

Hon Ginny Andersen
Minister of Justice

Proactive release – Better Outcomes for Victims: approvals for introducing legislation and a Government Response to Petitions Committee report

Date of issue: 11 September 2023

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Better Outcomes for Victims: approvals for introducing legislation and a Government Response to Petitions Committee report <i>Cabinet paper</i> Office of the Minister of Justice 27 July 2023	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
2	Government Response to Report of the Petitions Committee On Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand <i>Government Response</i> Office of the Minister of Justice 27 July 2023	Released in full.
3	Departmental Disclosure Statement <i>Key advice</i> Ministry of Justice 19 July 2023	Released in full.
4	Better Outcomes for Victims: approvals for introducing legislation and a Government Response to Petitions Committee report <i>Cabinet Minute – LEG-23-MIN-0122</i> Cabinet Office 27 July 2023	Released in full.

In Confidence

Office of the Minister of Justice

Cabinet Legislation Committee

Better Outcomes for Victims: approvals for introducing legislation and a Government Response to Petitions Committee report

Proposal

1. This paper seeks approval for:
 - the introduction of the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill, and
 - the Government Response to the Petitions Committee report on the *Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand*.

Policy

2. On 31 March 2023 and 3 April 2023, Cabinet agreed to a cross-sector work programme designed to achieve better outcomes for victims [SWC-23-MIN-0020 and CAB-23-MIN-0107 refers]. This included legislative changes to strengthen legal protections for victims of family violence and sexual violence by:
 - amending the Crimes Act 1961 to clarify the law to protect child victims of sexual violence from further harm resulting from participation in court proceedings,
 - amending the Criminal Procedure Act 2011 to explicitly provide an opportunity for victims of sexual violence to opt-out of automatic name suppression at the time of trial, and
 - amending relevant legislation to respond to litigation abuse by providing the Courts with the power to restrain a party from filing family-related applications (including interlocutory applications) or responses to applications at any stage of proceedings, where a holistic view of the case indicates the applicant or respondent is using the proceedings as a means to abuse the other party.
3. With the delegated authority granted to me by Cabinet, I have since agreed to address litigation abuse by amending the District Court Act 2016 and Senior Courts Act 2016 to create a new civil restraint framework for family proceedings. I will bring a separate Bill to address these matters to Cabinet at a later date.

4. The Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill (the Bill) addresses known gaps in the legislative framework, as articulated by victims of sexual violence, their advocates, and specialist service providers. I view these changes as the next step in New Zealand's shift towards a more victim-focused legislative framework – while also making significant and quick gains for sexual violence victims and their families.
5. I also seek approval of the attached Government Response to the Petitions Committee report on the *Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand*. The response references the multi-year work programme to deliver better outcomes for victims, which includes a review of the Victims' Right Act 2002 and the development of a new justice sector operating model.

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

6. The policy intent of the Bill is to reduce harm and the risk of retraumatisation for victims of sexual violence as they participate in court proceedings.

The Bill ensures consent is not relevant for child victims, and increases the penalty for sexual connection with a child

7. The Crimes Act 1961 includes sexual crimes that are applicable to the general population, as well as some that are specifically for offending against children and young people. For example, section 132(1) makes it an offence to have a sexual connection with a child (defined as a person under the age of 12).
8. Despite the age-specific offence available, rape or unlawful sexual connection with a child is frequently charged as sexual violation under section 128B of the Crimes Act 1961. Sexual violation (which is defined in section 128 of the Act) carries a maximum penalty of 20 years' imprisonment, whereas sexual connection with a child under 12 has a maximum penalty of 14 years' imprisonment. I understand this discrepancy in penalties is one of the primary reasons prosecutors often prefer section 128B over section 132(1) when charging sexual offending against children.
9. Lack of consent and lack of reasonable belief in consent are key elements that must be proved under section 128B, but are not elements that need to be proved under section 132(1). This means that where a charge is filed under section 128B, some children may be questioned about consent in court (such as whether they wanted, asked for, or even enjoyed the sexual activity), which can be extremely harmful and re-traumatising. Section 132(5) guards against that line of questioning under the child-specific offence by explicitly stating consent is not a defence.
10. To address this issue, the Bill amends the Crimes Act 1961 so that section 128B (sexual violation) does not apply when the victim is or was a child under 12. The Bill also amends section 132(1) (sexual connection with a child) to increase the maximum penalty to 20 years' imprisonment, aligning the penalty with that of sexual violation.

