

## Sexual Violence Legislation Bill — First Reading

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SEXUAL VIOLENCE LEGISLATION BILL

First Reading

Hon ANDREW LITTLE (Minister of Justice): I move, That the Sexual Violence Legislation Bill be now read a first time. I nominate the Justice Committee to consider this bill.

Sexual violence affects many New Zealanders, many more than the number of convictions that are secured each year. There are many reasons why victims of sexual violence may not report the offending that has been done to them to the police, or wish to continue with the prosecution process, and there are many reasons why sexual offenders may not be convicted. This Government is committed to addressing the drivers of sexual violence in Aotearoa and the harm it causes, and we are committed to improving the way our system works in pursuit of these aims and in response to sexual harm. This bill is one part of our commitment.

We know that the current court process makes finding justice for victims of sexual violence particularly difficult. Trials are set up to ensure defendants receive a fair trial—that's the right thing to do—and do so in accordance with fundamental principles and protections to ensure the integrity of each court outcome and the system as a whole. We still live by the principle of innocent until proven guilty. The State is put to proof; that is fundamental. That must always be the case, but we can and must make some changes to ensure the trial process does not unduly re-traumatise sexual violence complainants. That is what this bill does. The changes will help complainants to feel supported and safe in court. The changes recognise the need to re-empower complainants by expanding the options for how they participate in some of the most daunting aspects of a trial. They will protect complainants from being subjected to inappropriate, distressing, and irrelevant questions. This legislation will reduce the trauma sexual violence victims can face in court, while still ensuring the fairness and robustness of the trial.

Today, I'd like to address a few of its key amendments. The first of the changes I'd like to highlight entitles complainants to give their evidence in alternative ways. Alternative ways include using an audiovisual link, or CCTV, to stream their evidence from outside the courtroom, using a one-way screen in court to obscure the witness's view of the defendant, or recording the evidence prior to the trial. Some of these things have already been experimented with in the sexual violence pilot courts that have been operating in Whangarei and Auckland in the last couple of years. Giving evidence from the witness box will be a stressful experience for any witness, in any case. We know that sexual violence complainants generally find it the single most difficult thing about the trial. They are asked to recall minute and exceptionally sensitive details about the assault they experienced, often a considerable amount of time after it occurred. This evidence is given in an alien environment and in front of the jury, the public, and the defendant. Most sexual cases will turn on the complainants' evidence, which only adds to the pressure.

While there are some provisions for witnesses' evidence to be given in alternative ways, the prosecutor must apply to the judge in each case for permission to do so. In practice, recording evidence and playing it back at the trial only occurs for evidence-in-chief, so the complainant will still have to attend trial and be cross-examined in the open court by defence counsel. This legislation will mean that prosecutors will simply notify the court and the defence which way the complainant will give their evidence. The defence will still have the right to object to the way that has been elected, in which case the judge will determine what method is to be used. The bill includes a specific procedural framework for when pre-recorded cross-examination is elected, to ensure it operates as intended.

The bill makes the fairness of the trial the overriding consideration. If the use of pre-recording will create a real risk to a fair trial, a different method of giving evidence will need to be used. This also means that the policy of allowing pre-recording is not routinely frustrated by reference to its inherent features. We know, for instance, that recording a complainant's evidence before the trial will mean the defence lawyer will have to disclose some of their strategy and won't be able to tailor their cross-examination to a jury's reaction. The legislation prescribes that these factors cannot be presumed to create a risk to the fairness of the trial. It must be clearly shown in the circumstances of the case.

Pre-recorded cross-examination has been progressively implemented across similar jurisdictions to ours over the last 25 years. While our system has its own structures and processes that will need to be carefully managed as we implement this new process, I'm confident that we can make it work here too. I encourage experts and stakeholders to consider the bill and to participate in the select committee process to help us ensure that we get it right.

As well as how complainants give evidence, we need to ensure that what they are required to give evidence about does not unduly traumatise or re-victimise victims. Section 44 of the Evidence Act prescribes strict rules around evidence of a complainant's sexual experience with people other than the defendant. That kind of evidence can be led only if it's so relevant that excluding it would be contrary to the interests of justice, and permission to do so must be sought from the judge before trial. The bill would clarify that these rules apply equally to the evidence of a complainant's sexual disposition—that is, evidence about alleged preferences or predilections where they may not involve experience, as such. The bill will also extend those rules to evidence of sexual experience with the defendant. This change will ensure the relevance of questioning about quite intimate facts is actively considered in every case. It may also help to reinforce the fact that consent cannot be inferred from previous sexual activity; both parties need to consent every time. The bill maintains the ordinary admissibility rules for evidence about the mere existence of a previous relationship with the defendant, as opposed to the details of that relationship. This will help to ensure that there are no holes in the narrative of the case, and that decision makers' reasoning is based on a contextualised understanding of the facts.

The bill will also apply these rules, as well as section 44's complete bar on evidence of a complainant's sexual reputation, to civil cases as well as criminal ones, because we know that sometimes these issues are relevant in the Family Court, for example. As the Law Commission noted in its 2019 review of the Evidence Act, the same dynamics and potential for undue harm exist in court cases involving allegations of sexual violence, no matter what the jurisdiction. In progressing the Law Commission's recommendation to apply section 44 of the Evidence Act to civil cases, we've made a small modification to preserve legitimate avenues of litigation in defence and civil cases. As well as protecting the complainant from unfair questioning, the complete bar on evidence of a complainant's sexual reputation recognises that there is no way that that subject will ever be truly relevant to the question of whether sexual offending has occurred.

In the civil jurisdiction, there is a much wider range of questions that may be before the court. We need to ensure that procedural changes in one area of the law do not alter substantive law in other areas or foreclose the right to access the courts to resolve disputes.

While it is likely to be extremely—and thankfully—rare, we cannot rule out the possibility that a person's sexual reputation may become the very subject of civil litigation. In these cases only, the high

admissibility threshold and prior permission rules from section 44 will apply, rather than a complete ban. The bill is explicit that sexual reputation evidence can never be used to prove the accuracy of that reputation or to infer consent or a reasonable belief in consent.

