Regulatory Impact Statement: Changing name suppression settings in sexual violence cases

Coversheet

Purpose of Document	
Decision sought:	This Regulatory Impact Statement provides analysis to support Cabinet decisions on a proposal that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime.
Advising agencies:	Ministry of Justice
Proposing Ministers:	Minister of Justice
Date finalised:	15 August 2024

Problem Definition

Officials were directed to consider a specific proposal for addition to the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill. We proceeded on the following assumption:

That the current test for granting permanent name suppression to a person convicted of a sexual crime and the general process to appeal permanent suppression decisions can cause additional harm to victims participating in court proceedings, can undermine open justice, and does not adequately hold convicted persons to account or prevent future offending.

Executive Summary

This paper proposes adding a name suppression proposal to the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill (**the current Bill**), intended to strengthen the legal protections afforded to victims of sexual violence. Constrained timeframes meant that the proposal was not widely tested with stakeholders.

Section 200 of the Criminal Procedure Act 2011 (**the CPA**) sets out the test the court must apply when considering whether to make an interim or permanent order forbidding publication of the name, address, or occupation of a person who is charged with, or convicted or acquitted of, an offence.

The starting point is 'open justice' – the court may only make an order if satisfied that one of eight grounds has been met.

Two of the eight grounds specifically relate to the defendant's interests – that the court is satisfied that publication of the defendant's identifying details would cause them extreme hardship or would endanger their safety.

The remaining six grounds relate to other people, including where publication would cause extreme hardship to someone connected to the defendant, undue hardship to a victim,

endanger the safety of any person, or create a risk of prejudice to a fair trial (e.g. the defendant's children, partner or parents, or a witness to the offending). These name suppression provisions seek to balance a range of factors, which often conflict. These include:

- the principle of open justice
- fairness to parties in the case, including the defendant's right to a fair trial and to be presumed innocent until proven guilty, and
- the safety of complainant, victims, connected persons, and others.

The Minister of Justice commissioned the Ministry of Justice to consider a proposal for the current Bill. The proposal would amend section 200 of the CPA under which a court may grant defendant name suppression, and would apply where a defendant has been convicted of a sexual crime.

The proposal requires that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime (or each victim, in cases of multiple victims).

We understand the objectives of the proposal to be:

(A) to further protect victims of sexual violence participating in court proceedings

(B) to support open justice, and

(C) to hold people convicted of sexual offences to account and prevent future offending.

We have considered three options against the status quo, with the intention of providing adult victims with a clear opportunity to either grant or decline permanent name suppression for convicted persons. The second option would exacerbate harm to victims of sexual crimes and would be a significant departure from established justice principles. The two remaining options considered against the status quo were to either:

- shift to victim-agreed permanent name suppression for the convicted person with one added safeguard – the proposal would not apply to victims who are unwilling or unable to engage in the process due to incapacitation; or
- shift to victim-agreed permanent name suppression for the convicted person with five added safeguards – the proposal would not apply to victims under 18 years or victims who are unwilling, and allow the decision to revert to the court in instances of multiple victims, if there are detrimental consequences to connected persons, or in exceptional circumstances.

The Ministry of Justice's preferred option is to retain the status quo, although this option is not reflected in the Cabinet paper. The status quo option retains the court's decision-making power regarding name suppression. It ensures the court can apply an impartial view whilst balancing the principles of open justice against fairness to various parties in sexual violence proceedings.

Limitations and Constraints on Analysis

Narrow scope

The scope of feasible options has been limited by two key parameters – the first being direct commissioning provided to officials by the Minister of Justice, and the second being the need to align with the current Bill, to which this proposal is to be added. The scope is reflected in the proposal's objective and criteria.

Unclear problem definition

The Minister of Justice directed us to consider adding a proposal to the current Bill, that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime.

We did not have access to a fully detailed problem definition. We have discussed the proposal with the Minister to better understand his intention, and to more clearly define the problem. However, we were not able to obtain full context or clarity. We have therefore made some assumptions in our assessment of the proposal.

Assumptions about the scale of the problem and potential uptake of the proposal

This analysis assumes that the scope of the problem is relatively small due to the specificity of the proposal. The proposal impacts instances of sexual violence victimisation that make it to conviction, which we know – based on low reporting rates of sexual victimisation, as well as the attrition and progression trends of sexual violence cases through the courts – represent a small fraction of total victims of sexual crimes.

It also assumes if the proposal were to be passed into law, that victims impacted by the proposal will want to participate in the decision-making process to determine whether a convicted person is granted permanent name suppression.

Consultation with stakeholders has been time-constrained

We consulted on an early draft of the proposal with the Chief Victims Advisor, Crown Law Office, Public Defence Service, New Zealand Law Society and the judiciary's Legislation and Law Reform Committee. The recent consultation surfaced concerns that this proposal will exacerbate harm to victims of sexual violence.

Population groups that could be disproportionately impacted by this proposal were not consulted due to time constraints.

Time and resource constraints has limited our data analysis

Lack of available time and resources for gathering evidence has limited our understanding of the true scope of the problem. Name suppression is a complex area of the law by nature and multifaceted in the parties it affects in criminal proceedings. Due to time constraints and the way the policy advice was commissioned, its complexities have not been fully explored.

In the time available, we have been unable to quantify the total number of cases where the court has granted permanent name suppression to persons convicted in cases where a victim of a sexual crime would have preferred the convicted person's identity be published. Similarly, we are unable to quantify the number of court proceedings that have been prolonged by appeals made against permanent name suppression orders.

Responsible Manager(s)

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Ministry of Justice

15 August 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	The Ministry of Justice's Regulatory Impact Assessment quality assurance panel has reviewed the Regulatory Impact Statement "Changing name suppression settings in sexual violence cases" prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIS **partially meets** the quality assurance criteria. The limitations and constraints are clearly outlined, and the analysis is balanced. However, while some evidence has been provided and the views of some stakeholders have been ascertained, there are some notable gaps, especially the views and likely impacts (including potential negative impacts) for victims. This limits the extent to which Ministers can rely on the evidence to support their decision-making. The select committee will be able to consider a wider range of views, especially if people directly affected by applications for permanent name suppression make submissions.