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Together, these amendments to the Crimes Act 1961 will significantly reduce the risk of child victims of sexual violence being questioned about consent.

The Bill clarifies and strengthens the process for victims to lift automatic name suppression

11. Complainants in sexual cases are granted automatic name suppression, with the original policy intent being to protect the complainant. However, some victims do not want or need such protection. Greater autonomy is needed for victims of sexual violence participating in court processes; whether they want their privacy or to speak out about their experience, it is important that the justice system responds appropriately and efficiently.
12. The Bill amends the Criminal Procedure Act 2011 to reflect an expanded purpose of relevant sections, citing both the importance of protecting a complainant's privacy and supporting a complainant's autonomy over the name suppression they are subject to. The Bill also requires the court to consider any views of the complainant about the publication of identifying details.
13. Section 203 of the Criminal Procedure Act 2011 also provides for complainants who are over the age of 18 years to apply to lift their name suppression, without any additional cost. However, there is not a streamlined process or readily available information for complainants about how to pursue this application. This can disempower victims, leaving many unaware of their options, and causing some to spend thousands of dollars seeking legal assistance.
14. The Bill amends section 203 to require applications to lift name suppression to be made in accordance with the Criminal Procedure Rules 2012, which will establish a detailed, prescriptive process for this purpose.

Government Response to Petitions Committee report

15. On 8 June the Petitions Committee (the Committee) tabled its report on the *Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand*. A victim impact statement (VIS) is a statement that a victim of a crime provides to the court in criminal proceedings. The Victims' Rights Act 2002 sets out the purposes of a VIS and enables the victim of a crime to describe how the criminal offending has affected them. The judge considers the VIS when giving a sentence indication before trial, sentencing a convicted offender, or making orders for disposition under the Criminal Procedure (Mentally Impaired Persons) Act 2003.
16. The Committee's report notes that the petitioner considers that the current VIS system is unjust. The petitioner stated that "victims must be able to say exactly how they feel in their VISs and that editing VISs waters them down, silences victims, and minimises their pain and suffering". The Committee's report also notes that the Victims' Rights Act focuses on serving the needs of the judge when sentencing offenders and balancing competing requirements of the court. The Committee recommends that, in the context of VIS, the Government explore ways to close the gap between what the court requires and what aligns more closely with the victim's needs.

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17. Standing Orders require the Government to respond to the Petitions Committee's recommendation by 1 September 2023. I recommend Cabinet approve the attached Government Response, which refers to the multi-year victims work programme this Government already has underway. In particular, the response references the inclusion of a review of the Victims' Right Act 2002 and the development of a new justice sector operating model on the multi-year work programme. The law relating to VISs is set out in the Victims' Rights Act and therefore the Committee's recommendation will be considered as part of that review, as well as during the design of the new operating model.

Report back

18. When Cabinet agreed to a three-year work programme to drive the justice sector delivery of better outcomes for victims in the criminal justice system in April 2023, it also invited the Minister of Justice to report back to Cabinet on its progress by July 2023 [CAB-23-MIN-0107].
19. Tranche 1 of the work programme includes three pilot projects, which were all successfully launched on 3 July. These pilots collectively create a base for a future operating model to transform victim experience of the criminal justice system. Pilot 1 looks at how the whole system can keep victims safe, Pilot 2 focuses on a specific cohort of victims (children) and Pilot 3 is a deep dive into a specific interaction victims have with the bail system. The pilots will run for twelve months. Data and insights will be collected throughout the twelve-month period, with a final evaluation in July 2024, to inform the operating model.
20. To strengthen existing services for victims of crime, additional funding was provided to support Victim Support, and the Victims' Assistance Scheme. Improvements have already been made and/or are planned with the additional funding. Victim Support's experience and expertise working with victims will also help inform the detailed design of the operating model.
21. Officials are now focusing on addressing the way that justice sector agencies interact with victims directly, at the operational level – where rights and the principles of treatment and wellbeing set out in the Victims' Rights Act are actually delivered and experienced by people. Identified areas of focus include workforce and people, information and processes, and technology. Additional longer-term work, including further potential policy and legislative changes, and numerous programmes of work underway within justice sector agencies will also contribute to improving outcomes for victims in the criminal justice system. Strong governance and accountability arrangements are in place that will continue to drive and monitor the delivery of the work programme.

