



21 September 2018

S18.36

Submission to the Ministry of Justice on Information sharing guidance in the family violence sector

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (“NCWNZ”) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders.
- 0.2. 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 Justice and Law Reform Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

Previous Submissions on Family Violence Law

- 0.3. NCWNZ made an oral and written submission on the initial policy discussion document and the Family and Whānau Violence Legislation Bill (“the Bill”) to the Justice and Electoral Committee.¹

1. General Comments

- 1.1. We acknowledge that domestic violence affects all genders. In particular, New Zealand has one of the worst rates of violence against women and children in higher income countries. This point that was recently raised in its commentary and Concluding Observations at the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination at the United Nations.² Many of the Concluding Observations related to specific initiatives to address this epidemic of violence.

¹ NCWNZ. 2017. S17.07 Submission to the Justice and Electoral Select Committee Family and Whānau Violence Legislation Bill <https://www.ncwnz.org.nz/wp-content/uploads/2016/12/S17.07-Family-and-Wh%C4%81nau-Violence-Legislation-Bill.pdf>

² CEDAW/C/NZL/CO/8
https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/NZL/CO/8&Lang=En

- 1.2. NCWNZ welcomes all genuine efforts to reduce this rate of gendered violence, such as the recent passage of Parliamentary Under Secretary Jan Logie’s Domestic Violence Victims’ Protection Bill and many of the provisions in the Family and Whānau Violence Legislation Bill, such as stronger enforcement of protection orders.

2. Comments on the Draft Documents

- 2.1. Some of the professionals who will be subject to the new information-sharing requirements under the Bill are also currently subject to different information-sharing requirements under the Vulnerable Children Act 2014. These should be made clear so that people are clear what their responsibilities are.
- 2.2. Members emphasised that a big issue in this situation is trust for “people who have often been let down by the system how can they be sure that some incompetent/overworked/untrained official somewhere may disclose something they shouldn’t or fail to disclose crucial information or simply be unfamiliar with the current information sharing guidelines.” NCWNZ members recommended that the Government ensures that there is training and effective professional development in place for professionals who will be subject to new statutory duties under the Bill. This needs to be resourced on an on-going basis and is particularly important given the high workload and turnover of staff within the sector. People need to be empowered and supported to act and make a professional judgement.
- 2.3. There was some concern that the documents were not written in plain English – “very legal and hard to understand”. This emphasises the need for appropriate training.
- 2.4. NCWNZ supports the overriding concern that safety should be paramount. The factual situations provided in the guidance document were considered to be realistic situations.
- 2.5. Between the three documents, it appears as though the Ministry is trying to recreate the wheel each time. It would be better to get one base document – the one pager – accurate and easy to follow (see comments below on page 14 of the guidance document) and then have this replicated within the other documents. This helps to reinforce the key messages through repetition. At the moment, it is not a clear situation for a user to navigate at all and it will come down to professional judgement based on the context and statutory criteria. The quality of these decisions will depend on the quality of the training provided.

Feedback on the A3 Poster and One-Pager

- 2.6. The A3 Poster and One-Pager need changes. In particular, it is not clear from reading either document who a person can share information with and the steps they need to go through before doing so. For example:

- What do they do if they receive a request for information from an agency – how do they verify the person is who they claim to be and that the requester is a person authorised to have the information?
 - How will the information that is disclosed be stored to protect privacy from unauthorised people – particularly in cases where a person may work for an agency or have an abuser working in an agency that can access the information?
- 2.7. People to whom the information is disclosed should also know what they can do with the information, who they in turn can share it with, and how they can use it. This links with the Privacy Act requirements and should be made clearer in the guidance.
- 2.8. When information is collected, it should be clear to the person that it may be shared. Members commented that “a big issue is trust” and “for people who have often been let down by the system how can they be sure that some incompetent/overworked/untrained official somewhere [will not] disclose something they shouldn’t or fail to disclose crucial information or simply be unfamiliar with the current information sharing guidelines? Therefore [there] should be plenty of systems in place to reduce this risk as consequent damage cannot be reversed.”
- 2.9. One NCWNZ branch commented that: “The wording of the A3 poster and the page summary need to be in plain easy to understand language and should be multilingual. Both documents need to be in readily available.”
- 2.10. The process diagram on page 14 of the Guidance provides a helpful step-by-step guide and should be included on the A3 Poster, with amendments discussed below.