I note that a couple of the bill's amendments apply to all witnesses, not just those in sexual violence trials. One example is the entitlement to specialist communication assistance for anyone who needs it, for whatever reason, to understand questions and to give evidence in court. The language used in court in a court setting can be technical, specialised, and difficult to understand—and I say that as a lawyer—and so assistance should be available to witnesses and to others for whom the court is an unfamiliar territory. Currently, communication assistance is only available to witnesses who meet tight criteria based on English language proficiency or communication disability. So we need to make that change.

Another amendment applying beyond sexual violence cases clarifies that victim impact statements can be given in alternative ways, too. The Victims' Rights Act currently allows a statement to be given other than by reading it, and so we'll allow them to be given by video link, if possible.

I want to conclude by thanking the Law Commission for their work and on whose work this law change is based, but I particularly want to acknowledge my colleague, the Parliamentary Under-Secretary to the Minister of Justice, Jan Logie, who is a great leader in this whole area, and who is leading this Government's work in addressing the extraordinary incidence of family and sexual violence in this country, as we get to grips with it and really take it seriously, put resources behind it, but, most importantly, make important progressive law changes like this as we transform the landscape and start to provide protection for victims and survivors of sexual violence. I commend this bill to the House.

Hon PAULA BENNETT (Deputy Leader—National): Thank you. I stand in support of this bill and the changes that are proposed. So I want to acknowledge that. I'm pleased to say thank you to the Minister for the work that's gone on and the continuation of the work that came through from the Law Commission in 2015, and seeing that the next stage of it now needs to be introduced.

I'm pleased you did—I too was going to acknowledge the Parliamentary Under-Secretary, Jan Logie, for the work that she's doing in this area. I also note, Minister, that you called out to those experts and those that work in the field—to the chief victims' advocate and to people like that. I, too, while reading it, was thinking they would have had a real genuine input to make during the process. And if there's one thing about people that work in the sector, it is that they are not shy in putting their views forward and letting us know exactly what needs to be done and how it can be improved. In fact, I recall, very clearly, many meetings with them where I learnt a lot very quickly and I very quickly got a huge respect for what they were doing.

I think one of the things very early on was them teaching me the difference in response to domestic and sexual violence. I think, like many, previously, I had run them together. I had understood the importance of them but it was them that taught me just how important it was that we had a very different response—to the point that they worked me so hard over a period of time that when I got a little bit more senior as a Minister, I decided at their call that I would take on the role of being the lead Minister for sexual violence. Just recognising how hard it was for them to get their voices heard within Government, trying to cross between all of the different agencies, between all of the different Ministers, and with all of the intentions of all of them, I think, in the right place—just an incredibly difficult place to navigate. If I'm going to be fair, I don't think that it was put as a first or second priority by any of them, so I felt like perhaps collectively doing it.

There are many parts about it that certainly we, as the National Party, support, and certainly for the complainants—now, of course, for some of them, they can give their evidence via video link. This will strengthen that to make sure that it has to be available for them is the way that I read it. I think that that's a great thing. It is pretty daunting when you look at the statistics. I think this is one of those cases where you kind of go, "Statistics can be statistics, because I'm not even sure they're right." When you think about how few are reported, how few then even go through to trial, and then how many actually form a prosecution, it's hardly surprising when you speak to victims on why they haven't taken complaints to the police and then on to and through the court system, when the re-victimisation is absolutely real for them. To be quite frank, they're probably not encouraged by older women a lot, because sometimes we look at them and see the trauma they're going through and worry about how they're going to work their way through what can often feel like a complete re-traumatisation.

To see improvements for how they can give that evidence—one thing is, and we are impressed and so I'm going to go there, and then I'm going to say that we're going to be really interested in select committee as to how it goes through, but it is the fact that the judge can educate the jury a little bit on what needs to be done. We very much support that the past sexual history of a woman, in this case—but men as well, who may be victims—is not brought in to the case and is absolutely not relevant in any way, shape, or form.

What we are interested in exploring, though, in the name of fairness of our justice system and ensuring that there is a fairness of defence and prosecution in that, are some questions from the lawyers in our caucus, in particular around alcohol consumption. We were just concerned about how much that might be brought into it—from one aspect that, in respect of the fact that a woman may have been sexually violated, it has no relevance whatsoever in her ability to give evidence and recall. We did feel that there needs to be at least a "defence may be able to question", and so we wanted to just check where that line is in the rights of someone to defend. So, as I say, there is absolutely no question about any levels of intoxication. Whether or not that justifies or doesn't, or gives consent or doesn't, that is not our issue; the issue is actually a defence, if it comes into it. So, just as a caucus, we wanted to make sure we could test that perhaps a little bit through the select committee process, if we might, as to where that lies.

I also couldn't help but take this chance to shout out for the integrated service response and the work that is going on within that all-of-Government response—which, I know, is not all of Government, but I see that work being led right across so many different Government agencies. Then, of course, there are the incredible non-Government organisations that I think do even more exceptional work than sometimes within Government. When you see that work going on: the sharing of information, the one plan, and the one contact point for victims, whether that's around sexual or domestic violence—can I just say that we would just support any work that the Minister or his Government wants to do in that area. Actually, sorry, to the under-secretary as well—I know that's work that you lead. So, to Jan Logie, you know, any way that we can assist in that work, we'd just hugely advocate for it. It's not perfect—none of it's ever going to be, because each circumstance is so individual and unique in so many ways, but we do think that it is definitely the way forward in what we can do. I commend other previous Ministers that, of course, have done that work.

I also just wanted to touch on a couple of others. So for us, I have questions as well around training judges, and looked for that.

Hon Andrew Little: So do we.

Hon PAULA BENNETT: Is it in there? So you're nodding—he's kind of nodding. That's certainly work that needs to be done, in my opinion—dear judges: not criticising; just putting it out there because we all need to upskill. I probably botched that up a little bit. But because this is so incredibly specialised, and particularly if a judge is going to be directing a jury, I think that that work with them—and with all respect to judges, I think they would welcome it because they always want to do the best possible job that they can do. So there was something, we thought, in that training of judges and making sure that they've got a little bit more information so that they can be actually looking at what that traumatisation really means and how it can be affected within it.