Impact Analysis

22. A regulatory impact statement was prepared to accompany the first Cabinet paper outlining the sexual violence policy proposals [SWC-23-MIN-0020 refers].

Compliance

23. The Bill complies with:
- the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached),
 - the principles and guidelines set out in the Privacy Act 2020,
 - relevant international standards and obligations, and
 - the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

New Zealand Bill of Rights Act 1990

24. Advice has been provided to the Attorney-General by the Crown Law Office on consistency with NZBORA.

Principles of the Treaty of Waitangi

25. Māori are overrepresented as victims of crime, including sexual violence. It is likely the Bill will support the Crown's obligations to actively protect Māori interests and rights – particularly by reducing inequities – as the proposals seek to reduce further harm to victims of sexual violence as they navigate court systems.
26. There are differing cultural perspectives on automatic name suppression, including how it impacts a victim's whānau and wider community. Te Ao Māori processes and practices, and how automatic name suppression may limit tino rangatiratanga (autonomy and self-determination), have not been fully considered. This is because amendments in the Bill intend to clarify current settings to better support victims, rather than change the overarching policy position of automatic name suppression.
27. Given the overrepresentation of Māori as victims of crime, Māori also have an interest in the upcoming review of the Victims' Rights Act. The Ministry of Justice is partnering with Māori to inform this policy work and to support both public and targeted engagement planned for next year.

Consultation

28. The following agencies were consulted on this paper, the Bill, and the draft Government Response: Crown Law Office, the Treasury, Department of the Prime Minister and Cabinet, New Zealand Police, Oranga Tamariki, Department of Corrections, Ministry for Women, Ministry of Social Development, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Te Puni Kōkiri, Te Puna Aonui, Te Arawhiti, Department of Internal Affairs, Ministry of Health, Whaikara – Ministry for Disabled People, and Inland Revenue.

29. The Chief Victims Advisor, victim advocates and specialist service-providers were consulted throughout the policy process and support the legislative changes outlined in this paper. While the Chief Victims Advisor has held the view that victims would be best served by an 'opt-in' process for name suppression, on balance she is satisfied that the proposed changes are a positive step forward.
30. The judiciary and legal bodies, including the New Zealand Law Society, Criminal Bar Association, Defence Lawyers Association (DLANZ), and South Auckland Bar Association (SABA), were consulted on the best possible implementation of the policy proposals. The judiciary advised that decisions about consent and children are for Parliament to make. DLANZ and SABA raised concerns about potential unintended consequences of the changes to the Crimes Act 1961 and do not support the proposal.
31. The government caucus will be consulted prior to the Bill being introduced.

Binding on the Crown

32. Cabinet Office Circular (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Crimes Act 1961 and the Criminal Procedure Act 2011 bind the Crown, and it is proposed that the Bill will follow that position. The Bill will therefore bind the Crown.

Creating new agencies or amending law relating to existing agencies

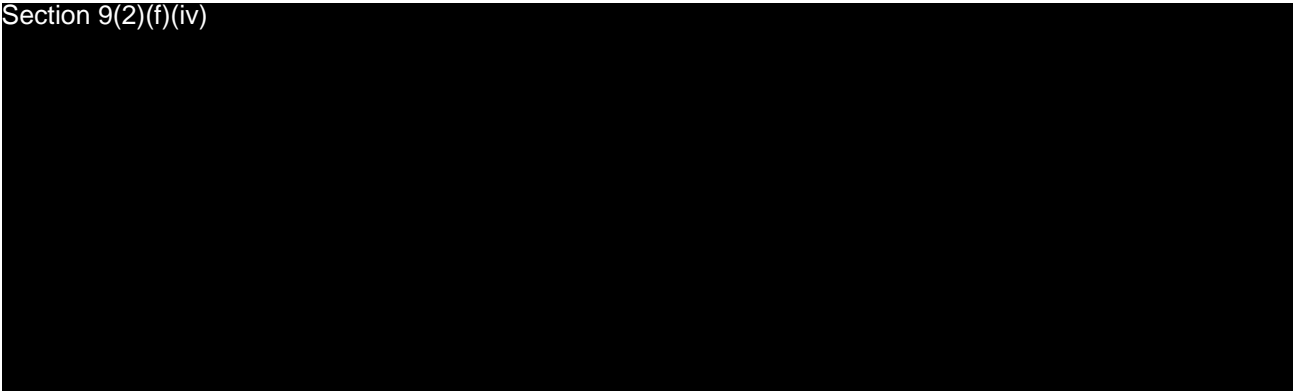
33. The Bill does not create any new agencies.

