



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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S17.03

Submission to the Justice and Electoral Committee on the Domestic Violence – Victims’ Protection Bill

Introduction

- 0.1 The National Council of Women of New Zealand, Te Kaunihera Wahine O Aotearoa (NCWNZ) is an umbrella group representing 283 organisations affiliated at either national level or to one of our 21 branches. In addition, about 260 women are individual members of branches. Collectively our reach is over 290,000 with many of our membership organisations representing all genders. NCWNZ’s vision is a gender equal New Zealand and research shows we’ll be better off socially and economically if we’re gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right. This submission has been prepared by both the Employment and the Justice and Law Reform Standing Committees, and the Parliamentary Watch Committee, after consultation with the membership of NCWNZ.
- 0.2 NCWNZ welcomes the opportunity to comment on the Domestic Violence-Victims’ Protection Bill (the Bill). NCWNZ has, since its inception 120 years ago, advocated for the rights of women and children including in the domestic, employment, social and economic areas. NCWNZ adopted specific policy on the rights of victims of crime in 2000. Since then, we have developed policy in relation to victims of domestic violence, children as victims of abuse and victims’ rights in general.
- 0.3 We have a substantial body of policy and parliamentary submissions urging government to increase support and protection for victims of domestic violence. Examples include our submission on the Domestic Violence (Enhancing Safety) Bill 2009 and NCWNZ National Conference resolution in 2008, calling for urgent action to improve the implementation of legislation relating to Protection Orders for those affected by domestic violence.
- 0.4 Similarly, NCWNZ has focused on addressing the underlying causes of domestic violence and we urge government to continue to develop effective and adequately resourced policies in that regard.
- 0.5 NCWNZ strongly supports the general direction of the Bill. We propose a number of amendments around ensuring privacy for victims of domestic violence and simplifying what is currently a complex and potentially daunting process.

1. Part 1 DOMESTIC VIOLENCE ACT 1995

Clause 4 Section 2 amended (Interpretation) (a) – (i)

- 1.1 We note that seven of the nine documents listed under the meaning of the domestic violence document are associated with the police. Reports indicate that a large number of domestic violence incidents go unreported and it seems unlikely that those options will be taken up by some victims of domestic violence.
- 1.2 We recommend that the wording in option (g) be changed from a report from a medical practitioner to a report from a health practitioner to reflect that there are a range of practitioners who are competent to provide the document.
- 1.3 It is important that there be only minimal disclosure of the details of the incident which forms the basis of the document/report. A number of our members believe that instead of providing the actual documents specified in Section 4(2) (g) and (h), it should be possible for victims to provide a statutory declaration signed by a Justice of the Peace affirming that the document has been sighted. This would assist in maintaining confidentiality of what is likely to be sensitive information.
- 1.4 Some members questioned the requirement to provide evidence of domestic violence. Disclosing sensitive and intimate information to an employer could be distressing to the applicant and provide a barrier to seeking leave.

2. Part 2 EMPLOYMENT RELATIONS ACT 2000

PART 6AB Flexible Working for Victims of Domestic Violence

69AB Object of this Part (a) (b) (c) (d)

- 2.1 (69AB(a) We strongly support victims of domestic violence having a statutory right to request a variation of their working arrangements or to have a variation of their working arrangements requested on their behalf. To ensure that employees and the wider public are aware of this right, and are able to exercise it, a communication programme should be implemented upon the passing of the legislation and should continue as part of information provided to all employees and to the wider public. This should include a step-by-step guide on the process to be followed and a template for providing information required – for example in the request for the variation of working arrangements.

69ABB Request

- 2.2 69ABB (1)(b) NCWNZ believes that the six months' period of employment required immediately preceding the date on which the request is made is too restrictive and limits vulnerable victims. We believe that there should be no time limit at all, noting that there is none for general flexible work requests in the Act.

- 2.3 69ABB((1)(c) It is recognised that incidents of domestic violence can be repetitive. This could result in another incident within 12 months. Our view is that there should be no request period restrictions. This would also align with the current flexible work request regime in the Act, in which there is no timeframe between requests.
- 2.4 69ABB (2)(f) This requirement that the employee state how the variation in employment will enable them to deal with the effects of being a victim of domestic violence, may well expect too much, given the sensitive nature of the situation. It seems obvious enough that flexible working arrangements will provide opportunities for the person involved to address, for example, urgent and immediate family issues, recover from stress or injury and move accommodation for safety reasons. Requiring details seems unnecessary. It should not be a mandatory requirement.
- 2.5 69ABB (2)(g) It appears reasonable for the employee to assist in providing information about workplace changes needed in their absence. Again, however, this requirement may not always be realistic or appropriate given the circumstances in which a victim of domestic violence may find themselves. It should not be a mandatory requirement.
- 2.6 69ABB(2)(h) We note the applicable provisions of the Privacy Act 1993, however, concerns about privacy of the domestic violence information have been expressed in all responses from our membership. NCWNZ believes that the information provided in the domestic violence document should be kept confidential and not recorded on the employee's personal file. In addition to issues of the safety of the domestic violence victim, a change of behaviour and attitude from colleagues towards the person concerned can take place if this knowledge is shared. This could be supportive or otherwise. Further, if confidentiality is respected, other people who are experiencing similar problems will gain confidence in asking for support from the employer. We strongly recommend that workplace training and professional development should include information about privacy issues around domestic violence and requests for a variation of working arrangements.
- 2.7 NCWNZ believes that the person making the application and the employer should discuss the privacy aspects around confidentiality of information. There should be a requirement in the Bill that the employee and the employer sign an agreement on issues around confidentiality. This should include whether and to whom it would be appropriate to share the information. A number of our members suggested that the request should not necessarily be made in writing.

