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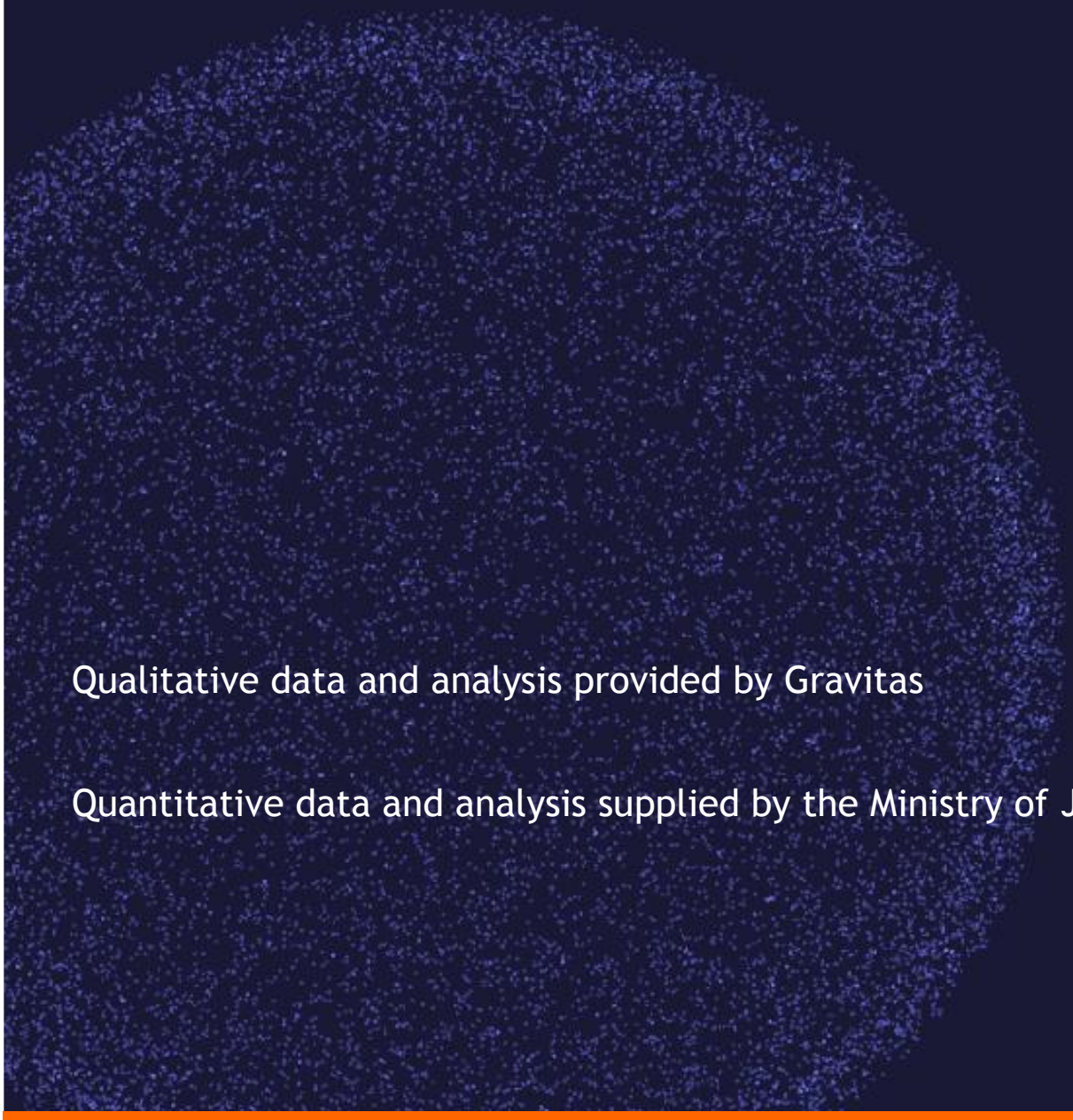
Evaluation of the Sexual Violence Court Pilot



Qualitative data and analysis provided by Gravitas

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Glossary

AVL	Audio visual link
CMM	Case Management Memorandum
ESR	Institute of Environmental Science and Research (a Crown Research Institute)
EVI	Evidential video interview
FTE	Full time equivalent
MoJ	Ministry of Justice
SVCP	Sexual Violence Court Pilot
SVVA	Sexual Violence Victim Advisor

Category 3 crimes (offences) are:

- punishable by imprisonment for life or by imprisonment for 2 years or more, except those offences listed in Schedule 1 to the Act (category 4 offences);
- heard by Judge-alone trial in a District Court unless the defendant elects a jury trial;
- able to be transferred to the High Court if a Protocol order is made, in which case the type of trial will be either a Judge-alone trial or a jury trial in the High Court (depending on whether the defendant had elected a jury trial or not).
- in some instances, despite a defendant electing a jury trial, the court may order that the trial be conducted by a judge without a jury: see section 102 or 103 (long and complex cases or juror intimidation).

Note on Terminology

Some prefer the terms 'survivor' or 'victim/survivor' when referring to people who have experienced sexual violence. However, in the context of the court system, the term 'complainant' is used prior to the guilt of a defendant being established. For this reason, throughout the report, we have used the terms 'complainant, or 'complainant-witness'.

In this report, we refer to secondary victimisation. This term is used by Orth (2002)[1], in his investigation of secondary victimisation in the criminal justice system. Orth quotes Montada (1994), the definition being:

> *A negative social or societal reaction in consequence of the primary victimization (sic), experienced as further violation of legitimate rights or entitlements by the victim.*

[1] Orth (2002). *Secondary Victimisation of Crime Victims by Criminal Proceedings.* Social Justice Research. Volume 15, Issue 4. Pp 313-325

Note on Verbatim Comments

Throughout this report, verbatim comments made by evaluation participants have been used to provide clarification or elaboration of a point made in the text, to provide an example or to add depth to the text. Unless otherwise stated, these comments should be considered representative of the general feeling of stakeholders. Participants' permission has been sought and given to include these comments in the report. Comments have been annotated to identify the general stakeholder group from which they came (judges, defence counsel, Crown prosecutors, complainants etc.); however, to ensure confidentiality, the location of the stakeholder (Auckland versus Whangarei) has not been given unless this distinction is relevant to the point being made in the text and it was felt that this would not compromise confidentiality. Where quotes come from a focus group (so cannot be attributable to a particular participant), they have been annotated as "stakeholder" and either Auckland or Whangarei.

1 Executive Summary

1.1 Background, Objectives and Method

Background

Sexual violence is a significant social problem in New Zealand, with approximately one in six people experiencing sexual violence at some point during their lives[2]. The negative impact of sexual violence can be long-lasting and affect relationships, wider family/whānau, and work[3]. Most victims of sexual violence do not report the offending to Police and therefore offenders are not prosecuted. For serious sexual violence offences that are prosecuted, court responses have been examined in the 2015 Law Commission report, *The Justice Response to Victims of Sexual Violence*.[4]

In response to a recommendation in that report, the Sexual Violence Court Pilot (SVCP) was created as a judicial initiative to establish best practice for the conduct of Category 3 sexual violence trials, within existing legislation. The aims of the pilot are to reduce delays and improve the courtroom experience for complainants, while preserving the rights to a fair trial for defendants. The SVCP has been established in the Auckland and Whangarei District Courts, beginning in December 2016. It is supported by a governance group comprising the Chief District Court Judge, three other members of the judiciary and Ministry of Justice (the Ministry) representatives (including the pilot project manager and the judicial resource manager).

A preliminary evaluation[5] found positive early impacts from the pilot. Now a comprehensive and independent evaluation has been conducted by the Ministry. This report presents the findings of a qualitative study that collected data from a wide range of stakeholders involved in the pilot including complainant witnesses, and relevant quantitative data provided by the Ministry.

Evaluation Objectives

The objectives of this evaluation were to:

- assess the extent to which the changes that have been implemented achieve the outcomes intended.
- identify any unintended consequences of the pilot on the timeliness and processes of non-pilot cases.
- identify any challenges, requirements, and opportunities for potential roll-out of a Sexual Violence Court.

[2] Ministry of Justice (2019). New Zealand Crime and Victims Survey, Cycle 1 2018. Ministry of Justice, Wellington.
[3] Kingi, v. and J. Jordan (2009). Responding to Sexual Violence: Pathways to Recovery. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington.
[4] Law Commission Te Aka Matua O Te Ture (2015). The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes. Wellington.
[5] The District Courts of New Zealand, (2017) Preliminary Evaluation: Sexual Violence Pilot Courts. Ministry of Justice, Wellington.

Evaluation Method

Data was collected by Gravitas Research and Strategy via face-to-face interviews (n=32) and two focus groups (n=18 participants, some of whom were also interviewed separately) with SVCP stakeholders, comprising judiciary, Crown prosecutors, defence counsel, victim advocates, court staff, and other stakeholder agencies. In addition, face to face interviews were also conducted with those who had experienced the pilot courts as complainant witnesses (n=9). Gravitas also conducted a courtroom observation to assist their evaluation work. Input to the interview and focus group guides was obtained from the Ministry of Justice and the governance group.

Some of the evaluation objectives were met by the quantitative data analysis provided by the Ministry from the case management system and from observations of trials by Sexual Violence Victims' Advisors (SVVAs). Some of this quantitative data is regularly reported to the governance board.

1.2 Overview of Findings

Best Practice Guidelines and Pilot Processes

The pilot has been run in accordance with the Sexual Violence Court Pilot: Guidelines for Best Practice[6] (the guidelines), developed by the District Courts and endorsed by the Chief District Court Judge. These guidelines are intended to operate within existing jury trial practice and prescribe the cases which will be eligible for the pilot; who may preside over such cases; a range of aspects of the case review hearing and trial callover; and aspects of trial management.

Stakeholders concur that there have been no significant challenges in following the guidelines. The pilot guidelines have been adopted consistently by Auckland and Whangarei courts, however the way the guidelines have been operationalised has varied, to fit the culture and physical characteristics of each court (for example, the use of tele-conferencing to conduct trial callovers in Auckland as opposed to in-person callovers in Whangarei). In addition to these guidelines, other processes (such as sexual violence cases only being set as firm fixtures, not as back-up trials, and having dedicated courtrooms for sexual violence cases) have been adopted that align with the intent of the pilot and support its objectives.

Overview of Pilot Impacts

Overall the pilot is considered successful by stakeholders, in that they have experienced the intended outcomes of improved timeliness and improved practices in case and trial management. Key differences in practices for Category 3 sexual violence cases that were used in the pilot are:

- Only pilot judges are designated to hear pilot cases, having participated in a judicial education programme on the complex dynamics of sexual violence and vulnerable witnesses;

[6] http://www.districtcourts.govt.nz/assets/Uploads/Publications/Best-Practice-Guidelines.pdf

- Designated case managers who proactively manage files to enable early identification of issues that could potentially cause delays to trial, earlier allocation of cases and earlier trial scheduling;
- Courtrooms prioritised for pilot cases; and
- Increased communication between stakeholder organisations involved in pilot cases.

Trial management has benefited from changes to the timing of the presentation of evidence, greater use of alternative modes of evidence and close attention to application of the guidelines to cross-examinations. Contrary to stakeholders' expectations, these practices do not appear to have a detrimental effect on non-pilot cases.

Complementing these practices, the use of separate court entrances and secure waiting spaces, communication assistants, pre-trial meetings with the presiding judge and existing practices of pre-trial court education visits, assistance from independent victims' advocates and support from SVVAs operating within the court, have reduced the risk of secondary victimisation through the justice process for complainant witnesses.

Stakeholders unanimously agree that a cessation of pilot practices would have a detrimental impact on complainant witnesses. Current and potential challenges to the ongoing success of the pilot include the availability of sufficient judicial resource, the sufficiency and reliability of technology, physical building design constraints and space availability (particularly to ensure the safety of complainant witnesses), the small pool of defence counsel in Whangarei, and inconsistencies around cross-examination questioning protocols. There is also a considerable gap in independent support provided to complainant witnesses.

Timeframes in the Pilot

Stakeholders experienced that the time to case disposal and/or to trial start date has reduced considerably within the pilot, particularly for straightforward trials (i.e. those set down for one week, which the majority are). The timeliness of trials has significantly improved in comparison with pre-pilot sexual violence trials in Auckland and Whangarei.

The Ministry's quantitative data for the first two years for the pilot shows that, while there is a small increase in the timeframe for the case review stage compared to pre-pilot (an average increase of 16.5 days in Auckland and 6.4 days in Whangarei), this relates to more comprehensive trial preparation. However, there are significant decreases in other timeframes in the process, achieving the aim of the pilot which was to reduce pre-trial delays.[7]

[7] The analysis compares cases in the Auckland and Whangarei courts that match the criteria for entry to the pilot (Category 3 sexual violence cases that had a not guilty plea and elected trial by jury), from two years pre-pilot, with cases from the first two years of the pilot (1 December 2016 to 30 November 2018).

The overall time for cases entering the pilot (at the case review stage) to the start of the trial is considerably shorter: in Auckland this time reduced by 30% (110 days on average), and for Whangarei by 39% (201 days on average).

Several factors underpin the reduction in timeframes to trial, including the 'buy-in' from participants involved in the operation and delivery of the pilot. Most stakeholders agree that the reduced timeframes are beneficial to complainant-witnesses, defendants, and to the courts, however defence counsel feel that the current timeframes may, in some instances, compromise a defendant's right to a fair trial due to lack of sufficient case preparation time.

While some stakeholders would like to see further reduction in timeframes, not everyone agrees that this would be feasible. Resourcing (judicial, court resources, counsel, support) is perceived as the key barrier to further timeframe reductions. There is only a small group of defence counsel in Whangarei who defend serious sexual violence cases (and none do sexual violence cases exclusively), and this has been a limiting factor in being able to schedule trials any earlier for some cases. In the early part of 2019, some stakeholders noted anecdotally that timeframes seemed to be increasing. This was felt to be due to an increase in the volume of cases coming into the pilot and potentially the court resource available not been able to keep up with the demand.

Pilot Versus Status Quo

All stakeholders included in the evaluation have enthusiastically embraced the pilot and its objectives, and both comments made by stakeholders and the observations of the evaluation team suggest that those involved have been extremely committed to seeing the pilot succeed. Whilst stakeholders were very clear that they did not want to see the pilot conclude, the short-term nature of the pilot (the ability to see 'outcomes' at the end) is also likely to have been a factor in encouraging engagement. There is a risk that, if the guidelines are rolled out nationally and become 'status quo', new stakeholders may not have the same commitment to, and be less engaged with, the objectives. Well-designed, motivational training, regular opportunities to re-energise (such as through refresher training and regular stakeholder meetings) and regular communications of performance statistics will be important to maintaining momentum.

2 Background, Objectives and Method

2.1 Background

The 2015 Law Commission report, *The Justice Response to Victims of Sexual Violence*,[8] considered whether the processes for justice in cases of sexual violence required changing to improve fairness, effectiveness, efficiency, and how complainants experienced the court system. The report found that the criminal justice system often failed to respond appropriately to victims of sexual violence and poses a risk of secondary victimisation[9], which may contribute to the low rates of reporting of sexual violence to the New Zealand Police. Fear and distrust of the legal system is another reason that victims often do not report incidents of sexual violence perpetrated against them[10].

The average time from filing of charges to case disposal[11] for jury trials of sexual offences in District Courts for 2014/15 was 480 days[12] and delays and adjournments in trials were common. Lengthy timeframes to get to trial has been identified as a major contributing factor to the secondary victimisation that complainant-witnesses in sexual violence cases often experience as there is a need to retain memories in detail in order to give accurate evidence in court.[13] In addition, complainants feel unable to 'move on' in their lives until the justice process has concluded.

Context

District Courts have many stakeholders, processes and interactions that impact on the data that can be obtained about specific projects such as the SVCP. All District Courts operate within unique community characteristics and may adapt in various ways to the needs of those communities.

[8] Law Commission Te Aka Matua O Te Ture (2015). The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes. Wellington.
[9] Orth, U. (2002). Secondary Victimization of Crime Victims by Criminal Proceedings. *Social Justice Research.* Vol. 15, No. 4.
[10] Kingi, v. and J. Jordan (2009). Responding to Sexual Violence: Pathways to Recovery. Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine. Wellington.
[11] Case disposal occurs when the proceeding of a case is concluded; this can occur through a conviction, acquittal, discharge or withdrawal of a case.
[12] Law Commission Te Aka Matua O Te Ture (2015), p 42.
[13] Gravitas Research and Strategy (2018). Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences. Ministry of Justice: Wellington.

The Auckland District Court serves the central Auckland community[14], is situated in the Auckland Central Business District and, as a region has the highest population density (24.9 people per hectare[15]), is growing faster than the New Zealand average and is the most ethnically diverse region (39% were born overseas)[16] in the country. It receives SVCP cases from the Waitakere and North Shore District Courts and provides other specialist courts, namely the Family Violence Court, Court of New Beginnings, Alcohol and Other Drug Treatment Court, Youth Court, Rangitahi Court and Pasifika Court as well as the SVCP. For two years pre-pilot at the Auckland District Court, 141 sexual violence Category 3 cases went to trial, compared with 91 cases in the first two years of the SVCP.

The Whangarei District Court serves the greater Whangarei district, which has had a steadily increasing population over the last 20 years, with a rapid increase in the last five years. The Whangarei District Court is a provincial court, with large rural areas but with more professionals than other occupations.[17] It receives SVCP cases from the District Courts in Dargaville, Kaikohe, and Kaitaia and provides a Youth Court weekly. For the two years pre-pilot at the Whangarei District Court, 33 sexual violence Category 3 cases went to trial, compared with 19 cases in the first two years of the SVCP.

Response

The Law Commission Report made wide-ranging and comprehensive recommendations that could improve the way that the justice system responds to victims of sexual violence. These recommendations included the establishment of a specialist court for sexual violence to be implemented first as a pilot, with the objective of minimising the risk of secondary victimisation of complainants.[18]

In response to the Law Commission's recommendation, the Ministry of Justice (the Ministry), with the support of the Chief District Court Judge, implemented the judicial initiative of the Sexual Violence Court Pilot (SVCP) in the Auckland and Whangarei District Courts in December 2016. Initially due to run until the end April 2019, the Governance Board has subsequently agreed to continue the pilot until such time as a decision is made about its future. The primary objective of the SVCP is to trial improved case and jury trial management, within existing legislation.

[14] The areas served by the Auckland District Court are bounded generally by: Waitemata Harbour in the north; Avondale in the west; Onehunga in the south and Glendowie in the east (Ministry of Justice, Regional Service Delivery, Operations Support).

[15] Fredrickson, C. (2014) Measuring Auckland's Population Density. Research, Investigations and Monitoring Unit, Auckland Council.

[16] Auckland Tourism, Events and Economic Development (2017) Auckland Growth Monitor , aucklandnz.com/auckland-index;http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-a-place.aspx?request_value=13170&tabname=Culturaldiversity

[17] Whangarei District Council community profile. https://profile.idnz.co.nz/whangarei

[18] [18] Law Commission Te Aka Matua O Te Ture (2015), p 12.

The pilot's governance board has developed Best Practice Guidelines[19] for this purpose (see Appendix A), which are intended to reduce pre-trial delay and ensure flexible, workable trial arrangements.

The SVCP operates specialist lists so that all serious (Category 3) sexual violence case proceedings, where the defendant has pleaded not guilty and elected a trial by jury, are dealt with in designated courtrooms and with cases being more closely managed by designated court registry staff.

2.2 Evaluation Purpose

A preliminary evaluation conducted by the District Courts of New Zealand in 2017[20] showed positive early results from the pilot in terms of timeliness of cases through the court system. As the pilot now draws toward a conclusion, a comprehensive evaluation of the pilot has been conducted by the Ministry, with the qualitative component of this evaluation conducted independently by Gravitas Research and Strategy.

The objectives of the evaluation were to:

- Assess the extent to which the changes that have been implemented achieve the outcomes intended.
- Identify any unintended consequences of the pilot on the timeliness and processes of non-pilot cases.
- Identify the changes to standard court process, procedure, resource, and infrastructure that have been implemented through the Pilot to improve case management and, as a result, timeliness.
- Identify any challenges, requirements, and opportunities for potential wider roll-out of a Sexual Violence Court.

2.3 Evaluation Method

Data was collected via in-depth face-to-face interviews (n=41) and two focus groups (n=18 participants), across the two pilot sites, conducted by members of Gravitas' executive research team[21]. Participants identified by the Ministry as suitable for this evaluation comprised pilot stakeholders (judiciary and other professionals involved in delivery) and complainants who had experienced one of the pilot courts as witnesses. Not all participants identified as suitable for interview were available.

Contact details for all participants except complainants were provided by the pilot project manager. Complainants were approached in the first instance by sexual violence victim advisors (SVVAs) and then, with complainants' permission, contact details were passed on the evaluation team. Informed consent was gained from all participants prior to interview.

[19] http://www.districtcourts.govt.nz/assets/Uploads/Publications/Best-Practice-Guidelines.pdf
[20] The District Courts of New Zealand. (2017) Preliminary Evaluation: Sexual Violence Pilot Courts
[21] Gravitas Research and Strategy are an independent research consultancy with extensive experience conducting qualitative research on sensitive subject matter and with vulnerable participants. All interviews were conducted by skilled qualitative researchers.

This included providing information regarding the purpose of the evaluation, how data would be used, who it would be shared with, and how confidentiality would be maintained.

Table 1: Evaluation Participants

Role	In-depth Interviews	Focus Groups
Complainants	9	0
Court registry staff and managers	7	7
Judges	6	0
Defence counsel	5	2
Crown prosecutors	4	3
Court victim advisors and managers	4	4
Victim advocates	2	1
Pilot project manager	1	1
ESR Forensics Service	1	0
New Zealand Police	1	0
Communications assistant	1	0
Total	**41**	**18**

Interviews were structured around topic guides (see Appendices B and D) to ensure that data collected would address the evaluation objectives and to maintain consistency across interviews. The main topics covered were:

- Case and trial management.
- Trial scheduling.
- Resourcing and infrastructure.
- Impact of the pilot on stakeholders and complainant witnesses.
- Impact of the pilot on other cases.
- Operational differences between Auckland and Whangarei.

However, interviewers used a free-flow conversation style so as to capture what was important to individual participants in the context of the sexual violence court pilot. Interviews took between 20 minutes and 1 ½ hours.

Subsequent to the interviews, two focus groups were conducted, one in each of the pilot sites (see appendix C for discussion guide). With the exception of the judiciary and complainants, all those involved in the delivery of the pilot who had participated in an interview were invited– with 9 attendees in Auckland and n=9 attendees in Whangarei. As the focus group question guide shows, the purpose of the groups was to discuss additional aspects of the pilot and to gather more detail on areas that had been raised proactively by participants during interviews.

With the permission of participants, all interviews and focus groups were audio-recorded and subsequently transcribed to assist in the analysis process. All data was stored securely in accordance with Gravitas' data management protocols.

Data analysis adopted a thematic approach in which transcripts were reviewed for common themes in the data that addressed the evaluation objectives.

2.4 Quantitative Data from the Ministry

The Ministry collects data on all cases in its Case Management Systems (CMS) database. Relevant data has been extracted from the CMS by the Ministry to help answer some of the evaluation questions. The data extracted includes the number of cases, dates that key events occur in all cases, number of cases disposed in the most common case outcomes and the number of events that occur for each case. Case data for the pilot courts has been collected for two years pre-pilot (1 December 2014 to 30 November 2016) and two years of the pilot (1 December 2016 to 30 November 2018). Differences in these values for these two time periods have been calculated as averages and medians.

Other evaluation data has been collected by the Ministry from the SVVAs at each pilot court. This data comes from their observations of individual victims' experiences of their jury trial during the pilot (n= 107). The data included whether complainants were met by the Crown, Prosecutor, SVVA or Judge before the trial, if they had education about the court or support at court, if pre-recorded evidence was used and if they had to appear only once. The data has been summarised and where possible, analysed quantitatively. General comments provided by SVVAs have been summarised. Key findings from these two analyses are incorporated into this report where appropriate.

2.5 Research Limitations and Exclusions

Two research limitations/exclusions should be noted:

- The evaluation did not include a review of the case files of complainant witnesses who had experienced the Sexual Violence Court Pilot (or sexual violence cases dealt with outside the pilot to compare and contrast).
- With the exception of one complainant witness who was referred to the evaluation team by an independent victim advocate, all complainant witnesses interviewed for this evaluation were selected, contacted and referred on to the evaluation team by SVVAs involved in the Sexual Violence Court Pilot. Therefore, complainant witnesses included in the evaluation should not be considered to be a random sample of those who had participated in the pilot.

3 Preparation for, and Introduction of, the Pilot

Key Findings:

- The pilot aims were widely supported by those involved.
- The pilot involved less of a shift in practices and mindset for stakeholders in Whangarei due to the previous judicial protocol for child and vulnerable witnesses.
- Judicial training and stakeholder education has been a valuable component in the pilot.

3.1 Context: Child/Vulnerable Witness Protocol in Whangarei

In 2014, Judge Harvey initiated a protocol[22] for child and vulnerable witnesses at the Whangarei District Court, which received support from, and was adopted by, other members of the judiciary who sit at Whangarei. While the protocol was intended to be implemented for child and other vulnerable witnesses in any jury trial, most witnesses to whom the protocol was applied appeared as complainant-witnesses in sexual violence cases. The protocol covered a range of aspects of trial management and treatment of young and vulnerable witnesses to minimise the potential negative impact of the justice process on them. The protocol was backed up by extensive research from overseas jurisdictions that showed how more 'victim-centric' processes in courts could reduce stress for complainants and, therefore, improve the quality of their evidence.

The protocol includes processes such as complainants viewing their evidential video interview (EVI) prior to the trial; not being brought to court until required to give evidence, with just enough time to settle in; having the waiting/CCTV room more welcoming and 'child friendly'; implementing frequent breaks during evidence; ensuring evidence does not go beyond 3pm; the judge, prosecutor, and defence briefly meeting the witness before the trial starts; judges not allowing tagged or confusing questions to be asked by defence counsel; and encouraging prosecutors to call counter-intuitive evidence first, thereby educating the jury before they hear the complainant-witness's evidence.

For many stakeholders in Whangarei, the implementation of the pilot was experienced as an extension of the protocol that had been in place for two years prior and so did not require significant adjustment to either practices or mindset.

[22] Judge Harvey. Child/Vulnerable Witness Protocol. Whangarei District Court. Unpublished document.

3.2 Stakeholders' Initial Reaction to The Pilot

Upon hearing about the pilot, all stakeholders responded positively. Most were enthusiastic about the proposed changes and the opportunity to try something new that might benefit complainants:

> *I was enthusiastic about the idea of anything that would improve the process, and in particular improve the timeframes and how trials are run. I can only imagine how tough it is to go through court and tell people you don't know about what has probably been the worst thing you have ever experienced in your life. I was enthusiastic about anything that could get them through that quicker. (Stakeholder, Whangarei)*

In most cases, there was optimism that the objective of reduced timeframes would be achieved, thereby allowing complainants (and defendants) to move on more quickly with their lives. Some stakeholders reported feeling reassured that the objectives were achievable because of the processes that had been put in place.

> *When I first started here, we had victims waiting up to a year, 14 months, 15 months for a trial date. By the time the person was convicted of those charges and sentenced, you were looking at 18 months. The potential positive of the trial was that it would give victims a little bit of closure a lot quicker. Our victims need to get these trials done and dusted for their mental health. (Victim advisor/advocate)*

> *I left [the introduction session] feeling positive. I could see there was a method to achieving what they wanted to achieve. (Stakeholder, Whangarei)*

Stakeholders who work directly with complainants reported feeling relief that the issues around timeliness and treatment of complainants were being acknowledged and addressed by the Ministry of Justice:

> *I thought finally we might treat our victims with dignity and respect. (Victim advisor/advocate)*

The only true frustration identified among a small group of stakeholders was that the changes proposed were not more far-reaching. In particular some stakeholders were disappointed that jury trials were being retained (as opposed to sexual violence cases being heard by judges alone).

