



NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND

TE KAUNIHERA WAHINE O AOTEAROA

11 February 2013

S13.03

Submission to the Justice and Electoral Committee on the Family Court Proceedings Reform Bill 90-1

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 47 organisations affiliated at national level and a further 41 organisations affiliated at branch level. It has 22 branches throughout the country attended by representatives of these organisations, as well as individual members. NCWNZ's function is to represent and promote the interests of New Zealand women through research, discussion and action.

This submission has been prepared by the NCWNZ Family Affairs Standing Committee and the Parliamentary Watch Committee based on input from the membership of NCWNZ.

Introduction

The NCWNZ submission dated 29 February 2012, when responding to the public consultation paper *Reviewing the Family Court*, noted that the overriding comment from the membership was the need for protection for the children and the best interests of the child being the paramount consideration.

The submission also stated that non Judge-led mediation could lead to faster and more successful outcomes. It may take longer initially, but time and costs would be saved because there would be no need for a Court appearance. It was also stated that some of our members considered there was a lack of relevant data and statistics and there was a danger to reform without this information.

The Family Court Proceedings Reform Bill addresses many of the issues that NCWNZ raised in their earlier submission, but there is still concern that some of the proposed changes being promoted may not be based on relevant statistical information and the underlying principle "in the best interests of the child" may not be able to be achieved.

The main purpose of this Bill is to encourage less adversarial resolution of family disputes through requiring the families with disputes about children to participate in an out-of-court family disputes resolution process, and a parenting information programme, before applying to the Family Court for a parenting or guardianship order. Many of our members consider that this will only work if these services are well resourced, are accessible, and, in particular, the proposed charges are appropriate.

Part 1

Amendments to Care of Children Act 2004

Clause 4 – replacing section 5. Principles relating to child’s welfare and best interests

It would appear that the Court looks at these principles in no particular order, meaning that no one principle is more ‘important’ or carries more ‘weight’ than another. Applying these principles should depend on the particular circumstances of the child. In relocation cases (where a child is to be moved with one parent to another city for example leaving the other parent without face-to-face access) the Court has prioritised continuity and keeping close contact with both parents (two of the six principles).

This new Bill has placed the safety of the child as the number one principle. Does this indicate that this rearrangement of the principles from the Care of Children Act 2004 mean that safety is now the key consideration and is it to be given more weight than the other principles?

The Court is still not guided as to how to apply these principles.

Clause 5 - replacing Section 7 Appointment of lawyer to represent child in proceedings

The membership is in agreement with this.

We would like there to be no hesitation in appointing a lawyer to represent a child. With the Court making the appointment, there should be no cost to the family involved.

Clause 6 - Section 8 amended (Interpretation)

“approved counselling organisation”

There is no indication in the Act to define an ‘approved counselling organisation’. It is noted that the Secretary (for Justice) has the approval responsibility. Will there be criteria to support the Secretary’s decisions?

Clause 9 - new section 46G Privilege

NCWNZ supports this new section. There must be total confidence between the family and the counsellor.

Clause 10 - new section 47B Mandatory statement and evidence in applications

NCWNZ supports these requirements.

The parenting programmes teach parents to understand and focus on the needs of their children. The underlying principle should be that families can and do sort things out between themselves, if they have the right resources and support available to them. These parenting courses should be free and it is essential that they be fully resourced.

Clause 21 - Section 131 amended (Costs of court-appointed counsel)

Section 133 Reports from other persons

Members of our group believe that a psychological report should be a mandatory requirement when an application is made regarding the care of the child. To uphold the principles relating to the child’s welfare and best interests, there needs to be a professional appraisal carried out by people who have a professional understanding of children’s healthy growth and development.

The cultural report should also be given priority as New Zealand is now a multi-cultural society, and sometimes in the past, the understanding of different cultures has been overlooked.

Clause 24 – section 135A Order requiring refund of payments in respect of reports requested under section 133

As these reports are an important part of ‘achieving the best outcomes for the child’ payment for all reports should be covered by the Court. Even though the Court may decline to charge a family for part or whole payment for these reports, any requirement for a payment being made could be viewed by the family as a disincentive measure and valuable time could be wasted. If a payment is going to be requested, then there needs to be very clear guidelines set out for all parties involved.

Part 2

Amendments to Domestic Violence Act 1995

Clause 35 - Section 3 amended (Meaning of domestic violence)

NCWNZ members fully support the addition of this amendment:

“(iva) financial or economic abuse (for example denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education)” to expand the definition of psychological abuse in the Act.

Clause 43 – section 39 Notice of non-compliance

NCWNZ supports the requirement that the non-violence programme provider must notify the Registrar if a respondent or an associated respondent fails to undertake an assessment or to attend a programme in accordance with the terms of the direction.

- Section 40 Notice of conclusion of non-violence programme

NCWNZ supports this section of the legislation.

NCWNZ recommend that there be regular reviews of cases where family violence or child abuse has occurred or anger management courses or other courses have been recommended. It is important that the courses offered should be assessed to ensure that they are making a difference to the families involved.

Part 3

Amendments to Family Courts Act 1980

Title

This Act is the **Family Disputes (Resolutions Methods) Act 1980**

NCWNZ supports the new title and the change of focus to this part of the legislation.

In the submission on the *Reviewing the Family Court* Consultation Paper, NCWNZ members supported the proposal that before court proceedings are issued, families should be required in most circumstances (except in cases of domestic violence, child abuse and mental health issues) to make a genuine attempt to mediate their dispute using a trained and experienced family mediator.

Part 1 Family dispute resolution

Clause 60 – section 3B Family dispute resolution providers

NCWNZ supports the use of well qualified resolution providers who are not necessarily lawyers. This approach is helpful for women who are often adversely affected financially. It provides them with the opportunity to talk through issues and empowers them to reach agreements with a partner for the good of their families.

Part 3 Regulations and rules

Clause 64 – section 16AA Regulations relating to family dispute resolution

Contracts for the family dispute resolutions have been left outside of the legislation. If legal aid is not available the Bill has stated that services would be under a private contract, and there has been no mention of a fee contract criteria or conditions.

There is concern that if a fee structure to access a family dispute resolution service is set at an inappropriate level, this will be a disincentive to many families, and the child/children will be exposed to a prolonged, intense and poorly resolved conflict between the parents/partners. A fee structure has the potential to disadvantage women, especially if they have been out of the paid work force for a time and have been full time at home with their children.

We believe that a fee structure should be even-handed and not unfairly empower a party that has greater economic resources than another.

Early intervention is vitally important as are referrals to counselling or mediation services. We would wish to see the six sessions of Court funded counselling (including mediation) be restored.

The Community Law Offices will become the first point of contact for many families seeking legal advice and information. This service needs to be accessible in all communities and be suitably resourced.

Conclusion

Concern for the welfare of children as individuals and in families is a thread that runs through NCWNZ's history since its inception in 1896. 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.

NCWNZ seeks improvement to the current system of the Family Court, and agree that the family justice system's primary purpose is to support 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 better outcomes to their lives.

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.

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