



24th May 2017

Justice and Electoral Committee

Parliament Building
Wellington 6140
New Zealand

E-mail: Justice.Electoral@parliament.govt.nz

Re: **Submission on the Family and Whānau Violence Legislation Bill**

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

Our Organisation

The International Federation of Business and Professional Women is a global organisation with representatives in over 100 countries, including New Zealand. Our organisation's aims are to link professional and business women throughout the world so that they may provide support to each other, lobby for change and to promote the ongoing advancement of women and girls. 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.

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 NEW ZEALAND

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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.

BPW International also upholds the UN Declaration on the Elimination of Violence Against Women which was adopted by the General Assembly in 1993 and affirms that under "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms"¹. In particular, we refer to Article 4:

"States should pursue by all appropriate means and without delay a policy of eliminating violence against women"

1. Executive Summary

BPW NZ supports this Bill as an important step in addressing the strengthening of legislation to prevent the widespread and serious problem of family and whānau violence. We congratulate the Ministry of Justice on this important work.

BPW NZ recognises that this issue particularly affects women, children, Māori, the disabled and elderly:

- In the four years from 2009 to 2012, an average of 13 women, 10 men, and 9 children were killed each year because of family violence;
- 1 in 3 women will suffer at the hands of their intimate partner at least once in their lifetime;
- 76 per cent of recorded assaults against females are committed by an offender that is identified as family.²
- A review of family violence legislation found "some population groups are at an increased risk of family violence, including women, children, disabled people, older people and Māori."³

¹ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Feb. 23, 1994)

² Ministry of Social Development, areyouok.org.nz/family-violence/statistics

³ <https://justice.govt.nz/assets/Documents/Publications/ris-review-fv-legislation.pdf>



While supporting this legislation, BPW NZ recommends the following amendments:

- tougher consequences for breaches of police safety orders,
- reference to disabled women and girls through the adoption of the recommendations made in New Zealand's 6th periodic review under the International Covenant on Civil and Political Rights regarding violence against disabled people,
- and adoption of the recommendations from the Privacy Commissioner's recent Inquiry into The Ministry Of Social Development's Collection Of Individual Client-level Data From NGOs.
- By consulting with the community to ensure that the language used is more encompassing – Domestic Violence rather than Family violence as this is not a true reflection of what is happening in the community.

In addition, BPW NZ believes it is important that there is specific and considerable outreach with Māori in the development of this Bill, that their practices and beliefs are incorporated within the language of this Bill, and also included in the implementation of this Bill should it come into law.

Our submission below will support the above recommendations by considering the following factors:

- BPW NZ has policy that speaks to the above issues,
- findings from inquiries commissioned by the New Zealand government or produced by our NGOs, and
- our international treaty commitments.

2. Domestic Family Violence Commitments

The Domestic Protection Act (1982) was the first law that specifically addressed domestic violence. This was enhanced by the Domestic Violence Act (1995).

In 2002, the Te Rito: New Zealand Family Violence Prevention Strategy was developed by the Family Violence Focus Group.

This led to the creation of the New Zealand Family Violence Clearinghouse in 2005, which coordinates and distributes research on domestic violence.

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However, a 2007 review found that the implementation of the act, in regard to protection orders, was still inadequate.⁴ This led to the Domestic Violence (Enhancing Safety) Act (2009).

However, in 2011 a UN report found New Zealand did not compare well among other OECD countries.⁵ This was supported by The Glenn Inquiry and their report The People's Blueprint, released in 2014:⁶

“For a developed country, free from internal strife and blessed with stable democracy, New Zealand’s family violence rates are inexcusably high.”

The People's Blueprint was supported by The Human Rights Commission: “Many of the recommendations such as a whole system approach, a national strategy, collection of accurate data and evaluation of programmes, capacity building and training of the workforce are what the government agreed to when it was examined by the Human Rights Council earlier this year,” Dr Blue said.⁷

Further, in 2016 Human Rights Commission report (New Zealand’s 6th periodic review under the International Covenant on Civil and Political Rights) included findings such as:

- New Zealand has the fifth worst child abuse record of 31 OECD countries. The most serious violence against children is family violence.
- Māori and disabled people are more likely to be victims of physical and sexual violence, and have less access to physical and psychological and judicial interventions.
- A recent study focusing on violence against disabled people highlighted the hidden nature of much abuse directed against disabled people living in care situations akin to a family relationship within the community. In addition to the physical, emotional and sexual violence experienced by non-disabled people, “locked in” and “silencing” violence is often specifically directed at disabled people.⁸

Included in the recommendations of the report:

The Commission recommends that the Committee urges the Government to:

⁴ <https://library.nzfvc.org.nz/cgi-bin/koha/opac-detail.pl?biblionumber=2627>

⁵ <https://www.un.org/ruleoflaw/files/Progress%20of%20the%20Worlds%20Women%202011-2012.pdf>

⁶ <https://nzfvc.org.nz/content/glenn-inquiry-releases-peoples-blueprint>

⁷ <https://www.hrc.co.nz/news/support-blue-print-call-stand-alone-agency/>

⁸

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/NZL/INT_CCPR_NHS_NZL_23124_E.pdf



- consider whether the Domestic Violence Act 1995 and other legislations provides sufficient protection for disabled people in community care situations and if it doesn't commit to amending it so as to apply; and
- commit to tracking violence/domestic violence against people with disabilities and educate the public as to the disability/violence nexus.