Allocation of decision-making powers

34. The Bill does not allocate decision-making powers between the executive and judiciary.

Associated regulations

Section 9(2)(f)(iv)



Other instruments

37. The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

38. The Bill does not contain a definition of Minister, department or Chief Executive of a department.

Commencement of legislation

39. The Bill will come into force four months after the date of Royal assent.

Parliamentary stages

40. The Bill should be introduced on or after 31 July 2023.
41. I propose that the Bill be referred to the Justice Committee for consideration and enacted by the end of 2024.

Proactive Release

42. I intend to proactively release this paper and any relevant materials following the introduction of the Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.

Recommendations

43. I recommend that the Cabinet Legislation Committee:
- 1 **note** that the Bill holds a category 4 priority on the 2023 Legislation Programme (to be referred to Select Committee before the general election);
 - 2 **note** that the Bill will strengthen legal protections for victims of sexual violence by:
 - 2.1 minimising the risk of children being questioned in court about consent to sexual activity, and
 - 2.2 creating a clear and streamlined process for complainants in sexual cases to apply to lift their automatic name suppression;
 - 3 **approve** the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
 - 4 **agree** that the Bill be introduced on or after 31 July 2023 following confirmation by Cabinet;
 - 5 **agree** that the Government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration, and
 - 5.2 enacted by the end of 2024;

I N C O N F I D E N C E

- 6 **note** that on 8 June 2023 the Petitions Committee presented its report on the *Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand* to the House;
- 7 **note** that the Committee recommend that the Government, in the context of Victim Impact Statements, explore ways to close the gap between what the court requires and what aligns more closely with the victim's needs;
- 8 **approve** the attached Government Response;
- 9 **invite** the Minister of Justice to present the Government Response in the House by 1 September 2023, in accordance with Standing Order 256; and
- 10 **Note** that the Minister of Justice will report back to Cabinet on agency progress on the Better Outcomes for Victims programme in due course.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice

I N C O N F I D E N C E

**Government Response to
Report of the Petitions Committee
on
Petition of Patricia Fabish and the Sensible Sentencing Group
Trust: Stop editing Victim Impact Statements in New Zealand**

Presented to the House of Representatives

In accordance with Standing Order 256

I N C O N F I D E N C E

Government response to Report of the Petitions Committee on Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand

Introduction

- 1 The Government welcomes the Petitions Committee's Report, *Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand*, tabled on 8 June 2023.
- 2 The report notes that the petitioner considers that the current Victim Impact Statement ("VIS") system is unjust. The petition stated that "victims must be able to say exactly how they feel in their VISs and that editing VISs waters them down, silences victims, and minimises their pain and suffering". It also stated that this can be the only time a victim has a voice during the justice process, their only opportunity to address the offender, and a huge part of the healing process.
- 3 The Committee's report notes that the Victims' Rights Act 2002 focuses on serving the needs of the judge when sentencing offenders and balancing competing requirements of the court. This includes ensuring that the voice of victims is present in sentencing, as well as upholding the integrity of the court and ensuring procedural fairness. The Committee also noted the requirements for VISs are "clinical and objective" when compared with the emotional needs of victims.
- 4 The Government responds to the Petitions Committee's report in accordance with Standing Order 256.

Recommendation and Government Response

- 5 The Petitions Committee ("the Committee") recommended that the Government explore ways to close the gap between what the court requires from VISs and what aligns more closely with the victim's needs.
- 6 The Government acknowledges victims of crime often feel their voices are not being heard in the criminal justice system. We have carefully considered the Committee's report and accept its recommendation.
- 7 This Government is committed to achieving better outcomes for victims, and the Committee's recommendation will be considered as part of a broader work programme to deliver better outcomes for victims.
- 8 In April 2023, the Government announced a multi-year work programme to improve victims' experiences in the courts and wider justice system. That work programme includes legislative changes to provide greater legal protections for victims of family violence and sexual violence; three new pilots to improve victims' safety, ensure they are heard in bail decisions and strengthen support for child victims of sexual violence; and additional funding for Victim Support and the Victims Assistance Scheme.
- 9 The work programme also includes the development of a new justice sector operating model which will transform the way justice sector agencies interact directly with victims at the operational level – where victims experience rights and the

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principles of treatment and wellbeing in the Victims' Rights Act are delivered. Given the scope of the operating model, VISs, and the process for preparing VISs, will be considered during its design.

