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Submission to the Justice and Electoral Select Committee on the Domestic Violence (Enhancing Safety) Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 46 nationally organised societies. NCWNZ has 28 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, families and the community through research, study, discussion and action.

This submission has been prepared by the Justice and Law Reform Standing Committee after consultation with members by means of the *Circular*, our monthly newsletter. In the limited consulting period we received replies from some branches across the country, member organisations and individuals. More responses would have been received if more time had been allowed for consultation. The end of the year and holiday season are not conducive to obtaining fulsome feedback from our membership.

Domestic violence and its impact on women and their families, has long been a major issue of concern for the membership – long before the language became acceptable in the public arena. NCWNZ resolutions date back to 1949, and it was only in 1995 with the passing of the Domestic Violence Act, that New Zealand had any specific legislation addressing the issue. However, as the current statistics on homicides, assaults, kidnapping and abductions, attest, we are still a long way from ensuring the safety of all our citizens, especially women and children in their own homes.

At the NCWNZ National Conference 2008 a resolution was passed calling for urgent action to improve the implementation of legislation relating to Protection Orders for those affected by domestic violence. Hence NCWNZ support the intent of this Bill to address these issues.

When asked if they supported further regulatory reform, as opposed to other non-regulatory measures, members generally supported a call to implement the law we have, with the view that the law (principally the Domestic Violence Act 1995) is sufficient, if only it were implemented as it stood.

The Executive Summary of Dr Ruth Busch's report [Living at the Cutting Edge: Women's Experience of Protection Orders](#) (August 2007) lists 47 recommendations to current New Zealand law and practices. It states

*“Overwhelmingly the problems identified in our case studies and in our analysis of judicial decisions reflect not inadequate legislation but inadequate implementation ... decision makers need to implement the law as it is written, not as they wish it were written. In many ways, our most important message is **enforce the law.**”*

However, most members supported moves to strengthen the powers of both the police and courts to implement the law, stating that current law appeared not to be working, and having “no teeth”. Some commented that a Protection Order may be breached five times before something is done.

Clause by clause analysis

Part 1 Amendments to Domestic Violence Act 1995

Clause 5 New sections 49 and 49A substituted

NCWNZ supports making failure to comply with a direction to attend a specified programme an offence as promulgated in new section **49A(1)**.

Clause 6 New section 50 substituted

NCWNZ supports the rewording of section **50**, empowering Police to arrest without warrant, where the constable has good cause to suspect the offender has committed a breach of an order.

Some members expressed concern about the vulnerability of women especially, and the need for temporary injunctions. Protection needs to be immediate. The capacity of Police to issue on-the-spot Protection Orders may improve this to some degree.

Some expressed concern about the judgement of young inexperienced police. Proper training in their increased powers will be needed.

Clause 7 New Part 6A inserted

NCWNZ supports the parameters described in the proposed section **124B** where a qualified constable “has reasonable grounds” for issuing a Police Order. NCWNZ would like to see a provision that the Police err on the side of caution, i.e. if there is any doubt, Police should issue the Order.

Concerns were expressed about the matters that the Police must have regard to when issuing a Police Order. It was felt that using the phrase “serious likelihood” in proposed section **124B(2)(b)** provided too much discretion as any warning signs could be dismissed as “not serious”. As there will always be hardship at some level, proposed section **124B(2)(d)** would apply in all cases and is therefore irrelevant. Taking into account “any other matter” as stated in proposed section **124B(2)(e)** allows too much discretion.

NCWNZ is concerned that new section **124D** specifies that a Police Order may not be issued against a child. While the Domestic Violence Act 1995 excludes people under 17 who have been in a relationship from the definition of ‘child’, provision should be made that in certain circumstances, children may be detained for the protection of other family members, and their own safety. CYF should necessarily be involved, as the child would require supervision and shelter.

Whilst some members considered that children (those under 18¹) should be exempt from Police Orders, many expressed the view that young people under 18 should also be held responsible and subject to a Police Order if their behaviour warrants it.

¹ NCWNZ policy supports the adoption of 18 years as the legal age of majority

However there was less clarity about the minimum age at which a young person could be charged. Some members indicated 14 years in line with current laws regarding young persons. Others noted examples of younger children, as young as nine years, committing violent offences.

One Branch commented on the restriction a Day and Night Shelter for women and children put on the age of male children accompanying a woman, the age being twelve years. The experience of the Shelter was that young lads copy the violence they have witnessed and many of their behaviours may put the women and smaller children at risk.

Generally members felt that each case should be assessed individually taking into account the age, the level of understanding and culpability. The emphasis of the intervention should be restorative not punitive justice.

Several members commented on the increased youth violence against their parents (especially mothers). One member, a family court lawyer, commented

“I have a client I am trying to convince needs a Protection Order against her son. He verbally abuses her to an horrific extent and she can get no help.”

Members strongly upheld the view that if a Protection Order could be placed against a child, the services of CYF should be enlisted, and a Family Group Conference held to determine a solution. Parents and care-givers should also be involved. The emphasis should be on breaking the cycle.

One member noted that family group conferences can be ineffective because the victim is always at a disadvantage, feeling vulnerable, while the perpetrator can be persuasive and is used to being manipulative.

NCWNZ supports the suspension of parenting orders outlined in new section **124F** where a Police Order is issued. However, provision needs to be made to ensure dependent family members are properly cared for (including financial support) in the absence of the detained parent.

