

31st January 2020

Sexual Violence Legislation Bill

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The New Zealand College of Midwives is the professional organisation for midwifery. Our members are employed and self-employed and collectively represent over 90% of the practising midwives in this country. There are approximately 3,000 midwives who hold an Annual Practising Certificate (APC). These midwives provide maternity care to, on average, 60,000 women and babies each year. New Zealand has a unique and efficient maternity service model which centres care around the needs of the woman and her baby.

Midwives undertake a four-year equivalent undergraduate degree to become registered followed by a first year of practice program that includes full mentoring by senior midwives. The undergraduate curriculum meets all international regulatory and education standards. Midwives are authorised prescribers in relation to their Scope of Practice as determined by the Midwifery Council.

Midwives provide an accessible and primary health care service for women in the community within a continuity of carer model as Lead Maternity Carers. Midwives can also choose to work within secondary and tertiary maternity facilities, providing essential care to women with complex maternity needs.

The College offers information, education and advice to women, midwives, district health boards, health and social service agencies and the Ministry of Health regarding midwifery and maternity issues. Midwives interface with a multitude of other health professionals and agencies to support women to achieve the optimum outcome for their pregnancies, health and wellbeing

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Committee Secretariat

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Justice Committee

Parliament Buildings

Wellington

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The New Zealand College of Midwives (the College) welcomes the opportunity to provide feedback on the Sexual Violence Legislation Bill, and we acknowledge this work towards amending the Evidence Act 2006, Victims' Rights Act 2002, and Criminal Procedure Act 2011 to reduce the re-traumatisation that survivors of sexual violence may experience when they attend court and give evidence. With data which shows that 31% of cases reported to Police result in court action for the perpetrator, 11% result in a conviction and 6% in a prison sentence¹, removing the systematic barriers to justice is an urgent priority. As described by the Law Commission, there is also a significant under-reporting of sexual violence which inhibits the proper operation of the criminal justice system.² The College hopes that the Sexual Violence Legislation Bill will address some of these significant barriers to reporting.

Introduction

Midwives in Aotearoa New Zealand work in partnership with women and provide the necessary skilled support, care and advice during pregnancy, birth, labour and the post-birth period. The Aotearoa New Zealand continuity of care midwifery model supports midwives and women to develop quality relationships that enhance the midwife-woman connection while fostering trust and meaningful dialogue about a range of concerns and issues. The College considers all abuse and violence to be unacceptable and we recognise that during pregnancy all forms of violence are risk factors leading to adverse health outcomes. Previous sexual violence and trauma may also have a

¹ Ministry of Justice. (2019). *Attrition and progression. Reported sexual violence victimisations in the criminal justice system*. Wellington, Ministry of Justice.

² Law Commission. (2015). *The Justice Response to Victims of Sexual Violence*. Report 136, Wellington, Law Commission.

negative effect on pregnancy, childbirth and parenting. Midwives are key frontline health care professionals who work with pregnant and birthing women who have experienced sexual violence and we are aware of the power and control issues that create a culture where such violence is normalised. Gender-based stereotypes undermine and devalue women and this includes within the justice system where further traumatisation can take place. The College welcomes the Sexual Violence Legislation Bill which aims to reduce barriers, improve the experience of those who have experienced sexual violence and reduce re-traumatisation.

Feedback from the College is below.

- 1.0 The College considers that increasing the ways in which complainants can give evidence in court is a very positive amendment. Allowing pre-recording of cross-examination, removal of the public while victim impact statements are given, intervention from judges if questioning is inappropriate or excessive, and increasing communication assistance will remove significant barriers and assist with trauma reduction.
- 2.0 The College supports protection of complainants from unduly invasive questioning, particularly related to complainants' previous sexual activity, and we hope this will support a move away from the paradigm of victim blaming and rape culture. Almost all respondents involved in research looking at victims' experiences, who were required to give evidence at court, found the most difficult part of the justice process was being cross-examined by defence lawyers.³
- 3.0 The College supports the replacement definition about communication assistance which has significantly broadened the range of assistance available.
- 4.0 The College supports the amendment whereby Judges will be able to inform the jury about common myths which surround sexual violence cases. Smith and Skinner found that rape myths were used extensively as a routine way for the defence to undermine prosecution witnesses' credibility and although this was resisted by some judges and prosecution barristers it remained relevant for juries.⁴ The most commonly discussed myths outlined by Smith and Skinner related to 'appropriate' demeanour, delayed reporting, failure to cut contact with the accused, and physical resistance.

