

SCNZ Submission on the *Victims of Sexual Violence (Strengthening Legal Protection) Legislation Bill*

Organisation Name:	Save the Children New Zealand (SCNZ)
Geographical location	National and international
Target group/focus	Children
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Date:	20 October 2023

Our Organisation: Save the Children was founded in 1919 and is the world's leading independent organisation for children. We work in 120 countries to save and improve the lives of children around the world.

Vision: Save the Children's vision is a world in which every child attains the right to survival, protection, development and participation.

Mission: We work to inspire breakthroughs in the way the world treats children and to achieve immediate and lasting change in their lives.

Save the Children New Zealand was established in 1947 in Christchurch. We work to uphold the rights of children both in New Zealand and overseas.

Our Ambition: We commit to doing whatever it takes to ensure by 2030 ALL children, especially the most marginalised and deprived, survive, learn, and are protected.

Save the Children New Zealand (SCNZ) has a vested interest in ensuring the rights and wellbeing of children in Aotearoa are understood, respected, and protected. This includes ensuring children's rights are protected and upheld in New Zealand legislation.

Oral Submission: SCNZ requests the opportunity to make an oral submission on the Bill.

Save the Children welcomes the opportunity to make a written submission on the Victims of Sexual Violence (Strengthening Legal Protection) Legislation Bill:

1. **We support:** In principle Save the Children is supportive of the changes to the Crimes Act 1961 and the Criminal Procedure Act 2011 to better protect victims of sexual violence through (1) prevents children from being subjected to questions in court about whether they wanted, asked for, or even enjoyed the sexual activity, (2) amends section 132(1) (sexual connection with a child) so that the maximum penalty available is 20 years' imprisonment, aligning with that for sexual violation, and (3) expanding the purpose of relevant provisions and requiring the court to consider complainants' views about the publication of identifying details.

2. **We recommend:** While we support the proposed amendments in this Bill, we recommend that the Bill goes further to protect child victims of sexual violence and that the age is changed to protect child victims under 16 years of age.
3. **We recommend:** Further amendments to clearly define consent in law.
4. Save the Children is supportive of amendments to the Crimes Act 1961 and the Criminal Procedure Act 2011 to better protect victims of sexual violence.
5. We have previously expressed serious concerns about the unacceptable way child victims of sexual violence are treated and revictimized in court, in writing to both Minister Faafoi and Minister Allen during their tenures as Minister for Justice, and Minister Davidson as Minister for the Prevention of Family and Sexual Violence. It is wholly unacceptable that children who have already been harmed by sexual violence suffer further harm by the justice system that should be in place to protect them.
6. The report, *That's a Lie* (Randall, 2021), commissioned by the Chief Victim's Advisor to Government¹ exposed serious harm and revictimisation of children and unacceptable violations of their rights² in the court process.
7. There is a widespread belief that New Zealand has an age of consent of 16 years, meaning a child under 16 years cannot legally consent to having sex.³ However, the law does not go so far as to uphold *children under 16 years not being able to provide consent due to their age*.
8. The proposed amendments mean the law will only protect children 11 years and under. Therefore, it is our view that the law will fail to protect children aged 12, 13, 14 and 15 years old and children of these ages could still be subjected to traumatising and harmful cross-examination related to whether or not they consented.
9. A concerning example of how the amended law may fail to protect children 12 years and older is the Tulisi Leiataua case⁴ where Leiataua claimed sex with a 12-year-old girl was consensual. The case was clearly gruelling as the Judge, three jurors and the court's registrar were emotional and offered professional

¹ Retrieved from <https://chiefvictimsadvisor.justice.govt.nz/assets/Chief-Victims-Advisor-report-Thats-a-lie-PDF.pdf>

² Convention on the Rights of the Child, retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

³ Community Law, retrieved from <https://communitylaw.org.nz/community-law-manual/pregnancy-rights/sexual-health/#:~:text=The%20legal%20age%20of%20consent,Sex%20without%20consent%20is%20rape.>

⁴ Retrieved from <https://www.nzherald.co.nz/nz/verdict-in-man-guilty-on-33-charges-of-sexually-abusing-underage-girls/AULVYUJWJKZ5HCATAWIUZ75VDA/>

support.⁵ With the proposed amendment, the 12-year-old girl referenced in the case would remain unprotected.

10. Amending the 'Crimes Act 1961 to provide that section 128B (which is the offence of sexual violation) **does not apply if the complainant is under the age of 16**' would give legal effect to 16 years as the age of consent in New Zealand.
11. The lack of a legal definition of consent in law is another area of concern. We call for further action on consent law reform, consent education and ensuring that children are legally protected from grooming whether in person or online.

This submission has been prepared on behalf of Save the Children by Jacqui Southey, Child Rights Advocacy and Research Director, Save the Children New Zealand. For any queries related to this submission contact Jacqui Southey, jacqui.southey@scnz.org.nz

⁵ Ibid.