Proposed new sections 124G to 124K are supported.

Part 2 Amendments to Sentencing Act 2002

Compulsory attendance of stopping violence programmes

Most members expressed strong support for making stopping violence programmes compulsory. An admission of guilt and a change of heart on the part of the offender is required. One member queried whether making these programmes compulsory could be a deterrent to seeking a Protection Order.

Support was expressed for creating a separate offence for failure to attend a programme.

Concern was expressed regarding the need for appropriate standards for stopping violence programmes, ensuring that the course content is made up with evidence-based material and that there is some way of evaluating the knowledge of participants at course completion.

Members also called for proper resourcing of programmes, including payment for those who provided the programmes. In some cases the course instructors are volunteers.

Accessibility to programmes need also to be considered, especially in rural areas.

Many respondents expressed support for stronger penalties and a call for imposition of penalties on the first breach of Protection Orders, not the fifth! Some supported the current two tier system of penalties for breach of Protection Orders.

Concern was expressed with regard to the District Court having the power to issue Protection Orders on the grounds that only the Family Court works with the Care of Children Act, and no other court deals with family matters. However, other members supported improved links between the Family Court and the criminal court. One member commented that “In these increasingly violent times, now is not the occasion to become too 'precious' about judicial jurisdiction vis-a-vis so-called aligned legislation.”

Clause 9 New heading and sections 123A to 123G inserted

Concerns were expressed at the implications in proposed section **123B(1)(c)** as the purpose of these orders is to address an immediacy of need. If there is a delay in the Family Court being able to make an Order, the Criminal Court should make an Order pending a Family Court determination.

Victims often object to making an order for fear of further violence or confusion over the situation. Provision needs to be made to ensure victims received proper counselling and support in order to make a decision from a position of strength. Therefore the proposed section **123B(2)(b)** would only be possible if there was a support mechanism in place for the victim.

The situation is not that different from Clause 7, proposed new section **124C** (which is supported), where the Police can issue an Order without the consent of the Victim. Very little time will elapse between the issuing of a Police Order and any District Court charges. Research indicates separation, albeit “enforced”, is the most dangerous time for a woman. Some of the work being undertaken in this area indicates women at that time are most vulnerable, their self esteem at their lowest and their ability to make wise and safe choices for themselves and their children limited. Recognising this, the decision may need to be made for them as a matter of safety for themselves and their children. Once they have had the appropriate support and education about domestic violence and its consequences and the supports available to them, if they still want to, they could then seek that the Protection Order be withdrawn.

In the interests of human rights, NCWNZ questions whether failure to give the required explanation of a Protection Order as proposed in section **123D(2)** does not affect the validity of the order made. A person against whom a Protection Order is issued has a right to an explanation under section 123D(1).

The victim also needs to be told as a matter of urgency as soon as the Order is made in accordance with proposed section **123F**.

Part 3 Amendment to Bail Act 2000

Members strongly supported provisions for more explicit protection of children, noting that it is important that children do not get forgotten in these situations. One member said that it is difficult to stop children making their own contact with a bailed person.

Clause 11 Defendant admitted to bail by Police employee

Proposed section **21(4A)** fails to specify what conditions a police employee may impose when granting bail, to protect any child who is in a domestic relationship with that person. Guidelines rather than criteria may be appropriate.

Programmes for Victims of Violence

Several members expressed a need for education of victims for domestic violence to strengthen their capacity to follow through with charges, and to rebuild their self esteem in order to recover. Police frustration with victims withdrawing charges, and repeated calls to the same address was noted. Victims need comprehensive supports in place including a safety plan, and, most importantly, to understand that domestic violence is intergenerational. Quoting one member, "They need to understand the effects on their kids, and how to mitigate them".

One member responded from personal experience:

This is close to my heart as I had the unfortunate experience of being in a violent relationship at the tender age of 16, and although the incidents occurred 30 years ago, the memories remain all too clear. At age 16, I was left completely dazed and confused following the arrival of the police and arrest of the offender. I was asked on the spot (minutes post-violence) if I wanted to press charges. I didn't understand precisely what was meant, and being told it could jeopardise the perpetrator's chances of employment, I agreed not to. I was terribly naive and vulnerable, and easily manipulated to the point that the relationship resumed and the violence continued. Psychological manipulation was perfect for such an innocent who thought she was at fault - the classic 'battered woman' syndrome...

Had I received counselling following the first incident involving the police, I believe I would have been equipped to manage the whole situation and avoid the continuation of the relationship. Further, I believe I should have been offered the support and advice of an advocate/support person/ youth victim support worker from the time of arrival of the police and given time (say 24 hours at least) to understand the implications of pressing charges.

It was noted that currently such courses for victims are voluntary, but the uptake is only 6%. Several members called for such courses to be mandatory.

Members also commented on the need for education for judges and other legal professionals.

General Comment

In general NCWNZ supports the strengthened regulatory measures proposed by this Bill. However, it is recognised that regulatory measures alone may not be enough. Even if Protection Orders are enforced, they alone do not resolve the issues or change behaviours learned over generations. Much needs to be done to break the cycles of violence that dehumanise all affected, including the perpetrators, and create a new culture of respect for all, in which every person may develop a sense of being valued and human.

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