



Influencing Policy for Women to Thrive
Affiliated to the International Council of Women

29 February 2012

S12.02

Submission to the Ministry of Justice on the public consultation paper
Reviewing the Family Court.

The National Council of Women of New Zealand (NCWNZ) 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 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 the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

The National Council of Women (NCWNZ) in 2002 when responding to the *Discussion Paper No 47 Family Court Disputes Resolution* wrote, "the best interest of the children must remain paramount". This statement still holds true today.

From the NCWNZ membership responses sent in for the *Reviewing The Family Court consultation paper*, one of the overriding comments was the need for protection for the children, and for the Family Court to remain child orientated with the welfare and best interests of the child being the paramount consideration.

Issues raised by the membership about the Family Court

1. All comments received stated that the delivery of Family Court Orders needs to improve, and changes to family situations take too long to come into effect.
2. The design of the Court needs to make people feel safe. There needs to be adequate separation of men's and women's toilets and waiting rooms. As women can be aggressive, their security needs to be addressed.

3. Courts operate from 10am to 4pm. Arrangements need to be made for the children to be cared for until the parent attending the court is able to return home. This may not be until 4.30pm or even later. For many parents, this adds to the already stressful situation. We recommend that all hearings should be between 9am and 2pm, or alternatively, another option might be the provision of child care facilities nearby.
4. We suggest that when a woman appears in court for a second time because of a domestic violence incident, she needs to be directed to a course on domestic violence management.
5. There has been a huge increase in Family Court costs and yet there has been not been a substantial increase in the number of new applications received. The majority of our responses stated they would like to see the State continuing to provide a range of free or subsidised services to families.
6. Regarding the current review of the Family Court, members felt there was a lack of proper data and statistics and there was a danger of reform without this information. It is essential that changes are not made unless they are based on adequate data. Research is needed to ascertain why outcomes are not improving.
7. Another of the issues raised was the extent to which there is freedom in exchange of information between the Family Court and other government agencies e.g. Child, Youth and Family, Health, WINZ, Corrections and Education. The Privacy Legislation should not be given priority where the interests of children are concerned
8. NCWNZ members feel that there is a tendency to withhold information, by people quoting the Privacy Act as the reason. Privacy is important, but it is possible to educate and give information about processes without mentioning names.

What role do you believe the State should have in regard to families, where would you draw the boundary?

1. NCWNZ members believe that the State had a duty to protect the most vulnerable in society and those who are least able to protect themselves – children, victims of crime, and people with physical or mental disabilities. However the Family Court should be the last resort for sorting out family

issues. It needs to be able to provide mediators who are neutral and have no material or other interest in being a mediator. Under the current system, individuals or companies involved have conflicts of interest in the sense that they can materially benefit from cases and increase the cost of running the Family Court.

2. In many cases non Judge-lead mediation could lead to faster and more successful outcomes. It may take a longer time initially, but time and costs would be saved because there would be no need for a Court appearance. We understand that there is now provision in the courts to use Senior Family Court Registrars instead of Judges, but because of financial constraints these positions have not been filled, and we would support these moves.
3. 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. The emphasis should be on what does not need to go to Court: this is less draining, both in an emotional as a financial sense for all concerned; as well as encouraging self-determination and resolutions that are 'owned' by the families themselves. There should always be the facility to take issues to the Court if very good reasons warranted that approach.
4. *Reviewing the Family Court - Chapter 4 Focusing On Children* states, "Parental separation does not necessarily mean poor outcomes for children but research shows that prolonged exposure to frequent, intense, and poorly resolved conflict is associated with a range of psychological risks for children." This statement is supported by comments made by the membership.
5. All children are affected by separation, even more so when there is conflict. Mothers tend to become over protective, as the safety of the children is vitally important. It is also important to recognize that decisions made when a child is a baby may not be as appropriate when the child is older. There needs to be a facility to reassess this – reviews of family situations should be part on the ongoing safety network.

What do you consider should be the role, purpose and function of the Family Court?

1. There have been significant changes to the Family Court jurisdiction since it was established in 1981, and it had jurisdiction under eight Acts. This has now expanded to the present 23 Acts, resulting in a sometimes fragmented approach which has impacted on the efficiency of the Family Court. A review of the Acts over which the Family Court has jurisdiction is urgently required, so that there is less misunderstanding by the people needing protection and delays can be minimised.
2. People need to know clearly and succinctly their rights, or what is the next step in the process.
3. With more legislation, or amendments to legislation to cope with, agencies such as Citizens' Advice Bureaus, Community Law Centres need to be accessible in communities to assist members of the public to understand 1) these changes and 2) under which legislation they gain those rights and protections. These centres need to be suitably resourced.
4. Public education on the role of the Family Court needs to be promoted with Court staff being able to speak to groups.
5. Changes to family situations are taking too long to come into effect, and frequently it is women and children who suffer in the meantime. There needs to be penalties where one party is being obstructive, or when protection orders are disregarded.
6. Self-litigation often disadvantages family members and sometimes makes it more difficult to reach a satisfactory outcome. Therefore this should be discouraged. Early intervention is very important as are referrals to counseling or mediation agencies. It was felt that the six sessions of court funded counseling (including mediation) should not be reduced.
7. A small group of our members felt that the State had a role in determining who should receive funding for counselling or mediation and whether a means test should apply. Government money needs to be spent on those who need it most, the most vulnerable members of our society. Some felt that legal aid applications should be screened by legally and family skilled people to consider the appropriateness of the case – there are parents who appear to keep going back to court with petty complaints. The Court needs to be able to intervene and prevent this from happening – for example

through better education about what the Court can and cannot get involved in.