A couple of other areas that—I am going to have to put my glasses on so that I can sort of see. I just did think it was worth, you know, really putting on record in this first reading speech that for every 100 sexual violence incidents that are reported to the police, figures show that only 31 actually make it to court and 11 result in a conviction, and only six of that 100 in imprisonment. When you look at that, you can see why. I certainly think that some of these changes genuinely need to be made.

Can I also—and I do see her up in the gallery—give a shout-out to Dr Kim McGregor and the work that she is doing on behalf of victims—and what a good appointment that was, Amy Adams—and the work that she's doing for victims across the board in this area. I know that she's had a huge input into having their voices heard and some of these changes that need to be made.

Look, I can go through them, but the Minister's actually done a much better job than I will. I think it's just for me to say that from our perspective, yes, we do want to ensure that there is fairness, fairness for a defence in that they can come forward. I certainly have worked with victims of sexual violence, but I'm also a stepmum to a son and a sister to brothers and a person that appreciates that there are a range of unique circumstances and that, actually, men—and I am saying men in these circumstances, because it is usually the majority. We must make sure that it is fair and that we have a justice system that we are proud of.

But in that respect, I think that for the bulk of the changes that are being put forward, then certainly I support them and welcome that to go through the select committee and look at changes, potentially, towards the end. Thank you.

JAN LOGIE (Green): Thank you, Mr Speaker. It's a real honour to stand on behalf of the Green Party, and, as the under-secretary, to follow the Minister introducing this legislation, Andrew Little, and the Hon Paula Bennett speaking on behalf of National, to offer our just incredibly wholehearted support for this piece of work. I too want to acknowledge all of the huge number of people that have contributed to this and remind the House of some of the history that has led to this piece of legislation. In some ways, the origins of it come from the country's shock in response to the Louise Nicholas case, in that I think it fundamentally shook many people's confidence in our justice system.

At that time, the Labour Government initiated a Task Force for Action on Sexual Violence, in 2007, and that reported in 2009, and it was a comprehensive programme. Then the National Minister Simon Power said it was the best road map that the country had ever had to addressing sexual violence. It laid out a huge amount of work, and then it was reinforced by this tome which sits on my desk, work by Yvette Tinsley and Elisabeth McDonald on the academic research to shift us from this concept of real rape, which really showed that our justice system was only seeming to get convictions in cases that were more likely to be stranger rapes where there was evidence of additional violence. That did not reflect the legal definition of sexual violence or the grounds and what we expect around the need to get consent. So there were a huge number of recommendations made for changes to our whole justice system.

And so we come today to the first comprehensive piece of legislation to deliver on those concerns, in 2019—now well over 10 years since that conversation started and those solutions were put down for us, and when in this country we have such a profound problem with sexual violence and gender-based violence: 24 percent of women, six percent of men, and, in the most recent research, almost one in two trans people experience sexual violence in their lifetimes in this country. This is an underlying pain in our country that we need to do better to stop, and that requires us being able to hold people causing harm to account and to move them to never causing harm again. It requires us to be able to hear the pain of

survivors and for them to feel supported and being heard in that process. Our justice system has not, to this point, given us confidence in its ability to do that, and so I welcome what I hope is unanimous support in this House for us taking another really significant step towards that reality.

I will also note the data that was mentioned by the Hon Paula Bennett of 100 incidents of sexual violence that are reported to police, only 31 going to trial, and only 11 resulting in a conviction. That data comes out of the attrition survey that this Government commissioned, because we are committed to making sure that the changes we make work and that we are holding ourselves, by producing that data, to account in the future on the impact of the changes that we make through legislation and other social reforms.

Also, in terms of this piece of legislation, I think it's important to acknowledge that it sits within a programme of work that this Government is leading around working to end family violence and sexual violence. This Government has recognised that if we talk about wellbeing, we have to talk about addressing and ending family violence and sexual violence, because it is the cause of so much harm in this country. Our mental health crisis, a lot of alcohol and drug abuse, around the child protection heartbreak that we have, around homelessness and poor economic outcomes—this is at the heart of so much of it. So there's so much to gain for all of us from doing this work.

But this is one part of a whole lot of other work, and it's specifically addressed at reducing the re-traumatisation that's happening within our justice system, and, I would say, it's also about adding more rigour to our justice system so that these cases can start to be tried on the facts and the evidence rather than myths and stereotypes or the ability of the defence to beat down and confuse a complainant to the point where they're not able to hold themselves through that process.

So it makes a range of changes that were, I thought, very well articulated by the Minister. It's enabling the victim to have choice over the way they give evidence and to enable pre-recording of that evidence ahead of court so that we can get people giving that evidence sooner and not having to give it again. That is the hope, and that will be the judge's role to ensure that those two things can happen. It will enable judges to provide direction to address rape myths, or what's sometimes called counterintuitive evidence.

I will note the National Party's concern in wanting to explore around, say, that use of alcohol. It doesn't prevent defence running a line around the memory or alcohol, but what it does say is if the prosecution hasn't balanced that defence and if it's relied on myths, then the judge will be required to provide just a statement of the facts around sexual violence in relation to alcohol. In overseas evidence, where this is not unusual at all, it doesn't undermine the right to a fair trial; it just helps us make sure that the trial is heard on the grounds of fact, rather than on myths and misconceptions.



It also extends the power and requires judges to intervene when there's inappropriate questioning. At the moment, they may, but we've heard that many judges haven't been doing that because they fear the risk of a mistrial. So we're giving them that confidence in being sure that the legislation backs them up and that we expect them to intervene, and we will be requiring them to intervene when they see somebody on the stand with repeated, repeated, repeated questioning or inappropriate questioning.

It also covers a person's sexual history with the defendant, and that's really important, as we grow our understanding as a country around what is consent, that we make sure that our legislation backs up the understanding that consent is every time. Just because I'm married to somebody, it doesn't mean they get access to my body without my consent. We have rape within marriage covered in our legislation, and this is a reinforcement of that. It is making sure that our court system just doesn't give the message that, actually, if you've had a relationship with somebody they do get access, because they don't. Consent is required every time.

