

30 January 2020

**Tuia te rangi e tū nei  
Tuia te papa e takoto nei  
Tuia i te here tangata  
Tihei mauri ora  
He hōnore, he korōria ki te atua ki te runga rawa  
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro  
Rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā Te Tūāpapa Hauora  
Hinengaro**

To the Justice Committee

Thank you for this opportunity to comment on the Sexual Violence Legislation Bill.

The Mental Health Foundation (MHF) endorses the aims and provisions of this Bill as a very small but necessary step towards reducing the harms of sexual violence and related court trials. We acknowledge and welcome the Government's signalling of this Bill as a first step in a wider programme of work aiming to reform the justice system so that it better serves and supports those who have been subjected to sexual violence. We also acknowledge the 2019 government funding boost for sexual violence prevention.

This submission is endorsed by Platform Charitable Trust and has been developed with researcher Sandra Dickson and Refugees as Survivors NZ.

We acknowledge the important, often thankless and under-resourced work of the agencies and individuals within the sexual violence prevention and survivor support sector, and the many reports and recommendations over many years from government departments, the Law Commission, scholars and non-governmental organisations which collectively show a clear pathway as to how to improve New Zealand's justice system vis-à-vis sexual violence.

## Recommendations outside the scope of the Bill

**We support calls from the sexual violence support sector – and indeed from the justice sector more widely – for deeper reform from what is currently being signalled, with the aim of protecting, supporting and empowering the most vulnerable victims/survivors and their whanau at all stages.**

Within the court system this should include, for example, allowing judge-only trials to become the norm for sexual violence cases. We are heartened by the recent sexual violence court pilot evaluation ([Allison & Boyer, 2019](#)) and hope that the pilot is rolled out nationally as soon as possible. Similarly, while we commend efforts to reform court processes, more needs to be done to avoid causing further harm to the victim/survivor and their whānau before and after court processes and across the wider criminal justice system more broadly. This should include reviewing the definition of “consent” and applying learnings from other pilot evaluation, such as the importance of early involvement of communications assistants. We are hopeful these suggestions, and many others, will be addressed in the wider program of work to reform the justice system.

## Summary of recommendations on the Bill

We make the following recommendations on the Bill:

1. Kaupapa Māori victim support specialist services be legally mandated, and resourced, for all sexual violence victims/survivors who choose them across Aotearoa, including those testifying in sexual violence court cases.
2. Culturally appropriate and accessible specialist services be legally mandated, and resourced, for all sexual violence victims/survivors who choose them, including those testifying in sexual violence court cases. Practice and services must effectively respond to client's cultural, linguistic, religious, gender identity, sexuality and disability needs.
3. Police be legally required to ensure victims/survivors of sexual violence are aware as early as possible of all support options available to them, including the support they are entitled to receive if they decide to testify. This includes ensuring that all victims are aware of culturally appropriate specialist sexual violence victim support services.
4. The Victims' Rights Act be amended so that a victim or their whānau not only have access to services in response to their needs arising from the offence but also in response to their needs from participating in the justice system process.
5. Judges presiding over sexual violence trials be required to undergo mandatory training, with refreshers at regular intervals, and monitoring to ensure their directions in such trials are considered appropriate by their peers.
6. Medical records be made inadmissible as evidence, apart from those that are highly relevant to the case.
7. Data on the ethnicity of complainants and their attrition rates through the justice system be collected, monitored and made public (where this would not contravene privacy).

## Background

### **Sexual violence is a major barrier to collective mental wellbeing in New Zealand**

Sexual violence is one of the most detrimental factors affecting our collective mental wellbeing today and, as such, it is “one of the causes of greatest harm in our society” (MSD [2017a](#), [2017b](#)). It is holding all New Zealanders back from thriving in the context of a healthy and caring society.

