

House of Representatives

Supplementary Order Paper

Thursday, 25 November 2021

Sexual Violence Legislation Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper sets out amendments to the Sexual Violence Legislation Bill. The amendments are as follows:

- *clause 2* is adjusted to ensure that (1) the Act comes into force on the day after Royal assent; but (2) the sections specified in *clause 2(1)* come into force on whichever is the first to occur of the following dates:
 - the date immediately after the end of the 12-month period that starts on the date of Royal assent;
 - an earlier date set by Order in Council (instead of **1 July 2021**):
- *new clause 4(4)* amends section 4(1) to insert a new definition, for the purposes of *new section 44AA* (inserted by *clause 8*). The new definition is to reflect a commonly understood meaning, and to help users navigate the rules that apply to evidence about a complainant’s sex life. The new definition ensures that the sexual reputation of a complainant—
 - means the way in which the complainant is regarded, by others, in sexual matters (including, without limitation, as having a particular sexual disposition or experience); but
 - excludes any witness’s evidence that is derived from the witness’s personal sexual experience with, or personal knowledge of the sexual disposition of, the complainant (evidence of which is subject to *new section 44*, inserted by *clause 8*):
- *new clause 12(3A)* ensures that the Judge can direct conditions on a defendant’s lawyer’s access to a video record that is to be offered by the prosecution as an alternative way of giving evidence in chief:
- *clause 14* is amended to correct a wrong cross-reference in *new section 106D(7)*:
- *clause 14, new section 106H(6)* is a new exception that enables the Judge, if satisfied that exceptional circumstances make it impossible or impracticable for the further cross-examination evidence to be given at trial, to amend a direction given under *new section 106H* so that the complainant or propensity witness must give the further cross-examination evidence by video record made before the trial:
- *clause 14, new section 106I(3)* is amended to ensure that the Judge can direct conditions on parties’ secure access to a video record, including one edited under *new section 106I(5)*:
- *clause 14, new section 106IA(4)* is deleted because this transitional provision is no longer considered necessary or desirable:
- *new clause 15A* replaces the offences in section 119(1AA) to (1AC):
- *new section 119(1AA)* re-enacts the offence in section 119(1AA) (unauthorised possession of a video record, under section 106(4), of a type specified in section 106(4A), which relates to evidence of a child complainant (in any case) or

of any witness (including an adult complainant) in a sexual case or a violent case). That offence is re-enacted as an offence of unauthorised possession of, or dealing with, any video record. It will replace the offence, in regulation 63 of the Evidence Regulations 2007, of failure to comply with any requirements or restrictions, under those regulations, on the use of, the supply of, or access to video records (including mobile video records):

- *new section 119(1AB) and (1AC)* re-enacts the intention-based offences, with higher penalties, in section 119(1AB) and (1AC) (which apply to a video record, under section 106(4), of a type specified in section 106(4A), which relates to evidence of a child complainant (in any case) or of any witness (including an adult complainant) in a sexual case or a violent case). Those offences are re-enacted as applying (under *new section 119(1ABA)*) to any video record of a child complainant (in any case) or of any witness (including an adult complainant) in a sexual case or a violent case:
- *new clause 15B* inserts *new section 119A*, which sets out requirements for disclosure of video records in proceedings that are not criminal proceedings or Family Court proceedings. *New section 119A* rewords section 119A to make clearer its effect. *New section 119A* also applies to any video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of *new sections 106AA to 106J*):
- *new clause 16A(1)* amends section 201(a), which authorises regulations prescribing the procedure to be followed where a person's evidence is to be video recorded, to include a reference to *new section 201A* inserted by *new clause 16B*:
- *new clause 16A(2)* amends section 201(ga), which authorises regulations prescribing the ways in which video records may be dealt with, to confirm that they include regulations on access to or the disclosure or sharing of video records:
- *new clause 16A(3)* amends section 201(ia) to confirm that section authorises regulations regulating the destruction of video records or of transcripts of video records (including the destruction of copies or summaries of, or of extracts or parts of, video records or transcripts of video records):
- *new clause 16A(4)* repeals section 201(ib) because that section authorises regulations prescribing offences that are replaced by the offence in *new section 119(1AA)*, as inserted by *new clause 15A*:
- *new clause 16B* inserts *new section 201A*, which ensures that regulations made under section 201(a) may authorise a Judge to make an order restricting attendance by, or excluding, any member of the media at any making, before trial, of a video record of a sexual case complainant's or propensity witness's evidence. This is a power to make regulations that give a Judge a power to make an order imposing media restrictions or exclusions. Both the regulation-making power and the order-making power will need to be read and exercised consistently with the New Zealand Bill of Rights Act 1990. The rights to a public trial and

media freedom are therefore respected except when there is good reason for proportionate limits on those rights:

- *new clause 29A(1)* inserts *new section 199(1)(g)* of the Criminal Procedure Act 2011 to make it clear that the presence under that paragraph of any member of the media in the courtroom while the complainant gives oral evidence (whether in chief or under cross-examination or on re-examination) is subject to an order, of the kind specified in *new section 199(4)(a)*,—
 - restricting attendance by, or excluding, members of the media at any making, before trial, of a video record of a sexual case complainant’s or propensity witness’s evidence; and
 - made by a Judge under regulations made under section 201(a) of the Evidence Act 2006 (*see new clauses 16A(1) and 16B*):
- *new clause 29A(2)* inserts *new section 199(4)* of the Criminal Procedure Act 2011, to make it clear that nothing in that Act limits the following:
 - an order restricting attendance by, or excluding, members of the media at any making, before trial, of a video record of a sexual case complainant’s or propensity witness’s evidence:
 - regulations made under section 201(a) of the Evidence Act 2006 authorising a Judge to make an order of that kind (*see new clauses 16A(1) and 16B*):
- *new clause 30A* inserts *new section 199BA* of the Criminal Procedure Act 2011. *New section 199BA* ensures automatic suppression of a sexual case complainant’s or propensity witness’s evidence that is video recorded before trial. The automatic suppression remains in force, unless earlier lifted by the court, until the evidence is presented at trial in the sexual case or the relevant charges in the sexual case are withdrawn, dismissed, stayed, or otherwise disposed of. However, the court may, by order made on application or on its own initiative, lift, or vary the effect of, the suppression. Similar suppression is currently often achieved, to mitigate a real risk of prejudice to a fair trial, by orders made under section 199C(1)(d). Related amendments, to ensure that an order made under *new section 199BA(3)* is a suppression order for related ancillary, offence, and appeal provisions, are made by *new clauses 28B and 32A*:
- *new clause 30B* amends the knowing or reckless publication offence, and the other publication offence, in section 211(1) and (2) of the Criminal Procedure Act 2011, so that those offences also apply to breaches of, or of orders made under, *new section 199BA*.

