



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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S17.07

NCWNZ Submission to the Justice and Electoral Select Committee

Family and Whānau Violence Legislation 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 and we have 81 National Individual Members. 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.
- 0.2.** NCWNZ has been a long-time advocate for improving the law and policy that impacts on victims of domestic violence. This includes making a submission on the discussion document that was a forerunner to the Bill. For the convenience of the Select Committee, a copy of that submission is attached as an Appendix to this submission.
- 0.3.** We support the approach that the Minister of Justice has taken with the policy development of the Family Violence and Whānau Violence Legislation Bill ("the Bill"), including a "first principles" review of the Domestic Violence Act 1995 ("the Act") and the extensive consultation that informed the review.
- 0.4.** In our submission, we have highlighted some of the key areas in the Bill that we either support or believe should be deleted or amended.
- 0.5.** We also support the cross-party approach that was evident at the first reading on the Domestic Violence Victims' Protection Bill being unanimously supported to Select Committee. This demonstrates a cross-party approach to eliminating domestic violence and a genuine willingness to explore policies that are likely to contribute to this. We hope, however, that the cross-party approach continues through the Parliamentary process after the General Election as there are key features in that Bill that need to become a reality - in particular the entitlement to up to 10 days' paid leave to deal with the effects of domestic violence, domestic violence being a ground of illegal discrimination under the Human Rights Act 1993 and the need for workplaces to be able to respond appropriately to domestic violence - including having appropriate policies and training for health and safety representatives.

- 0.6.** Domestic violence legislation and improvements to the law is just one part of the puzzle. We are concerned about the instability in a sector that has had funding freezes for too long and, in the case of Shakti, Government funding withdrawn. We reviewed the submissions on the discussion document and it was clear that there was a call for tailored services for different ethnicities and groups of the population.
- 0.7.** We also need to be aware that domestic violence does not happen in a vacuum. It exists within a culture that tolerates it to exist and, in some cases, perpetuates it. More needs to be done to change this culture, schools need funding to support programmes that will assist, and the public service that work on the front line need support and stability to be able to do their jobs well. Too many are burning out through over-work, restructuring and being under-paid. This does nothing to help our families that are most at risk and the children who are vulnerable.
- 0.8.** Instead, let's create a first world public service that gives time for professionals to engage meaningfully with families, and professional development that can ensure that those who can help, can actually help.

Part One, Clauses 4 – 7

- 1.1** These clauses change the name of the Act, repeal the long-title of the Act and change the name of the short title of the Act, and introduce a new purpose statement into the Bill. Read alongside the interpretation changes, these clauses represent a significant shift in the concepts underpinning the Domestic Violence Act 1995 by appearing to replace it with the narrower concept of family / whānau violence.
- 1.2** While this may seem like semantics, the unchanged “or has a close personal relationship with the other person” in section 4 of the Act will nevertheless be coloured by the fact that the title of that section, and indeed the whole Act, is relating to family / whānau violence. The average member of the public reading the Act may think that the law now no longer applies to situations such as their friend that is being abusive, fellow parishioners, those relationships that are in early stages, or friends of the family.
- 1.3** We are concerned about this because of the risk that women in these situations will believe that they do not have the protection of the law for the purposes of domestic violence.
- 1.4** This is an unnecessary change and we strongly advocate that the amendments be withdrawn from the Bill, and that the references to “family violence” be replaced with “domestic violence”, and that any amendments to substitute a current description to family violence be deleted.
- 1.5** We support the proposed purpose and principles, with the phrase change to domestic violence, as noted above.

Clause 8

1.6 We support the interpretation section, specifically the definition of child to mean a person who is under the age of 18 years (consistent with the application of the United Nations Convention on the Rights of the Child).

1.7 We do not support repealing the definition of domestic violence

Clause 9

1.8 We support the extension of the definition of “psychological abuse” to include situations where a person has ill-treated pets or animals whose welfare affects significantly, or is likely to affect significantly, a person’s well-being.

Clause 10

1.9 We support new section 12, which enables a person to make an application on behalf of an adult that is prevented from doing so by physical incapacity, fear of harm, or another sufficient cause from applying personally. We believe that such a provision will help to save lives of women and children. When a person is caught in an abusive relationship they can often not see a pathway to safety and may be terrified to seek the help that they need; they are in a state of survival and fear of future harm can prevent positive action.