Sexual violence has an immediate and direct effect on individuals, which can be long-term, as well as for whānau and friends (whether or not they are aware of the sexual violence) and Aotearoa’s entire culture, society and economy. It is a trauma that our communities have been carrying for too long, particularly women, Māori, rainbow communities, and people with lived experience of mental distress – and most acutely, the people who identify with two or more of those groups (intersectionality). As the testimonies offered to, and the challenges faced by, the Royal Commission of Inquiry into Abuse in Care show only too well, sexual violence creates toxic complexities that can lead to sustained cycles of abuse and other harmful behaviour to the self and others.

The Government Inquiry into Mental Health and Addiction (Paterson et al, [2018, p.44](#)) found that “Trauma is a key factor in mental distress and addiction” and that people they spoke to had noted that preventing and reducing the trauma of sexual abuse and sexual violence (among other harms) “should be recognised as strategies for preventing future distress and investing in the wellbeing of future generations”. We view this current Bill as being part of one such strategy.

### **Sexual violence can affect the mental health and wellbeing of those who are subjected to it, and their whānau**

The impacts of sexual violence on mental health and wellbeing can include life-long anxiety and social withdrawal; depression; alcohol and drug dependency; PTSD; loss of self-esteem and confidence; disabling levels of shame and self-blame; relationship and sexual difficulties; increased vulnerability to subsequent sexual and physical violence; and suicide (MSD, 2017a).

The more sexual violence a person is subjected to, the more likely they are to experience negative long-term outcomes for their mental health and wellbeing: "Compared to women who are singly victimised or non-victimised, women who are sexually revictimised (and particularly those with histories of child sexual abuse) have a much greater risk of developing adult mental health problems, significantly poorer long-term psychological and health outcomes, a greater number of lifetime traumas (non-sexual), higher levels of drug use, and more interpersonal problems... Sexual revictimisation has been associated with unwanted pregnancies, severe psychiatric morbidity, and use of psychiatric services" ([Ministry of Women's Affairs, 2012](#)). Child sexual abuse also increases the risk of depression, PTSD and self-destructive behaviours such as self-harm, substance abuse, eating disorders and aggression (Te Puni Kōkiri, 2010).

### **People with lived experience of mental distress are at far greater risk of being subjected to sexual violence.**

International studies show that the victimisation rates of people with lived experience of extreme mental distress for sexual violence are approximately 4 to 6 times that of the general population ([de Vries et al, 2019](#); [Khalifeh et al, 2015](#)).

Research in New Zealand suggests the difference in risk could be higher (approx. 10-13 times higher) for young people, even for more moderate levels of mental distress. The "Dunedin study" found that 1 percent of their sample with "no mental disorder" had undergone sexual assault by age 21, compared to 10.7 percent of those with depression disorders, 11.9 percent of those with anxiety disorders and 13.2 percent of those with schizophreniform disorder ([Silver et al, 2005](#)).

### **The effects of sexual violence are more likely to be severe for victims/survivors who had previous experience of mental distress**

For example, a 2015 British study found that adulthood serious sexual assault led to attempted suicide 16 times more often among women with "severe mental illness" than women in the control group (53% v. 3.4%,  $p < 0.001$ ) (Khalifeh et al, 2015).

## ***New Zealand's current justice system exacerbates the mental distress of sexual violence***

A Ministry of Women survey published in 2009 found that only 39 percent of Crown prosecutors and 59 percent of police would advise a friend or family member to go through the criminal justice system – specifically because “seeking justice was seen to be re-traumatising for victim/survivors and many respondents raised concerns about the system’s ability to deliver justice for all victim/survivors” ([Mossman et al, 2009](#))

### ***Māori definitions of sexual violence***

In order to uphold te Tiriti o Waitangi, the justice system needs to work for Māori victims/survivors of sexual violence.