With this legislation, I'm incredibly proud to be part of this Government, which is shifting away from a tinkering to a transformation. [Bell rung]

ASSISTANT SPEAKER (Hon Ruth Dyson): Apologies to the member. I didn't give you your two-minute warning bell.

Hon AMY ADAMS (National—Selwyn): Thank you, Madam Speaker. I rise to take a call, very happily, on the Sexual Violence Legislation Bill at its first reading, and, like others, I want to commend both Minister Little and Parliamentary Under-Secretary Jan Logie for their work in this area. It is an important area, and I certainly want to endorse what's been said to date, and what my colleague the Hon Paula Bennett has said.

I just want to reflect, really, at the beginning of this contribution, that none of us can live happily in a world where so many women face sexual violence in this country and so few of the perpetrators face justice. There has to be something wrong at a system level when, as we've already heard, only 11 percent of the cases that are reported ever get convicted, and we all know that, actually, the statistics of the unreported cases of violence are far, far greater.

It's been said that we do have to be careful, of course, of the rights of the perpetrators, and I agree with that. I too am the father of a son—father! I am the mother of a son—well, in this era, I could be either, I guess. I'm the mother of a son, but I'm also the mother of a daughter—

Hon Andrew Little: It's a non-binary world, now.

Hon AMY ADAMS: —that's exactly right; I could be either, but I choose to be the mother—and I would hate to find myself in a situation where my daughter, my sister, my nieces, my cousins, or anyone who has found themselves the victim of sexual violence was being told, as women in New Zealand are told, "Don't report it, because the process is bloody awful.", and it is bloody awful. But we cannot accept a world in which—and I have heard senior judges say publicly, "I would tell a young woman who had been sexually assaulted not to report it, because of the horror of going through the process." I don't accept that that's as good as it can get. I don't accept it, I don't think anyone in this House should accept it, and I don't think anyone in this House does accept it. I think it's one of those rare situations where everyone in this House, I'm sure, is united in their desire to want to improve that.

I do want to reflect that it falls at that very difficult intersection that all Ministers of Justice know very well, where Parliament has to be very careful in the way in which it directs how trials are conducted. We have a very clear separation of powers between the executive—that's the Parliament, of course—and the judiciary, and our approach in New Zealand, in a Westminster system, is very much that we enable the judiciary. We set the rules, but we stay out of, in the large part, the conduct of trials and the way in which they work.

I respect that and I know that that is a well-established principle that we have to be very careful to guard, but we cannot simply continue with a system that has failed so many women. It shouldn't need to be said that for a woman—it doesn't matter how drunk she is, it doesn't matter what she wore, it doesn't matter how sexually active she is, it doesn't matter if she was flirting, it doesn't matter if she knew him, it doesn't matter if she asked him out, it doesn't matter if she was batting her eyelashes—consent is consent, and no man has the right to take that away from any woman, and any man who does has to be held to account.

Now, with that background, I think it is fair to say that for any number of reasons, the unquestionable importance of ensuring a fair trial and the presumption of innocence has gotten to a point where victim-shaming and victim-blaming has become endemic. Jan Logie talked about the Louise Nicholas case, but you only even have to go back as far as the Roast Busters case, where we saw, time and time again, comments being made around, effectively, whether the women invited it, somehow, because of what they wore or what they said or what they did or the fact that they were out drinking at a bar at night.

That is just not OK, and what astounded me when I did some research in this area when I was the Minister was the very clear evidence that's now starting to be put together around subconscious bias. I don't think any member of a jury or member of the legal profession or—certainly—judge ever thinks that they carry any bias in assessment around these matters, but the incontrovertible evidence tells us that subconscious bias is a real thing. So we do now have to say it is time to look at how our court

processes work to address these trials in a way that women are not being told "Don't report it, because it's horrible.", and when they do have the courage to report it, we get a better reflection of holding those men to account.

Now, this is a piece of work that has its genesis across Governments. The Minister and Jan Logie have reflected that it comes back to the Law Commission report from December 2015. That's a piece of work that I actually restarted—it had been on hold in the Law Commission—and early on in my term, I could see that I didn't have the answers, and I don't think any of us pretend that we know all the answers, but I could see we had to start asking these questions. I'm very proud to have done that and I'm proud to see the new Government picking it up and running with it on, largely, a non-partisan basis, and we want to continue to help them in that respect.

It's not, of course, the only thing that needs to be done, and these things, as Jan Logie mentioned, are multifaceted. Again, under my tenure, I was very pleased to put a significant number of millions of dollars from the Justice Sector Fund into the judicial studies body to enable further training of the judiciary, because I'm a strong believer, actually, that we need specialist judges, and I would even go so far as to argue for specialist prosecutors and defence counsel, who have got special training and understanding of these issues, so that the rights of fair trial can absolutely be preserved and protected, but in a way that doesn't unnecessarily traumatise the victims.

So we certainly put funding into that from the Justice Sector Fund in our time in Government, and I'm also very proud of—and my colleague Paula Bennett mentioned it—the appointment of Dr Kim McGregor as the first ever Chief Victims Advisor. One of the reasons that I chose Kim for that role is her very strong history and knowledge in this area of sexual violence. Kim has been a wonderful addition, certainly, to the advice stream that I got when I was Minister. I'm sure she's carrying on that role with the current Government, and I'm very pleased to have her in that role. Her advice has been absolutely without parallel.

So we do have to now look at whether further legislative direction around the conduct of trials is warranted, and I think, in my mind, there is no question that it is. I appreciate, as I said, that we are treading carefully on that line between Parliament and the judiciary, but there is an appropriate way of doing that, and I think we have to look at where the sum of what has been previously permitted within the wider discretion is now made more clearly available and more as of right.

When we work through the select committee on this process, we certainly will be checking in to ensure that that balance is right. I've seen some suggestions in this field that I wouldn't support, for what it's worth. I wouldn't support, for example, reversing the onus. I cannot support a system where a charged person has to prove their innocence. I think that is too high a bar. I know this is not in the bill—to be very clear, I'm not suggesting it is in the bill—but I have heard suggestions from some that we should go

as far as that. So we do have to be very careful that it doesn't become some sort of witch-hunt process. What I've seen in the bill is a very moderate step in addressing ways in which we can tangibly make the court process, the trial process, more supportive of women, more respectful of the rights and wrongs of the situation, and yet maintaining that fair trial.