This Supplementary Order Paper supersedes Supplementary Order Paper No 540, which was released on 20 July 2020.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about

any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2021&no=105>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement in March 2021 to help inform the new policy decisions taken by the Government relating to the contents of this SOP.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

The Honourable Kris Faafoi, in Committee, to propose the amendments shown in the following document.

Hon Kris Faafoi

Sexual Violence Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sexual Violence Legislation Act **2019**.

2 Commencement

(1A) This Act comes into force on the day after Royal assent.

(1) However, **Sections 4(1) and (3), 10 to 16B, 24, 28A, 28B, 29A, 31, and 32 and 30A to 32A** come into force on whichever is the ~~last~~first to occur of the following dates:

(a) the date immediately after the end of the ~~6~~12-month period that starts on the date of Royal assent:

(b) ~~1 July 2021~~an earlier date set by Order in Council.

~~(2) The rest of this Act comes into force on the day after Royal assent.~~

~~(2) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~

Part 1

Amendments to Evidence Act 2006

Preliminary provisions

3 Amendments to Evidence Act 2006

This Part amends the Evidence Act 2006.

4 Section 4 amended (Interpretation)

(1) In section 4(1), replace the definition of **communication assistance** with:

communication assistance means any assistance (for example, oral or written interpretation of a language, written assistance, or technological assistance) that enables or facilitates communication with a person who for any reason (for example, insufficient proficiency in the English language, age, or a disability) requires assistance to—

(a) understand court proceedings; or

(b) give evidence

(2) In section 4(1), replace the definition of **sexual case** with:

sexual case means—

- (a) a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for,—
 - (i) an offence against any of the provisions of sections 128 to 142A or section 144A of the Crimes Act 1961; or
 - (ii) any other offence against a person of a sexual nature; and
- (b) for the purpose of **sections 40(3)(b), 44 to 44A, and 95(1)** only, a civil proceeding that involves issues in dispute of a sexual nature

- (3) In section 4(1), insert in its appropriate alphabetical order:

sexual case complainant or propensity witness means a person of any age who is 1 or both of the following:

- (a) a complainant who is to give or is giving evidence in a sexual case:
- (b) a witness for the prosecution who is to give or is giving evidence in a sexual case that is or includes propensity evidence (as defined in section 40(1)) related to their personal experience of a sexual nature with any 1 or more defendants

- (4) In section 4(1), insert in its appropriate alphabetical order:

sexual reputation, of a complainant, for the purposes of **section 44AA**,—

- (a) means the way in which the complainant is regarded, by others, in sexual matters (including, without limitation, as having a particular sexual disposition or experience); but
- (b) excludes any witness’s evidence that is derived from the witness’s personal sexual experience with, or personal knowledge of the sexual disposition of, the complainant (evidence of which is subject to **section 44**)

5 New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

Veracity: application

6 Section 36 amended (Application of subpart to evidence of veracity and propensity)

In section 36(3), replace “section 44” with “**sections 44 to 44A**”.

*Propensity: evidence of propensity***7 Section 40 amended (Propensity rule)**

- (1) In section 40(1)(b)(i), replace “1” with “one”.
- (2) In section 40(1)(b)(ii), before “proceeding in question”, insert “civil”.
- (3) Replace section 40(3)(b) with:
 - (b) a complainant in a sexual case in relation to the complainant’s sexual experience, sexual disposition, or sexual reputation may be offered only in accordance with **sections 44 to 44A**.

*Complainants in sexual cases***8 Sections 44 and 44A replaced**

Replace sections 44 and 44A with:

44 Evidence of sexual experience or sexual disposition of complainants in sexual cases

- (1) In a sexual case, unless a Judge gives permission (on an application made under this subsection and in accordance with **section 44A**), no evidence can be given and no question can be put to a witness that relates directly or indirectly to—
 - (a) the sexual experience of the complainant with the defendant (except to establish 1 or both of the following:
 - (i) the mere fact that the complainant has sexual experience with the defendant;
 - (ii) an act or omission that is one of the elements of the offence for which the defendant is being tried, or that is the cause of action in the civil proceeding in question);
 - (b) the sexual experience of the complainant with any person other than the defendant;
 - (c) the sexual disposition of the complainant.
- (2) The Judge must not grant permission under **subsection (1)** to bring the evidence or ask the question unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding, or the issue of the appropriate sentence, that it would be contrary to the interests of justice to exclude it.
- (3) The permission of the Judge is not required to rebut or contradict evidence permitted to be given under this section.
- (4) In a sexual case in which the defendant is charged as a party and cannot be convicted unless it is shown that another person committed a sexual offence against the complainant, **subsection (1)(b)** does not apply to any evidence

given, or any question put, that relates directly or indirectly to the sexual experience of the complainant with that other person.

- (5) This section does not authorise evidence to be given or any question to be put that could not be given or put apart from this section.
- (6) In this section and **sections 40(3)(b), 44AA, and 44A**, **complainant**, in a civil proceeding that involves issues in dispute of a sexual nature, means the party, or a witness for the party, who seeks to establish a cause of action or, as the case requires, a defence in the civil proceeding.

44AA Evidence of sexual reputation of complainants in sexual cases

- (1) 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 sexual reputation of the complainant ~~(which, in this section, means the reputation of the complainant in sexual matters, and includes, without limitation, the reputation of the complainant for having a particular sexual disposition).~~
- (2) However, in a sexual case that is a specified civil proceeding (as defined in **subsection (3)**), the Judge may give permission (on an application made under this subsection and in accordance with **section 44A**) for evidence to be given or a question to be put to a witness that relates directly or indirectly to the sexual reputation of the complainant.
- (3) A **specified civil proceeding**, in **subsection (2)**, means a civil proceeding in which the complainant's sexual reputation itself is directly relevant to—
 - (a) a cause of action in the civil proceeding; or
 - (b) a defence in the civil proceeding.
- (4) The Judge must not grant permission under **subsection (2)** to bring the evidence or ask the question unless satisfied that the evidence or question is of such direct relevance to facts in issue in the proceeding that it would be contrary to the interests of justice to exclude it.
- (5) However, evidence (of the sexual reputation of the complainant) permitted to be given under this section cannot be used—
 - (a) to support a claim of consent, or of reasonable belief in consent, to an act of a sexual nature; or
 - (b) to prove the accuracy or truth of that reputation.
- (6) The permission of the Judge is not required to rebut or contradict evidence permitted to be given under this section.
- (7) This section does not authorise evidence to be given or any question to be put that could not be given or put apart from this section.

