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Committee Secretariat  
Justice Committee  
Parliament Buildings  
Wellington

## **Submission: Sexual Violence Legislation bill**

Thank you for the opportunity to make a submission on the Sexual Violence Legislation Bill. The Public Health Association of New Zealand (PHA) strongly supports the legislation, and its intention to improve court processes for survivors of sexual violence. We offer comment on the Bill from our perspective as an organisation advocating for equity in health outcomes.

### **Background**

The PHA is a national association with members from the public, private and voluntary sectors. Our organisation's vision is 'Hauora mō te katoa – oranga mō te Ao', 'Good health for all - health equity in Aotearoa', and our purpose is to advocate for the health of all New Zealanders.

To achieve this, we provide a forum for information and debate about public health action in Aotearoa New Zealand. Public health action aims to improve, promote and protect the health of the whole population through the organised efforts of society. Our organisation includes a wide membership across New Zealand and also has a Māori Caucus, a Pacific Caucus and an Asian Caucus.

We recognise Te Tiriti o Waitangi as Aotearoa New Zealand's founding document, defining respectful relationships between tangata whenua and tangata Tiriti. We are actively committed to supporting Te Tiriti articles in policy and legislation, and holding true to Te Tiriti values as an organisation.

We actively promote full implementation of related international agreements to which New Zealand is a signatory, including the UN Covenant on Economic, Social and Cultural Rights (ICESCR), particularly Article 12 The Right to Health, the UN Convention on the Rights of the Child (UNCROC), the UN Declaration of the Rights of Indigenous People (UNDRIP), the Convention on the Rights of Persons with Disabilities, the UN Framework Convention on Climate Change and the Paris Climate Agreement.

We also advocate action on the United Nations Sustainable Development Goals (SDGs), especially Goal 3: Good Health and Well-being for all at all ages. Notably the SDGs come as a package and embody recognition that the 17 individual Goals are interconnected: success in achieving one may be dependent on tackling issues pertaining to other Goals. We hold this particularly true with regard to the measures within Goal 5: Gender Equity and their relevance for Goal 3.

## Sexual violence impacts health and creates a burden on our health system

We note the disturbingly high prevalence of sexual violence in New Zealand, particularly by men and with most impact being upon women, girls and transgender people. According to the 2014 New Zealand Crime and Safety Survey 24% of New Zealand women and 6% of men reported having experienced sexual assault in their lifetime.<sup>1</sup> The Counting Ourselves report on transgender health and wellbeing found that 1 in 3 participants reported experiencing rape.<sup>2</sup> The 2012 Youth2000 Survey found that 1 in 5 girls age 12-18 had experienced unwanted sexual contact.<sup>3</sup>

A culture of silence about this high prevalence persists in New Zealand, leaving sexual violence under reported, with just a minority disclosing the violence.<sup>4</sup> This may largely be due to sexual violence usually being perpetrated by someone known to the survivor, such as an intimate partner or family member. This means most instances of sexual violence happen without formal consequence for the perpetrator. Only 11% of reported cases of sexual violence result in a conviction.<sup>5</sup>

The health and wellbeing impacts of sexual violence upon survivors are often significant and long-lasting. There can be both physical and psychological impacts including unintended pregnancy, sexually transmitted infection (STI) including HIV, sexual dysfunction, pelvic pain, urinary track infections (UTI) and other gynaecological problems, post-traumatic stress, guilt, shame, depression, anxiety, substance abuse and suicide.<sup>6</sup> These health and wellbeing outcomes leave survivors of sexual violence with a greater cost of healthcare while the health system itself is burdened by the preventable demand, often for emergency services as well as long term primary and mental health care, created by sexual violence.

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<sup>1</sup> Ministry of Justice (2015) *2014 New Zealand Crime and Safety Survey, Te Rangahau O Aotearoa Mō Te Taihara Me Te Haumarutanga 2014: Main Findings*. Retrieved from:

<http://www.justice.govt.nz/assets/Documents/Publications/NZCASS-201602-Main-Findings-Report-Updated.pdf>

<sup>2</sup> Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T & Bentham R (2019) *Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Transgender Health Research Lab, University of Waikato: Hamilton NZ. Retrieved from: [https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves\\_Report-Dec-19-Online.pdf](https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves_Report-Dec-19-Online.pdf)

<sup>3</sup> Clark, T.C., Moselen, E., Dixon, R., The Adolescent Health Research Group, & Lewycka, S. (2015). *Sexual and Reproductive Health & Sexual Violence among New Zealand secondary school students: Findings from the Youth'12 national youth health and wellbeing survey*. Auckland, New Zealand: The University of Auckland.