69ABC Employer's duties

- 2.8 69ABC (a) NCWNZ believes that dealing with a request 'as soon as possible' is essential if the Bill is to have any teeth. The period of 'not later than 3 months after receiving it' is too long a period. An employee putting in such a request is likely to be in an emergency and possibly an unsafe situation, and a prompt response is needed. The quicker an employer responds to the request, the quicker the employee will be back at work. We suggest this be amended to 'within 3 days but not later than 10 working days'.

- 2.9 69ABC (b) We support the requirement that the employer refer the employee to appropriate domestic violence support services. In the general sense, it would be useful to have information about such services publicly available in a workplace.

69ABD Refusal

- 2.10 69ABD (2) (a-h) The proposed grounds upon which an employer may refuse a request are many and broad. It would be easy for an employer to justify a refusal. The reason for this Bill is the shocking level of domestic violence in our society and NCWNZ believes that there should only be exceptional grounds for refusal. It would be useful to have such grounds for refusal reviewed by a third party, such as a Labour Inspector or the Ombudsman, before any submission to a dispute is made. Such refusals should be provided in writing.
- 2.11 The grounds for refusal may vary between small organisations with limited resources and large, better resourced organisations. (We note that some bigger organisations such as The Warehouse have already established support systems for women affected by domestic violence). We believe that, if this process is to be effective, it will be necessary for small employers to be given government assistance with the cost of implementing the legislation.
- 2.12 A number of our members believe that the Bill places too heavy a burden on employers – to be able to refuse a request under 69ABD(1) would require an employer to make determinations they are not in a position to make.

609ABE Disputes (1) – (7)

- 2.13 We support the provision of a dispute's procedure. We hope, however, that the process and requirements set out in the Bill would be sufficient and robust enough to ensure that it would be needed rarely. It is questionable whether many victims of domestic violence would be in a position to pursue a daunting and what could be a lengthy process, given the stress, sensitivity and complexity of the situation.
- 2.14 A number of our members believe that too many people and organisations would be involved in the proposed dispute's process and that one organisation is needed to resolve the situation more simply, quickly and effectively, given that it could go on for months.
- 2.15 As a last resort, we support the provision for reference to a Labour Inspector, then to mediation, and then to the Authority. We note, however, the relatively small number of Labour Inspectors and the wide range of responsibilities they already have. It is our view that additional inspectors, trained in the specific issues around domestic violence, would be needed if the intent of this provision is to be effectively realised.
- 2.16 A number of our members suggested that victims of domestic violence should be offered the choice of gender for a Labour Inspector and Mediator with whom they engage.

- 2.17 Other members expressed the view that the current maximum penalty of \$2,000 is not significant enough and that there should be various penalty limits imposed upon an employer relating to intentional/unintentional refusal and discrimination.

3. Part 4 HOLIDAYS ACT 2003

Subpart 5 – Domestic Violence Leave

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- 3.1 We strongly support this paid leave being specifically available for victims of domestic violence.
- 3.2 Having paid leave available for this purpose makes it transparent to workers that they are eligible for support and recognises domestic violence as a workplace issue. When victims are in the middle of a violent relationship it can be difficult or impossible for them to make the necessary arrangements to leave the violent relationship or to deal with the effects of it – for example, moving house, seeking support from an NGO such as Women’s Refuge or attending court for a protection order.
- 3.3 Paid leave for this purpose needs to be established as a minimum entitlement in legislation so that all victims are entitled. It should not be a lottery for the victims based on their place of work. Setting a minimum entitlement establishes a minimum social expectation that we think should exist in New Zealand and the importance of supporting victims (predominantly women) in work. This will have positive flow-on effects for the victims and their children.
- 3.4 All of us, including workplaces, need to be doing what we can to reduce or eliminate domestic violence in New Zealand. Suzanne Sniveley’s¹ research establishes strong economic basis of the productivity gains of providing victims of domestic violence with this support.
- 3.5 Further thought should also be given to extending the Bill to enable offenders of domestic violence to be able to access this leave, e.g. to attend counselling sessions or restorative justice programmes.

5. Part 5 HUMAN RIGHTS ACT 1993

Clause 16 Section 21 amended (Prohibited grounds of discrimination) (2) (n)

- 5.1 We support the proposal in clause 16 that would add being a victim of domestic violence as a ground of prohibited discrimination under the Human Rights Act 1993.
- 5.2 Statistics show that 1 in 3 women and 1 in 7 men in New Zealand are victims of domestic violence at some point in their lives. The physical, emotional and financial implications of this violence are well reported and people in this situation should not be further disadvantaged (e.g. through being denied access to housing) through the abusive behaviour of their partner, former partner or parent.

¹ Snively, Kahui and Ku *Productivity Gains from Workplace Protection of Victims of Domestic Violence* (2014). <http://ppta.org.nz/dmsdocument/428> (last accessed 21/04/2017).

6. Conclusion

- 6.1 NCWNZ strongly supports the general direction of the Bill. Providing flexibility in the workplace and special leave for employees is a welcome addition to the current protections available for victims of domestic violence. The proposed amendments detailed above seek to further enhance the level of protection for victims of domestic violence by safeguarding privacy of individuals, and ensuring practicable and time-sensitive measures are implemented to allow swift access to assistance, information and support for employees who are victims of domestic violence.

Rae Duff
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