Pre-Pilot Concerns

Stakeholders generally reported having few concerns on hearing about the pilot and its objectives. Stakeholders working directly with complainants reported having concerns that the pilot would focus solely on streamlining administrative practices (case and trial management) with little or no consideration for the complainant– so there would be no noticeable change for the complainant - or worse, the complainant's

experience would be negatively impacted by a lack of flexibility in the process. This group were also wary of the extent to which the pilot could be successful given the (pre-judicial-training) attitudes of some judges towards complainants of sexual violence

Among defence counsel, upon hearing about the pilot, there was concern that the objectives of the pilot would make it harder to defend clients and/or to increase conviction rates. Defence counsel were also concerned that all eligible sexual violence cases would be pushed through a standardised streamlined process, with no consideration given to 'special cases' where more time might be required (for example, where defendants have mental health issues which require additional assessments, reports etc.). It is reported anecdotally that some defence lawyers in Whangarei, upon receiving the information about the pilot, decided not to deal with sexual violence cases any longer. It is perceived that this will have made it increasingly difficult for Legal Aid to find providers to assign cases to and may have reduced options for defendants:

> *Generally everything that's in sexual violence court, [defendants] can pick their own lawyer. [A defendant] might want to pick a lawyer that knows their history, their family background, but if that lawyer's not doing sexual violence court, then you've got to go through that whole process with somebody new and build up that rapport. (Defence counsel)*

Within the judiciary, prior to the commencement of the pilot there was some concern regarding the potential negative impact on non-sexual violence trials, particularly serious cases involving personal violence:

> *There are only so many judges and judge time so if you've got to give priority to a different type of case then there has to be an effect on the other trials. You could argue that some of the very serious violence charges are equally worthy of quickly time frames because the effects on the complainants can be very devastating. There's a bit of tension there I suspect. (Judge)*

One judge noted that they had had pre-pilot concerns around the potential impact of the guidelines on fair trial processes, in particular regarding the perceived 'constraints' on the cross-examination process.

The aspirational goal of the pilot was to achieve a six-month average timeframe from trial callover to the trial[23]. Stakeholders noted that, when this goal was announced, they felt it was over-ambitious, particularly because it was such a huge change from the then current two years that many sexual violence trials were taking.

[23] The District Courts of NZ. Preliminary Evaluation: Sexual Violence Pilot Courts (2107), p12.

3.3 Stakeholder Perspectives on Pilot Objectives

Stakeholders identified the objectives of the pilot being twofold - firstly, more timely progression of serious sexual violence cases through the court system:

> *One of our aims is to reduce the time between charges and trial. The gold standard is six months. (Judge)*

> *People shouldn't have to wait 18 months to get tried, complainants shouldn't have to wait 18 months from the time the person is arrested. It's just unacceptable. (Judge)*

Secondly, minimising any negative impact of the justice process on complainant-witnesses:

> *To make it better for a complainant, an adult or a child, to give evidence so that they're not retraumatised by the experience, regardless of the verdict. It should be made as easy as possible for any person to come along and give evidence. (Judge)*

Stakeholders included in the evaluation show strong support for the objectives of the pilot and see many advantages in timelier outcomes and minimising the risk of secondary victimisation for complainants.

> *I don't know how many sexual offending trials I prosecuted over 20 years and I had my own personal views, which coincided 100% with the aims of the pilot, so I had no difficulty embracing what the pilot stands for. (Judge)*

> *I think it's very good that the old brutal days for complainants are gone. It's still brutal but less so. (Defence counsel)*

> *We're giving better outcomes and experiences to all involved. It's a success if you measure against the things we wanted to achieve. (Stakeholder, Whangarei)*

In addition, stakeholders perceive that the pilot aim of improved timeliness is of benefit to defendants, particularly those in custody or on bail.

> *From the point of view of a defendant, he gets his trial earlier, so it's a good system. (Defence counsel)*

3.4 Training and Ongoing Support Early in the Pilot

Judicial Training

All judges designated to preside over pilot cases have undergone specialised training on how sexual violence cases are dealt with in the justice system, which included content drawing on research into how complainants experience the process. For some judges, despite having presided over sexual violence cases for many years, this was their first insight into the perspectives of complainants. Judicial evaluation participants considered the judicial training to be very intensive and effective. Strengths of the training cited by judicial stakeholders included that it was interactive, complainant-focused, had a theoretical base, and that material presented was often new to judges – "*a true learning experience*."

> *The training put together by the Chief Judge's office was really effective. [Judges] are far more conscious of the welfare of victims. (Stakeholder, Auckland)*

> *It was very good, extremely useful. It was a very intense three days. There was a lot of information that was thrown at us. It was concentrated and intense. It had a very good theoretical base to it from a range of experts. A couple of good practical examples were presented, very illuminating. It was an intense few days, but I think it ticked the boxes of the things we needed to know and do. (Judge)*

Stakeholders in various roles within the pilot agreed that this judicial training has been a critical element of the pilot. Through the judicial training, judges have become more aware of the impacts of the justice system on sexual violence complainants and consequently have genuinely embraced the pilot guidelines.

> *The training was essential. In my view you couldn't effectively get the [Sexual Violence Court] up and running as it should be without that knowledge and reasons for why we are doing these things this way and how to do it. (Judge)*

> *The judges have been on this sexual violence training and they have really changed. Some of them are completely different now when they sit on trials. Some of them have changed their stance on a lot of things. They are all very kind in the way they speak to the victims now, how they act, how they interact with victims. (Victim advisor/advocate)*

Counsel Training

Early in the pilot, Whangarei court held an education workshop, involving judges, Crown prosecutors and defence lawyers for them to be informed of the scope and purpose of the pilot, and what that meant for how witnesses could be questioned. The workshop included sessions by a communications expert, covering appropriate ways to question child and other vulnerable witnesses, including a video that supported and demonstrated the material covered.

It is unclear whether a similar workshop or training session was held in Auckland for counsel, however there was no mention made of this by any stakeholders.

Training of Court Staff

No specific sexual violence training was provided for court staff working within the pilot. Training in terms of operation and delivery of the pilot was conducted 'on the job' and via internal meetings.

Stakeholder Meetings

Stakeholder meetings provide an opportunity for pilot participants to share ideas about what is and isn't working well and what changes could be made to help the pilot run more smoothly and create more positive impacts. All stakeholders who had attended these meetings viewed them positively and essential to the effective operation of the pilot. It was also noted that the meetings helped build rapport between the stakeholders at the start of the pilot.

> *People voice their concerns and present solutions and that will be assigned to somebody to do something about before the next meeting. I think those meetings are essential. They bring everyone together and together we come up with solutions on how we can do things better. (Victim advisor/advocate)*

> *We have had regular meetings to decide how we would put things in place. Everyone has had input through those regular meetings. Those meetings were really good, they got everyone working together right from the start. I think that was a good thing – that everyone could see the positive side of it and were willing to make it work. (Ministry of Justice staff)*

> *[Stakeholder meetings] are good. People talk about what works and what doesn't, and you hear about things that sometimes you wouldn't hear about. (Ministry of Justice staff)*

When interviewed in the early part of 2019, stakeholders in both Auckland and Whangarei expressed disappointment that commitment to the meetings seemed to have waned significantly. Stakeholder meetings had been held frequently at the start of the pilot and were well-attended; by early 2019, meetings were held infrequently, and attendance was low.

Governance Board

The Governance Board for the pilot consists of the Chief District Court Judge and three other members of the judiciary, with other stakeholders invited to attend monthly meetings (including the pilot project manager and the judicial resource manager). Progress updates are provided to the Board via monthly quantitative reports and a short report from the pilot project manager.

Stakeholders who are aware of the Board consider their expertise (legal expertise in particular) invaluable and they act as an important 'sounding board' regarding questions, concerns and suggestions for new ideas that have arisen over the course of the pilot.

4 Case Management

Key Findings:

- Cases progress through the court system overall more efficiently, faster and with fewer delays.
- The average time for all cases to be disposed through both Pilot courts has decreased by 134 days in the Pilot
- Judges are more actively involved with cases from an earlier stage.
- Focused, proactive case management* is a feature of the pilot. Dedicated case managers are critical to its success.
- Case review hearings are considerably more thorough and comprehensive within the pilot.
- The case review stage takes an average of seven days longer in the pilot, reflecting the greater care taken with trial preparation.
- Setting down firm trial dates at case review encourages parties to engage with files earlier and resolve pre-trial issues more effectively.
- Judicial resource is a key influencing factor on case disposal timeframes.

** 'Case management' encompasses all of the activities and processes that are required to take place from the point that the case enters the pilot (not guilty plea and defendant elects a trial by jury), right through to case disposal and sentencing, where this occurs.*

This section covers all aspects of the pilot related to pre-trial processes and events – from entry of a case into the pilot and assignment of staff and judicial resource, through the case review hearing, trial scheduling, trial callover and any other pre-trial activities deemed necessary. It loosely addresses Guidelines 4 to 19 (although it should be noted that it was not the purpose of the evaluation to evaluate each guideline individually so not every guideline is specifically addressed here.)

4.1 Designated Judges

Guideline 6: Only judges designated for the purpose may preside over a case in the Pilot. The Chief District Court Judge will designate judges from time-to-time based on experience and training.

Once the file has gone through case review, it is physically assigned to a designated pilot court judge who ideally will preside over callovers and the trial itself. This enables the judge to familiarise themselves with the case typically months in advance of the trial – as opposed to sometimes only days or even a few hours before the trial for non-pilot cases:

> *[For non-Sexual Violence Court Pilot cases], you might get the trial file on the morning of the trial or, if you're lucky, the week before. That's the first time you've ever been introduced to this trial. And some days, because of the management of the trials, you might get a file given to you, you start reading it then it gets taken away because they have pled guilty. So you might end up having to read two or three trial folders before you walk into the courtroom, which means you have very limited knowledge of what is going to unfold. [In the Pilot], once they go from case review, the file is actually physically given to the judge, so we become familiar with it months in advance – rather than hours or even minutes. (Judge)*

In contrast, in non-pilot cases, the timing of files being provided to judges is a common cause for delays in trials going ahead as scheduled.

> *[Prior to the Pilot], judges would literally get their trial file the week before the trial. So if something hadn't been done, you would only find out then. And a lot of the time, things hadn't been done and trials would have to be put off. (Ministry of Justice staff)*

Only judges who have attended the judicial training on sexual violence and have been designated by the Chief District Court Judge have presided over cases in the pilot. There are three judges who hear pilot cases in Whangarei and 13 in Auckland. Each jurisdiction also has a designated pilot liaison judge who has administrative responsibilities around the scheduling and conduct of pilot trials. Whilst Judge Harvey has remained the liaison judge in Whangarei from the start of the pilot, Auckland has had three different liaison judges (Judges Kiernan, Collins and Paul).

Stakeholders are supportive of the guideline that only judges who have completed the judicial training may preside over pilot cases. Given that they have been educated on how the justice process may impact on complainants in these cases, they are therefore more likely to be aware of and alert to factors that may cause secondary victimisation for complainants.

However, in both Auckland and Whangarei it was highlighted that judicial resource is a key limiting factor in being able to achieve and maintain reduced timeframes to trial. Considerable concern was expressed by stakeholders about designated judges leaving the pilot for various reasons and not being replaced. It was felt that the continued success of the pilot model would be at risk if there were a reduction in jury warranted judges, particularly those designated to hear pilot cases.

When the pilot started, Ann Kiernan was leading it. She left for personal reasons to return to England, no judge replaced her, so we were down one judge on the pilot. Another judge who may not have been on the pilot retired – no judge to replace him. So we have this sinking lid of judges and no-one is getting replaced. The work is still the same – perhaps more if you look at some of the figures - but the judges to do it is reducing. (Judge)

The whole system is at real risk because we've generally had on average at least six judges per week rostered into jury trials. That drops to five [in 2019]. Under the judicial resource the aims of the pilot are actually unsustainable. (Judge)

If we don't have the extra [existing] judge, [time frames] are going to go right back to being two years. That is a risk, should we not be allowed to put more judges on the bench or maintain the number of judges. (Stakeholder, Whangarei)

It is also noted that the pilot is susceptible to delays that can occur because of the requirement that only designated judges can sit on pilot cases. If a trial runs over the scheduled time, there is generally no other designated judge available to pick up new cases due to start:

For example, last Monday I was to have a trial start and I thought "Oh, there's no judge." The judge from the week before, their trial was running over so that put us out. So they had to move the trial to [two months' time] – and that can be tricky as you have to find a time when the Crown prosecutor, defence lawyer and the witnesses can all be there. It can be a huge thing. It can be a bit of a problem that there are not enough designated judges. (Victim advisor/advocate)

4.2 Case Manager Role

The management of cases through the court process within the pilot is more time-focused and proactive than the management of other jury cases, including pre-pilot sexual violence cases. This is primarily due to the appointment of dedicated sexual violence case managers (two in Auckland and one in Whangarei) who manage sexual violence case files from election of trial by jury (the point that the case comes into the pilot) to the end of the life of the file. The pilot case managers were appointed from within existing court registry staff (although one additional full time equivalent (FTE) roles were resourced for the court registry in Auckland and one additional FTE role was resourced for the court registry in Whangarei).

In Auckland, the two case managers work exclusively on sexual violence cases. In Whangarei, due to a lower volume of cases, the pilot case manager also works on non-pilot jury trial cases. While it varies slightly over time, more than 50 per cent of the Whangarei pilot case manager's time is allocated to pilot cases.

Responsibilities of pilot case managers are the same for both locations, and include:

- Making up and updating the judge's file as required.
- Liaison with complainants regarding bail variations (via the SVVA).
- Liaison with jury trial schedulers.
- Liaison with parties regarding availability for hearings and trials.
- Arranging dates for specific events (callovers, pre-trial hearings).
- Facilitating witness arrangements (travel, accommodation, mode of evidence)
- Liaison with Officer in Charge, Crown Solicitor, and Defence Counsel.
- Accepting documents and uploading them to the file.
- Processing pre-trial applications.

This role is viewed unanimously by stakeholders as critical to the success of the pilot.

> *[The case managers] are quite exceptional in terms of registry staff, so they would be the key to the success of it, hands down. They don't have a bureaucratic, obstructive mentality. They just get on and actually do it. (Crown prosecutor)*

> *I just think for timetabling and for general management, having someone dedicated to that role is really important. They know what's required. I don't think there is any substitute for that. (Judge)*

Case managers are the point of contact for communications from all parties to the case. They adopt a proactive approach in order to avoid any administrative issues arising that may otherwise cause delays to trials.

> *[Case managers] are on top of every file, they've got a really thorough knowledge of every single file and every [SV] trial that's going on. So we're intercepting any issues as they're arising really quickly. So something falling down or breaking down is very uncommon in the pilot because of the case management. (Ministry of Justice staff)*

> *One of the things with [pre-pilot] jury trials, you never knew who to contact, who was the case manager. I think that has been one of the successes of the pilot, that we've always known who [the case managers] were, and they've been very responsive. They've been very good at communicating with counsel, which means you get things sorted out and it's just much more efficient. (Defence counsel)*

Case managers liaise closely with judges on case files and judges report that their roles are well supported by the case managers. Other court staff, such as SVVAs, also utilise case managers as the 'central hub' for all information and communication regarding a particular case:

If I have any queries, I go straight to the horse's mouth. And they are really good about letting us know about any changes too. I think the way things are working is really good and it absolutely works. (Victim advisor/advocate)

[Case Managers] know who to contact, who to talk to. They're familiar with the file so they know what's happening. You just tell them the name and they can easily tell you what's happening. They make things happen, make sure things go ahead. Their micro-managing makes everything easier for the rest of us. (Stakeholder, Auckland)

Numerous stakeholders highlighted that the competence of the case managers is critical to the pilot achieving its intended outcomes. Key qualities of the current pilot case managers that contribute to the success of the pilot include:

- Strong understanding of the criminal justice system, including the jury trial process.
- Extensive experience within the Ministry of Justice. Case managers have built up an extensive knowledge of court processes generally and sexual violence cases specifically. This allows them to be proactive in dealing with files.
- Well-organised, with high attention to detail.
- High energy – *"but also cool, calm and collected under pressure."*
- Strong liaison skills – being able and willing to proactively and articulately engage with judiciary, counsel and other stakeholders as required.
- A genuine desire to have a positive impact on the timely progression of cases and the experience for complainants.

The files are impeccably prepared. Everything's in the right place, everything is actually there and that's a rarity. They are well organised, perfectly prepared. [SV case managers] know what they are dealing with, they are experienced. The minute something crops up, they'll have the file to the allocated judge. Proposed trial dates are all set up so that when you go into case review, nine times out of ten it just gets confirmed. (Judge)

We're fortunate that we have a good relationship with our registry staff. We get on with them very well and they have no hesitation or qualm about coming to speak to us if they've got a problem. We have a very open-door policy. If we see any issues looming, we just go downstairs and have a chat to them. And likewise, if they've got problems … We have a very good working relationship which helps control the case management work hugely. (Judge)

Both defence and Crown have found that having a dedicated case manager overseeing the progression of cases through the system has been of benefit to them, in that they have a single point of contact. Often, case managers are able to resolve queries or issues raised by counsel. However, should counsel need anything raised with the case judge, they are able to effectively liaise via email through the case manager.

> *It's much better communication with the court, rather than sending an email and having to chase up 50 different people to see if it's actually got to the right person and landed in the file. That's the problem with most other files, it's not a criticism of the court staff, I think they do their best, it's just under resourced. (Defence counsel)*

> *A specific case manager is fantastic. Everyone knows who's got [the file], that person's responsible for it, it just moves so much more smoothly. You have one person where we've got dialogue going. They seem to have their finger on the pulse. That side of things is fabulous for us. (Defence counsel).*

Both defence and Crown counsel also appreciate within the pilot, that case managers pro-actively request things from them that need to be filed or responded to.

> *[The case management] is very effective and they do even chase us up which is great too, because we can get busy with other things and overlook things. (Defence counsel)*

Case Manager Caseloads

The pilot case managers are perceived by stakeholders as highly competent and are able to manage their relatively heavy workloads. In Auckland, case files within the pilot are split alphabetically between the two case managers, with each having up to n=70 current cases at any time over the past five months, which has fluctuated to some degree over the pilot (caseloads at the start of the pilot were notably smaller). Caseloads of much more than this – or caseloads being managed by less competent/less motivated case managers - could compromise the level of proactive case management that could be given to each file.

In Whangarei, the caseload has remained at around n=30 over the past year or so and does not constitute a full workload on its own. The case manager also manages the files for other jury trials. There is no evidence to suggest that this impacts on the efficiency of case management.

As noted above, the current pilot case managers are all experienced court staff who have a comprehensive understanding of court processes, strong interpersonal skills and are confident dealing with the range of stakeholders including the judiciary. Stakeholders working with the current case managers felt that less experienced staff members– particularly anyone new to the justice sector – would most likely struggle in the role and there is a real risk that outcomes would not be achieved. These stakeholders commented that careful selection of staff for the case manager roles will be essential to the success of a national roll-out of the pilot.

4.3 Case Review Hearing

Guideline 7: All cases in the Pilot must be dealt with by a judge at case review stage.

Guideline 8: All defendants must be present at the case review hearing unless attendance has been specifically excused, in advance, by the judge.

For jury trial cases outside the pilot, case review hearings are relatively perfunctory, and as one stakeholder noted "of little value". Cases are often still within the jurisdiction of the police at case review (rather than the Crown) and there is usually no progression of the case in between the case review and trial callover, which may be up to three months.

> *The majority [of non-SV cases] go through case review and nothing really happens, and it then goes off to callover. So you've got a delay of about three months where nothing's happened, no-one's interacting with it. So what that translates to is delay. (Judge)*

> *If it's the normal court, most of the time it's a matter of us turning up and saying, "He's denying these charges, he's going to a jury trial, let's get it sent to a callover." That's it. (Defence counsel)*

In contrast, case review hearings within the pilot are guided by the best practice guidelines and are significantly more robust. They tend to be longer and more comprehensive, with judges ensuring that all relevant aspects of the case are covered as per the guidelines. Quantitative data provided by the Ministry of Justice shows that pilot timeframes are longer at case review but more useful, with greater benefits overall .

All case review hearings within the pilot are heard by one of the designated pilot judges (usually the pilot liaison judge), although not necessarily the judge who will preside over the trial unless it is a particularly complicated case, for example with multiple complainants.

> *We're basically doing at case review hearing stage what you would do at trial callover for a non-sexual violence case. What we're doing is much more intensive at the front end - review of evidence, the charges being finalised, identification of pre-trial issues, all of the evidential brief. (Crown prosecutor)*

In sexual violence cases [for case review hearings] we need to know who all of the witnesses are, what they're saying, whether there's any challenges to the evidence of any witness, any pre-trial application, any expert reports, if there's witnesses coming from somewhere else. We need to know time frames, communication assistance, counter intuitive evidence, what further disclosure is coming, edits to the defendants' DVD (if they did one), who defence witnesses might be, all that kind of stuff. (Defence)

Critical in reducing the need for adjournments is the discussion of important aspects of the trial at case review hearing, as required by Section 12 in the guidelines. These include the need for interpreters or communication assistance, as well as mode of evidence, use of evidential video interview, support person for the complainant, and any pre-trial applications likely, including around admissibility of evidence. These are issues that, pre-pilot, may not have been addressed until the trial callover some months later – or in some cases, just before the trial was about to get underway, often resulting in delays to trial commencement.

Every single issue you can think of is raised at case review. And the judges that deal with it are all the experienced ones who have had the training. (Crown prosecutor)

Guideline 9: Both Crown and defence must engage in case management discussion and jointly complete the case management memorandum (CMM) as directly by s.55 Act.

Case management memoranda are required to be filed for all category 2, 3 and 4 criminal cases, in which a defendant has entered a not guilty plea. However, within the pilot in Auckland, a more detailed joint case management memorandum, based on the guidelines, has been developed, which Crown and defence counsel complete and file jointly a week before the case review hearing. This is viewed by parties as a positive initiative that encourages them to engage in dialogue about the case early on so that issues can be identified, and all parties made aware of these as early as possible. In Whangarei the practice is for separate filing of case management memorandum by parties, and for judges to go through a checklist of items based on the guidelines during the hearing. However, the Crown and judiciary in Whangarei would like to see a joint memorandum implemented and there are plans to progress this.

The Crown and defence are getting together earlier to talk about things so they're more prepared for the trial. Issues are raised at an early stage so the judge knows what those issues are. It's about getting issues out into the arena as quickly as possible, so everyone knows, so everyone is aware. (Ministry of Justice)

Getting together and doing the joint memorandum for case reviews is very helpful because you do have those conversations earlier in the piece, you're getting your heads together not a week before trial which to me is the real positive for case management. (Crown prosecutor)

Counsel that work in both the Auckland and Whangarei courts sing the praises of the use of the joint Memorandum, noting that potential trial issues can be identified and resolved in a timelier way.

> *In Whangarei, Crown file their trial callover memo, defence file theirs, then they'll file the checklist and then some defence lawyers file a checklist. So the judge is sitting in court and he's got four different memorandums from counsel that he uses to fill out his checklist. So it takes about 40 minutes per client in court. Whereas in Auckland they have a joint memorandum that both the Crown and the defence counsel will file together so everything is already summarised before the judge sits down. They've got one piece of paper where counsel have done all the legwork. Everything is in one place before you start. (Defence counsel)*

Both Crown and defence come to case review with an understanding that they need to be prepared to discuss all pertinent aspects of the case that might impact on the trial proceeding smoothly.

> *It's much smoother. It turns everybody's minds to the issues much quicker. The reality of practice is that in non-sexual matters, you get close to the trial and all of a sudden defence are bombarding us with objections to evidence or this thing or that thing. [Expectations at case review] makes us all look at it much sooner and so we're avoiding all those tail end issues, so by the time you get to trial everybody knows where they are. There's always stuff that comes up that you can't predict, but as much as possible we're identifying the issues earlier and dealing with them. (Crown prosecutor)*

The best practice guidelines include that the judge enquires into, and makes direction as appropriate, in regards to a range of aspects of evidence, including evidence admissibility and likely pre-trial applications. This helps to ensure that delays and adjournments are minimised. (Note: Aspects of giving evidence that were found to have impacted pilot outcomes - such as modes of evidence and support are discussed in the following section.)

> *The biggest thing is probably the review of evidential issues, which you wouldn't do until trial callover stage in the non-sexual violence court. So it was that front end identifying pre-trial issues so that we could deal with them quickly to get to the trial quicker. (Crown prosecutor)*

Closer case management ensures that any potential issues that could risk delays or adjournments are identified early, with pre-trial dates set as necessary to resolve these issues before the trial.

> *The management leading up to [the trial] has hopefully dealt with, shall I call it 'no surprises', because that can be a very a hard thing to deal with mid-trial. But one of the ideas is that you flush out the issues, you get those surprises out beforehand. (Crown prosecutor)*

Some stakeholders reported hoping that there would be more opportunity for robust discussion around case resolution as part of pilot case review hearings – that there would be more judiciary-led discussion of the strengths and weaknesses of the case and hopefully an early resolution. However, it was noted that this does not seem to have happened to date.

In Whangarei, some court staff will sit in on the case review hearing. Staff find this beneficial, noting that it assists in building their knowledge of the case. Judges in Whangarei typically ask the scheduler to attend the case review hearings so dates for the next steps in the process can be confirmed immediately.

Defence Perspective on Case Review

The increased focus on discussion of matters at the case review hearing raises issues for defence counsel in that they typically do not have access to all the evidence by the case review hearing and there is often further disclosure from the Crown after the trial data has been allocated.

In order to avoid potentially unnecessary use of resources, Police commonly do not have EVIs and formal witness statements transcribed until after a defendant has entered a not guilty plea. The timeframe between plea and case review hearing within the pilot (45 working days) means that defence counsel often do not receive formal written statements prior to engaging in the case review hearing – or only shortly before – which can impact on their preparation.

> *The defence should have everything that they're relying upon [as early as possible] but that doesn't happen. Particularly with EVIs, because until you get the transcript, until you can see the EVI, you can't even sensibly begin to analyse the case. I would like to see protocols changed in some way to get the EVI and the transcripts to the defence at the earliest stage. Until you get full disclosure, you can't effectively do your job. (Defence counsel)*

> *The case review is too early. We just don't have enough information by case review hearing. (Defence counsel)*

> *Six to nine months [between election of jury trial and trial] is what they're aiming for, but unless you get full disclosure, that's very difficult to achieve. If [defence] could get everything early and identify pre-trials early, even before the [case review] conference, you bring the whole thing forward. And I see that as the key to it. I see full and proper disclosure as the success or failure of the pilot. (Defence counsel)*

> *I've got a case at the moment that's got six complainants and each of them has done a DVD interview. So I need to watch the DVD interviews and some of them are three, four hours long. All of a sudden, I need to have 20 hours set aside just to sit down and watch. I don't have 20 hours in the next few weeks. It just has to be done, but it does put a lot of pressure on you getting things done at that very early stage. It's a lot more upfront working as opposed to what everyone's used to doing. (Defence counsel)*

However, one defence counsel noted that ESR seem very aware of the additional case review hearing requirements and have been providing information back to counsel in a timelier way than pre-pilot. This has been much appreciated by counsel.

There is also a perception among some defence counsel that within the pilot they are being required to commit to trial dates too early.

> *I feel that we're being pressured into setting trial dates to soon. A lot of things like pre-trial matters and admissibility matters even before the law says we get the formal written statements. So, that to me is too short a time to set the trial date. (Defence counsel)*

While one of the aims of the pilot is perceived to be having the same judge following a case right through (to allow them to become more familiar with the case), some defence counsel noted that this often doesn't happen. Insufficient judicial resource and scheduling difficulties is perceived to account for this.

