



**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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25 July 2013

Submissions,  
The Committee Secretariat,  
Constitution Advisory Panel,  
C/o Ministry of Justice.  
DX SX10088  
**Wellington**  
via Email:

**Re: Submission on the Constitution Conversation**

## **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 to 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 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.

BPW International aims to unite business and professional women in all parts of the world through the following four aims:

1. **work for women's:**
  - *economic independence*
  - *equal opportunity and representation in economic, civil and political life*
2. **encourage and support women and girls to:**
  - *develop their professional and leadership potential*
  - *undertake lifelong education and training*
  - *use their abilities for the benefit of others, locally, nationally and internationally*
3. **advocate:**
  - *for the elimination of all discrimination against women*
  - *for human rights and the use of gender-sensitive perspectives*
4. **undertake:**
  - *world-wide networking and co-operation between business and professional women*
  - *non-profit projects that help women gain economic independence*
  - *to present the views of business and professional women to international organisations and agencies, and to business, governments and civil society.*

### **Work on Human Rights in New Zealand:**

The New Zealand Government has ratified CEDAW and every four years the Government reports on the country's progress. In New Zealand BPW NZ contributes to the NGO alternate report to the CEDAW committee.

BPW NZ is currently working with the National Council of Women New Zealand (NCWNZ) on an alternate report. The targeted group and themes were among those identified by the Monitoring Committee for CEDAW in New York, 2012: *Parliamentary Oversight, Definition of Gender Discrimination and equality, Access to Justice, National Machinery including action plan, Stereotyping (and promotion of women's rights), Violence against Women, Participation in political and public life including temporary special measures, Health, Disadvantaged Women, Marriage, Other international instruments.*

BPW NZ is the lead organization to monitor and report on the actions of the government on women's employment and women with disabilities. BPW NZ has the responsibility to monitor and report on the actions by the Government to redress these key areas of concern and the recommendations made for New Zealand women.

### **This submission:**

**Our interest in this conversation is because we are committed to representing the interests of all women and advocating for equal social and economic opportunities for women. Our aim is to enable women to achieve their full potential and so we advocate on issues such as women's health, women's employment opportunities and combating violence against women.**

## **1.0 General Comments:**

- 1.1 BPW NZ welcomes the opportunity for national discussion on matters that will affect the lives of all New Zealand citizens.
- 1.2 We congratulate the Advisory Panel on promoting and encouraging public discussion.
- 1.3 BPW NZ will be addressing two of the topics raised in the Constitution Conversation:
  - Sharing your aspirations (2 questions)
  - Bill of Rights Act (5 questions)

## 2.0 Responses to questions on “Sharing your aspirations”

### 2.1 What are your aspirations for Aotearoa New Zealand?

Our vision and aims for this country are based on our policies, the aims of BPW International and on the vision of BPW NZ.

We quote the BPW NZ vision:

*“To achieve a just and equal status for women in all levels and areas of society where decisions are taken in true partnership with men, based on a mutual respect, for a more balanced and peaceful world.”*

- 2.1.1 That we recognize that we are a multi-cultural society
- 2.1.2 That we recognize that Te Tiriti o Waitangi/The Treaty of Waitangi is New Zealand’s founding document
- 2.1.3 That we have a justice system that is consistent and fair to all
- 2.1.4 That equal pay for work of equal value work is not affected by age or gender
- 2.1.5 That the health and well-being of all citizens are protected and that women are safe.
- 2.1.6 That every human being is equal and treated as such with equity in education, health and employment.
- 2.1.7 That there is sound and responsible stewardship of our resources for future generations

### 2.2 How do you want our country to be run in the future?

BPW NZ considers our system of Government of Mixed Member Proportional representation fair and wish the country to remain in the same democratic mold with public submissions called for on all bills.

### 3.0 Responses to questions on The Bill of Rights Act

#### 3.1 Does the Bill of Rights Act protect your rights enough? Why?

No the Bill of Rights Act does not protect our human rights completely. It is designed to protect individuals (natural persons) and legal persons (such as corporations) from the actions of the State. The rights and freedoms contained in the Bill of Rights Act are not absolute, but other additional legislation is enacted to provide rights and freedoms not encompassed in the Bill of Rights Act. The NZ Human Rights Act (1993) which sits under the Bill of Rights Act is important legislation which sets out the primary functions of the Human Rights Commission – to advocate and promote respect for and appreciation of human rights in NZ society. The Act's intention is to help ensure that all people in NZ are treated fairly and equally.

