



**Improving the Justice Response
to Victims of Sexual Violence**

Operational Improvements

Stocktake and Review 2020/21

Prepared for the Ministry of Justice

by GravitasOPG



Executive Summary 2022

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gravitasOPG

www.gravitasopg.co.nz

taniab@gravitasopg.co.nz

Suea@gravitasopg.co.nz

09 3568842

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The Ministry of Justice is one of the agencies undertaking operational improvements in the justice response to sexual violence, and was funded to undertake this evaluation work.



Executive Summary

Introduction

Sexual violence is a significant problem in New Zealand that the government is committed to addressing. A significant proportion of offending goes unreported – and when cases do go to trial, victims often experience negative impacts as a result of the justice system.

In 2015 the Law Commission¹ recommended a wide range of changes to how the justice sector responds to sexual violence. The Ministry of Justice responded with a package of initiatives that did not require legislative change, and were funded from the Justice Sector Fund (JSF) in 2017/18, namely:

- Better training for prosecutors, defence counsel, court staff and the judiciary.
- Comprehensive online guidance and information for victims.
- Developing an operational policy to ensure that victims' needs are better and more consistently met when they are at court.
- Development of a draft evaluation plan for these initiatives.

Budget 2019 (B19) provided funding for the continuation of some of the first initiatives and for another package of improvements, this time both legislative and operational, namely:

- Prosecution guidance and training (refreshed to reflect legislative changes).*
- Defence lawyer training (best practice in questioning vulnerable witnesses in sexual violence cases)
- Judicial education.²
- Increased use of alternative modes of evidence, including pre-recorded cross-examination, and recording of all evidence at the substantive trial (technology and AVL services in courts).*
- Increased access to communication assistance (training and quality capability frameworks).

Two additional consequential operational activities were funded from B19:

- Pipeline expenses for Corrections from reforms.*
- Implementation and evaluation.*

(Denotes improvements or activities entirely or partly dependent on the Sexual Violence Legislation Bill being progressed.)*

Some of the (B19) initiatives require legislative changes and therefore are dependent on the passing of the Sexual Violence Legislation Bill, currently proceeding through the House. The Bill will amend the Evidence Act 2006, the Victims' Rights Act 2002, and the Criminal Procedure Act 2011 with a raft of changes aimed

¹ Law Commission, (2015), The Justice Response to Victims of Sexual Violence, Report 136, Wellington. Retrieved from: <https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R136-The-Justice-Response-to-Victims-of-Sexual-Violence.pdf>

² Some training activities that were funded in 2019/20 are likely to be complete and are part of this stocktake and review, and other activities were funded in 2020/21, 2021/22 and 2022/23 and not included in this stocktake and review.

at reducing the re-traumatisation that victims of sexual violence often experience when they attend court and give evidence.

Approach

Focusing on the individual operational reforms listed above, the Ministry of Justice commissioned GravitasOPG to conduct a stocktake and review to ascertain the extent to which they have been implemented, including any barriers, enablers and interdependencies to the work, and how they could be evaluated for impact and outcomes in the future.

To achieve this, the evaluators consulted with n=33 stakeholders from relevant justice sector agencies and related organisations in a series of in-depth interviews to deliver a 'stocktake' and review of progress to date for each of the funded initiatives.

An overview of the status of each of the operational improvements is provided below.

Overview

Online Guide and Information for Victims of Sexual Violence

The Ministry of Justice has developed and fully implemented the guide, which has been live since December 2018. Feedback on the website's content from the sexual violence support sector and the Ministry's frontline staff has been positive; little user feedback from victims on the online guide has been sought to date.

Anecdotally, use of the website has been considerably lower than expected. This appears to be due to a range of technical issues, particularly that the site has been set up as a sub-site to the general victims' information website (rather than a site in its own right, which would be recognised by search engines). Work is underway to raise awareness of the guide, including through social media advertising and an extensive outreach to the sexual violence support sector.

