

**Submission to the Social Services Select Committee on the
Family Courts Matters Bill**

NCWNZ is an umbrella organisation representing 46 Nationally Organised Societies and National Members. It has 28 Branches throughout the country attended by representatives of those societies and some 150 other societies. It also has three satellite groups and three regional consultation groups. NCWNZ is representative of approximately 350,000 women, via its affiliated bodies. The Council's functions are to serve women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ welcomes the opportunity to consider this Bill.

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 the Parliamentary Watch Committee.

Introduction

NCWNZ applauds any efforts that improve the efficiency and effectiveness of the Family Court through changes to processes and procedures. The perception is that lengthy delays occur largely from the procedures and processes that exist at present.

Openness

NCWNZ members who responded are divided on whether there should be increased openness in the Family Court:

Allowing accredited news media attendance in the Family Court

Part 1: Adoption Act 1955, Clause 4, proposed new s22A

Part 4: Children, Young Persons, and Their Families Act 1989, Clause 30

Part 5: Domestic Violence Act 1955, Clause 40

Part 6: Family Courts Act, Clause 45, proposed new s11A

Under the Care of Children Act 2004 the Family Court is now open. This has resulted in physical changes to courtrooms, but no increased attendance or reporting of cases by the media who have appeared to be lethargic about attending.

Membership response is also divided on media attendance in the Family Court.

The majority response is that media attendance should be determined by a Judge on a case by case basis, with the stipulation that the family have input as well as control regarding whether there is to be media in attendance.

Reporting of Family Court matters should be permissible only if application is made to the Judge stating reasons for reporting on a particular hearing prior to the opening of a hearing. Provision should be made for a Judge to have the right to change her/his ruling at any stage during the hearing.

If reporting provisions are breached the penalty must be severely punitive, including banning that reporter from Court for a specified length of time.

One positive effect of allowing media attendance is that it has the potential to keep the Court 'honest', so there is the potential for this to be applied to both the Judiciary and the legal fraternity.

Some members are of the view that accredited news media reporters could attend hearings of certain proceedings; however, as mentioned above, harsh penalties for any breaches in reporting must be legislated for and then administered.

While the Court is already open to the media and the media cannot release any identifying information, some NCWNZ members are convinced that the press should be excluded. An argument put forward for media exclusion is the possibility of biased reporting causing undue stress to an already fragile family unit.

Furthermore, this group of NCWNZ members thinks that the media already promulgates far too much damaging reporting into the world and view media reporting of Family Courts matters as totally unnecessary. They believe that the family suffers enough being in a courtroom situation let alone having their private business spread publicly by the media. The Court record is sufficient.

Recommendations

That of paramount importance is the restriction surrounding the maintenance of confidentiality in naming those involved or those who are in any way associated or who may be in any way concerned in the matter to which the proceedings relate.

NCWNZ is aware that Judges' decisions are published (omitting names of parties involved) and are thus available to the public. The status quo should continue.

Some specific cases, such as domestic violence, mental health and some Property (Relationships) Act matters, are inappropriate cases to be published aside from in publications of a professional or technical nature.

Attendance of support persons

Part 1: Adoption Act 1955, clause 4, proposed new s22

Part 4: Children, Young Persons, and Their Families Act 1989, clause 30

Part 6: Family Courts Act 1980, clause 45

Currently other people may enter the Family Court (at the Judge's discretion) and this should continue to be the case. It remains of critical importance that Judges retain the power to close the court to the public in special circumstances.

Members who support increased openness believe that the Family Court should be run in a manner similar to other Courts, allowing the attendance of relevant support persons who are directly affected, such as whanau/family members.

To expand further on this point, proceedings should be open to support persons and/or mediators with the consent of all involved and the permission of the presiding Judge.

Members who do not support increased openness of the Family Court consider it is quite open enough already and do not see the need for change. These members see that an open court could inflame a fragile situation; for example, cases where child abuse is present or high levels of conflict exist between participants.

A further negative element to increased openness is the view that sorting through family issues can be a cruel process and should not be exploited through an open court system.

However, if a statutory agency is involved and they deem it useful to proceedings to have another party or parties present to resolve a matter truthfully, then they should be in attendance.

Allowing anyone to report family court proceedings

Part 1: Adoption Act 1955, clause 4, proposed new s22A

Part 4: Children, Young Persons, and Their Families Act 1989, clause 32, proposed new s437A

Part 5: Domestic Violence Act 1995, clause 41

Part 6: Family Courts Act 1980, clause 45,

Part 9: Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, clause 73, amended s130

Part 10: Mental Health (Compulsory Assessment and Treatment) Act 1992, clause 75, amended s25

Part 11: Property (Relationships) Act 1976, clause 79, amended s35A

The bill amends penalties across the various Acts from \$2,000 to \$10,000. Whether or not penalties exist for breaches in reporting, allowing anyone to report on Family Court matters may cause information to become public that is injurious to the family participants involved. Some reporters may consider it worthwhile to be penalised and publish information regardless of the consequences.