> *[The Ministry] have always said that we'll be told which judge we're going to have and that it would be the same judge that does the case review hearing, that does the telephone callover, that does the trial. Yet that seems to change very frequently in the weeks leading up to the trial. I don't know how [judges] are timetabled to do the various courts but they don't seem to have the ability to stick to one judge right throughout. It means a new judge isn't aware of what's gone on before. They can read the file obviously, but I think that continuity that they wanted hasn't been achieved. (Defence counsel)*

Most defendants going through the sexual violence courts have their defence funded by the Public Defence Service via the Legal Aid system. Defence counsel note that Legal Aid currently doesn't recognise the increase in the amount of 'upfront' work that defence counsel is now required to do under the pilot. It was reported that the funding for case review hearings ($700) has remained based on the minimal amount of work required pre-pilot – typically the preparation and filing of a two-page memo – rather than the considerable amount of work now required. Some defence stakeholders expressed surprise that Legal Aid had not been better aligned with the pilot.

From our perspective, it's a real hurdle at the moment. We need these experts to be briefed and we need it done now, but we can't brief an expert if [Legal Aid] are not going to pay for it, and if [they're] not going to pay for it, our client can't. That's a real issue, because they don't understand how it works. (Defence counsel)

Legal aid is another issue. Some of the grants' officers are not aware of the sexual violence court and they really do need to understand how the pilot is different. For example, let's say it's a case review hearing and we'd say "look, there's four or five Eastlight folders, there's five hours of DVD to watch", and they're going "Why do you need to watch it before case review?" (Defence counsel)

Police Resource

Police in Whangarei noted that, at the start of the pilot, they had been under-resourced to meet the transcription demands of the more comprehensive case review hearings. In some cases, transcription requests were being received by police too late to allow time for the transcription to be completed in time to meet the '20 working days prior to case review' deadline. A system has now been established so that when the date for the case review hearing is set, the New Zealand Police receive a report from the designated case manager to notify them of the date and transcription requirements. This is then forwarded on to the Officer in Charge, the typists, the criminal justice support unit (and ESR if forensics are required) so everyone is aware of the case review date and what is required to be delivered).

4.4 Trial Scheduling

Guideline 17. At the first trial callover, dates will be allocated for any pre-trail application and the trial.

Whangarei has one courtroom dedicated for the scheduling of pilot cases. Auckland started with two dedicated courts, however it became apparent early on that timeframe goals would not be met with this level of resource and the Chief District Court Judge directed that three courts be used for prioritised scheduling of pilot cases. Late in 2018, there were additional courts running pilot trials in order to avoid timeframes being pushed out too far.

In the last two months we have pretty much just completely taken the schedule over for pilot trials, such that in the last couple of months there might be four or five pilot trials starting every week. (Judge)

Having dedicated courts allows trials to be scheduled as much sooner than previously. (Pre-pilot, sexual violence trials were scheduled into any court in the general mix with other types of trials). In addition, only firm, rather than 'stand-by', fixtures are being scheduled for pilot cases.

Although the guidelines state that dates for pre-trial applications and the trial should be set down at the first trial callover, in practice this is being done at the case review hearing – so effectively much earlier than the guidelines require. In contrast, for jury trials outside of the pilot, a jury trial date will not be set until the first trial callover, or sometimes the second or third callover, depending on when pre-trial issues have been resolved and the case is ready to proceed to trial.

Many stakeholders believe that the change to trial scheduling is perhaps the single most important – and influential – change to the standard trial process.

Pilot case managers in both pilot sites have access to the court scheduling calendars and so can propose available dates to counsel prior to the case review hearing. In Auckland, the case managers are also able to schedule trials in. Typically, within the pilot system, trials are being scheduled around six months out from the case review.

Once the firm trial date is set, parties need to work backwards from this date to make sure that everything is ready for the trial to proceed, which requires both Crown and defence counsel to engage earlier on with the case files, which encourages closer case management by parties.

> *It's counsel engaging earlier with the facts. So they have to be all over it, they can't leave it till callover to read the file, and I think historically, counsel didn't even need to think about it. I mean they reviewed the file at callover. They can't do that in the pilot, they have to be all over the facts, instructions from their client, they have to know where they're going and have a theory of the case in essence. So what it's doing, it's achieving a much closer party management of the process. (Judge)*

Benefits of Trial Scheduling Process

Both Crown and defence see the benefits in setting firm trial dates only, rather than standby dates (even if they would be earlier) so that there is a high degree of certainty for all involved.

Whilst having a fixed trial date early in the process has benefits for more timely case management, it also provides complainants with a reassurance that actions are being taken (as they may not have been kept as updated by the New Zealand Police as they would have liked[24]) and that the trial will actually go ahead. Having a fixed trial date early also allows complainants to put plans in place to ensure everything is organised for their time in court – for example, applying for leave from their job, making childcare arrangements, organising for support people to be available, and organising holidays and other major personal activities so they don't clash with the trial date.

[24] Gravitas Research and Strategy Limited (2018) **Improving the Justice Response to Victims of Sexual Violence**. Ministry of Justice: Wellington

After case review, we ring the victim with a trial date. "This is your trial date. It's firm. That's the date we're going." And very, very seldom does that date change now. That makes a difference because then [the victim] knows "Right, I've got a date now." (Victim advisor/advocate)

I can tell people when they'll be heard. So that makes a big, big difference… [it] hangs like this big heavy weight around their shoulders. [They] want it to be over and done with, so knowing it will be within a certain time makes a big difference. (Victim advisor/advocate)

Stakeholders dealing directly with complainants note that having a fixed trial date early also reduces the amount of contact they need to have with them. This is an important benefit for these stakeholders who typically have large caseloads, but stakeholders also feel that most complainants don't want to be constantly contacted by court staff, especially when no firm information can be provided. These stakeholders also note that complainants often become concerned where there are lots of appearances by the defendant, especially when court staff can't tell them what the appearances are for, and fear that the trial may not go ahead. Setting the trial date early provides reassurance.

The victims don't want to be contacted every couple of weeks, especially if you can't tell them anything definite. They don't want to hear "Oh, it's a call-over and they're going to look for a date …" They don't want to be left wondering. They want the facts. (Victim advisor/advocate)

The decision not to have sexual violence trials as reserve fixtures (and the reduction in adjournments evident through the pilot) means that complainants only need to physically and mentally prepare for trial once. Whilst this preparation still causes considerable anxiety, those working directly with complainants note that at least this anxiety is now not 'wasted'.

Anxiety starts in the days leading up to the court appearance. [The victim] can't sleep and they are doing all the things that anxious people do building up to this moment. They take time off work, they get their support people to take time off work, and then it gets adjourned. It's disheartening. I've had someone just run off because they were so distressed that all this build up had led to nothing. (Victim advisor/advocate)

There's that build up, knowing that [the trial] is coming – you have to read your statement and go through your video and relive all those moments and get ready to stand in front of a bunch of strangers and say what happened. Then for it not to happen, it's destroying. (Victim advisor/advocate)

There is only a small group of counsel in Whangarei who defend serious sexual violence cases (and none do sexual violence cases exclusively), and this has been a limiting factor in being able to schedule trials any earlier for some cases.

The main issue for scheduling has been the availability of counsel. We've only got a very small pool of counsel and they do a lot of other things apart from sexual violence [trials]. Everyone's just getting busier and busier and for our counsel, they don't have a lot of time available. We might say "This case is going to be heard in six months' time" but then we have to work with them because they could have other trials and a lot of other work in between. Whereas when you were scheduling 18 months out, [counsel] knew they didn't have anything on. (Ministry of Justice staff, Whangarei)

One counsel is so stretched that it's hard to get him to find time to schedule his trials. Even though he has given as much priority as he can to SV trials, but sometimes he's just booked out. So we could have given [a trial] a slightly earlier time maybe, but it's had to be pushed out a little bit more because he's fully booked. It hasn't got to the point where it's made those trials go over one year, but sometimes it's gone towards one year. (Stakeholder, Whangarei)

Scheduling of Pilot Trials in 2019

In Auckland some stakeholders felt that the drive to get cases scheduled as early as possible that had been evident in 2018 seemed to have waned in 2019. Stakeholders interviewed in February and March 2019 were surprised that cases were being scheduled for August and beyond when there was only one trial a week happening currently (whereas there was capacity for at least three).

I am finding that timings seem to be extending out a bit longer now. When [the pilot] first started, it was great. Trials were being completed in six months, some were less – and things were moving really quickly. But things seemed to have started to push out. Particularly at the beginning of the year, we haven't had many trials on. This week for example there has only been one sexual violence trial. It concerns me a bit. (Stakeholder, Auckland)

Some stakeholders suggest that the increase in the volumes of cases coming into the pilot may have resulted in timeframes increasing as the court resource available has not been able to keep up with the demand.

When the pilot started, it was very quick that trials were being set down, but now of course with the volumes of trials the dates are being pushed out further and further. So it might have been two years plus that you'd wait for trial, then all of a sudden it was six months. Now we're getting dates that are well outside the guideline. It's just volume. (Crown prosecutor)

4.5 Trial Callover

Guideline 14: All cases in the Pilot must be dealt with by a judge at trial callover stage.

All trial callovers within the pilot are dealt with by designated pilot judges. As issues normally discussed at trial callover are now addressed at case review hearing within the pilot, trial callovers are used for judges to ensure that everything that could potentially delay a trial is raised and addressed – *"The callover is a bit like a rubber stamp".*

> *Callovers are used to ensure that everything that needs to be done is done in advance of the trial date. You go through all that preliminary stuff that, in the old days – well fairly recently – could have delayed a trial. And everyone involved knows that that's what we're doing so they are not going to turn up at a later date and say "Oh, there's something else now." There is no more of that. (Judge)*

In contrast to cases outside the pilot, trial callovers are presided over by the judge allocated to do the trial and generally have a specific scheduled session rather than being mixed in with callovers for other types of cases.

> *The implications of having someone who knows the file in-depth taking the callover is huge. Because they know the file, they will have some thoughts on how the trial might go and what they need to get before the trial. They probably set more ground rules now for how the trial will run. (Ministry of Justice staff)*

Pilot judges at the Auckland district court have developed a practice of holding callovers via teleconference, rather than in person. These are typically held early in the morning (before court sits for the day). Counsel dial into a courtroom where all proceedings are recorded by the court taker in the normal way as if the hearing was in-person. Audio-recording is also used to provide an independent record of the proceeding. This is an important tool in minimising delays at trial as all parties have access to an accurate record of what decisions have been made regarding the trial. Tele-conferences are now always facilitated from a courtroom, rather than from the case manager's desk as they were at the start of the pilot, so that media – and the public - can attend if they wish.

> *Some significant issues can be agreed at callover, like what evidence is going to be accepted. You don't want people reversing on those decisions and at trial going, "Oh no, we never agreed to that." That creates delay, it can upset the apple cart. The recording ensures that there is an accurate record of what was said and what was agreed to. (Judge)*

The use of tele-conferencing is viewed by Auckland stakeholders as an efficient use of time and resources, making the court more accessible (by reducing the need to travel and find parking in central Auckland). Tele-conferencing also has the advantage that judges can conduct callovers from other jurisdictions where they might be sitting. Counsel noted that holding the callover by telephone tends to be less formal which can be helpful in terms of counsel raising issues (however, one defence counsel felt that callovers became a little more formal once that parties became aware that discussions were being held in the courtroom and were being recorded).

Auckland stakeholders report that callover teleconferences have become more proactive and counsel feel that they can request a callover if there are issues to raise that cannot be resolved between parties and that require judicial involvement. This is seen as another way of preparing the case for trial and eliminating the risk of adjournments or last-minute pre-trial applications.

> *We're more proactive now about asking for a teleconference because if we know who the presiding trial judge is and…they'll say to counsel, "If you need to bring in a further application…" or we'll all just ask the court for a teleconference because we want to raise an issue. We can use those teleconferences quite proactively, for example, if I'm dealing with a defendant's lawyer who's not engaging and I've got complainants who've done their court orientation and they're waiting to go to trial in a couple of weeks, I'll be asking for a teleconference. (Crown prosecutor)*

In Whangarei, due to the proximity of counsel to the courthouse, tele-conferencing is perceived as unnecessary. Some counsel working in Whangarei feel that things can be completed more quickly when everyone is in the same room.

> *If you get everybody in the same place at the same time, things do get moving a little bit quicker, rather than on the phone. You might be "Look, we want this, we don't want this …" I think people tend to get more things done in person. (Defence counsel)*

Guideline 15: All defendants must be present at the trial callover hearing unless attendance has been specifically excused in advance by the judge.

In Whangarei, judges generally require the defendant to attend the callover (exceptions might include where the defendant has been bailed to another region). As well as ensuring defendants are kept well informed of their case, having the defendant attend is also perceived as a practical way for the court to check that the defendant has not absconded, and defence counsel use the appearance at court as an opportunity to catch up with their client, particularly those that live some distance away.

In contrast, in Auckland, the defendant is generally excused from attending the callover. Some counsel feel that excusing the defendant from attending allows more candid discussion between parties, which may have an impact on pre-trial resolution rates. However, other defence counsel express a preference for the defendant to be present, noting that the charges against them are significant and they need to be aware of what's going on - and see that their lawyer is working hard on their behalf.

> *I think it's important that the defendant is there [at call-overs and pre-trial hearings]. They could be looking at 7, 8, 10, 12 years in prison if this doesn't go their way. Even if they don't do anything or actively participate, it's their case. I think it's important for them to know what's going on and it's important for them to know that the Court, Police, Crown and lawyers are working on their case, that things are happening in the background. (Defence)*

4.6 Other Pre-Trial Activities

Pre-trial Hearings

Court staff note that, in the original design of the pilot, the plan was for the allocated judge to hear all the pre-trial hearings – and judges included in the evaluation report that this is most ideal (to allow them to develop a thorough knowledge of the file). However, this has proved challenging in reality. A lack of judicial resource impacts on the availability of judges to hear pre-trial applications. For example, a judge may be in the different court or different jurisdiction. Court staff note that, while some judges will do pre-trial hearings over the phone, not all will do this, instead opting to give the pre-trial hearing to another judge (who will provide a written decision for the trial judge) – or delaying the hearing.

> *I think you're far more familiar with the trial if you've determined the pre-trial applications, it would add to your knowledge. But sometimes, if I am not available, because we want it completed in advance of the trial date, another judge will have to hear the pre-trial. It's a rostering issue. That's probably the only area I think we could improve. (Judge)*

> *I know if I had more time to sit on my pre-trials I'd get things done quicker. And certainly my trials would be ready to go earlier in that sense, things wouldn't need to be scheduled so far out. (Judge)*

It was noted that, within the context of the pilot, there is an increased emphasis on identifying, as early as possible, issues that could potentially cause delays to trial:

> *We attempt to narrow down the issues, try and get all of that squared away prior to the trial starting, so you don't have these arguments during trial. (Judge)*

> *The more we can identify those things that can cause delays and hiccups in the giving of evidence earlier, the better - and more and more defence are seeing that it can be better for them to have the trial go through than an adjournment or an aborted trial. They don't want to be confronted halfway through by a judge that says, "No, that's inadmissible". (Crown prosecutor)*

There is a perception that more discussion is taking place between parties, reducing the need for pre-trial hearings. This may be more so in Whangarei where a smaller pool of Crown and defence counsel are well known to each other.

> *I've got no empirical evidence for this, but my feeling is that there is a little bit more cooperation between Crown and Defence. They seem to resolve more matters than they used to. For example, they'll be disputes about what is and is not admissible in a complainant's EVI. If they can't reach agreement, we have to have a pre-trial, so they do tend to get together and compromise. So by the time we get to trial, the EVI has been edited, it's been done by agreement between counsel, so I don't have to have any involvement in that at all. (Judge)*

However, some defence counsel felt that the shortened time frames to trial were insufficient to allow for pre-trial applications to be heard. One stakeholder felt that more pre-trial applications were now happening on the morning of the trial, which they considered unsatisfactory.

> *You need to know what evidence is going to be in and what is out while you are preparing. And it's not nearly as good for the client if you have to do it on hoof that morning. (Defence counsel)*

4.7 Impact of Case Management on Timeframes to Trial

In March 2019, stakeholders in both locations perceived the average time to trial from cases entering the pilot to be around eight months. It was felt this was reasonable. Stakeholders reported being satisfied with the reduction in time to trial that the pilot had achieved and viewed this as a clear indicator of the pilot's success. The impact of the pilot on timeframes can be seen in the following analysis of cases that went to trial:

- From the time cases enter the pilot to the date the trial starts: in Auckland this time reduced by 30% (110 days on average) to 252 days (8 months) and in Whangarei by 39% (201 days on average), to 312 days (10 months). Prior to the pilot, it took an average of 12 months in Auckland and 17 months in Whangarei.
- From the filing of Case Management Memorandum (CMM) to the trial date - In Auckland the average time taken has decreased by 97 days to 180 days (a 35% decrease), while in Whangarei the average time

taken has decreased by 183 days to 208 days (a 47% decrease). This was analysed as there is a difference in process of the filing of the CMM between the two Pilot courts.

- From the date cases enter the pilot to disposal – the average number of days has decreased by 27% in Auckland (an average decrease of 114 days) and in Whangarei the decrease is 38% (an average decrease of 229 days).
- This means the average time for trial cases to be disposed from entering the case review stage in the pilot is 308 days (10 months) in Auckland and 368 days (12 months) in Whangarei. Prior to the pilot, the average time for cases that went to trial to be disposed from the comparable point was 422 days (14 months) in Auckland and 597 days (20 months) in Whangarei.

A point to note:

In both pilot sites, there were cases that met the criteria for the pilot from 1 December 2016 that weren't immediately ready for trial. This resulted in some pre-pilot cases being prioritised to use allocated SV Pilot court sitting days to maximise court utilisation. Some pre-pilot cases represented in this data therefore benefitted from pilot practices and received an earlier trial than what would have otherwise been possible.

> *It's an amazing result, pretty good in the scheme of things. When I first started in SV, it was easily a two year wait. (Ministry of Justice staff)*

> *Having a trial heard within six or seven months rather than two years, that's pretty awesome for the victims. I think anything within a year is absolutely awesome. Awesome for the victim who doesn't want to have to bring everything up again after two years, and awesome for the defendant who may be in custody. (Ministry of Justice staff)*

Many stakeholders felt that it would be challenging (and perhaps unfair to the defendant) to reduce these timeframes further, particularly given (relatively low – and potentially declining) levels of judicial resourcing, coupled with the high, and increasing numbers of sexual violence cases coming to court.

> *You'd never get the time down to six months. There's just too much work coming in the front door – and we can't control that. It may be that there is much more awareness now of what's acceptable and what's not, complainants being more resolved to come forward and make a complaint, victims; advisory groups encouraging people to come forward. (Judge)*

> *It would always be good to reduce it even more but because of the nature and the seriousness of the charges and sometimes there's issues that have to dealt with before the trial, it would be pretty difficult to get it much below eight months. (Ministry of Justice staff)*

I'm not sure that we could [make it any quicker] because everyone has got to engage with the file, they have to get the facts and properly prepare, and they have to have time to achieve that. They have to look at potential defences, and I think that's a legitimate concern. (Judge)

Other Factors Impacting on Timeframes to Trial

In addition to enhanced case management and changes to the way that trials are scheduled, other factors that have contributed to reduced time to trial include:

- **The provision of additional judicial resource**

  Prior to the pilot being implemented, timeframes for jury trials in Whangarei were increasing due to a lack of judicial resource. The addition of a fourth jury warranted judge, although not one that presides over SV cases, has meant that timeframes have been able to be reduced within the pilot. Perceptions in Whangarei are that timeframes to trial have approximately been halved within the pilot and that the additional judicial resource has made this possible.

Even if, with the previous resource, more priority was given to SV, it wouldn't have been able to give the amount of time we've had with the extra resource. So definitely the resources had made the biggest difference in reducing the timeframes. (Stakeholder, Whangarei)

- **Buy-in from those involved**

  One of the key factors for the effective delivery of the pilot has been identified as the 'buy-in' from those involved in it and a wide range of stakeholders consider this critical to its successful operation.

We were lucky here that we got buy-in from the Crown, the defence, the Police, the judiciary, it's really important…and that open communication. (Stakeholder, Whangarei)

The goodwill is there, from all parties actually, the judiciary, court staff, defence and Crown. (Stakeholder, Auckland)

Everyone knows what they've got to do, that's the human side of it. You can put in place any rules you like but unless the human beings buy into them, it's not going to work. I think that the human beings have bought into it up here because we've been doing it so long and we see it doesn't compromise. (Stakeholder, Whangarei)

We've got a group of people downstairs who are passionate about [the pilot], and whether they are short staffed or not, or whether they're fully resourced or not, we never hear about it, because it always gets done. (Stakeholder, Whangarei)

4.8 Impact of Case Management on Trial Delays and Adjournments

Most stakeholders report that the enhanced case management has also reduced delays[25] and adjournments[26] to trials within the pilot.

> *Progress has definitely been made in terms of adjournments and delays. Before the pilot what I would notice is that I'd have three trials booked for one month and then one would happen. In the last five months of 2018 I think 80% of my booked trials happened when they were supposed to happen and for a few, there might have been a couple of days' delay. And the couple of trials that were postponed happened again in a timely fashion. I think that's amazing. (Victim adviser/advocate)*

Stakeholders report that procedural adjournments are uncommon within the pilot. When adjournments do occur, they tend to be related to new evidence or complainants coming to light shortly before the trial or once it has begun – factors which cannot be anticipated by parties.

> *My observation is that there's less likelihood of adjournments because they've had the education training with the lawyers at the outset and asked them to give the highest priority when they're assigned to an SV pilot case. And similarly with the Crown. We've had discussions with the Police to talk to them about advancing at the earliest possible stage the discovery side of things. (Stakeholder, Whangarei)*

It was also noted earlier that there is an expectation within the pilot that parties are prepared for the scheduled trial date, having alerted the case manager and judge early to any potential issues that may impact on the trial going ahead as scheduled. For this reason, judges are less likely to grant adjournments to trials, particularly for 'last minute' applications by counsel.

> *It would need to be a very, very good reason for an adjournment to a sexual case. It's really got to be something massive for it to be adjourned. (Stakeholder, Whangarei)*

> *Adjournments in the pilot are so rare as to be a non-event. The lawyers know now that they would rarely asking for an adjournment from me. (Stakeholder, Auckland)*

Stakeholders working directly with complainants note that the reduction in delays (and timeframes) has been beneficial for them, allowing them to work proactively with a smaller group of complainants – and therefore spent more time with each:

[25] A delay occurs when a trial commences on a date later than when it was originally scheduled for
[26] Adjournments are postponements called by the presiding judge when they deem matters are not ready to proceed.

> *My caseload has always been big but it's always good to get a case finished. When a case is postponed, I'm still holding that person, and I've got new people coming through. All the trials that happened last year that finished – it was a miracle. It was nice to be able to close them and be able to move on. (Victim advisor/advocate)*

At a practical level, fewer delays and adjournments is advantageous for SVVAs as less of their time to required to move complainant witnesses around the courthouse.

In contrast however, one defence counsel suggests that, because of the insufficient time defence now have to prepare their case, adjournments may actually increase as things come to light that they overlooked, didn't have time to consider fully or were not made aware of until the last minute. Identifying that a defendant will need support from a communications assistant is identified as an example.

> *We were so constrained for time and it didn't become evident until quite close to the trial date that he had communication problems. So we didn't have time to organise the communications assistant and get to the bottom of what his communication difficulties were before the trial was on us – so we had to ask for an adjournment. It's just not having enough time to get those boxes ticked. (Defence counsel)*

4.9 Impact of Case Management on Complainants

Long waits to reach trial have been identified as a cause of significant distress for complainants in sexual violence cases as they feel unable to 'move on' with their lives until the case has concluded. In addition, last minute delays have a considerable impact on complainants' emotional and mental wellbeing[27]. Complainants would generally like cases resolved as quickly as possible.

Overall, timeliness of outcomes for complainants has been improved by reduced timeframes to trial and a perceived increase in rates of guilty pleas[28], which has the additional benefit to complainants of not having to give evidence.

Whilst stakeholders viewed the reduction in timeframes as a key success of the pilot, the general feeling among complainants was that the wait times were still too long. Being unfamiliar with the court process, some complainants anticipated that they would get a court date relatively quickly and so the actual timeframe – albeit considerably shorter than prior to the pilot – often came as an unwelcome surprise. The complexities of trial scheduling are little understood by complainants, or at least not of concern to them when faced with waiting for a trial to proceed.

[27] ibid
[28] See Section 6.1

It's really hard to remember stuff when it's been a year. And it's hard to be put on the stand and you can't remember things. (Complainant)

Such a long time to wait for it to happen. (Complainant, 11-months from arrest to trial)

It went on for a long time. You can't get on with your life until it's over. (Complainant)

[Officer in Charge] told me many, many times not to worry, that the defendant was not dangerous. But somehow that never really sunk in. I heard him but I didn't comprehend it. So the whole time I was waiting for the trial, I was on edge. I wouldn't go out by myself, I would always make sure I got a park close to wherever I was going. That went on for about six months while I waited for the trial. It took forever. (Complainant)

It is also important to note that, for complainants, their perceived 'wait time' also includes the time taken by the New Zealand Police to investigate their case before a decision is made to press charges – a period of time outside the scope of the pilot.

It can now be less than a year from first appearance to trial, which represents a big reduction [in time], but it could actually be 18 months, two years since the actual event took place. There is one I know of that's been three years. That's too long. Victims need to come into court, do what they need to do and move on with things. (Victim advisor/advocate)

However, one complainant reported being "*both good and bad shocked*" that their case came to trial considerably more quickly than the police had suggested it would. When informed that her trial was scheduled for six months' time rather than a year as she had been initially informed, she was appreciative of the opportunity to *"get it over and done with quickly*" but also a little unnerved initially about having to recall everything again so soon.

Indeed, some stakeholders who work directly with complainants also noted that, 'as short as possible' wait times may not always be beneficial for complainants. For some, a longer time frame is required due to the complexity of the personal issues that need to be addressed (particularly psychological issues) before they feel ready to give evidence. These stakeholders suggested that while reduced time frames has benefits for many complainants, for others, having flexibility in relation to time frames was more important:

> *The timing needs to be driven by [the victim's] needs. Sometimes survivors need a lot more preparation and support and there are a lot of things to be addressed before they can go to court. For example, one [survivor] was still in love with the man who basically attempted to kill her. There was no way she was going to court – "I understand his behavior. I'm the only one who understands him." I worked with her for three months, but she still wasn't ready to go to court. And I had another [survivor] who was so scared that someone was going to kill her that she had a psychotic episode. So there are some that need a bit longer to be ready. (Victim advisor/advocate)*

One complainant included in the evaluation felt poorly treated by the justice system because of a delay in the trial proceeding due to the late filing of a Section 44 application, and subsequent appeal, and a further delay in trial date being scheduled to accommodate the defendant's personal circumstances. This left her feeling that the defendant's needs took a higher priority to hers.

While complainants were appreciative that their trials had started when they were told they would, most assumed that this was a given; none were aware that there was a possibility that their trial could have been substantially delayed. However, those who work directly with complainants were very aware of the benefits of trials starting on time, in terms of the minimisation of stress and anxiety associated with last-minute delays to trails going ahead.

4.10 Impact of Case Management on Other Participants

Impact on Defendants

In the same way that complainants put their lives 'on hold' when awaiting the trial, the same is true of defendants. Whilst defendants were not consulted directly as part of this evaluation, defense counsel noted that the reduced time to trial was welcomed by defendants, particularly those on bail or in custody.

