



**NEW ZEALAND**

Affiliated with the International Federation of Business & Professional Women

**BPW**  
**NEW ZEALAND**

New Zealand Federation of Business  
and Professional Women Incorporated

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7 February 2014

To the Committee Secretariat, Justice & Electoral Committee  
Parliament Buildings  
**Wellington**

Online:

**Re: Submission on Objectionable Publications and Indecency Legislation Bill 2013**

**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, 14 branches and a number of individual members in areas where there is no branch. We are an apolitical organization.

**International Status:**

BPW International has General Consultative Status at the United Nations through the UN Economic & Social Council (ECOSOC). This enables BPW International to appoint official representatives to UN agencies worldwide and to accredit members to attend specific UN meetings.

BPW International's President is the Gender Specialist with the International Organization of Employers (IOE) and we bring the voice of women to business as an expert resource on gender diversity.

BPW International upholds the outcomes of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee at state party level. BPW International upholds the outcome documents of the annual UN Commission on the Status of Women (CSW) which evaluates progress, identifies challenges, sets global standards and formulates policies to promote gender equality and women's empowerment worldwide.

Our interest in this Bill is because we are committed to representing the interests of women and their families. Our position in regards to CEDAW (The Convention to Eliminate Discrimination Against Women) is that we work actively to eliminate all forms of discrimination against women and children. We are active participants in encouraging New Zealand to be proactive in all pieces of legislation to ensure that women have a fair and equitable say on laws that have a direct impact on the quality of life for women.

We are gravely concerned for the rights of many girls and young women and we endorse the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC):

*“Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited.”*

We are committed to working for women and girls and reinforcing the need for New Zealand to implement Legislation which refers to the protection of women and children from all forms of Objectionable Publications and Indecency. We have been advocating for this protection for over twenty years.

## **1.0 General Comments:**

**1.1** We congratulate the Justice and Electoral Select Committee on this Bill which will help to ensure that the offences that involve child exploitation material reflects the seriousness of the offence. The suggested changes to the maximum penalties should be adopted sending a message that the exploitation and abuse of children will not be tolerated. We support the Bill in principle and would like to see it implemented as soon as possible.

We quote the BPW NZ Policy **18.2.1 Enquiry into Pornography**

*“**THAT** the New Zealand Federation of Business and Professional Women Inc URGE the Minister of Justice to act with all speed in implementing the prime recommendation of the Committee of Inquiry into Pornography by rationalizing all legislation presently dealing with aspects of pornography into one code.”* **(1989)**

**1.2** BPW NZ supports the increasing of the maximum penalties for possession, import or export of objectionable publications from 5 years to 10 years as well as the distribution or making an objectionable publication from 10 years to 14 years.

**1.3** Our Federation welcomes the creation of a new offence of indecent communications with a child/young person (anyone under the age of 16) which can occur by a variety of means, texting, internet, telephone as well as verbal communications in any manner directly or indirectly.

**1.4** BPW NZ welcomes under the Classifications Act 1993 the clarification in the Bill as to what is deemed to be an objectionable publication with explicit guidelines for what is not acceptable for public good. This will give the enforcement agencies the ability to prosecute without the need to obtain leave from the Attorney-General.

- 1.5 BPW NZ welcomes the amendment to the Bill relating to the possession of electronic publications ensuring that who view objectionable publications without saving or copying it do not avoid liability.
- 1.6 BPW NZ welcomes the ability for the courts to create a presumption in favour of imprisonment for a repeat child pornography offence; this reflects the seriousness of the offending.
- 1.7 The Bill needs to be strengthened and resources put in place to effectively monitor the growing electronic trafficking of objectionable publications. We congratulate the Government on being a part of the 48 countries who have signed the Global Alliance against child exploitation material.
- 1.8 BPW NZ is concerned with some aspects of the Bill and the impact on human rights. This is discussed further in Section 3. However, we would not want these concerns to override the importance of the protective work contained in this Bill.

## 2.0 Comments specific to penalties for Objectionable Publications

We quote the BPW NZ Policy **18.2.2 Sentences for Pornography Offences**

*“URGE the Minister of Justice to increase the maximum sentence imposed for charges for possession and sale of indecent videotapes and other pornographic material, to better reflect the seriousness of the crime, the substantial profit made from such perversion and the need for strong deterrent effect.”*  
**(1992)**

- 2.1 **Amendments to Films, Videos, and Publications Classifications Act 1993 – Sections 124(2)(a) and Sections 131A(2)(a) of the principal Act** We welcome stronger penalties being introduced against those who knowingly involve themselves in the possession of and production of objectionable material. This sends a message that as a community we do not tolerate the distribution or possession of such material.
- 2.2 **Sections 132B (new) Presumption of imprisonment for repeat offenders** – this clause needs to be inserted as a deterrent for those who continue to involve themselves in repeat child pornography offences. It is really important to increase penalties. At least one of the reasons for needing to increase them is that up until now the penalties have often been less than the benefits of the exploitation, and that is clearly not going to change the behavior.
- 2.3 **Amendments to Customs & Excise Act 1996 Section 209(5)(a)** – we welcome the increase of the term allowable from 5 to 10 years imprisonment for the importation or exportation of objectionable publications in the hope this too will be a deterrent from actively participating in this type of activity.