Māori experiences of being subjected to sexual violence are disproportionate, due to colonisation, inter-generational trauma and poverty ([Pihama et al, 2016](#)). For example, a 2007 survey found that Māori girls are 1.75 times more likely to be sexually abused as Pākehā girls (Fanslow et al, 2007). However, there is no evidence to suggest that Māori are more likely to be the perpetrators of sexual violence than Pākehā or other tauīwi groups; instead, many Māori are the victims of tauīwi perpetrators. The research available is old and limited, but indicative: in a 1996 survey, around a third of the Māori women who reported physical or sexual partner violence described their partners as non-Māori (Ministry of Women’s Affairs, 2012). Regarding male sexual coercion of Māori males, eight of the ten reported incidents in a 2006 study were perpetrated by a man identified by participants as Pākehā ([Barnes, 2010](#)). Researchers posit that “normalised Western notions of masculinity and femininity are strongly implicated in inequitable and sexually coercive behaviours” for both Māori and non-Māori, and that pre-colonial Māori had more balanced gender relations and “more diverse, inclusive and open attitudes to sex and sexuality” than did the colonial culture imposed on Māori (Barnes, 2010).

In their seminal work "Māori cultural definitions of sexual violence", Pihama et al (2016) state that te ao Māori includes "understandings that perceive sexual violence not only as a form of physical violence but also as a cultural and spiritual transgression that impacts both the individual and the collective wellbeing of their entire whakapapa line and whānau. What that means is that acts of sexual violence are considered to be acts of both individual and collective violence.... It is connected directly to the rape of the land and the rape of our ancestors through historical trauma events perpetuated through colonial invasion". Thus, the authors note, many Māori providers working in the area of sexual violence prevention and intervention have articulated that "healing must take place on both individual and collective levels in order for intervention to occur in the intergenerational transmission of trauma" and "when seeking to develop interventions for Māori, it is necessary to ensure that there is an awareness of colonisation and that many western intervention approaches that are not informed by such understandings prove to be inappropriate for Māori".

## Recommendations

### **1. Kaupapa Māori victim support specialist services be legally mandated, and resourced, for all sexual violence victims/survivors who choose them across Aotearoa, including those testifying in sexual violence court cases.**

Our recommendation is aligned with government obligations under Tiriti o Waitangi, as well as similar recommendations from TOAH-NNEST (2019), Ashton-Martyn (2019) and other researchers and advocates. We concur with TOAH-NNEST that "The current criminal justice system lacks understanding of the needs of Māori survivors of sexual violence and the particular kinds of trauma that this harm engenders when coupled with the impacts of colonisation." In addition, takatāpui and other Māori rainbow communities need to be able to access kaupapa Māori services that are responsive to their needs.

We strongly recommend advice is taken from kaupapa Māori experts in the sexual violence victim/survivor support sector on what forms of support would be most appropriate. We expect that Māori services should include (but not be limited to) Māori sexual violence victim advisors employed by the Ministry of Justice as well as kaupapa Māori independent victim advocates – both roles are important in empowering the victim/survivor throughout the court process (Allison & Boyer, 2019). But we also expect that new and different forms of kaupapa Māori support may be required to help relieve the trauma of testifying for both the witness and their whānau. It is important that these services are available throughout New Zealand, including in rural areas, where they have been previously unavailable (Te Puni Kōkiri, 2010).

**2. Culturally appropriate and accessible specialist services be legally mandated, and resourced, for all sexual violence victims/survivors who choose them across Aotearoa, including those testifying in sexual violence court cases. Practice and services must effectively respond to client’s cultural, linguistic, religious, gender identity, sexuality and disability needs.**

As Ashton-Martyn et al (2019) notes: “One cultural size does not fit all when it comes to sexual violence support and prevention, and the government must support culturally nuanced pathways towards healing. Underfunding and lack of access to support and prevention are likely to be relevant to other marginalised communities across Aotearoa. For example, further work to support survivors from Pacific communities and the disabled community is crucial to providing equitable and accessible support to all.” Worryingly, the researchers found that “negative experiences of those from rainbow communities currently seeking help from mainstream violence support services include having sexual violence blamed on their sexuality or gender identity, and being required to educate staff members about who they are, before they can access services to address trauma.”