- 44A Application to offer evidence or ask questions about sexual experience or sexual disposition or sexual reputation of complainants in sexual cases**
- (1) An application made under **section 44(1) or 44AA(2)** must comply with **subsections (2) to (6)** (as relevant) unless—
 - (a) every other party has waived those requirements; or
 - (b) the Judge dispenses with those requirements.
 - (2) A party who proposes to offer evidence about the sexual experience or sexual disposition or sexual reputation of a complainant must make a written application to a Judge, which must include—
 - (a) the name of the person who will give the evidence; and
 - (b) the subject matter and scope of the evidence; and
 - (c) the reasons it is claimed that the evidence meets the test in **section 44(2) or 44AA(4)**.
 - (3) A party who proposes to ask any question about the sexual experience or sexual disposition or sexual reputation of a complainant must make a written application to a Judge, which must include—
 - (a) the name of the person who will be asked the question; and
 - (b) the question; and
 - (c) the scope of the questioning sought to flow from the initial question; and
 - (d) the reasons it is claimed that the evidence meets the test in **section 44(2) or 44AA(4)**.
 - (4) If any document is intended to be produced as evidence of the sexual experience or sexual disposition or sexual reputation of a complainant, the application required under **subsection (2)** must be accompanied by a copy of the document.
 - (5) In a criminal proceeding, an application must be made, and a copy of the application must be given to all other parties,—
 - (a) as early as practicable before the trial so that all other parties are provided with a fair opportunity to respond to the evidence or question;
 - (b) unless a Judge otherwise permits under **subsection (7)**, no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.
 - (6) In a civil proceeding, an application must be made, and a copy of the application must be given to all other parties,—
 - (a) as early as practicable before the evidence is to be offered or the question is to be asked so that all other parties are provided with a fair opportunity to respond to the evidence or question; and

- (b) unless a Judge permits otherwise under **subsection (7)**, no later than the close of pleadings date.
- (7) The Judge may dispense with any of the requirements in **subsections (2) to (6)** if,—
 - (a) having regard to the nature of the evidence or question proposed to be offered or asked, no party is substantially prejudiced by the failure to comply with a requirement; and
 - (b) compliance was not reasonably practicable in the circumstances; and
 - (c) it is in the interests of justice to do so.

Trial process: questioning of witnesses

9 Section 85 amended (Unacceptable questions)

- (1) Replace section 85(1) with:
 - (1) In any proceeding, if the Judge considers a question, or the way in which it is asked, is improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand, the Judge must disallow the question or direct that the witness is not obliged to answer it.
- (2) Replace section 85(2)(a) with:
 - (a) the age, maturity, or vulnerability of the witness; and
- (3) After section 85(2)(e), insert:
 - (f) the nature of previous questions and any cumulative impact the questioning may have on the witness.

9A Section 95 amended (Restrictions on cross-examination by parties in person)

- (1) Replace section 95(1) with:
 - (1) A defendant in or a party to a sexual case, or a defendant in or a party to a criminal or civil proceeding concerning family violence or harassment, is not entitled to personally cross-examine—
 - (a) a complainant; or
 - (b) any other witness (for example, a propensity witness) who has made an allegation against that defendant or party (as applicable),—
 - (i) in a criminal proceeding, of an offence of a sexual nature, or of an offence of family violence or harassment; or
 - (ii) in a civil proceeding, of a sexual nature, or of family violence or harassment; or
 - (c) a child who is a witness of a kind not described in **paragraph (a) or (b)**, unless the Judge gives permission.
- (2) In section 95(5),—

- (a) after “A defendant”, insert “in”; and
 - (b) replace “his or her” with “that defendant’s or party’s”.
- (3) In section 95(5)(a) and (b), after “the defendant”, insert “or the party”.

10 Section 99 amended (Witnesses recalled by Judge)

After section 99(2), insert:

- (3) This section is subject to **section 106H** (further cross-examination if all evidence of sexual case complainant or propensity witness has been or is to be given by video record made before trial).

Trial process: alternative ways of giving evidence

11 Section 102 replaced (Application)

Replace section 102 with:

102 General provisions are subject to provisions for specific situations

Sections 103 to 106 (which provide for alternative ways of giving evidence) are subject to the following provisions (which deal with specific situations):

- (a) sections **106AA** to 106B (which relate to family violence complainants):
- (b) **sections 106C to 106J** (which relate to sexual case complainants or propensity witnesses):
- (c) sections **107AA** to 107B (which relate to child witnesses in criminal proceedings):
- (d) sections 108 and 109 (which relate to undercover Police officers):
- (e) sections 110 to 118 (which relate to anonymous witnesses).

11A Section 102A replaced (Relationship of Courts (Remote Participation) Act 2010 to sections 103 to 106)

Replace section 102A with:

102A Relationship of Courts (Remote Participation) Act 2010 to this subpart

Nothing in the Courts (Remote Participation) Act 2010 affects or limits the ability of—

- (a) a witness to give evidence, or a party to apply for evidence to be given, under a provision of this subpart; or
- (b) a Judge to make directions under a provision of this subpart.

Video record evidence

12 Section 106 amended (Video record evidence)

- (1) In section 106(1), replace “an alternative way of giving evidence at the trial” with “an alternative way of giving evidence in chief at the trial”.

- (2) In section 106(2), replace “evidence” with “evidence in chief”.
- (3) In section 106(3), (4), and (6), replace “an alternative way of giving evidence” with “an alternative way of giving evidence in chief”.
- (3A) In section 106(4), after “must be given to a defendant’s lawyer”, insert “, subject to compliance with any conditions the Judge directs,”.
- (4) In section 106(6), after “that is to be offered”, insert “by the prosecution”.
- (5) In section 106(9), after “which may or may not be offered”, insert “by the prosecution”.

Giving of evidence by family violence complainants

13 Section 106A replaced (Giving of evidence by family violence complainants)

Replace section 106A with:

106AA Sections 106A and 106B apply to family violence complainants

Sections 106A and 106B apply to a complainant (a **family violence complainant**) who is not a child and who is to give or is giving evidence in a family violence case (which does not include a sexual case).

106A Giving of evidence by family violence complainants

- (1) A family violence complainant is entitled to give their evidence in chief by a video record made before the hearing.
- (2) The video record must be one recorded—
 - (a) by a Police employee; and
 - (b) no later than 2 weeks after the incident in which it is alleged a family violence offence occurred.
- (3) If a video record is to be or has been used as the complainant’s evidence in chief, a Judge must give a direction under section 103 about how the complainant will give the other parts of their evidence, including any further evidence in chief.
- (4) Section 106 applies to a video record offered as the complainant’s evidence in chief under this section.
- (5) If the prosecution intends to use a video record as a complainant’s evidence in chief, the prosecution must provide the defendant and the court with a written notice stating that intention to do so.
- (6) Unless a Judge permits otherwise, the notice must be given no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

*Giving of evidence by sexual case complainants or propensity witnesses***14 New sections 106C to 106J and cross-heading inserted**

After section 106B, insert:

*Giving of evidence by sexual case complainants or propensity witnesses***106C Sections 106D to 106J apply to sexual case complainants or propensity witnesses**

Sections 106D to 106J apply to a sexual case complainant or propensity witness of any age.

