

9 June 2011

S11.06

Submission to the Justice and Electoral Committee on the Criminal Procedure (Reform and Modernisation) Bill (243)

The National Council of Women of New Zealand (NZNCW) is an umbrella organisation representing 51 nationally organised societies and national members. It has 23 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. NCWNZ's function is to serve women, families and the community through research, study, discussion and action.

This submission has been prepared by the NZNCW Justice and Law Reform Standing Committee after consultation with the membership of NCWNZ, and reviewed by the Parliamentary Watch Committee and the NCW Board.

Introduction

1. NCWNZ members have expressed concern at the current delays of court proceedings and inefficiencies of court processes. NCWNZ supports the purpose of the Bill as set out in the General Policy Statement in the Explanatory Note of the Bill, in particular to reduce unnecessary delay and inefficiency of court processes. However there are some reservations in regard to the proposed changes for the right to trial by jury and for the defendant to be present during the court hearing.

Other Comments

Part 3, subpart 5, Clause 73

Category 1 and 2 offences

2. Some members disagree, and one member strongly disagrees, with the proposal to remove trial by jury for category 2 offences because a single judge cannot take the place of 12 citizens. Judges are limited by their own life experiences and are not able to respond with the wider view and "common conscience" that a jury brings. Further the member believes that it is a breach of a defendant's human and judicial rights not to be permitted a trial by jury for category 2 offences.

3. However, members have also noted that trial by jury will still be available to defendants charged with more significant offending and do not oppose the three year threshold despite it being contrary to the New Zealand Bill of Rights Act 1990. The limitation on the right to trial by jury is generally supported because it is seen as cost effective and practical.

Part 5, subpart 1, Clause 124

Defendant generally may be present at all hearings

4. Some members are concerned that the trial may proceed without the defendant being present as this is an absolute right of the defendant and not being present is a complete denial to the right to a fair trial.

5. A member, who is a High Court Judge's Associate, commented that the defendant's physical appearance at all stages of the trial should be regarded as fundamental unless he or she makes it impractical to achieve.

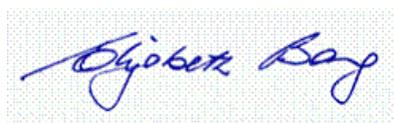
6. In a jury trial, matters inevitably arise concerning aspects of evidence, procedure and the like, where the views of a defendant must be sought. If a defendant is absent from the courtroom, dealing with such matters will be much more difficult and will impact on witnesses, jurors, victims and all those involved.

7. Even in cases of misconduct resulting in an accused not being personally present in the courtroom, modern technology such as closed circuit television could be installed to enable him or her to be able to see and hear the proceedings in court but with his or her participation being controlled by the judge. That, however, would still require an accused in almost every case to be within the courthouse even if not personally present in the courtroom.

8. However, Clause 128(4) of the Bill also provides that the court must not proceed with a hearing in the absence of the defendant if the court is satisfied that it would be contrary to the interests of justice, and it would appear that trials in the absence of a defendant would be rare.

Conclusion

9. NCWNZ generally supports the bill with some reservations. NCWNZ believes women's access to justice is critically important and an efficient and functional criminal procedure system is key to obtaining justice by women as victim and as defendant, but at the same time there must be regard for fundamental human and judicial rights.



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