3. BPW NZ on Domestic Violence

For the past twenty-five years, as a national federation, BPW NZ has worked to advocate for victims of family violence. This is an issue that is very personal for a number of our members.

Our BPW Kaitiaki club initiated the "I am the One in 4" campaign to raise awareness around sexual abuse and to support victims of abuse.

In addition, over the years we have developed numbers of policies around family violence:

18.5.1. Funding for HAIPP (Hamilton Abuse Intervention Pilot Project) (1993)

18.5.2. Protection Orders (2008)

- THAT the Government 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.

18.5.3. Campaign to End Violence Against Women (2008)

- THAT members support the campaign to end violence against women and urge their organisations to ensure that their members know about how to exercise their right to live without fear of violence, and are aware of the information, resources, support, protection and assistance available in their communities for victims of domestic violence.

18.5.4. Long Term Strategy For Elimination of Violence Against Women (2015)

18.5.5. Domestic Violence: Reduction of Violence In Society (2015)

18.7. Domestic Violence Act - Protected Persons (2008)

- RECOGNISING THAT in the NGO Report to CEDAW in July 2007 the overwhelming concern for New Zealand Women was violence in all its 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:

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- 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.

18.8. Family Violence Funding (2011)

- 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.

18.9. Funding for Victims of Sexual Abuse (1993, 2005, 2010)

18.11. Roper Report (1994)

18.17. Post Release Hostels for Women (2010)

18.18. Testifying by Witness (2010)

This year, in 2017, we continued our work with the passing of two policies at our national conference:

Breaches of Police Safety Orders (PSOs)

Breaches of Protection Orders

With these policies, our federation unanimously voted for breaches of police safety orders to be made a criminal offence and for breaches of protection orders to require a mandatory arrest.

BPW NZ has two additional policies which have shaped this submission:

11.4. Treaty of Waitangi (recognising that the Te Tiriti o Waitangi is New Zealand's founding document) (2012)

15.8.2. Services for Disabled People (care for women with disabilities, who are experiencing abuse) (2007)

4. International Commitments

BPW NZ acknowledges the following international treaties which New Zealand is a party to:

CEDAW:

In 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly.

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It defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

CEDAW has asked that we call it violence against women or violence against children. Family harm, family violence and domestic violence do not tell the story.

CEDAW was ratified by New Zealand in 1985.

The Optional Protocol to CEDAW is a supplementary agreement allowing complaints to be made to the Committee on the Elimination of Discrimination against Women and allows the Committee to investigate complaints. This was ratified by New Zealand in 2000.⁹

CRPD:

CEDAW was strengthened by the Convention on the Rights of Persons with Disabilities (CRPD), which was introduced in 2006 and ratified by New Zealand in 2008.

It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms.

The Optional Protocol to CRPD is a supplementary agreement that allows individuals or groups of individuals to make a complaint (or communication) directly to the Committee on the Rights of Persons with Disabilities (the Committee) alleging a violation of any rights under the CRPD. This was ratified by New Zealand in 2016.¹⁰

Beijing Declaration:

One of the outcomes of the UN's Fourth World Conference on Women was the Beijing Declaration, of which strategic objective IV. D. Violence against women stated:

"Violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms."¹¹

New Zealand has strongly committed to this declaration.¹²

5. BPW NZ Recommendations

⁹ <http://www.un.org/womenwatch/daw/cedaw/>

¹⁰ <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>

¹¹

<http://beijing20.unwomen.org/~media/Field%20Office%20Beijing%20Plus/Attachments/BeijingDeclarationAndPlatformForAction-en.pdf#page=53>

¹² <https://www.mfat.govt.nz/en/media-and-resources/ministry-statements-and-speeches/commission-on-the-status-of-women-61/>



BPW NZ makes the following recommendations based on the considerations outlined above:

5.1 Making a breach of a police safety order a criminal offence

- Police safety orders (PSOs): at present, and continued in this draft Bill, a breach of a PSO does not result in a criminal conviction.

BPW NZ recommends that any breach of a police safety order be made a criminal offence.

Rationale:

The latest Police Data shows that the number of PSOs issued over the last five years has almost doubled. Documents released under the Official Information Act show 14,802 PSOs were issued nationwide in 2015-2016 compared to 8817 in 2011-2012. PSOs are supposed to provide immediate protection for women, children and any other potential victims of family violence, however, the fact that a breach of a PSO can only result in the Perpetrator being held for 24 hours, significantly reduces its efficacy and does not ensure the victim's safety.