106D Giving of evidence by sexual case complainants or propensity witnesses

- (1) A sexual case complainant or propensity witness is entitled to give evidence in 1 or more alternative ways so that—
 - (a) the complainant or witness gives evidence in 1 or more of the following ways:
 - (i) by a video record made before the trial;
 - (ii) while in the courtroom but unable to see the defendant or some other specified person;
 - (iii) from an appropriate place outside the courtroom, either in New Zealand or elsewhere;
 - (b) by use of any appropriate practical and technical means the Judge, the jury (if any), and any lawyers can see and hear the complainant or witness giving evidence, in accordance with any regulations made under section 201;
 - (c) the defendant can see and hear the complainant or witness, unless the Judge directs otherwise.
- (2) A sexual case complainant or propensity witness who gives evidence of any kind in one way is entitled to give the other parts of their evidence, including any further evidence in chief, in 1 or more other ways.
- (3) A prosecutor intending to call a sexual case complainant or propensity witness must provide every other party and the court with a written notice stating—
 - (a) the 1 or more ways in which the complainant or witness will give their evidence (which may, unless the complainant or witness is a child, be or include the ordinary way); and
 - (b) if the complainant's or witness's cross-examination evidence (as defined in **subsection (7)**) is to be given by a video record made before the trial, any 1 or more other alternative ways in which their evidence is to be given during the recording.
- (4) However, no notice is required under **subsection (3)** if—

- (a) the complainant or witness is a child who indicates their wish to give evidence or any part of their evidence in the ordinary way under section 83; and
 - (b) the prosecutor applies under **section 106E** to a Judge for a direction that the complainant or witness be permitted to do so.
- (5) Unless a Judge permits otherwise, the notice required under **subsection (3)** must be given,—
- (a) if the notice states that the complainant or witness will give all or any of their cross-examination evidence (as defined in **subsection (7)**) by a video record made before the trial, as early as practicable; and
 - (b) in every case, no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.
- (6) If a prosecutor has given notice under **subsection (3)** and it is no longer possible or desirable for the complainant or witness to give evidence by the means stated in the notice, the prosecutor may file an amended notice but must do so as early as practicable.
- (7) In this section and **sections ~~106F~~ 106G to 106IA**, cross-examination evidence, for a complainant or witness, includes the following evidence (if any) that they give with their evidence given in cross-examination:
- (a) evidence in chief given by them further to their evidence recorded and offered under section 106;
 - (b) evidence in re-examination given by them about matters arising out of their evidence given in cross-examination.
- (8) This section is subject to **sections 106E to 106I**.

106E Application by prosecutor for sexual case complainant or propensity witness who is child to give evidence in ordinary way

- (1) If a sexual case complainant or propensity witness who is a child indicates their wish to give evidence or any part of their evidence in the ordinary way under section 83, the prosecutor may apply to a Judge for a direction that the complainant or witness be permitted to do so.
- (2) Unless a Judge permits otherwise, an application under **subsection (1)** must be made no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.
- (3) The Judge—
 - (a) may direct that the complainant or witness give evidence or any part of their evidence in the ordinary way, if satisfied that the complainant or witness fully appreciates the likely effect on the complainant or witness of doing so; and

- (b) before giving a direction, may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant or witness of giving evidence in the ordinary way or any alternative way.
- (4) When considering whether to give a direction under this section, the Judge must have regard to—
 - (a) whether the interests of justice require a departure from the usual procedure under **section 106D(3)** in the particular case; and
 - (b) the matters in section 103(3) and (4).

106F Application by any other party for sexual case complainant or propensity witness to give evidence in ordinary way or different alternative way

- (1) Despite **section 106D**, if a notice given under **section 106D(3)** states that a sexual case complainant or propensity witness is to give all or any part of their evidence in an alternative way, any other party may apply to a Judge for a direction that the complainant or witness give evidence or that part of their evidence in the ordinary way under section 83, or in a different alternative way under **section 106D**.
- (2) An application for a direction under **subsection (1)** must be made as early as practicable before the trial, or at a later time permitted by a Judge.
- (3) Before giving a direction under this section, the Judge—
 - (a) must give each party an opportunity to be heard in chambers; and
 - (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant or witness of giving evidence in the ordinary way or any alternative way.
- (4) When considering whether to give a direction under this section, the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—
 - (a) whether the interests of justice require a departure from the usual procedure under **section 106D(3)** in the particular case; and
 - (b) the matters in section 103(3) and (4).

106G Direction that sexual case complainant's or propensity witness's cross-examination evidence not be given by video record made before trial

- (1) Despite **section 106F(4)**, the Judge may give a direction under **section 106F** that all or any of the complainant's or witness's cross-examination evidence (as defined in **section 106D(7)**) not be given by a video record made before the trial only if the Judge considers that—
 - (a) the giving of that evidence in that way would present a real risk to the fairness of the trial; and
 - (b) that risk cannot be mitigated adequately in any other way.

- (1A) A direction referred to in **subsection (1)** may be made—
- (a) on an application made under **section 106F**; or
 - (b) on the Judge’s own initiative.
- (2) For the purposes of **subsection (1)**, the Judge must, in addition to any other matter that the Judge considers relevant, have regard to whether the witness is likely to need to give further evidence (including cross-examination evidence) after the making of a video record (for example, due to further disclosure).
- (3) For the purposes of **subsection (1)**, it must not be presumed, and must be shown clearly in the circumstances of the case, that the following consequences of cross-examination before trial would present a real risk to the fairness of the trial:
- (a) the making of a video record will require the defence to disclose all or any of its strategy earlier than if all of the evidence of the complainant or witness were given in the ordinary way or in a different alternative way:
 - (b) the defence will be unable to tailor its cross-examination to a jury’s reaction:
 - (c) the making of a video record before the trial will involve preparation and other effort extra to that required for the trial:
 - (d) complying with or using any appropriate practical and technical means for the making of a video record will involve more difficulty for all or any parties than if all of the complainant’s or witness’s evidence were given at the trial.