8. A member who had personal experience with the Family Court stated, "There is nothing stopping a parent from breaching the Care of Children Act 2004. There are consequences for a parent who has breached the Act but it should have more teeth for enforcing it."
9. Another group expressed concern about, "Time taken by the Court; the sanctions the Courts are able to apply are not severe enough to act as a disincentive – some cases can drag on for years, in one case 15 years. If one partner has more access to money to continually bring cases, this can be detrimental to the partner who does not have the money."
10. A number of NCWNZ members have sent in details of positive experiences and there is a lot of praise for the Family Court staff - they are seen as "caring, hardworking and tolerant".
11. Many of our members felt that before a case could be taken to Court, except where there was domestic violence, signs of child abuse or mental health issues, all cases should be referred to a Parenting Through Separation Programme.
12. Immature parents often have unrealistic expectations and too many end up in the Family Court system - it should be the last resort.
13. The role of the State is to maintain best interests of children – to protect families, particularly children from violence and to provide a society where children have the basic rights of food, shelter and safety, and their emotional and physical needs are met.
14. NCWNZ members found the following information of interest and worthy of further research:

"A growing body of evidence does, however describe a cascade of negative impacts from early exposure to the toxic stresses of recurrent child abuse or neglect, severe depression, substance abuse or violence within a family (Centre on the Developing Child at Harvard University, 2007). Such exposures can result in persistently elevated stress hormones that disrupt brain development...immune responses and metabolic regulatory functions. This in turn may result in increased susceptibility to multiple physical and mental health issues." *Officer of the Children's Commissioner Dr. Janine Martini – Preventing Child Neglect in New Zealand – December 2010.*

An important part of the review is looking at incentives/disincentives so that couples resolve matters themselves (where there is no risk of harm)] without recourse to the Court.

1. Many of our members advocated that s.5A of the Care of Children Act be given impetus. The section states: “A child’s parents should have primary responsibility and should be encouraged to agree on their own arrangements for the child’s care, development and upbringing.”
2. This means that before court proceedings are issued we should require families in most circumstances (except in cases of domestic violence, child abuse and mental health issues) to have a genuine attempt to mediate their dispute using a trained and experienced family mediator.
3. Mediation services may well be able to be delivered by qualified mediators, not necessarily lawyers. If legal issues emerge, a lawyer can be made available. These kinds of mediations solve 75 – 80% of all family disputes, provide enduring outcomes for families and provide tools for parents to better deal with future disputes. It is also less expensive for the state and for families. (*Law Commission Reports, Family Court Mediation Pilot Evaluation.*)
4. It is particularly noteworthy that the approach above is helpful for women who are often adversely financially impacted by separation. It provides them with an opportunity to talk through issues and empowers them to reach agreements with a former partner for the good of their families.
5. Most couples work out their problems satisfactorily. Couples often go to a counselor together, with follow-up individual visits to organize a care plan for the welfare of their children. Judges are good professionals and encourage parents to solve their own problems themselves. ‘A hand up NOT a hand out approach’ is preferred.
6. The Family Court is a restricted area with all parties, regrettably sometimes including children, in the same big open space. In a case where there has been family violence against a mother/children, they should be able to wait and meet legal counsel in a secure place away from a threatening male partner/husband/father. Children are particularly vulnerable and may have mixed loyalties/uncertainties, even though in a threatening situation. Eye contact and body language can cause conflict, so segregation of the parties is desirable with emphasis on the protection of the children. Children

should have more say about protection orders. Judges should take into account situations where mediation is not successful because of 'wilful obstruction' by one of the parties.

7. Attendance at Parenting through Separation should be mandatory. In this context, we wonder whether these programmes would be funded to be delivered within easy access to both partners/all parties?

Issues the review team should consider.

1. Should ADR [alternative dispute resolutions] be means tested? There was mixed opinion on this. If counseling/mediation was means tested or refused this could result in non-resolution and the case going to Court – at a greater cost.
2. Are there enough trained and experienced family lawyers? Is a lawyer the right person to obtain the children's views or could this role be taken by another person? And for whom is the lawyer acting and advocating – a paying parent or the child? Children have the right to a lawyer of their own to act for them, should this be required.
3. NCWNZ would support training of all professionals dealing with Family Court issues for specific training and ongoing review of the practices and processes. An essential part of the review process should be a review of all family law legislation to ensure that all different cultures and communities needs are taken into account.

The relevant and appropriate information should be made available to the community about the processes of the Family Courts.

1. In particular this information must reach people of all cultures, especially women, who sometimes have less opportunity to be in the community to learn English, and therefore to understand how the NZ system works. It is important that immigrant women know how to get help and advice.
2. There should be some form of 'follow-up' to ensure that orders made by the Court are actually carried out. There should also be regular review of cases where family violence or child abuse have occurred or anger management courses or other courses have been recommended.

3. Communication needs to be improved between government departments while still respecting privacy and confidentiality. This must not be done at the expense of a child's safety and well-being.
4. NCWNZ also supports the introduction of improved data collection in order to capture comprehensively a true record of the Family Court as stated in our 2002 submission.

Conclusion

NCWNZ welcomes the opportunity to contribute to this public consultation paper on Reviewing the Family Court. As has been stated in the review paper, 'the success of any reform will require all professionals working in the field including community agencies, service providers, government, the legal profession and the judiciary, to work collaboratively to support a new approach'. NCWNZ supports this statement, with the bottom line being – to gain the best outcomes for children and to promote their welfare.

Elizabeth Bang
President

Billa Field
Convenor, Family Affairs Standing Committee