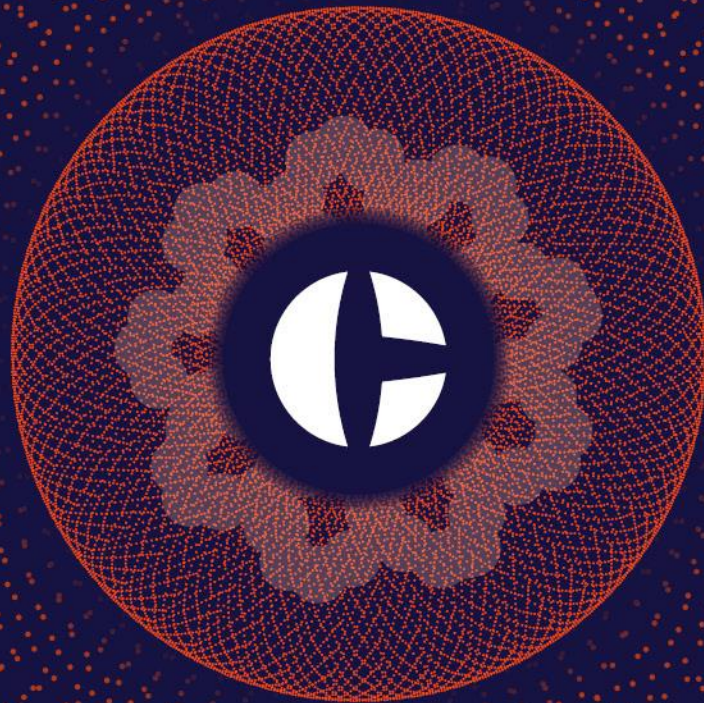


SUBMISSION

Amendment Papers 215 and 216 on the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

19 DECEMBER 2024



chapman tripp

To: Justice Committee

Submission on Amendment Papers 215 and 216 on the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill

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Introduction

This submission is from Chapman Tripp, Lawyers, PO Box 2206, Auckland 1140. It relates only to the Amendment Papers 215 and 216 (**AP 215** and **216**) for the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill (**the Bill**). It does not repeat matters raised in our previous submission on the Bill dated 20 October 2023.

Our submission

- 1 Chapman Tripp supports AP 215 and 216, which aligns with the position set out in our previous submission on the Bill.
- 2 The amendments better serve the Bill's overall purpose of reducing the harms experienced by victims of sexual violence participating in Court proceedings. In particular:
 - 2.1 AP 215 broadens the automatic suppression of the identity of complainants in sexual cases in s 203 of the Criminal Procedure Act 2011 (**the CPA**) to any offence against a person of a sexual nature. We agree that the amendment is internally consistent with other sections of the CPA, as well as with the Evidence Act 2006 and Victims' Rights Act 2002.
 - 2.2 AP 216 provides that, where an adult defendant has been convicted of an offence against a person of a sexual nature, the court may make a s 200 suppression order only with the agreement of the complainant. That amendment takes particularly important steps to reduce the harms experienced by victims in the suppression context – it rightfully elevates the role of the victim on suppression matters where the defendant has been convicted. Further AP 216 provides two important mechanisms to deal with certain situations:
 - (a) Where a complainant is unable or unwilling to engage with the court, or cannot be contacted: we apprehend the courts may still make a suppression order without the complainant's agreement, but that would remain governed by the usual s 200 test.
 - (b) Where there are multiple complainants, who have different views on the making of a suppression order: the court may only make orders in respect of the complainants who agree or who are unable or unwilling to engage with the court, or cannot be contacted. In that scenario, the orders must not prevent the identification of the convicted defendant in relation to complainants who have *disagreed* with the making of the order. We see this amendment as appropriately balancing diverging views of the victims as well as upholding the principle of open justice.
- 3 We identify, however, room for improvement in both amendments below.

Room for improvement

Scope of s 203 matters addressed in AP 215

- 4 There is opportunity for further improvement to s 203 of the CPA to better support victims of sexual violence which is not currently addressed in AP 215.
- 5 Section 203(4)(b) requires the court to be satisfied that the complainant understands the nature and effect of their decision to apply to the court for an order lifting their automatic suppression. That requirement:
 - 5.1 is potentially demeaning and patronising to complainants – complainants are already separately required to apply to the court for such an order under s 203(4)(a)(ii); and
 - 5.2 presents a risk that offenders may use this requirement against the complainant’s express wishes, the effect of which:
 - (a) would perpetuate harm against the victim within the bounds of the criminal justice system;
 - (b) may have a silencing effect on victims who may otherwise wish to speak publicly about the offending against them – which may form part of the victim’s own recovery process; and
 - (c) relatedly, serve as a shield for the offender (or alleged offender) to minimise or avoid the natural consequences of their offending – or to avoid allegations of the offending being responsibly published.
- 6 In our view, victims should have the ability to seek to lift their own name suppression as of right, subject only to the current requirements in s 203(4)(a) and (c) of the CPA.

Suggested changes to the AP 216 drafting

- 7 AP 216 provides for complainant autonomy in the criminal justice system. But the amended drafting of s 200 is directed towards what a court may do, not what a complainant may do.
- 8 Currently, victim participation in name suppression decisions is reliant on steps taken by (or not taken by) the prosecutor in any given case, or in unusual cases, directions specifically made by the Court for this purpose. We apprehend that the effect of AP 216 will be that a defendant *loses* any suppression on conviction. It will be for the defendant to apply to the court for an order under s 200 and they may seek agreement from the complainant as to that step. This may bypass the involvement of, and any resulting assistance from, the prosecutor in that case and the complainants may not be legally advised, or independently advised of their own interests.
- 9 In our view, AP 216 could be expressed in a manner which:
 - 9.1 Better allows for complainants to understand s 200 so as to exercise their autonomy under it.
 - 9.2 Provides a clear pathway for complainants who have agreed to an order or fall into the scenario described in (7) or (8), to later withdraw their agreement to that order. Complainants should have the ability to seek to lift a suppression order as of right, particularly given the changes contemplated in AP 216 require a complainant’s agreement for such an order to be made.

10 Our suggested changes, reflecting the comments above, are marked in orange:

- (7) *In the case of an adult who is convicted of an offence against any of sections 128 to 142A or section 144A of the Crimes Act 1961 or any other offence against a person of a sexual nature, **the court may only make an order under subsection (1) with the agreement of the complainant** unless the court is satisfied that the complainant—*
- (a) *is unable or unwilling to engage with the matter; or*
 - (b) *cannot be contacted.*
- (8) *If the case specified in subsection (7) involves more than 1 complainant,—*
- (a) *the court may make an order under subsection (1) only in respect of the complainants who—*
 - (i) *have agreed to the making of the order; or*
 - (ii) *are described in subsection (7)(a) or (b); and*
 - (b) *the order—*
 - (i) *must provide that nothing may be published that could identify the complainants who agreed to the making of the order or who are described in subsection (7)(a) or (b), including (without limitation) the charges involved in the case; and*
 - (ii) *must not prevent the identification of the person convicted or the offence for which the person was convicted in relation to any complainant who has disagreed with the making of the order.*
- (9) *If the court makes an order in the case specified in subsection (7) or (8), a complainant described in (7)(a) or (b) may apply to the court to permit publication.*
- (our emphasis)

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