106H Further cross-examination if all evidence of sexual case complainant or propensity witness has been or is to be given by video record made before trial

- (1) This section applies to a sexual case complainant or propensity witness only if all of their evidence (except any further cross-examination evidence they give under this section) has been or is to be given by video record made before the trial.
- (2) The defence may apply to a Judge for a direction that the defence be permitted to further cross-examine the complainant or propensity witness after a video record is made of their cross-examination evidence.
- (3) The Judge may give the direction,—
- (a) if all parties agree that a recall of the complainant or propensity witness is necessary or desirable, under section 99 of this Act; and
 - (b) in any other case, only if the Judge considers it would be contrary to the interests of justice not to do so (despite section 99 of this Act).
- (4) For the purposes of **subsection (3)**, the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—

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- (a) whether further evidence, or an additional matter, has been disclosed, or has otherwise come to light, that is directly relevant to the determination of the case:
 - (b) whether that further evidence, or that additional matter, can be adequately addressed without requiring the complainant to be further cross-examined.
- (5) If the Judge gives the direction, the complainant or propensity witness must give the further cross-examination evidence at trial (and so not by video record made before the trial).
- (6) However, the Judge may, if satisfied that exceptional circumstances make it impossible or impracticable for the further cross-examination evidence to be given at trial, amend the direction so that the complainant or propensity witness must give the further cross-examination evidence by video record made before the trial.

106I Video record evidence: sexual case complainant's or propensity witness's cross-examination evidence given by video record made before trial

- (1) A sexual case complainant's or propensity witness's cross-examination evidence given by video record made before trial must comply with all applicable enactments in or made under this Act and any other relevant Act (and those enactments apply with all necessary modifications) as if that evidence were being given at trial.
- (2) A video record made before trial of the complainant's or propensity witness's cross-examination evidence must be recorded and dealt with in compliance with any regulations made under this Act.
- (3) All parties must be given secure access to the recording, including a version edited under **subsection (5)**, subject to compliance with any conditions the Judge directs, unless a Judge directs otherwise.
- (4) All parties must be given the opportunity to make submissions about the admissibility of all or any part of the complainant's or propensity witness's cross-examination evidence that is given by a video record made before the trial.
- (5) The Judge may, on an application for the purpose made by any party or on the Judge's own initiative, order to be excised from a video record made before the trial of the complainant's or propensity witness's cross-examination evidence all or any of the following material:
 - (a) any material that, if the evidence were given in the ordinary way, would or could be excluded in accordance with this Act:
 - (b) procedural content that is irrelevant to the determination of the proceeding (for example, witness breaks):
 - (c) any other material that the parties agree is not to form part of the evidence.

- (6) After edits to a video record are ordered under **subsection (5)**, further edits to the video record may be made (on an application for the purpose made by any party or on the Judge's own initiative) only if any new relevant issues have arisen and the interests of justice require the edited version to be revisited.
- (7) The Judge may admit a video record made before the trial of evidence, and that is recorded and dealt with substantially in accordance with the terms of any direction under this subpart and the terms of regulations referred to in **subsection (2)**, despite a failure to observe strictly all of those terms.

106IA Procedure if video record evidence under section 106 not offered, or not admitted, as evidence in chief

- (1) This section applies if,—
 - (a) a prosecutor gives a notice under **section 106D(3)** stating that a sexual case complainant or propensity witness is to give all of their evidence by a video record made before trial; and
 - (b) for any reason, video record evidence under section 106 is not offered as an alternative way of the complainant or witness giving, or is not admitted as, evidence in chief (for example, because the record is of poor quality, or it contains inadmissible, or other non-complying, material).
- (2) The complainant or witness may give both their evidence in chief and their cross-examination evidence by a video record made before the trial.
- (3) The making and use of that video record must comply with—
 - (a) the process, and requirements, specified in **sections 106D to 106I** for a sexual case complainant's or propensity witness's cross-examination evidence given by video record made before trial (and that process, and those requirements, apply with any necessary modifications); and
 - (b) the process, and requirements, specified in regulations made under this Act that apply to a video record made under this section.
- (4) ~~However, if no regulations of that kind are in force, the making and use of that video record must comply with the process, and requirements, specified in regulations made under this Act for a video record made before the trial of the complainant's or witness's cross-examination evidence (and, in that case, those regulations apply with any necessary modifications).~~

106J Making of video record of sexual case complainant's or propensity witness's evidence given at trial and not given by video record made before trial

- (1) A video record must be made, in accordance with any applicable regulations made under section 201, of evidence (of any kind)—
 - (a) given at trial by a sexual case complainant or propensity witness; and
 - (b) not given by video record made before trial.

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- (2) That video record may be used by the complainant or witness to give evidence in an alternative way under this Act (for example, in or for a retrial)—
 - (a) in a sexual case, and under **section 106D(1)(a)(i)**; or
 - (b) in any other proceeding, and under any other provisions of this subpart.
- (2A) Section 106 (except section 106(4A) to (4C)) applies, with any necessary modifications, to the video record.
- (3) This section does not limit or affect a video record of a witness's evidence being filed as a formal statement under the Criminal Procedure Act 2011, or section 99 (Oral evidence must be recorded) of that Act, or a witness giving oral evidence by way of a video record in accordance with an oral evidence order made under that Act.

Giving of evidence by child witnesses

15 New section 107AA inserted (Sections 107 to 107B apply to child witnesses)

Before section 107, insert:

107AA Sections 107 to 107B apply to child witnesses

Sections 107 to 107B apply to a child witness when giving evidence in a criminal proceeding unless the witness is a defendant who is a child or a sexual case complainant or propensity witness who is a child.

Offences and requirements for disclosure of video records in proceedings that are not criminal proceedings or Family Court proceedings

15AA Cross-heading above section 119 amended

In the cross-heading above section 119, replace “*other than under section 106 or in Family Court proceedings*” with “*that are not criminal proceedings or Family Court proceedings*”.

15A Section 119 amended (Offences)

- (1) Replace section 119(1AA) to (1AC) with:

Unauthorised possession of, or dealing with, any video record

- (1AA) A person who is in possession of, or who deals with, a video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of **sections 106AA to 106J**), other than as permitted by legislation or court order, commits an offence and is liable on conviction,—
- (a) if the person is an individual, to a fine not exceeding \$2,000:
 - (b) if the person is a body corporate, to a fine not exceeding \$10,000.

Video records to which offences in subsections (1AB) and (1AC) apply

(1ABA) The offences in **subsections (1AB) and (1AC)** apply to a video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of **sections 106AA to 106J**) of—

- (a) any child complainant; or
- (b) any witness (including an adult complainant) in a sexual case or a violent case.

Possession of video record with intention of unauthorised copying, supplying, or showing

(1AB) A person who is in possession of a video record of a type specified in **subsection (1ABA)**, with the intention of copying, supplying, or showing the video record, other than as permitted by legislation or court order, commits an offence and is liable on conviction,—

- (a) if the person is an individual, to a term of imprisonment not exceeding 6 months;
- (b) if the person is a body corporate, to a fine not exceeding \$10,000.