Extensive monitoring data is available through Google Analytics including number of website visits – per day or week; which pages of the site users view; how long users spend on the site; how many repeat visits they make; and gender and ethnicity of site users.

Development of an Operational Policy and Training for Ministry of Justice Staff

The proposed operational policy funded out of the JSF was not progressed by the Ministry. Key reasons for this decision include a perception that those responsible for ensuring victims' needs are met (primarily Court Victim Advisers) are already achieving this as far as they can within the constraints of the court environment; resources and legislation; and a perception that it would be challenging to design and implement a policy that would have an impact, given these circumstances. A decision was made by the steering committee for the Improving the Justice Response to Victims of Sexual Violence Project that training for frontline court staff would be more valuable and impactful than an operational policy document.

A training package covering family violence and sexual violence was developed for the Ministry of Justice by two non-government organisations. Phase One of the work programme has been delivered as a two hour in-person training workshop to court and tribunal staff around the country on site at courts. An estimated 1200 of a potential 2000 staff attended. No follow-up or refresher training has occurred to date, meaning that with staff turnover the proportion of those who have been trained has decreased over time.

Phase Two of the training will be delivered via a 'champions' model, with at least one staff member from each court attending national level training and championing a best practice approach delivering that in their own courts. This will cover how to recognise and respond to family violence and sexual violence and where to refer. A newly established national role will support the champions.

A further component of the work programme is for all third-party court service providers to have received family and sexual violence response training, although this will not be the same training delivered to court staff.

Whilst a decision was made to replace the operational policy with the staff training, some stakeholders feel that an operational policy would have been valuable to document nationally consistent expectations for dealing with sexual violence victims in the courthouse - to achieve better regional consistency, to reduce potential re-traumatisation, ensure accountability, and to provide a 'standard' to assist with monitoring and compliance.

Solicitor-General's Guidelines for Prosecuting Sexual Violence and Training

The Crown Law Office developed the Solicitor-General's Guidelines for Prosecuting Sexual Violence (the Guidelines) and published these in July 2019. Crown Law delivered training on the Guidelines, via a national roadshow, to all Crown Solicitors and Police prosecutors who were on staff at the time; new prosecutors are trained locally, usually as part of induction.

The Guidelines are perceived as comprehensive and relevant and, for the most part, document what Crown and Police prosecutors report they were already doing. Prosecutors experience few barriers to implementing the Guidelines.

Periodic refresher training would be welcomed by prosecutors and further training is planned for when the Guidelines are updated when the Sexual Violence Legislation Bill is passed. The mode for this training is yet to be determined.

Accreditation of Legal Aid Defence Counsel; Defence Training

As an alternative to accreditation of legal aid defence counsel, Continuing Legal Education (a company owned by the New Zealand Law Society) was commissioned by the Ministry of Justice to develop and deliver training for lawyers, targeted to defence counsel but open to all. Training was designed to raise awareness of key issues pertaining to sexual violence cases, including how complainant witnesses

experience the justice process and how to question vulnerable witnesses in line with the Evidence Act 2006.

Training has included presentations from a wide range of subject matter experts, including experienced defence counsel, a senior member of the judiciary, a court communication assistance provider, and leading academics. Over 1200 legal sector stakeholders registered over two training sessions, although defence counsel attendance was lower than anticipated. Feedback received from participants indicated that the training exceeded or met their expectations.

Judicial Education

Te Kura Kaiwhakawā (Institute of Judicial Studies) developed and delivered annually 2 or 3-day inter-bench half-day workshops for the judiciary around sexual violence in the criminal justice system, including impacts on complainant-witnesses and how judges can minimise trauma for victims while maintaining fair trials for defendants. Education material was developed in collaboration with a range of experts including from the fields of criminal justice, psychology, memory, disability, and communication assistance.

Education for the judiciary on sexual violence is ongoing as part of Te Kura Kaiwhakawā's curriculum area on social context issues.

To support the judicial education, Te Kura Kaiwhakawā produced a Sexual Violence Trials Bench Book. This was developed by a multi-disciplinary editing committee and first published in March 2019. This bench book has since been updated to remain current, with further content on sexual violence misconceptions due for publication at the end of 2021.