I also want to acknowledge that nothing in, certainly, my contribution should be taken as any criticism of a number of our judiciary who work very hard in this space. Again, when I was the Minister, I had the fortune of announcing the establishment of two dedicated sexual violence courts run, led, and really instituted by very, very dedicated judges who worked a lot in this area and were very careful to think about how they could run their court and run these trials in a way that was more respectful. So I want to acknowledge that there's some tremendously good work going on within our judiciary, but we have to acknowledge that at a system level, too many women have been failed for too long by a system that has become very adept at destroying the victim as a means of gaining an acquittal for their client, and that cannot be right.

So with those words of caution, I am very pleased to support the work in this bill, and the continuation of the work of the Law Commission from my own time, to select committee. I hope the select committee go into these matters with an open mind as to what is possible, a respectful mind to fair trial processes, but come back with a bill that makes it far easier for women victims of sexual violence in New Zealand to receive justice.

DARROCH BALL (NZ First): Thank you, Madam Speaker. It's a pleasure to rise on behalf of New Zealand First in support of this, the Sexual Violence Legislation Bill. There are a number of reasons why it is a pleasure, not least of which is that it should be and it is a non-partisan issue. The fact is that we all agree that this is a very important topic that we need to address, and we're making some very good progress. This is the first step in that long pathway of progress.

I'd like to congratulate and acknowledge the National members, when they were in Government as well, for bringing that voice, and acknowledge the Hon Amy Adams for her efforts bringing this issue to the fore as well. Actually, something that she mentioned made something pop into my mind, where she talked about her daughter. I too have a daughter. As every parent in this House, we will defend and protect our children and our daughters to the end. When we need to put that trust in a system to do that for us, we need to ensure that that system is working 100 percent, not only on our behalf as parents but on behalf of those victims in the future as well. I think that if we all identify that there are current issues with that, then I think it behoves us to make sure that we get it right, and this bill is going one step towards getting that whole system right.

I think even when the National Party has some issues that they want to explore in select committee—I think that we all understand that. We need to take that very seriously and make sure that the

legislation, as mentioned, is absolutely 100 percent protecting the victim through this process, but also ensuring that fairness in the justice system that we demand in our democracy.

I'm not going to go into too much detail of what the bill does. Obviously, we've heard from the Minister and the Parliamentary Under-Secretary in good detail on that, but I think it's important to mention in my speech the main aims of the bill and why New Zealand First is supporting it. The first is where it tightens the rules around the evidence. Obviously, the unduly invasive questioning that we've heard is—the situations that some victims are put through through that questioning process is unbearable, and we need to try and fix that. It also gives evidence in alternative pathways, we heard, whether that be prior to the trial giving evidence remotely, and ensuring you only do it once, and not having to repeat that for the victim.

It requires judges to intervene in inappropriate questioning. It was one of my assumptions and hopes that it was already occurring, but to ensure that it occurs, this bill is addressing that as well. Obviously, it improves protections and processes for child complainants or witnesses, which is vitally important. As mentioned by Parliamentary Under-Secretary Jan Logie, this Government is committed to addressing family and sexual violence, and this is part of that. I'd like to hope—and, like I've heard today—all parties are keen to do that, and we welcome that. We're moving forward with that.

This technically addresses the Law Commission's recommendations in the 2015 and 2019 reports, and amends the Evidence Act 2006, the Victims' Rights Act 2002, and the Criminal Procedure Act 2011.

New Zealand First is obviously supporting this bill, and we will be ensuring that we, in a non-partisan way, with all of the parties in this House, go through the select committee process, give the legislation due process, and ensure that we come up with a piece of legislation and it goes through this House finally and passes. We have a very good piece of legislation that helps fix the current situation that we have within our system. Thank you, Madam Speaker.

JO HAYES (National): I'm honoured to stand and take a call on the first reading of the Sexual Violence Legislation Bill. I, too, want to add my acknowledgments to the Minister for Justice, the Hon Andrew Little, and the Parliamentary Under-Secretary Jan Logie, who has, I would say, dedicated her life to this area of this legislation, and to representing women and speaking up for women.

I'm also the co-chair of Commonwealth Women Parliamentarians, and this is an area that we all support very strongly. We are concerned about the protection—the rights—of women and girls, and this bill is one that is right within our line of sight.

It does give confidence to me that the judiciary will have the tools to be able to hear women's concerns around sexual violence without, hopefully, re-traumatising them. A lot of what I've heard today—I endorse the speakers from the other side, because everything that they've said is so true. Consent is consent. No is no. It doesn't mean any other word. No means no. Women should be able to live their lives freely and be able to participate in whatever activities there are, without the fear of being raped or trapped.

This is what this bill is about. This bill is going to be able to empower the judiciary to be able to protect those women, the victims that are coming forward, in laying complaints and for them to be heard. For every 100 sexual violence incidents that have been reported to the police, only 31 made it to court, and only 11 of them resulted in a conviction, with only six going to jail. These are, I think, very low statistics for an Act that has been so, kind of, hidden in behind the scenes because of the way the judiciary had been dealing with them in the courts. I would like to say to the Minister, and to Jan, well done. Well done in getting this bill here. I know that National, when we were in Government, did a lot of work around violence, sexual violence, and I think this adds more and grows that area as well.

So without any further ado, I support this bill. I would like to see it head off to the select committee. I know the Justice Committee will give this bill a very good review with the submitters also being able to come in and put in their concerns as well. So without any further ado, I commend the bill to the House.

ANAHILA KANONGATA'A-SUISUIKI (Labour): Kia ora, e Te Mana Whakawā. I am truly honoured to stand and make a contribution to the Sexual Violence Legislation Bill. I want to take this opportunity to thank the Minister of Justice, the Hon Andrew Little, for his leadership where we are now helping to traverse the bill's pathway in this House. I also echo the acknowledgment made by all members who have spoken: to the Parliamentary Under-Secretary to the Minister of Justice, Parliamentary Under-Secretary Jan Logie. Also I want to acknowledge this House. The contributions today have been respectful, and I want to acknowledge all parties from this House for their behaviour, because it's a demonstration that we behave the way this bill resolves to achieve.

