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### **Submission to the Justice and Electoral Select Committee on the Legal Service Amendment Bill (No 2)**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 40 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

In March 1977, NCWNZ made a submission to the Royal Commission on Social Policy calling for 'the need for access to the justice system to be affordable for all...' Over the years before and since then, NCWNZ has responded to a number of calls from advisory and select committees to submit ideas on affordability but, even though the legal aid scheme was designed to meet this need, members' responses reflected a significant level of public confusion and cynicism. Up-dating the financial eligibility criteria and improving repayment processes ought to dispel at least some of the currently held public perceptions, especially those fostered by media reports of legal aid going to applicants presumed to be wealthy, and of law firms over-charging.

For the purpose of this submission, NCWNZ canvassed members for their views on:

- (a) the justification for raising the financial eligibility threshold;
- (b) whether a person's 'disposable capital' ought to be considered for repayment assessment and
- (c) to what degree a spouse's or partner's assets should figure when calculating repayments.

#### **(a) The justification for raising the financial eligibility threshold**

Most members see this Bill as timely, especially as the income threshold has remained static since 1987. The research of one NCWNZ Branch suggested for example a family of say two adults and one child should be able to apply for legal aid on a gross income of \$36,371 in 2006 instead of \$19,000 which applies now. New Sections 8 and 9 were noted as having extra safeguards aimed at ensuring that applications are not made mischievously, and NCWNZ approves of them from a taxpayers' perspective.

Some members are concerned at wastage of legal aid funds, and see shortening the legal process as contributing to better accountability. According to an article in *Law Talk* (May 30, 2005) the additional cost of grants will be around \$14 million for the first year, with a comment by Justice Wilding noting that this must ensure the 'maintenance and provision of a suitable pool of experienced lawyers who are willing to undertake legal aid work.'

Another argument supporting increased access to legal services is that people are less likely to take the law into their own hands. Also the proposed legislation should discourage people from staying on benefits in the belief that there would be more sympathetic responses to applications for assistance.





(b) **Ought a person's 'disposable capital' to be considered for repayment assessment**

There was general recognition among members that assessment of assets for repayments is justified as some people are asset rich even if some assets are not liquid in the short term. However **Section 20, Clause 4** allows generous time for debt repayment and there is provision in **Clause 31 A** for adjustments and even waiving of all or portions of the repayments. A major concern expressed by several respondents was the difficulty facing many women who did not have the earning capacity to meet legal aid debt. But as already indicated, this Bill covers such contingencies. A frequent comment was that each case should be treated on its merits.

(c) **To what degree should a spouse's or partner's assets figure when calculating repayments**

Although **Clause 41** as defined in Schedule 1, is primarily introduced to clarify new definitions of 'partner', some members could see cases where there is not accurate disclosure of marital status, fearing that the legal Agency may charge applicants higher payments than seem justified. **Clauses 11 and 12** require two way trust, i.e. Agencies are to be notified of changes of circumstances while the Agency is to keep the aided person informed.

**General Comment**

While the financial costs of legal aid are substantial, the social costs of not providing legal aid would be very serious indeed. But it is essential that legal aid is not used or seen to be used in an unjust manner.

NCWNZ is pleased to have been afforded this opportunity to make the above submission.

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**National President**

Heather M Smith  
**Convener, Economics Standing Committee**