



24 May 2017

Submission to the Justice and Electoral Committee: Family and Whānau Violence Legislation Bill.

1. Research for this submission was carried out by Law Reform student volunteers from the Wellington Community Justice Project (**WCJP**), a law student-lead society and registered charity at Victoria University of Wellington.
2. The WCJP aims to improve access to justice in the wider community, and provide volunteers with opportunities to develop their legal skills through volunteer projects. Law Reform is one of four teams within the WCJP with their primary focus on legislative changes and policy developments.
3. The WCJP supports the Family and Whānau Violence Legislation Bill (**the Bill**) but makes several recommendations.
4. Research for this submission was carried out by: Brooke Magill (LLB/BA), Hassan Abdullahi (LLB), Chiu Kai Ling (LLB), and Peter Grierson (LLB/BCOM).
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I Introduction

- [1] New Zealand has the worst rate of family and intimate-partner violence in the world. The WCJP believes that a firm stance must be taken on the issue of domestic violence. Perpetrators of domestic violence must be punished and deterred. Victims of domestic violence must receive support. Early intervention is needed. Therefore, to the extent that the Bill attempts to achieve such objectives, it is a step in the right direction.
- [2] However, the WCJP has concerns on the ability of the Police and the Family Court to cope with the increase in domestic violence reports and cases. It may be desirable to have post-sentence measures to prevent cyclical domestic violence. The WCJP recommends retaining the current short title of the Domestic Violence Act 1995. We also recommend that there should be a greater role for Tikanga in the Bill.

II Will the Police have sufficient resources?

- [3] The WCJP is concerned that the addition of 66 new police officers nation-wide is unlikely to be sufficient for the effective enforcement of the Bill. Police resources are already stretched. The Bill is expected to result in a greater number of protection orders and increased amount of administrative work.¹
- [4] New Zealand Police have divided the nation into 12 operational districts. Of the 12 districts, the district with the largest number of constabulary staff sits at 1,019, and the lowest at 324.² The addition of 66 new police officers nation-wide dealing specifically with family violence would result in only five and a half extra staff per district on average. Regardless of the distribution, these extra staff represent a small absolute increase in policing figures.
- [5] The total crime rate per 10,000 people has increased from 816 in 2014/15 to 844 in 2015/16.³ It is important that additional officers are clearly allocated to areas associated with the Bill's administration. For example, enforcing a projected increase in protection orders as opposed to other crime areas facing under-staffing pressures.

¹ Amy Adams *Q&As – Family and Whānau Violence Legislation Bill* (New Zealand Government, Wellington, 2017).

² New Zealand Police *Annual Report 2015/2016* (October, 2016).

³ New Zealand Police, above n 2.

[6] Family violence is a major area of concern, with 110,000 family violence investigations in 2015.⁴ Over 5,000 applications for protection orders were made in 2015,⁵ and the number of breaches of these orders has remained a significant proportion of these at around 2,000 for 2015.⁶ With family violence being such a critical issue facing New Zealand society, it is important that police are adequately resourced to respond to family violence offences, and in particular the predicted increase in protection orders. As such, the increased number of police staff allocated directly to enforcing the Bill appears inadequate for proper enforcement and achieving a decrease in breaches of protection orders and related family violence mechanisms.

III Clogging of the Family courts

[7] Another area of concern is whether the Family courts are equipped to handle the expected increase in applications for protection orders. The latest statistics available for the 12 months ending 30 June 2016 disclose that there are 59,449 new cases and 23,848 active cases.⁷

[8] Following the implementation of this Bill, there may be an increase in the number of cases and applications before the Court. This is because the Bill is expected to make applications for protection orders easier. As such, it is suggested that court processes undergo review to increase efficiency so that the cases before it can be processed faster. This is to prevent new cases arising from the Bill from impeding on the progress of current cases before the Court.

IV Post-Sentencing Measures to Support Victims

[9] The WCJP is concerned that victims might fall back into the same domestic abuse cycle by acquiescing to a perpetrator's advances. It is trite that parties should have the right to make their own decisions. However, reunification should not occur immediately where it is apparent that the victim lacks psychological autonomy. In such

⁴ New Zealand Family Violence Clearinghouse *Data Summaries 2016: Snapshot* (New Zealand Family Violence Clearinghouse, Wellington, 2016).

⁵ New Zealand Family Violence Clearinghouse, above n 4.

⁶ Email from Z Collins (Private Citizen) to New Zealand Police regarding the total number of protection orders breaches Male vs Female under the Official Information Act 1982 (4 April 2016).

⁷ Courts of New Zealand "Family Court workload statistics" <www.courtsofnz.govt.nz>.

circumstances, the courts should have discretionary power to prevent perpetrators from returning to their victims and continuing the same behaviour. It is suggested that a one-year compulsory separation period could prevent both victim and perpetrator from falling back into the cycle of domestic violence.

