

# Canterbury

District Health Board

Te Poari Hauora o Waitaha

## Submission on Sexual Violence Legislation Bill

**To:** Justice Committee  
Committee Secretariat  
Justice Committee  
Parliament Buildings  
Wellington

**Submitter:** Canterbury District Health Board

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**Proposal:** This bill aims to reduce the re-traumatisation of sexual violence victims during court proceedings. The Law Commission's 2015 report found the judicial system is not conducive to helping victims recover from their experience and receive justice. This bill would increase the variety of ways complainants could give evidence in court. It would improve sexual violence complainants' experience of the court process by allowing: the cross examination process to be pre-recorded for victims to give their impact statement without the public being present judges to intervene if questioning is inappropriate or excessive judges to tell the jury about any common myths surrounding sexual violence cases The bill would also increase access to communication assistance. Anyone who needs help understanding court proceedings or giving evidence would be able to apply for assistance.

## SUBMISSION ON SEXUAL VIOLENCE LEGISLATION BILL

### Details of submitter

1. Canterbury District Health Board (CDHB).
2. The submitter is responsible for promoting the reduction of adverse environmental effects on the health of people and communities and to improve, promote and protect their health pursuant to the New Zealand Public Health and Disability Act 2000 and the Health Act 1956. These statutory obligations are the responsibility of the Ministry of Health and, in the Canterbury District, are carried out under contract by Community and Public Health under Crown funding agreements on behalf of the Canterbury District Health Board.
3. The Ministry of Health requires the submitter to reduce potential health risks by such means as submissions to ensure the public health significance of potential adverse effects are adequately considered during policy development.

### Details of submission

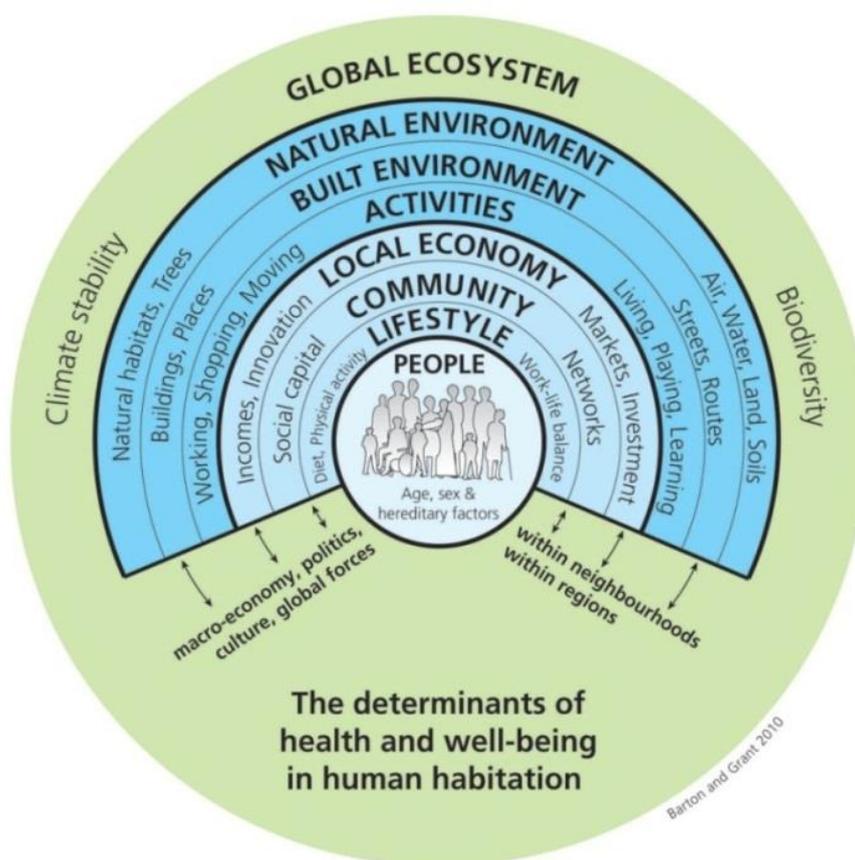
4. We welcome the opportunity to comment on the Sexual Violence Legislation Bill. The future health of our populations is not just reliant on hospitals, but on a responsive environment where all sectors work collaboratively.
5. While health care services are an important determinant of health, health is also influenced by a wide range of factors beyond the health sector. Health care services manage disease and trauma and are an important determinant of health outcomes. However health creation and wellbeing (overall quality of life) is influenced by a wide range of factors beyond the health sector.
6. These influences can be described as the conditions in which people are born, grow, live, work and age, and are impacted by environmental, social and behavioural factors. They are often referred to as the 'social determinants of health'<sup>1</sup>. The diagram<sup>2</sup> below shows how the various influences on health are complex and interlinked.