Section 1: Diagnosing the problem

Context

Sexual violence victims can experience further harm through the criminal justice system

1. Sexual violence causes serious harm to many New Zealanders. Despite the significant impacts it has on individual survivors, whānau, and wider communities, the criminal justice system has at times failed to deliver just outcomes for victims. Available evidence indicates that when victims of sexual violence engage with the criminal justice system, it can exacerbate the effects of the initial trauma caused by offending, and impact psychological recovery for victims of sexual violence.

2. Some victim advocates are also concerned that aspects of the criminal law can shield perpetrators from the full consequences of their sexual crimes, and potentially enable them to go on to re-offend, eroding public and victims' confidence in the system.

3. Sexual crimes are significantly under-reported. The 2024 New Zealand Crime and Victims' Survey estimated around 80, 000 adults in New Zealand experience 205,000 sexual assault. Women are three times more likely than men to be the victim of sexual assault and over one in three women in New Zealand experience sexual assault in their lifetime. Only 13 per cent of sexual violence incidents against adults were reported to New Zealand Police (**Police**).[1] In 2023, only 39% of sexual offence charges resulted in convictions. Where they were reported, the majority did not progress through the criminal justice system to conviction.[2]

4. Reporting, apprehension, and conviction rates for sexual offences are low. Corrections data[3] shows of 3,102 male sexual offenders released from prison between July 2011 and June 2019, within five years of release:

    - 33 percent had been reconvicted and 21 percent had been reimprisoned.

5. Recidivism rates were higher for sex offenders who had committed crimes against adult victims (1,249). Of these:

    - 41 percent had been reconvicted and 29 percent had been reimprisoned.

6. It is likely the risk of secondary victimisation in sexual violence cases contributes to low reporting rates, and the high rates of attrition between the Police investigation and trial stage. Further, stress and trauma negatively impact the quality of witnesses' evidence in court and may also contribute to difficulty in pursuing prosecution and conviction.

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[1] Ministry of Justice (2024), *The New Zealand Crime and Victims Survey*. Available at: https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvs/.

[2] Ministry of Justice (2023), *Progression and attrition of reported sexual violence victimisations in the criminal justice system: Victimisations reported April 2017 to March 2023.* Available at: https://www.justice.govt.nz/assets/Documents/Publications/Progression-and-attrition-of-sexual-violence-victimisations-through-the-criminal-justice-system-2017-to-2023.pdf.

[3] Department of Corrections. 2024. Reoffending rates are based on offending committed within a 60-month window from release date, with a three-month grace period to allow for any charges laid in the latter months to progress through the courts.

The Sexual Violence Legislation Act 2021 responded to Law Commission recommendations

7. The Sexual Violence and Legislation Act 2021 (**the Act**) progressed the Law Commission's 2015 and 2019 recommendations on the justice response to victims of sexual violence,[4,5] and reforms that were highlighted in Professor Elisabeth McDonald's research.[6]

8. The Act amended legislation with the intention of reducing the trauma that sexual violence complainants can experience in court (e.g. by providing for the re-recording of evidence and providing judges with the ability to prevent harmful or irrelevant lines of questioning).

9. The Act did not amend provisions relating to name suppression in sexual violence cases. New Zealand's name suppression laws were tightened in 2011 in response to Law Commission recommendations. We provided supplementary advice to the Minister of Justice in 2022 relating to name suppression laws, at which time available data and information did not suggest a review or reform was needed.

Name suppression laws seek to balance a range of factors

10. The principle of open justice underpins the way in which the courts conduct their proceedings. The New Zealand public has an interest in knowing what happens in our courts and how this affects our communities.

11. The principle of open justice is a starting point that ensures judicial proceedings and outcomes are made available in a transparent manner so that justice is seen to be done by the public. This enables public scrutiny and helps to maintain confidence in our justice system.

12. However, there can be justifiable limits on the principle of open justice. The public interest in judicial proceedings and outcomes is weighed against the interests of others, including the safety of defendants, complainants, witnesses, and children. The principle of open justice must also be weighed against other core justice principles, such as a defendant's right to a fair trial, and to be presumed innocent until proven guilty.[7]

13. The court brings an impartial role to the balancing of competing factors when making decisions. This includes the interests of the Crown, the legal system, the maintenance of law and order, public safety, and open justice.

14. The court can restrict the sharing of information relevant to criminal proceedings through suppression orders. The main legislative settings for suppression orders are set out in the Criminal Procedure Act 2011 (**the CPA**), which permit interim and

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[4] New Zealand Law Commission (2015), *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* [NZLC R136]. Available at: https://www.lawcom.govt.nz/our-work/alternative-models-for-processing-and-trying-criminal-cases/tab/report.

[5] New Zealand Law Commission (2019), *The Second Review of the Evidence Act 2006 – Te Arotake Tuarua i te Evidence Act 2006* [NZLC R142]. Available at: https://www.lawcom.govt.nz/our-work/second-review-of-the-evidence-act-2006/tab/report.

[6] McDonald, E. & Y. Tinsley (Eds.) (2011), *From "Real Rape" to Real Justice: Prosecuting Rape in New Zealand*. Victoria University Press: Wellington.

[7] These are rights provided for in section 25 of the New Zealand Bill of Rights Act 1990 (Minimum standards of criminal procedure).

permanent suppression orders to be made for defendants, witnesses, complainants, victims, and other connected persons.

Name suppression plays a pivotal role in sexual violence cases

15. With regard to name suppression for complainants in sexual violence cases, section 203 of the CPA provides automatic name suppression in specified sexual cases. The policy intent of this is to protect the complainant.

16. With regard to name suppression for defendants in sexual violence cases, section 201 of the CPA provides automatic name suppression to persons accused or convicted of incest or sexual conduct with a dependent family member. The policy intent of this is to also protect the complainant.

17. With regard to granting name suppression for defendants, section 200 of the CPA provides that when the court is considering making a suppression order, it is required to identify that one or more of eight grounds have been satisfied. Once this has been established, the court then considers whether this outweighs the public interest in the application of the open justice principle.[8]

    - Two of the eight grounds specifically relate to the defendant's interests – the court must be satisfied that publication of the defendant's identifying details would cause them extreme hardship or would endanger their safety.
    - The remaining six grounds relate to other connected people (e.g. the defendant's children, partner, parents, or a witness to the offending). This includes where publication would cause extreme hardship to someone connected to the defendant, undue hardship to a victim, endanger the safety of any person, or risk the prejudice to a fair trial.