> *[Prior to the Pilot], my client could be in custody, they could be sitting in prison for two and a half years and then come trial time, charges might be withdrawn, or they might be found not guilty. In the same way long time frames are frustrating for complainants, they are frustrating for defendants too. (Defence counsel)*

Impact on Defence Counsel

Defence counsel concur with other stakeholders that there are advantages to expediating the justice process for serious sexual violence cases. However, there is a perspective among some defence counsel included in the evaluation that the reduced timeframes to trial may or do compromise their ability to effectively defend their client.

Since the pilot, the pressure to get these trials on sooner - you feel like you haven't had that reflection time, where you think, "I'm going to go down this path, I'm going to weigh this up". Because my job is to test credibility. I need time to reflect, based on my experience and what is the best way to get a fair trial for my client, and somehow we feel like we're just being a bit squeezed of that time. (Defence Counsel)

It's great for defendants and complainants to get the matter sorted as soon as possible, but the timing puts huge pressure on getting things ready, almost too much pressure. Sometimes you just need time to consider and mull and things have to emerge, and you lose that process a bit because everything is supposed to be organised by case review. Frequently it's just not possible to do that. (Defence counsel)

One of the problems that we've got now is that the pressure is so great that things can get missed, pre-trial applications don't have time to be heard. I think the speed that [the pilot] is running now is almost unmanageable - whereas before [the pilot] it was probably at the other end of the scale, it was too long. I think it's swung too far. (Defence counsel)

Counsel who defend serious sexual violence cases are often heavily booked for many months in advance and have highlighted that there may be times that they need to turn down a client for lack of time availability.

The days of having a trial 18 months later are gone. You take on a sex trial now, you're going to have this within nine months, so you better look at your diary and if you can't fit in a two week trial and you're going to be really tight for prep then you have to say "Well I can't do it." (Stakeholder, Auckland)

The ability for counsel to prepare a defence, including locating and speaking to potential witnesses, and pursuing expert evidence, is limited until full disclosure and formal written statements have been received from the Crown. Some defence counsel have indicated that reduced timeframes to trial could impact on their ability to mount a robust defence and therefore potentially impact on a defendants' rights to a fair trial. In contrast however, other defence counsel felt that if lawyers were so busy that they felt it was compromising the quality of their work, they needed to review their own workloads and how much work they were taking on.

Something that might have had a year to prep, now you might have six months to prep. But from my perspective, just don't take the trial date if it's not workable. (Defence counsel)

Stakeholders who work directly with complainants raised concerns that insufficient time to prepare their case could become a reason used by defense to appeal a guilty verdict and forcing a re-trial – risking secondary victimisation of the complainant.

.Impact on Police

Feedback from stakeholders working directly with complainants suggests that, as part of the pilot, victim impact statements have been requested earlier on in the process than previously. These stakeholders note that they have been requested to inform sentence indication hearings, but there is also a sense for a greater administrative requirement – that is, to have everything required included in the complainant's file as early as possible.

The request to have victim impact statements prepared earlier appears to have put a significant demand on the New Zealand Police, with victim advocates reporting being approached regularly to ask if they offer assistance in preparing these.

> *I've observed that the detectives have been a lot more under the pump to get cases together for the Crown. All of a sudden, I was getting asked to do things that I'd never been asked to do before, administrative things. For example, I do victim impact statements with survivors that I've gone to trial with. Then all of a sudden, I was being requested before trials, and for clients I wasn't even working with. All of a sudden we were being inundated with requests. (Advocate, Auckland)*

Impact of Case Management on ESR

ESR (Institute of Environmental Science and Research) provide analysis of samples on behalf of the New Zealand Police, including for DNA and toxicology results, in the same way that they provide this service for non-Pilot SV and other criminal cases. The pilot has had no impact on ESR. At the time of interview, they had received two sets of samples coming through to them for analysis that had been flagged as cases within the pilot. However, they were aware that the actual number is likely to have been much higher, with other samples not having been flagged by the New Zealand Police as 'SVCP'. ESR process all samples within a standard 45-day turnaround time and would have done so for any SVCP samples, without knowing that they were for pilot cases. This standard 45-day turnaround time appears to have had no impact on timeframes for justice processes within the pilot.

5 Trial Management

Key Findings

- Support provided to complainant witnesses remains largely unchanged under the pilot, all complainant witnesses being assigned a SVVA after the defendant's first appearance. Support from independent victim advocates is also accessed by some.
- Pre-trial meetings, reduced wait times at court, feeling supported by the professionals involved, and cross-examination being closely managed means complainants are generally better prepared for attending trials, thereby reducing anxiety around the process.
- Overall, judges are more alert to unacceptable questioning and the impact on complainant-witnesses, and intervene more frequently when necessary; however, this is variable between judges and trials.
- Stakeholders perceive that trial quality has improved, with less adjournments necessary, better quality evidence being heard and fairer trials.
- Technology issues are reported to have led to trial delays.

This section covers all aspects of the pilot related directly to preparing the complainant for trial (in regard to court education, the need for interpreters or communication assistants and giving evidence and conducting the trial itself.

5.1 Preparing Complainant-Witnesses for Trial

Guideline 12. The judge will enquire into, and make such necessary directions as to, support persons under s 79 Evidence Act 2006.

The Role of Sexual Violence Victim Advisers

A Sexual Violence Victim Adviser (SVVA) is assigned to all complainant witnesses in sexual violence cases going through the court system, although this is not a pilot initiative. The SVVA's first contact with the complainant witness is typically after the defendant's first appearance and will continue through to case disposal. Previous research[29] has identified that complainant witnesses appreciate the availability of SVVAs and report that their assistance helped them to cope with the experience of dealing with the justice system, both in terms of undertaking administrative functions and also in helping to alleviate some of the anxiety and distress associated with having to give evidence as a complainant of sexual violence through the provision of information, guidance and practical support (such as providing escorts through the court building). SVVA roles include:

[29] Gravitas Research and Strategy Limited (2018) **Improving the Justice Response to Victims of Sexual Violence**. Ministry of Justice: Wellington

- Providing information about the court process, rules and regulations – including delivering court education.
- Providing a 'touch point' within the court from first appearance to case disposal – someone the complainant witness can contact to have questions answered or to be kept updated on court proceedings.
- Keeping the complainant safe from the offender whilst in the court building, including meeting the complainant witness on arrival.
- Providing a waiting environment – and waiting experience – that is as positive as possible for the complainant witness and their supporters prior to them giving their evidence.
- Keeping the complainant witness as calm as possible whilst in the court environment.
- Being available to talk through the days' court proceedings.

Stakeholders perceive that the pilot has put considerable pressure on the SVVA role. Prioritising sexual violence cases and having dedicated sexual violence courts means that multiple sexual violence trials run simultaneously in Auckland.

> *Some weeks all trial courts in this courthouse will be sexual violence pilot trials. So you might have five courts going. That's five complainants or more. That's a lot of people for the victims' advisers to take care of. They are running between courts, trying to be present, moving complainants around the building in a safe and careful way. We're getting our trials on-stream quicker, they are happening, they are not being delayed. We're getting through them and that's increasing demand for victim advisers among other things, and I don't think that's being reflected in the resourcing. (Judge)*

The Role of Victim Advocates

HELP Auckland is an Auckland-based specialist provider of sexual violence support services. The organisation provides a range of services to sexual violence survivors and their whānau including a call-out service to support people through police interviews and forensic medicals, face-to-face therapy sessions and a 24/7 telephone counselling helpline. In addition, the support service receives funding to provide in-court support in Auckland, however this service is not available in Whangarei. HELP Auckland's Justice Services Counsellor assists survivors in understanding the nature of the court process and in developing skills to minimise secondary victimisation through the justice process.

The services provided by HELP Auckland to complainant witnesses are unchanged under the pilot. These include (but are not limited to):

- Accompanying the complainant witness to view their EVI and/or attend the court education visit – to offer emotional and practical support.
- Work with the complainant witness prior to the trial to develop strategies for remaining calm and focused during the court proceedings, including offering advice and guidance about how to navigate the cross-examination process.
- Advocating for the complainant witness to ensure all modes of evidence are made available and assisting the complainant witness to make an informed choice around how they give their evidence.
- Helping complainant witnesses make informed choices about in-court support – including providing this support themselves if required (so sitting with the complainant witness in the court room or CCTV room whilst evidence is given).
- Advocating for the complainant witness's safety and privacy while in the court building (which may include physically escorting complainant witnesses to and from the witness waiting area).
- Explaining, and assisting with preparation of, the victim impact statement.
- Being on-hand to answer questions about court procedures (including communicating with other court staff and the Officer in Charge as required).
- Offering emotional support to both the complainant witness and their supporters throughout the trial (and sentencing if required).
- Arranging ongoing counselling or psychotherapy services post-trial if required.

While there may appear to be overlap between the SVVA role and that of victim advocates, both stakeholder groups note that one of the key strengths of the victim advocate role is that it is independent of the Ministry of Justice. This allows victim advocates to actually advocate for complainant witnesses – against Ministry staff if necessary - to ensure that complainant witnesses' rights are upheld and any trauma caused by the justice process is minimised. SVVAs felt that the pilot (and indeed all sexual violence cases) should be sufficiently funded to allow each complainant witness to be assigned both an SVVA and a victim advocate.

Quantitative data compiled by the Ministry of Justices shows that HELP Auckland provided victim advocacy services in half of the pilot cases observed by SVVAs. Both sexual violence-specific (e.g. Rape Crisis) and general victims' support groups provided victim advocacy services in 24% of cases in Whangarei and 7% in Auckland.

In-Court Support

The allowance for in-court support for witnesses in sexual violence cases, and the rules governing this role, have not changed as part of the pilot. Complainant witnesses included in the evaluation were generally aware that they were able to have a support person with them when giving evidence. Some had chosen to do so, nominating a family member (typically an extended rather than immediate family member, often on the advice of the SVVA or victim advocate). Others chose supporters from a support agency that they had established a rapport with. Participants who opted not to have a support person present were often aware of the limitations of the support person's role (for example, the support person not being able to sit within sight of the complainant witness or not being allowed to offer physical support or comfort) and therefore questioned its value.

One complainant witness reported that she had initially nominated her husband to be her support person but that this had been actively discouraged by the SVVA. She felt frustrated by this, noting that she and her husband had a good understanding of the role (and limitations) of the in-court support person and felt that she should have been trusted to be able to make an informed decision as to who supported her. (In the end, she decided that having no in-court support was a better option than sitting alongside a stranger from Victim Support).

Communication Assistance

Guideline 12.8 At the case review hearing the judge shall enquire into and make appropriate direction as to the need for communication assistance under s 80 of the Evidence Act (2006).

Communication assistance is available to defendants and witnesses, to assist them in understanding the proceedings and in giving evidence. Within the context of the pilot there has been an increased uptake of communication assistance as stakeholders have become more aware both of the existence of the service (some stakeholders report not having been aware of the service pre-pilot) and of the positive impact it can have on quality of evidence and the experience of participants. Possibly because the service was so new to many, almost all stakeholders included in the evaluation (including judicial participants) made some mention of their increased awareness of, and impact of, communication assistance on the pilot, hence the extent of the information provided in this section.

This is in contrast with other forms of support such as SVVAs and victim advocates whose roles and level of involvement have not changed as part of the pilot. Communication assistants were not mentioned by complainant witnesses included in the evaluation as none had accessed this service.

Communication assistance involves pre-trial assessments for complainants and defendants to report on their individual communication support needs within the context of the court (both in terms of expression and comprehension) and assisting with setting guidelines for how the trial should operate in order to meet the complainant's and defendant's communication needs. Communications assistants also work with defendants to help them fully understand the charges and the evidence against them. Some stakeholders believe that this has contributed to an increase in pre-trial guilty pleas.

> *The sexual violence court has really opened up the use of communications assistants. We've become way more aware of [the service] now and using it for complainants. Defence counsel have become more aware of it and they're getting their defendants assessed. Everybody is perhaps getting a fairer go than what they would otherwise have had as we become aware of these resources and vulnerabilities that all parties can have. (Stakeholder, Whangarei)*

> *[Communications assistants] are so beneficial. They are a good use of resources absolutely. Imagine a little one sitting in front of the screen and not knowing how to answer a question, and knowing that their support person cannot say anything? They need an advocate, someone who can help them express themselves. (Victim advisor/advocate)*

In addition, communication assistants can provide guidance to counsel on how to phrase questions appropriately for the age and capabilities of the individual complainant or defendant, which further reduces the need for judicial intervention in questioning and elicits better quality evidence.

> *Counsel are now prepared to sit down with these people and formulate appropriate questions, which means that I can sit there very quietly and say nothing. (Judge)*

Communications assistants report that the pilot's enhanced case management approach has positively impacted on the service's ability to deliver support. For non-sexual violence trials, the benefits of communications assistants are currently not being fully realised as they are often brought onto a case too late. They note that some non-pilot court staff perceive their role as similar to an interpreter, in that they can just walk in on the first day of the trial and provide 'communication support.' However, in reality, support at trial can only be successfully provided if the assistant has a comprehensive understanding of the complainant or defendant's communication needs – which requires extensive pre-assessment and planning. Ideally communications assistants need to be brought in at least two to three months prior to trial. As part of the pilot, the need for communications assistance is flagged at the case review hearing so the service is notified early, particularly in Auckland.

Some of the really challenging cases that have been in the Sexual Violence Pilot Court, we've had the judges and lawyers say to us at the end "We couldn't have done that without you. It was really difficult, that person had lots and lots of needs that were difficult to manage." (Communications assistant)

Currently, a limitation of the use of communication assistants is their availability as there is a limited pool of people able to carry out this role.

At the moment our poor communications assistant is backlogged, but there's nothing we can do about it. She can only do so much work, so it's a resourcing issue. (Stakeholder, Whangarei)

Some defence counsel raised a concern that, when assistants sit alongside complainant witnesses in the CCTV room, they have essentially become another support person or advocate for the complainant-witness. Defence counsel note that it is essential that communication assistants remain independent.

I have no issues with communications assistants being used in trials by the Crown, but I do have an issue with the practicality of having one of them in the CCTV room. For example, in the CCTV room they sit alongside them and will say things like "Can you please ask that question in a different way as it is upsetting her." It's not for [the communications assistant] to judge if the victim is getting upset and to inform the court. They may be upset because they realise that they are about to be found out, or you're getting to a crucial part of the cross-examination that they don't want to give evidence about. Defence lawyers have to ask certain questions and to have the communication assistant interrupting your cross examination/flow really undermines the defence case sometimes. They're meant to be impartial and be assisting the court, but in reality they become a support person for the complainant and that's not their role. (Defence)

Communication assistants themselves acknowledge that there is potential for the boundaries of the role to be blurred. Communication assistants comment that, while they don't necessarily need to be legally-trained to successfully carry out their role, legal training around the implications of the decisions that they might make would be welcomed.

If we are going to be intervening when somebody is giving evidence, we need a really clear understanding about where our role starts and stops. We're not there to change the content, we're not there to put the questions, we're not there to be leading in any way. Yet often we're called upon to adapt the language. We need to know that we can't just jump on and put a question that we think the lawyer might be trying to say when maybe we don't know what they're really trying to ask, and suddenly we've introduced another whole thing into the trial that no-one intended. That would be awful. (Communications assistant)

One defence counsel also reported an experience of being told by a communications assistant that they couldn't ask certain questions in the way they wanted to, but felt they were not offered any advice or support on how to revise the questions. Defence counsel perceive that there is a risk to fair trial if defendants do not receive the same level of communication assistance as complainant witnesses.

Court Education

Guideline 19.1 The judge will enquire into and make such necessary directions about whether court and witness facilities have been explained to the complainant, and inspection has been arranged.

Court education visits, facilitated by SVVAs, are not unique to the pilot, being made available to complainants in courts around the country. However, the pilot guidelines state that judges should enquire and make directions as necessary to ensure that it has been made available.

The Ministry's quantitative data analysis shows that almost all complainants received court education at the pilot courts[30]. There is no pre-pilot quantitative data on which to make a comparison, however earlier research suggests that participation rates in court education was already high among complainants in SV trials[31].

Court education generally occurs in the days leading up to the trial. In some instances, it can be arranged to take place at a more convenient court for those who live in locations other than that which the trial will be held in. During the court education, complainants are shown the layout of the courtroom, where each participant will be sitting, the waiting area, and from where they will be giving their evidence – usually the CCTV room. In Whangarei, complainants are also shown the rear entrance to the court where they will enter from. The education tour provides an opportunity for complainants to familiarise themselves with the court and its facilities and to answer any questions relating to court processes.

The court education tour was welcomed and well-received by complainants included in the evaluation, who appreciated being able to get a mental picture of the courtroom prior to trial so they could better prepare themselves. They were also able to get reassurances that they would be physically safe from the defendant during the court process. Overall, the court education helps to alleviate some anxiety associated with the court process.

[30] Data collected by SVVAs show 95% of complainants in the pilot received court education at the pilot court prior to the trial; others received education at another court or declined education.
[31] Gravitas Research and Strategy Limited (2018) **Improving the Justice Response to Victims of Sexual Violence**. Ministry of Justice: Wellington

One defence counsel questioned why court education is not offered to defendants, noting that they are often equally as vulnerable as complainants and often under extreme stress.

> *I believe [complainants and defendants] should get the same opportunity – to know where they are going, who's going to be there. I think it would perhaps help relax them. I think people forget how extraordinarily stressful it is being on trial, particularly for sexual offending. There's so much at stake, the penalties are just so massive. (Defence counsel)*

Meeting with Prosecution

The Crown Law guidance for prosecutors in relation to victims of crime[32] includes that prosecutors should personally meet with a victim[33] of sexual offending to discuss the giving of evidence, the court process and any issues which are likely to arise. Previous research[34] found that this meeting (at other courts outside of the pilot) often occurred only days, or sometimes hours, prior to the trial commencing, and that the practice of prosecutors meeting complainants was not consistent.

Although not one of the SVCP guidelines, Crown prosecutors report consistently meeting with complainants in the period leading up to the trial, sometimes more than once. This is confirmed by quantitative analysis. [35] It is common for prosecutors to attend the court when the complainant is being shown the court facilities by the SVVA, as an additional opportunity to build rapport, answer any questions, clarify anything with the complainant that they might need to, and help to put the complainant at ease. Sometimes the Officer in Charge, victim advocate and/or the communications assistant (if involved) will also attend this meeting.

Crown prosecutors view meeting with complainants as not only respectful but also beneficial from an evidence perspective.

> *I'm asking these people about really personal horrendous things that have happened in their life. How can I expect to ask them that as a complete stranger that they don't know? You need them to answer as fully and as openly as they can. I'm going to have a better chance if they know me. It's that rapport with them that helps them feel at ease and enables them to give better evidence. (Crown prosecutor)*

[32] Crown Law. Victims of Crime – Guidance for Prosecutors (2014). 16.3.
[33] The term 'victim' is used here for consistency with Crown Law.
[34] Gravitas Research and Strategy Limited (2018) **Improving the Justice Response to Victims of Sexual Violence**. Ministry of Justice: Wellington
[35] Observations of the trials in the pilot by the SVVAs show that 95% of all complainants had a meeting with the prosecution before the trial.

All but one of the complainants included in the evaluation had the opportunity to meet with the prosecutor prior to the day of the trial. They appreciated the opportunity to have processes clarified, ask any questions and were therefore able to feel more at ease on the day of the trial.

> *I went in and met the main prosecutor. I was able to know about the process and what was expected of me and also what I could expect of them. The detective was in on that meeting and explained "I won't be talking to you on that day in court." They explained the situation and that the lawyer will be there and just going off my statement. It was really helpful… forming some kind of rapport. (Complainant)*

Complainants also noted feeling more prepared for what they would experience in court as a result of the meeting with the Crown prosecutor.

> *That meeting was highly important to me. I was comfortable with her being the prosecutor and I felt relaxed with her. By the time I got into the courtroom, she has walked me through everything. Obviously, I didn't know what she was going to ask me, but I had a fair idea and she prepared me for how the defence was going to attack me. Without that, it would have been horrendous. (Complainant)*

The one complainant who had only met with the Crown prosecutor very briefly on the morning of the trial expressed a desire to have met them earlier and also to have had more opportunities to build rapport:

> *I only met the Crown very briefly. My mind was so occupied with the trial I am not sure I took much in. He just told me that he would be asking me the questions. But I didn't quite understand his role and what he does, and that he is not my lawyer, he is the Crown. I wish I had a little bit more time with him, just so that I could understand what he was after. I didn't really understand how the system works. It would have been good to understand that beforehand, maybe a week before, not ten minutes before. (Complainant)*

Watching Evidential Video Interviews

Guideline 19.2 The judge will enquire into and make such necessary directions about whether a complainant intends to view his or her evidential video interview before the trial.

Having child and vulnerable witnesses able to view the recording of their evidential video interview (EVI) prior to the trial (rather than simultaneously with the jury) was part of the protocol in Whangarei, and as such has been a routine practice prior to the pilot. This initiative was implemented in acknowledgment that it may have been up to 18 months since the EVI was conducted and, particularly for young complainants, watching the evidential interview recording can elicit a range of negative emotions and so being cross-examined immediately afterwards is not ideal.

> *We didn't see much point in having everyone in court watching the complainant going through the agony of watching what they had said [in the EVI] perhaps a year ago. Particularly for young women – 12, 14, 16-year-olds – they are highly self-conscious and highly embarrassed. (Judge)*

It was considered less re-traumatising for complainant witnesses to allow them to view their EVI in advance of the trial (usually a week prior) in a more comfortable environment (typically either in the complainants' area at court or at the Crown prosecutor's office). Non-simultaneous watching of the EVI means that, rather than having to sit through the entirety of the EVI in one sitting, complainants can take breaks and have time to process it.

> *They see the video and they refresh themselves on what they've said. They have to go back to that place of what happened, but they've been able to do it privately. They haven't had to do it in front of strangers, while everyone else is watching, which is scary and intimidating. (Victim advisor/advocate)*

> *My sense is that [complainant witnesses'] anxiety is less where they watch their video the week before. The court staff organise for you to watch your video, it refreshes your memory then you can go home and think about it and take it easy. In my view, [complainant witnesses] appear to be – I wouldn't say relaxed – but less stressed than you would normally see if they have to watch the video in court then woof, get right into being asked questions. (Judge)*

Analysis of the SVVA trial observations conducted by the Ministry of Justice shows that in almost all cases within the pilot (unless there is an exceptional and compelling reason to the contrary), the complainant's evidence is presented to the court by way of pre-recorded EVI. However, some stakeholders note that, in Auckland, at the start of the pilot, this was not done consistently (some prosecutors still preferred to have the complainant watch their video in court ('as this is how it has always been done') but by the time of the evaluation in early 2019, pre-viewing of the EVI was common practice.

Complainants welcomed not having to watch the recording of their evidential interview simultaneously with the defendant and jury. It has usually been many months since the recording was made and so being able to process what they had just watched, rather than going straight into giving evidence, was preferable.

> *It's good watching it before because then you could process it…especially after a year after. (Complainant)*

Meeting with the Judge – and Defence Counsel

As practices that began in Whangarei as part of the protocol for child and vulnerable witnesses, judges in Whangarei routinely meet the complainant in the waiting room prior to the trial commencing to introduce themselves. In Auckland this practice is more variable, with judges usually meeting with child witnesses but not always meeting with adults.

> *Often, they don't know who's who or what our role is and all they see on the [CCTV screen] is an old guy with white hair and a gown, just sitting there. But if they see you first, they know you're human, and that helps. (Stakeholder, Whangarei)*

Some judges are ensuring that meetings with complainants are audio-recorded by the court-taker for later transcription, to ensure against any suggestion by defence counsel of interference.

Among those judges who do not meet with the complainant prior to the trial, a concern that the meeting may set false expectations for the complainant of their relationship with the judge is cited as the reason.

> *I think it's just being too familiar for me personally. This is a contest and I've got to be the referee of it. I'm not their mate and I'm not the defendant's mate. If you go and see, particularly a young person, they are going to be anxious. They are going to be looking to you to look after them but that's not my role. I'm not their mate, I'm not their friend. I'm just uncomfortable with the whole idea. (Judge)*

Comments from both complainants themselves and stakeholders who work directly with them suggest that meeting the judge in person prior to trial makes complainants feel valued in the justice process and mitigates feelings of anxiety or intimidation that might arise for them in such a formal and unfamiliar environment.

> *Judges are meant to be scary, but he wasn't, he was very nice. He didn't mention anything about what would happen. He just said he's the judge and it's nice to meet us. It was a lot easier than sitting there looking at people you haven't met before. (Complainant)*

> *The judge walked in and he just introduced himself. It was pretty informal. That was really good. It meant that I felt at ease because I knew who he was. I didn't feel as nervous. And I was happy because he seemed like a good judge. (Complainant)*

> *I think it's particularly important for the young [victims]. They go in and they're so nervous. They think of the judge as very much like God and they are really intimidated by that. The judge will come in and introduce themselves and say "look, you can take a break any time you want. Just let me know. I'm the boss of the court." The judge is really cool and casual, and you see [the complainant] completely relax. (Victim advisor/advocate)*

It was also noted that complainants were often more informed – and therefore more empowered – after having met the judge. Information provided by judges included how the complainant should refer to them appropriately and making them aware that they were entitled to ask for a break and how to do this. In addition, those who work directly with complainants feel that the quality of the evidence that they are able to give is enhanced by having met the judge as they tend to be more relaxed.

Two complainants who were not offered the opportunity to meet with the judge prior to the trial (including one in Whangarei) noted that this would have been beneficial to them:

> *That would have been nice, because a lot of people are really fearful of the judge. (Complainant)*

> *It would have been good to meet the judge before I went into court, or at least have seen a picture of him, because on the CCTV you have somebody come up on the screen and you have no idea who they are. (Complainant)*

Whilst those working directly with complainants fully support judges meeting with complainants prior to the trial, they note some instances where the timing of these meetings has been arranged at the convenience of the judge rather than the complainant.

> *I've had it twice I think where a judge has wanted to meet a victim, a witness, but meet her at 11 o'clock or 11:15 and have them come back at 2:15 pm. So the victim is made to come in early, just to do that. (Victim adviser/advocate)*

Defence counsel may be invited to accompany the judge, and some choose to do so, viewing this as a both a courtesy and a way of presenting as less intimidating to the complainant.

> *I know a lot of defence lawyers who are a bit critical about meeting with the victim beforehand, but I just think it's a civil courtesy if they're not going to be in the room that we meet with them and they know who we are. At least they know who is asking them the questions rather than the big bogeyman on the other end of the video link. I don't see how that's either an inconvenience or something that's inappropriate, as long as it remains professional. (Defence counsel, Auckland)*

Other defence counsel report not seeing this as necessary or appropriate – but do call for defence to at least be notified as to when and where the visit will take place. (One defence counsel also suggested that the defendant should be present in some way (although not seen by the complainant necessarily) when the visit is done so they are fully informed on what's happening.

Those working directly with complainants also reporting having mixed views as to the appropriateness of complainants essentially being forced to meet the defence lawyer during these sessions. Complainants often perceive the defence lawyer as an extension or a key supporter of the defendant and can find it confronting and traumatic to have to meet them face-to-face.

> *Having the judge come in to meet the survivor, that makes the judge more human. Bringing the defence lawyer in, I'm not so sure. If the survivor's thinking is "they're the one that is going to cross-examine me, they believe the abuser, they're trying to get the abuser off …" then having them in that little room with them is going to be very confronting. I think survivors should be asked "do you want the defence counsel to come or do you just want the judge to come in and say hello?" There needs to be some discussion beforehand, not just "hello, I'm the judge and here's the defence lawyer." (Victim adviser/advocate)*

> *I think meeting the defence lawyer would have made me more nervous. No, I don't think I would have liked to have met him. (Complainant)*

Finally, one defence counsel questioned why judges make pre-trial visits to complainants but not to defendants, stating that all parties should receive the same treatment.

