

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill seeks to strengthen legislative safeguards for victims of sexual violence when they participate in court processes. It would do so by amending:

- the Crimes Act 1961 to address issues relating to children and consent
- the Criminal Procedure Act 2011 to modify provisions relating to automatic name suppression.

Part 1 of the bill would amend the Crimes Act 1961 so that the offence of “sexual violation” cannot be charged if the victim is under 12 years old. Instead, the charge would be “sexual connection with a child”. This would reduce the risk that a child must undergo questioning about sexual consent while giving evidence in court. The bill would also increase the maximum penalty for the offence of sexual connection with a child to align with that for sexual violation.

Part 2 of the bill would amend the settings in the Criminal Procedure Act 2011 related to automatic name suppression for complainants in sexual cases. At present, the Act provides automatic name suppression with the intent of protecting the complainant. However, some complainants do not want or need such protection, but find that applying to lift the suppression can be slow, difficult, and expensive. The bill’s amendments seek to maintain the original policy intent of protecting complainants’

privacy, while supporting their autonomy to have name suppression lifted if they wish.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

The Minister of Justice wrote to us on 21 November 2024 inviting us to consider Amendment Papers 215 and 216, which propose additional amendments to the Criminal Procedure Act 2011 relating to name suppression. We have done so, including reopening for public submissions on these proposals. We are recommending that the changes proposed in the two amendment papers with a few adjustments we propose form part of the attached version of the bill that we recommend to the House.

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Automatic name suppression for victims of all types of sexual offences

Currently, automatic name suppression is only given to complainants of specified sexual offences. Victims of other crimes of a sexual nature, particularly of intimate visual recording offences, must apply to the court if they want to have their identity suppressed. This is inconsistent, and means some victims could be identified without their knowledge or consent. We think that some victims may be distressed that they could be publicly named, which could be retraumatising.

Amendment Paper 215 proposes broadening automatic name suppression so it applies to all victims of crimes of a sexual nature. We support this proposal, and recommend inserting new subclauses (1AAA) and (1AAB) into clause 8 to amend section 203 of the Criminal Procedure Act. Section 203 deals with the automatic suppression of the identity of complainants in sexual cases. These amendments would extend the application of section 203 to include all offences of a sexual nature. This would ensure that all victims of sexual offences have the same legal protection.

Requiring agreement of complainant to suppress identity of convicted defendant

Currently, the court decides whether to grant permanent name suppression for defendants convicted of a sexual offence. The court must take the victim's views into account, but if it grants permanent name suppression, a victim who wished to speak out is prevented from doing so. Amendment Paper 216 proposes to amend section 200 of the Criminal Procedure Act so that the views of victims would be paramount if the court considers making an order to suppress the identity of the convicted defendant. The court could not make a permanent order to suppress the name of an adult convicted of a sexual crime unless the victim agrees, or cannot be contacted or engaged on the matter. We support this proposal, with two adjustments. First, we

recommend making it clear that it applies to all orders that are not interim orders. Second, we recommend requiring that all reasonable efforts be made to contact the complainant.

Accordingly, we recommend inserting clause 6A to amend section 200 of the Criminal Procedure Act (Court may suppress identity of defendant). Proposed new subsection (8) would allow the court to make an order without the agreement of the complainant only if the court is satisfied that the complainant:

- is unable or unwilling to engage with the matter; or
- cannot be contacted despite all reasonable efforts to do so.

In cases that involve more than one victim, the court would need to treat each victim individually. Proposed new subsection (9) specifies that orders to suppress a convicted defendant's identity could only be made in respect of the victims who agree to the order, or who are unable or unwilling to engage with the court. These court orders must ensure that nothing is published that could identify the complainants who agreed to the making of the order. At the same time, the orders must not prevent the identification of the person convicted in relation to any victim who disagreed with suppressing the convicted defendant's identity.

Aligning process for lifting automatic name suppression with the Criminal Procedure Rules

Clauses 7 and 8 would amend sections 201 and 203 respectively of the Criminal Procedure Act, relating to the automatic suppression of the defendant's and the complainant's identity in specified sexual cases.

We think that there should be consistency in sections 201 and 203 regarding the process for the complainant to apply for an order to lift automatic name suppression. We recommend amending section 201(4)(a)(ii) to ensure that if the complainant applies to the court for such an order, it is in accordance with the Criminal Procedure Rules 2012. This aligns with an existing amendment in the bill to section 203(4)(a)(ii).

New Zealand Labour Party differing view

Labour supports this bill. In particular we support the proposed amendments to the Crimes Act that are intended to reduce the risk of child victims of sexual violence being questioned about sexual activity in court. We support the offence of sexual connection with a child explicitly preventing the use of consent by the child as a defence.

We have some reservations about the amendments made by the Minister of Justice that would provide victims of sexual violence with a veto right on name suppression of the offender. We are concerned that victims of sexual violence could be put under more stress and pressure because of the weight of the decision. We are also concerned that victims could be exposed to influence and negative influences from family members, particularly if they are under 18. There is no bottom age limit on whether

victims would be consulted, which could result in children being given the decision power despite potentially not fully understanding the consequences.

There is an additional concern that arises when there are multiple victims. It is unclear what would happen when there has been intergenerational sexual offending and victims have opposing views on name suppression. This has the potential to prolong the trauma of sexual violence within our justice system, an experience which is already incredibly traumatic for victims of sexual violence.

The policy process of developing the name suppression amendments to this bill is also concerning. We note that the Ministry of Justice stipulated within the Regulatory Impact Statement: “The Minister of Justice directed us to consider adding a proposal to the current bill, that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime. We did not have access to a fully detailed problem definition. We have discussed the proposal with the Minister to better understand his intention, and to more clearly define the problem. However, we were not able to obtain full context or clarity. We have therefore made some assumptions in our assessment of the proposal.”