1.10 We know that there are many professionals, such as Police and social workers, who will be called out to several incidents at the same property and currently feel ill-equipped to act to address the harm

1.11 We recommend that these provisions are reviewed after five years to see if they are working in practice.

Clause 30

1.12 We support the extension of section 50, which would enable a greater range of related reasons for a person to be arrested for breaching a protection order, specifically:

- for having contravened, or failed to comply with a term and condition of, a related occupation order; or
- for having contravened a related tenancy order; or
- for having contravened, or failed to comply with a term and condition of, a related ancillary furniture order; or
- for having contravened, or failed to comply with a term and condition of, a related furniture order.

1.13 It is important to send a message that these breaches are both related and unacceptable.

Cause 85

1.14 We support the proposed changes, which would mean that temporary / full protection orders will be taken into account by the Court when considering whether to grant an application for a guardianship order, a direction under section 46R relating to a guardianship dispute, a parenting order under section 48 or a variation of a parenting order under section 56 of the Care of Children Act 2004.

1.15 There is potential to inflict significant harm on an abused partner (or ex-partner) through disputes over child custody and other civil matters. We also recognise the potential for that abusive person to extend to the children from the relationship.

Clause 93

1.16 We support the introduction of a new offences of strangulation, forced marriage and coerced marriage / civil union into the Crimes Act 1961. These are well overdue and a welcome addition to responding to the range of ways that a person can be harmed by those who purport to care about them.

Clause 124

1.17 We support the ability for a victim of domestic violence to give evince by video record before the hearing. We are unclear about the strict time limit rule for the giving of evidence in this way as there may be extraneous circumstances, such as the victim hiding or being in a coma, that prevent the Police being able to record the video statement within this timeframe.

Clause 126

1.18 We support the addition to the list of aggravating factors to be taken into account by the court when issuing a sentence. This helps to demonstrate the seriousness of breaching a protection order and may actually reduce harm if it results in a longer sentence for the offender, not least because it may mean a longer period of separation from the victim and offender. This should be supported by an offender being able to access appropriate rehabilitation services.



Rae Duff
National President



Eva Hartshorn-Sanders
Convenor, Justice & Law Reform Standing Committee

Appendix

25 September 2015

S15.23

Submission to the Ministry of Justice on Strengthening New Zealand's Legislative Response to Family Violence

About NCWNZ

The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing 288 organisations affiliated at either the national level or to one of our 20 branches. In addition to our organisational membership, about 260 women are individual members of branches. 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 and the Parliamentary Watch Committee, after consultation with the membership of NCWNZ and a workshop with NGOs that work with victims and offenders of domestic violence.

Context

The statistics in the discussion document are damning. The New Zealand Women's Refuge has noted that there were 113,000 investigations last year, with only 1/3 resulting in a charge and only 20% resulting in convictions. The discussion document highlights the high recorded crime rate of domestic violence but we know that many victims and instances of violence do not come to light.

The system is failing these victims – many of whom are women.

While the review is welcome, it is too limited in scope. The Domestic Violence Act 1995 as drafted is largely fine, though examples of specific recommended changes are outlined below. The issue for victims has been with the implementation of the legislative provisions, often down to a lack of resourcing and, in some cases, an absence of appropriate training and education of the judiciary and officers.

As one of the most important social issues in New Zealand, it cannot be seen in isolation. The experience of domestic violence victims and the risk of revictimisation is impacted by, for example:

- Family law and court processes. For example, one example provided was the negative impact that the Care of Children Amendment Act (No. 2) 2013 was having on victims of domestic

violence, by removing the presumption against contact with a violent parent – requiring further litigation and contact between a victim and offender;

- A lack of workplace protections (such as paid leave entitlements to deal with the effects of domestic violence);
- The fact that these cases rarely progress through the criminal justice system;
- Police resources being stretched so that they are unable to appropriately respond to each case of domestic violence that they witness each night, particularly where the physical evidence is low-level compared to other domestic violence call-outs;
- The financial cost of obtaining a protection order (even one which is undefended) is hundreds to thousands of dollars, and there are restrictive limits on legal aid entitlements, effectively creating a financial barrier for a woman or victim to seek legal safety; and
- NGO support services having insecure funding / funding that has reduced in real terms, which means that they are limited in their ability to effectively respond to the needs of community.