³ Boyer, T., Allison, S., & Creagh, H. (2018). *Improving the justice response to victims of sexual violence: victims' experiences*. Gravitas Research and Strategy Limited, report for the Ministry of Justice,

⁴ Smith, O., & Skinner, T. (2017). How rape myths are used and challenged in rape and sexual assault trials. *Social and Legal Studies*, 26(4):441-466.

- 5.0 The College considers that it would be reasonable for jurors to be able to examine written information about common myths to support any verbal direction from a Judge. As described by Retter, tailoring judicial directions to applicable myths relevant to the specific facts of the case may be useful.⁵ The College would be interested to learn what education Judges will be required to undertake in regards to common myths about sexual violence as we recognise that this will play a key part in tackling stereotypes and mythology.
- 6.0 The College notes that alongside training, implementation of a court observation scheme can identify problematic practices by judges. Durham et al. in an observational study in Northumbria, England, found that stereotypes came up in 26 of 30 cases, with some common ones occurring very frequently.⁶ Concern was expressed that if the directions which explain stereotypes away are not given to the jury until the end of the trial, there would be a considerable time during which the stereotype will have been operative, shaping juries thinking about cases. Dispelling rape stereotypes at the outset of trials was strongly recommended. The routine use of direction to dispel rape stereotypes, in most cases, was highly praised as capable of contributing to a sea-change in public attitudes (Durham et al, 2016).
- 7.0 Research indicates that broadening policies to address rape-myths acceptance is necessary to address oppressive beliefs, particularly for men who have been found to have a significantly higher endorsement of rape myth acceptance than women.⁷

Conclusion

The College supports the Sexual Violence Legislation Bill which aims to reduce barriers, and improve the experience of those who have experienced sexual violence, while also aiming to reduce re-traumatisation. We would also like to take this opportunity to reiterate previous comments in submissions the College has made regarding sexual violence and violence. Aotearoa New Zealand needs adequately resourced and funded nationwide specialist sexual violence support services that are accessible, culturally appropriate, securely funded and sustainable. Access to a 24/7 telephone support service, a call out team of specialist trauma counsellors, an acute crisis counselling service, and support for court preparation represents a level of service which aligns with positive changes within the justice system. These services need to be available before and after court processes. Services such as these are often invisible, just like many aspects of family and sexual violence, but

⁵ Retter, A. E. (2018). *Thinking outside the (Witness) box: Integrating experts into juries to minimise the effect of rape myths in sexual violence cases*. Victoria University of Wellington Law Review, [S.I.], v. 49, n. 1:157-178, <https://ojs.victoria.ac.nz/vuwlr/article/view/5315>.

⁶ Durham, R., Lawson, R., Lord, A., & Baird, V. (2016). *Seeing is Believing: The Northumbria Court Observers Panel. Report on 30 rape trials 2015-16*. Northumbria, Police and Crime Commission.

⁷ Suarez, E., & Gadalla, T. M. (2010). Stop blaming the victim: A meta-analysis on rape myths. *Journal of Interpersonal Violence*, 25(11):2010-2035.

the impact of both is long lasting and significant. Removing access barriers to services, such as geographical distance, waiting time and language are urgent priorities.

Services available for survivors of sexual violence also cannot sit in isolation. Sexual violence has its roots in inequity related to gender discrimination and women's rights are at the core of maternity care concerns. Work towards a more equitable society is a key component necessary for any meaningful progress to be made in the reduction of sexual violence. This requires support for women in terms of education access, workforce and pay equity and addressing issues of poverty that increase disadvantage. It also requires the development of community action and effective services for the perpetrators of sexual violence that foster non-violence and gender equity, and provide education and life skills to change attitudes and behaviour. Primary prevention of sexual violence needs attention alongside the provision of services for survivors, law amendments and changes to the justice system.

The College is grateful to have the opportunity to provide feedback on the Sexual Violence Legislation Bill.

Ngā mihi

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