

Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

Introduction:

We would like to thank the Justice Select Committee for the opportunity to submit on this Bill. NCIWR is a non-governmental organisation that has been delivering services to women, children, and whānau affected by family violence in Aotearoa for the last 50 years. In 2021/22, our network of 40 affiliated refuges supported 52,000 clients and provided 59,000 safe nights in safe houses. Children made up 50 percent of all clients who accessed safehouses across the country. As in any submission made by NCIWR, we represent the victims of family violence, specifically wāhine and tamariki, who are the primary groups subjected to and impacted by family violence. For many tamariki impacted by family violence, sexual abuse is a core and deeply impactful aspect of their experiences – as is the aftermath of reporting it.

Our position:

We strongly support this Bill and applaud its focus on the safety and wellbeing of children. Tamariki represent the biggest and arguably one of the least-served victim cohorts in Aotearoa. Children are driven to seek formal avenues of justice because their rights have been violated as a result of the choices and actions of others, usually adults.

Children face many and disproportionate barriers to procedural equality in the court system. This Bill may offer more protection to children, who are already faced with seemingly insurmountable challenges as those with the least social power and epistemic status in a court setting. We therefore support this Bill in recognition of the positive changes it will facilitate for children in sexual violence cases.

- We support preventing the use of 'consent by a child' as a defence;
- We support reducing the risk of child victims of sexual violence being questioned about consent to sexual activity in court;
- We support the inclusion of child victims' views about name suppression in sexual violence cases; and
- We support increasing the maximum penalty for the offence of sexual connection with a child.

Overview:

NCIWR has dedicated a large amount of its capacity over the last four years to understanding children's experiences of violence. The research and policy team at NCIWR have heard from 47 tamariki about what facilitates safety for them after victimisation. NCIWR released the *Kids in the middle* research report in 2021, which heard from children about what they wanted and needed after their experiences of violence. We heard from many children about their negative experiences of the justice system, and the systemic and structural disablers of safety they encounter.

From this research NCIWR launched a child-specific advocacy pilot in seven Refuges across the country. To date the Kōkihi ngā Rito pilot has supported 160 tamariki who are at critical risk because of family violence. A significant number of these children are victims of both family violence and sexual violence and the advocacy they have received responds to their needs in relation to both types of violence. We use the information gathered through research and advocacy with children to inform our submission on the Bill.

We strongly support the Bill as children should never be subjected to questioning about consent to sexual activity that they are too young to give. It is essential, and in the best interest of tamariki wellbeing and justice, to prevent the use of 'consent by the child' as a defence. There are few support pathways that offer a means to recognise and reverse the practical and material toll that perpetrators have on children. In our research children conveyed that while they would never be truly comfortable with the court process, the adverse impacts on their wellbeing could be mitigated by the adaptation of processes to suit their needs within systems largely designed for adults. This Bill centres children as victims and prioritises their unique needs as children.

Our approach to research and advocacy with children attempts to counter the systemic under-privileging of the stories and knowledge held by tamariki. We are therefore in support of legislation that considers children's experiences, opinions, views, and needs about matters that pertain to them – specifically, name suppression of the defendant and complainant in specified sexual violence cases. The tamariki we interviewed expressed feelings of powerlessness over their situations; they told us that their input is not often heard, considered, or actioned by justice actors who make decisions on their behalf. Our research shows that children are willing and able to provide information – but their willingness and capacity to do so is contingent on the capacity of justice systems' (and actors') to hear from them and understand them *as children*.

We believe it is essential that children's opinions are sought, respected, and integrated into judicial decision making. The way that adults and systems invite, support, and hear children's contributions is pivotal to whether their contributions are accurately understood, contextualised, and actioned. Tamariki told us that safely giving input into decisions that impact them means:

1. Being confident that the person listening understands the nuances of the ongoing risks to their safety and wellbeing, and will not put them at further risk;
2. The preconditions to them accessing a sense of emotional safety, trust, and confidence to speak are met; and
3. The people listening to them are sufficiently equipped to recognise when and how they are communicating, and to hear what they are saying.