- 10 In addition, the Minister of Justice has directed the Ministry of Justice to lead a review of the Victims' Rights Act 2002 and related legislation to strengthen victims' rights and agency accountability in the criminal justice system. The law relating to VISs is set out in the Victims' Rights Act and therefore the Committee's recommendation will also be considered as part of that review.

DRAFT

Departmental Disclosure Statement

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 July 2023

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Part One: General Policy Statement

This Bill is introduced under Standing Order 267(1)(a). This Standing Order permits an omnibus Bill to amend more than one Act to be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy for this Bill is to reduce the harms experienced by victims of sexual violence participating in court proceedings.

Victims of sexual violence are particularly vulnerable because of the invasive and traumatising nature of the violence they have experienced. This type of violence can be detrimental to a victim's physical and mental wellbeing, and can have long-lasting psychological, social, and financial impacts. For a victim, participating in the court process can cause even further harm.

The Bill strengthens legislative safeguards to enhance protection for victims of sexual violence as they participate in court processes. It seeks to ensure that court processes are aligned with victims' needs, while preserving the fairness and integrity of the court system. The Bill implements this single broad policy by amending:

- the Crimes Act 1961, and
- the Criminal Procedure Act 2011.

The Bill contributes to work underway addressing sexual violence across New Zealand and the experience of victims in the justice system, including contributions to *Te Aorerekura* (the National Strategy and Action Plan), and giving effect to the new regulatory provisions introduced under the Sexual Violence Legislation Act 2021.

Amendments to the Crimes Act 1961 reduce the risk of child victims of sexual violence being questioned about consent to sexual activity.

Under section 128B (sexual violation), lack of consent and lack of reasonable belief in consent must be proved. The Bill inserts a new clause within section 128B, ensuring the section does not apply if the alleged victim is under 12. This prevents children from being subjected to questions in court about whether they wanted, asked for, or even enjoyed the sexual activity.

A child-specific offence, section 132 (sexual conduct with a child under 12), already guards against this line of questioning by explicitly preventing consent as a defence. The Bill amends section 132(1) (sexual connection with a child) so that the maximum penalty available is 20 years' imprisonment, aligning with that of sexual violation.

Amendments to the Criminal Procedure Act 2011 clarify the law so that automatic name suppression settings both protect complainants' privacy and support complainants' autonomy. The Bill does this by expanding the purpose of relevant provisions and requiring the court to consider complainants' views about the publication of identifying details.

Victims can be disempowered by the lack of streamlined process or readily available information for how to apply to lift automatic name suppression. A new, prescriptive process will be set out in the Criminal Procedure Rules 2012. The Bill amends section 203 (automatic suppression of identity of complainant in specified sexual cases) to account for this new process. Whether complainants want their privacy or to speak out about their experience, these amendments ensure the court system responds appropriately and efficiently.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>That's a lie: Sexual violence misconceptions, accusations of lying, and other tactics in the cross-examination of child and adolescent sexual violence complainants</i> (Dr Isabel Randell, August 2021): https://chiefvictimsadvisor.justice.govt.nz/assets/Chief-Victims-Advisor-report-Thats-a-lie-PDF.pdf</p> <p><i>Te Tangi o te Manawanui Recommendations for Reform</i> (Chief Victims Advisor, 2019): https://chiefvictimsadvisor.justice.govt.nz/assets/Uploads/Te-Tangi-.pdf</p> <p><i>Improving the justice response to victims of sexual violence: victims' experiences</i> (Gravitas Research and Strategy Limited, August 2018): https://www.justice.govt.nz/assets/Improving-the-justice-response-to-victims-of-sexual-violence-victims-experiences.pdf</p> <p><i>The Justice Response to Victims of Sexual Violence</i> (New Zealand Law Commission, R136, published 14 December 2015): https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Regulatory Impact Statement: Strengthening Legal Protections for Victims of Family Violence and Sexual Violence</i>, by the Ministry of Justice, dated 24 March 2023.</p> <p>This will be published at: https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/; and https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments.</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statement did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.</p>	
2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
The size and nature of potential costs and benefits of the policy to be given effect by the Bill are detailed in the Regulatory Impact Statement prepared by the Ministry of Justice.	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
The changes will require adjustment to process and practice for the following: Police, prosecutors, the judiciary, other legal professionals and court staff.	
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
We anticipate implementation through the Institute of Judicial Studies, the New Zealand Law Society, and the Ministry of Justice.	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry of Justice analysed the Bill and did not identify any international obligations that conflict with the policies contained in the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

