

The Justice Select Committee  
**Sexual Violence Legislation Bill 2019**

February 2020

He aroha whakatō  
He aroha puta mai

If kindness is sown  
Then kindness you shall receive

### **About The Royal Australian & New Zealand College of Psychiatrists**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry and addiction, supports clinical practice, advocates for people affected by mental illness and addiction, and advises government on mental health care.

This submission has been prepared by Tu Te Akaaka Roa - the New Zealand National Committee, working with representatives from the RANZCP's Family Violence Psychiatry Network.

Tu Te Akaaka Roa represents the RANZCP in New Zealand by advocating and working to improve the mental health of our community and by collaborating with a range of stakeholders including NGOs, other health organisations and Government agencies. The RANZCP values the consumer perspective through consumer engagement on our Committees, listening to psychiatrists with lived experience, and consulting with our kaumātua. We work alongside consumers and their whānau guiding them through their journey to recovery.

### **Introduction**

#### **Our Feedback on the Proposed Bill**

We welcome the opportunity to comment on the Sexual Violence Legislation Bill (the Bill) which aims to reduce the risk of retraumatisation of victims of sexual violence when going through the court process, giving evidence, and presenting victim impact statements.

Tu Te Akaaka Roa supports the Bill's key principles. We analysed the Bill against our four policy platforms and conclude there are some additional factors to be considered to protect the safety of people with enduring and complex mental health issues that may also be related to their experience of trauma.

### **Key messages**

#### **The link between sexual violence and mental health is an important issue**

Sexual violence is associated with significant mental and physical health problems, regardless of age, gender and culture. It occurs across the relationship spectrum from intra-familial and other adult sexual abuse of children, to sexual violence by strangers, to sexual violence within both casual and established intimate relationships. While men can be victims of sexual violence from their female and male partners, and sexual violence occurs in LGBTQI partnerships, women are the primary group affected as victims and the person using violence is primarily male.<sup>1</sup>

In addition, social patterns of harm reflect structural inequity such as, community values and beliefs. They can reinforce perpetuation of male violence against women and give rise to myths or misconceptions that could prevent reporting of sexual violence. This can also be played out in court to disadvantage women.<sup>2</sup> The psychological impact of sexual violence is

individual and cumulative. For many women, sexual victimisation begins at a young age and continues into adulthood.<sup>3</sup>

The impact will vary according to the circumstances of violence and a victim's relationship to the perpetrator. The most commonly recognised psychological effects are heightened fear and anxiety, loss of trust in personal relationships, loss of confidence, depression, anger, suicidal behaviours (idea, plans and intent) and Post Traumatic Stress Disorder (PTSD). Women who are sexually assaulted have the highest burden of PTSD<sup>4</sup>, the severity of which is beyond that already accounted for by physical violence.<sup>5</sup>

Sexual violence is accompanied by a pervasive sense of shame and embarrassment. It can adversely affect work, study and relationships. It can precipitate risky behaviours such as alcohol and drug abuse, including increased tobacco use; dysfunctional eating behaviours; deliberate self-harm and sexual promiscuity (often associated with substance abuse), in an attempt to emotionally numb or to regain a sense of control. The psychological effects (and the physical effects) can be lifelong.

There may be additional psychological trauma from unwanted pregnancy, sexually-transmitted disease or subsequent reproductive difficulty. As evidenced in the recent murder trial<sup>1</sup>, family and friends also suffer significant emotional distress when a loved one is a victim of sexual violence. In summary, sexual violence is associated with significant intergenerational trauma, psychological distress, psychiatric morbidity – and mortality.

### Comments on proposed changes

The Bill builds on the recommendations of the Law Commission Reports (2015; 2019)<sup>6</sup> and findings of the report by the Ministry of Justice (2019) into the attrition and progression of reports of sexual violence to Police.<sup>7</sup>

The Bill recognises that victims currently face a double-bind situation. They experience re-victimisation by the court process if they report an offence and they are vulnerable to re-victimisation by the perpetrator if they fail to report. Perpetrators target the vulnerability of victims, the fact that they are unlikely to report an offence, and/or are unlikely to be believed if they do report, enabling perpetrators to successfully avoid the criminal justice system.<sup>8</sup>

Women with existing major mental disorders, such as schizophrenia or bipolar affective disorder, and those with an intellectual disability are particularly vulnerable to the predatory behaviour of perpetrators.

### 1. Victim vulnerability (Clause 9)

The RANZCP welcomes the requirement on judges to intervene in inappropriate questioning of witnesses. A victim's vulnerability being one of the factors a judge may consider in determining whether the questioning is unacceptable.