Recommendation

That the Committee consider whether the proposed new penalties are deterrents.

Amendments to process and procedures

Non-judicial Mediation

Part 7: Family Proceedings Act 1980, clause 55

Most members agree with non-judicial mediation as this would suffice in many situations where criminal offence is actually minimal.

Counselling or mediation is already often used to resolve Family Court issues. NCWNZ sees this as a preferable first port of call rather than families having decisions forced on them through formal mediation by a Judge.

NCWNZ agrees with all types of mediation being available, as specified and when and if required. The Registrar should confer with the Judge as to which cases require mediation if this becomes apparent during a hearing. The mediator should provide a report to the Court as to what further steps are recommended.

Non-judicial mediation is practised by mediators in Family Court matters with parents now. Specialist mediators would be useful in matters not resolved in counselling or where cases are reasonably non-complex and parties are willing to mediate, freeing Judges for hearings.

Increased attendance at mediation conferences

Part 7: Family Proceedings Act 1980, clause 55

Some members support attendance at mediation conferences being increased to include other interested parties, for example, parent's partners and children's caregivers. Allowing increased attendance at mediation conferences may help resolve issues and should be considered.

Some members agree with enabling additional information to be recorded in mediator's reports to Family Courts. They are of the view that the more information a Judge receives the more it will help to speed up the hearing. Allowing for fuller reports from mediators to be brought before the Judge should allow for a more secure judgement to be made.

However, other members disagree with counsellors' information in Court being increased since counsellors operate under ethics of confidentiality which would be undermined if further information or opinion is proffered. There is currently provision for reporting abuse/risk of parties/children to the Court.

Gown wearing

Part 6: Family Courts Act 1980, clause 44, amended s10

NCWNZ membership is divided over this matter. Some see the Family Court as an already stressful event for families so the lesser formality the better. Judges carry sufficient mana in their personal standing so this does not need to be enhanced by the wearing of a gown. Gowns may prove an intimidating barrier in the close confines of a hearing room.

The Family Court can be an intimidating place for the ordinary citizen, so a judge without robes may assist in relaxing the people who are discussing their troubles.

Others see the need for an authoritative figure; that is, the judge gowned up to sharpen participants' attitudes. Family Court Judges should wear their gowns in Court to make it clear that they have the authority to make a judgment, demonstrating this to both adults and children.

Regulations prescribing court fees

Part 6; Family Courts Act 1980, clauses 46-47

The regulations need to be made clear in regard to the fees and possible waiver of fees.

Extending the range of powers available to Registrars

Part 2: Care of Children Act 2004, clause 6, amended s7; clause 18, amended s130; clause 19, amended s133

Part 4: Children, Young Persons, and Their Families Act 1989, clause 28, amended s150

Part 5: Domestic Violence Act 1995, clause 37, new s41A

Part 6: Family Courts Act 1980, clause 47, new ss16B and 16C

NCWNZ members agree with extending the range of administrative powers currently exercised by Judges to Family Court Registrars as it may take some pressure off the Judges. Registrars must have extra professional development to undertake increased responsibilities. NCWNZ agrees that Registrars should be able to:

- appoint lawyers to act for the child
- only appoint a specialist report writer if the Judge requests one
- agree with making certain types of directions under the Family Protection Act 1955

Family Court practice has historically been that the Family Court Judge has responsibility for appointing counsel for the child in conjunction with the Family Court coordinator, who carries an awareness of lawyer availability, past connections with the case and counsel for child caseload so that an appropriate appointment is made. This means the Judge remains in control of the case. Some Courts are very small and the experience and knowledge of the Registrar can vary. Members would prefer this procedure to remain unchanged.

There are some concerns regarding the Registrar being able to decide whether mediation is appropriate and that this should be a matter for the Judge dealing with the case. Where mediation is ordered it must be monitored to see that it has been undertaken.

Conclusion

The focus of any Family Court must remain firmly on the child – the right for the child's views to be heard through the lawyer for the child, and a child's right to privacy and protection must remain paramount. There is a consensus on allowing increased attendance in the Family Court via support persons; however, there needs to be monitoring of the participants invited and this is a role that must be undertaken by the Judge or Registrar.

News media attendance in Family Court is a contentious issue and NCWNZ strongly urges the Government to consider who will benefit from this attendance. Furthermore, if it is legislated that the Family Court is open to accredited media, thought must be given and care must be taken around developing harsh penalties and consequences for breaches in reporting.



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