In preparation of this work, we consulted with specialist Māori social service providers on the issues more broadly. Māori are overrepresented as both victims and offenders of sexual violence. We undertook high-level analysis of the proposals against the Treaty, and concluded that overall, the proposals are likely to reduce inequities and support the Crown's obligations to actively protect Māori interests and rights.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Crown Law Office has provided advice to the Attorney-General. This advice will be available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

Clause 5 amends section 132(1) of the Crimes Act 1961 to increase the maximum penalty available for the offence of sexual connection with a child from 14 years' to 20 years' imprisonment.

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Offence and Penalty Vetting team at the Ministry of Justice was consulted on this amendment.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

YES

Clauses 7 and 8 expand the purpose sections of relevant name suppression provisions in the Criminal Procedure Act 2011, and requires courts to consider complainants' views with regard to the publication of identifying details. These provisions relate to the disclosure of personal information.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Ministry of Justice officials maintain active relationships with stakeholders that have an interest in sexual violence issues and legislative settings, including specialist service-providers and victim advocates. Through these, we have explored concerns about sexual violence legislative settings more broadly, and tested a range of proposals in response to these concerns.</p> <p>The following agencies were consulted on the policy: Crown Law Office, the Treasury, Department of Prime Minister and Cabinet, New Zealand Police, Oranga Tamariki, Department of Corrections, Ministry for Women, Ministry of Social Development, Ministry for Pacific Peoples, Ministry for Ethnic Communities, Te Puni Kōkiri, Department of Internal Affairs, Ministry of Health, Whaikaha – Ministry of Disabled People, and Inland Revenue.</p> <p>The following legal professionals were also consulted to inform the best possible implementation of the policy intent: the judiciary, the New Zealand Law Society, Criminal Bar Association, Defence Lawyers Association, and South Auckland Bar Association.</p> <p>There will be the opportunity for stakeholders and the wider public to provide feedback and recommendations on the proposed changes through the Select Committee stage.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Bill's policy has been further tested with the Group in the Ministry of Justice responsible for delivering court services throughout the country.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Better Outcomes for Victims: Approvals for Introducing Legislation and a Government Response to Petitions Committee Report

Portfolio Justice

On 27 July 2023, the Cabinet Legislation Committee:

- 1 **noted** that the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill (the Bill) holds a category 4 priority on the 2023 Legislation Programme (to be referred to Select Committee before the general election);
- 2 **noted** that the Bill will strengthen legal protections for victims of sexual violence by:
 - 2.1 minimising the risk of children being questioned in court about consent to sexual activity;
 - 2.2 creating a clear and streamlined process for complainants in sexual cases to apply to lift their automatic name suppression;
- 3 **approved** the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill [PCO 24501/2.4] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agreed** that the Bill be introduced on or after 31 July 2023 following confirmation by Cabinet;
- 5 **agreed** that the government propose that the Bill be:
 - 5.1 referred to the Justice Committee for consideration, and
 - 5.2 enacted by the end of 2024;
- 6 **noted** that on 8 June 2023, the Petitions Committee (the Committee) presented its report on the Petition of Patricia Fabish and the Sensible Sentencing Group Trust: Stop editing Victim Impact Statements in New Zealand to the House;
- 7 **noted** that the Committee recommend that the government, in the context of Victim Impact Statements, explore ways to close the gap between what the court requires and what aligns more closely with the victim's needs;

- 8 **noted** that the proposed government response, attached the submission under LEG-23-SUB-0122, references the inclusion of a review of the Victims' Right Act 2002 and the development of a new justice sector operating model on the multi-year work programme, and that the Committee's recommendation will be considered as part of that review, as well as during the design of the new operating model;
- 9 **approved** the government response attached the submission under LEG-23-SUB-0122;
- 10 **invited** the Minister of Justice to present the government response in the House by 1 September 2023, in accordance with Standing Order 256;
- 11 **noted** that the Minister of Justice will report back to Cabinet progress on the Better Outcomes for Victims programme in due course.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Andrew Little
Hon David Parker
Hon Kieran McAnulty
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Dr Deborah Russell
Tangi Utikere, MP (Chief Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG