

Government Response to the Law Commission report on
*The Justice Response to Victims of Sexual Violence:
Criminal Trials and Alternative Processes*

Presented to the House of Representatives

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Introduction

The Government has considered the Law Commission's report, *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (the report), presented to the House of Representatives on 14 December 2015, and responds to the report according to Cabinet Office circular CO (09) 1.

Background

In 2013 there were an estimated 186,000 instances of sexual offending¹. Data from the NZ Police on recording and resolution rates indicate that, where recorded, resolution rates for sexual violence (48%) are similar to resolution rates for criminal offences over all (41%)². However, the reporting rate to the NZ Police for all offences has been estimated at about 32%, while that for sexual offences is only about 9%³. In short, too few victims of sexual violence are choosing to engage with the justice system.

The risk that criminal justice processes will re-traumatise victims clearly contributes to low reporting rates. Many features of the criminal justice system, aimed at ensuring the rule of law and a fair trial, currently deter victims from engaging with the justice system.

The Law Commission's recommendations

In November 2014 the Minister of Justice asked the Law Commission to develop proposals for improving the court experience of complainants in sexual violence cases.

In the resulting report, the Law Commission recommended:

- changes to court processes, procedures, and physical environment including the suitability and feasibility of a specialist sexual violence court;
- out-of-court processes to obtain resolution and justice for victims who will not engage with the criminal justice system; and
- improving social support for victims of sexual violence so that they are better equipped to engage with the justice system.

¹ New Zealand Crime and Safety Survey 2014

² <http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE7408>

³ New Zealand Crime and Safety Survey 2006. The reporting rate from this survey has been used because it is more reliable than those from more recent surveys

Government response

The Government acknowledges the extensive work of the Law Commission on possible improvements for victims of sexual violence, and expresses its gratitude for the direct and indirect contribution of those affected by sexual violence to its findings and recommendations.

Within the scope of its inquiry, the Law Commission identified a range of court-related issues, a lack of alternatives to court processes, and gaps in victim support that are contributing to victims' lack of engagement with the justice system. It also outlined an ambitious and wide ranging agenda of reform for resolving these issues.

The Government accepts the Law Commission's position that reform would improve the justice response for victims of sexual violence. Given the complexity of the issues and deeply sensitive nature of this area (particularly for victims for sexual violence), further analysis is needed to establish an achievable and effective programme for change.

Proposals relating to court processes

The Law Commission has made some recommendations to improve the court experience of victims of sexual violence. The Government acknowledges that more could be done in this area to reduce unnecessary re-traumatisation and to better support victims during the court process.

The Law Commission has recommended that improvements to court processes should centre on the following:

- ensuring judges, lawyers and court staff are better able to deal with the complexity and sensitivities of sexual violence cases;
- minimising harm to victims without compromising defendants' rights;
- ensuring timely proceedings;
- changes to primary legislation affecting court procedure and to operational aspects of court processes.

The Law Commission recommended piloting a specialist sexual violence court as a possible vehicle for achieving these objectives.

The Government recognises the need for legislative and operational change. These recommendations have significant implications for the courts, the judiciary and law practitioners. We will work through these proposals to identify an achievable and effective programme of change.

Alternatives to trial

The Law Commission has recommended an alternative process to obtain resolution and justice for victims who do not want to access the criminal justice system.

While the proposal has significant potential, the particular circumstances in which alternatives to trial could be applied, as well as their design (including suitable safeguards for victims), will need further consideration before the Government will come to a final view on these recommendations.

Social support for victims of sexual violence

The Government agrees with the Law Commission that social support for victims of sexual violence can be improved both within and outside the court process.

The Social Services Committee report, *Inquiry into the funding of specialist sexual violence social services*, recommends that the Law Commission's report be considered as part of developing improved social support for victims of sexual violence. The Government response⁴ to the Social Services Committee report agrees with this recommendation. Work on this is being progressed as part of the programme of the Ministerial Group on Family Violence and Sexual Violence.

Next steps

The Government has directed the Ministry of Justice to further analyse the Law Commission's recommendations. Once this work is completed, the Government will form a final view on the Law Commission's recommendations.

⁴ http://www.parliament.nz/en-nz/pb/presented/papers/51DBHOH_PAP68769_1/government-response-to-the-report-of-the-social-services