Communications Assistance

Up until recently, the communication assistance service in courts has been provided with limited specific governance or oversight from the Ministry of Justice. With input from the two current communication assistance providers, the Ministry has developed the Communication Assistance Quality Framework (operational guidelines) for court- appointed Communication Assistants (CAs).

Foundation training modules are in development for CAs working in courts and it is expected that all 40 current and any new communication assistants being recruited will receive this foundational training by the end of 2021. In addition, a new role has been established within the Ministry to manage the CA contracts with communication assistance providers.

Currently, uptake of communication assistance for complainant-witnesses and defendants varies widely around the country, due primarily to mixed levels of awareness among lawyers and the judiciary, arising from a lack of a formalised national roll-out of the service to date.

Where there is high awareness, demand for the service is high with resources reported to currently be at capacity. Demand for communication assistance is expected to increase significantly over coming years as awareness increases, and further when the Sexual Violence Legislation Bill passes (as the Bill will officially

extend the service to any witness who, for any reason, requires assistance to give evidence or to understand proceedings – in all cases, including sexual violence cases). Workforce development will be critical to meet the growing demand and ensure equitable access by location.

Other Operational Improvements and Initiatives

Three additional activities were identified that relate to, or can be expected to contribute to, the intended cumulative impacts on the justice response to sexual violence but were not funded through JSF17/18 or B19. These are:

- Upgrades and refurbishment of courthouses³: The Ministry of Justice's property team has overseen upgrades and refurbishments to vulnerable witness rooms in 28 courts around the country.
- The Ministry of Social Development (MSD)'s Court Support Service, which provides mental, spiritual, and physical support to victims through the court process. The service is to date delivered by seven sexual violence support agencies that were already contracted by MSD to provide sexual violence crisis support. Work is being done to define referral pathways and raise awareness of the service among sector stakeholders.
- The Sexual Violence Court Pilot, established at the Auckland and Whangārei District Courts in December 2016, implemented a range of initiatives including the use of designated judges and case managers, courtroom prioritisation, earlier presentation of evidence, and greater use of alternative modes of evidence. The Pilot established best practice for the conduct of sexual violence trials, within existing legislation. Initially due to run until April 2019, these courts are continuing to operate now on a permanent basis. Decisions to extend these operations to other courts are yet to be made. However, it is expected that best practice lessons from these courts, along with other specialist courts, will be incorporated into the implementation of the Te Ao Mārama model for District Courts.⁴

Summary

As at June 2021, of the nine operational improvements outlined in Section 2.1, progress has been made on six. Five have been fully implemented with the remaining one (quality competency framework and training for communication assistance) being well underway. The Ministry of Justice decided not to progress the development of an operational policy, while the then Minister of Justice and former Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) decided not to proceed with the accreditation of legal aid defence counsel. Training programmes for court staff and defence counsel have been developed and implemented as alternatives. The increased use of alternative modes of evidence is awaiting the passing of the Sexual Violence Legislation Bill.

³ A small amount of funding was included for property improvements within B19 for implementing alternative modes of evidence/pre-recorded cross-examination under the Bill. However, this was more focused on enhancing audio visual quality within secure witness rooms.

⁴ Transformation of the District Courts to reflect the needs of a multi-cultural Aotearoa where everyone can seek justice and feel they are heard and understood. <https://districtcourts.govt.nz/media-information/media-releases/11-november-2020-transformative-te-ao-marama-model-announced-for-district-court/>

Common enablers to the implementation of the improvements include wide stakeholder consultation in the design stage, accessing the skills and experience of non-Ministry stakeholders as required, testing of initiatives with the ultimate user group prior to launch, and making the improvement as accessible as possible to all stakeholders.

Insufficient budgetary time frames, single training sessions, impacts of COVID-19 on timings, uncertainty around the timing of the Bill and a lack of inter-agency collaboration, among other factors, have been barriers or challenges to the implementation of some of the operational improvements.