18. The court is also required to consider the views of the victim/s when determining permanent suppression orders.

19. During court proceedings, interim name suppression is typically granted or given by the court to defendants. This is to safeguard the presumption of innocence and protect the right to a fair trial, for example.

20. Following the disposal of court proceedings, the defendant may apply to the court for a permanent name suppression order. If an appeal is filed against a decision to grant a defendant name suppression, interim name suppression will continue until all appeal processes have run their course.

21. This forms the status quo and gives the context in which name suppression laws play an important role in varying aspects of the criminal law. Under the status quo, the court uses judicial discretion to consider name suppression in the context of sexual violence cases.

[8] The eight grounds are set out in section 200(2) of the CPA (Court may suppress identity of defendant).

The Government response to support victims of sexual violence

22. The Government has set a range of targets to deliver over the next six years, including a goal of 20,000 fewer victims of assault, robbery, and sexual assault by 2029.[9]

23. To achieve this, the Government is undertaking reforms to the criminal justice system, including an increased response to gang activities, establishing military-style academies for youth serious offenders, improving court timeliness, reinstatement of the 'three strikes' law, and broader sentencing reform.

24. Due to the limited time available, we have not completed analysis to determine if, how, and to what extent these reforms might affect the proposal, and vice versa.

The Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

25. On 10 August 2023, the Government introduced the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill (**the current Bill**).[10]

26. The current Bill aims to reduce the harms experienced by victims of sexual violence participating in court proceedings. It seeks to ensure that court processes are aligned with victims' needs, while preserving the fairness and integrity of the court system. The current Bill amends the Crimes Act 1961 and the CPA by:

    - minimising the risk of child victims of sexual violence being subject to harmful lines of questioning when giving evidence, and
    - clarifying the law to better support adult victims' autonomy over name suppression orders they are subject to.

27. The current Bill is being considered by the Justice Committee.

28. The Regulatory Impact Statement for these amendments can be found on the Treasury's website: https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-strengthening-legal-protections-victims-sexual-violence.

What is the policy problem or opportunity?

Settings for permanent defendant name suppression could better support victims and justice

29. The Minister of Justice directed us to consider adding a proposal to the current Bill that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime.

30. We did not have access to a fully detailed problem definition. We discussed the proposal with the Minister to better understand his intention, and to more clearly define the problem. We were not able to obtain full context or clarity.

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[9] New Zealand Government (2024), *Government Targets*. Available at: https://www.dpmc.govt.nz/our-programmes/government-targets.

[10] New Zealand Legislation (2024), *Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill*. Available at: https://www.legislation.govt.nz/bill/government/2023/0274/latest/LMS876547.html?search=ta_bill%40bill_V_bc%40bcur_an%40bn%40rn_25_a&p=1.

31. We proceeded on two assumptions. Firstly, that the proposal aligns with the current Bill. Secondly, that the problem relates to the current test for granting name suppression and/or the general appeals process – with the concern that these:

    - cause additional harm to victims participating in court proceedings
    - undermine open justice, and
    - do not adequately hold convicted persons to account or prevent future offending.

Permanent name suppression applications can result in ongoing appeals and undermine public confidence

32. Permanent name suppression applications can result in proceedings being drawn out over many years through the appeals process. This can occur in particularly rare circumstances when a defendant seeks permanent name suppression, or appeals their conviction and requests continued interim suppression.

33. This may at times conflict with a complainant wishing to speak out about their experience, and undermine public confidence in aspects of the criminal law. These proceedings can result in victims having to wait years to speak about their experience despite lifting their own suppression order.

34. This was exemplified in *M & LF v R,* two cases recently considered by the Supreme Court.[11] The Court dismissed two appeals for permanent name suppression on the grounds that publication would cause the appellant extreme hardship and/or endanger his safety.

35. The case involved a defendant sentenced to 12 months' home detention after pleading guilty to ten charges for sexual offending in relation to six victims. The victims were all aged between 13–17 years when the offending occurred. The case raised issues about the process spanning three years, including:

    - practical problems the victims experienced in complying with the existing interim suppression order for the appellant, despite having lifted their own name suppression
    - the prospect of other victims who might come forward if the appellant was named, and
    - concern about future complainants who may not be aware of the appellant's previous offending.

36. Similarly, in *Yikar v R*, there were instances of delay and multiple attempts to misuse statutory grounds in the CPA relating to name suppression.[12] The Court of Appeal case partly relates to appeals made by convicted sexual offender James Wallace, who submitted serial applications for name suppression which lasted over two years, before being finally declined in June 2023.

37. Mr Yikar, an associate to Mr Wallace, delayed filing his own application for permanent name suppression. He sought suppression on the grounds that disclosure of his

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[11] *M (SC 12/2023) v R* [2024] NZSC 29 [23 April 2024].

[12] *Yikar v R* [2023] NZCA 296 [13 July 2023].

identifying details would cause undue hardship for his mother living overseas. The court dismissed Yikar's application as an abuse of process, and noted that it had "all the hallmarks of a desperate attempt to again frustrate the right of the public" to know of the pair's convictions.

38. Victim-advocate Ruth Money has made calls for a broad reform of name suppression rules in New Zealand, stating they too often privilege the defendant in sexual violence cases. Money supported three victims to lift their suppression, however, they were unable to due to the defendant's multiple appeals for permanent suppression. Money noted the Supreme Court decision serves as an example of how similar cases in the future could be treated.[13]

Analysis shows lengthy name suppression hearings are uncommon, and impacts for victims are complex

New Zealand's approach to name suppression aligns with comparable jurisdictions

39. New Zealand's suppression laws are in step with those of comparable jurisdictions. Australia and Canada's suppression laws also balance open justice and the interests of the public.

40. In 2010, the Australian Standing Council of Attorneys-General endorsed the *Court Suppression and Non-publication Orders Bill* (**model law**). The model law has safeguarding the public interest in open justice at its heart. New South Wales and Victoria have adopted the model law to varying degrees.