- [10] This is a matter best left to the Family Court to look at the problem holistically, taking the medical, social and legal factors, as well as the characteristics of the parties into account. As Justice Minister Amy Adams said, the Bill aims to improve the way family violence is dealt with and place emphasis on the safety of victims. The safety of victims may be compromised if post-sentence measures are not in place. Domestic violence victims are often weaker than the perpetrator and distancing the two can be extremely difficult. This is especially so when both parties live in close proximity to each other, and when threats and manipulation are involved.
- [11] Therefore, it is suggested that this aim (to improve the way family violence is dealt with and to prioritise the safety of victims) can be better achieved if there are provisions providing for post-sentence measures for both victims and perpetrators.
- [12] To minimise the encroachment to personal autonomy, there must be a clear provision that enforces a separation between the victim and perpetrator for at least a year. The perpetrator should be subject to post-sentence supervision to keep track of their progress and ensure compliance with any conditions imposed by the Court. The issue of autonomy is best addressed in the Family Court which, due to its discretionary way of handling legal issues, is best suited to approach the problem in a practical and holistic manner. The discretionary aspect allows the Family Court to handle the matter more effectively, especially when children are involved.
- [13] The Bill could be improved by allowing for post-sentence measures. Currently, the Domestic Violence Act states that if the victim is protected by a protection order then the perpetrator must not harm the victim or their immediate family.⁸ It prevents a perpetrator from making any contact with the victim, subject to very few exceptions

⁸ Domestic Violence Act 1995, s 19(1).

such as emergency or attending family group conference.⁹ These prohibitions are helpful but does not directly address the issue of cyclical domestic. Victims often acquiesce to the perpetrators' advances and domestic violence continues. Separating the victim from the perpetrator for a minimum of one year, coupled with follow-up programs that ensure any conditions in place are being complied with, would allow both parties to focus on recovering from the violent relationship. It is hoped that these measures may help to reduce the continuation of the cycle of harm for everyone involved in these situations.

V *A Greater Role for Tikanga Maori within the Bill*

- [14] The WCJP supports the inclusion of culturally appropriate responses within the Domestic Violence Act 1995. In the current version of the Bill this is only referenced within the principles section.¹⁰ This submission would like to see a greater inclusion of specific processes and mechanisms that could be applied and guidance on appropriate situations to apply them. This inclusion is necessary to ensure that Tikanga is applied in appropriate circumstances, and is not just a hollow addition in the principles section.
- [15] This submission supports following such models as the Family Group Conferences from The Children, Young Persons, and Their Families Act 1989. The concept of Family Group Conferences is non-interventionist and places a focus on the family and wider Whānau involvement. This involves including wider family, Whānau and iwi in a group discussion about solutions to family issues.¹¹ This would also be appropriate in many situations where domestic violence occurs. Studies acknowledge that a large proportion of family violence occurs is perpetrated by repeat offenders.¹² The effects of this violence create intergenerational cycles, where a victim of domestic violence is significantly more likely to be a perpetrator in the future.¹³ The inclusion of this form of Tikanga would be appropriate where there is ongoing relationship between the victim and the perpetrator, and where a governing authority deems it to be an appropriate

⁹ Section 19(2).

¹⁰ Family and Whānau Violence Legislation Bill 2017 (247-1), cl 7.

¹¹ Children, Young Persons, and Their Families Act 1989, s 19(1)(h).

¹² Denise Lievore and Pat Mayhew *The scale and nature of family violence in New Zealand: A review and evaluation of knowledge* (Ministry of Social Development, April 2007) at 7.

¹³ Lievore and Mayhew, above n 12, at 30.

measure. It would also bring the Domestic Violence Act 1995 in line with *The Children, Young Persons, and Their Families Act 1989* and see a more consistent response to different types of domestic violence.

VI *Short title of the Domestic Violence Act 1995*

[16] The WCJP submits that the short title of the Act should not be altered. The current short title is appropriate. Amending it to the Family and Whānau Violence Act 1995 is likely to mischaracterise the scope of the legislation.

[17] The neutral phrasing of ‘domestic violence’ acknowledges the wide variation of interpersonal relationships which fall within the scope of the legislation. For example, ‘domestic violence’ includes causal partners, whom would not commonly be associated with family. Domestic violence involving causal partners is prevalent. A recent report commissioned by the Ministry of Justice disclosed that the highest rates of intimate partner violence tend to be found among young, cohabiting adults¹⁴. This shows that a large proportion of domestic violence occurs outside what society would consider a “family relationship”. Therefore, changing the title of the legislation would only serve to mischaracterise the scope of the legislation. There is no need to change the characterisation of domestic violence as this terminology is most appropriate and a change would only create confusion.

[18] Another negative effect of the proposed title change is creating an unnecessarily connection between the concepts of Whānau/family and violence. This submission believes it is within the purpose of the 1995 Act to be distinguishing these concepts rather than connecting them. Furthermore, by including the one Maori word Whānau, this seems to unnecessarily connecting one particular demographic to the issue domestic violence.

VII *Conclusion*

¹⁴ Lievore and Mayhew, above n 12, at 7.

[19] The WCJP sees the Bill as a step in the right direction. Our main concerns are with its implementation and policing, and the need for post-sentence monitoring and support to ensure that domestic violence does not reoccur.