3.1.1 There are nine United Nations Treaties that if ratified by a Government, provide additional mechanisms to protect human rights, as well as Optional Protocols that provide a mechanism for civil society to lay a claim of discrimination or denial of human rights directly with the appropriate UN Monitoring Committee such as for CEDAW. The NZ Government has ratified seven of the nine Treaties including Covenants, Conventions and Protocols which means that NZ has an obligation to enforce these international standards through its laws.

3.1.2 We would like to see these international treaties included in the constitution so that those citizens that the treaties are designed to protect, are protected.

3.1.3 We would like to see the use of empowering language in the constitution and either gender neutral language used or if gender is needed, that all genders are referenced so that there is no advantage or disadvantage to any gender.

3.1.2 We would like to see a mechanism for citizens to question legislation that has been passed under urgency where no provision was made for public input. There needs to be a constitutional right for petitioning the House of Representatives in such instances so that the rights of citizens to submit in the legislative process is enshrined in the Constitution.

3.1.3 For sections of our society there are limited rights. Areas of particular concern to BPW NZ are the rights of women and girls with disabilities, the limited rights for new immigrants and the rights of battered women and their children for protection. Often laws are adequate but application is poor and resources inadequate.

We quote the BPW NZ Policy **18.5.5 Domestic Violence Act – Protected Persons:**

*“RECOGNISING THAT in the NGO Report to CEDAW in July 2007 the overwhelming concern for New Zealand Women was violence in all it's forms; ACKNOWLEDGING THAT the Domestic Violence Act provides for programmes for Protected Persons, usually women and children, but that the uptake of these programmes is only 6%; all clubs are urged over the coming year to lobby the Ministers of Justice and Women's Affairs to:*

- (a) review and amend Section 29 of the Domestic Violence Act to ensure that Protected Persons are directed to commence programmes within six months of any Protection Order being made.
- (b) provide increased education and resourcing to promote the benefits of such programmes. (2008)

Rationale:

Section 29 of the Domestic Violence Act provides that the Court Registrars may authorise programmes to Protected Persons or their Children for up to three years after the making of a Protection Order. Under Section 32 of the Domestic Violence Act the Court must, unless there is good reason not to, direct the Respondent to attend a programme. Many Family Court Judges report recommending women attend programmes and the Courts write to all Protected Persons advising them that there are programmes, for groups and individuals, available and free. The letter strongly recommends the uptake of a programme and notes that those who have attended report many benefits. Unfortunately whilst the Domestic Violence Act provides for programmes for Protected Persons, usually women and children, the uptake of these programmes is only 6%;

Given that a programme:

- (c) assists the protected person to deal with the effects of Domestic Violence by educating, informing and supporting that person and building that person's self-esteem; and
- (d) increases their understanding about the nature and effects of Domestic Violence, including the intergenerational cycle of violence; and
- (e) raises the person's awareness of the social, cultural and historical context in which Domestic Violence occurs in order to help that person put past experience in perspective;
- (f) assists the protected person to address safety issues and put in place strategies to maximise their safety; and
- (g) (i) provides information about the effect of Orders and the way in which the Act operates; and  
(ii) builds support networks; and  
(iii) provides details of programmes available for Children; and  
(iv) provides details of programmes for Respondents; and
- (h) develops of realistic expectations of behavioural and attitudinal change in respondents; and
- (i) assists the protected person to identify and explore options for the future.

These programmes are invaluable, particularly in preventing the intergenerational transmission of violence and assisting women to move forward in their lives, breaking the pattern of returning to the abuser.

The recognized benefits for women attending these programmes is huge. The cost to these women (and society) who continue to return to the abuser or repartner, as many do, with a similarly abusive partner has been previously well documented by a Report undertaken by Susan Snively. Within the Cutting Edge Report 2007 those women who reported undertaking programmes/counselling seemed to move on positively, most quickly and were less likely to return.

Given the research that we now have that much violence is intergenerational, and that domestic violence is enormously damaging to children and predictive of serious adjustment difficulties later in life, mandatory programmes will go a long way to ensuring women, especially Mothers gain the skills and knowledge they need to protect themselves and their children.

