



NEW ZEALAND

Affiliated with the International Federation of Business & Professional Women

BPW
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New Zealand Federation of Business
and Professional Women Incorporated

P O Box 28 326, Remuera, Auckland 1136, New Zealand

www.bpwanz.org.nz

13 February 2013

To the Committee Secretariat, Justice and Electoral
Parliament Buildings
Wellington

Email:

Re: Submission on the Family Court Proceedings Reform Bill

This submission is from:

The New Zealand Federation of Business and Professional Women Inc.,
PO Box 28-326, Remuera, Auckland 1136.

We wish that the following appear before the committee to speak to our submission:

Carolyn Savage, President BPW NZ

I can be contacted at: Daytime contact number 021 1179261 and email is president@bpwanz.org.nz

We wish that the following also appear in support of our submission:

Anne Todd-Lambie, Past President & Life Member BPW NZ.

Daytime contact number (03) 5482154, mobile 021 961547 and email in AnneT@mmp.co.nz

Thank you for the opportunity to speak to our submission and we hope that our comments are of use to you.

On behalf of
New Zealand Federation of Business and Professional Women Inc.

Carolyn Savage
BPW NZ President

Submission:

This submission is from the NZ Federation of Business and Professional Women (BPW NZ) Inc.

Our Organisation

Our organisation's aims are to link professional and business women throughout the world, to provide support, to lobby for change and to promote the ongoing advancement of women. We work for equal opportunities and status for all women in economic, civil and political life and the removal of discrimination in all countries. We promote our aims and organise our operating structure without distinction as to race, language or religion.

Our structure is comprised of a National Executive, 15 branches and a number of individual members in areas where there is no branch. We are an apolitical organization.

Our interest in this Bill is because we are committed to ensure all women and their families have fair access to Family Courts and representation through advocacy, education and mentoring.

We submitted our comments on the proposed changes in the review of the Family Court on 27th February 2012 and while pleased to see some of the suggestions we made incorporated in the current Bill we are concerned that other suggestions have not been included.

1.0 General Comments:

1.1 We support the intent of this Bill to provide a more responsive service for children and vulnerable people. We congratulate you on the work that has gone into this overarching Bill. We are, however, concerned that excessive cost-cutting measures and access barriers may work against the intent of this Bill.

1.2 We support the introduction of a non-adversarial Family Dispute Resolution service to allow for earlier intervention, reduction of the impact of conflict on children and to speed the resolution of family disputes. For this to be effective it needs to take place after the Parties have attended Counselling, which needs to be for up to six Sessions; one session can achieve very little.

1.2.1 This will increase the likelihood of children feeling more settled earlier and reduce emotional harm to them.

1.2.2 However, the possible fee of around \$900 to use the Family Dispute Resolution service places a barrier to those with no or low income accessing the family justice system and could be a manipulative, controlling and a stalling tactic for a Party who wishes to hurt or punish the other, or to "cement in" a status quo situation to the Party's advantage.

1.2.3 The current grounds for subsidy or exemption are limited. We believe it is fair and reasonable that costs are charged but the mechanism for subsidy, exemption and weekly payment of costs should be clear and not deter access.

- 1.3** We support the refocusing of the Family Court on more serious cases and the introduction of the three new Court Tracks. A prime concern is access to the “Without notice” track for cases involving domestic violence, alcohol and drug addiction and mental health issues. It is vital that no cost or administrative barriers are placed in this area to ensure that those in fear gain fast protection for themselves and their children.

We quote the BPW NZ Policy **16.13 Access to Legal Aid**:

*“THAT the New Zealand Federation of Business and Professional Women Inc urges the Minister of Justice, Minister of Women’s Affairs, Minister of Health and relevant Ministers to unite to enable any woman experiencing Domestic Violence and seeking a Protection Order, immediate access to Legal Aid **free of charge regardless of income** and ask the above Ministers to increase the funding for Legal Aid to family lawyers acting on domestic protection issues” (2009)*

We quote the BPW NZ Policy **18.5 Family Violence Funding**:

“THAT BPW NZ request that the Government does not cut funding to essential family violence programmes such as Te Rito, It’s Not OK, and also child advocates.” (2011)

- 1.4** We are concerned about the reduction of access to lawyers and court professionals and the switch to independent navigation.

1.4.1 Our concern is that this will decrease the efficiency of the new processes and cause distress, confusion and bad outcomes for the most vulnerable who often have low literacy and low confidence.

1.4.2 We recommend that at the initial point of contact to gain advice and direction there is a legally trained person who will explain the relevant Law, procedures and assist with understanding of pamphlets provided and forms to be completed. Current Court staff are already overloaded; perhaps legally qualified especially appointed Registrars could undertake this role; we understand some Australian States have such a person.

1.4.3 Although there may be full information online this is not available to those with no computers and/or no computer literacy. It is important that all people know where to go for that initial contact. To meet this need we recommend an 0800 number be established for national use.