Unauthorised copying, supplying, or showing of video record

(1AC) A person who copies, supplies, or shows a video record of a type specified in **subsection (1ABA)**, other than as permitted by legislation or court order, commits an offence and is liable on conviction,—

- (a) if the person is an individual, to a term of imprisonment not exceeding 6 months;
- (b) if the person is a body corporate, to a fine not exceeding \$10,000.

Contravention of witness anonymity order

(2) Before section 119(4), insert:

Contempt of court

15B Section 119A replaced (Requirements for disclosure of video records in proceedings other than under section 106 or in Family Court proceedings)

Replace section 119A with:

119A Requirements for disclosure of video records in proceedings that are not criminal proceedings or Family Court proceedings

Definitions of disclose, proceedings, and video record

(1A) In this section,—

disclose, in relation to a video record, means to disclose or produce the video record under an order—

- (a) made by a Judge or judicial officer; and
- (b) made under a power existing under legislation other than this section

proceedings means proceedings that are not—

- (a) criminal proceedings; or
- (b) Family Court proceedings

video record means all, or any extract from or part, of—

- (a) any video record (whether a video record made under section 106, or a video record made before or at the hearing or the trial under any of **sections 106AA to 106J**); or
- (b) any copy, transcript, or summary of any video record referred to in **paragraph (a)**.

Police must not disclose video record unless order for disclosure complies

- (1) The Police must not disclose a video record to all or any parties to proceedings unless the order for disclosure is made in compliance with **subsection (2)**.

Restriction on Judge or judicial officer making order for disclosure

- (2) A Judge or judicial officer may make an order for disclosure of a video record to all or any parties to proceedings only if satisfied—
 - (a) that the disclosure will not prejudice any criminal proceedings for which the video record may be offered as evidence; and
 - (b) that, after considering the matters in section 119B, it is in the interests of justice to do so.

Directions for how video record to be disclosed under order for disclosure

- (3) A Judge or judicial officer who makes an order for disclosure must, subject to **subsection (4)**, give directions for the way in which the video record is to be disclosed, which may include the Police or court providing all or any parties to proceedings with—
 - (a) the video record, or a transcript or a summary of the video record;
 - (b) an opportunity to view the video record;
 - (c) access to 1 or more extracts or parts of the video record by any of the means in **paragraphs (a) and (b)**.
- (4) A Judge or judicial officer may make a particular direction for the way in which the video record is to be disclosed if satisfied that, after considering the matters in section 119B, the direction is in the interests of justice.

Disclosed video record must be dealt with in compliance with regulations made under section 201

- (5) A video record disclosed under this section to all or any parties to proceedings must be dealt with in compliance with any regulations made under section 201.

Trial process: judicial directions

16 New section 126A inserted (Judicial directions about misconceptions arising in sexual cases)

After section 126, insert:

126A Judicial directions about misconceptions arising in sexual cases

- (1) In a sexual case tried before a jury, the Judge must give the jury any direction the Judge considers necessary or desirable to address any relevant misconception relating to sexual cases.
- (2) Misconceptions relating to sexual cases (all or any of which the Judge may consider relevant in the case) include, but are not limited to, misconceptions—
 - (aa) about the prevalence or features of false complaints in sexual cases:
 - (ab) that a victim or an offender in a sexual case has, or does not have, particular stereotypical characteristics:
 - (b) that sexual offending is committed only by strangers, or is less serious when committed by a family member (including, but not limited to, a spouse, civil union partner, or de facto partner) or by an acquaintance:
 - (c) that sexual offending always involves force or the infliction of physical injuries:
 - (d) that, in a sexual case, a complainant is less credible or more likely to have consented, or a defendant’s belief in consent is reasonable, based solely on the complainant—
 - (i) dressing provocatively, acting flirtatiously, or drinking alcohol or taking drugs:
 - (ii) being in a relationship with a defendant, including a sexual relationship:
 - (iii) maintaining contact with a defendant, or showing a lack of visible distress, after the alleged offending.
- (3) This section does not limit or affect—
 - (a) section 127 (delayed complaints or failure to complain in sexual cases):
 - (b) any regulations made under section 201(m) (warning or informing jury about very young children’s evidence).

Compare: 1961 No 43 s 128A; SR 2007/204 r 49

Regulations

16A Section 201 amended (Regulations)

- (1) In section 201(a), after “the procedure to be followed”, insert “(see also **section 201A)**”.

- (2) In section 201(ga), before “the custody or return of video records”, insert “access to or the disclosure or sharing of video records, or”.
- (3) In section 201(ia), after “video records”, insert “or of transcripts of video records (including the destruction of copies or summaries of, or of extracts or parts of, video records or transcripts of video records)”.
- (4) Repeal section 201(ib).

16B New section 201A inserted (Regulations made under section 201(a) may authorise Judge to make order restricting attendance by, or excluding, members of media at making, before trial, of video record of sexual case complainant’s or propensity witness’s evidence)

After section 201, insert:

201A Regulations made under section 201(a) may authorise Judge to make order restricting attendance by, or excluding, members of media at making, before trial, of video record of sexual case complainant’s or propensity witness’s evidence

- (1) Regulations made under section 201(a) may authorise a Judge to make an order restricting attendance by, or excluding, any member of the media at any making, before trial, of a video record of a sexual case complainant’s or propensity witness’s evidence.
- (2) In this section, **member of the media** has the same meaning as in section 198(2) of the Criminal Procedure Act 2011.
- (3) This section does not limit the generality of section 201(a), and applies despite anything to the contrary in the Criminal Procedure Act 2011.

Transitional, savings, and related provisions

17 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Part 1** of the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Part 2
Amendments to Victims’ Rights Act 2002

Preliminary provisions

18 Amendments to Victims’ Rights Act 2002

This Part amends the Victims’ Rights Act 2002.

19 Section 4 amended (Interpretation)

In section 4, insert in their appropriate alphabetical order:

audio record means a recording on any medium from which a sound track may be produced by any means

sexual case means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for,—

- (a) an offence against any of the provisions of sections 128 to 142A or section 144A of the Crimes Act 1961; or
- (b) any other offence against the person of a sexual nature

sexual case complainant means a complainant who is to give or is giving evidence in a sexual case

video record means a recording on any medium from which a moving image may be produced by any means; and includes an accompanying sound track

Transitional, savings, and related provisions

20 New section 5A inserted (Transitional, savings, and related provisions)

After section 5, insert:

5A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

Victim impact statements

21 Section 19 amended (Form and verification of information ascertained)

In section 19(1), replace “on audiotape or videotape” with “as an audio record or video record”.