BPW has policy on Women's Human Rights 8.5, Sexual Harassments 11.15, and on Sexual Abuse under 18.3 and 18.4. This Resolution seeks active involvement by clubs in programmes that can and do increase the wellbeing and status of women (and their children) who are subject to domestic violence.

### 3.2 What other things could be done to protect rights?

The Bill of Rights Act includes two important safeguards to help protect human rights:

- a) One empowers the Courts to prefer possible interpretations of enactments that are consistent with the Bill of Rights Act over interpretations that are not consistent (s.6)
- b) The other (s.7) requires the Attorney-General to notify the House of Representatives if any provisions in a Bill appears to be inconsistent with the Bill of Rights Act

3.2.1 As we are discovering, most of our laws need reviewing over time the Bill of Rights will be no exception especially with the changing demographics in NZ moving steadily towards a multi-cultural society. It is true that the fundamental principles should be such that it encompasses the basic needs of all people to attain fair and equal treatment, one would hope that remains a constant.

3.2.2 BPW NZ suggests that a further protection of rights would be for Select Committees to request gender impact analysis of changes proposed in new legislation to ensure there is a full understanding of who will be most affected. This is in line with CEDAW article 2 which New Zealand has ratified.

3.2.3 BPW NZ believes that the continued monitoring of international labour and human rights' conventions, that New Zealand has ratified, is essential. It is vital that New Zealand honours its obligations under international conventions and these provide another level of protection for all citizens.

3.2.4 BPW NZ urges the New Zealand Government to:

- (a) sign and then ratify the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities and
- (b) press for a further article to be added to the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) to address the elimination of discrimination against women and girls with disabilities

We quote sections from BPW NZ policy **15.8 Disabled Services and Support**  
**15.8.5 CEDAW Article 26 – Discrimination against Women and Children with disabilities.**

*“THAT BPW NZ urge the New Zealand Government to request, under Article 26 of Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), that a further Article be included to address the elimination of all forms of discrimination against women and girls with disabilities. (2011)*

**15.8.6 Optional Protocol to UN Convention on Rights of Persons with Disabilities**

*“THAT BPW NZ urge the New Zealand Government to sign and then ratify the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities”. (2011)*

**3.3 Do you think the Act should have a higher legal status than other laws (supreme law)? Why?**

Currently the Bill of Rights Act does not have the status of supreme law. This means that the Courts cannot use the Act to repeal, revoke, or invalidate other legislation. In the event of an inconsistency between the Bill of Rights Act and another enactment, the other enactment must prevail.

Many members believe this should change as they are concerned about rushed legislation as seen in examples provided in Clause 3.1.2 of this submission.

**3.4 Who should have the power to decide whether legislation is consistent with the Act: Parliament or the Courts? Why?**

BPW NZ believes that it should be the courts because they have to exercise impartiality. Parliament would be biased since new legislation comes from the ruling parties. The Courts provide a fairer avenue of challenge. We refer to the examples given in Clause 3.1.2 of this submission.

Currently the Attorney-General, who is Principle Advisor to the Government, is required to notify the House of Representatives if any provisions in a Bill appear to be inconsistent with the Bill of Rights Act. This must be done upon introduction of a Government Bill or for others, such as private members bill, as soon as practicable after introduction. The current Attorney – General is Hon. Chris Finlayson, Minister of Treaty of Waitangi Negotiations, Arts, Culture and Heritage, and Associate Minister of Maori Affairs.

**3.5 What additional rights, if any, could be added to the Act? Why?**

3.5.1 Where there is serious doubt of the safety of a court case resulting in a jail sentence, the right of a prisoner to access police evidence and review police behaviour, should be a right under the Bill of Rights. Nor should the decision to review be left to the decision of the Minister of Corrections who may well try to protect the police rather than pursue justice for a prisoner. Cf the case of Teina Pora

3.5.2 In general any gaps within the Act has been covered through other legislation. The onus is on the Government to implement all legislation.

3.5.3 BPW NZ believe a level of oversight is required for our legal system and that this should be a responsibility of all people.

We quote the BPW NZ policy **19.8 Judicial Commission**

***“THAT BPW NZ LOBBIES for the establishment of a Judicial Commission incorporating public representation.”*** **(1997)**

Thank you for the opportunity to present 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.***

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