

## **Submission to the Social Services Select Committee on the Protection of Personal and Property Rights Amendment Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 Nationally Organised Societies and National Members- NCWNZ has 31 Branches throughout the country attended by representatives of those societies as well as some 150 other societies. The Council's function is to work for the well-being of women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ welcomes the opportunity to make this submission on behalf of our members.

This submission is written by the Justice and Law Reform Standing Committee based on input from branch members and NCWNZ policy. It has also been reviewed by a member of the NCWNZ Board and Parliamentary Watch Committee

### **Introduction**

The majority of NCWNZ membership supports this bill and believes it will offer improved protection to vulnerable people as far as the law is able to assure. The legislation in strengthening witnessing requirements for new enduring powers of attorney (EPAs) is particularly commended.

However, members thought that the key to enduring power of attorney is that it should be established before it is required, that is, before a person becomes incapacitated. This would then mean a person was able to choose someone they trusted implicitly to act in their best interests. With an aging population it is especially necessary to encourage people to make provisions in order that their wishes will be honoured and that their interests will be paramount.

It is also imperative that the legislation does not make the process of giving enduring power of attorney to family members so cumbersome that people will avoid them and therefore the benefits they provide. It is also important that enduring powers of attorney should be affordable both in their instigation and in any monitoring that may occur as a result of the legislation. Perhaps some form of review of these provisions should take place within five years.

### **Specific Comments**

#### **Part 2, Clause 6, New Section 93A, sub-clause 1 which enables a donor to grant an enduring power of attorney.**

Some members queried the use of the word "donor" and suggested the word "signatory" may be more apt.

#### **Part 2 Clause 7 New Section 94 sub-clause 4 which lists those who may witness the donor's signature.**

There was concern that the need to utilize a lawyer may create costs and this could be a disincentive for people to have an EPA. It was felt that JPs should be included among those who are authorized to witness new enduring powers of attorney since they also fulfill the requirements of the bill and may be more affordable witnesses.

#### **Part 2, Clause 7, New Section 94A, sub-clause 6 which lists the explanations which are required of a witness to the donor's signature.**

It is essential that any gifting must be stated at the time of drawing up the enduring power of attorney, and this should be included in the lists of explanations which the witness is required to give the donor.

**Part 2, Clause 14, New Section 99C - Medical certification of incapacity**

It is of paramount importance that a medical practitioner certifies that the person is incapable of making decisions before the attorney can take control.

Recognizing a donor's lack of mental capacity has the potential to be fraught with difficulties. NCWNZ believes that there is a need for objective independent evaluation of that state and that it is mandatory that a certificate of capacity be provided by a medical practitioner, perhaps even on an annual basis.

Some form of stringent criteria needs to be established to determine the donor's mental capacity. As an example, if a donor was to appear capable and competent on any given day then the medical practitioner could be misled into believing the donor was competent in the long term.

**Part 2, Clause 15, New Section 100A - suspension of an attorney's power to act.**

There needs to be clarity around the circumstances of the suspension of an attorney's power to act and who needs to be involved. However NCWNZ welcomes the idea that if the donor was to recover their mental capacity they may suspend the enduring powers of attorney.

**Part 2, Clause 20, New Section 107-Attorney's power to recover expenses.**

Consideration needs to be given to those who have been given enduring power of attorney as they have a lot of difficult decisions to make. Being an attorney under an enduring power of attorney can be a demanding, frustrating and expensive task. The costs of administering an enduring power of attorney are considerable therefore there must be provisions for attorneys to recover expenses such as loss of income, travel, phone calls and money spent in various other ways that are currently not recompensed.

Similarly, measures must be taken to ensure that a clear and comprehensive paper trail is left to submit to the estate lawyer when the enduring power of attorney comes to an end. NCW would recommend that records of all financial transactions should be kept and written reports to an independent person such as a family lawyer or public trustee should be included in the legislation.

**Conclusion**

NCWNZ congratulates the government for this attempt to address what may be a widespread misuse of an instrument that could be an abuse of the rights of the elderly, particularly elderly women.

In the main, members recognize and support the intent of this bill and believe there is enough evidence which suggests the need for this statutory change. Anecdotal evidence has revealed elderly women at the mercy of family members who do not have the care and welfare of the donor of the enduring power of attorney at heart. Whilst there are men who may suffer this type of abuse, it is likely that it is more often women because of their statistical majority in the elderly age groups and longer life expectancy.

NCWNZ recommends increased publicity via doctors, senior citizen organizations and government departments such as WINZ and IRD, along with media campaigns, to explain and

educate the public on the benefits of enduring powers of attorney. NCWNZ also suggests that making enduring power of attorney provisions go hand in hand with the making of a will.

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