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<sup>1</sup> Media item example: <https://www.independent.co.uk/topic/grace-millane>

It is important that vulnerability due to the psychological impact of cumulative trauma and sexual violence is considered as a contributing factor, even if it does not amount to PTSD.

Women who experience sexual violence as adolescents or young adults report intense memories of stressful life events, irrespective of PTSD and memories of sexual trauma are associated with a remarkably high level of vividness, detail, and sensory components.<sup>9 10</sup>

These memories are re-experienced in everyday life during post-traumatic and ruminative thoughts. It is thought that such repeated rehearsal of vivid stressful life memories generates more trauma memories in the brain, making the experience of sexual violence even more difficult to forget.<sup>11</sup> This phenomena can lead to dissociation, when the brain copes with the trauma of sexual violence as a type of 'out of body' experience and the memory of the sexual violence and event is experienced as if watching a movie.<sup>12</sup>

When giving an account to Police, or answering questions in court, victims may appear emotionally disconnected from the trauma of the event and give an impression of being dismissive or unaffected by the violence. If feeling threatened, they may dissociate by shutting down emotionally, they may stop talking and may appear to lose touch with their environment. This safety mechanism is triggered unconsciously, but can give the impression of being deliberately evasive or avoidant of answering questions.

Women with a history of head trauma through repeated assault,<sup>13</sup> those who have been self-medicating with drugs or alcohol to numb their experiences, and those who have other psychiatric morbidity such as psychotic illness, may all have difficulties in remembering and accurately recounting their trauma, threatening their credibility as victims.

As with cases of intimate partner violence, it is essential that the court is assisted with expert testimony, to challenge the interpretations that may be made and elicit the victim's perspective of the narrative and unique circumstances.<sup>14</sup>

## **2. The giving of evidence in alternative ways (Clause 11) & communication assistance (Clause 4(1))**

The RANZCP acknowledges the tensions between the requirement for a fair trial and the preservation of the integrity of the criminal justice system, with the victim's needs, her recovery and the court's desire to reduce the risk of re-traumatisation.

Unlike most other offences, reporting sexual violence, particularly rape, involves intimate examination as part of the evidence-gathering, at a time when the victim is particularly sensitive about her body. The combination of facing the alleged perpetrator in court and the shame and humiliation of cross-examination, increases the risk of re-victimisation, may be sufficient to stop the victim from reporting the sexual violence in the first place.

The RANZCP welcomes the entitlement of sexual violence complainants (and propensity witnesses) to give their evidence in alternative ways, shielding them where procedurally possible, from appearing in the witness box. Evidence must be tested but preventing hostility in the cross-examination process will significantly reduce re-victimisation.

We also note that communication assistance can be provided to anyone who needs help understanding court proceedings or giving evidence. This provision could be of considerable assistance for traumatised victims, with the mental health vulnerabilities outlined above.

### **3. Clarification and extension on the admissibility of evidence about a complainant's sexual reputation, experience and disposition (Clause 8)**

In addition to clarifying the boundaries of consent as an ongoing concept rather than consent on one occasion, applying on subsequent occasions, Clause 8 will protect information about the complainant's sexual history from forming part of the admissible evidence.

As previously noted, the psychological impact on some women who are victims of sexual violence is to respond by sexual risk-taking and promiscuity, to regain a sense of control over their own bodies or to convince themselves that they are coping with the nature of the violence they have experienced. This response may appear counter-intuitive to the experience of sexual trauma and would certainly require direction from the judge.

### **4. Requirement for judges to tell the jury about common myths surrounding sexual violence cases (Clause 16).**

The RANZCP notes that a central tenet of myths and misconceptions around sexual violence is that victims are in some way responsible for their own victimisation. This view perpetuates misconceptions of social norms about masculinity and femininity, sex, and "seduction", which perpetrators use to obtain and force compliance. In turn this is reinterprets the assault as consensual, and used to silence victims.<sup>15</sup>

Rape within marriage was not an offence in New Zealand until 1985, however, it continues to be tolerated in many countries where rape and other forms of sexual violence are part of the marital contract, or as part of a marital conflict for which they are in some way, to blame, and this is often culturally reinforced.<sup>16 17</sup>

As stated previously, sexual violence within intimate relationships is an important independent contributor to the severity of post-traumatic distress. Judges may also hold misconceptions themselves, and we consider a programme of judicial education to accompany the proposed legislation should be considered.

### **5. Victims can give their impact statement without the public being present (Clause 30)**

Clause 30 also clarifies that victim impact statements may be presented to the court in alternative ways. The RANZCP commends the Bill's recognition that empowering victims to exercise their rights to convey the impact of the offending, to the offender and the court, without suffering unnecessary distress, can be an important part of the healing process.