As we've heard from the Minister, the bill is one part of our commitment to addressing the drivers of sexual violence in Aotearoa, and the harm that it causes. In essence, the Sexual Violence Legislation Bill will provide support for sexual and family violence complainants in courts, while making sure the trial is a fair process. This is an indication to victims of violence that the justice system is a fair process for all—for victims and also for complainants and for defendants.

So what the bill will do is it will tighten the rules around evidence to ensure complainants and witnesses are protected from irrelevant and unduly invasive questioning. It will allow the complainants and witnesses to give their evidence in alternative ways, including by pre-recording statements to shield

from some of the more traumatic elements of the processes. It will also equip judges to intervene when they need to intervene.

There were suggestions about the training of judges, but I want to urge those who are in the court system to make a submission at the select committee stage. In my past life, I was an interpreter; I was required to interpret in the District Court for a court matter, and going in to interpret I wasn't aware of the severity of what I was going into. So if I can just urge those who are in the system to come forward and make a submission, because sometimes English as a second language is forgotten in our working processes. In that experience that I had in the District Court as an interpreter, I was ill-equipped to interpret in such a horrific incident, but I did the best that I could.

Following that sentence, I want to, again, urge those who are currently in the justice system, who are employed by the Government, to make a submission, because they have the insights into the mechanisms of the justice system, and their insightful knowledge will make this bill a better bill. So I want to put that wero up to those of us public servants who are in the system.

We've heard speakers before refer to fathers and mothers having a parental responsibility to their children. We all, in New Zealand, want to live in a place where it's safe for everyone, and this bill intends to do that. I want to finish my kōrero by, again, acknowledging the Minister, the Hon Andrew Little, and Parliamentary Under-Secretary Jan Logie. And I want to acknowledge the Prime Minister and her leadership in appointing an under-secretary who has the passion and the experience to add value to New Zealand. It is always a pleasure for me to be in the leadership of our Prime Minister, the Rt Hon Jacinda Ardern. On that note, I commend this bill to the House. Mālō.

CHRIS PENK (National—Helensville): Thank you, Madam Speaker, for the opportunity to join in the debate at this, the first reading of the Sexual Violence Legislation Bill. Other speakers have noted, in solemn tones, the issues that it is we are addressing and seeking to improve as a matter of legislation—and, of course, that's entirely appropriate, given the subject matter.

I'd like to provide a little bit of analysis, if I may, before, of course, the bill passes through to the select committee, as it will no doubt do on completion of this reading. The Minister of Justice, Andrew Little, has nominated the Justice Committee, of which I'm a member. So I will look forward—along with fellow members of that committee—to examining the bill in more detail at that time.

The first tension I suppose I'd like to acknowledge is the benefit and the cost. So the benefit, of course, is that if we can make the lives of victims easier, victims specifically in relation to sexual violence, then, of course, we should; indeed, we must do so. The potential cost, of course, is the issues that others have

already raised in relation to ensuring that every person has a fair trial—noting, of course, that those who are not yet proven guilty are deemed innocent under the law, and that is as it should be.

In a similar vein, on the other side of the coin, a complainant is not a victim, technically speaking, so far as the criminal law is concerned, until such time as they have been deemed as such following a fair trial. So that's important as a matter of justice and also from the point of view of confidence in our judicial system.

Having said that, taking a step back, the next dichotomy, of course, is the problem and the solution. Others have noted already, quite rightly, the extent of an issue whereby there are very few convictions as a proportion of complaints and trials in relation to matters where there is alleged sexual violence. Of course, it's impossible to place a correct number or proportion of convictions because each trial, of course, must be heard on its merits, but it does sound as though there is a very low conviction rate, potentially, in relation to the real situation. I understand that research indicates that very few actual incidents are reported in the first place, perhaps for reasons that colleagues have already mentioned. So our starting point, I think, along those statistical lines, as well as the anecdotal evidence sadly, that we have so much of in this country, is that we need to consider very carefully if there are ways that we can improve the law, in this regard.

The solutions to these problems are set out—the intended solutions, certainly—in the legislation, and it's worth considering those very carefully in terms of the extent to which they will be helpful, and, perhaps, ways that they might be improved as well.

I approach this task with humility in the sense that I don't have a great deal of personal or professional experience in the area. So I will be listening carefully, as I'm sure all the members of our Justice Committee will—and I acknowledge the chair, the Hon Meka Whaitiri, here, and perhaps other colleagues too. We will be listening carefully to submitters who will no doubt have lots of interesting perspectives from a place of personal and professional experience.

One thing I do know, though—and I want to, sort of, say aloud as part of this debate—is that every human has inherent worth and dignity. So man, woman, or however an adult identifies, and so too children—all of these human beings must be protected against the scourge of sexual violence. So it's right that we take very seriously situations where this is alleged to have occurred and do our best to provide a measure of justice in that way.

It's almost impossible to speak of justice without reflecting on that notion of balance. Classically, justice is represented with the scales, and so it is that when we consider the particular measures in the bill—for example, the hearing of evidence by ways outside of a traditional court room setting; for example, the



proposition that cross-examination be pre-recorded—we'll need to bear in mind the balance that's necessary to ensure, on the one hand, a fair trial and, of course, on the other, justice in the sense that a victim's experience must be recognised and the truth of the matter must be arrived at as best as any human institution, such as the court, can possibly manage.

With that, I'll end my contribution, except, again, just to reiterate that I look forward to learning more about the technical aspects of the bill, and, certainly, to take the advice of those who are learned in this regard, and see if we can go forward with this legislation in a way that is appropriate for our statute book and our justice system.

ASSISTANT SPEAKER (Hon Ruth Dyson): This is a split call. I call the Hon Meka Whaitiri.

Hon MEKA WHAITIRI (Labour—Ikaroa-Rāwhiti): I am pleased to take a call on the Sexual Violence Legislation Bill, and can I say how heartened I am that all parties of the House support this very important piece of legislation. As a member of the Justice Committee, I'm definitely looking forward to this bill coming for submission to our select committee.