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<sup>1</sup> Public Health Advisory Committee. 2004. *The Health of People and Communities. A Way Forward: Public Policy and the Economic Determinants of Health*. Public Health Advisory Committee: Wellington.

<sup>2</sup> Barton, H and Grant, M. (2006) A health map for the local human habitat. *The Journal of the Royal Society for the Promotion of Health* 126 (6), pp 252-253. <http://www.bne.uwe.ac.uk/who/healthmap/default.asp>

7. The most effective way to maximise people’s wellbeing is to take these factors into account as early as possible during decision making and strategy development. Initiatives to improve health outcomes and overall quality of life must involve organisations and groups beyond the health sector, such as local government if they are to have a reasonable impact<sup>3</sup>.



<sup>3</sup> McGinni s JM, Williams-Russo P, Knickman JR. 2002. The case for more active policy attention to health promotion. *Health Affairs*, 21(2): 78 - 93.

## **General Comments**

8. The Canterbury DHB is supportive of the proposed changes to the Sexual Violence Legislation Bill. The Canterbury DHB's frontline services regularly encounter victims of sexual and family violence who require hospital treatment. Only a minority of patients are willing to engage with the court process because of experiences reflected in the Law Commission report that led to this Bill (Sexual Violence Legislation Bill, 1999, Explanatory Note). This perpetuates the cycle of violence, putting patients and others at risk. This Bill intends to address an important gap in current legislation.

## **Specific comments**

9. Canterbury DHB Social Workers work with victims of domestic and/or sexual violence on an almost daily basis. It is the experience of Canterbury DHB social workers that victims of domestic violence often immediately express that they do not wish to report cases of domestic/sexual violence to police.

10. The reported reasons for this include fear of not being believed, awareness of the court process that is re-traumatising and the belief that the court system is un-fair and not designed to support victims. Awareness of a likely unfavourable result also results in fear of repercussions by the perpetrator. This fear is elevated due to the acute physical harm patients are experiencing at the time of their presentation.

11. The proposed Bill shows awareness of the current failures of the system and the victim's needs (Sexual Violence Legislation Bill, 1999, Explanatory Note). Thus the Bill is seen as reducing re-traumatisation of victims of sexual violence, support their recovery, and promote privacy and confidentiality.

## **Restrictions on admissible evidence**

12. The Canterbury DHB supports the Bill's intent to prevent the defence from casting doubt and confusing the jury in relation to consent (Sexual Violence Legislation Bill, 1999, Part 1, S44-S44A). The Canterbury DHB agrees that consent to engage in any sexual activity needs to be clear (Sexual Violence Legislation Bill, 1999, Explanatory note; Part 1 cl 8). The Canterbury DHB also supports that prior consent is not an excuse for latter activity (Sexual Violence Legislation Bill, 1999,

Explanatory note; Part 1 cl 8). The Canterbury DHB also agrees that consent can be withdrawn if a partner changes their mind about a sexual activity.

13. Canterbury DHB social work input to this submission supports that consent is often misunderstood by victims, perpetrators and the public (and thus potentially a jury). For these reasons historical consent questions are irrelevant as they do not predetermine consent at a later stage and consequently only increase misconceptions relating to consent (Sexual Violence Legislation Bill, 1999, Part 1, Section 85).
14. This Bill highlights the need for consent regardless of the type or duration of the relationship within which the sexual activity takes place (Sexual Violence Legislation Bill, 1999, Explanatory note; Part 1 cl 8). In doing so sets a standard for Aotearoa which reflects values of gender equality, human rights and respect.
15. The Canterbury DHB concurs that both sexual history (and prior consent) are irrelevant and should not be able to be brought up to influence a jury – or serve to discourage victims from engaging in the process in the first place. This is of particular relevance given widely held misconceptions and judgements of society that see ones reputation influence judgement. The court needs to be empowered to prevent invasive questioning that tarnishes a victims reputation and in doing so shield victims.
16. The Canterbury DHB also supports the restrictions on invasive questioning that makes victims vulnerable, confuses the jury and detracts from the incident in question (Sexual Violence Legislation Bill, 1999, Explanatory note, Part 1, Section sections 44 to 44A., Section 85). Cross examination and the fear of being victimised or one's reputation being challenged is a primary reason why many of our patients are reluctant to engage with the court process.
17. Canterbury DHB social workers highlight that victims reports of prior police and court encounters have often resulted in victims feeling that they had somehow instigated the abuse, and that the police and court were unable (or unwilling) to support victims.
18. Police explanations of the court process that highlighted the traumatic procedure involved which includes the requirement to sit in the evidence box in front of the perpetrator stops victims from reporting. The inevitable consequence is that the

abuse continues. Previous efforts to escape the cycle of violence were not supported by the court process and relied primarily on the bravery of victims themselves.