41. In 2018, in a departure from the model law, New South Wales amended its suppression laws to provide that a court may make a suppression order to avoid causing undue distress or embarrassment to a defendant in proceedings involving an offence of a sexual nature.[14]

42. Canadian suppression laws also reflect the principle of open justice, protected under the *Canadian Charter of Rights and Freedoms*. The settings focus on the right for the public to know what is happening in the justice system – the court may make an order in favour of a 'justice system participant' if satisfied that one of the eight grounds for making an order is met.[15]

It is uncommon for permanent name suppression to be granted to people convicted of sexual crimes

43. It is uncommon for the court to grant permanent name suppression for convicted persons of a sexual crime. In 2023, permanent name suppression was granted to 76 individuals convicted of one or more sexual offences. This is a proportion of the 6989 sexual violence charges that were pursued against individuals through the court process. Of the 6989 sexual violence charges:

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[13] Money, R (2023), *Submission on the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill*. Available at: https://bills.parliament.nz/v/6/95a2a9e1-227b-464d-cce7-08db991d9060?Tab=sub.

[14] Justice Legislation Amendment Bill (No 2) 2018 [NWS].

[15] Section 486.5(2) Criminal Code R.S.C 1985 c. C-46.

- 308 (or 4%) resulted in a conviction and the court granting permanent name suppression – these charges related to 76 individuals convicted of one or more sexual offences, and

- 3133 (or 45%) resulted in a conviction with no name suppression order at disposal of the case – these charges related to 810 individuals convicted of one or more sexual offences.[16]

  3548 (or 51%) resulted in other charge outcomes, like acquittal, discharge without conviction or withdrawn.[17]

44. Of the convicted people granted permanent name suppression it is estimated that at least 30% of their victims were under the age of 18.

45. This data does not account for those defendants who may have applied for permanent name suppression but were unsuccessful. Such cases would also be affected by the proposal.

46. The Ministry of Justice does not routinely record the grounds under which a name suppression order is granted by the court. It is likely that because of the unique nature of sexual offending – including, for example, the often close relationship between offender and victim – there is a higher chance that statutory grounds in the CPA are met for a defendant to be granted name suppression to protect other connected people, including the complainant. In 2022, the offender was known to the victim in 76 per cent of sexual violence cases.[18]

Previous consultation on name suppression settings did not surface concerns with name suppression orders for people convicted of sexual crimes

47. In recent years, there has been a significant, global shift in the way sexual violence and victimisation is perceived and discussed. The #MeToo and #LetHerSpeak movements have played an important role in empowering victims to reclaim personal agency and let others know they are not alone.

48. In 2020, the Chief Victims Advisor commissioned a report on name suppression processes,[19] recommending legislative change is needed to ensure that when defendants are given suppression to protect the identity of a victim, the victim can apply to lift both their own and the defendant's suppression order. The report used existing provisions in the CPA that exemplify complainants' right to do this in cases of incest and sexual conduct with a family member.

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[16] This excludes cases in which automatic defendant name suppression applies – charges of incest and sexual conduct with a dependent family member.

[17] Ministry of Justice data.

[18] Ministry of Justice (2023), *Progression and attrition of reported sexual violence victimisations in the criminal justice system.*

[19] Pender, N. (2020), *Research Report: Name suppression processes for victims of sexual violence*. Available at: https://www.justice.govt.nz/assets/Documents/Publications/Namesuppressionprocessesforvictimsofsexualviolence.pdf.

49. However, we are aware through consultation with the Crown Law Office and New Zealand Law Society it is uncommon for defendants to have solely applied for name suppression to protect a complainant's identity and to have met such a threshold.

50. The Crown Law Office advised that often the court use their discretion to suppress the defendant's identity while court proceedings are only ongoing (e.g. to safeguard the presumption of innocence, or protect the right to a fair trial) even if the defendant has not made an application themself.

51. Legal professionals and the Office of the Chief Justice broadly expressed support for the court having to reassess existing defendant name suppression orders only made to protect complainants.

52. However, they identified that there can be complex issues involved in consideration of any existing orders made for a defendant. This includes the reasons why hardship may be met, issues that arise when parties hold close familial relationships, and ongoing court proceedings that impact parties to the proceedings.

Stakeholders consulted on this policy proposal

53. We had a limited period to consult on the Minister of Justice's proposal that before a court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime (or each victim, in cases of multiple victims).

54. We undertook targeted consultation with the Chief Victims Advisor; Crown Law Office; Public Defence Service; New Zealand Law Society; Office of the Chief Justice; and the judiciary's Legislation and Law Reform Committee.

55. Feedback from the Chief Victims Advisor noted potential benefits, including that the proposal could support improving victims' autonomy and influence. However, she also suggested victims would need support, potentially through legal aid, to make informed decisions about name suppression considering the various implications for both the victim and defendant.

56. The potential benefits of the proposal were counterbalanced with a range of concerns raised by legal professionals and the judiciary as follows:

    - That the proposal risks further harming victims of sexual violence. Although the proposal is designed to empower victims, some consider it adds additional pressure. In cases with multiple victims, they may have divergent views resulting in some victims' decisions not being represented.
    - That the proposal risks impacting other connected people. Name suppression is often sought to protect others, or where other fair trial rights might be prejudiced. Victims may not have sufficient information to assess an application made on those grounds.
    - That the proposal is a shift away from established justice principles in a number of ways. Giving decision making power to a victim who is not a party to the proceeding and is not required to be impartial could result in inconsistent outcomes across similar cases. The right of appeal is also effectively removed.
    - That the proposal does not provide for exceptional circumstances. For example, where publishing a defendant's identity may be detrimental to a third party.

Having received feedback, we identified some key risks in our advice

57. There were a range of risks associated with this proposal that we raised in our subsequent advice:

    - The proposal could be more stressful for victims, due to the gravity of the decision and the necessity of participating in court processes further.
    - The proposal could expose victims to influence and negative repercussions, especially those under the age of 18 years, who may experience pressure from family members.
    - The proposal does not address situations where victims are unable or unwilling to decide. This may arise if victims refuse to engage with the process, are incapacitated, or have died since the defendant was convicted.
    - The proposal assumes multiple victims relating to a single perpetrator would be able to reach consensus about the decision. This raises questions about how the decision-making process would be facilitated and what would happen if the victims were unable to agree.

58. These risks are incorporated into the analysis of options below.

Population implications

59. Available data shows that women are overrepresented as victims of sexual violence. In 2021, 87 per cent of people who reported sexual violence victimisation were female.[20]

60. Children are also disproportionately impacted as victims of sexual violence. In 2021, nearly half of people (45 per cent) who reported sexual violence victimisation were under the age of 18 years. Approximately 40 per cent of those who reported victimisation were adults aged over 18 years, with 15 per cent being adults aged over 18 years reporting historic sexual victimisation from their childhood.[21] This shows that more than half of sexual violence reports relate to offending against children who were aged younger than 18 years at the time of offending.