- 1.5** We endorse the Parenting through Separation (PTS) course and we recommend that the Family Dispute Resolution service encourages all parties using their services to attend these courses before any Mediation is attempted. (Mediation is less time consuming and more child focused for those who attend PTS Courses prior.)

1.5.1 We see the provision of advice and parenting tools such as PTS and Parenting Courses (especially for inexperienced fathers) assisting parents and guardians to focus on their children’s needs and this will increase the likelihood of good outcomes for the children.

1.5.2 We support making participation in the Parenting through Separation courses mandatory for most court applicants.

- 1.6** We oppose the change of onus on the Court in determining whether to appoint a lawyer to represent a child.
- 1.6.1 Currently a lawyer is appointed in all parenting disputes likely to lead to a hearing unless the Court believes it serves no useful purpose. This kept the needs and the views of children paramount.
- 1.6.2 The Bill proposes a lawyer is used only to represent the child in certain circumstances. Our views are expanded under Clause 5.
- 1.7** We are pleased to see the maximum penalty for breaching a protection order has been increased from two years to three years. Our views are further expanded under Clause 51 where we have quoted BPW NZ policy 18.5.2.
- 1.8** We support extending the definition of domestic violence in the Domestic Violence Act to include “financial or economic abuse” (for example, denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education, The prevention of domestic violence in all forms is fundamental to BPW’s main objectives and this is expanded under Clause 3.5.
- 1.9** We also support improving domestic violence treatment programmes to reduce the likelihood of recurring violence and to recognise that domestic violence is intergenerational, for attendance at Women’s Education Programmes to be mandatory, especially after a second Application for a Protection Order, whether with the same or a new Partner.
- 1.10** We do not support the blanket reduction of free counselling for one or both parents or parties.
- 1.10.1 We are concerned about the reduction of availability from the current three (3) hours recently reduced from six (6) hours (01/01/2013), to the proposed one (1) hour.
- 1.10.2 We believe it would assist all Parties if they attended counselling and Parenting through Separation courses before working through the Family Dispute Resolution service, therefore ensuring when all representatives come together during the first allotted three (3) hours that they will be focusing on the children. The Counselling and Parenting through Separation courses would have hopefully assisted in resolving some of the key issues.
- 1.10.3 Counselling to still be available for all Parties without filing any court applications and the Court standard procedures continue, when a non-urgent application is received for them to refer it to counselling in the first instance.
- 1.11** We believe that the initial point of contact should have information on counselling for children both during the separation/divorce process and later when psychological and emotional effects plus difficulties being experienced in blended families surface.
- 1.12** In general we support the bill with some provisos and comments set out above and as listed below.

2.0 Comments specific to Part 1, Care of Children Act 2004:

- 2.1 Clause 4, replacing sections 4 and 5 with new sections 4 and 5:** We support this clause because it provides for the pre-eminence of the child's welfare and best interests and we see this as the heart of the current bill.
- 2.2 Clause 5, replacing section 7 with new sections 7 and 7A:** We do not agree with the replacement of the existing section 7 (1) and (2). The existing section 7 (1) and (2) requires the Court to represent a child in every parenting dispute that appears likely to proceed to a hearing but left discretion with the Court to not appoint a lawyer if it would serve no useful purpose. This kept the child's welfare paramount whereas under the new section 7 if child safety issues are not raised it is unlikely that the Court will appoint a lawyer to act for the child. The new section 7 will lead to children's concerns being overlooked and their views will not be expressed which flies in the face of all current Research and would be in breach of our international obligations under the UN Convention on the Rights of the Child.
- 2.3** We agree with the intent of new section 7A to reduce the adversarial stance in the court process. Many lawyers are not adversarial and under the current Law are obliged to promote conciliation and also for legally aided clients reduce costs by limiting the situations in which lawyers will be used. Effectively this means when proceedings are started with an urgent application or a Judge directs a Court hearing. However we are very concerned about leaving a vacuum with no support or advice readily available for vulnerable people in the majority of cases. We would recommend that an objective legally trained person to assist people in the initial court stages be appointed for all unrepresented litigants, at least initially.
- 2.4 Clause 10, insertion of new section 47B** We agree with the requirement to make a statement about undertaking a parenting information programme. This will create more understanding of children's feelings and give a caregiver ongoing confidence in dealing with the impact of the separation. As we are aware Parenting Through Separation courses are not parenting courses, rather about highlighting the implications for children on separation; we suggest all non primary caregivers, and all young parents could only benefit (or their children could) from a mandatory parenting course as well, which will produce more confident and happy children.
- 2.5 Clause 14, replacing sections 58 to 62** We oppose the changes in this clause as sections 58-62 are being replaced with less robust clauses which do not prioritise the safety of women and children. We are concerned these provisions will not keep children and women safe from violence and abuse.