5.2 Complainants Attending Court for Trial

Timing for Giving of Evidence

Long waits at court to give evidence are stressful for complainants. Within the pilot, wait times are being minimised by complainants generally being asked to arrive at court as close as practical to the time that they will be called to give evidence.

> *The less waiting time that victims have, the better. The more that they sit there and wait, the more their anxiety builds. If they could come in at 9.30 am for a 10 am start, that would be great. (Victim advisor/advocate)*

In Whangarei, complainants are always asked to attend on the second day of the trial (usually a Tuesday), to be called as the first witness of the day. This practice is more variable in Auckland, but Auckland SVVAs report that they will always advocate for the complainant to be called on Tuesday morning wherever possible.

It was noted that on occasion, this meant that court would finish early on the Monday with unutilised court time during the afternoon. However, there was agreement among stakeholders that being able to avoid the complainant having to wait at court and then potentially give evidence late into the afternoon was preferable (although some defence counsel questioned the cost associated with this unused court time).

If necessary, Monday afternoon may be used to discuss any last-minute pre-trial issues. Some defence counsel suggest that this time could be used for police to provide evidence or for the appearance of expert witnesses.

However, protocols around arrival times at court are not consistently applied and when complainants are waiting for long periods of time, this is stressful for them. Given the high level of anxiety that many complainants experience while they are waiting, even relatively short time frames can seem long:

> *It was myself, the Victim Adviser, my partner who came and the Officer in Charge. We were all just sitting in the waiting area. It was a very long wait and you get more and more nervous as you have so much time to think. (Complainant)*

> *There's a lot of waiting involved. You just want to get it over with. It must have been 9.30 am or 10 when we came to the court and we probably waited another hour and a half. It took ages and we were just sitting there in the room, stewing, thinking about it. (Complainant)*

One defence counsel felt strongly that the protocols around the timing of giving evidence should apply equally to defendants – for example, that they should be allowed to start their evidence first thing in the morning also.

> *The premise is that [defendants] are innocent until proven guilty, so one wonders why they're not given more attention. We hear all about complainants needing breaks, having to go home, coming back when they are fresh. The same should be afforded to the defendant. They shouldn't be giving evidence starting after lunch for example. No-one wants the complainant to be retraumatised, but the defendant's been charged with an extraordinarily serious offence where their liberty is at stake for goodness knows how long. It's really stressful for them. (Defence counsel)*

Entry to Courthouse

As noted in previous research[36], concerns around seeing the defendant and/or their supporters in or around court is a cause for increased anxiety associated with the court process. When this can be avoided, complainants are able to remain calmer and more able to focus on their evidence.

[36] Gravitas Research and Strategy (2018). Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences. Ministry of Justice: Wellington.

Although not set out in the guidelines, the practice in Whangarei is for the SVVA to meet complainants on the day of their evidence at the rear (staff) entrance to the court. There is a huge sense of relief for complainants when they are shown the entrance they will use (this occurs when they attend the court education prior to trial date).

> *[Officer in Charge] assured me that the defendant was the type of guy who wouldn't do anything. He told me many times that I would be fine. But it still plays in your head doesn't it? So I was quite nervous about seeing [the defendant] somewhere. But because I went through that back door [of the courthouse], I felt safe. I knew I wasn't going to see him just walking along the corridors. I think that was very important for me. (Complainant))*

In contrast, while complainants at the Auckland District Court are escorted by SVVAs to the privacy of the complainants' waiting area, at the request of court security, they are still required to enter the courthouse via the main (public) entrance.

> *I thought that maybe I would bump into him. I was petrified that when I showed up he would be there. (Complainant, Auckland)*

Often complainants are being picked up by a police officer and escorted into the courthouse on the day of their evidence. For complainants, particularly in Auckland where there is no utilisation of the staff entrance for complainants, this can have a positive impact.

> *[Police officer] came and picked me up and took me into the court and took me right into the complainant-witness support area… and that was huge, because it's really daunting. (Complainant)*

Waiting Area

Waiting space for complainants at Auckland District Court is limited with currently only two private rooms in the Victims' Advisers area available. When there are multiple trials on, considerable 'juggling' reportedly takes place. SVVAs note that occasionally complainants will be placed in staff offices to wait. This impacts on productivity as staff can't do any office-based work whilst complainants are there.

In Whangarei, the waiting area for complainants has been furnished and decorated to provide a more welcoming, warm environment. The newly-renovated space now includes a couch, DVD player, toys, and books. Complainants in Whangarei noted that the space where they wait to give evidence, and from which they give their evidence via CCTV, has been made to feel 'homely' and comfortable. From complainant-witness recounts of their experience, it appears that the physical environment has a considerable impact on overall wellbeing of complainants at court.

There was a couch, everything to make you feel like you're just waiting for someone. They've tried to make it colourful and nice - posters on the wall, made it much more reassuring, that it's normal, like it's not something to be worried about. (Complainant)

Complainants in Auckland also noted that the waiting room met their needs and expectations, with access to appropriate facilities.

We got free WiFi which was great, so we just watched Netflix and did a bit of work. It was lovely. We were able to bring our own food in, so it was a nice relaxing environment. (Complainant)

However, one complainant noted that, when she arrived at Whangarei court on the day she was due to give her evidence, she wasn't invited into the room immediately on arrival as she anticipated she would have been; rather she was made to wait in the public meeting area until just before she was due to give evidence. Whilst the public meeting area was quiet on the day of the trial and she was accompanied by the Officer in Charge, she expressed concern at potentially having the defendants' supporters waiting alongside her.

Whilst complainants were appreciative of having 'safe spaces' within the court, experiences of being traumatised by coming into contact with the defendant, particularly at break times, were still reported.

During the break he was still allowed to leave [the court]. His bail conditions are that he is not to have any contact with me. We were going up the street, we were just parking the car and he came up to us. I think he thought he was going to have lunch with us. I thought it was a bit weird that he was allowed out actually. It made me feel really angry. I told my lawyer and he told the Judge, but nothing really happened. I also had to walk past him and his lawyer when they were standing outside, and one time I was in reception and he passed me there as well. (Complainant)

5.3 Complainants' Evidence

Guideline 12.4 At the case review hearing the judge shall enquire into and make appropriate directions as to alternative ways of giving evidence.

Mode of Evidence

Judges can accept an application that a witness may give evidence in an alternative way: either from within the courtroom but unable to see the defendant (i.e. use of a screen), from an appropriate place outside the courtroom, or by way of a pre-recorded video.[37] Within the pilot, judges enquire and make appropriate directions at case review on the mode of evidence for complainants.

[37] NZ Government, Evidence Act (2006), Section 105

It appears that there is an assumption by parties and judiciary that all complainants in SV trials will be questioned either via CCTV (most commonly, especially in Whangarei) or, in Auckland, with a screen in place. Trials within the pilot at Whangarei have also had complainants appear via AVL from other locations. Defence counsel rarely oppose the use of an alternative mode of evidence.

> *If there is an EVI [evidential video interview], we nearly always do it by closed circuit TV. Ninety-nine percent. (Stakeholder, Whangarei)*

Victim advocates view the fact that mode of evidence is now routinely addressed – and addressed early in the process – very positively. They note that, prior to the pilot, they spent a lot of time advocating on behalf of complainants regarding applications for CCTV or screens, and meeting with the Crown to discuss safety and wellbeing issues. Under the pilot, mode of evidence is considered as a matter of course and parties are more open to the alternatives, rather than just assuming complainants will appear in person.

> *[Pre-Pilot] we used to have these ridiculous conversations about how the victim would present much better in the courtroom than in the CCTV room. "She's a pretty white girl and she presents really well and the jury need to see how distressed she is, even if she does end up vomiting into the rubbish bin because she's so anxious." I don't see that much now. There are a lot more conversations around those alternative ways of getting evidence. (Victim advisor/advocate)*

Auckland stakeholders who work directly with complainants note that they would like to see the use of CCTV as the 'default' mode of evidence for all Auckland sexual violence cases in the same way as it is in Whangarei.

> *All victims of sexual violence should give evidence via CCTV. How it's done in Whangarei, I think that's brilliant. (Victim advisor/advocate)*

There is a strong preference among complainants to not have to be physically present in the courtroom, but rather to be able to give evidence via CCTV. Although those included in the evaluation did not have a reference point for giving evidence from within a courtroom, there was an assumption that it would be less stressful.

> *Not saying all those questions and answers in front of everyone in the room was a lot more comfortable. (Complainant)*

One complainant included in the evaluation was surprised that she was asked to provide a rationale for why she preferred to give evidence via CCTV rather than it being the default.

However, some complainant witnesses noted that they would like to be given a choice as to their mode of evidence, and of the nine complainant witnesses interviewed for the evaluation, at least four reported not giving evidence via their preferred mode. One complainant-witness had opted to give evidence with a screen between themselves and the defendant, however on the day of the trial a screen had not be made available. She reported being told that there would be a need to move courtrooms in order to have a screen and so opted to give evidence in the 'normal' way. Another complainant, who gave evidence from in court with a screen, would have preferred to give it via CCTV:

> *They did say that the judge usually isn't keen for that [evidence via CCTV] so I didn't really push it because I'm quite passive in that sense. It's quite distracting having the jury there and it's quite intimidating having the lawyer there. They made me feel like judges usually aren't keen for the video unless you're a child. (Complainant)*

In addition, the complainant wasn't aware until the day of evidence that the defendant would be able to see her with the screen in place, which she did not like.

Another had opted to give evidence in person in court (as she felt she would have been too nervous using CCTV) but had not been aware that she could have requested to have a screen between herself and the defendant.

> *If I had been offered the option [of a screen], I probably would have taken it. I don't think I would have said anything different but I wouldn't have felt so nervous. [The defendant] was a bit close. A bit too close for my liking. He was almost sitting next to me. (Complainant)*

The final complainant interviewed noted that court staff just assumed that she would have wanted to give evidence via CCTV whereas she actually wanted the opportunity to be face-to-face with the defendant.

> *[I opted for CCTV] because that's what was recommended. I was told it would be nicer for me as the victim so I just went with that. There was also a comment made that the jury might find it strange if I give evidence in the courtroom. I did think "why is that?" I would have liked to have seen [defendant's] face, I would like to see his reaction to how what he did … his reaction to my side of the story. (Complainant)*

CCTV Resources

For the duration of the pilot to date, Whangarei has had only one witness room equipped with CCTV. When there have been simultaneous trials where vulnerable witnesses are giving evidence by this mode, court staff have needed to create a make-shift additional CCTV room. However, the current courthouse facility upgrade has been designed to provide for two CCTV rooms. (Note: Vulnerable witnesses from non-SV trials may also give evidence via CCTV).

> *A couple of times we've had to boot staff out of their offices to set up equipment. We have really struggled with that a bit. There has been a bit of juggling. (Ministry of Justice staff, Whangarei)*

Auckland has had three CCTV rooms and when there are multiple pilot trials running simultaneously where complainants are to appear via CCTV, there has needed to be extra equipment outsourced (which stakeholders note is expensive). The lack of CCTV resource is also cited as a reason why adult complainants in Auckland typically appear in court with a screen.

One of the guidelines to be followed for best practice in sexual violence trials states that the testing of electronic equipment e.g. CCTV used for complainant's evidence, is to be done in court as part of the trial process. In both Auckland and Whangarei, on-going IT issues continue to cause problems, resulting in brief trial delays – either while the technology is being fixed or the trial is moved to a different courtroom (which can be disconcerting for the jury). For example, Auckland's courtroom 13 is notorious for having issues with the connection between the CCTV room and courtroom (and was witnessed by the evaluation team during observation).

One complainant (who had not met the judge or defence counsel prior to the trial) reported finding using CCTV very confusing as she was unsure of who the different parties in the court actually were/the roles of those who appeared on her screen. She also noted that, at times, the camera did not switch over to whoever was speaking which made proceedings difficult for her to follow:

> *I would see someone in front of me on the screen and I would have no idea who this was. I didn't know who the judge was or the defence lawyer. Then sometimes they didn't switch [the camera] over to the other person. So somebody else would talk but the person I saw on my screen wasn't talking so I didn't know who it was. Then someone else would say something and I would hear it but because I couldn't see them, I didn't know whether the question was meant for me. So there would be silence and then they would say "Mrs. [complainant name], did you just hear me?" "Yes, I did hear you, but I wasn't sure that question was for me." So that was a bit confusing. (Complainant)*

Other Technology Issues

In Whangarei there have been issues with the sound quality of EVIs being played when they have been edited (for example to remove inadmissible content). It appears that there is sometimes a compatibility issue between the New Zealand Police's editing system and the court audio-visual system and in one incident a whole day of trial was lost trying to work out how to get the evidential interview played. In some cases it has been played to the jury on a laptop, which is not ideal.

> *We are working with the Crown and Police [on the issue] as the DVD and the quality is not compatible with some of our equipment. It's not been very audible. I might have had one trial postponed for that, but it's meant that sometimes the evidence has had to be read, rather than the DVD being played – which isn't ideal. (Stakeholder, Whangarei)*

> *I probably haven't had a single trial where the CCTV or something hasn't malfunctioned. Just stuff breaking down, not working. Sometimes one of the TVs won't be working, sometimes there's no sound. (Stakeholder, Auckland)*

> *[Technology] causes endless frustration and delays. You have to say to the jury "I'm terribly sorry. The technology is not working again. Go and have a cup of tea and we will try to sort this out." (Judge)*

Whilst not strictly a technology issue, Auckland court staff note that the screens currently available are very cumbersome, heavy and can be difficult to set up. The high turnover of court registry staff means that often court staff don't know how to operate the screens, with incidents of the screens being set up back-to-front being reported.

Offering Breaks During Evidence

Guideline 21. The judge is to ensure flexibility for the evidence of the complainant recognising the complainant's age and capacity, including regular breaks, early/later start and finish times.

The guidelines include that judges are to ensure flexibility for the complainant's evidence, recognising their age and capacity, including having regular breaks. It appears that judges manage breaks within their courts differently to one another. Some judges reportedly closely watch complainants for signs of fatigue or emotional overload and direct the court to take a break – often these will be 'mini-breaks' of 3-4 minutes, with the jury staying seated.

> *Nobody can concentrate more than 25 minutes and, in the past, we expected children to come in at 10 o'clock and have a break at 11.30, so for an hour and a half. They were expected to listen to adults using complicated language, which we no longer allow. So we have mini-breaks, where everybody stays in court, [the CCTV] is switched off, and the child can get up and walk around, come back, refocus and away we go again. (Stakeholder, Whangarei)*

Other judges will either ask complainants directly whether they need breaks or wait for a complainant to request one.

As a result of their court education visit, and in many cases, having been informed by the judge during a pre-trial meeting, most complainants including in the evaluation were aware that they could request breaks and how they should go requesting one. However, it was noted by some complainants and stakeholders, that often a vulnerable witness will not exercise this right, due to a lack of confidence and/or fear of disrupting proceedings. A complainant in Auckland who reported giving evidence in court for at least three hours recalls being told that she could request breaks when she needed them, however found it uncomfortable to do so.

> *They said that you can [ask for a break], but I'm not very good at putting myself first. I think I did have one break. (Complainant)*

A complainant who was pregnant at the time of giving evidence also reported being reluctant to ask for a break:

> *I probably could have done with one when I was being cross-examined by his lawyer, but I would not have felt comfortable asking for a break. Everyone's just looking at you. I wasn't going to ask in front of everyone. I didn't want to ask for a break and hold things up. Even if I had been feeling really sick I think I still would have pushed on. (Complainant)*

Those working directly with complainants report that pilot judges generally seem better at picking up on a complainant's heightened anxiety and emotion and seem more open to asking them if they would like to take a break. However, these breaks are often declined – despite complainants needing one (for similar reasons that they don't initiate a break).

In the Whangarei court, a system had been developed whereby a complainant-witness appearing via CCTV can point to a sign on the table – which the court registry officer can then show to the camera – in order to request a break. This provides a good compromise for requesting breaks without the need for complainants to vocalise the request to the judge, which they may feel nervous doing.

In addition, judges are now aware of timing around evidence for children and won't allow evidence to go on after 3pm but will rather call them back the next day if required.

5.4 Counter-Intuitive Evidence

Guideline 24. The order of prosecution witnesses is a matter for the prosecutor, but judges should ensure that expert evidence (medical, counter-intuitive) is addressed to actual trial issues.

Traditionally, expert evidence has been presented to the court (either by witnesses in person or by way of written statement read to the court) towards the end of the trial. This includes evidence referred to as 'counter-intuitive' (that which addresses common 'rape myths'[38]). There was a concern among some stakeholders in Whangarei that jury members may have already formed their opinions by the time that they hear this evidence and so it may have little impact. For this reason, prosecutors in Whangarei now commonly present counter-intuitive evidence first in sexual violence trials in anticipation that the jury may pay more attention to it- and ideally use it as a filter through which they interpret the subsequent evidence presented.

> *I was always worried that by the time the counter-intuitive evidence was called, the jury had already watched the complainant be cross-examined with questions like, "If you're father had been doing this, you would have told your mother straight away, wouldn't you?". So by the time they heard that evidence, they'd already made up their minds. So now the jury is educated before they hear the cross examination. (Judge)*

In order to ensure that the expert evidence is addressed to actual trial issues, defence in Whangarei are asked to provide to the Crown, prior to the trial, with the areas of the complainant's evidence that they intend to challenge.

This does not appear to be practice in Auckland. However one stakeholder acknowledged that this would be of benefit and would be supported by at least some judiciary. Crown and defence would need to agree on the scope of and extent of expert counter-intuitive evidence prior to trial, which often occurs already when the evidence comes in as a written statement previously agreed to by both parties.[39]

> *Being led as the first evidence so the jury gets that information before hearing the complainant's evidence, there's a real benefit to that. (Judge)*

[38] Hill, Holly. Rape Myths and the Use of Expert Psychological Evidence. www.austlii.edu.au/nz/journals/VUWLawRw/2014/23.pdf

[39] NZ Government. Evidence Act (2006). Section 9.

Where counter-intuitive evidence has been presented first, this has helped the complainant feel validated.

> *So the day of the court case, a lady prior to us giving our evidence had told the jury, the judge and everyone in the court room a little bit about why people come out so late about giving evidence. It was nice to know that someone had done that for us, so that people knew where we were coming from and why we were speaking out. Also, one of the questions I got asked was why I left it so long. It made me feel a lot less nervous about giving my answers. The lady had told them how, as kids, you haven't processed it, it's not until you're older that you understand. (Complainant)*

5.5 Cross-Examination

Guideline 23. The judge must be alert to and intervene if questioning of any witness, particularly complainants, is unacceptable in terms of s85 Evidence Act 2006.

Previous research[40] found that being cross-examined by defence lawyers is frequently the most difficult aspect of the justice process for complainants of sexual violence, with many complainants completely unprepared for how traumatic it would be. This aspect of the justice process appears to be a common point of secondary victimisation for many complainants:

> *It's hard enough for the victim being there, going through the detail of what happened to them, bringing back all that trauma. But then to be called a liar or have to go through their previous sexual history, or get told it was their fault, they wanted it, or they were drunk, that's just extra trauma. Some people say they get revictimised. I think that's true. (Victim advisor/advocate)*

Within the pilot, the guidelines include that judges must be alert to, and intervene if necessary, if questioning of any witnesses, particularly complainants, is unacceptable. This includes questions which the judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand.

At least one judge noted that, when made aware of this guideline during the judicial training, they were initially concerned that it may lead to a more 'sterilised' approach to questioning complainant witnesses, thereby limiting the defense counsel's ability to put their case. It was felt that the perceived 'blunting' of the way questions could be asked was in conflict with the adversarial nature of the jury trial system.

[40] Gravitas Research and Strategy Limited (2018) **Improving the Justice Response to Victims of Sexual Violence**. Ministry of Justice: Wellington

However, these perceived concerns proved to be unfounded as the Evidence Act[41] is very clear on the type of questions that are not permitted, and the guideline has been 'applied generally' rather than prescriptively (as one judicial stakeholder noted has been the case in the United Kingdom for example).

Some judges will outline their expectations of counsel, in regard to questioning of witnesses, at the outset of the trial:

> *There is an extent of judicial management. I always tell counsel that I'll be watching their questioning closely. From both sides. It needs to meet these parameters. The whole goal is to be understandable. (Judge)*

Stakeholders observed that judges are managing cross-examination of witnesses more closely:

> *[Judges] are stopping defence from badgering [the victim] too much. They're putting a stop to it. [Since the judicial training], they seem a lot more mindful of the victim. It's not very often now that I see a support person go "Oh, that was brutal." (Victim advisor/advocate)*

> *There's a new way of cross-examining complainants and it's a much better way, and I think the pilot has bought that out. (Crown prosecutor)*

Others highlighted that there has been less judicial management of this aspect of trials than they were expecting, or would like to see:

> *Unfortunately, there's still a lot of questioning in cross-examination which I think is inappropriate and there's not as much control over the questioning as I thought there was going to be when it started. (Stakeholder, Whangarei)*

Judicial Variability

Stakeholder and complainant accounts suggest that there is considerable variability in the types of questioning that judges will allow in cross-examination of complainants, with some being much more aware of, and alert to, questioning that risks secondary victimisation than others.

> *When a witness is asked peripheral or unrelated matters as if they've done something wrong, as a tactical effect, some judges [intervene] but sometimes they let it happen and that increases the trauma for the witness. (Crown prosecutor)*

[41] NZ Government. Evidence Act (2006). Section 85.

Once you get to know the judge or what the judge perceives as appropriate or inappropriate, you get a lead on that. But there's such variance between different judges as to what they think's appropriate or inappropriate, and it also seems to change depending on their view of the case. (Defence counsel)

One of the problems is that there's a protocol about cross-examination – which some judges do follow and some don't. It's not written in legislation so it's very arbitrary. They are sort of 'judge-made' rules that some judges stick to and others don't. I'm not sure that it's been that successful. (Defence counsel)

Some stakeholders suggest that the variation may be due to some judges being more concerned about appeals and/or some defence lawyers being keener to appeal, on the basis of judicial intervention in cross-examination.

[Judges] don't want to be criticised as being interventionalists so they will tend to be the arbiter who doesn't really get involved because of a fear that, on appeal, there is going to be some criticism that they have interfered too much and they have interfered with the way that the defence counsel has run. So I think they're a wee bit hamstrung in my view as well. (Defence counsel)

There are three trials that I presided over where there are appeals before the Court of Appeal and they are all around either my intervention to stop inappropriate questioning or comments that I made summing up about submissions. [By comparison], I haven't had an appeal against any jury trial that's been a non-sex trial. (Judge)

Some defense counsel also felt that judges tend to be more lenient on lawyers they know well (as they may have a greater sense of where particular lines of questioning might be leading).

I have noticed that some defence lawyers seem to get away with more. Some judges are consistent with every single defence lawyer that comes into the courtroom whereas others seem more afraid or less interventionalist. I wonder if it's because the defence lawyer has a reputation for appealing? Sometimes I am observing a case and I think "[Judge], you were amazing last week in the other trial and here you are today, letting this person repeat themselves, confuse the witness, letting [victim] keep going even though she is obviously upset and losing focus." (Victim advisor/advocate)

One defence counsel, based on personal experience, perceived that juries can find the new method of questioning confusing and difficult to follow. They noted one case where they had followed the pilot protocol perfectly, but the jury had communicated with the judge that they felt the defence lawyer was confusing the complainant by asking questions she couldn't understand.

One defence counsel perceived that variation in how the cross-examination guidelines are applied can only be eliminated through legislating the cross-examination requirements more explicitly.

Complainants' Experience

Although being cross-examined may remain the least comfortable aspect of the justice process for complainants, there was an increased sense that lawyers were 'just doing their jobs' and fewer remarks (compared with baseline data[42]) of complainant-witnesses feeling bullied and harassed by defence counsel.

> *She was just doing her job, I don't have any beef with her. So her job is to try to discredit a witness, I understand that. (Complainant)*

There was also a sense among complainants (and stakeholders who deal directly with complainants) that judges were intervening when question lines became unacceptable. It is reported that complainants felt empowered by the fact that judges were paying attention to them.

> *The judge actually had to tell him off when he was questioning me, like "That's enough, that's got nothing to do with it, you've already got those answers so don't ask that again." The judge had to remind him to stop going off topic. (Complainant)*

> *She was leading me down a line of questioning where the only answer could be "Yes", whether it was yes or not. And he pulled her up three times on it and stopped that line of questioning before I could answer. (Complainant)*

> *[Defence lawyer] was trying to push me. He pushed it too much sometimes and the judge called him up on it a few times, saying things like "that's not necessary." That was good, really good. I didn't think the judge was taking my side or anything, but he was making sure everything was fair. (Complainant)*

> *I have noticed that judges are much more likely to tell defence counsel off. Having the judge say "You have already asked that question. You can't keep asking the same thing in different ways", that's such a powerful message. What is says to the witness is that the judge is paying attention to what's going on, showing they are aware, that they are involved, that they are present. Cross-examinations are always very tough but it just makes a huge difference when [judges] do that. (Victim advisor/advocate)*

[42] Gravitas Research and Strategy Limited (2018) Improving the Justice Response to Victims of Sexual Violence. Ministry of Justice: Wellington

However, there were still reports by complainants of being questioned by defence in a way that they felt was designed to confuse them or "trying to trick your mind":

> *Most of mine were trying to make you say what he wants you to say. Very intimidating, I didn't feel comfortable. (Complainant)*

> *They have a tactic to ask leading questions. (Complainant)*

> *Some of it comes [across] a bit accusatory… automatically, your fight or flight system will be activated and that's going to make whoever's on the stand defensive. And if the jury is seeing someone that is defensive, I guess that person's going to be less believed. (Complainant)*

5.6 Sentencing

Sentencing was generally not discussed with evaluation stakeholders or complainants because this stage of the process is not covered in the guidelines. However, one stakeholder working directly with complainants spoke about a pilot trial had been held at the Auckland District Court (and included all the trial management initiatives discussed above) but, at the request of the trial judge, sentencing was moved to Waitakere District Court. It was reported that the complainant had found this move extremely traumatising as they were unfamiliar with the court environment at Waitakere (no court education was done prior to sentencing), the small size of the courtroom and design of the seating meant that the complainant would have had to walk past the perpetrator's supporters to read her Victim Impact Statement, and sentencing was ultimately adjourned as the necessary submissions were not received by the Waitakere court staff in time.

> *[Pilot] cases should never be transferred out to another court from where the trial was heard. Sentencing is as stressful as the trial in lots of ways because you don't get to watch from the CCTV room. You're in the courtroom and the offender's family is trying to sit right behind you and their supporters are there and some of them might hate you. It's very heightened sensitivity. Why would we make someone – after we have brought them here [to Auckland District Court] and given them court orientation so they feel as comfortable as possible – send them somewhere else? I want to make sure we never do that again. (Victim advisor/advocate)*

5.7 Impacts of Trial Management on Trial Quality

Most stakeholders perceive that pilot practices are resulting in better quality trials. Parties are more prepared to go ahead with the trial on the scheduled date and there are fewer delays and adjournments due to unresolved issues, and an improved quality of evidence being presented to juries, which many perceive as producing fairer trials.

Everyone's focused on the trial. All the preliminary stuff that could perhaps distract or lengthen the duration of the trial has gone, it's been dealt with, so everyone's actually quite focused on 'where the ball is'. Once we hit trial day, everything tracks pretty well. (Judge)

It makes for better evidence, makes for a fairer trial. No counsel wants to cross-examine a witness who is tired and just saying "yes" because they want to get out of a room. If the witness is able to give the best evidence, then it's fairer for both sides. No counsel should be asking inappropriate questions, it's not just one-sided, because you'll get a fairer case. (Stakeholder, Whangarei)

The trials are run much more on logical, reasonable grounds now, and the complainant is at their best in terms of being fresh and well informed. We see a witness who gives better evidence than if we didn't have these [Pilot] measures in place. (Judge)

It was noted by a stakeholder in Whangarei that, despite complainants not being called to give evidence until the Tuesday, and there being more frequent breaks during evidence, trials are more efficient.