This bill, as others have mentioned, is aimed at reducing the trauma of those sexual complainants that are standing trial but also preserving the balance of the rights of the defendant. There has been talk around the work that previous members of this Parliament on that side of the House have done in this space. I want to acknowledge the Hon Andrew Little and, of course, the under-secretary Jan Logie for their work in that. But I also heard contributions from the deputy leader of the National Party and, of course, Amy Adams, in terms of her work when she was former justice Minister, and I just want to acknowledge their contributions here and towards seeing this bill get off to the Justice Committee and have it come back to the House. So much so was I taken by their contributions in the reading of this bill that I'd like to extend an invitation that maybe the deputy leader or Amy Adams will come and join the select committee, because that expertise that they both possess around this piece of work would be very useful for ushering this bill through the submissions process.

But back to the bill. There's been three reports that have given rise to this. The Minister acknowledged, and I want to record, The Justice Response to Victims of Sexual Violence, New Zealand Law Commission in December 2015; the Second Review of the Evidence Act 2006; and, of course, the Improving the Justice Response to Victims of Sexual Violence: Victims' Experience, Gravitas Research and Strategy Limited in August 2018. This is for those contemplating—and they should—that every woman who has a complaint of sexual violence should not be traumatised when their case is heard in court. They should not be. So this bill is attempting to alleviate and remove some of that re-traumatisation in the three areas of tightening the rules, different ways of presenting evidence, and, of course, the requirement of judges to intervene.

I want to acknowledge those victims who have already gone through our justice system and haven't had a good experience. I want to acknowledge those who won't even raise the issue because of the trauma that they've heard through friends that have had their cases heard. I just want to acknowledge that. I want to acknowledge those women who don't take that course. But what we're trying to do here is to make sure that when people lay their complaints, it is heard fairly and in a safe manner without what I said earlier—jeopardising the right of the defendant.

It is a straightforward piece of legislation. I am looking forward to it coming towards our select committee. I'm particularly interested in what the bill would do around the tightening of rules, the alternative ways of presenting their evidence, and, of course, the requirement on judges. So I do hope people can provide some really constructive feedback through their submissions on ensuring that these rules that are contained in this bill are well tested to see what further we need to do in terms of making this bill fit for purpose.

Like I said, I'm pleased that all parties have supported this. I'm looking forward to it coming. I have acknowledged all the Ministers. I acknowledge the work of the Justice Committee that we're about to do as we go in it. It is a serious offer—I do hope the deputy leader of the National Party or Amy Adams considers joining our select committee, because I believe their expertise will be very, very useful to the select committee. I commend this bill to the House.

MAUREEN PUGH (National): Thank you, Madam Speaker. I too feel very privileged to be speaking to the Sexual Violence Legislation Bill today, and, as other speakers have said, pay tribute to all of the work that's gone on in the background, particularly to Jan Logie, who has provided the analysis of the cases from between 2014 and 2018, that were stark when we read them. We've got close to 24,000 cases which were analysed, but, actually, out of that, less than a third of those cases that were reported to the police actually got to the court. Of those, only 10 percent ended in convictions, and only 6 percent ended up in a term of imprisonment. So there's clearly something that needs to be corrected, because Lady Justice is all about balance, and it just feels as though there is a very strong imbalance in the system that allows that kind of skewing of the numbers.

I do take the invitation from Meka Whaitiri seriously. I think that would be a good opportunity for the Justice Committee to have some expertise on it. I wonder if other members would be keen to nominate which other members would be replaced in terms of—[Interruption] But, yes, I do understand that the select committee is going to have a balancing act, and we do need to make sure that the considerations are fair, because there's going to be some very subjective things that we're going to be asking our judges and lawyers to do. As a matter of course, going through the notes, you realise that the judges are going to be required to do several things. I note enactment of this bill will be July 2021, so by the time we get this bill through the passage of legislation and enacted, I hope that the select committee will be taking

cognisance of how much time it will take for the system to be retrained, for the scenarios for the judges and lawyers to be worked through, so that we have consistency in our judicial system with some of those rulings that will be made and the subjective requirements that will definitely come out of this piece of legislation. There are going to need to be some changes in the logistics inside those courtrooms for the provision of evidence for witnesses, for the complainant, and also for the defendants.

I too take note of some of the other contributions where, you know, as a mother of two sons, we do absolutely need to protect the complainant so that there is a safe place for the case to be heard, but the last thing that we want is to risk an alleged perpetrator becoming a victim themselves, because it is their family, their reputation, and their livelihoods that are also at risk in this. So, again, Lady Justice will need to find some balance there.

In terms of the operational issues inside the courtrooms, I just want to put a plea out, too, that there are some logistics that need to be addressed—the ways that victims, complainants, witnesses, and defendants will give evidence and evidence will be heard so that they are protected. You know, for instance, if there are video systems that need to be put in place, private rooms, etc., I'm putting out a plea that these are not just put in place in the big city courtrooms. We have small rural district courts around this country and other courts that may not have the same population base but still deserve the same facilities so that these cases can be heard all over the country and enjoy the same protection and respect everywhere.

I just want to make another short contribution about the cost of this. There will be cost implications, and although the select committee won't be turning its mind to that, I do hope that the cost will not be a barrier to implementing any changes that are found by the select committee and, indeed, at the end of this bill. I commend this bill to the House.

GINNY ANDERSEN (Labour): Thank you very much, Madam Speaker. Isn't it a nice afternoon, on Thursday afternoon, to have women from both sides of the House agreeing on the importance of our judicial system and that it well represents the needs of women in New Zealand. I'm proud to be part of a debate where there's clear agreement across the House on such an important issue.

We have a judicial system which always aims to hold an offender accountable and to protect the rights of victims, but, particularly in the area of sexual violence, that can be a really difficult area. I couldn't think of a more unwelcoming place to talk about sexual history or sexual activity than in front of a courtroom and media, for any woman to have to stand and give evidence. So what this bill attempts to do is try and make those obstacles, those difficult times within an adversarial court system, far more victim-friendly, and I welcome that victim-focused approach that this bill endeavours to take.

We've made a big commitment, this Government—and I acknowledge the work of Jan Logie—to try and make our justice system work more effectively in order not just to protect the rights of victims but to increase our reporting rates; to give women the confidence that if they report a sexual violence crime, they will be treated with dignity and respect within our system. That, in many instances in the past, has been lacking.