Despite these concerns, we believe the provisions that remove consent as a defence for sexual offences against children are essential and accordingly we support this bill.

Appendix

Committee process

The Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill was referred to the Justice Committee of the 53rd Parliament on 29 August 2023. The committee called for submissions on the bill with a closing date of 20 October 2023.

The bill was reinstated with this committee in the 54th Parliament on 6 December 2023. We received and considered submissions from 50 interested groups and individuals, and heard oral evidence from 8 submitters.

On 22 November 2024 we received Amendment Papers 215 and 216. We called for submissions on the amendment papers with a closing date of 23 January 2025. We received and considered submissions from 80 interested groups and individuals. We heard oral evidence from 4 submitters.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Carl Bates (from 29 January 2025)

Cameron Brewer (until 29 January 2025)

Tākuta Ferris

Paulo Garcia (until 29 January 2025)

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul (until 29 January 2025)

Tom Rutherford (from 29 January 2025)

Todd Stephenson

Hon Dr Duncan Webb

Dr Lawrence Xu-Nan (from 29 January 2025)

Related resources

The documents received as advice and evidence are available on the Parliament website.

**Victims of Sexual Violence (Strengthening Legal
Protections) Legislation Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

Hon Paul Goldsmith

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

Government Bill

Contents

	Page
1 Title	1
2 Commencement	2
Part 1	
Amendments to Crimes Act 1961	
3 Principal Act	2
4 Section 128B amended (Sexual violation)	2
5 Section 132 amended (Sexual conduct with child under 12)	2
Part 2	
Amendments to Criminal Procedure Act 2011	
6 Principal Act	2
<u>6A</u> Section 200 amended (Court may suppress identity of defendant)	<u>2</u>
7 Section 201 amended (Automatic suppression of identity of defendant in specified sexual cases)	3
8 Section 203 amended (Automatic suppression of identity of complainant in specified sexual cases)	3

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Act **2023**.

2 Commencement

This Act comes into force 4 months after Royal assent.

Part 1**Amendments to Crimes Act 1961****3 Principal Act** 5

This Part amends the Crimes Act 1961.

4 Section 128B amended (Sexual violation)

After section 128B(3), insert:

- (4) This section does not apply if person B (as described in section 128) is under the age of 12 years. 10

5 Section 132 amended (Sexual conduct with child under 12)

In section 132(1), replace “14 years” with “20 years”.

Part 2**Amendments to Criminal Procedure Act 2011****6 Principal Act** 15

This Part amends the Criminal Procedure Act 2011.

6A Section 200 amended (Court may suppress identity of defendant)

After section 200(6), insert:

- (7) **Subsections (8) and (9)** apply— 20
- (a) in the case of an adult who is convicted of an offence against any of sections 128 to 142A or section 144A of the Crimes Act 1961 or any other offence against a person of a sexual nature; and
- (b) to any order made under subsection (1) other than an interim order.
- (8) The court may make an order under subsection (1) without the agreement of the complainant only if the court is satisfied that the complainant— 25
- (a) is unable or unwilling to engage with the matter; or
- (b) despite all reasonable efforts, cannot be contacted.
- (9) If the case specified in **subsection (7)(a)** involves more than 1 complainant,—
- (a) the court may make an order under subsection (1) only in respect of the complainants who— 30
- (i) have agreed to the making of the order; or
- (ii) are described in **subsection (8)(a) or (b)**; and

- (b) the order—
- (i) must provide that nothing may be published that could identify the complainants who agreed to the making of the order or who are described in **subsection (8)(a) or (b)**, including (without limitation) the charges involved in the case; and 5
 - (ii) must not prevent the identification of the person convicted or the offence for which the person was convicted in relation to any complainant who disagreed with the making of the order.
- 7 Section 201 amended (Automatic suppression of identity of defendant in specified sexual cases)** 10
- (1) Replace section 201(2) with:
 - (2) The purpose of this section is to protect the complainant’s privacy and support the complainant’s autonomy in connection with the publication of the details of a person accused or convicted of an offence referred to in subsection (1).
 - (1A) Replace section 201(4)(a)(ii) with: 15
 - (ii) applies to the court for such an order in accordance with the Criminal Procedure Rules 2012; and
 - (2) After section 201(4), insert:
 - (4A) The court, when determining whether to make an order under subsection (3), must take into account any views of the complainant (or, if there were 2 or more complainants, each complainant) in respect of the publication of the details of the person accused or convicted of an offence referred to in subsection (1). 20
- 8 Section 203 amended (Automatic suppression of identity of complainant in specified sexual cases)** 25
- (1AAA) In the heading to section 203, delete “specified”.
 - (1AAB) In section 203(1), after “an offence against any of sections 128 to 142A or 144A of the Crimes Act 1961”, insert “or any other offence against a person of a sexual nature”.
 - (1) Replace section 203(2) with: 30
 - (2) The purpose of this section is to protect the complainant’s privacy and support the complainant’s autonomy in connection with the publication of their details.
 - (2) Replace section 203(4)(a)(ii) with:
 - (ii) applies to the court for such an order in accordance with the Criminal Procedure Rules 2012; and 35
 - (3) After section 203(4), insert:

(4A) The court, when determining whether to make an order under subsection (3), must take into account any views of the complainant in respect of the publication of their details.

Legislative history

10 August 2023
29 August 2023

Introduction (Bill 274–1)
First reading and referral to Justice Committee