<sup>4</sup> TOAH-NNEST Prevalence. Retrieved from: <https://www.toah-nnest.org.nz/what-is-sexual-violence/prevalence>

<sup>5</sup> Ministry of Justice (2019) *Attrition and progression Reported sexual violence victimisations in the criminal justice system*. Retrieved from: <https://www.justice.govt.nz/assets/Documents/Publications/sf79dq-Sexual-violence-victimisations-attribution-and-progression-report-v1.0.pdf>

<sup>6</sup> World Health Organisation (2003) *Guidelines for medico-legal care for victims of sexual violence*. Chapter two: Sexual violence: prevalence, dynamics and consequences. Retrieved from: [https://www.who.int/violence\\_injury\\_prevention/resources/publications/en/guidelines\\_chap2.pdf](https://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap2.pdf)

## The PHA supports the Legislation

We see the legislation as a mechanism to promote a more fair and just court process including minimising or eliminating re-traumatisation of sexual violence survivors. We acknowledge and support the intention that it may make more victims feel empowered to seek justice through the courts, thereby addressing the disappointing rates of reporting the crime.

We support:

- Protecting survivors from intrusive and irrelevant questioning about their sexual behaviour and history;
- Allowing survivors to give evidence in more ways to ensure they can be protected from the offender during court procedures;
- Requiring judges to stop inappropriate questioning and to advise the jury about rape myths with a view to preventing implicit biases dormant in jury members' cultural beliefs;
- Better support for witnesses who are giving evidence.

However we acknowledge and share the concerns raised by Family Planning NZ in their submission to this bill:

### **1. Māori are more likely to experience sexual violence, and Māori are also more likely to experience institutional racism in New Zealand's courts**

Sufficient consideration must be given to court processes and/or systems for Māori seeking justice. The extremely high incarceration rates for Māori likely mean that there is a particular distrust of the court system among Māori, which could make it an unsafe option for Māori seeking justice in both perception and perhaps reality. Both the justice and corrections systems require proper application of te Tiriti o Waitangi principles and articles, providing a kaupapa Māori option for Māori survivors that is by Māori and for Māori in its governance, design and implementation.

### **2. Advising about or discussing rape myths is a significant responsibility for judges.**

Judges must be well-trained about sexual violence and how to deconstruct rape myths for others, perhaps in some instances also for themselves. This will take comprehensive judicial training and a culture change for the workforce at large. Training should also be required for lawyers and other people involved in court systems and processes, particularly where they interact directly with a sexual violence survivor.

### **3. The Bill does not appear to address issues around sentencing.**

A review of sentencing needs to be done to determine whether current sentencing is sufficient.

### **4. Adequate support systems are not in place for far too many survivors moving through the court process.**

Every survivor should be provided with an Independent Sexual Violence Advocate who can advocate for them throughout each stage of the process. This role would be different to an advocate employed by the courts as the role would have greater independence and would be able to support the person's emotional and psychological wellbeing.

Finally, we note that the legislation's use of the term 'complainant' to refer to survivors of sexual violence was problematic for some PHA members. While we understand the term is legal and commonly used within courtroom vernacular, it is nevertheless a term of deficit and we call for

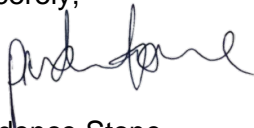
greater sensitivity in the use of terms of deficit inside this legislation, particularly given its intent. Where possible, we recommend use of terms that are mana-enhancing such as 'survivor'.

## **Conclusion**

This Bill addresses issues related to the justice system and court processes for survivors but with further consideration we believe it will also help challenge social norms of ethnic and gender inequity in New Zealand. While this Bill is intended to improve the justice system to be more responsive to the needs of sexual violence survivors, we believe that it should also play an important role encouraging survivors to come forward, as well as raise awareness of and disrupt the rape myths and harmful gender stereotypes which allow sexual violence to continue so under-reported in our society. In doing so, we are confident in the long term this legislation will do much to improve health outcomes and reduce inequity of outcomes among New Zealanders, as well as relieve a significant cost-burden upon our health system.

Thank you for the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Prudence Stone', written in a cursive style.

Prudence Stone

Chief Executive Officer