

**Oral submission to the Justice and Electoral Select Committee on the NCW Submission on
the Family Court Proceedings Reform Bill 90-1
S 13.03 made by Judy Whitcombe and Patricia Byrne on 21.2.2013**

Justice and Electoral Select Committee: Chairperson: Scott Simpson, National, Coromandel; Deputy Chair: Alfred Ngaro, National, List; Jackie Blue, National, List; List; Lianne Dalziel, Labour, Christchurch East; Denis O'Rourke, NZ First, List; Katrina Shanks, National, List; Kate Wilkinson, National, Waimakariri, Ruth Dyson Labour, Port Hills (replaced Charles Chauvel Labour), David Clendon, Green, List.

Good morning. My name is **Judy Whitcombe** and my colleague is **Patricia Byrne**. We are both members of the Parliamentary Watch Committee of the National Council of Women of New Zealand. This submission has been prepared from a background of policy decisions and consultation with the members of our organisation.

Introduction

As the written submission states, NCWNZ members were involved in the Ministry of Justice's Review of the Family Court in 2011 and the wide-ranging consultation was reflected in NCWNZ's February 2012 submission to the Ministry of Justice. Earlier, a representative from the Ministry of Justice had provided a briefing on the Review process to ensure that our members could be provided with relevant background information.

Back then it was thought that the system:

- takes too long,
- costs too much, and
- has a negative effect on children.

Responses to the Review from members included:

- Issues arrive at Court unnecessarily – often they could be solved through counselling
- Children need to be given their own lawyer
- The process must be speeded up and simplified with penalties where one party is being obstructive
- Concern at Court hours - between 10am and 4pm. It was thought that they should reflect school hours.

Earlier, in 2007 NCWNZ made a detailed submission on the Family Courts Matters Bill S07.53. At this time the efforts to improve the efficiency and effectiveness of the Family Court system were supported as was the non-judicial mediation proposed. That submission concluded "the focus of any Family Court must remain firmly on the child – the right for the child's views to be heard through the lawyer for the child, and the child's right to privacy and protection should remain paramount."

Comments on the Bill

This Bill has been reviewed against the views expressed earlier to assess whether it has dealt with all the issues which have been raised by members. While members supported the intention of the Bill – faster processes and more successful outcomes; less adversarial resolution of disputes; there were concerns that "the best interests of the child" may not be able to be achieved. The lack of relevant statistical information was commented on. While Family Court costs have increased by 63% the

number of cases has not varied greatly. More analysis of costs was needed. (Refer NZLawyer online Issue 172)

Part 1 Amendments to Care of Children Act 2004

Clause 4 replaces sections 4 and 5 of the Act

Section 4 covers the paramourcy principle. This is maintained and supported with some rewording. (7 subsections to 4 in the Bill)

Section 5 is important. It is in the Principles relating to the child's welfare and best interests where the Bill makes a change to the order of the principles. Here the child's safety is placed first [5 (a)] whereas in the Act the protection from violence is the fifth mentioned principle. This was referred to in the written submission which asked "does this mean that safety is now a key consideration?" and noted that there was no guidance on the application of these principles.

For the proposals in the Bill to work successfully, and the Principles articulated in clause 4 to be met, there must be:

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| • Appointment of a lawyer to represent the child | Clause 5 |
| • Available qualified counselling support | Clauses 6 and 9 |
| • Availability of suitable parenting programmes | Clause 10 |
| • Costs to meet the provision of appropriate aid | Clause 21 |

Here our members have expressed concerns relating to the importance of this support and possible problems with costs and availability of professionals and support programmes.

With regard to Clause 24 it was argued that "As these reports are an important part of achieving the best outcomes for the child, **payments for all reports should be covered by the Court.**

Part 2 Amendments to the Domestic Violence Act 1995

Clause 35 The addition of the amendment to section 3 to include financial or economic abuse was welcomed by members. However, with regard to the non-violence programmes referred to in Clause 43, the importance of monitoring the attendance was noted.