Going forward, if not already in place, quantitative data collection in relation to the operational improvements needs to be established as quickly as possible so that robust datasets are available to measure impacts and outcomes. Also, future evaluations need to be cognisant of timing, ensuring sufficient time for cases to have gone through the entire court process with the new improvements in place in order for impacts and outcomes to be measurable.

Stocktake Overview: Status of Operational Improvements (June 2021)

A number of operational improvements were funded through the Justice Sector Fund (JSF) (2017/18) and Budget 2019 (B19) aimed at improving the justice response to victims of sexual violence. Table 1 below identifies funding streams and responsible agencies, summarises progress to date for each of the operational improvements, and shows which are dependent on passing of the Sexual Violence Legislation Bill (the Bill) currently before Parliament.

Table: Overview of Status of Operational Improvements

Category	Proposal/Operational Improvement and Status	Funding	Depends on Bill	Progressed	Agency
Solicitor-General Guidelines for Prosecution of Sexual Violence					
Development of SG-SVPG	Solicitor-General Guidelines for the Prosecution of Sexual Violence (SG-SVPG) were developed by Crown Law, with input from Crown Solicitors, and published 2019	JSF	No	Yes	Crown Law
Training – Crown Prosecutors SG-SVPG	Training of Crown Solicitors on SG-SVPG <ul style="list-style-type: none"> All current Crown Solicitors who prosecute SV attended in-person training on the SG-SVPG, delivered by Crown Law in 2019. Training for new Crown Solicitors or those new to prosecuting SV is managed by individual Crown Solicitor warrants. 	JSF	No	Yes	Crown Law
Training – Police Prosecutors SG-SVPG	Training of Police prosecutors on SG-SVPG (and National ASA Coordinators) <ul style="list-style-type: none"> All current Police prosecutors who prosecute SV cases received training via the Police internal training department based on resources created by Crown Law. National ASA co-ordinators received training directly from Crown Law. Development of a training module for new prosecutors is underway. 	JSF	No	Yes	NZP (PPS/ASA)
SG-SVPG (ii)	Updating of the Solicitor-General SV Prosecution Guidelines when the Bill passes <ul style="list-style-type: none"> Crown Law plans to update the Guidelines if the Bill passes. 	B19	Yes	No	Crown Law
Training – Crown Prosecutors SVPG (ii)	Update training for Crown Law on SG-SVPG (v2) when the Bill passes <ul style="list-style-type: none"> Crown Law plans to implement training to Crown Solicitors on the updated guidelines; format of this is yet to be determined. 	B19	Yes	No	Crown Law
Category	Proposal/Operational Improvement and Status	Funding	Depends on Bill	Progressed	Agency
Solicitor-General Guidelines for Prosecution of Sexual Violence					
Training – Police	Update training of Police prosecution on SG-SVPG when the Bill passes	B19	Yes	No	NZP (PPS/

Prosecutors SVPG (ii)	<ul style="list-style-type: none"> No plans are in place yet for update training, however Police have a policy to develop and deliver training as required for any new legislation affecting their operations. 				ASA)
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Sexual Violence Awareness Education/Training					
Training for Court Staff	Raise awareness and understanding of family and sexual violence issues among Ministry staff <ul style="list-style-type: none"> Combined family and sexual violence awareness training was developed by two NGOs. Two hour in-person training was delivered by the NGOs to 1200 of the potential 2000 court and tribunal staff over multiple sessions at each court. Phase 2 of training is intended to adopt a 'champions' model with 'champions' from each court and tribunal attending a national training and championing the approach at their own court/tribunal. 	JSF	No	Yes	MOJ (CSI)
Judicial Education	Enable/support increased awareness of SV issues through funding judicial education on SV cases <ul style="list-style-type: none"> Te Kura Kaiwhakawā (Institute of Judicial Studies) developed and delivered half-day workshops to the judiciary. Educational material was developed with input from subject matter experts. A sexual violence bench book was developed and published in 2019. Educational activities are ongoing. 	JSF	No	Yes	MOJ (Courts)/ IJS
Judicial Education (ii)	Update bench book, seminars and workshops, training after legislation <ul style="list-style-type: none"> Educational activities on SV are ongoing and will reflect the Bill when passed. Te Kura Kaiwhakawā intends to update the SV bench book after the Bill passes. 	B19	Partial	Yes	MOJ (Courts) /IJS