3.0 Comments specific to Part 2, Amendments to Domestic Violence Act 1995:

- 3.1 Clause 35** We agree with the redefinition as this covers abuse where the opportunity and economic security of one party is significantly reduced. The aims of our organisation are to improve women's economic, political and social status.

3.2 The prevention of domestic violence in all forms is fundamental to BPW's main objectives which are to:

- Improve the quality of life for all women
- Advocate for equal social and economic opportunities for women
- Eliminate all forms of discrimination against women
- Empower women through information, education and mentoring

3.3 **Clause 42** We agree with the repeal of old clause 38 and the effect that there is no longer provision for a respondent or an associated respondent to be excused from attending a non-violence programme.

3.3.1 We request that the Courts use their mandate to direct women to specific domestic violence women's educational programmes, to ensure they obtain the necessary skills and knowledge to protect their children and themselves, this in turn will assist in the breaking of the continued domestic violence cycle.

3.4 **Clause 43** We agree with this clause and are pleased that this criteria has been tightened.

3.5 **Clause 51** We agree with this clause but have had ongoing concerns about the implementation of such policy. Included is BPW NZ policy 18.5.2

18.5.2 Protections Orders

THAT the Government to take urgent action to improve the implementation of the legislation relating to protection orders to ensure that such orders are effective in providing protection for battered women and their children. (2008)

Rationale:

- The key issue for NZ NGOs is the level of violence against women and children in New Zealand. Domestic violence includes both physical and psychological violence, bullying, and harassment. Laws are adequate but application is poor and resources inadequate.
- The recent report "The Cutting Edge - women's experiences of protection orders" identified from women's experiences of protection orders that little action is taken to deal with repeated breaches of protection orders.
 - Few convictions are made and sentences are trivial
 - There are ineffective controls after a breach, with a huge gap between women's experiences and the justice and legal system's responses.
 - Legislation is sound but implementation by police, lawyers, judges and courts is poor. Decisions are often contrary to international research findings. 61% of judgments are not based on mandatory risk assessments.
 - Family Court judges are not required to give reasons for denying an application for a protection order, seriously compromising the ability of the applicant to appeal the decision.
 - Judges do not have training before taking protection order cases.
 - 214 women and children have died from family violence since 1996.
 - Battering and sexual abuse co-exist in 60% of cases
- 70% of boys who see their mother being abused will themselves become abusers.

- CEDAW Article 2 (c) requires Parties “to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”
- CEDAW Article 5 (a) states that “Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of man and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women

3.6 **Clause 52** We agree with this clause but as stated for Clause 51 it is the implementation that will determine the clause’s effectiveness.

4.0 Comments specific to Part 3, Amendments to Family Courts Act 1980:

4.1 **Clause 58-60** We agree with the emphasis on the first stage of dispute reconciliation being outside the court wherever possible

4.2 **Clause 60, new section 3B** There is no provision for quality control or training to ensure that the mediation/dispute resolution services will be provided by people who understand the risks and dynamics of violent and abusive relationships and know the Law relating to these issues.

4.2.1 We are concerned about the determination of which applicants for family dispute resolution services must make private contracts and which ones will be judged to be in the limited income category with contracts paid by the Ministry of Justice. We stress that expertise and discernment will need to be used when using the civil legal aid income threshold to determine which parties have limited incomes.

4.2.2 It is important that each Party is carefully assessed on their current financial position, from fully employed, self-employed, to those with access to trust funds and on any income support.

4.2.3 Where financial impediments have occurred to cause additional stress on the main caregiver this may result in not having the financial resources available to ensure full participation through the court process.

5.0 Comments specific to Part 4, Amendments to Legal Service Act 2011:

5.1 **Clause 71** We do not support the reduction of legal aid imposed in this clause. We believe that this should be assessed on a case by case basis, ensuring that legal representation can be provided to those who would not have the financial resources under normal circumstances. This is to ensure the full court resources will be available to women and children, who could be deemed unsafe and affected by domestic violence otherwise the proposed imposed costs could prevent many Parties accessing justice and being able to leave abusive relationships.

5.2 Refer to BPW NZ Policy **16.13 Access to Legal Aid** (as referred to in 1.3 above)

6.0 Comments specific to Part 5, Amendments to other Acts:

- 6.1 **Clause 73, section 226B (4)** If court costs are charged there must be a fair and equitable way for people to be able to pay them.
- 6.2 **Clause 85** We oppose this clause as all efforts should be made to encourage conciliation where possible and counselling aids this process.
- 6.3 **Clause 87, section 162B (4)** If court costs are charged there must be a fair and equitable way for people to be able to pay them. Included is BPW NZ policy 18.13

18.13 Access To Court Facilities

***“THAT** the New Zealand Federation of Business and Professional Women urges the Minister of Justice to establish satellite courts in all areas where distance or lack of public transport prevents local residents from having affordable, timely access to court services.” (2010)*