61. The proposal and any associated risks may have a particular impact on Māori, who are overrepresented as victims of crime. In 2022, 24 per cent of child victims of sexual violence were Māori. Māori are also overrepresented amongst those convicted for sexual offences against children under 16 (30 per cent in 2023). Experience of sexual assault is also disproportionately high for bisexual people, gender diverse and transgender people, and gay and lesbian people.[22]

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[20] Ministry of Justice (2023), *Progression and attrition of reported sexual violence victimisations in the criminal justice system.*

[21] Ibid.

[22] Ministry of Justice. (2024), *New Zealand Crime and Victims Survey Cycle* 6.

62. However, 42 per cent of children that reported sexual assault in 2022 did not have their ethnicity recorded. These means it is difficult to discern the true degree of disproportionate impact to victims who reported sexual assault.[23]

63. Disabled women and children are significantly more likely than non-disabled women to be victims of sexual violence. Disabled adults have a higher prevalence rate of sexual assault and intimate partner violence than non-disabled adults (48 per cent and 30 per cent, respectively).[24]

64. It is well-established that disabled victims of violence, including sexual violence, are less likely to report the crime because of fear, in many cases, dependency on the perpetrator. This lends disabled victims of sexual violence to be unwilling or unable to engage in court proceedings that could result in unintended consequences for a person convicted of a sexual crime.

65. Data on population implications is based on instances of sexual violence victimisations that were reported to Police. It estimated that over 85 per cent of sexual violence offences against adults go unreported. This limits the certainty we can have on population implications.

66. Population groups that could be disproportionately impacted by this proposal were not consulted with directly due to time constraints.

What objectives are sought in relation to the policy problem?

67. The Minister of Justice proposes including an additional amendment in the current Bill:

- that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime.

68. The current Bill makes minor amendments to name suppression laws to better support a complainant's autonomy over their own name suppression. The current Bill:

- reflects an expanded purpose of name suppression, specifying the importance of both protecting a complainant's privacy and supporting a complainant's autonomy
- requires the court to consider any views of the complainant about the publication of identifying details, and
- requires applications to lift complainant name suppression to be made in accordance with the Criminal Procedure Rules 2012, which will establish a detailed, prescriptive process for this purpose.

69. This RIS will assess the proposal against criteria to ensure it meets **three objectives**:

(A) to further protect victims of sexual violence participating in court proceedings

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[23] Ministry of Justice (2023), "Sexual offences," *Research and data*. Available at: https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/.

[24] Ministry of Justice (2023), *New Zealand Crime and Victims Survey*. Available at: https://www.justice.govt.nz/justice-sector-policy/research-data/nzcvs/.

(B) support open justice, and

(C) hold people convicted of sexual offences to account and prevent future offending.

70. In assessing the proposals, we also considered other key justice objectives, including:

- rule of law and human rights (including right to fair trial, right to appeal), and
- public trust and confidence in the New Zealand justice system.

Section 2: Deciding upon an option to address the policy problem

2.1 What criteria will be used to compare options?

71. The criteria fall out of the objectives identified in the previous section:

    (1) **Further protects victims;** refers to the extent to which a proposal reduces the risk of harm and secondary victimisation for victims of sexual violence participating in court proceedings, and upholds the victim's mana

    (2) **Supports open justice;** refers to the extent to which the proposal supports the public to see justice being done, transparency of processes and decision making, and an appropriate balance with the rule of law, and

    (3) **Holds people to account and prevents future offending;** refers to the extent to which the proposal ensures that those convicted of sexual crimes are held to account prevented from further offending, for example, through rehabilitation and/or convicted persons being know to the public.

72. Options are assessed and compared on the basis of how likely they are to meet criteria.

73. **Criterion (1)** relates to **objective (A)** to further protect and reduce harm and secondary victimisation for victims of sexual violence participating in court proceedings. This criterion is well-placed to balance the range of implications for victims across different options, and test whether they meet **objective (A)**, and align with the purpose of the current Bill.

74. **Criteria (2) and (3)** reflect the Minister's explicit intent that the proposal should support open justice and hold people convicted of sexual crimes to account, preventing future offending.

75. There will be a trade-off between supporting open justice and ensuring people convicted of sexual crimes are held to account. However, when considered on balance **criteria (2) and (3)** will help test options to ensure the proposal meets **objectives (B) and (C).**

2.2 What scope will options be considered within?

76. The scope of feasible options has been limited by two key parameters: firstly, the explicit commissioning provided by the Minister of Justice, and secondly, the alignment of the options with the current Bill to which this proposal is to be added. This is reflected in the proposal's objective and criteria.

2.3 What options are being considered?

77. The proposal requires that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime.

78. We have considered **four options** to test against the criteria:

- **Option 1** – Status quo
- **Option 2** – Victim-agreed permanent suppression order
- **Option 3** – Victim-agreed permanent suppression order with one safeguard
- **Option 4** – Victim-agreed permanent suppression order with five safeguards

Option 1 – *Status quo*

79. Under existing legislation, defendants can apply to the court for an interim name suppression order while proceedings are ongoing. They must make an application on one of eight grounds provided for in the CPA. If the court is satisfied that one of the grounds is met, the court must then consider whether to make the order. The court weighs and balances the public interest in open justice against the identified ground(s) in the case and determines accordingly.

80. Two of the grounds relate directly to the defendant's interests, while the remaining six relate to other interests including those of the defendant's children, partner, connected persons, parents, a witness to the offending and the victim.

81. We keep an eye on ensuring the New Zealand's suppression laws are working as envisioned. Recent work has confirmed name suppression laws are operating as generally intended and comparable to similar international jurisdictions. The judiciary and legal professions recently confirmed this is in consultation on this proposal.

82. In specified sexual cases, when a person is charged with an offence of incest or sexual conduct with a dependent family member, automatic name suppression applies to the defendant (section 201 of the CPA). The purpose of this is to protect the complainant.

83. Once proceedings have concluded, the complainant in cases of incest and sexual conduct with a dependent family member, can apply to the court to lift both their own and the defendant's name suppression, according to the process described above (section 201(5)).

84. In all other specified sexual cases, the complainant can apply to the court to lift their own name suppression, according to the process described above (sections 203(3) and 203(4)).