### **Requirement of Judges to intervene in inappropriate questioning**

19. The Canterbury DHB agrees with the Bill's requirement for judges to intervene if inappropriate questioning takes place (Sexual Violence Legislation Bill, 1999, Explanatory note. Section 85). As highlighted, sexual reputation, experience and disposition is irrelevant to a trial referring to a specific episode of abuse.
20. The Canterbury DHB would like to highlight negative stereotypes regarding some of the most at risk cultural and occupational groups are prevalent in society. These stereotypes are likely going to influence a jury and therefore the potential influences should be minimised as this Bill intends. As judges are also not immune to stereotypes regarding a particular groups the Canterbury DHB recommends that the legislation considers means to develop some clear guidelines that outline inappropriate questioning to protect those groups most at risk.

### **Giving evidence in alternative ways**

21. The Canterbury DHB strongly supports the provision enabling victims to give evidence in alternative ways choosing a medium they choose (Sexual Violence Legislation Bill, 1999, Explanatory note; Part 1, Section 106). The fear of Canterbury DHB patients admitted or identified as having been victims of sexual and/or Domestic Violence to have to present their case in person and in front of an audience is one key element many patients choose not to engage with the process.
22. The Canterbury DHB staff working in the field are hopeful that the proposed change will increase the confidence of patients and lead to engagement in the court process. Canterbury DHB social work input highlights that the proposed amendments are believed to support development of rapport, encourage understanding for victim's future needs, and support and re-reporting if this becomes necessary in future.
23. The Canterbury DHB strongly supports the provision that irrelevant questions during cross examination are prohibited (Sexual Violence Legislation Bill, 1999, Part 1, Section 106). The lack of these limitations at present are likely to contribute to low

engagement and ultimately conviction rates. The Canterbury DHB also supports the ability for cross examination to be pre-recorded or the room cleared as this will support victims and enable them to give evidence more confidently (Sexual Violence Legislation Bill, 1999, Part 1, Section 106).

### **Requirement of Judges to direct the jury on myth and misconception in regard to sexual violence**

24. The Canterbury DHB agrees that the Judges need to be required to direct the jury on myth and misconception in regard to sexual violence (Sexual Violence Legislation Bill, 1999, Explanatory note, Part 1, Section). This is of vital importance as myth and misconception in regard to sexual violence persist and can be perpetuated by different social, cultural and religious worldviews.

25. To minimise the influence of social, cultural and religious worldviews the Canterbury DHB recommends that the Bill plans for the establishment of guidelines for the judiciary to minimise the negative impact of worldviews on them.

### **Ability to clear the court**

26. The Canterbury DHB strongly supports the ability for the court to be cleared for the case or the duration victim impact statements are being read (Sexual Violence Legislation Bill, 1999, Part 3, Section 199AA). It is hoped that this provision will lead to better engagement and more transparent victim impact statements. The Canterbury DHB believes that this will likely strengthen victim's experiences and encourage them to respond in individual ways instead of the frequently 'prescribed' manner promoted by the fear and mistrust of professionals

### **Appropriate for Family Violence to be included in the Bill**

27. The Canterbury DHB appreciates and supports the inclusion of family violence victims to have the ability to benefit from the proposed legislating changes even in cases where the violence is not of a sexual nature. Family violence victims treated in the Canterbury DHB often share the same fears of re-victimisation and prejudice highlighted by victims of sexual abuse. The resulting lack of engagement with the legal process perpetuates the violence and even if the relationship is discontinued it is likely the perpetrator's next partner becomes a victim too.

## Summary

28. Canterbury DHB professionals, especially those with a social work and law background agree that this Bill is going to lead to a fairer hearing that is likely to lead to better justice for victims of sexual and domestic violence.

## Conclusion

29. The CDHB does not wish to be heard in support of this submission.

30. If others make a similar submission, the submitter will not consider presenting a joint case with them at the hearing.

31. Thank you for the opportunity to submit on the Sexual Violence Legislation Bill

## Person making the submission



Evon Currie

Date: 31/01/2020

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