We have found that even with no questions on a Monday afternoon, starting Tuesday, that [trials] are not taking longer. If anything they're shorter because cross [examination] is fixed. The lawyers aren't tired, they're a bit more direct, a bit more focused, they've had time to prep, so it's working quicker. (Stakeholder, Whangarei)

Due to the timing of complainant's evidence and prior meeting with prosecution and judge, stakeholders noted that complainants appear to be better prepared for giving evidence, hence able to give better quality evidence.

By calling the child on the Tuesday morning, they're bright eyed, bushy tailed, they've watched the EVI, they know what's happening, they've done the court education, they meet me, we get underway. My impression is that they are much better prepared. (Judge)

Stakeholders also note that reductions in the time to trial (due to enhanced case management as discussed earlier) also improve the quality of the evidence provided as parties' ability to recall information about the event is better.

People's memories fade. In the past we have had complainants being cross-examined in detail about various things and they can't remember, so that tends to create a doubt in the jury's mind because the jury have been told multiple times that they need to be sure. If you have got a witness sitting in front of them saying they can't remember this and they can't remember that, even if it's completely peripheral and has no real bearing on the charge at all, it can create a doubt in the jury's mind. (Judge)

However, one stakeholder noted that the insufficiency of the CCTV resource in Auckland and the consequent need to move trials around courtrooms (including mid-trial) can be disruptive for all parties – including the complainant who may have had their court education in a different court room – and impacts on the overall quality of the trial.

You are constantly having to change rooms depending on who needs the CCTV. You're shifting within the trial – which isn't the end of the world but nor is it good practice I would have thought. It's disruptive, it's a waste of time and resources having to lug everyone from one court to another. It's not very efficient. (Defense counsel)

5.8 Impact on Complainants

Complainants in pilot cases are generally better prepared for what to expect during the trial, which makes the process less daunting. In addition, most complainants included in the evaluation felt that the trials were managed in a way that did not cause them to be retraumatised by the process. These outcomes appear to be due a combination of factors, including having met key participants prior to the trial commencing, not having extensive waits at court to give evidence, feeling well looked-after by the professionals involved, and cross-examination being closely managed by judiciary.

[I had] a lot of support from different people in the court. It was a lot easier than what I had thought, way easier than I had built in my head. I was thinking the worst of all situations and it was nothing like that. (Complainant)

It was never going to be a pleasant experience, but it was as good as it could be. [I was treated] totally with respect - and the judge was lovely too. (Complainant)

We have had a couple of cases that have been re-trials, so where the first trial was under the 'old system'. The feedback we are getting is that complainants are commenting of how much less stressful, how much more comfortable they felt with these new ways of proceeding being employed. [Giving evidence] is always a stressful experience but it's certainly a less stressful experience than before [the Pilot]. (Judge)

5.9 Impact on Defence Counsel

Some defence counsel included in the evaluation are supportive of the tighter constraints being implemented by judges for cross-examination of complainants and there is a perception among these that an experienced lawyer should be able to extract evidence in a way that does not aim to confuse or upset the complainant. Some, but not all, defence counsel are now conducting cross-examination in pilot trials in a way that is considered acceptable to judges, thereby minimising the need for intervention:

> *It's raised awareness of the way in which cross-examination is undertaken, and it's showing up, linguistic tricks, double negatives, tagged questions - they're being eliminated; just making questions more understandable and taking it in a chronological, logical sequence, not jumping all over the place to confuse. (Defence counsel)*

> *I've actually noticed that counsel have got on board. They seem to understand, particularly with the young complainants. They're very aware. (Judge)*

> *I think cross-examining a complainant in the way in which the guidelines promote just means you're likely to be more effective, so I don't see a downside. (Defence counsel)*

However, despite most making attempts to conform to the guidelines, some defence counsel report finding the 'micro-managing' of the cross-examination process by some judges frustrating, claiming that regular interventions from judges can adversely impact on rapport counsel builds with the witness.

> *Some judges intervene a lot and that's really irritating. Some are very particular about every tiny little question and how it's asked. The interfering judges can really stop the flow of the cross-examination. You build rapport with the witness and if judges are constantly interfering then you lose that, you lose that flow. (Defence counsel)*

Defence counsel raise concerns around how defendants might be viewed by juries in cases where they perceive there to be too much intervention by a judge in cross-examination of a complainant. Some defence counsel feel that trial management now places too much emphasis on the wellbeing of the complainant, which may inadvertently send signals to the jury supporting the Crown case, thereby impacting on the fairness of trials. It was suggested that greater use of adjournments - so that issues around questioning of witnesses can be discussed with counsel in the absence of the jury - is preferable.

It's important to recognise the needs of the complainant, but on the other hand it needs to be balanced against how that might be perceived by the jury. I think there is a real concern that the judge's intervention, if they're not careful, could be perceived to be pro-complainant or anti-defendant. (Defence counsel)

The dedicated pilot judges are hyper-sensitive to the needs of the complainant, which I think is fantastic. But they're not so hyper-sensitive to the impact of that on the jury and/or the impact of that on the defendant or counsel. (Defence counsel)

Judges have been so pro-complainant that at times they have forgotten the needs of the defendant or how that approach might appear to the jury. It's hard to come away from one of those hearings without feeling that the judge has certain sympathies towards the complainant and I think judges need to be careful about what they portray to the jury. (Defence counsel)

Defense counsel are also conscious of how juries may perceive a lawyer who is constantly being stopped or corrected by a judge, and also note that constant intervention can result in them losing their train of thought.

Despite the guidelines, there is wide variability in how defence cross-examine complainants. Some Crown prosecutors expressed frustration that particular defense counsel are still unwilling to adapt and have continued to question complainant witnesses in an inappropriate way, sometimes without intervention from the judge.

[Defence counsel] is an example of counsel who [cross examines] in a respectful and courteous way to complainants. There are other lawyers who fail [on that] and the complainant's experience is dreadful. (Crown prosecutor)

There are the ones that still want to do it the old adversarial confrontational manner, and that's traumatic. I think that judges need to come down harder. (Crown prosecutor)

Some stakeholders have raised concern regarding the level of experience and competence of some defence counsel involved in serious sexual violence trials, noting that this can impact on the way that they conduct their cross-examination of complainants.

It is a specialist role, and in my experience, there's been some defence lawyers who have just rocked up to this sexual violence trial, with a child complainant or intellectually disabled complainant, because of their own level of competency they're not equipped to be cross-examining in that environment. (Crown prosecutor)

It was suggested that there may need to be further training in this area within the defence bar.

> *We can learn a much better way as defense advocates on dealing and tightening up and being better at what we do. We need workshops and try to help people cross-examine in a much more effective and efficient way. We've got to come away from how it used to be 30 years ago and upskill and have consistency. (Defence counsel)*

There is also a perception among some defence counsel that some judges appear reluctant to apply the guideline to the cross-examination of defendants.

> *The Crown, when they cross-examine the defendant, get away with a hell of a lot more than what we get away with cross-examining the complainant and that's because the complainant has been protected. I have got no problem with that but there needs to be some kind of consistency. (Defence counsel)*

6 Other Impacts of the Sexual Violence Court Pilot

Key Findings:

- Defendants are aware of the trial date and evidence earlier, resulting in more, and earlier, pre-trial guilty pleas. Complainant witnesses are positively impacted in that some don't have to engage with the court at all.
- Time frames for non-pilot trials do not appear to have been adversely affected by prioritisation of sexual violence trials – due to using non-SV trials as 'stand by' trials and the adoption of pilot processes on non-pilot cases.
- Judges and counsel report workload pressures due to the 'frontloading' of work to meet the new requirements of the case review hearing.
- Psychological and emotional impacts on all parties working exclusively in the area of sexual violence is a concern. Staff 'burn out' is a risk.
- Pilot guidelines have been adopted consistently by Auckland and Whangarei courts, however the way the guidelines have been operationalised has varied – to fit the culture and physical characteristics of each court. Both courts consider the pilot to have been successfully implemented at their site.

6.1 Impacts of the Pilot on Disposal Outcomes

A higher rate of pre-trial resolution by way of guilty pleas is an unexpected positive outcome of the pilot. Stakeholders attribute this to more comprehensive case management, greater case discussion between parties, trial dates being set earlier, and pre-trial applications determined in advance of the trial date - so defendants know earlier in the process exactly what evidence they are going to face. The work done by communications assistants in helping defendants fully understand the charges and the evidence against them is also believed to have contributed to an increase in pre-trial guilty pleas.

> *We certainly get more guilty pleas than we ever use to get pre-pilot. A sexual violence case, you very, very rarely got a guilty plea in the old days. (Stakeholder, Auckland)*

> *The defendant now knows in advance what evidence they are going to face at the trial. This assists them in making a decision about whether they in fact go to trial. They know what the weight of evidence is and they can make a decision on a plea. It's taking people from that sort of 'never never land' and putting them in a tunnel that they can't get out of. (Judge)*

We've had more than one case that hasn't needed to proceed to trial when the defendant has understood the charges fully and the evidence. There hasn't needed to be a trial when they actually understand, and they can give informed instruction to counsel. Sometimes people just don't understand what they have been charged with. (Communications assistant)

In the pre-pilot system, the lack of certainty around when a trial will actually take place has allowed defendants to 'put off the hard decisions' around how they will plead. However, with trial dates now set early, the reality of having to face a jury may be prompting defendants to request sentence indications and decide to change their plea.

What we used to do is, you'd have case review, you'd go to callover, you might be given a date, you might be given a standby [trial]. People won't make hard decisions if they know they can put them off. Now from case review, the trial gets its trial date – which is significant. It's a big deal because people then know they can't get out of it. It's all going to happen then, there's no avoiding it, it won't go away. (Judge)

Anecdotally, from the judiciary, the rate of resolution of sexual violence cases was quite surprising... maybe it was the mentality of the defendant knowing that they're going to a firm trial. (Crown prosecutor)

Stakeholders also perceive that, under the pilot, guilty pleas now happen earlier, with fewer coming on the morning of the trial. Stakeholders note that guilty pleas continue to come at the same point in the process – that is, once the defence case has been built – but because this now happens so much earlier in the process, guilty pleas are made earlier also. This has a positive impact on complainant witnesses in these cases in that they don't have to engage with the court at all (as opposed to guilty pleas on the morning of the trial – by which time the complainant witness will have undertaken court education and may be at the court awaiting the start of the trial).

In addition, it was noted that increased transparency around what the evidence and arguments actually are before the trial has led to either plea changes or charges begin withdrawn after case management discussions between Crown and defence.

Everything has been laid out, there's no surprises coming out. We're not going to wait and see what the complainant says because we know exactly what they're saying. So, sometimes counsel say, "Well look, the case against you is pretty strong", and so because of that case management, we now get more guilty pleas. It can always work against the Crown as well where the judge will say, "It's going to be an uphill battle trying to prove this". So it works both ways. (Stakeholder, Auckland)

6.2 Impacts of the Pilot on Cases Outside the Pilot

Impacts on Timeframes

Counter to what stakeholders initially anticipated might occur during the pilot, comments from stakeholders suggest that there has been no significant negative impact on timeframes to trial for cases outside the pilot.

> *There has been no negative impact at all [on non-pilot] jury trials. Our outflow of trials in Auckland, from two years ago is up 60%, which is extraordinary given the volumes that we deal with. (Judge)*

One of the reasons suggested for this is that sexual violence cases are reaching resolution prior to trial more frequently (as discussed above) so non-pilot trials which are now scheduled as stand-by trials are being re-allocated to the court.

> *Where [early] resolution [of a pilot case] happens, something else will slot in behind it. I think a benefit of the pilot trial process is it may have actually resulted in a greater likelihood that other matters will be dealt with – which you might think is counter-intuitive, but it's the sense that I get of it. (Judge)*

> *[Increased guilty pleas] then allows us to bring on standby trials which aren't pilot trials. It's just worked out that, through other means, we've been able to deal with pre-trial applications and get those completed at a high rate on the day they were set down. Once there was some resolution and the lawyers started to realise that the standby trials were going to get on, the domino effect of pleas occurred. (Judge)*

> *It hasn't had a detrimental impact [on timeframes], but our guilty pleas have skyrocketed on those other [non-pilot] cases]. (Crown prosecutor)*

Adoption of Pilot Processes Outside the Pilot

Comments made by stakeholders suggest that one of the impacts of the pilot has been that the protocols around more proactive and focused case management are now beginning to be adopted across all cases. In particular, a number of stakeholders talked about the benefits of more thorough case review. This minimises the risk of either party coming to trial with unresolved matters that need to be dealt with.

> *As a result of our experience with serious sexual violence court [case reviews] I think we are now being a little bit more thorough in the other jury jurisdictions. It's had a flow-on effect. (Stakeholder, Whangarei)*

In addition, the practice of trial callovers by teleconference has been adopted by judges for some cases outside the pilot.

Teleconferences were only ever meant to handle the callover aspect of the pilot, but then it morphed into this general call over on non-sex cases, which I thought was really good. Get things out of the courtroom, you could deal with things faster. (Crown prosecutor)

One stakeholder noted that, prior to the implementation of the pilot, all trials were scheduled at callover stage. Once the benefits of scheduling trial dates at case review hearing within the pilot became apparent, the practice was adopted in Auckland for non-pilot cases.

6.3 Impacts on Those Delivering the Pilot

Increased Job Satisfaction

Despite the high demands of the role, SVCP case managers reported getting greater job satisfaction from being able to proactively manage and be the single point of contact for case files than working as part of a pool of registry staff as they had done pre-pilot. They have more direct liaison with judges and counsel in this role and feel a greater sense of ownership of the files that they manage. They reported a strong sense of satisfaction at being able to have a positive impact on timeliness of disposal for sexual violence cases and, therefore, on the experience of complainants.

The pilot has been awesome. It was a bit of a change but I know a lot of the cases inside out because we end up following them right from when they're laid now. You're better informed, you can answer questions better. I get to have more contact with Crown and defence. I think I have a good rapport with them now because we're constantly talking about the case. I feel like everyone is heading down the same track now. (Ministry of Justice staff)

Workload Pressures

There are mixed perspectives on whether the case management changes have had a significant impact on overall workloads of stakeholders. Judges generally felt that there is the same amount of work to do, but there is a little more time pressure due to the shorter time frames. Occasionally this results in judges working outside of work hours/taking work home. Having cases allocated to judges earlier allows them more time to familiarise themselves with a case file – but also sets the expectation that they should take time to familiarise themselves more comprehensively with the file then they would have pre-Pilot.

Shortening up the time frames does put a bit of pressure on pre-trial decision-making. It means you have got less time to get it out. You've got to get your skates on and sometimes spend more of your own time, taking it home or … (Judge)

Judges are getting the file a lot earlier. They're very busy. They're in court nearly every day, they don't get a lot of days out of court. So I would say that they're trying to fit more things in when they're case-managing a file, when they're owning it rather than rocking up on a Monday and being handed a trial file. (Ministry of Justice staff)

One judge also feels that shortened time frames has compromised the quality of the expression of their reasoning provided in their pre-trial decision documents.

Counsel's view on workloads is similar to that of judges, noting that the total workload in preparing a case and taking it to court has not changed notably but that there is now more pressure on the early part of the process, and overall time frames have shortened.

You have to be more prepared earlier on now. You have to have everything ready at the case review hearing. It's that compression of time that makes it more challenging I think. The work is more intense and you're just got to do more work at the beginning. I suppose it means you're doing the work at a different time. But the turnover is so much quicker. It really is quick. I guess we're all used to leaving it until later and now we don't, we can't. (Defence counsel)

Psychological Impacts

A number of stakeholders noted that the nature of sexual violence cases and the content involved in the evidence given can have a detrimental impact on those involved in trials, particularly as complainants are often young and/or vulnerable. Some pilot judges report that sexual violence trials have comprised up to 90% of their workloads, and concern is also raised about the impact on court registry staff who are listening to often graphic sexual material on a daily basis. As part of the evaluation, stakeholders raised concerns regarding the psychological wellbeing of those administering the pilot and noted the staff 'burn out' (and the resulting high staff turnover) could compromise the ongoing success of the model.

A judge couldn't sit his entire year doing serious sexual violence trials because you'd become warped. You can't just do one sexual violence trial after another. Even though we're tough, it does build up. (Stakeholder, Whangarei)

It's probably had more of an effect on me psychologically than it has from a pure work point of view. For the first year I did [sexual violence trials] almost exclusively – it was a tough year. Now we're sharing [the trials] out and I've found it a bit easier. (Stakeholder, Whangarei)

There can be a bit of emotional overload, vicarious trauma coming through. I think we've got to guard against it. I would have thought 50% [SV trials] would be a better split. I think doing the majority of sexual violence trials is a bit wearying. (Stakeholder, Auckland)

6.4 Impacts – Auckland Versus Whangarei

Whilst the pilot guidelines have been adopted consistently by Auckland and Whangarei courts, the way in which some of these guidelines have been interpreted and operationalised has varied somewhat between sites. Stakeholders note that each court has its own culture and the two locations have different physical characteristics, so it is natural and appropriate for differences to be evident. It was generally felt that the variations in how the pilot has been operationalised don't compromise the ability to evaluate the success of the pilot principles and guidelines.

Many of the processes within the pilot have been adopted from, or evolved out of, the Child and Vulnerable Witness Protocol that was developed in Whangarei. For this reason, within the pilot period, participants in Whangarei have noticed less difference in the way they manage sexual violence cases than their Auckland District Court counterparts, as in many ways the pilot has been 'business as usual' for them.

> *In this office, well before any pilot, we [had] a special [focus on] making sure we did a good job and trying to make these cases work better. We have a long history in this area. Vulnerable witnesses, we have strived and worked in ways to make it better for them. (Stakeholder, Whangarei)*

Whangarei has a smaller and more stable pool of judges who preside over cases within the pilot, all of whom have considerable experience hearing cases under the local protocol and all of whom are personally supportive of the intended outcomes of both the protocol and the pilot. For this reason, it is likely that there is less variability in practices, particularly those experienced by complainants, in Whangarei than there is in Auckland – for example, being met by the judge prior to giving evidence, minimised waiting time while at court, more considered cross-examination.

Table 6.1 compares and contrasts the Pilot processes and practices adopted in each location.

Table 6.1: Pilot Processes and Practices By Site

	Auckland	Whangarei
SVCP Guidelines for Best Practice		
All aspects of SV cases from case review heard only by designated SV judges	Yes	Yes
All cases must be dealt with by a judge at the case review and trial callover stage	Yes	Yes
Trial date set at case review	Yes	Yes
Both Crown and defence must engage in case management discussions and jointly complete the case management memorandum	Yes	Yes

	Auckland	Whangarei
Judge may excuse defendants from case review hearing and/or trial callover	Yes	Yes
At trial callover, judge will enquire about court education, viewing of EVI and witness availability	Yes	Yes
Electronic equipment (CCTV) tested prior to witness evidence being called	Yes	Yes
Judges manage trials more closely and are alert to inappropriate questioning	Variable	Variable
Judges offering more frequent breaks, including mini-breaks when complainant-witness giving evidence	Yes	Yes
Other Process and Practice Initiatives Under SVCP		
Case Managers dedicated to specific SV case files manages these from election of trial by jury through to sentencing; closer, more proactive case management; single point of contact for all parties	Yes	Yes
Joint Case Management Memo filed (Note: Whangarei file separately)	Yes	No
Case review hearing more comprehensive	Yes	Yes
SV Case Managers can access trial scheduling calendar and liaise with jury trial scheduler	Yes	Yes
SV cases set as firm fixtures only	Yes	Yes
Dedicated court room resource allocated to SV cases	Yes	Yes
Case allocated to SV judge at earliest possible stage (before first callover)	Yes	Yes
Closer case management by judges once allocated	Yes	Yes
Allocated judge hears pre-trials and callovers	Yes	Yes
Callovers occur by teleconference	Yes	No
Presumption of alternative mode of evidence – usually CCTV	Yes	Yes
Non-simultaneous watching EVI by complainant; flexibility of location	Yes	Yes
Prosecution meet complainants prior to trial date	Yes	Yes
Complainants attends court education	Yes	Yes
Complainants arrives at court as close as possible to time of giving evidence; efforts to minimise waiting time	Yes	Yes
Complainants are met by SVVA to enter court via a back entrance for security and privacy	No	Yes
CCTV equipment set up in complainants' waiting room	No	Yes
Judges introduce themselves to complainants prior to trial	Variable	Yes

	Auckland	Whangarei
Communication assistants more frequently used for complainant-witnesses and defendants	Yes	Yes
Flexibility in court session times in consideration of the needs of complainants	Yes	Yes
Defence required to advise Crown before trial commencement which areas they intend to challenge, allowing for counter-intuitive evidence to be called early by prosecution	No	Yes

7 Moving Forward: Learning from the Sexual Violence Court Pilot

Key Findings:

- Stakeholders believe the SVCP model will continue despite the pilot officially concluding. The ability to **retain the current judicial resource and dedicated case manager role** will be critical to the model continuing.
- Key enhancements to the SVCP model going forward include: **more support for stakeholders delivering the pilot** (including access to sexual violence education and professional supervision, and rejuvenation of stakeholder meetings), **enhancing the wellbeing of complainants** (including trial scheduling more sensitive to complainants' personal schedules, measures to keep complainants safe from defendants whilst at court, appointment of an advocate for each stakeholder, judge-complainant meetings as standard, and empowering complainants to make informed decisions about mode of evidence) and **maximising the quality of evidence** (including greater resourcing of court information technology (IT) and the communication assistance service).

7.1 Stakeholder Perceptions of the Conclusion of the Pilot

The pilot is due to conclude once the Governance Board determines its completion date. However, pilot cases are currently being scheduled under the assumption (by most stakeholders) that current resourcing and practices will continue. Stakeholders are strongly opposed to seeing the practices of the sexual violence court pilot cease at the conclusion of the pilot. There is a general sense – particularly in Whangarei - that, provided the existing resource continues, the current model can and will continue to operate once the pilot officially concludes.

> *As far as I'm concerned, it will be business as usual unless for some reason we're told we can no longer have the dedicated court. I'm hoping we won't even notice, it'll just continue. (Stakeholder, Whangarei)*

> *[The pilot] would carry on how it is now. I think the people we have working on it now and Judge Harvey, I think we would make sure … no standards would slip or anything like that. I think it would be fine. (Ministry of Justice staff)*

Stakeholders unanimously agree that a cessation of pilot practices would have a detrimental impact on complainants.

> *What you experience [in the pilot] is different. We have these awesome staff who are working on your behalf, we've got private access, you meet the judge, you've got the CCTV room, you don't have the experience of sitting in that courtroom. If the pilot stops and the money stops, it's going to impact these women and it puts them at further risk of being traumatised. (Victim advisor/advocate, Whangarei)*

Critical to the ability to continue the practices of the model after the official pilot concludes is being able to retain the dedicated sexual violence case manager role – and in Whangarei, the additional judge. It is generally agreed that, if funding is no longer available for these roles and the current case managers have to go back into the 'pool' and the judge is reassigned, the pilot procedures wouldn't be able to operate – and time frames would return to pre-pilot lengths.

> *If we hadn't got the extra judge, the pilot wouldn't have happened. So if the pilot doesn't go on, then our cases are going to just go back to how they were. We are treading water with our other trials and then if we have to add SV back in, then it just won't work, it won't happen. (Ministry of Justice staff, Whangarei)*

7.2 Enhancing Stakeholder Education and Support

Judicial Training

Judges included in the evaluation are very complimentary about the pre-pilot training they received. Going forward, it was suggested by both the judiciary and stakeholders that work directly with complainants that this training could be enhanced by having complainant witnesses speak to the group about their experience of the justice system (or have victim advisers speak on behalf of complainants).

Stakeholder Education and Training

Stakeholders across all roles involved in the pilot (including those with no direct complainant or defendant contact) feel that more education around sexual violence issues would be beneficial. Many expressed an interest in receiving similar training to the judiciary, both to educate themselves on sexual violence and also so they would be more aware of judges' levels of knowledge and understanding – *"to know what they've learned."*

> *I'd have everybody do the training – Crown, defence, everybody. It's professional upskilling which I think is important. In the same way as we have seen with judges, I think, if they did the training, everyone would be more mindful about what the victim is actually going through. (Victim advisor/advocate)*

Case managers feel that having an increased awareness of sexual violence issues would assist them to have a greater appreciation of the judge's plan with respect to individual cases and may allow them to identify and flag potential issues with the judge.

> *I think some of the court registry officers who sit through the sexual violence cases and even the case managers, they don't get specialised training. How well do our court staff understand what's gone on for that victim? The judges got educated but nobody else did. I think that should be different. We need education right across the board to give everyone a better understanding of what they are dealing with. (Ministry of Justice staff)*

Those working directly with complainants expressed a strong desire for court security staff to participate in the training too, particularly to make them more aware of complainants' experiences of encountering the defendant and/or their supporters in and around the courthouse.

With regard to the design and delivery of the training, stakeholders who work directly with complainants (particularly SVVAs and victim advocates) feel that they could make a meaningful contribution, providing greater insight into complainants' experiences of the justice system, being able to highlight particularly problematic areas and being able to offer pragmatic solutions.

> *I am on the ground [with complainants] all the time. I get so much feedback from them as I go through the journey with them. I do know what makes a difference and I do know the things that are hugely problematic for them. And they are recurring themes. Sometimes I feel like it's Groundhog Day … (Victim advisor/advocate)*

Stakeholders feel that refresher training provided at regular intervals (six or twelve monthly) to all those involved in the implementation of the pilot (and beyond) could guard against focus and enthusiasm being lost over the course of time and knowledge being lost as a result of staff turnover.

Although outside the ambit of either the Ministry or the District Courts, some stakeholders identified the need for there to be education and training available for defence counsel in relation to the questioning of complainants in sexual violence trials. It was noted that most cases defended are funded through legal aid and so there could potentially be some requirement to meet criteria to be allocated sexual violence cases.

An important aspect of any education for defence counsel would be to present the ways in which the changes to processes within the pilot are of benefit to defendants (i.e. timeliness to trial, communication assistance, and questioning of vulnerable defendants).

> *Just as there are various categories for serious offenders, categories one, two, three and four, in my view there should be a new category, category five if you like, and only counsel who are thought to be of sufficient experience and ability would be permitted on Legal Aid to do these. I personally think that's essential. (Judge)*

> *I think as a defence bar we need to do some further work in relation to approach. Maybe we need to talk to the Law Society about running specific seminars on [cross-examination of complainants]. (Defence counsel)*

The lack of suitable resources available as exemplars for defence counsel around acceptable and appropriate questioning of vulnerable witnesses was raised. In addition, given that complainant evidence is given to a closed court, observing trials is not easy. It is suggested that examples of 'best practice' trials could be recorded and made available online for counsel to access for professional development.

Professional Supervision for Staff

Those involved in the delivery of the pilot, including judiciary, Crown and defence counsel, identified that the concentration of focus on sexual violence cases can have a detrimental impact on mental and emotional wellbeing, and consequently can result in high staff turnover (which in turn increases training costs and can negatively impact on the culture of the team delivering the pilot). Stakeholders suggested that professional supervision should be made available to all staff in the pilot, including those who don't deal directly with complainants and/or defendants.