85. The person convicted of the sexual crime can apply to the court for a permanent order prohibiting publication of their identity. The court will make a name suppression order only if it is satisfied that publication of the defendant's identifying details would meet one of the eight statutory grounds set out in section 200(2) of the CPA.

86. This option – Status quo – helps to meet **objective (A)** to reduce harm and secondary victimisation for victims of sexual violence participating in court proceedings. However, evidence suggests court processes can cause harm and secondary victimisation. In rare cases, of ongoing appeals regarding name suppression applications can cause further harm to victims.

87. This option helps to meet **objective (B) and (C)** in ensuring the public see justice being done through transparency in judicial outcomes, and holds people to account. The status quo allows the court to serve as an impartial decision-maker applying the law, and weighing the interests of the public knowing the defendant's identifying details with the statutory grounds set out in section 200(2) of the CPA.

Option 2 – *Victim-agreed permanent name suppression order*

88. This option represents a fundamental shift in the decision-making process for denying or granting permanent defendant name suppression. By removing an entrenched judicial power to make decision on suppression from an impartial judicial body to a non-party who is a victim of sexual offending. This option is the original proposal that was provided: that the courts may not make a permanent order for the name suppression

for an adult convicted of a sexual crime, unless the victim of that crime agrees to the order.

89. This option could contribute to improving victims' autonomy by supporting them to determine the extent to which they can share their experience of sexual violence, including the identifying details of the person convicted.

90. However, this option could:

- put victims under more pressure and be stressful for them, because of the gravity of the decision and the necessity of participating in additional court processes
- could expose victims to influence and negative repercussions, especially those under 18, who may experience pressure from family members
- does not address situations where victims are unwilling or unable to decide – this may arise if victims refuse to engage with the process, are incapacitated, or have died since the defendant was convicted, and
- assumes multiple victims would be able to reach consensus about the decision – this raises questions about how the decision-making process would be facilitated and what would happen if victims were unable to agree.

91. This option risks impacting other connected parties, as it:

- does not provide for situations where there are compelling reasons to suppress a convicted person's name to protect other people, and
- means a victim's view would override any discretion the court may have otherwise applied in a case where publication of the convicted person's name could cause extreme hardship to a connected person or risk to another person's safety.

92. This option risks undermining the rule of law and associated rights, as it:

- requires agreement from a person who may not have access to all the relevant information, such as psychological reports and submissions filed by counsel, and who is a non-party to proceedings – disrupting the fundamental structure of the criminal justice system where the Crown investigates and prosecutes criminal behaviour, with a judge or jury acting as an impartial arbitrator
- is likely to undermine public confidence in justice outcomes, as outcomes of victim-agreed decisions could be unpredictable, inconsistent across similar cases, and reliant on the personal views of a victim, which can be based on subjective factors and means victims may not be able to exercise impartiality in the way judges are trained to, and
- effectively removes the general right of appeal (by the Crown, defendant, or other person) – which removes a key check and balance on judicial decisions.

93. At consultation, the Chief Victims Advisor supported the intent of this option, with caveats such as providing victims legal aid and further wrap around court services. However, legal professionals and the judiciary raised serious concerns. They considered this option could exacerbate harm and cause further trauma to victims, and erode established justice principles.

94. This option shifts away from established principles to such a degree that it will not likely meet **objectives (A) and (B).**

95. This option could help meet **objective (C)**, resulting in more convicted persons being named and reducing future offending by, for example, expanding media freedom to report on sexual violence cases and offenders, and ensuring the public has more awareness of known convicted sexual offenders in their communities.

96. However, this could endanger a defendant's safety, impact future employment, and their ability to rehabilitate and reintegrate in society. Option 2 has an inherently punitive element, and will likely subject defendants to inconsistent and disproportionately severe punishment beyond sentencing decisions. This will likely engage the rights and freedoms provided for in the New Zealand Bill of Rights Act 1990.[25]

Option 3 – *Victim-agreed permanent name suppression order with one added safeguard (Minister's preferred option, reflected in Cabinet paper)*

97. This option, like option two, reflects a fundamental shift in the decision-making process for the permanent name suppression of a defendant.

98. This option provides that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime. It also includes one additional safeguard that addresses one of the concerns raised with the proposal (option 2). This safeguard provides that:

    - the proposal does not apply to victims who are unwilling or unable to engage, or who cannot be contacted – respecting victims' prerogative to choose if they want or do not want the responsibility of deciding on permanent defendant name suppression. This safeguard will protect those that who are unwilling or unable to engage in the process due to incapacitation.

99. This safeguard addresses some serious concerns raised during consultation by ensuring those victims who do not want to engage in the court process to make such a decision can opt out, and enhance the proposal as set out in option 2**.** This option ranks slightly better when analysed against the criteria, and consequently has a greater chance of meeting **objective (A)**.

100. However, this option would not guarantee protections for victims, who may be vulnerable. This could lead to victims experiencing more pressure and stress (particularly for victims under 18 years). This option would likely result in secondary victimisation to some victims of sexual violence.

101. Like option 2, this option could impact other connected parties; undermine the rule of law, appeals process, and impartial decision-making; and has an inherently punitive element which could subject defendants to inconsistent and disproportionately severe punishment beyond the sentencing decision. This limits the extent to which this option can help achieve **objectives (A), (B), and (C).**

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[25] See section 9 of the New Zealand Bill of Rights Act 1990 (Right not to be subjected to torture or cruel treatment).

Option 4 – *Victim-agreed permanent name suppression order with five added safeguards*

102. This option, like options 2 and 3, reflects a fundamental shift in the decision-making process for the permanent name suppression of a defendant.

103. This option provides that before the court can grant permanent name suppression to a person convicted of a sexual crime, it must have the agreement of the victim of that crime. It also includes five additional safeguards that address some of the concerns raised with options 2 and 3. These safeguards are:

    - that the proposal does not apply to victims under the age of 18 years – this ensures victims are at the developmental stage where they can understand the consequences of their decisions, and mitigates the risk of exposure to influence from others
    - that the proposal does not apply to victims who are unwilling or unable to engage, or who cannot be contacted – this respects the autonomy of victims who may not want the responsibility of deciding, and protects those who are unwilling or unable to engage in the process due to incapacitation
    - that where there is more than one victim, the court may not make a permanent suppression order unless all of the victims agree. Where all of the victims do not agree, the decision should revert to judges applying usual suppression settings – this provides a mechanism to ensure the views of one victim are not subordinate to those of another
    - that judges can make decisions if there may be detrimental consequences for a person other than the convicted person – this provides protection for third parties, such as the family of a convicted person, and
    - that judges can make decisions in cases with exceptional circumstances – this avoids unintended consequences, such as where is the court has evidence that a convicted person may be at risk of self-harm were they to be identified.

