



29 November 2017

Constitution Aotearoa NZ Submissions
PO Box 11-566
Manners Street
Wellington

Email: feedback@constitutionaotearoa.org.nz

Dear Sir Geoffrey Palmer and Dr Andrew Butler,

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.

This submission:

The basis of our submission is that 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 we therefore 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 We support the idea of the development of a constitution and the rationale for this for New Zealand. We do not however support all elements of your proposed constitutional document. There are several very significant changes proposed within the document, including the relative disconnection from the Crown through abolishment of all royal powers and the adoption of a 'head of state'. The impact of this needs to be considered in detail and cover all sectors of society.
- 1.4 We propose that the major issues raised need addressing via referendum or extensive public consultation, given the political and societal ramifications.
- 1.5 BPW NZ will be addressing four of the topics raised in the Constitution Conversation ([X] refers to the reference number in the feedback form):

[1.] THE PROPOSAL FOR A CODIFIED CONSTITUTION AS SUPERIOR LAW

[2.] THE PREAMBLE

BPW NEW ZEALAND

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[12.] TE TIRITI O WAITANGI/THE TREATY OF WAITANGI

[13.] THE BILL OF RIGHTS

2.0 [1.] The Proposal for a Codified Constitution as Superior Law

[1.1] We think it's about time that New Zealand had a written constitution like nearly every other country in the world. That way, Kiwis would be easily able to find the basic rules by which the country is governed. What are your views on the proposal to codify New Zealand's Constitution?

2.1 The United Nations advocates for democracy and supports countries that adopt constitutions based on the International Bill of Human Rights. The work of the Office of the High Commissioner for Human Rights includes facilitating constitution-making. For this reason, BPW NZ supports a national discussion about the codification of our Constitution.¹

“The Universal Declaration of Human Rights, adopted by the General Assembly in 1948, clearly projected the concept of democracy by stating “the will of the people shall be the basis of the authority of government.” The Declaration spells out the rights that are essential for effective political participation. Since its adoption, the Declaration has inspired constitution-making around the world and has contributed greatly to the global acceptance of democracy as a universal value and principle”

[1.2] In most countries, the Constitution is superior law to which other laws are subject. However, in New Zealand there is no superior law except the one that Parliament can pass any law it likes. What are your views on the proposal to make New Zealand's Constitution superior law?

2.2 BPW NZ recommends that as a Constitution ideally protects or extends a country's Bill of Rights and related Acts and has the most important judicial role of protecting citizens, it should be supreme law. Otherwise, there is a risk that its effectiveness is subverted.

3.0 [2.] The Preamble

[2.1] One of the functions of a Constitution is to set down the basic rules by which a country is governed. Many constitutions include a Preamble that records the country's traditions, values, and aspirations. What are your views on the Preamble that we have proposed? Does it adequately capture your sense of New Zealand's shared values, traditions, history, and sense of the future?

3.1 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.”

Our sense of New Zealand's shared values is:

- That we recognize that we are a multi-cultural society
- That we have a justice system that is consistent and fair to all
- That equal pay for work of equal value work is not affected by age or gender



- That the health and well-being of all citizens are protected and that women are safe
- That every human being is equal and treated as such with equity in education, health and employment
- That there is sound and responsible stewardship of our resources for future generations

We recommend that these items are specifically referenced in the preamble.

4.0 [12.] Te Tiriti O Waitangi/The Treaty of Waitangi

[12.1] What are your views about the proposal to recognise Crown and Maori rights, duties and obligations under the Treaty of Waitangi? Do you agree that the Treaty should be part of the Constitution? Why or why not?

4.1 BPW Policy 11.4 states “THAT BPW NZ recognises that Te Tiriti o Waitangi/The Treaty of Waitangi is New Zealand’s founding document.”

We support the inclusion of the Treaty of Waitangi as a founding document and do not see any way that a Constitution could not include this, given the purpose of a constitution as described in the preamble discussion.

Although there is comment in the document, that the new ‘State’ will honour any agreements reached in relation to Te Tiriti between iwi and the Crown, it is concerning that there is no further detail or discussion around what other impacts these changes may have on current and future settlement discussions.

5.0 [13.] The Bill of Rights

[13.1] What are your views about the proposed entrenchment of the Bill of Rights and its guarantee of individual rights and freedoms including the right to life and security, democratic and civil rights, rights to freedom from discrimination and unequal treatment, right to liberty and justice, and so on?

5.1 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.



5.2 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.

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.

5.3 For sections of our society it is particularly challenging to safeguard the provision of rights. Areas of 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 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:

(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.”

5.4 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.

[13.4] What are your views about our proposal to recognise social and economic rights, but to provide that those rights would not be judicially enforceable?

5.5 The 1993 World Conference on Human Rights and subsequent Vienna Declaration enforced the principles of the UN Charter and the Universal Declaration of Human Rights and the duty of States to uphold them, per Article 5:



“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

BPW NZ believes that all rights should be judicially enforceable, or they will not have the legislative backing to hold the Government or relevant bodies accountable for ensuring that these rights are recognised.

[13.5] What are your views about our proposal to include 'gender' in the list of recognised grounds of discrimination people should be protected from? Are there other grounds you would include?

5.6 We support the inclusion of gender in the list of recognised grounds of discrimination people should be protected from. We question why it was specifically raised as part of this feedback process as it implies that it is questionable whether there were instances of gender discrimination.

5.7 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.

6.0 Other Comments

6.1 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.”

6.2 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.

6.0 Further Information about BPW in New Zealand and Internationally

Our structure is comprised of a National Executive, 13 branches and a number of individual members in areas where there is no branch. We are an apolitical organization. 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 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 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.

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.



We thank you for reviewing our submission.

Yours Sincerely,

A handwritten signature in brown ink that reads 'Hellen Swales'.

BPW President
Hellen Swales

A handwritten signature in blue ink that reads 'Janet Gibbs'.

BPW Vice-President Issues
Janet Gibbs