



NEW ZEALAND

Affiliated with the International Federation of Business & Professional Women

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SUBMISSION To Ministry of Justice

Re: Review of Family Court

Introduction

1. This submission is from the New Zealand Federation of Business and Professional Women Inc.

Our organisation

2. Our organisation's aims are to link professional and businesswomen 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 membership is approximately 450.

Our structure is comprised of a National Executive, 18 branches located nationwide between Kaitaia and Southland, with a number of individual members in areas where there is no branch. We are a non political organisation.

Our interest in this bill is because we are a women's group who are committed to ensure all working women and their families have fair access to family courts and representation through advocacy, education and mentoring.

We submit our views on the Family Court Review as our aims and policy that has been passed to reflect our commitment to fair, cost viable and timely representation.

BPW NZ makes the following comments regarding the proposed changes in the review.

A Court under Pressure

- One of the reasons the courts are under pressure is the problem of financial burdens being placed on a rising number of families who no longer have an income or are having to cope with a reduced income. This causes tensions within the family and consequently incidences of violence, drug and alcohol abuse, depression have an effect to the point that families break down.
- The consequences of this are more families requiring the services of the court.
- The role of the state in resolving private parenting disputes –

- History has shown that as long as there are parents and children there will be disputes. Personalities will always clash and families should be able to reach out to other members of their family or to a counselling service that is available. There are a number of organisations that can (and do) cater for this type of problem. The State should not be involved in this type of dispute. The exception is where violence occurs, either to the child or as in some cases the parent. Very often mediation and facilitation will not work for families where it has got to this stage.
- There are specialist degrees that focus on mediation, facilitation and guidance to help people to communicate and understand the stress's that each member of a family may be going through, a number of agencies are involved in the private sector helping families to adapt to the dynamics of their own particular family. These agencies are already tapped into to aid the courts, where this happens a fee could be charged to the family for the help they receive to be paid as and when they can financially afford, scaled to reflect the type of conflict that has occurred.
- Where possible the above agencies could assist in early resolution of problems so that the court never gets to see them. This will assist in cutting down the number of cases that have to go to court for resolution and should assist in causing a decrease in the delays that are currently occurring.
- Where it involves a custody hearing for instance that affects the children, resolution brought about by mediation will mean less acrimony amongst the family and children will be better settled thus having a better outcome for them.
- Currently children will often get a lawyer to represent them, this adds to the costs but does provide an objective overview of the children's needs. Often children need to be told what is going on so that they are not confused. If the process and the reasons for the process are explained by a third party rather than a parent (who has an emotional requirement for the child to support them), the child has a better chance of understanding and of feeling as if they have some control over the outcome.

The changing Family Court

The need for a simplified and clear court process is absolutely necessary to ensure that costs do not continue to escalate and so that clients are able to see the process without being confused.

Impact of Social changes

There needs to be flexibility in the process to allow for cultural differences, this includes the set up of the court, the language used in the court and an understanding of what is offensive to different cultures in the conduct of the court.

As New Zealand's population base changes in diversity of cultures the court will need to adapt. At present we are an ageing society, this may change with the increase in immigration and cultures that have more children per family than is currently the case. With more people living in partnership relationships, families living with more than two generations in one household, and with people choosing to move around the country to work leaving part of their family behind while doing so, the nucleus family of parents and 2 children as was the supposed *model family* is no longer the norm.

The Family Court Jurisdiction

Changes to the Family Court's current jurisdiction would mean less delays for some cases and longer delays for others where they have been moved to either the District Court or the High Court. There are strong arguments for the suggested types of cases in the summary on page 26 being heard in either of these two courts and or the Family court. The parameters for the severity of the case being heard should determine which court it is heard in.

An open Family Court

The current system has an appropriate balance between being open to the media and others, while protecting the vulnerable. If the court was opened up any more then the very people the court is trying to protect or give justice to could be exposed to unwanted abuse from other parties.

If there was a need for more openness it could be done as per the suggestion 84. By providing the relevant information on the justice departments website available for those who wished to research decisions and information on the courts activities.

Focusing on the Children

Currently children often have no say in what happens to them and in the case of very young children are often confused by the fact that Mum and Dad are no longer living together. There may be feelings of abandonment by the child concerning the parent that has left the home, which may not be resolved for many years if at all. This will often result in children withdrawing into themselves, doing poorly at school, and feelings of not being worthy.

It is very important that children be told what is happening, what the likely outcome will be and then that the parents carry through with the responsibilities that have been asked of them by the court.

Where a dissolution of a marriage is acrimonious and possibly has had an element of violence in the cause, it is often better for the children to have no contact with the abusive parent.

Children always want their parents to get along and often dream of their parents "getting back together". They are always optimistic about outcomes and if they are kept informed are better equipped to accept that the relationship between their parents is over. Also having their opinions on what the final arrangements for them will be is important for them to be able to settle with the final outcome. The danger here is that the child is not asked leading questions and that they are able to trust the person they are talking to. Children should have an objective person appointed to assist them and this person should be able to represent them in the court and through the mediation process. There should be only one person to avoid confusion. Consistency in what the child is told is paramount in the child being able to make decisions.

Focusing on Alternative Dispute Resolution Services

Counselling is an essential part of being able to come to a resolution. However it may be that the Family court is not the best place for this to occur. There are available through Citizen's Advice Bureau a number of agencies who can provide counselling services, although there may be a cost to the parties concerned. Also legal representatives can give advice on where to get counselling advice. If this sort of counselling was developed the costs to the court could be reduced. For those who are not able to afford the cost themselves a levy system might be developed, or assistance provided through the MSD.

Counselling should encourage conciliation where possible, and if that is not possible should act as a place where understanding of the parties differences can be bought to an amicable resolution.

Mediation – has proved to be successful in Australia and an independent body could be set up to provide this type of service, reducing the pressure on the Family Courts. The MSD could be the controlling department of this type of service, working in conjunction with the Justice department.

Court Fees

Court fees should be based on the ability to pay, and many factors must be taken into account.

Women who are supposedly middle class and should have the ability to pay may not necessarily be able to. Often, a family home has been sold, the person has children to support and has had to take out a mortgage to ensure there is a roof over the children's heads, it may be that the option from being employed and being able to pay for child care while working is no longer viable depending on the ages of the children, transport may become an issue and to add court costs onto these other financial problems could be detrimental to the mental health of the person. If court costs are charged then there must be a fair and equitable way for people to be able to pay them,

Application, setting down and hearing fees

These should be applied when it is an obvious delaying tactic, however where the adjournment is through unavoidable circumstances, the court should have discretion to waive or reduce the fees.

Addressing health and Social issues

Where there are ongoing problems with separated parents who have drug and alcohol related problems which affect the children, MSD should become the legal guardian of the child, placing the child in a safe environment with either another member of the family or foster parents until the parents and the court come to a mutual agreement about the placement of the child. Children in these circumstances should also be given counselling to ensure they are aware that it is not their fault that their parents have problems and to ensure they become confident and happy.

Clarity of Process

There should be a standard process for hearings within the Family court so that people know what to expect and when to expect things to happen, however there will need to be some flexibility built into this to provide for the differences in cultural perceptions and expectations.

The processes outlined in the discussion paper are better than the existing court procedures and provide consistency.

Compliance/breach of orders

Where orders have been breached they should be subject to sanctions and penalties. Particularly protection orders that have been issued to protect the vulnerable, most often women and children.

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

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Noeline Reisch', written in a cursive style.

Noeline Reisch
Vice President Issues
BPW NZ