This all has an impact; as one NCWNZ-affiliated organisation noted:

“...unfortunately in recent times the government has been cutting funding non-violence programmes, counseling and other support.”

You cannot divorce the impact and effectiveness of one piece of legislation from the social, legal and economic context or operational environment. These things are all linked.

Legal Definitions

NCWNZ members provided substantial feedback on the current definition of domestic violence and recommended the following:

- **We need to retain the term “domestic violence” in legislation:** The term “family violence” used in the review is too narrow in scope and suggests that it is a one-size fits all approach, or a personal rather than criminal matter. It is important to recognise the different types of violence and that interventions for child abuse, for example, may be different from interventions for violence against women or elder abuse.
- **The definition of “domestic violence relationship” needs to be expanded:**
 - Both elder abuse and abuse of disabled people in care homes need to be considered as part of the legislation and review.
 - Currently, landlord and tenant relationships are excluded, but some people live together who have this relationship; how are they treated under the Act?
 - Relationships in the workplace need to be covered.

- **The definition of “domestic violence” needs to be expanded:**
 - “Negligence”, such as adequate care, should be added specifically in respect of domestic violence abuse of a child;
 - Abuse of family pets should be recognised within the definition as this is viewed as often used to control women and children.

Some members felt that there needed to be additional guidance on the types of behaviours that constitute abuse, particularly in respect of psychological abuse. For example, this type of abuse should explicitly cover, without limitation, “emotional abuse and bullying”, “manipulation, living in an atmosphere of fear and insecurity long-term; imprisonment and/or limited contact with the 'outside world'; limiting digital contact with the 'outside world'”, and “coercive control”.

Protection Orders

NCWNZ members felt strongly that it needed to be both easy and free to apply for a protection order. We need to remove the barriers to ensure that all women and victims have access to justice and protection.

There was strong support in the submissions from NCW branches and the NGO workshop, for the Police to have the authority to issue a protection order independently, provided that it is in accordance with the victim’s wishes so that it is an enabler and able to be actively used. One NCWNZ-affiliated organisation noted that:

“The requirement to self report is the first barrier. Physical abuse by its very nature also includes psychological abuse by instilling a power imbalance and fear into the opposite party. By placing the whole decision into the hands of the victim it is highly likely that many domestic violence cases will go unreported.”

There was also some support for a person close to the victim, such as a family member, to be able to apply on behalf of the victim. One member advised that the Disability Rights Commissioner had recommended such an action at a recent NCW branch meeting and noted that:

“... it can sometimes be really hard for victims to go and get protection orders, especially as they are likely to be emotionally (and often physically) beaten up and exhausted. Going through the process of what I assume is filling out forms and discussing what happened could be really unattractive for the victim right at the time that they need the protection order, soon after the event has happened.”

Enforcement of protection orders

There was a strong feeling from members that the real problem lay in the fact that enforcement of the current law was not happening; for example:

“... evidence suggests there are too many breaches of the Protection Order that go without penalty... which reduces the attitude of how serious the Order is.”

“Too many hideous tragedies occurring where women and children are traumatised, injured or killed by partners/ boyfriends/ husbands/ fathers/ step-fathers against whom there are [already] trespass or protection orders.”

“There needs to be clear stipulation made at/around schools, and how schools are contacted and made fully aware of any orders and adhere to them. This is particularly important when a relieving teacher is brought in to a class for a day or so as she/he may not be aware of protection orders for a particular student.”

Part of the problem was seen as inadequate resourcing for Police to ensure that the terms and conditions of any protection orders are enforced, and part of it comes down to an attitude change needed. As one NCWNZ-affiliated organisation stated:

““Protection” implies that there are resources available to ensure that victims are protected. These are inadequate in many communities particularly rural ones.

The Police often do not understand the importance of protection order breaches. They trivialise and downplay them and this also happens in the courts. The policy keeps changing. In recent years the police have gone back to simply warning perpetrators of domestic violence. The law says perpetrators should be arrested and charged so that the victim knows the legal system will protect her, and judges and others know the history of violence.” [Some submitters noted that there was wide variation between understanding of Police in the main centres compared with elsewhere in the country, and that there may be generational differences].

