



NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND

TE KAUNIHERA WAHINE O AOTEAROA

Oral submission to the Justice and Electoral Select Committee on the NCW Submission on the Harmful Digital Communications Bill 168, S14.04 made by Jean Fuller and Patricia Byrne on 20/3/14

Justice and Electoral Select Committee: Chairperson: Scott Simpson, National, Coromandel; Deputy Chair: Alfred Ngaro, National, List; Paul Foster-Bell, National, List; Raymond Huo, Labour, List; Tracey Martin, NZ First, List; Joanne Hayes, National, List; Kate Wilkinson, National, Waimakariri, Clare Curran, Labour, List, David Clendon, Green, List.

Good morning. My name is **Jean Fuller** 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.

Our members recognise the social problem that has arisen from the new technology which allows swift, unregulated, and long lasting harm to be generated. We consider this Bill a worthwhile attempt to control this problem but we notice that in the Regulatory Impact Statement there was a recommendation that the legislation should be reviewed in two years. This seems a prudent step in such a fast moving field and we would like to see this provision stated in the Bill.

Clause 6. The Communication Principles which underlie this legislation have an elegant simplicity but each principle appears to be contestable. The “sensitive personal facts” in Principle one are a particular case which is ambiguous and needs some clarity. The ‘reasonable person’ test which is generally applied can be very contentious eg concerning abortion our Canterbury Branch reported that a pro-life organisation had material both approved and disallowed by different agencies.

Clause 7. The Approved Agency. The Law Commission’s original report suggested Netsafe as a possible agency. Our members are concerned that any Approved Agency should have a wide community base including younger people. It is important that any Agency should generate a reputation for community trust and we consider that such an Agency should be independent of Government.

Members also noted that there was no appeals procedure set out for someone who faced an accusation at the Approved Agency level. This seems an omission especially since the Law Commission has research which suggests that 1-10 New Zealanders have experienced harmful digital communications and that number doubles for ages 19-29. As well nearly half of those questioned did not know where to get help or how to defend themselves.

Additionally the complainant should have the right to know what actions have been taken. We have anecdotal evidence that people complaining under the Privacy Act may not know what action has been taken, but only that something has been done. Since the Privacy Commission may also become involved in considering harmful digital communications we hope that matters here will be more transparent.

Clause 8 e). is part of the description of the functions and powers of the Approved Agency. If this law is to be effective it needs to have a **strong educational function**. From comments made by

people who have been found to have inflicted digital harm there is a common defence that they did not know the consequences of their action. Younger people are particularly susceptible to this problem and it seems clear that many genuinely do not appreciate the seriousness of a tweet or a text. It is important that there is a public educational aspect to this Bill.

We endorse this sub clause, 8e but feel that it is so important that it should be placed as a separate clause which would also include the provision and publication of statistics relating to complaints. In particular we would ask that the information be gender and age disaggregated. This information would be particularly important for the 2 yearly review which we advocate.

Thank you.

Jean Fuller

Questions: General comment. The Bill sets out broad principles which will have to be refined by regulations. This can pose a problem for NCWNZ since that leaves the Government of the day open to impose regulations which we may not want to support. A written submission has to be directed to the Bill, but in this oral we took the opportunity to raise the sort of things that members had mentioned in Action Item responses, and that might well become the subject of regulations. This resulted in a more free flowing discussion than usually happens after an oral.

Q1. Alfred Ngaro questioned our suggestion that the Approved Agency should be independent of the Government, since it was intended that the Approved Agency should have teeth and therefore needed Government protection.

A1. Jean pointed out that if the “harm” were political it would be difficult for a government agency to be seen to be acting impartially.

Q2. Kate Wilkinson questioned our comment that no defence avenue had been set out for a person facing an accusation under the Approved Agency. She felt that the Bill was broad (vague?) enough to cover this. Later she said that the Bill should not be too prescriptive.

A2. Jean answered that many of the people who might be expected to be affected by this Bill were likely to be young and not familiar with defence actions. The accused also needed assistance.

Tracey Martin suggested that a phrase such as “follow the laws of natural justice” could be inserted to cover the NCWNZ concern.

While this did not really cover the point we were making it seemed we had done all we could to signal a possible problem and therefore we accepted this idea.

Q3. David Clendon continued a line of questioning that had been developed with the previous submitters, The Human Rights Commission. He asked whether we considered the definition of the word “harm” was too subjective?

A3. We agreed since it is clear that what one person might consider harmful another might not.

Q4. Paul Foster-Bell took up our concluding points about the need for education to accompany the Bill. He spoke warmly in favour of our comment.

A4. Jean took the opportunity to stress our views and point out that that there have been a number of cases where the teenager asks, “What have I done wrong?”

Clare Curran asked that the Committee be supplied with a copy of the oral and this was done.

Jean Fuller and Patricia Byrne

21/3/14