Category	Proposal/Operational Improvement and Status	Funding	Depends on Bill	Progressed	Agency
Sexual Violence Awareness Education/Training					
Training - Lawyers	Develop and deliver training for approximately 800 defence lawyers; on-going costs of PDS training (new staff/refresher) <ul style="list-style-type: none"> Continuing Legal Education have developed and delivered three training seminars targeted at defence lawyers but open to all, covering awareness, questioning vulnerable witnesses, and questioning children. A fourth session may potentially be delivered in November 2021. 	B19	No	Yes	MOJ/NZLS
Accreditation for Legal Aid (Training)	Accreditation of legal aid defence counsel for SV cases <ul style="list-style-type: none"> Not progressed as could not apply to all defence counsel and may limit defendants' access to legal support. Training for defence counsel delivered as an alternative. 	JSF	No	No	MOJ (Legal Aid)
Online Guide	Develop/publish online guide for victims on prosecution and investigation of SV cases <ul style="list-style-type: none"> Online guide went live in December 2018. Access/use has been lower than expected due to 'sub-site' design; difficult to find using search engines. No printed information has been provided. 	JSF	No	Yes	MOJ (CSI & Victims Centre)
Operational Policy	Develop operational policy to ensure victims' needs in court are consistently met <ul style="list-style-type: none"> Not progressed. Training for court staff delivered as an alternative. 	JSF	No	No	MOJ
Communication Assistance	Develop training and competency framework and training delivery costs <ul style="list-style-type: none"> A CA quality framework (operational guidelines) has been developed. Foundation training modules for CAs have been developed. Current contracted CAs expected to have received the training by the end of 2021. 	B19	Partial	Yes	MOJ (CSI)

Category	Additional Consequential Activities of Operationalising New Legislation	Funding	Depends on Bill	Progressed	Agency
Increased Use of Alternative Modes of Evidence					
Alt Modes Evid – Courts	Design, fit-out and implement pre-recorded cross-examination and recording of all evidence as services, video storage, contracted service costs, capital depreciation costs) Some planning is underway in anticipation of the Bill being passed.	B19	Yes	No	MOJ (Courts)
Alt Modes Evid - Legal Aid	Implement pre-recorded cross-examination (preparation pre-trial events, and appeals) • Not yet progressed as requires Bill to be passed.	B19	Yes	No	MOJ (LA)
Alt Modes Evid - PDS	Implement pre-recorded cross-examination (preparation pre-trial events, and appeals) • Not yet progressed as requires Bill to be passed.	B19	Yes	No	MOJ / PDS
Alt Modes Evid - Crown Law	Implement pre-recorded cross-examination (preparation pre-trial events, and appeals from both their own cases and Police cases) • Not yet progressed as requires Bill to be passed.	B19	Yes	No	Crown Law
Alt Modes Evid - Police	Implement pre-recorded cross-examination (preparation pre-trial events, and investigation for both their own and Crown Law Cases) • Not yet progressed as requires Bill to be passed.	B19	Yes	No	NZP
Alt Modes Evid - Corrections	Transporting prisoners on remand in custody to additional pre-recorded cross-examination hearings • Not yet progressed as requires Bill to be passed.	B19	Yes	No	DC

Table 1 Glossary

ASA	Adult Sexual Assault Unit	Courts	District Courts of New Zealand
CSI	Commissioning and Service Improvement	DC	Department of Corrections
IJS	Te Kura Kaiwhakawā (The Institute of Judicial Studies)		
LA	Legal Aid	MOJ	Ministry of Justice
NZP	New Zealand Police	PPS	Police Prosecution Service
PDS	Public Defence Service		

