

5 May 2009

S09.10

Submission to the Justice and Electoral Select Committee on the Criminal Investigations (Bodily Samples) Amendment Bill

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 50 nationally organised societies and national members. It has 26 branches spread throughout the country to which women from some 150 societies are affiliated. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ has a longstanding history of encouraging the promotion of social and health issues, particularly as they affect women.

Members of NCWNZ from 10 branches responded to a questionnaire on the Criminal Investigations (Bodily Samples) Amendment Bill. There was quite a divergence of opinions from branch to branch and within branches. Some of the comments ranged from; "it is important that the Police get one step ahead of the increasing range of criminals in society in New Zealand", to one respondent who commented that if the Bill became law, we would have the beginning of a Police State.

A small majority of the members who responded thought that there were no special circumstances in New Zealand to warrant a different approach to the investigation and detection of offenders than that which already exists under current law and under the Bill of Rights. On the other hand many believed that there was not enough consideration given to the victims of serious crime and that Police powers should be widened because of this.

Submission Points

New Part 2B

Taking bodily sample from person arrested or intended to be charged with relevant offence

Clause 7, 24J Authority to take bodily sample from person of or over 17 years arrested or intended to be charged with relevant offence.

Some members made the comment that if introduced into legislation, these powers would negate the premise of New Zealand law that a person is innocent until proven guilty. Opinion was divided on whether the identification and prosecution of offenders was a compelling reason to expand Police powers. Most members expressed confidence in the judiciary to make orders for the taking of bodily samples and did not see a need to change the status quo.

All of the members agreed that it is acceptable to use DNA for the investigation and detection of offenders. However most thought that this should be only for violent crime against the person, not for any imprisonable offence (Part 3), as is envisaged when the Act is fully implemented. One branch commented; "Only take bodily samples for indictable offences such as murder, rape, and other sexual offences, attempted murder, grievous bodily harm and aggravated burglary. Police must see themselves as under the law, not deciders without judicial guidance."

Most also thought that matching DNA samples for the detection of unsolved cases should only be done once a person has been convicted of a crime and not before. "People who are not convicted of a crime are considered not to be offenders, so they should not be included in this information collection."

Part 2 Clause 7, Sections 24Jff and Clause 9, Section 26A provide protections for offenders and police. However members were skeptical about the operation of the protections.

One branch made the comment that "this is no trivial matter and unless very carefully controlled could lead to much grief and suffering for the alleged offender and/or victim and their families and friends. Consideration must be given to the possibility of error in the testing methodology. .. the possible consequences of human error must be acknowledged. All testing should be carried out by a certified independent agency- never by the Police". One member argued that people in vulnerable situations could be bullied by the police into agreeing to a DNA sample being taken despite the safeguards in **New Sections 50A and 50B Young person giving sample under Part 2B entitled to have certain other persons present.**

Some thought the Bill was draconian and would impinge on the civil rights enjoyed by New Zealanders while others thought that the Police need to be better resourced to do their job rather than given more power to invade privacy.

Another branch supported the provision of phase 2 of the introduction of this legislation which could ensure that the operation of the Bill/ Act is examined after a period in terms of the New Zealand Bill of Rights.

The National Council of Women is aware that this legislation has been triggered by dramatic and horrific events and that there may be a risk that this could be "knee jerk" legislation encouraged by emotional reaction rather than by rational handling of the issues. The protection of individual members of the public, especially innocent women and children and the freedom of the individual citizen need to be balanced. Any technological advances such as the taking and storage of DNA samples must be used to protect and promote humanity.

From the Financial Implications of the Bill in the Explanatory Note NZWNZ notes the view that "Appropriately drafted Police Operational Guidelines for the use of their proposed discretion could significantly reduce departments' estimated costs."

Cost cutting is a matter of concern. Overwhelmingly however members do not agree with the Police being able to develop internal guidelines for the use of these powers. Most members called for an independent body to do so. Some commented that the Public's confidence in the Police has been eroded lately and that the Police could not be trusted to adhere to their own guidelines and that internal regulation of the Police would be too easily open to abuse. Others felt that an independent body was required to keep the Police's reputation intact.

The National Council of Women NZ acknowledges that this Bill is intended to aid Police in the detection of criminal offenders and since many violent crimes are committed against women and children any legislation that aids the Police to deter or detect violent crime is appreciated.

It is evident however that from the comments received from our members that there is a great deal of unease with some of the measures proposed in this Bill and indeed the Bill itself is seen by most of the respondents to be unnecessary.

Elizabeth Bang
National President

Sheryll Fitzpatrick
Convener Health Standing Committee