### Conclusion

Thank you for the opportunity to comment on the Bill. We welcome this legislation as a refinement to the process, but are cautious about the impact on people who are most vulnerable due to the ongoing impacts of psychological and physical trauma. The RANZCP reinforces the importance of identifying and supporting those who have significant intergenerational and extra-familial trauma, psychological distress, and psychiatric morbidity.

The RANZCP suggests that consideration be given to the following:

1. **Don't forget the 5%:** those with mental illness whose severe and enduring conditions make them especially vulnerable in sexual violence cases. We wish to ensure they are protected in the judicial process. Their needs are complex and they are often not able to advocate for themselves e.g. a person with severe primary or secondary psychosis.
2. **Let's work together:** working across the system to reduce the likelihood of re-traumatisation throughout the legal process. Protecting victims within the system requires collaboration and communication. We strongly urge the Justice Select Committee make provision for access to psychiatric support. Psychiatrists are uniquely qualified in working with traumatised populations to assess and treat mental illness, working alongside whānau and other services.
3. **Look at the Evidence**  
Without robust outcome measures linked directly to legislative changes, the RANZCP contends that it may be challenging to demonstrate or understand success. We urge the Select Committee to consider New Zealand based evidence to inform its ongoing work and evaluate its changes.
4. **Get the right people in the right places**  
The success of many of the objectives will hinge on developing adequate supports around the court system to ensure victims are treated sensitively and the workforce is culturally safe and competent. Greater understanding of the depth and impact of trauma is needed through training and development. The RANZCP also suggests that greater collaboration across services would assist the protection and support of vulnerable people within the process. In addition, the RANZCP suggests a programme of judicial education to accompany the proposed legislation.

### References

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<sup>1</sup> Family Violence Death Review Committee. Fifth Report Data: January 2009 to December 2015. Wellington: Family Violence Death Review Committee. 2017

<sup>2</sup> World Health Organization. Violence Prevention: The Evidence. Geneva: World Health Organization. 2010. pp 79–94.

<sup>3</sup> Garcia-Moreno, C., Jansen, H.A.F.M., Ellsberg, M., Heise, L., and Watts, C. WHO Multi-country Study on Women's Health and Domestic Violence against Women: initial results on prevalence, health outcomes and women's responses. 2005. Geneva: World Health Organization.

<sup>4</sup> Jina R, Thomas L. Health consequences of sexual violence against women. *Best Practice & Research Clinical Obstetrics & Gynaecology*. Vol 27. Issue 1. Feb 2013, pp 15-26.

<sup>5</sup> Bennice J, Resick P, Mechanic M, Astin M. The Relative Effects of Intimate Partner Physical and Sexual Violence on Post-Traumatic Stress Disorder Symptomatology. *Violence Vict*. 2003. February; 18(1): 87-94.

<sup>6</sup> Law Commission. The Justice Response to Victims of Sexual Violence. Criminal Trials and Alternative Processes. NZLC R136. 2015.

Law Commission. The Second Review of the Evidence Act 2006. NZLC R142. 2019.

<sup>7</sup> Ministry of Justice. Attrition and Progression. Reported sexual violence victimisations in the criminal justice system. November 2019.

<sup>8</sup> Ministry of Women's Affairs. Lightning Does Strike Twice: preventing sexual revictimisation. September 2012.

<sup>9</sup> Millon EM, Chang HYM and Shors TJ. Stressful Life Memories Relate to Ruminative Thoughts in Women With Sexual Violence History, Irrespective of PTSD. *Front. Psychiatry*. 2018: 9:311. doi: 10.3389/fpsy.2018.00311

<sup>10</sup> Kristine A. Peace PhD, Stephen Porter & Leanne ten Brinke Are memories for sexually traumatic events "special"? A within-subjects investigation of trauma and memory in a clinical sample, *Memory*, 2008: 16:1, 1021, DOI: [10.1080/09658210701363583](https://doi.org/10.1080/09658210701363583)

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Brain Injury Australia, *The prevalence of acquired brain injury among victims and perpetrators of family violence*, Australia, Brain Injury Australia, 2018.

<sup>14</sup> Tolmie, R. Smith, J. Short, D. Wilson and J. Sach, 'Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence', *NZ Law Review*, 2018: pp. 181–218.

<sup>15</sup> Clark, H., & Quadara, A. Insights into sexual assault perpetration: Giving voice to victim/survivors' knowledge (Research Report No. 18). 2010. Melbourne: Australian Institute of Family Studies.

<sup>16</sup> Finkelhor, David and Yllo, Kersti, "License to Rape: Sexual Abuse of Wives". *Sociology Scholarship*. 1985: 337. [https://scholars.unh.edu/soc\\_facpub/337](https://scholars.unh.edu/soc_facpub/337)

<sup>17</sup> See 5.