“The Police and CYFs need to have a depth of understanding of the Protection Order requirements and then be trained to be able to put them into force correctly so that the victim is safe and the perpetrator knows and understands that he is under control. It is essential that the people enforcing this law do not take any short cuts and be ‘leaders’ in the situations that they have to assess and then follow through with the procedures.”

Our branches clearly articulated the realities of enforcing a protection order for victims, and there was strong support for an emergency alarm:

“Some women are petrified and unable to report breaches, thus depriving themselves of the support. This is a weakness of the system, not the women’s fault. Because they have been psychologically brutalised, some women lose every shred of self-confidence. They try to normalise the situation. They are unable to protect their children. When they do find the courage to go to the police, it is VITAL they be supported AT ONCE, otherwise there can be no trust.”

“If non-contact provisions are broken it is too easy for the perpetrator to pressure the children or partner not to disclose the contact. The victim needs an immediate response from the Police. Possibly an emergency number or alarm which alerts the Police instantly that the protection order is being breached and where it is happening.”

“Often a victim is reluctant to press charges for a range of reasons, including retribution or not being believed.”

The evidence that we heard in the workshop with NGOs is that Police take a conservative approach with prosecutions because they are pre-empting the approach that they expect the court to take and do not want to re-victimise the women concerned through a formal criminal court process. This is symptomatic of a system failure that needs to be addressed. The Solicitor-General’s Prosecution Guidelines and court processes, generally, should have been included in the scope of this review. One NCWNZ-affiliated organisation noted that:

“The law defines “domestic violence” to include psychological abuse. However in practice, protection orders will not be granted unless there has been very recent physical abuse. Reasons for judges not granting protection orders include the woman being in a refuge and therefore not needing protection; or the parties being young and physical violence being a week earlier, rather than within the last couple of days.”

Some branches felt that there needed to be stronger consequences when a protection order was breached. “Harsher penalties when orders are breached and [more resourcing in enforcement so that you can] catch perpetrators more frequently. Ensure perpetrators take protection orders seriously.”

Suspension of protection orders

There was some concern expressed about the ease of suspending protection orders. One branch recommended that:

“There should be some guidelines around when and how the victim can suspend a non-contact provision to ensure they have not been forcibly made to do so, particularly by the perpetrator.

There need to be immediate consequences for breaking a protection order. Something strong enough to make the perpetrator stop and think of the consequences to him/herself.”

Another branch recommended that any lifting of protection order conditions needed to first be reviewed and approved by a court.

How different population groups experience domestic violence

There was overwhelming support from NCWNZ members for a specific strategy for different population groups, including one focussed on women and girls, given the large number of women victims. There were several comments on this area, including recommendations relating to education and attitude changes:

“Women and girls could be helped with increased knowledge on recognition of what makes a victim and also learning the skills to counteract this. They also need to be able to recognise patterns leading up to violence and how to defuse potentially violent situations. Overall they need skills that would give them the power and control to stop violence before it happens.

There is potential in promoting the significant influence women can have in domestic violence. This includes role modelling of women/girls who successfully confront domestic violence and the impact of mothers allowing domestic violence to occur knowingly.”

“The objectification of girls and women is very prevalent in our society. There needs to be age appropriate sexuality education in all schools as part of the health curriculum and training for young people on respectful relationships.”

“Pay equity is another way for women to be treated as of equal value.”

“Society needs to be constantly reminded not to legitimise or tolerate violence as attitude change can take generations.”

“We need to work out how we can put nerves of steel into all the people (women in particular) who are the victims of domestic violence. Boys and girls, men and women, require separate strategies so that each family member has the tools to treat every person with respect.”

“Women are still defined by the way they chose to dress. Women are defined and identified in relation to their partners. Children are thought of as chattels rather than people in their own right.”

“I feel that when our society realises the importance of equality for both men and women a respect will be developed for each other. At the moment so many men have the attitude and the behaviour towards women that indicate that they are second class citizens. This does not promote the physical and mental well being for women and their families.”

Alongside a specific strategy for women, NCWNZ members provided support for specific strategies that addressed the needs of other vulnerable groups identified in the discussion document, including Māori and Pasifika (including culturally appropriate engagement and practice), elderly people, ethnic and migrant communities (including those on temporary visas, where they are dependant on a partner or employer), and disabled people. Other vulnerability areas included rural and isolated communities, those with mental health issues.