We support the call for violence response services to have “adequate resourcing to ensure all their staff members are equipped to provide appropriate support which treats rainbow identities with care.” In addition (not as an alternative but as a supplement), rainbow communities should be consulted about whether there are rainbow organisations – across a range of ethnicities – who could be resourced to be (more) involved in supporting victims/survivors of sexual violence.

Outside of rainbow communities, similar discussions should also be had with other organisations who support particular ethnic or disability groups.

We understand that specialised independent advocacy services for sexual violence victims/survivors are only available in Auckland, and only on a part-time basis (Allison & Boyer, 2019). Lack of access to such services affects the ability of victims/survivors to participate in the justice process and puts those who do participate at greater risk of re-traumatisation and increases attrition rates. Victim support services need to be specialised for sexual violence cases, due to their sensitive and traumatic nature for victims/survivors. They need to provide wraparound support and strong links to existing services via trained advisors and advocates with strong psycho-social support skills.

More work will need to be done to appropriately publicise these changes to support services and the court system so that victims/survivors can have confidence the justice system will generate as little additional trauma as possible. This is particularly the case for Pacific people where research (quoted in [Percival et al., 2010](#)) suggests they may not identify their sexual violence experiences as a crime and therefore may not tell anyone, contributing to under-reporting among Pacific peoples. The [Youth 2012](#) survey found that 22 percent of Pacific student reported they had been forced to do sexual things that they did not want to do and 39% had not told anyone about the abuse. Research also suggests that Pacific communities, currently justifiably, often view going through the justice system as too hard; for example, Percival et al. (2010) quote a Minister's wife as saying "It's simply difficult to take any rape case to court because that would have negative impact to the victim."

**3. Police should be legally required to ensure that victims/survivors of sexual violence are aware as early as possible of all support options available to them, including the support they are entitled to receive if they decide to testify. This includes ensuring that all victims are aware of culturally appropriate specialist sexual violence victim support services**

It is important that victims/survivors are fully informed, and do not miss out on important support because they were not aware of it. This includes ensuring that all victims/survivors (no matter their appearance) are aware of specialist sexual violence victim support, kaupapa Māori services, and any and all victim support services tailored to specific groups (for example, Pacific, new migrants, rainbow communities). It should be made clear which services are specialised in sexual violence cases and which are not.

**4. The Victims' Rights Act be amended so that a victim or their whānau not only have access to services in response to their needs arising from the offence but also in response to their needs from participating in the justice system process.**

No matter how sensitive the justice process is, there will always be some trauma associated with it for some victims/survivors. It is important that the law acknowledges this trauma is above and beyond the trauma caused by the offending itself, so that victims/survivors considering testifying can be assured that their rights are legally upheld.

**5. Judges presiding over sexual violence trials be required to undergo mandatory training, with refreshers at regular intervals, and monitoring to ensure their directions in such trials are considered appropriate by their peers.**

This recommendation supports and expands on recommendation 28 of the Law Commission (2015): "Judges who sit on sexual violence cases should have access to detailed and up-to-date guidance on the instances in which guiding judicial directions to the jury may be appropriate in sexual violence cases and examples of how those directions should be framed." This Bill puts further onus on judges to ensure the law regarding sexual violence trials is implemented properly and that justice is done. This is appropriate – but given the importance of that role, and the fact that research into trauma is ongoing, it would be good to ensure Judges are receiving up-to-date information and they are interpreting it appropriately. We envisage such training including information about myths about sexual violence, Māori tikanga and understandings of things such as sexuality and sexual violence, best practice in trauma informed methods for communicating, and sexualities and gender identities.

This recommendation is informed by concerns that existing protections are not always well utilised in court. For example, the current Evidence Act (2006) already states "In a sexual case, no evidence can be given and no question can be put to a witness relating directly or indirectly to the sexual experience of the complainant with any person other than the defendant, except with the permission of the Judge." And "In a sexual case, no evidence can be given and no question can be put to a witness that relates directly or indirectly to the reputation of the complainant in sexual matters." However, we understand there is anecdotal evidence these prohibitions are contravened. Monitoring of judges' directives would assist in preventing such inappropriate questioning.

