

Submission on Legal Assistance (Sustainability) Amendment Bill

The National Council of Women of New Zealand (**NCWNZ**) is an umbrella organisation representing 51 nationally organised societies and national members. It has 23 branches throughout the country attended by representatives of those societies and some 150 other societies as well as individual members. NCWNZ's function is to represent and promote the interests of New Zealand women through research, discussion and action.

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.

Introduction

Free legal assistance in certain circumstances has been NCWNZ policy since 1937, and since 1968 specifically for domestic proceedings.

NCWNZ has been party to numerous consultations, conferences and reports where the issue of women's access to justice has been advocated.

NCWNZ acknowledges the purpose of the Bill as set out in the General Policy Statement in the Explanatory Note. However we have reservations in regard to access to justice being denied for women who could be discouraged by the reintroduction of user charges (interest on debts and lawyer's fees for child services).

NCWNZ strongly believes that the interests of the children must be central to any decisions regarding funding eligibility and that the children must not suffer because of their parents' financial circumstances.

Other Comments

Part 1

Amendments to Legal Services Act 2011

Clause 7

When legal aid may be granted: civil matters

A NCWNZ member (who is a family court lawyer) observed that tightening the criteria will result in more self-represented litigants and this will cause delay and expense to other parties, and ultimately the state.

Other NCWNZ members also commented that the merits of the case should be the focus rather than the expense of the case.

Clause 10

User charge payable by aided person

Our members were concerned that the increased payment may discourage women, in particular, from being able to take court action.

Clause 12

Interest on unpaid legal aid debt

Several members were opposed to the requirement to pay interest at all. Others suggested that there should be an interest-free period. Some members were unhappy with the philosophy behind the requirement for interest to be paid and expressed the view that Legal Assistance is supposed to be a support service for those who need it.

Other members agreed there should be accountability but there should also be a degree of flexibility, eg if the aided person was relying on the proceeds of the sale of an asset to repay the legal aid and required extra time for the sale to be finalised.

Clause 19

Regulations

Several members do not agree with the removal of the requirement to index means thresholds to movements in the Consumer Price Index.

Part 2

Amendment to other Acts

Subpart 1 – Care of Children Act 2004

Clause 27

Order requiring refund of payments in respect of lawyer acting for child

A member emphasised that it is essential that access to the lawyer for the child is not thwarted because of the cost, as sometimes the lawyer for the child is the only person battling for the child. Another comment was that the appointment of the lawyer for the child should be based on need and not whether the family can afford it.

Some members commented that consideration should be given to an increased period for repayment.

Other members supported the proposal and stated that if one of the parties is difficult or prolongs the case or is unreasonable then that party should reimburse a greater share of the lawyer's fees.

Conclusion

NCWNZ generally supports the bill with some reservations about the burden of costs for the economically disadvantaged. NCWNZ believes equality of access to justice for women is critically important and an efficient and functional legal aid system is paramount to achieving this..

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