Part 3 Amendments to Family Courts Act 1980

As the submission outlined, the new title and change of focus on resolution, was supported as were the Purposes – Clause 60, for Section 3A

The proposals contained in the *Review of the Family Court System* to use trained and experienced family mediators before court proceedings are issued, were welcomed. The proviso "except in cases of domestic violence, child abuse and mental health issues" is sensible.

Clause 60 provides a useful expansion of what is proposed.

However, it is Clause 64 relating to Regulations and Rules where major concerns were aired. These concerns related to the fee structure, the need for access to legal aid, restoration of Court funded counselling and mediation and the adequate resourcing of Community Law Offices.

Conclusion

Concern for the welfare of children as individuals and in families was our main focus. It has been well documented that warring parents will very likely have a negative impact on children, as continued contact between parents puts their children in the centre of the conflict.

Improvement to the current system of the Family Court is sought, and the focus of the family justice systems should be towards supporting people to resolve their disputes about their children out of court, where appropriate.

An adequately resourced Families Dispute Resolution Service easily accessible to those families who are in need of help to resolve their differences and difficulties, will provide the children involved with a better outcomes. To gain best outcomes for children in all circumstances, Government, Service Providers, Community Agencies, the Legal Profession and the Judiciary need to be working in collaboration.

Members of the National Council of Women had many concerns which were stated in the submission. If the Bill is enacted in its present form it is hoped that there will be adequate monitoring processes in place to ensure that the reality reflects the intentions of the Bill.

Dr Judy Whitcombe
21 February 2013

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Q: (Lianne Dalziel) I noted your suggestion that changes need to be properly monitored. Do you think we should take time in implementing?

A: Yes, phase in changes and monitor effects as we have suggested.

Q: (David Clendon) Regarding services needing to be accessible and easily resourced. Are there areas where this is not so?

A: Our members have responded with different reports of availability or shortage of services in different areas.

Q: (Kate Wilkinson) You mentioned the fee structure needing to be at an appropriate level. What do you think is appropriate?

A: I am not in a position to suggest this, but monitoring will show which families are without the financial resources. Back-up is needed.

Q: (Lianne Dalziel) The suggested fee is \$897 to be split equally between parties. Would that be a barrier?

A: The way costs are moving it sounds good, but back-up is needed for families who have a problem with fees.

At this point the Chairman thanked us and called for the next submitters.

NOTE: Although the Select Committee had been meeting earlier, it had been considering different legislation, making us the first presenter that day on the Family Court Proceedings Reform Bill.

However, we stayed to listen to the next submitter – “Relationships Aotearoa”.

There were three members present and the first (Sheila Glensor) introduced the group and stated that they had been involved in family dispute resolution services for the last 60 years.

They stated that if services were reduced and not replaced with similar counselling this would have an adverse effect. They claimed that only 5% of people counselled went on to the Courts. Counselling at the beginning could help improve the time taken for resolutions and subsequent effect on the children. It produces changes and assists with the outcomes. Social networks can be brought in to help, e.g. grandparents, siblings, relatives and close friends. Section 9 counselling helps families to resolve issues and stay together. The withdrawal of Section 9 counselling will have a detrimental effect.

The legislation being considered tends towards separation of couples rather than helping them to resolve their differences. We must get counselling and services right.

Accessibility: 80-95% of people will end up in Court. You don't want them in court. Previously free court Counselling and legal representation helped prevent this. Families will give up if it is too costly. It is not about lawyers, but about helping parents find their own solution.

Children: Please include children in Family Dispute Resolution services. Counsellors are the best people to screen who should receive free or subsidised counselling are the FDR counsellors.

Questions: Katrina Shanks asked : Should we require parents to attend parenting course?

Jackie Blue said it was not clear what is urgent. Do all Domestic Violence cases go straight through?

Answer: In courts we see people who are fighting all the time – often access to money is the cause (and sometimes violence has not been revealed). Couples don't recognise their own situation.

Fee for access – have we lost free counselling? Do we need free counselling at the beginning of the process? Lots of clients do get sent for Protection Orders or to a lawyer.

Success Rate – only 5% go on to court. 95% don't separate.

Family Court Counselling can cost about \$700 for 6 counselling sessions. Do they need 6?

Answer: Often only about 4 sessions are needed.

At this point we left the committee room.