104. These safeguards address the majority of concerns about the proposal as set out in options 2 and 3. That said, this option is still a considerable shift away from well-established justice processes. It may result in further harm and secondary victimisation to some victims, and may have a perverse consequence of victims not seeking to lift their own suppression for fear of public retribution for their decision.

105. However, these additional safeguards would enable the court to intervene in circumstances when victims are unable to come to a decision in cases of multiple victims. It could also ensure in exceptional circumstances the court can apply discretion to protect victims and connected persons where there are risks to safety. This provides for judicial discretion to balance open justice with other established justice principles. This option ranks better than options 2 and 3 in achieving **objectives (A) and (B).**

106. Like options 2 and 3, this option will help achieve **objective (C)**. The safeguards could help mitigate the punitive element of the proposal. This is an additional benefit not reflected in the ranking of options against **criterion (3)**.

How do the options compare to the status quo?

	Option 1 – Status quo (preferred option)	*Option 2 – Victim-agreed permanent name suppression order*	*Option 3 – Victim-agreed permanent name suppression order with one added safeguard (Minister's preferred option, reflected in Cabinet paper)*	*Option 4 – Victim-agreed permanent name suppression order with five added safeguards*
Further protect victims of sexual violence participating in court proceedings	0	- - Represents a significant departure from the current approach. Would enable some victims to engage in decision-making on defendant suppression on their own terms, and have a greater role in criminal proceedings. Would not guarantee protections for victims, who may be vulnerable – could lead to victims feeling more pressure and stress (particularly those under 18 years). Could undermine the views of some victims in cases where multiple victims do not come to a unanimous decision. Likely to result in secondary victimisation to many victims of sexual violence.	- Represents a significant departure from the current approach. Would enable some victims to engage in decision-making on defendant suppression on their own terms, and have a greater role in criminal proceedings – victims who are unwilling or unable to engage due to capacitation would not be required to make a decision. Would not guarantee protections for victims, who may be vulnerable – could lead to victims feeling more pressure and stress (particularly those under 18 years). Could undermine the views of some victims in cases where multiple victims do not come to a unanimous decision. Likely to result in secondary victimisation to some victims of sexual violence.	- Represents a considerable departure from the current approach. Would enable some victims to engage in decision-making on defendant suppression on their own terms, and have a greater role in criminal proceedings – victims who are unwilling or unable to engage due to capacitation would not be required to make a decision. Safeguards would enable the court to intervene in circumstances when victims are unable to come to a decision in cases of multiple victims, and could help further protect victims and connected persons in exceptional circumstances. Likely to result in secondary victimisation to some victims of sexual violence.
Support open justice	0	- - Represents a significant departure from the current approach. Likely to undermine public confidence in justice outcomes, as it allows a non-party to make decision of law at their own discretion, resulting in unpredictable and inconsistent outcomes. Does not balance rule of law. Could harm connected persons, when suppression is sought for compelling reasons to protect other people. For example, a victim's view would override any discretion the court may have otherwise applied in a case where publication of the convicted person's name could cause extreme hardship to a connect person or risk their safety.	- - Represents a significant departure from the current approach. Likely to undermine public confidence in justice outcomes, as it allows a non-party to make decision of law at their own discretion, resulting in unpredictable and inconsistent outcomes. Does not balance rule of law. Could harm connected persons, when suppression is sought for compelling reasons to protect other people. For example, a victim's view would override any discretion the court may have otherwise applied in a case where publication of the convicted person's name could cause extreme hardship to a connect person or risk their safety.	- Despite still being a considerable departure from the current approach, will allow the court to intervene if publication of the convicted person's name is likely to result in detrimental consequences to a third party or there are exceptional circumstances related to the defendant.
Hold people to account and prevent future offending	0	+ May be considered to more adequately hold convicted persons to account by naming them in the media and ensuring the public are aware of convicted sexual offenders in their communities. Could result in additional prosecutor and judicial time to make determinations on a case-by-case basis (particularly if offenders attempt to appeal a decision). This may also unintentionally result in victims having to re-engage in court proceedings. This has a punitive element, and could subject defendants to inconsistent and unreasonable punishment beyond sentencing decisions. This could endanger their safety, unduly impact future opportunities, and rehabilitation/reintegration.	+ May be considered to more adequately hold convicted persons to account by naming them in the media and ensuring the public are aware of convicted sexual offenders in their communities. Could result in additional prosecutor and judicial time to make determinations on a case-by-case basis (particularly if offenders attempt to appeal a decision). This may also unintentionally result in victims having to re-engage in court proceedings. This has a punitive element, and could subject defendants to inconsistent and unreasonable punishment beyond sentencing decisions. This could endanger their safety, unduly impact future opportunities, and rehabilitation/reintegration.	+ May be considered to more adequately hold convicted persons to account by naming them in the media and ensuring the public are aware of convicted sexual offenders in their communities. Could result in additional prosecutor and judicial time to make determinations on a case-by-case basis (particularly if offenders attempt to appeal a decision). This may also unintentionally result in victims having to re-engage in court proceedings. This has a punitive element, and could subject defendants to inconsistent and unreasonable punishment beyond sentencing decisions. This could endanger their safety, unduly impact future opportunities, and rehabilitation/reintegration. However, these risks could be mitigated by the five safeguards allowing for judicial discretion in exceptional circumstances.
Overall assessment	**0**	**(-3)**	**(-2)**	**(-1)**

Key:

0	about the same as the status quo		
+	better than the status quo	++	much better than the status quo
-	worse than the status quo	- -	much worse than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

107. **Option 1** – retain the status quo – is the Ministry's preferred approach. The status quo allows the court to grant or decline permanent name suppression for convicted persons using the statutory grounds in section 200 and appropriate discretion, whilst being required to take into account the views of the victim of the offence. This option retains the current legislative safeguards in place for all victims of sexual violence. This option also retains established justice principles to leave decision-making to an impartial judicial body that is required to take into account the views of all parties to a proceeding.