> *We have staff, day in day out, who are listening to [sexual violence cases]. We've got staff that are sitting in there with the complainants, and it's not healthy unless you've got the tools to be able to process it. Just trying to create that 'hands up, I need some help' environment…because it can trigger people. (Stakeholder, Whangarei)*

> *Obviously sexual violence is a traumatic event. There is a taxing nature to it, it can be really hard and upsetting. Teams need to have supervision, clinical supervision and opportunities to de-brief. There also needs to be a lot of self-care support because it's hard horrible stuff that they are listening to. (Communications assistant)*

This type of work is not for everyone. In some cases it might be for you for a little while and then you decide that this is not healthy for you to be doing it. You're dealing with people going through very hard stuff. I worry about that for the lawyers actually. I see that they're working very long hours with very difficult content, and from conversations I have had with them, I know that they don't have the same kind of supervision requirements as someone like health professionals. That does concern me. (Stakeholder, Auckland)

Stakeholder Meetings and Cross-Pollination Between Courts

Stakeholders in both Auckland and Whangarei would welcome the opportunity for regular (quarterly is suggested) meetings to discuss issues relating to the implementation of the pilot. It was also suggested that these meetings could be used as an opportunity to provide feedback to stakeholders (particularly court staff, including those who work directly with complainants) on the pilot outcomes and to reinforce the great job they are doing. It was noted that, as well as being useful to identify solutions to enhance the pilot operations, regular meetings would also have an important role in maintaining and building enthusiasm for the success of the pilot and building team culture.

Meetings have been few and far between. This [focus group] is the first time really that we've had a meeting with [sexual violence court case managers]. We don't have formal meetings, but I think we should – just to say "how's it going?", maybe share some statistics, look over the calendar together ... (Ministry of Justice staff)

Views were mixed as to whether judges (and Crown and defence) should be included in the stakeholder meetings, some feeling that it is important for judges (and counsel) to know what is going on in term of the operation of the Pilot ("*so everyone's hearing the same messages*"), others perceiving that court staff may not be as open or candid in their comments with the judiciary and legal counsels present.

We've never had a meeting where it's just the court staff. I think that's important because people can be more honest and open. For example, the VAs and the case managers haven't sat down and said "is there anything I could do better for you?" Ideally it would be great, after every trial is completed - let's have a 10 minute catch-up." It might only be five minutes if everything is perfect, but if it wasn't perfect, let's talk about it. (Ministry of Justice staff)

(The impact on court staff of having judiciary and lawyers present at the stakeholder meetings was evident in the focus group process. It was observed in the Whangarei focus group that court staff made only a very small contribution to the discussion until the lawyers left. For the Auckland group, court staff were consulted separately from counsel, resulting in a freer, more open discussion).

In addition, it was suggested by court staff that occasional delegate meetings involving stakeholders from each of the pilot courts, and any others which may in future adopt the model, would be beneficial.

> *It would be good just to talk to somebody doing the same job as us, so what they're doing and how things are going, and if they are doing anything we're not. Maybe a tele-conference every couple of months? (Victim advisor/advocate)*

> *I'd love to go up to Whangarei and have a look, to know more about what they're doing, to see their set-up and to see how everything works. (Victim advisor/advocate)*

7.3 Enhancing Complainant Wellbeing

Comparisons with the experiences of justice system reported by complainants in Gravitas's 2018 report[43], show that the changes to case and trial management made under the pilot have had a positive impact on complainants, empowering them and reducing the likelihood of secondary victimisation through the process. Stakeholders working directly with complainants noted a number for further enhancements:

Avoiding Contact Between Complainant Witnesses and Defendants

Ideally complainants giving evidence at the Auckland District Court should be able to enter the court building via a means other than the public entrance, as they are able to do in Whangarei. Those working directly with complainants perceive that the decision to have complainants use the main entrance has been made by security, seemingly for their own convenience. It is suggested that portable wands could be used to security-check complainants using the Federal Street entrance.

Auckland stakeholders would also like to see judges making more informed decisions about where defendants are able to go and with whom during breaks so there is no risk of them being able to intimidate witnesses or their supporters.

> *There's some inconsistencies sometimes with judges on SV trials with offenders not always staying in custody in the lunch break. Our victim should be allowed to go out the front door and go and have some fresh air when they're giving evidence. I think the judges just need to be more aware that that's when intimidation can happen. Perhaps it should be in the guidelines. (Victim advisor/advocate)*

[43] Gravitas Research and Strategy (2018). Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences. Ministry of Justice: Wellington.

Complainant Waiting Area and CCTV Room

The Whangarei meeting room, which is also where complainant witnesses give evidence via CCTV, has been recently renovated to make it more user-friendly (through the addition of couches, toys, books, games, videos etc.) It was suggested that the rooms in Auckland could be similarly improved to make them more comfortable for those waiting to give evidence.

> *[There is] a lack of resources for the victims' advisors, as in a lack of space in the court, place where people can come and where we can meet them as prosecutors before the trial. And currently the resources and space allocated to the victims' advisors is very small. I think that's probably outside the ambit of the pilot because that's more of a Ministry of Justice thing. You really should have a proper facility for complainants to wait before they give evidence in court. (Crown prosecutor)*

Judges Meeting with Complainant Witnesses

Given the positive feedback from complainants and the benefits observed by stakeholders who deal directly with complainants, stakeholders suggested that pre-trial judge-complainant witness meetings should be compulsory for all sexual violence cases. To alleviate judicial concerns around being criticised for getting 'too familiar' with complainants, meetings could be audio and/or video recorded.

Appointment of Victim Advocates

Some court staff – including SVVAs – are in favour of complainants being appointed a victims' advocate as well as continuing to be receive support from the court's victim adviser. Due to a lack of both advisory and advocacy resource, some feel that the line between 'advising' and 'advocating' had become blurred (as SVVA and advocates are required to deliver both roles):

> *There are times – like with a child that was due to go [on the stand] at 3:15 pm – where they need to say "no, that's not going to happen." But that's not advising, that's advocating and that's not the role of the VA. But the reality is, the VA job currently has a lot of advocacy in it. It needs to be clearer that there is somebody who will advocate for the victims. There's nobody actually there really for the victim. (Victim advisor/advocate)*

Having a pool of Victim Support staff on call for when support people are needed at short notice (for example, when a complainant arrives at court without a support person or a support person chosen by the complainant is deemed unsuitable - such as boyfriends) would be beneficial.

Communication Assistants

Whilst the pilot has been a catalyst to raising awareness of communications assistants, both stakeholders and the service itself acknowledge that more work needs to increase stakeholder awareness of how the service operates, the extent of the services available and most importantly, when in the justice process the service needs to be engaged with. Stakeholders also need to be made aware that it is not only the complainant witness that may need communications assistance but equally so, the defendant and other witnesses.

Communications assistants suggest that they should be involved in the justice process earlier, ideally at the EVI stage – to work with the New Zealand Police to ensure that complainants are able to communicate their experience as accurately and articulated as possible. It is felt that this might minimise the traumatic experience of the defence picking apart the EVI during cross-examination.

> *We sometimes watch the EVIs. I am highly respectful of the Police investigative interviewers but they don't always have the expertise to deal with some very high need individuals in terms of communication. You can end up with events being very confused. Then at cross-examination you're trying to unpick what they said in the first place but it's really unclear what they meant. I would love to see more robust [communications] assessment pre-EVI so that we could ensure that the person can talk about time, how long things occurred for, how many events happened. A lot of the time people with language and communication issues find that stuff really really difficult and yet often cases are based on that kind of information. (Communications assistant)*

Finally, communications assistants strongly advocate that all children up to the age of 13 or 14 years – including those who do not have special communications needs – should be referred to the service and provided with communications assistance as a matter of course. The service believes that ideally all children should receive communications support to help them deal with the adult setting and complex questions asked using adult language. (However, they also note that the communications assistance service would need to be expanded considerably to ensure there was sufficient resources available to allow this to happen.)

> *At what point is questioning in court something a child can do on their own without anybody assisting them? If you're nine and you have typically developing language for a nine-year-old, that doesn't mean you necessarily have the skills to manage the complex questions at a linguistic level that adults might assume you do. You don't have anything wrong with your language, you haven't got an impairment, but you're just nine. If it was my nine-year-old, I would want somebody making sure they're not being confused by the questions. (Communications assistant)*

7.4 Enhancing Modes of Evidence

More Informed Decisions

The use of CCTV and/or screens within the courtroom for complainants to give evidence is not consistent within the pilot. Complainants will be empowered by:

- Having all the mode of evidence options available presented to them in an objective way that is easy for them to understand. This is most sensibly done during the court education visit, allowing complainant witnesses to see (and sit in) the CCTV room, be shown how the screen works, check how far they would be sitting from the defendant in the court room etc.;
- Allowing them to make the decision as which mode they prefer (without having to justify their reasoning); and
- Ensuring that the equipment required for each mode of evidence is available on time, in good working order and that staff know how to operate it correctly.

Evidence via Audio Visual Link (AVL)

Earlier research[44] identified that a key stress point for complainants is the risk of encountering the defendant and/or their family/whānau in and around the courthouse and when this occurs it can cause secondary victimisation.

Section 105 of the Evidence Act[45] allows for a judge to direct that a witness may give evidence and be cross-examined from an appropriate place outside the courtroom, on various grounds including trauma suffered by the witness and their relationship to the defendant. There have been some cases within the pilot in where, due to logistical reasons, complainants have appeared via AVL from another location outside the court. This does not appear to have any negative impact on proceedings.

The Ministry of Justice have a strategic goal[46] to modernise courts and tribunals, which includes extending the use of remote participation in justice processes. In line with this, there is strong support from stakeholders for greater use of remote AVL appearances for complainants in sexual violence cases. It was noted that as few courts provide for separate entrances for complainants, this would eliminate the logistics of keeping them away from defendants.

[44] Gravitas Research and Strategy (2018). Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences. Ministry of Justice: Wellington.
[45] NZ Government, Evidence Act (2006), Section 105
[46] Ministry of Justice (2018). Statement of Intent: 2017 to 2022.

Remote appearances require counsel to have organised in advance any documents, diagrams, maps etc. that they may wish the complainant to refer to during their evidence. This material needs to be provided in a sealed envelope and delivered securely to the court or other location from which the evidence will be given. This is already a requirement under the guidelines.[47]

> *There could be a presumption that the victim be able to give evidence from a remote location that was more complainant-centric. Here in Auckland, we have a multi-agency centre. You could have them beam in from there, as it's much more user-friendly. (Stakeholder, Auckland)*

> *I've run one trial where the complainant lived in Invercargill and we just did AVL. It was brilliant, worked very well indeed. I anticipate that, as we go, it'll happen more often because it was such a great success. Ideally, I'd like witnesses to be giving evidence from a central location away from the court, so there is absolutely no chance of the complainant tripping into the defendant or his family, whānau. (Judge)*

> *The prosecution, under Section 105 [of the Evidence Act] make the application and it's always at the judge's discretion. But logically, if CCTV is ordered, it doesn't really matter whether she's in a room there or a million miles away does it? So why put her to the inconvenience of jumping on a plane, the emotional turmoil, staying in some dive of a motel. It makes no sense. (Stakeholder, Whangarei)*

> *I don't think victims need to come to court. I think they can go to a centre where they can give their evidence well removed from the court so they don't have to face going into a court or running into the defendant of their family or anyone else they don't want to see. They can do it by AVL from a purpose fit room that is better than what we are providing them with here. (Defence counsel)*

Complainant-Witness Evidence by Pre-recorded Video Only

In certain cases, particularly those involving young complainant-witnesses and cases that are likely to have a long wait time to trial (for example, complex cases with multiple complainant-witnesses likely to need a two or three week scheduling window), two stakeholders highlighted the benefits of allowing pre-recorded evidence and cross-examination. This would eliminate the need for complainant-witnesses to attend court at all.

[47] District Court of NZ, Te Kōti ā Rohe o Aotearoa. Sexual Violence Court Pilot: Guidelines for Best Practice. No 22. http://www.districtcourts.govt.nz/assets/Uploads/Publications/Best-Practice-Guidelines.pdf

Pre-recorded evidence. I think there's room within the legislation for it, but the Court of Appeal didn't like it some years ago. So if there was going to be a delay for whatever reason, or you have particularly young complainants, get their evidence pre-recorded sooner, so actually do the cross-examination, record it all and then play the recorded evidence at trial. I think we already have the frameworks, it's just a matter of using them. (Stakeholder, Whangarei)

7.5 Enhancing Case Management

Section 44 Application at Pre-Trial Hearing

Under the pilot, most potential issues that could risk delay or adjournment for trial are being effectively dealt with at case review and, if necessary, resolved at pre-trial hearings. However, it was raised by one stakeholder that there is a tendency among some defence counsel to not identify their intention to apply under Section 44 of the Evidence Act[48] (to ask complainant-witnesses about previous sexual experience with someone other than the defendant). It was highlighted that this can be traumatising for the complainant-witness when questions they are not expecting are put to them.

We have some defence counsel that seem to think that they don't have to identify certain things, in particular Section 44 applications. For some reason the defence bar think they don't have to bring that sort of application until trial and we're actually dealing with them inter-trial. Allowing the defence to get away with it and not forcing their hand earlier flies in the face of the objectives of the sexual violence court pilot. We have no way of letting them know it's coming, and then [complainant-witnesses] are getting ambushed in court. It's just about fairness. (Stakeholder, Whangarei)

It was highlighted that if the Section 44 application was brought within appropriate timeframes before the trial, there could be a pre-trial hearing held on it well in advance, and any necessary further investigation conducted to address the application. The judge would be able to make an informed decision and decide on the parameters of the questioning, if it is to be allowed. In this way, prosecutors could then advise the complainant-witness that questioning on prior sexual activity with particular people would form part of the defence line of questioning. One possible solution to defence not being sure at case review as to their intention to apply under Section 44, would be for this to be enquired into again by the judge at trial callover.

I think that there is benefit at the trial callover almost going through your case review checklist again, all of those matters now that the evidence has been filed. Does it change? Are there any further applications? And then finalise it, talk through the issues again and make both parties nail down exactly where they're going and what they're doing. (Stakeholder, Whangarei)

[48] NZ Government, Evidence Act (2006); Section 44 and 44A

Scheduling

It was noted by one stakeholder that courts could give more consideration to the needs of complainants in setting trial dates, rather than focusing purely on scheduling for the earliest possible date - for example, a trial being set down for the day that a complainant was due to start high school and a preference for the trial to be re-scheduled until the school holidays.

> *Even though there is a directive from on high that we've got to get these trials on and set them down without any delays, there needs to be a little bit of the personal side taken into account sometimes. (Stakeholder, Auckland)*

Flexibility also needs to be applied in scheduling for trials that require specialist expertise evidence that may require longer lead times.

> *There are certain cases when you need expert reports or you need somebody briefed and they just can't work within [pilot] timeframes. For example, I need a fetal alcohol spectrum disorder specialist to give evidence and she can't even see my girl until end of June, and there's only one specialist we can brief and it just doesn't fit those timeframes. So there's always going to be cases that just don't fit into that box and those really concern me, that they're trying to be pushed through for valid reasons, but it's not realistic. (Stakeholder, Auckland)*

7.6 Enhancing Resourcing

Case Manager Caseload

Ideal case manager caseloads would be highly dependent on the level of experience and capability of the individual case managers. Some stakeholders suggested that a caseload of no more than n=50 per case manager would be manageable; however, the Auckland case managers disagreed, noting that they felt that were competently dealing with a caseload of around 80 complainant witnesses.

IT Equipment

As noted in Section Five, there are ongoing issues with electronic equipment used for presenting evidence to the court in both Auckland and Whangarei. Ensuring that all IT/electronic equipment is working correctly, is compatible with stakeholder system, is upgraded as necessary, and tested regularly to ensure compliance with the guidelines can be expected to eliminate delays and disruption.

It was also noted that, with the majority of complainants in sexual violence cases giving evidence via CCTV, there is pressure on the existing CCTV resource in Auckland. An additional suite would be advantageous.

> *The technology in some areas leaves a bit to be desired. It isn't up to standard. (Stakeholder, Auckland)*

> *Better technology, so things aren't breaking down. That causes delays, that causes distress. (Stakeholder, Auckland)*

7.7 Enhancing Inter-Agency Communication

Wider stakeholder engagement to include all relevant agencies and organisations, for them to understand the differences in case management processes within the pilot (compared to normal jury trial case management) would help to minimise the risk of delays occurring due to lack of effective communication.

ESR

Going forward, it would be helpful for ESR to know which samples are for cases within the pilot as they would like to be able to track when samples are submitted to them, and if necessary, be able to prioritise these if results are required for New Zealand Police and/or Crown to make decisions around how to progress the case.

> *Making sure that communication is kept up so that if we had to prioritise over other cases … to know what the key dates are, when this is going to be needed, what's the date of the case review, what's the date of the trial. And the sooner we get it, the greater the opportunity we can deliver something for those key dates. (ESR)*

An enhancement, from the perspective of ESR, would be the routine sharing of information around key dates (for example case review hearing), for pilot cases that involve them conducting analysis, so that they can ensure that they can contribute to key decision points in the process.

> *Traditionally when we thought about case work, the trial date is the key date that everyone would work towards, except for the situations where it's an unknown offender. But the importance placed on case review gives us a really good opportunity to think about what analyses have we got that we could package up in a way that would support an early resolution, or just to better inform the justice process. We can provide science that supports decision making. (ESR)*

New Zealand Police

Within the pilot, Crown are often requiring the New Zealand Police to provide evidence earlier in the process, which puts pressure on their resources, particularly in terms of transcription of EVIs. More communication and gaining buy-in on the processes and objectives of the pilot would be beneficial.

> *Police need to understand too, because so much of how quickly or otherwise it runs through the court is so dependent on them and then it becomes a resourcing issue for them as well. It's simply communication, buy in, collaboration, so everyone understands what we're trying to achieve and can put resources and processes in place to do it. (Stakeholder, Whangarei)*

Digital Communication Platform

It has been noted and observed that effective communication between parties involved in pilot cases is critical to its success. Currently liaison between Crown, defence and judges is facilitated by case managers, usually via email or phone calls. It was suggested by a stakeholder that an online message platform or file sharing service would enhance communication by utilising available technology.

> *I don't understand why we can't just have a system that's run electronically, so we can dial into our case and put some notes up for the judge or other counsel. Just give the court updates on what's going on and the court could give us updates as well. It just needs to be easier. (Stakeholder, Auckland)*

Case managers and SVVAs currently work in two different electronic systems that don't link. Whilst the current case managers are reported to be very diligent about ensuring any changes made to the files are communicated to all parties involved (generally via email), there is a risk that a change made in the case manager's system (for example, a revised date) is not manually communicated to the SVVA. This can result in trials being delayed or complainant witnesses being unnecessarily inconvenienced.

> *Ideally you would have a system that, when you updated or changed something, an alert would be sent to the Victims Adviser. (Ministry of Justice staff)*

7.8 Enhancing Judge-Alone Trials

Many stakeholders are in favour of all sexual violence trials being 'judge alone', stating that 'judge alone' trials would be quicker/more efficiently-run, more cost effective (as juries are not required) and the quality of the outcome (that is, based on the facts of the case as opposed to the biases and personal beliefs of jurors) and experience of the complainant (and defendant) might be better, especially given the sexual violence training that judges have received as part of the pilot.

Just having two judges – that would be huge and would not retraumatise a lot of victims. It's very hard walking into a court room and you're sitting opposite 12 members of the jury that are all unfamiliar to you. You don't know them but you have got to talk in front of them about the most intimate, personal stuff that has happened. (Victim advisor/advocate)

8 Perspectives on National Rollout

Key Findings:

- There is unanimous support for the pilot model to be rolled out nationally.
- Stakeholders believe the model must be flexible to allow it to be adapted to suit different court sizes and configurations, jurisdiction populations and court cultures.
- Comprehensive training for all participants and a consultative process that encourages buy-in from all stakeholders is recommended.
- Resourcing the rollout needs to be carefully planned, including judicial resource, courtroom availability, court registry officers to support expanded capacity for jury trials, SV case managers and the physical environment for complainant-witnesses, including sufficient CCTV capacity.
- There is a risk that stakeholder enthusiasm for the objectives of the pilot may wane once the approach becomes status quo. Well-designed, motivational training, regular opportunities to re-energise and regular communications of performance statistics will be important to maintaining momentum.

Among stakeholders, there is wide support for the pilot model to be extended to other courts around the country.

> *Roll the Pilot out nationally? Brilliant! We're all for it. If we can do it here, there's no reason why it can't work elsewhere. (Ministry of Justice staff)*

Stakeholders noted a range of challenges (and in some cases risks) associated with a national roll-out of the pilot, and also made suggestions as to how these challenges could be addressed (and risks minimised).

8.1 Allowing Flexibility – Not A 'One Size Fits All' Approach

Courts around New Zealand vary greatly, including in terms of their physical size and configuration, the nature and size of the populations they serve and the culture among the staff who work there. Consequently, the pilot approach needs to have a level of flexibility to allow for the model to be adapted in ways to suit the characteristics of each individual court. (Stakeholders noted that the way that Auckland and Whangarei have successfully adapted the pilot to fit their environment and court culture demonstrates that this approach can work.)

> *Variation is inevitable I think. You can't be completely prescriptive. You can be prescriptive about the general principles and about best practice. Outside of that, there is room for differences. [Auckland and Whangarei] are basically working to the same core principles. Those principles won't change around the country. But how you put those principles into place might change slightly to take account of the local conditions. (Judge)*

I think if you say to a [court] team, "this is how Auckland does it so this is what we're going to do too" but it doesn't fit, well it's not going to work then. You need to be able to tailor it a bit to the size and who you are working with. (Ministry of Justice staff)

It was suggested that the Manager for Justice Services for each court where the pilot is to be rolled out would need to be part of the consultation and decision making around the allocation of resource.

It's not going to work for every court to have exactly the same processes for each thing. The finer details would need to be flexible to accommodate [different] needs. (Stakeholder, Whangarei)

It may be logistically easier to roll the pilot out to larger courts, which have more resourcing, first than to smaller courts. However, regardless of whether timeframes can be reduced in smaller jurisdictions, many of the other practices that aim to minimise negative impact on complainants could be implemented consistently across all jury courts.

I would hope that the principles that we're operating here will be rolled out [nationally]. I think it's very important. Even if there's only one jury court, at least the guidelines will be the same throughout the country. The time between charge and trial may well be longer in the smaller courts, simply because of resourcing, but even if that is the case, provided complainants are treated in the way that I think we're treating them, it will be an improvement. So, I pray that it's rolled out. (Stakeholder, Whangarei)

8.2 Education and Communication

Training

Stakeholders feel that it is strongly advisable that any judge presiding over sexual cases will have undertaken the sexual violence education. In addition, other stakeholders to the pilot would benefit from specific sexual violence training.

Understanding and changing mindsets about the way that things have always been done is what's going to be important if we are going to successfully roll it out across the country. It changes the way that you see these cases and you recognise that they are different. What you're dealing with and the people you're dealing with, they do need to be dealt with differently than you do drugs case or any other type of case. (Stakeholder, Whangarei)

Some stakeholders suggested that judicial training/education could be particularly important in smaller courts/in provincial area where attitudes to sexual violence may be more 'old fashioned.'

> *There are fewer judges in the provinces. You might have some judges who are … how do you put it nicely? I hate to think of things like this but you can't help thinking, if you are in an urban environment, maybe you have a more contemporary way of thinking. I can just imagine that some judges are going to be naturally resistant to all this. (Victim adviser/advocate)*

It was also suggested that current designated SVCP judges could provide exemplars of trial management in other jurisdictions:

> *It would be useful if one or two judges experienced in running these trials traveled around the other courts, sit in other courts and introduce other courts to the way it's done, because you can have as many programmes as you like, you can read as much as you like, but ultimately it's actually being on the bench, running the trial, and I think that would be very useful for all courts to have somebody who knew what was going on. (Stakeholder, Whangarei)*

Communication

Pivotal to rolling the pilot model out to other courts will be ensuring that all stakeholders, including those peripherally affected such as the New Zealand Police and ESR, are fully informed of the purpose, processes, expected outcomes, and how it will affect their roles. It will be important to gain buy-in from all those involved so that they understand the benefits to be gained for all parties.

> *You've got to prepare people for what it is, because if they've got no idea what are the expectations on counsel, how are things going to be different? And you would want buy-in from counsel, so preparing that transition for counsel to change their mindset. What you don't want is setting it up and you get this real revolt against it for whatever principled reasons they perceive. (Defence counsel, Auckland)*

8.3 Resourcing

Appropriate resourcing will also be critical for a successful rollout of the pilot to other locations. This relates to judicial resource, courtrooms, court registry officers to support expanded capacity for jury trials, SV case managers and also the physical environment for complainant-witnesses, including sufficient CCTV capacity. For example, concern was raised about the impact on the non-sexual violence cases in courthouses with only one jury trial court if sexual violence trials were to be prioritised nationally.

In addition there needs to be enough defence counsel willing to work on serious sexual violence cases in the localities of courts where the pilot might run.

> *There are very few counsel taking assignments for sexual violence and that's a concern. It's a really small pool of counsel up here, and it's getting smaller because they're becoming stressed and not coping so they're just saying "no". So that could become a real issue. (Stakeholder, Whangarei)*

Judicial Resource

As has been highlighted earlier in the report, presiding over back-to-back pilot trials can take a psychological toll on judges and so consideration needs to be given to the number of judges designated in any jurisdiction that might run prioritised sexual violence trials and to rostering of judges to a mix of trials.

Case Managers

As identified earlier, the utilisation of designated case managers has been a critical factor in the success of the pilot to date. Stakeholders unanimously agree that this success has been derived not only from the role/job description but also from the suitability of the particular people appointed to those roles in terms of their experience, knowledge, interpersonal skills and passion.

Careful selection of case managers in other courts is essential in a roll-out of this Pilot. Key qualities include:

- experience (in the justice sector generally as a minimum, but ideally in 'normal' jury trials);
- high level of case management proficiency;
- excellent time management skills and an ability to remain calm under pressure;
- resilience;
- strong communication skills.

> *The [case manager] roles do need to have people who are experienced as some aspects of the role are hard to teach; you just need to know. They need to have come through the ranks and done other jury trial case management. I also think that the lawyers need to respect you as well. Lawyers, God love them, will at times take advantage of inexperienced people. You need to have the confidence to push back sometimes and say "no, actually I'm not going to do that. This is how we are going to do it." Also, you are dealing with people's lives so that can make the role incredibly stressful. If you had a brand new person trying to case manage our most serious cases then I think that would be a big mistake.* (Ministry of Justice staff)

Communication Assistance

Availability of a communications assistant in some cases is critical to ensuring that complainants can effectively engage in the process and do not experience secondary victimisation. They are equally vital in contributing toward a fair trial for defendants. It was noted that the contracted communications assistants in both Whangarei and Auckland are overloaded with work, not only within the pilot but also with other non-SV cases. A roll-out to other courts would need to consider the availability of communications assistants.

> *If the Pilot was rolled out nationally, I don't know what would happen. We are already swamped. Every time we get a referral we're saying "we might be able to do this but we have a lot of existing cases and we do not have a large team. Sometimes we just have to say no. The workload we currently have is not sustainable. (Communications assistants)*

Communications assistants, all of whom are qualified and experienced speech language therapists, noted that they need training to inform them about legal processes, and in particular the implications of their work on the legal process. (Communications assistants included in the evaluation noted that while it was important for this training to be provided independently of the providers, providers would be keen to have input into decisions around the content of the training).

> *I'd like there to be some kind of postgraduate certificate of proficiency in communication assistance, so we know that everybody doing this role has a certain level of expertise. So if they are going to be doing the work, everybody knows that they already have a baseline then they accrue experience. (Communications assistants)*

Communications assistants also note that an alternative to their current contracting model would be required if the pilot was rolled out nationally. Currently assistants work on contract – so a need for assistance is identified by court staff and providers are approached to see if they have availability and are contracted to provide the service. However, this reactive approach makes identifying staffing requirement almost impossible – and consequently, because providers can't give potential employees an indication of how much work is coming in, it is proving very difficult to persuade trained speech language therapists to leave their current jobs and to work exclusively as communications assistants.