Feedback on the Guidance Document: *Sharing Information Safely*

- 2.11. Page 8 – As the Ministry plans to update the Guidance regularly, it needs to ensure that it has effective notification and publication procedures in place with the sector and people who will need to follow this guidance. This should be accompanied with appropriate professional learning and development training for substantial changes.
- 2.12. Page 9 – We agree that there is an important point about the sensitivity of the information provided and contact information of victims being amongst the most sensitive personal information. It needs to be stressed that other identifying features related to the victim may make them unsafe if revealed to a perpetrator or person connected to the perpetrator, such as the location of their work, phone number, and information about a new partner or children. This emphasises the need to ensure that the information is being provided to an appropriate person for an appropriate purpose.
- 2.13. Page 10 – How will the average person who is subject to these provisions know when an agency that was government funded (wholly or partly) loses its funding and therefore loses its authority to access the information? Will there be an established register?

- 2.14. Page 11 – The bad faith provisions are critical for people to know but are far down within the guidance itself. They should be clearer in an Executive Summary and the shorter guidance documents (the A3 and 1-pager).
- 2.15. Page 13 – The diagram on page 13 is useful – it would be useful to include it on the one pager and A3 document.
- 2.16. Page 14 – As discussed above, this flow-chart would be useful in the one pager / A3 document, although it should be amended in the Guidance Document, and those documents, to include what the permitted purposes are and who the authorised agencies are (e.g. even a link to an online list). There is currently no step to check that they are authorised under the Act – both at an organisational and individual level. Relevant statutory timeframes / deadlines should be included, as should other checks – such as whether to transfer the request to another agency, etc. Page 41 steps should be incorporated. Also there is a need to have a separate limb in the diagram that shows when the Privacy Act applies.
- 2.17. Page 17 – Case examples of the grey areas would be useful, and they need to be incorporated into the training for staff who will be subject to these requirements.
- 2.18. Page 18 – Proactive disclosures – This is a very short and vague paragraph that doesn't fit within the context of the rest of the document. How does it reconcile with Page 24?
- 2.19. Page 19 – The duty to consider sharing is another critical element of the new provisions and does not appear until Page 19. It also needs to be better incorporated into the flow-diagram, A3 document, and one-pager.
- 2.20. Page 21 / 22 – These are important aspects – it needs to be clearer within the shorter guidance documents that this is a professional judgement that people are making, having regard to the context and statutory criteria, and with the overriding consideration of safety risks to the victim.
- 2.21. Page 22 – “Before sharing information, you must carefully consider whether sharing could create or worsen safety risks for victims.” – This is a significant point that shouldn't be buried so late in the document.
- 2.22. Pages 38-39 – It should be clearer that the overriding interest continues to be the safety of the person concerned. What happens if the information that unauthorised disclosure has occurred is not disclosed to the victim and they are at risk but there is an ongoing police investigation? What steps will be put in place to enhance the safety of the person – particularly if the disclosure may be to someone connected to the perpetrator?

3. Meeting Request

- 3.1. We welcome the consultation on these documents. However, more obviously needs to be done. Underpinning violence against women is a culture that is in desperate need of change. NCWNZ has

dedicated itself to changing this culture as its top priority. We request a meeting for our Chief Executive and or President with senior managers at the Ministry as soon as possible to discuss how we can partner to progress this urgent and important work related to culture change. An approach that is also embedded in the United Nations Sustainable Development Goals (particularly Goals 5 and 17) and is necessary to prevent a wide range of intergenerational impacts on human rights, well being, health, productivity and the economy, and most of all on the lives of women and children.



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