108. **Options 2, 3, and 4** may result in negative consequences for those victims who lift their own suppression, and then are scrutinised for their decision regarding the convicted person's name suppression. Option 2 would require the victim of sexual violence to decide whether the convicted person would receive permanent name suppression. The gravity of making this decision may cause victims distress and may also mean they are subject to coercion by other parties to the proceedings (particularly in cases involving family members and cases with multiple victims).

109. **Options 2, 3 and 4** have the potential to cut across the purpose of the current Bill to protect victims, while upholding established principles of justice. It is likely to undermine public confidence in justice outcomes by allowing a non-party to effectively make decisions of law at their own discretion, resulting in unpredictable and inconsistent outcomes. It would also override any discretion the court may have otherwise applied in a case where publication of the convicted person's name could cause extreme hardship to a connected person or risk their safety.

110. **Option 3** is the Minister's preferred option and is reflected in the relevant Cabinet paper. This option may increase victim autonomy in terms of an additional opportunity to influence justice outcomes. It may also contribute to timeliness and result in victim's attending fewer court proceedings. This option may also be considered to more adequately hold convicted persons to account and prevent future offending by enabling public awareness of convicted sexual offenders in their communities. However, it is also likely to detract from the three objectives by exposing victims to additional circumstances that may cause them harm, reducing the role of the court in decision-making, and effectively removing the right to appeal.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Victims of sexual violence	**Ongoing** – repercussions that stem from public scrutiny for their decision.	**Medium** – could endanger their safety and result in secondary victimisation.	**Low certainty**
Persons convicted of sexual crimes	**Ongoing** – cost of hardship if identifying details made public.	**Medium** – could endanger their safety, impact future employment, and rehabilitation/ reintegration.	**Low certainty**
Connected persons indirectly impacted by the change in decision-making	**Ongoing** – will be flow-on impacts to the wider whānau of victims, convicted person's family members, other victims of the offence.	**Medium** – this could endanger their safety.	**Medium certainty** – sexual offending often occurs within families, or where the perpetrator is known to the victim.
Court system	**Ongoing** – cost of additional resources to support victims and marginal increase in court time for judges to respond to applications of permanent name suppression. Potential for decisions to be challenged by defendant resulting in delays in proceedings and additional court time.	**Medium** – due to lack of consultation with victim-advocates.	**Low certainty** – limited evidence is available to forecast numbers.
Ministry of Justice	**Ongoing** – increase in legal aid to support convicted persons who attempt to appeal decisions. Cost of additional wrap around support for victims. **One-off** – cost in preparing and delivering information on changes for prosecutors, defendants, court staff, the judiciary, and the media.	**Low** – this will require additional resources and legal aid funding.	**Low certainty**
Attorney-General	**Ongoing** – cost to the Crown Solicitor Network who are likely to be responsible for ascertaining the views of victims to present to the court. Although victims' views are already canvassed, this will need to be a more formal and fulsome process.	**Medium** – this will require Crown prosecutors to source additional resource.	**Low certainty**
Total monetised costs	Unquantifiable	Unquantifiable	N/A
Non-monetised costs	**Ongoing**	**Medium**	**Low certainty**

Affected groups	Comment	Impact	Evidence Certainty
Additional benefits of the preferred option compared to taking no action			
Victims of sexual violence	**Ongoing** – ability to give effect to personal choice and 'reclaim power' in and potential reduction in severity of trauma experienced and long-term impacts. Victims may feel better heard in the justice system. Risk that some victims may be overwhelmed by the need to make such a decision, especially those under 18 years. May incentivise other victims to come forward to report offending either for that offender or others.	**High** – encourage more reporting of sexual violence victimisations.	**Low certainty** – due to limited documented evidence base.
Wider society	**Ongoing** – over time, more sexual offenders may be held to account for their crimes and there may be fewer repeat offenders. Society as a whole will benefit in an ongoing way from a reduction in the cumulative costs associated with the poor life outcomes experienced by victims who have been retraumatised.	**Medium** – this increases transparency and allows for greater public scrutiny of proceedings. Could raise awareness of convicted persons and foster greater accountability to communities.	**Low certainty** – limited by understanding of medium-longer term impacts.
Total monetised benefits	Unquantifiable	Unquantifiable	N/A
Non-monetised benefits	**Ongoing**	**Medium**	**Low certainty**

Section 3: Delivering an option

How will the new arrangements be implemented?

111. If progressed, implementation of this proposal would be part of the implementation measures for the current Bill. Transitional arrangements will provide that the new provisions apply only to proceedings for which charges have been filed after commencement.

112. The Ministry of Justice will be responsible for communicating the codified process by updating court staff guidance, media guidelines, bench books, the Victims Information website,[26] and non-governmental organisations and specialist service-providers. This will likely be covered by baseline funding, but additional funds may be helpful to ensure public-facing information is available in te reo Māori and accessible formats.

113. We have also identified that the following implementation matters that need to be considered to ensure the proposal is effective:

- The Case Management System (**the CMS**) will need to be adapted, to determine how to properly record the outcome of a name suppression application for defendants when the determinative decision lies with the victim. Currently, any application is recorded with outcomes of granted, refused, or dismissed. The CMS will need to be changed to add an outcome where the victim has overridden the judge's decision. This process of recording in the CMS will need to be consulted with court subject matter experts to confirm whether this is a reference data change or requires minor work.
- This change could mean that applications to seek permanent name suppression may exacerbate disposal rates. Applications made post-trial will require additional court proceedings, and applications could be appealed, meaning a conference in chambers is required. The extent of this potential impact on disposal rates is unknown, as is the potential impact on the number of post-trial applications.
- There might be an increase to legal aid costs and transcription workload through an increase activity in the courts, but it would be difficult to quantify this until we know how this process would work in practice and the amount of additional court activity.
- Changes in the process for the Court Victim Advisor to notify and assist the victim during the court process. Although the responsibility for obtaining the victim's view lies with the prosecutor, Court Victim Advisors will also be trained on the new process to assist the victim with any questions.

How will the new arrangements be monitored, evaluated, and reviewed?

114. A monitoring plan will be developed as part of implementation planning. We anticipate that the introduction of a ‘codified’ process recording the outcome of victims’ decisions regarding permanent defendant name suppression will support improved data collection (utilising the CMS). Business as usual data collation and assessment processes will support implementation monitoring.

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[26] Ministry of Justice (2024), *Victims Information*. Available at: https://sexualviolence.victimsinfo.govt.nz/.