Now, I acknowledge, as previous speakers have done, that there is an important process in place in a trial for questioning in order to determine what has occurred, but there have been many instances where there have been unreasonable lines of questioning, and particular instances where an individual's sexual history, clothing, or practices have been brought into question, to the point where the character and the very moral fibre of that individual is being questioned above and beyond the need within the case. So this legislation seeks to find a better balance to enable witnesses—and not just witnesses but those who are victims—to have a greater sense of confidence.

I'd like to note the work that Amy Adams has already referred to, and that's the Sexual Violence Pilot Court that has been trialled in both Auckland and Whangarei. I was lucky enough to attend a visit there and to speak to some of the judges who had actually run that pilot, and it's interesting to note that some of the practices that have been implemented through those two pilots are exactly some of the changes that this piece of legislation now implements. The two key ones are that there is a pre-recorded statement, so the ability to have a pre-recorded statement that is outside of that adversarial environment—that can be done, and that is able to be used and submitted as a choice—and the second one that has been implemented in those pilots is the ability for judges to interrupt inappropriate lines of questioning if they believe them to be so, and I think that that's really important.

We had the really excellent opportunity to directly ask those judges how they did that and how that worked, and it worked incredibly well. All the reports from those two pilots gave evidence that cases progressed better and that victims reported a far better experience through our judicial system, and if we have more victims coming away from the court process, whether the offender is found guilty or innocent—if we have those who have been through a sexual violence trial reporting a better experience, then I believe that will spread the word, and, hopefully, more women will report crimes of sexual violence and have a better understanding that our system is responsive to their needs and understands that women need to have their dignity and their mana respected within our court system.

I won't speak further. I'm really proud to see a piece of legislation that takes an excellent step in the way of respecting women's rights yet still trying to definitely maintain the importance of the court system, to give that appropriate balance. As a final point, I think it's really important, the pre-recording element. The ability to have alternative ways to include audiovisual link or CCTV is just as important for our children and young people—not to have to put young people through a traumatising experience when giving evidence when they need to. I think that's another excellent advancement in this area. I'm proud of New Zealand to be leading the world in terms of making changes to how our courtrooms run in order

to respect the dignity of people and making sure that people are looked after as well as justice being upheld. I commend this bill to the House.

BARBARA KURIGER (National—Taranaki - King Country): Thank you, Madam Speaker. Look, there's not much I'm going to add to the technicalities around this bill today. Just on the first reading, the one thing I've noticed, actually, sitting here listening to all the speakers, whether it be current Ministers or previous Ministers, is the will for everybody to work closely on this bill—the invitations for ex-Ministers to come along to select committees. This is a hugely important issue, and it's something that I feel very proud about and hope that we can make some progress on as we move forward. So I commend this bill to the House. Thank you.

Hon CLARE CURRAN (Labour—Dunedin South): Thank you, Madam Speaker. What a joy it is to read in the explanatory note to a piece of legislation in this House in 2019 a reference to the Law Commission's 2015 report that found "that the justice system often fails to respond appropriately to victims of sexual violence [and that] The requirements of the court process are not aligned with victims' needs or recovery, and risk further traumatising those who come forward. These features, and the experiences of victims who have participated in prosecutions, can deter others from reporting offences and lead to fear and mistrust of the criminal justice process. Low reporting rates mean sexual offenders may not be held to account, resulting in missed opportunities to reduce reoffending and provide victims with a just resolution." The purpose of this legislation is to redress that, and it has unanimous support across the House. It is a great thing for that to be happening today.

I really want to give a big thankyou to the Minister Andrew Little, to Jan Logie, and to everybody inside the Parliament and outside the Parliament who has worked so hard and so long to get us to a point today where we are tightening the rules around evidence about a complainant's sexual history, and all of the other things that this bill does.

No longer will women have to bear those questions, standing in the courtroom, of: "What were you wearing? How much had you had to drink? How many previous partners have you had? And what's your sexual history?" Every single woman who hears those phrases shudders and can tell you that those are the sorts of questions that are asked of victims and that result in so few women coming forward and putting themselves through the ordeal. The underlying message that sits below those questions is that somehow they were asking for it and that it's a perpetuation of rape myths.

What this legislation is doing is tackling that in a way that is at the core of our justice system. Of course, it's not going to be easy and you can't just pass a piece of legislation and expect it to miraculously solve the problem. It's going to require a lot more than that. I really agree with the point that Paula Bennett made, and a couple of others have referred to, around the importance of judges being up to speed. As I understand it, there's this place called the Institute of Judicial Studies, which already provides training

for judges. No doubt we'll hear about this at select committee or at least we'll be able to ask questions of officials around that, what that means—perhaps that will be stepped up and perhaps that will be compulsory to ensure that the judges, who have an incredibly important role as victims go through the court process, have the appropriate skill levels and understanding and skills to be able to intervene appropriately.

But, again, the system change is going to be bigger than that, and everybody who operates within the justice system, whether they're for the defence or the prosecution, whether they're just in the courtroom—the system that victims have to go through before they get to the courtroom has to change. And alongside that goes the community, the workplaces, the organisations—workplaces like our workplace and the organisations that support us in the community.

I want to give a big shout-out to Rape Crisis in Dunedin for the work that they do. They've just rebranded this week as the Otepoti Collective Against Sexual Abuse, or OCASA. They've made a big decision to represent anybody who is sexually abused. They actually provide a lot of practical support in our community. Recently, they ran a workshop from my Dunedin electorate office on how to upskill us in how we deal with victims of sexual abuse so that we're better at doing that; we can all be better at that.

We know that, statistically, one in three girls, one in five women, one in six men, and one in two—I think Jan Logie said tonight—trans people are victims. Such a small number of them report and such a small number of them actually get a conviction. We know in this House that there are around a dozen women who stood up and said they were the victims of sexual abuse. How many of them actually saw things through to a conviction?

There is so much to do, so much to do around this issue. What this legislation is doing today is putting it at the heart of our justice system—that we make change. I commend the bill to the House.

Bill read a first time.

Bill referred to the Justice Committee.