We quote the BPW NZ Policy **18.2.3 Pornography on the Internet**

*“THAT the Federation urges the Government to introduce legislation and controls to adequately monitor perpetrators of child pornography on the internet and impose upon them greater penalties than at present.”*  
**(2002)**

- 2.4** BPW NZ would like to congratulate the NZ Parliament on introducing a new offence into the Crimes Act 1961 which identifies “**Indecent communications with young persons under 16 years.**” Whilst the imprisonment term cannot exceed three years in length it is showing a commitment to exposing those that take advantage of girls and young women by directly or indirectly exposing them to indecent material in any form of communication. We believe with the advances in technology it is becoming far too easy to exploit the young.
- 2.5** BPW NZ has grave concerns as to whether the government has enough resources invested in the education of the public to increase awareness of just how prevalent indecent publications are in the community, and how to encourage citizens, when confronted by it, to report these sorts of crimes confident that they will be handled in a non-threatening way. This includes the reporting of explicit news releases during general time.
- 2.6** BPW NZ would also like to see more funds invested in the detection of these crimes as we need to ensure we keep abreast of advances in technology to ensure we are able to capture those that choose to offend in this arena. We need the necessary resources and skills to effectively investigate all reported cases and prosecute.

### **3.0 Comments specific to human rights issues**

- 3.1** BPW NZ is concerned that the current Bill be consistent with the New Zealand Bill of Human Rights Act 1990. With the recommendation to remove the requirement to obtain consent of the Attorney-General to prosecute we remove the safe guard against inappropriate prosecutions. Given the nature of the offences in the Classification Act 1993 it is possible that inappropriate private prosecutions could be brought.
- 3.2** Our Federation is concerned that with the introduction of “indecent communications with young persons under 16 years” as a crime there is always the ability to have the opportunity for grounds of entrapment when collecting information and proceeding with a prosecution.
- 3.3** Our Federation has grave concerns for the rights of child victims of these offences and urges the government to follow the process provided in Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC) which New Zealand ratified in September 2011.

We quote:

*“1. States Parties shall adopt appropriate measures to protect the rights and interests of the child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:*

- a. Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;*
- b. Informing child victims of their rights, their role and scope, timing and progress of the proceedings and of the disposition of their cases;*

- c. *Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;*
- d. *Providing appropriate support services to child victims throughout the legal process;*
- e. *Protecting, as appropriate, the privacy and identity of the child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of the child victim;*
- f. *Providing, in appropriate cases, for the safety of the child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;*
- g. *Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.*

**2.** *States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.*

**3.** *States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.*

**4.** *States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.*

**5.** *States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.*

**6.** *Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial”.*

## **4.0 Summary**

**4.1** It is evident from literature that child exploitation material is a significant global phenomenon that crosses social, economic, racial and cultural divides.

**4.2** BPW NZ would like to see the issues of gender be clearly identified within all Policy documents that shape prevention and intervention strategies with regards to the introduction of this Bill. The separation of reporting and prosecutions associated with objectionable publications would also be more pertinent when drawing upon information which will better protect the community.

**4.3** We would like to quote “The NZ Herald” June 17, 2013. p.A10 an article from a NZ First study

*“Claiming that sex was ok as long as a condom was used, information on sexual activities was too explicit, sexual freedom was promoted as a right, sex-related diseases and health risks were white-washed and little encouragement was given to sexual abstinence. Whether we believe this or not it is clear that sexual freedom is acceptable in the soaps which young people watch in*

*prime viewing time. Sexual freedom and promiscuity, exploitation through pornography and sexual offending (including the legislation of prostitution) would appear to be logical consequences of current morality. Therefore it is imperative that Parliament attempts to legislate for the worst offences.”*

**4.4** Our Federation urges the government to follow the process provided in Article 10 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC) which New Zealand ratified in September 2011.

We quote:

1. *“States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-government organizations and international organizations.*
2. *State Parties shall promote international cooperation to assist child victims in their physical and physiological recovery, social reintegration and repatriation.*
3. *States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution. Child pornography and child sex tourism.*
4. *States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes”*

**4.5** We need more resources to be expended to ensure that our women, children and families feel safe and the threat of their exploitation in this arena is minimized if not eradicated. Public awareness of these issues needs to be done in a sensitive way to ensure the fullest participation of the community. Community engagement and reporting of these crimes have got to be made a priority and resources expended so these programmes can be put into place. It is the duty of this government to pass legislation that protects its community. We congratulate this government for tabling this piece of legislation.

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**  
**President**

**Vicky Mee**  
**Vice President, Issues**