22 Section 22A replaced (Victim impact statement may be presented to court in some other manner)

Replace section 22A with:

22A Victim impact statement may be presented to court in some other manner

- (1) The judicial officer sentencing the offender may, at the request of the prosecutor, agree that all or any part of a victim impact statement submitted under section 21 be presented to the court in any manner other than by reading it in accordance with section 22.
- (2) For example, the manner in which all or any part of the statement may be presented to the court under this section may be any of the following:
 - (a) it can be read to the court by the victim while in the courtroom but unable to see the defendant or some other specified person:
 - (b) it can be read to the court by the victim from an appropriate place outside the courtroom, either in New Zealand or elsewhere:

- (c) if it is an audio record, it can be presented by playing that record:
- (d) if it is a video record, it can be presented by playing that record.

Rights of victims who are sexual case complainants

23 New Part 2A inserted

After Part 2, insert:

Part 2A
Provisions relating to rights of victims who are
sexual case complainants

28A Sections 28BA and 28D apply only to individual victims who are sexual case complainants

Sections 28BA and 28D apply only to an individual victim who is a sexual case complainant (the **victim**).

28BA Victim’s preferences on presenting victim impact statement

If a victim impact statement of the victim as a sexual case complainant is to be, or has been, submitted under section 21(1), the prosecutor must make all reasonable efforts to ensure that—

- (a) the victim is informed about the ways in which the victim impact statement may, with the agreement of the judicial officer sentencing the offender, be read to the court, or presented to the court in some other manner, under sections 22 and **22A**; and
- (b) any preferences the victim has on that matter are ascertained and taken into account in the operation of those sections.

28D Court may be cleared when victim impact statement read or otherwise presented to court

A court may, on an application made for the purpose by the prosecutor under **section 199AA** of the Criminal Procedure Act 2011, make an order under that section that the courtroom be cleared while the victim’s victim impact statement is read or otherwise presented to the court.

24 Sections 28A and 28BA replaced

Replace **sections 28A and 28BA** (inserted by **section 23** of this Act) with:

28A Sections 28B to 28D apply only to individual victims, or all victims, who are sexual case complainants

- (1) **Sections 28B, 28BA, and 28D** apply only to an individual victim who is a sexual case complainant (the **victim**).

- (2) **Section 28C** applies only to all victims who are sexual case complainants (the victims).

28B Victim’s preferences on ways of giving evidence

The prosecutor must make all reasonable efforts to ensure that—

- (a) the victim is informed about the ways in which the victim may give evidence (whether in chief or under cross-examination or on re-examination) as a sexual case complainant; and
- (b) any preferences the victim has on the ways of giving evidence as a sexual case complainant are ascertained and taken into account in the operation of **sections 106C to 106J** of the Evidence Act 2006.

28BA Victim’s preferences on presenting victim impact statement

If a victim impact statement of the victim as a sexual case complainant is to be, or has been, submitted under section 21(1), the prosecutor must make all reasonable efforts to ensure that—

- (a) the victim is informed about the ways in which the victim impact statement may, with the agreement of the judicial officer sentencing the offender, be read to the court, or presented to the court in some other manner, under sections 22 and **22A**; and
- (b) any preferences the victim has on that matter are ascertained and taken into account in the operation of those sections.

28C Availability of appropriate facilities when attending court

- (1) The Secretary must make all reasonable efforts to ensure that appropriate facilities are available to the victims when attending court, or participating in or viewing the proceeding related to the offences concerned, as sexual case complainants.
- (2) In determining whether facilities for those purposes are appropriate, the Secretary must, in addition to any other factors that the Secretary considers relevant, take into account—
 - (a) the victims’ physical and emotional comfort and safety;
 - (b) any physical constraints posed by the courtroom or courthouse.
- (3) Examples of appropriate facilities may include—
 - (a) alternative waiting areas away from the general public;
 - (b) alternative bathroom facilities;
 - (c) other measures to minimise the likelihood that the victims encounter the defendants or the defendants’ supporters.

*Transitional, savings, and related provisions***25 Section 53 amended (Amendments)**

In section 53, replace “the Schedule” with “**Schedule 1**”.

26 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Part 2** of the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

27 Schedule heading amended

Replace the Schedule heading with:

Schedule 1
Enactments amended

s 53

Part 3**Amendments to Criminal Procedure Act 2011***Preliminary provision***28 Amendments to Criminal Procedure Act 2011**

This Part amends the Criminal Procedure Act 2011.

*Procedure for taking oral evidence***28A Section 98 amended (Application of sections 103 to 105 of Evidence Act 2006)**

- (1) In the heading to section 98, replace “**sections 103 to 105**” with “**subpart 5 of Part 3**”.
- (2) In section 98, replace “sections 103 to 105 of the Evidence Act 2006 apply” with “subpart 5 (alternative ways of giving evidence) of Part 3 (trial process) of the Evidence Act 2006 applies”.

*Public access and restrictions on reporting***28B Section 194 amended (Interpretation)**

In section 194, definition of **suppression order**, paragraph (b), after “section 199A(3)”, insert “or **199BA(3)**”.

29 Section 196 amended (Court proceedings generally open to public)

In section 196(3), replace “and 199” with “199, and **199AA**”.

29A Section 199 amended (Court must be cleared when complainant gives evidence in cases of sexual nature)

- (1) Replace section 199(1)(g) with:
- (g) any member of the media (as defined in section 198(2)), except that this paragraph is subject to an order of the kind specified in **subsection (4)(a)**:
- (2) After section 199(3), insert:
- (4) Nothing in this Act limits the following:
- (a) an order restricting attendance by, or excluding, members of the media at any making, before trial, of a video record of a sexual case complainant's or propensity witness's evidence:
- (b) regulations made under section 201(a) of the Evidence Act 2006 authorising a Judge to make an order of that kind.

Power to clear court

30 New section 199AA inserted (Court may be cleared when victim impact statement read or otherwise presented to court in cases of sexual nature)

After section 199, insert:

199AA Court may be cleared when victim impact statement read or otherwise presented to court in cases of sexual nature

- (1) In any case of a sexual nature, a court may, on an application made for the purpose by the prosecutor, make an order that no person may be present in the courtroom while the victim's victim impact statement is read or otherwise presented to the court, except for the following:
- (a) the Judge:
- (b) the prosecutor:
- (c) the defendant and any person who is for the time being acting as custodian of the defendant:
- (d) any lawyer engaged in the proceedings:
- (e) any officer of the court:
- (f) the Police employee in charge of the case:
- (g) any member of the media (as defined in section 198(2)):
- (h) any person whose presence is requested by the victim:
- (i) any person expressly permitted by the Judge to be present.
- (2) The order may be made only if the court is satisfied that the order is necessary to avoid causing the victim undue distress.

