



NATIONAL COUNCIL OF WOMEN OF NEW ZEALAND

TE KAUNIHERA WAHINE O AOTEAROA

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Submission to the Law Commission on Alternative Trial and Pre Trial Processes: Possible Reforms

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 Justice and Law Reform Standing Committee after consultation with the membership of NCWNZ.

Introduction

NCWNZ has been party to numerous consultations, conferences and reports where the issue of women's access to justice has been advocated.

NCWNZ also has specific policies in regard to:

- Evidence of children – use of video technology in defined circumstances to be accepted as evidence in both family and criminal courts.
- Domestic violence – request government to allocate sufficient funds for the adequate support of organisations providing approved programmes and educating for the peaceful resolution of conflict.

NCWNZ generally is very supportive of the possible reforms. The possible reforms are viewed as enhancing the likelihood of women and children to obtain a better outcome in an area of justice which at present is not effectively serving a large proportion of complainants or potential complainants.

The submissions are directed at the possible reforms for sexual offence cases only.

Pretrial – sexual offence cases

2A Laying and reviewing charges

The majority of respondents support the possible reform. A concern was expressed about the present court hierarchy and the requirement for training and where the funding would come from.

2B Role of victim in pre-trial process

The majority of respondents support the possible reform. There were concerns about the situation where the complainant has “cried rape” and about possible delays in the justice system.

2C Guidelines for prosecution of sexual offences

The majority of respondents support the possible reform. There was a query about the situation where other charges are possible, eg drugs and alcohol.

2D Pre-trial evidential issues

There is unanimous support for the possible reform. The view is that the case dossier would be less painful for the complainant and the move towards an inquisitorial style of justice is a positive move.

Characteristics of the Trial Court

3A Who should determine the verdict?

Some members favour 5 jurors and there was a concern about the right of the defendant to be tried by his/her peers and queries as to how the jurors would be chosen.

3B Verdict

There was general agreement with the possible reform and the comment that it is important that the reasons for the verdict are in writing. The written reasons could be used in later reviews/references pertaining to the case.

3C Sentencing

There was general agreement with the possible reform.

3D Specialist judges

There was general agreement with the possible reform. There were comments that there should be a gender balance and no male judges aged over 70 years and training should include gender sensitivity.

3E Accredited counsel for sexual offence cases

There was concern about restricting the defendant's choice of counsel. There was support for accredited counsel and training that includes the promotion of a culture that is gender sensitive and respectful of the experience of complainants, without compromising a defendant's right to a fair trial. Others commented that the objective to bring out the truth rather than point scoring is important.

Trial Procedure

4A How is evidence presented and who is in control of the process

A few respondents did not support the possible reform, however several were in favour. There was support for the narrative style of giving evidence which would allow the complainant to be more relaxed and there would be less potential for harassment, as the power stays with the speaker.

4B Evidence by the defendant

Responses were evenly divided between supporting and not supporting the possible reform.

4C Admissibility of evidence

There were mixed responses and several favoured the status quo. There was comment that possibly the sexual history of the complainant would be admissible if relevant to the case.

4D Evidence of vulnerable witnesses

The majority supported the possible reforms. There were comments that the intermediaries should be trained in sexual abuse and court procedures. The intermediaries should also have empathy and objectivity. The complainant should be able to participate in a healing journey rather than be re-traumatised.

4E Role of the complainant

Two respondents questioned the need for the ISVA but the majority supported the possible reform. There were comments that the ISVA should be of high calibre and have a good understanding of all cultures, have counselling and communication skills, be empathetic and be supportive.

There was also a concern raised about a victim who is an older person with limited cognition and with limited family support – will this person have her safety ensured as there is no provision for refuge in Women's Refuges for over 65 year olds.

4F Child protection orders

Two respondents questioned the need for the changes but the majority supported the possible reform. There were comments that the child needs to be safe and this is paramount.

5 Specialist Sexual Violence Court (SSVC)

Similarly two respondents questioned the need for the specialist court but the majority supported the possible reform. There were comments that the complainant should be the priority and safeguarded from being re-victimised.

There were comments that maybe a team of judge, co-assessors and counsel could be suitably trained and would travel around a region. The team could be seen as objective and viewed with credibility and as specialists. There was also a comment that the public would need to be educated to understand the validity of the new process.

Other comments were that more resources and funding would be required.

6 Alternative Process for Sexual Offence Cases

There was mainly support for the possible reforms and comments that a complainant would have more input and control over the possible outcomes, however there must be good measurable outcomes and maybe a pilot programme would be needed first.

There were also comments that the process must be tailored to the needs of the complainant and allow for the safety of the complainant. There was support for greater flexibility and alternative processes being available.

There was a suggestion that the NZ LEADR process could be used as this has a good success rate. There was comment that the defendant may be more likely to take responsibility for their actions if there is no risk of imprisonment.

Conclusion

NCWNZ generally supports the possible reforms in regard to sexual offences with some reservations about some of the more radical proposals. NCWNZ believes access by women and children to justice is critically important. An efficient and functional justice system is important for obtaining justice by women and their children, particularly in the area of sexual offences.

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