The purpose of a PSO is to provide a "safety window" during which time the victim (s) can apply for a protection order through the courts and find a place of safety. Research suggests that the point at which a victim(s) is most at risk is at the point of separation. Breaches of PSO's do not currently ensure a conviction takes place.

As long as a breach of a PSO is not a criminal offence, it will not be taken seriously enough by the perpetrator.

This resolution supports the work being done by Ang Jury, Chief Executive of Women's Refuge NZ, who says: "The fact that these orders do not constitute a criminal offence is a definite weakness."

5.2 Disabled people: this Bill does not clarify the role disabled people may have in a family relationships nor recognise that disabled people may require different and additional support as victims of family violence.

BPW NZ recommends that the special relationship that disabled people and their carers may have in clarified per clause 10, Section 4 Meaning of Family Violence.

BPW NZ urges the Minister to adopt the recommendations made in New Zealand's 6th periodic review under the International Covenant on Civil and Political Rights regarding violence against disabled people.

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Rationale:

Disabled people, along with elderly and Maori, are identified as being at a higher risk of family violence. In many cases, the role of a family carer may be unpaid and casual and disabled people are dependent on carers in a unique way.

Disabled people may find it more challenging to speak out about violence and not have the capacity to seek support.

Auckland Disability Law are also providing a submission to this proposed legislation and we strongly support their recommendations.

- 5.3 **Privacy protection:** this Bill introduces new information sharing provisions, particularly in clause 69.

BPW NZ urges the Minister to adopt the recommendations of the Inquiry into the Ministry of Social Development's Collection of Individual Client-Level Data from NGOs, under Section 13 of the Privacy Act 1993, which was released by the Privacy Commissioner April 2017.

Rationale:

BPW NZ club members are employees, managers, and on the Boards of social service agencies throughout New Zealand.

Our members have frontline experience, not just working with clients, but also as clients.

Although BPW NZ recognises the importance of sharing information about victims and offenders or potential offenders, we also hear of the fear they have that information about them will be shared and/or used against them.

BPW NZ believes this deters potential clients from utilizing social service agencies.

Anecdotally, our BPW Warkworth club member who is on the board of an abuse prevention service, has heard that some people are already avoiding agencies because of the fear that their information will be taken, shared and held against them at a future date.

Based on the recent Privacy Commissioner's recent inquiry, BPW NZ understands that current individual client level data collection is consistent with the principles of the Privacy Act. We believe this Bill should support current practices and specifically, not support the collection and reporting to Government Departments, of Individual Client Level Data.

¹³ <https://www.privacy.org.nz/assets/Files/Reports/2017-04-04-Inquiry-into-MSD-collection-of-individual-client-level-data-OPC-report.pdf>



5.4 **Te Tiriti o Waitangi:** this Bill does not speak to New Zealand's commitment to the Treaty of Waitangi as a founding document for New Zealand.

BPW NZ recommends that the role of Whānau be explained per clause 10, Section 4 of the Family and Whanua Violence Legislation Bill.

That the practices and beliefs of Māori be incorporated into this Bill by widely consulting Māori in the development and implementation of this legislation.

Rationale:

(We refer to Mason Durie's work in Whānau, Whanaungatanga and Healthy Māori Development published in Mai I Rangiatea, 1997)

In Aotearoa/New Zealand, the institution of whānau is more than simply an extended family network. It is a diffuse unit, based on a common whakapapa within which certain responsibilities and obligations are maintained.

Since urbanisation, it has come to refer to a variety of 'non-traditional' relationships where Māori have similar interests but are not related by blood.

Whanaungatanga is the process by which whānau ties and responsibilities are strengthened - based on the principle of both sexes and all generations supporting and working alongside each other.

Therefore, all policies and interventions should be whānau-centred in their approach.

Since New Zealand has an obligation to the Treaty of Waitangi and therefore a bi-cultural responsibility to uphold Māori sovereignty over their own health and wellbeing, we believe that Māori should be consulted in all changes and updates to family violence policy.

Not least because Māori people are highly represented in terms of offenders and victims of family violence, consultation with Māori in this policy is crucial.

6. Concluding Summary

BPW NZ supports this legislation but has outlined recommendations regarding Policy Safety Orders, disabled people, privacy, and our commitment to the Treaty of Waitangi.

This reflects our international treaty commitments and the advice of national experts, such as the Privacy Commissioner and the Human Rights Commission.

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BPW NZ is passionate about the issue of family violence.

We acknowledge the startling statistics - 80,000 and 90,000 police investigations each year centre on family violence - that reflect women, men, and children who are victims of violence. We implore the Justice and Electoral to consider our recommendations.

Thank you for the opportunity to submit 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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