> *I can probably provide full time work for another person but I can't guarantee that. And I certainly can't guarantee that out of Auckland. I've got a brilliant colleague wo would love to work for us fulltime. We've got some work but I don't have enough guaranteed to make her an offer. I can't persuade her to leave her job without more certainty. (Communications assistants)*

8.4 Pilot Versus Status Quo

As discussed in Section Three, all stakeholders included in the evaluation have enthusiastically embraced the pilot and its objectives, and the comments made by stakeholders and the observations by the evaluation team suggest that those involved have been extremely committed to seeing the pilot succeed and the objectives being met. As discussed, stakeholders in Whangarei were particularly motivated by wanting to make a locally-initiated idea (designed by someone they know well and respect) succeed. Whilst stakeholders were very clear that they did not want to see the pilot conclude, the short-term nature of the pilot is also likely to have been a factor in encouraging engagement. There is a risk that, if the guidelines are rolled out nationally and become 'status quo', new stakeholders may not have the same commitment to, and be less engaged with, the objectives. Well-designed, motivational training, regular opportunities to re-energise (such as through refresher training and regular stakeholder meetings) and regular communications of performance statistics are a significant part of maintaining momentum when a pilot is rolled out nationally.

> *[It will be] interesting to see if the pilot ceases being a pilot and it's just policy, if the mindset continues, whether it has to do with the fact that as a pilot, "let's make it work, break our backs doing it", as opposed to 'business as usual.' (Prosecutor, Auckland)*

> *Whenever we do a pilot, everybody wants it to succeed. People want pilots to succeed because a lot of time and energy goes into them. People put their heart and soul into making it work.*

Appendices

- SVCP: Guidelines for Best Practice
- Key Informant Interview Guide
- Key Informant Focus Group Guide
- Complainant Witness Interview Guide

Appendix A

SEXUAL VIOLENCE COURT PILOT:

GUIDELINES FOR BEST PRACTICE

Object

1. The object of these guidelines for best practice ("the Guidelines") is to improve case and trial management of offences of sexual violence.

2. The guidelines operate completely within existing jury trial practice under the Criminal Procedure Act ("Act"), the Criminal Procedure Rules ("Rules") and case and trial management techniques.

3. The guidelines are designed to reduce pre-trial delay and to ensure flexible, workable trial arrangements.

Entry of cases into the sexual violence court pilot

4. Charges covered by the sexual violence court pilot ("the Pilot") are those listed in Appendix (1) where the defendant has pleaded not guilty and elected trial by jury.

5. The case enters the Pilot at the time of a case review hearing.

Designated judges

6. Only judges designated for the purpose may preside over a case in the Pilot[49]. The Chief District Court Judge will designate judges from time-to-time based on experience and training.

The case review hearing

7. All cases in the Pilot must be dealt with by a judge at the case review stage.

8. All defendants must be present at the case review hearing unless attendance has been specifically excused, in advance, by the judge.

9. Both Crown and defence must engage in case management discussions and jointly complete the case management memorandum (CMM) as directed by s 55 Act.

10. The CMM must contain the matters set out in s 56 Act and r 4.8 Rules. It must also contain a summary of facts.

[49] Any reference to "a judge" or "the judge" in the Guidelines is to a judge designated in accordance with guideline 6. The case review hearing

11. Judges must be prepared to engage their power under s 364 Act to make a costs order for procedural failures.

12. At the case review hearing the judge, apart from the matters set out in ss 57 and 58 Act, shall enquire into and make appropriate directions as to:

    12.1 whether the case is, or has been identified as, a case falling within the Court of Trial Protocol;

    12.2 whether there are issues of disclosure, including disclosure by a non- party;

    12.3 whether there are issues of joinder of charges and/or defendants under s 138 Act;

    12.4 alternative ways of giving evidence under ss 102 — 107 Evidence Act 2006;

    12.5 admissibility of evidence including but not limited to, propensity, complaint; 13.

    12.6 the length and content of evidential video interviews, and whether they can be truncated or reduced in length;

    12.7 the need for interpreters;

    12.8 the need for communication assistance under s 80 Evidence Act 2006;

    12.9 support persons under s 79 Evidence Act 2006;

    12.10 the likelihood of expert evidence (forensic, counter-intuitive, medical) and the availability of expert reports;

    12.11 likely trial length;

    12.12 any other likely pre-trial applications.

13. All judicial directions will be recorded in writing and distributed to the Crown and defence.

Trial callover

14. All cases in the Pilot must be dealt with by a judge at trial callover stage.

15. All defendants must be present at the trial callover hearing unless attendance has been specifically excused in advance by the judge.

16. Both Crown and defence must file trial callover memoranda as required by s 87 Act and r 5.6 Rules. The memoranda must contain the information required by s 88 Act and r 5.8 Rules. In addition, the trial callover memoranda must address the directions given by the judge at the case review hearing.

17. At the first trial callover, dates will be allocated for any pre-trial application and the trial. 18.

18. Further callovers, prior to trial, will be a matter entirely within the discretion of the judge.

19. As well as dealing with the matters set out in paragraph 16, the judge will enquire into, and make such necessary directions about:

19.1 whether court and witness facilities have been explained to the complainant, and inspection has been arranged;

19.2 whether a complainant intends to view his or her evidential video interview before trial;

19.3 witness availability.

Trial

20. The testing of electronic equipment, e.g. CCTV used for the complainant's evidence, is to be done in court as part of the trial process.

21. The judge is to ensure flexibility for the evidence of the complainant recognising the complainant's age and capacity, including regular breaks, early/later start and finish times.

22. Where the complainant gives evidence from another location any documents, e.g. photographs, sketches, written statement, letters, should be made available in the witness room for use by the complainant prior to the commencing of his/her evidence.

23. The judge must be alert to and intervene if questioning of any witness, particularly complainants, is unacceptable in terms of s 85 Evidence Act 2006.

24. The order of prosecution witnesses is a matter for the prosecutor, but judges should ensure that expert evidence (medical, counter-intuitive) is addressed to actual trial issues.

Appendix B

Evaluation of the Sexual Violence Court Pilot – Key Informants

Interviewee Question/Topic Guide

1. Introduction and Context

- Overview of evaluation project and Gravitas role
- Purpose and aims of discussion; expected duration; roles of participants
- How the information will be used
- Confidentiality and anonymity
- Purpose and permission of audio recorder
- Opportunity for questions
- Reconfirm participant is happy to go ahead with interview. Explain and sign consent form.

2. Main Discussion

The objective of the Sexual Violence Court Pilot is to improve case management and jury trial management of sexual violence offences, with the aim of establishing best practice for the conduct of sexual violence trials.

As a stakeholder and someone who has been involved with sexual violence cases going through one of the Court Pilot locations, we would like to understand from your perspective how well the Pilot is achieving its aim, what is contributing to this, and what the barriers might be to greater success.

1. Background

(To be asked of all key informants)

- Tell me briefly about your role and how you come into contact with the SV Court Pilot
- Prior to the introduction of the SV Court, what do you feel were the main challenges:
  - For case management and trial management of SV offences?
  - For you in your role in working on SV cases?
- What, if any, involvement did you have in the design of the SV Court Pilot?

- What is your view about the objectives of the Pilot?

Ask the following sections as relevant to the key informant.

2. Case and Trial Management

(To be asked of all key informants)

- In what ways does the management of an SV case in the Pilot differ from management of other jury trials?

- In practice, in what ways does the management of an SV case in the Pilot differ from management of an SV case outside the Pilot? *(if they have knowledge of this)*
  For each way, ask:
  - How/why has this difference come about?
  - Was this difference planned (i.e. originated from Best Practice guidelines) or unexpected?
  - Do you see this as a positive or negative change? Why? Who benefits/is disadvantaged? *Probe to understand impact both inside and outside the SV Court Pilot.*
  - What implications has this change had on your role specifically?
  - Has this difference gone far enough/is it as different as you expected? *If no:* Why not? What has been the impact of this?

If not specifically asked above:

Case Review Hearing

(To be asked of project manager, case managers, judges, prosecutor/Crown, defence)

- In what ways are case review hearings different under the Pilot? *For each way, ask:*
  - How/why has this difference come about?
  - Was this difference planned (i.e. originated from Best Practice guidelines) or unexpected?
  - Do you see this as a positive or negative difference? Why? Who benefits/is disadvantaged?
  - What implications has this change had on your role specifically?
  - What, if any, implications are there for cases outside the Pilot?
- *If not mentioned:* Some Crown and defence counsel are filing pre-trial applications in the Pilot before the case review. What impact does or would this have?

If not specifically asked above:

Trial Callover

(To be asked of project manager, case managers, judges, prosecutor/Crown, defence)

- In what ways is the trial callover stage different under the Pilot? *For each way, ask:*
  - How/why has this difference come about?
  - Was this difference planned (i.e. originated from Best Practice guidelines) or unexpected?
  - Do you see this as a positive or negative difference? Why? Who benefits/is disadvantaged? *Probe to understand impact both inside and outside the SV Court Pilot.*
  - What implications has this change had on your role specifically?
  - What, if any, implications are there for cases outside the Pilot?
- *If not mentioned:* In the Pilot in Auckland, SV callovers are occurring by teleconference. What impact does this have on your role? On timeframes to trial? Are there any negative impacts of this practice?

Case Manager Role

(To be asked of all key informants except perhaps Dept of Corrections, Forensic Service and advocates)

- What do you understand the role of the dedicated SV Case Manager in the Pilot to be?
- What impact has this SV case manager role had on the operation of the Pilot?

- How effectively have SV Case Managers been able to liaise with judiciary and counsel in order to advance cases through the court process? What had supported this? What, if any, challenges have there been? How could this be improved?
- How would you describe the SV Case Managers caseload throughout the Pilot?
- How could the optimal caseload for SV Case Managers be determined?
- In what ways, if any, could this role be enhanced to further achieve the objectives of the Pilot? What would be the impact of this for you in your role? For other participants? For the Ministry generally?

Adjournments, Delays and Length of Trials

(To be asked of project manager, case managers, jury scheduler, judges, prosecution/Crown, defence)

- What changes to processes and practices as part of the SV Court Pilot have had an impact on adjournments?
- What, if any, changes have there been in reasons for adjournment in the Pilot? Why?
- What has been the impact of these changes?
- What, if any, impact has the Pilot had on the length of trials? What factors have affected trial length?
- How have judges dealt with any delays/adjournments in trials proceeding? How is this different to what would happen outside the Pilot?
- Going forward, what more could be done to reduce delays and the length of SV trials?

Case and Trial Management - Summary

(To be asked of all key informants)

- *If not clear from discussion:* Which of these differences that you have identified has been most significant/had the greatest impact on improving SV case and trial management?

- What, if any, differences did you understand (or hope) would happen in terms of case and trial management of an SV case in the Pilot but that haven't eventuated? *For each ask:*
  - Why hasn't this difference happened (yet)? What are the barriers?
  - How has this affected your role? The experience of complainant witnesses and defendants? The impact and outcomes of the Pilot as a whole?
  - Do you think it will happen in time? What interventions are needed for it to happen?

3. Resourcing and Infrastructure

(To be asked of all key informants)

- Do you think the Pilot is sufficiently resourced to achieve its objectives?
  - *If not,* what additional resourcing would support the Pilot in achieving its objectives?
  - What difference would this make to the operating and outcomes of the Pilot?
- Is there appropriate and sufficient infrastructure in place for the Pilot to achieve its objectives?
  - *If not,* what additional infrastructure would support the Pilot achieving its objectives?
  - What difference would this make to the operating and outcomes of the Pilot?

4. Impact on Role of Judges

(To be asked of project manager, case managers, judges)

- What impact has the Pilot had on judges' time resource?
- In addition to the Best Practice guidelines, what other changes have you adopted to improve case and trial management? *For each ask:*
    - What has been involved in implementing these changes?
    - How successful have these changes been to date? What has been the impact(s)?

(To be asked of project manager, case managers, judges, SVVAs, prosecution/Crown, defence, advocates)

- The Best Practice guidelines state that only judges designated for the Pilot can preside over Pilot cases. What has been the impact of this? *Probe both positive and negative impacts; planned and unexpected impacts.*
- What difference has the judicial education on sexual violence made to how SV cases within the Pilot are managed?
- How has the judicial education impacted on how judges deal with complainant-witnesses? With defendants? With other stakeholders?

5. Impact on Role of Prosecution/Crown and Defence

(To be asked of project manager, case managers, prosecution/Crown and defence lawyers)

- What impact has the Pilot had on prosecution/Crown and defence lawyers' time resource?
- In addition to the Best Practice guidelines, what other changes have you adopted to improve case and trial management? *For each ask:*
    - What has been involved in implementing these changes?
    - How successful have these changes been to date? What has been the impact(s)?
- *If not identified earlier:* What have been the challenges for you and your work as a result of the changes to case and trial management? How have you dealt with these challenges?

6. Impact on Role of SVVAs and Victim Advocates

(To be asked of project manager, judge, prosecution/Crown, defence lawyers, SVVAs and victim advocates)

- What impact has the Pilot had on the role/involvement of SVVAs in SV cases? (What do SVVAs do differently as part of the Pilot?
    - What has led to these impacts/changes?
    - Were these impacts/changes planned or unexpected?
    - How do you feel about these changes? *Probe to understand benefits/negative impacts and which stakeholders have been affected*
    - *Ask of project manager and SVVAs only:* Has there been sufficient resourcing to adequately address these impacts/changes? What more would be beneficial?
- What, if any, issues are there with balancing SVVAs' involvement in SV court pilot cases with SV cases not in the court pilot?

- What impact has the Pilot had on the role/involvement of victim advocates in SV cases? (What do victim advocates do differently as part of the Pilot?)
  - What has led to these impacts/changes?
  - Were these impacts/changes planned or unexpected?
  - How do you feel about these changes? *Probe to understand benefits/negative impacts and which stakeholders have been affected*
  - *Ask of victim advocates only:* What are the implications for resourcing of these impacts/changes?
- What, if any, issues are there with balancing SVVAs' involvement in SV court pilot cases with SV cases not in the court pilot?

7. Scheduling

(To be asked of project manager, case managers, jury scheduler, jury service manager)

- What, if any, concerns did you have at the start of the Pilot regarding scheduling of trials? Why?
- Which, if any, of these concerns have eventuated?
- What impact is the Pilot having on the scheduling for SV jury trials?
- What impact is the Pilot having on scheduling for non-SV Pilot trials?
- What are the challenges for prioritised scheduling for SV trials in the Pilot?

8. Data Collection

(To be asked of project manager, case managers)

- How is data is being captured and reported, by whom, how frequently etc. for the Pilot?
- How effective and comprehensive has this data capture been?
  - What have the challenges been?
  - How could data collection be improved?
  - What other kinds of data should be collected, by whom, how frequently etc.? *Probe to understand how this additional data would be used/its benefits*

9. Impact of Pilot on Other Cases

(To be asked of project manager, case managers, jury scheduler, jury service manager)

- In what ways, if any, has the Pilot impacted on non-SV Pilot cases and jury trials? *Probe to identify both positive and negative impacts, planned and unexpected impacts*
  - To what extent were these impacts anticipated/expected?
  - How have these impacts been addressed – if at all? Who was involved in this? Was it effective?
  - What more could be/should be done to address these impacts?

10. Differences Between Auckland and Whangarei

(To be asked of those who are aware of both)

- What are the key differences between how Auckland and Whangarei have implemented the SV Court Pilot?

Ask for each difference:

- How did this difference come about? Was it planned or unintentional?
- How are the impacts different (if at all)? *Probe impacts for staff, complainant witnesses, defendants, trials generally, for evaluating Pilot outcomes etc.*
- Do you think that one of these ways is 'better' than the other? Which? Why? What, if any, barriers or challenges are there to both sites operating in the same way with respect to this?

11. Impact on Complainant Witnesses and Defendants

(To be asked of project manager, judges, SVVAs, prosecution, defence, advocates, Dept of Corrections)

- What have been the key benefits of the SV court pilot for complainant witnesses? For their wider family and supporters? For defendants and their supporters?
- What, if anything, have been the negative impacts of the SV court pilot for complainant witnesses? For their wider family and supporters? For defendants and their supporters?

Probe for each not mentioned above:

- Are complainant witnesses and defendants better prepared for giving evidence in the SV Court Pilot?
  - *If yes*, what is being done differently, and by whom, to make complainant witnesses and defendants better prepared?
  - *If not*, what could be done differently to help them be better prepared?
- In what ways, if any, are court education tours being managed differently? (i.e. timing/number of visits/up-take by complainant witnesses/defendants)
- What differences have the changes to case and trial management made to complainant witnesses and defendants?
- In what ways, if any, has the Pilot impacted on complainant witnesses having in-court support people with them while giving evidence?
- Has the Pilot had any effect on the use of communications assistants or interpreters in court?
  - *If so,* what impact has this had?
- Overall, do you think that the Pilot has reduced the risk of trauma for complainant witnesses and defendants through the court process? What about for their wider family/supporters?
- What more could be done (within existing legislation) to reduce the risk of trauma for sexual violence complainant witnesses and defendants through the court process?

3. Final Thoughts

- Thinking about your expectations/hopes when the SV Court Pilot first got underway/when you first became involved, how do you feel the Pilot has gone to date (better/worse than expected? About the same?) Why?
- If you had to identify the most significant change initiated by the Pilot so far, what would it be? Why?
- If the Pilot was to continue operating here in Auckland/Whangarei, what changes and/or new initiatives would you like to see made in the next 12-24 months?
    - Why these?
    - What impact will these changes have – for you in your role, for other staff, for complainant witnesses, for the Ministry generally?
    - What needs to happen to allow these changes to occur?
    - What are the challenges to these changes occurring? *Probe potential impact on non-SV cases*
- What are your thoughts on the SV Court model being rolled out nationally?
    - What would the challenges be?
    - What changes would need to be made?
    - What do you think the impact would be?

Final participant-initiated comments

Thank and close

Appendix C.

Ministry of Justice - Sexual Violence Court Pilot

Focus Group Discussion Guide

Introduction and Context

- Introduction and purpose of focus group discussion; expected length (90 minutes)
- How the information will be used
- Confidentiality; anonymity of quotes in reporting
- Feel free to share perspectives – views do not have to align with other participants' views
- One person speaking at a time
- Opportunity for questions
- Consent to record
- Introductions if necessary

Discussion Prompts

1. Perceptions of Success Of Pilot To Date

- What does success mean to you in the context of the Pilot?
- How successful overall has the Pilot been?
- *Review key pilot data, particularly around case disposal times (pre-Pilot vs. Pilot) and from SVVA surveys. Get participant thoughts on results and whether results indicate 'success'. Identify any 'surprises' with respect to the data*
- What have been the most critical elements to the pilot's success?
- What, if anything, has hindered the success of the pilot? *Probe:* What, if anything, has made it challenging to follow the guidelines?
- What, if anything, did you understand/think would happen as part of the Pilot that hasn't eventuated or gone far enough?
    - What have been the implications for that (i.e. changes not occurring…)?
    - What could have been done to support these changes occurring?
- What elements of the Pilot could be applied to other SV prosecutions (such as Judge alone trials)?

2. Perspectives on Rollout of the Pilot

- What are your thoughts about rolling out the SV court model nationally?

- If, as a team, you were responsible for managing the national roll-out of the pilot, how would you organise it?
    - What would the risks/challenges be?
    - What would you do first?
    - What resources would you request?
    - What changes would you make from what is happening now?
    - What aspects would you definitely keep the same?
- What do you think the impact of having the SV court model operating nationally might be?

3. Completion of the Pilot

- What will happen once the pilot stops at the end of June 2019?
    - What would be lost with the pilot ceasing?
    - Which aspects of practice could feasibly continue post the pilot without any additional resourcing?
    - Which of these do you expect to continue? Why these/why not others?

Any other issues

Thank and close

Appendix D

Evaluation of the Sexual Violence Court Pilot – Victims

Interviewee Question/Topic Guide

1. Introduction and Context

- Overview of evaluation project and Gravitas role
- Purpose and aims of discussion; expected duration; roles of participants
- How the information will be used
- Confidentiality and anonymity
- Participant safety; support services *(contact details will be available for Victim Support, HELP Auckland, Rape Crisis, Skylight/NSVSA, Shakti, Toah-NNEST)*
- Option to withdraw at any time, not answer particular questions; request a break/a breather etc.
- Purpose and permission of audio recorder
- Opportunity for questions
- Reconfirm participant is happy to go ahead with interview. Consent form explained and signed.

2. Main Discussion

- I am wanting to understand your experience, in your own words, of attending court to give evidence as a victim in a sexual violence case. I won't be asking you about the event or events that led you to make a complaint to the Police. However, you are welcome to refer to these as little or as much as you feel comfortable in talking about the court process and what your experience of that was.

- If you have had more than one experience of being a victim called to give evidence in a sexual violence trial, we would like to hear about any ways that your experience at Auckland/Whangarei District Court in 2017/2018 was different to the other previous experiences.

Please talk me through your experience of the court process from when the defendant elected a trial by jury.

Probes:

Use as necessary on each of the following steps in the court process. Only use specific questions if not covered in participant's narrative.

1. *Court Awareness and Communication*

- Had you had any prior experience of a court process? *If yes, discuss briefly*
- Did you receive any information from the Police about the court process? *If yes:* What information was this? When and how was it provided? What impact did it have on you?
- Did you receive any information from the Sexual Violence Victims Advisor about the court process? If yes: What information was this? When and how was it provided? What impact did it have on you?
- *If not mentioned:* Did you receive information from the Police or the Victims Advisor about the case review hearing?
- Where else did you get information about the court process? What information was this? When and how was it provided? What impact did it have on you?
- *If not mentioned:* Did you have contact with a Victims' Advocate or other specialist support? *If yes:*
  - Who/which agency(ies)?
  - When did that start?
  - What support did you receive and when?
  - Was this support helpful? Why/why not?

2. *Time Between Election of Jury Trial and Start of the Trial*

- Approximately what was the timeframe between the first appearance/election of trial by jury and the scheduled date for trial? How did you feel about this timeframe?
- Had anyone advised you beforehand of what timeframe to expect? *If yes:*
  - Who had advised you?
  - When did this happen?
  - What timeframe were you told to expect?
  - Did you understand what was being communicated to you?
- What communication did you receive about events between the election of jury trial and the trial? Who communicated with you? When did this happen?
- What impact did the timeframe waiting for trial have on you?
- What, if anything, changed during this period?

- Were there any delays in the trial going ahead? *If yes:*
  - How much notice did you get that the trial would be delayed?
  - How do you feel about the reason(s) for the delay?
  - What impact did delay(s) have on you?
  - What difference would it have made to you if the trial had gone ahead as originally scheduled?

3. Court Preparation

- How prepared did you feel for the court process before it began? What did you think the court process would be like?
- Did you have a meeting or discussion with the Crown Solicitor or Police Prosecutor before the trial started? *If yes:* When did you have this meeting? What did they discuss with you? How did you feel about this meeting?
- Did you have a court education visit prior to the trial?
    - *If yes:* Who offered this visit? How long before the trial did this happen? How long did the visit take? What did you discuss/what were you shown? How useful was this?
    - *If no:* Were you offered a pre-trial court visit? If yes: Why did you decline to attend?
- Were you provided with options about entering and leaving the court building during the trial?
    - *If yes*, who provided you these options?
    - *All:* What was your experience of entering and leaving the court building? What impact did this have on you?

- Were you consulted on bail conditions or any name suppression application?
- Were you provided with the opportunity to view your evidential video prior to the trial?
    - *If yes:* Who offered you this choice? Did you choose to view your evidential video? Why/why not? What impact did this have on you?
    - *If no:* What difference would this have made?

4. The Trial Itself

General Perceptions

- What words would you use to describe your experience giving evidence in court?
- Describe what happened at court
- Describe how you were treated at court by…
    - the judge.
    - the prosecutor(s)
    - the defence lawyer(s)
    - the Sexual Violence Victim Advisor
    - other court staff
    - Victim Advocates (e.g. from HELP Auckland, Rape Crisis etc.)

    Probe to find out which staff, if anyone, they met with prior to the trial commencing and how they felt about this meeting/what impact it had

Experience Giving Evidence

- What was the process used when the charges were read?
- Was your evidential video interview played to the court?

If yes: Was it played in full or were just parts played? How did you feel about this? If you had had the choice, would you have liked the full video to be played or just parts? Why?

- Were you offered a choice of ways to give evidence (either behind a screen or via CCTV)?
  - *If no:* If you had been offered a choice of ways to give evidence, what would you have preferred? Why? What difference would it have made?
  - *If yes:* Who offered you this choice? Did you use one of these ways? Why/why not?
  - *If used CCTV:* Were there any issues or problems with the use of the CCTV (i.e. not working properly)? *If yes:* What impact did this have on the trial? On you personally? Were all necessary documents (photographs, sketches, written statements etc.) made available to you in the witness room before you started giving evidence? *If no:* What impact did this have on the trial? On you personally?
- If you could have given evidence from another location (not at the courthouse) via CCTV, would you have opted for this? What difference would this have made?

Communication Assistance/Use of Interpreter

- Did you require an interpreter and/or communication assistance while giving evidence?
  - *If yes:* How was this identified by the court – if at all? Was this assistance made available to you? *If yes:* Who made this assistance happen? How would you describe the effectiveness of the assistance you received? *If no:* What difference would it have made if this had been made available to you?

Timing Issues

- Did you have any difficulties attending court at the times you needed to be there? (e.g. significant dates) *If yes:*
  - What type of difficulties were they? How significant were they to you?
  - Did you raise this with anyone? *If not:* Why not?
  - Did anyone ask you about this or offer ways that the court could make it easier for you? (for example, later start or earlier finish times)? *If yes:* What impact did this have on you? *If no:* What was the impact of these difficulties not being identified?
- How long were you in court for? How do you feel about this amount of time?
- How do you feel about the regular breaks the court has (morning tea, lunch, afternoon tea)?
- Had anyone talked to you about what you should do if you needed a break while giving your evidence? *If yes:*
  - Who was this?
  - What were you told to do?
  - How comfortable did you feel/would you have felt about proactively asking for a break if you needed one?

- Did anyone offer to give you a break while you were giving evidence? *If yes:* Who offered this? What impact did this have on you?

Experience of Questioning/Cross-Examination

- Before the trial, what did you know about being questioned by the prosecution and the defence lawyer? How did you know about this?
- How well prepared for the trial were the prosecution/Crown? How about the defence team? What was the impact of this?
- Describe your experience of being questioned by the prosecution or Crown lawyers. Describe your experience of being questioned by the defence lawyer(s). How did you feel? *Probe to understand any differences in experience between questioning from prosecution/Crown versus defence lawyers*
- While you were being questioned by the lawyers, what did the judge do? Did the judge intervene in the questioning in any way? *If yes,* how? What was the impact of this on you?
- What, if anything, do you think the judge should have done differently while you were being questioned? What difference would this have made?

Provision of Support

- What was discussed with you regarding having a support person with you at the trial? By who?
- Did you have a support person/people at trial?
    - *If yes:* Who was this? Why this person? What type of support did they provide? *Probe to identify whether provided in-court support*. What impact did this support have on you?
    - *If no:* Were you aware that you could have a support person or persons near you while giving evidence? What difference would this have made if you had had a support person near you?

5. Pre-Sentencing and Sentencing

If guilty verdict:

- How did you feel about the timeframe from guilty verdict to sentencing?
- Were there any delays to the scheduled date for sentencing? *If yes:* Were you made aware of the delay and the reasons for delay? What impact did the delay have on you?
- How did you feel about the pre-sentencing and sentencing process? Did you feel safe during this part of the court process?
- Did you have the same judge at the sentencing as you had at the trial? What impact did this have?
- Did you prepare a Victim Impact Statement? Why/why not? Was it read in court? Who read it out? Did this effectively represent the impacts that you experienced? Did you have the chance to review it beforehand?

3. In Conclusion

- Given the experience you have had, what do you think are the most important things that need to be changed to improve the experience for victims giving evidence in sexual violence court trials?

Final participant-initiated comments

Check participant is OK. Suggest making contact with support services if appropriate

Thank and close