There were also particular concerns for the women who fell outside the legal aid threshold and would miss out on necessary support for related legal cases, low socio-economic groups, refugees, sex workers, women and children in gangs, extreme religious groups,

There was also concern that there appeared to be gaps in the availability of appropriate services for female offenders, young offenders and male victims.

Members provided specific comments on the types of services that were needed to help reach out to at-risk groups, including:

- **Access to help:** promotion of free, confidential 24/7 support (0800, email);
- **Respite care:** availability of this service for families under stress may help to minimise stress, which in turn could reduce domestic violence;

- **Increased resourcing to school truancy and social work services:** “children’s behaviour often signals their home environment, parental interactions and violence. Being able to respond and investigate non-school attendance and changes in school performance could identify actual or potential domestic violence in the child’s home”; and
- **Rapid response teams.**

There was recognition of the need to address broader social issues; for example:

- “... dealing with poverty might improve the situations as there is so much stress and worry experienced when there is no job, insufficient money to make ends meet, inadequate housing, poor health etc.”

Other legal changes

NCWNZ members made the following recommendations about other legal changes required to help safeguard domestic violence victims:

- **New offences:** Introduce an offence of non-fatal strangulation, look at better legislation and interventions to address female genital mutilation and other coercive activities (such as forced marriage) of New Zealand women or girls that takes place overseas;
- **Programmes for offenders:** Every perpetrator should be required to participate in a programme to understand that their behaviour is not normal, and there are alternatives to solving relationship and other problems without resorting to threatening and violent behaviour. Perpetrators should also be shown/taught what the consequences of their actions are for their victims. This can be a revelation for some people who have grown up in an environment of constant threat and violence. They know no other way of operating and need to be educated and shown what acceptable behaviour is, and what a positive relationship looks like.
- **Sharing information:** Support the changes to ensure that domestic violence history information is shared between the criminal and family courts. There was some concern that the recording of these convictions may not note the context (i.e. whether the offence occurred in a domestic situation). Police also need to be fully aware of the family violence history.
- **Addressing issues with technology:** We acknowledge the passage of the Harmful Digital Communication Act 2015, would like it fully implemented as soon as possible, and there needs to be moves to ensure that the harm caused through technology is fully understood by those who are enforcing protection orders or otherwise responding to victims and offenders.

Other changes required

In addition to the issues outlined in the context section, NCWNZ members recommended that:

- **Free counselling sessions for couples should be reintroduced:** “Formerly when 6 free sessions of relationship counselling were available without any questions being asked, couples who were aware that their relationship was deteriorating took advantage of counselling and the relationship often did not reach the stage where abuse occurred.”
- **Continuing with a resourced campaign and other interventions to change public attitudes.**
- **Strong, educated, not over-worked, and resourced public sector:** This is essential if Police and social workers are able to appropriately respond. Domestic violence is a priority, supported by the statistics, and there needs to be room and energy for people to do their jobs in this area. Not just loading this on to already busy workloads, but giving them space to engage and respond appropriately, to build the networks in the community, and relationships of trust.
- **Domestic violence as a workplace issue:** Workplaces also need to do their part to ensure that victims are supported – for example, providing domestic violence leave clauses in employment agreements and having policies in place to ensure the safety of staff at, and when leaving, their work. Suzanne Snively’s report gives overwhelming evidence of the economic cost, and loss of productivity, of allowing this violence to continue unchecked. Workplace interventions and support are essential. A copy is available here¹.
- **Resources on the Are You Ok website.** There are some useful resources here and some of our affiliated organisations have distributed these through their membership. More needs to be done to publicise their availability and there should be no limit to the number you can order online for organisations.

Concluding comments

We welcome the review and encourage you to proceed with reforms as a matter of urgency, maintaining the essential linkages with other interventions and recognising links in other policy areas. This is too important to delay.



Rae Duff
National President



Eva Hartshorn-Sanders
Convener
Justice & Law Reform Standing Committee

¹ <http://www.psa.org.nz/media/news/two-significant-reports-on-family-violence-is-a-workplace-issue/> (last accessed 22/09/2015).