We also support the Law Commission's recommendation 25: "Every prosecutor who appears in a sexual violence case, whether in the High Court or the District Courts, should be required to be accredited (i.e., to have completed appropriate training and education on the prosecution of sexual violence cases and to know how to deal with complainants in that process)", and recommendation 26: "The Legal Services (Quality Assurance) Regulations 2011 should include experience and competence requirements applicable to defence counsel who appear in sexual violence trials on a legal-aid basis." We understand there is further upcoming legislation in the pipeline regarding such training and accreditation. Again, we recommend such training includes education about te ao Māori.

**6. Medical records be made inadmissible as evidence, apart from those that are highly relevant to the case**

We understand that currently, witnesses' medical records, including any history of being prescribed medication for mental distress, are sometimes referred to by defence lawyers in court to discredit witnesses and to suggest that they are unreliable. This is discriminatory and misleading practice and means people with lived experience of mental distress are excluded from the same access to justice as others. This is a concern given the higher likelihood of being subjected to sexual violence for those with lived experience of acute mental distress.

**7. Data on the ethnicity of complainants and their attrition rates through the justice system be collected, monitored and made public (where this would not contravene privacy).**

Better data collection will allow government and others to assess how the system is working for different ethnicities, including whether aspects of the system are discriminatory.

## Summary

The MHF endorses the aims and provisions of this Bill but makes a number of recommendations designed to further strengthen the Bill. These speak to mandating training and monitoring for judges presiding over sexual violence trials; ensuring victims/survivors of sexual violence, including court witnesses, are empowered through culturally appropriate and adequately resourced support; and halting court practices that are discriminatory against those with lived experience of mental distress. We also eager to see the wider program of work to reform the justice system underway, including deeper reform of court processes that this Bill seeks to initiate.

Ngā mihi,



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## About the Mental Health Foundation

The MHF's vision is for a society where all people flourish. We take a holistic approach to mental health and wellbeing, promoting what we know makes and keeps people mentally well and flourishing, including the reduction of stigma and discrimination (particularly on the basis of mental-health status).

The MHF is committed to ensuring that Te Tiriti o Waitangi and its Articles are honoured, enacted, upheld and incorporated into our work, including through our Māori Development Strategy. We are proud that Sir Mason Durie is a Foundation patron.

The MHF takes a public health approach to our work, which includes working with communities and professionals to support safe and effective suicide prevention activities, create support and social inclusion for people experiencing distress, and develop positive mental health and wellbeing. Our positive mental health programmes include Farmstrong (for farmers and growers), All Right? (supporting psychosocial recovery in Canterbury, Kaikōura and Hurunui), Pink Shirt Day (challenging bullying by developing positive school, workplace and community environments), Open Minds (encouraging workplaces to start conversations about mental health) and Tāne Ora (working with tāne Māori and their whānau to build wellbeing skills). Our campaigns reach tens of thousands of New Zealanders each week with information to support their wellbeing and help guide them through distress and recovery.

We value the expertise of tangata whai ora/ people with lived experience of mental distress and incorporate these perspectives into all the work we do. Established in 1977, the MHF is a charitable trust, and our work is funded through donations, grants and contract income, including from government.

## About Platform

Platform Trust (Platform) ([www.platform.org.nz](http://www.platform.org.nz)) is an intermediary organisation for community mental health and addiction services, and as such we have an understanding of the mental health and addiction system. As an intermediary organisation, we have strong connections with service providers, service users, policy makers, other intermediaries, professional associations and government agencies.

We support a network of community organisations that provide support to people whose lives are directly impacted by mental health and addictions, their whānau and the communities where they live. Our role is to give voice to the hundreds of community sector organisations that have a significant role in the day to day delivery of mental health, addiction, disability and social support.

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