



3 March 2018

S18.06

## **Submission to the Foreign Affairs, Defence and Trade Committee on the Military Justice Legislation Amendment Bill**

0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing 245 organisations affiliated at either national level or to one of our 19 branches. In addition, about 350 people are individual members. Collectively our reach is over 350,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are 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 the NCWNZ Employment Standing Committee and the NCWNZ Parliamentary Watch Committee.

### **1. Introduction**

- 1.1. NCWNZ has had a history of supporting legislation to support the victims of crime. This includes submissions on the Victims' Rights Bill<sup>1</sup> which was supported, and the Victims of Crime Reform Bill<sup>2</sup> in 2011. We also supported the Human Rights (Women in the Armed Forces) Amendment Bill<sup>3</sup> allowing women to serve overseas and in combat.
- 1.2. Overall, NCWNZ supports the amendments contained in this Bill. We support the aim of the Bill to ensure victims of offences in the military justice system have the same rights as they would have under the Victim's Rights Act 2002<sup>4</sup>. Expanding and ensuring the rights of victims who are offended against within the jurisdiction of the military justice system will be one of the ways we can work to dismantle rape culture within our NZ society. We particularly welcome the right to be kept informed and the right to be consulted in respect of decisions such as bail.
- 1.3. This Bill deals with offences of a sexual or violent nature. Given that the majority of victims of reported sexual offences have been women we have looked at this Bill from the viewpoint of

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<sup>1</sup> Submission to the Justice and Electoral Select Committee on the Victims' Rights Bill. Submission S01.24 12 Mar 2001.

Avail: <https://www.ncwnz.org.nz/wp-content/uploads/2013/06/S01.24-Victims-Rights-Bill.pdf>

<sup>2</sup> Submission to the Justice and Electoral Committee on the Victims' of Crime Reform Bill (319). Submission S11.13 20 Oct 2011. <https://www.ncwnz.org.nz/wp-content/uploads/2013/06/S11.13-Victims-of-Crime-Reform-Bill.pdf>

<sup>3</sup> Human Rights (Women in Armed Forces) Amdt Bill. Submission SL/06/24.

<sup>4</sup> Victim's Rights Act 2002

[http://www.legislation.govt.nz/act/public/2002/0039/latest/DLM157813.html?search=ta\\_act\\_V\\_ac%40ainf%40anif\\_a\\_n%40bn%40rn\\_25\\_a&p=1](http://www.legislation.govt.nz/act/public/2002/0039/latest/DLM157813.html?search=ta_act_V_ac%40ainf%40anif_a_n%40bn%40rn_25_a&p=1)

ensuring maximum rights and protections are afforded to women who are subjected to such offences. To that end we question if the Bill goes as far as it could to ensure protections and rights.

- 1.4. As our Armed forces are considered to be among the most inclusive in the world from a gender point of view, our comments relate to the continuum of gender, whether in relation to the victim or the perpetrator.
- 1.5. There are two clauses that NCWNZ would like to make specific comment on.

## 2. Clause analysis

### Clause 7 new section 102A and Clause 8 new section 117ZIA

- 2.1. Clause 7 inserts new section 102A which provides for the commanding officer of an accused to determine whether the alleged offence has a victim and whether it is a specified offence i.e. of a sexual or violent nature. Clause 8 inserts new section 117ZIA which allows the Director of Military Prosecutions to override the decision of the commanding officer and determine that the alleged offence is or is not a specified offence and the alleged victim is or is not a victim.
- 2.2. Given the probable close association of alleged offenders, victims and their superiors we are concerned about possible conflicts of interest when it comes to determining if an offence falls in to the category of a specified offence i.e. of a sexual or violent nature. In current general employment case law it is accepted that the employer or supervisor has a responsibility for ensuring a safe workplace. If a victim's supervisor is able to avoid their responsibility by denying that a specified offence has occurred or that the offence has a victim then there is a possibility the victim will be denied justice. In this instance we believe an alleged victim should have access to appeal to an independent arbitrator.

## 3. Conclusion

- 3.1. In conclusion, the NCWNZ supports the aim of the Bill to ensure victims of offences in the military justice system have the same rights as the general population, although we do have reservations about possible conflicts of interest if supervisors are able to deny that an offence has occurred or a person is a victim of an offence. We suggest victims need the right to easily appeal to an independent arbitrator in order to ensure justice.



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