- (3) In deciding an application made under this section, the court must take into account, in addition to any other factors the court considers relevant, the following considerations:
- (a) the interests of the victim, and any preferences the victim has on how the victim's victim impact statement is read or otherwise presented to the court:
 - (b) whether those interests and preferences could be served and met by the statement being read or otherwise presented to the court in an alternative way:
 - (c) whether the statement is to be read to the court by the victim, or by a person nominated by the victim, under section 22(1)(a) or (c) of the Victims' Rights Act 2002.
- (4) Even if an order is made under **subsection (1)**, the passing of sentence must take place in public; but, if the court is satisfied that exceptional circumstances exist, it may decline to state in public all or any of the facts, reasons, or other considerations that it has taken into account in determining the sentence.
- (5) In this section,—
- case of a sexual nature** has the meaning in section 199(3)
- read or otherwise presented to the court**, for a victim impact statement, means that all or any part of it is read or otherwise presented to the court under section 22 or **22A** of the Victims' Rights Act 2002
- victim impact statement** means a victim impact statement—
- (a) as defined in section 17AA of the Victims' Rights Act 2002; and
 - (b) submitted under section 21 of that Act to the judicial officer sentencing the offender.

Automatic suppression of sexual case complainant's or propensity witness's evidence that is video recorded before trial

30A New section 199BA and cross-heading inserted

After section 199B, insert:

Automatic suppression of sexual case complainant's or propensity witness's evidence that is video recorded before trial

199BA Automatic suppression of sexual case complainant's or propensity witness's evidence that is video recorded before trial

- (1) No person may publish the whole or any part of a sexual case complainant's or propensity witness's evidence that is video recorded before trial (see **sections 106C to 106J** of the Evidence Act 2006) except as permitted by or under this section.

- (2) The automatic suppression in **subsection (1)** remains in force, unless earlier lifted by the court, until—
- (a) the evidence is presented at trial in the sexual case; or
 - (b) the relevant charges in the sexual case are withdrawn, dismissed, stayed, or otherwise disposed of.
- (3) However, the court may, by order made on application or on its own initiative,—
- (a) lift the suppression:
 - (b) vary the effect of the suppression by permitting the publication of any evidence as specified in the order.
- (4) This section does not limit other suppression provisions or orders.

30B Section 211 amended (Offences and penalties)

In section 211(1)(b) and (2)(b), after “199A,”, insert “**199BA**,”.

Appeals: appeals against pre-trial decisions: first appeals

31 Section 215 amended (Right of appeal by prosecutor or defendant against certain pre-trial evidential decisions in Judge-alone case)

After section 215(2)(b), insert:

- (ba) granting or refusing to grant an application for a direction under **section 106F** of the Evidence Act 2006 in respect of a notification under **section 106D** of that Act that cross-examination evidence is to be given by video record made before trial:
- (bb) granting or refusing to grant an application under **section 106H** of the Evidence Act 2006 for further cross-examination of a sexual case complainant or propensity witness all of whose evidence has been or is to be given by video record made before trial:

32 Section 217 amended (Right of appeal by prosecutor or defendant against pre-trial decisions in jury trial case)

After section 217(2)(i), insert:

- (ia) granting or refusing to grant an application for a direction under **section 106F** of the Evidence Act 2006 in respect of a notification under **section 106D** of that Act that cross-examination evidence is to be given by video record made before trial:
- (ib) granting or refusing to grant an application under **section 106H** of the Evidence Act 2006 for further cross-examination of a sexual case complainant or propensity witness all of whose evidence has been or is to be given by video record made before trial:

32A Section 282 amended (Interpretation)

In section 282, after “199B(1),”, insert “**199BA(3),**”.

Transitional, savings, and related provisions

33 Schedule 1AA amended

In Schedule 1AA, after clause ~~3~~ 4, insert the **Part-2 3** set out in **Part 3** of the **Schedule** of this Act.

Schedule
Transitional, savings, and related provisions

ss 17, 26, 33

Part 1
New Schedule 1AA of Evidence Act 2006

Schedule 1AA
Transitional, savings, and related provisions

s 4A

Part 1
Provision relating to Part 1 of Sexual Violence Legislation Act 2019

1 Proceedings affected by Part

- (1) Amendments made by a provision of **Part 1 of the Sexual Violence Legislation Act 2019** (except for this clause) apply only to proceedings commenced on or after the commencement of that provision.
- (2) Proceedings commenced before that commencement, and not finally determined (including any rehearing, retrial, or appeal) before that commencement, continue as if those amendments had not been enacted.

Part 2
New Schedule 1AA of Victims' Rights Act 2002

Schedule 1AA
Transitional, savings, and related provisions

s 5A

Part 1
Provision relating to Part 2 of Sexual Violence Legislation Act 2019

1 Proceedings affected by Part

- (1) Amendments made by a provision of **Part 2 of the Sexual Violence Legislation Act 2019** (except for this clause) apply only to proceedings commenced on or after the commencement of that provision.
- (2) Proceedings commenced before that commencement, and not finally determined (including any rehearing, retrial, or appeal) before that commencement, continue as if those amendments had not been enacted.

- (3) However, the following provisions apply, after they come into force, to proceedings specified in **subclause (2)**:
- (a) **section 22A** (victim impact statement may be presented to court in some other manner):
 - (b) **section 28A (sections 28BA and 28D)** apply only to individual victims who are sexual case complainants) (as inserted by **section 23** of that Act):
 - (c) **section 28A (sections 28B to 28D)** apply only to individual victims, or all victims, who are sexual case complainants) (as inserted by **section 24** of that Act), but only to the extent that it relates to the application of **sections 28BA and 28D**:
 - (ca) **section 28BA** (victim's preferences on presenting victim impact statement) (as inserted by **section 23 or 24** of that Act):
 - (d) **section 28D** (court may be cleared when victim impact statement read or otherwise presented to court).

Part 3

New Part 2-3 of Schedule 1AA of Criminal Procedure Act 2011

Part 23

Provision relating to Part 3 of Sexual Violence Legislation Act 2019

45 Proceedings affected by Part

- (1) Amendments made by a provision of **Part 3 of the Sexual Violence Legislation Act 2019** (except for this clause) apply only to proceedings commenced on or after the commencement of that provision.
- (2) Proceedings commenced before that commencement, and not finally determined (including any rehearing, retrial, or appeal) before that commencement, continue as if those amendments had not been enacted.
- (3) However, the following provisions apply, after they (or, as the case requires, after the amendments made to them by that Part) come into force, to proceedings specified in **subclause (2)**:
 - (a) section 196(3) (court proceedings generally open to public):
 - (b) **section 199AA** (court may be cleared when victim impact statement read or otherwise presented to court in cases of sexual nature).

**Proposed amendments to
Sexual Violence Legislation Bill**

Wellington, New Zealand:

Published under the authority of the House of Representatives—2021