Human Rights Commission
Te Kāhui Tika Tangata

Submission on Family and Whānau Violence Legislation Bill

Contact Person:

Anneliese Boston
Legal Officer
New Zealand Human Rights Commission
annelieseb@hrc.co.nz

Submission of the Human Rights Commission on the Family and Whānau Violence Legislation Bill

To: Justice and Electoral Committee

Introduction

1. The Human Rights Commission (the Commission) welcomes the opportunity to provide the Justice and Electoral Committee with this submission on the Family and Whānau Violence Legislation Bill (the Bill).

2. The Commission is an independent Crown Entity pursuant to the Crown Entities Act 2004 and derives its statutory mandate from the Human Rights Act 1993 (HRA). The long title to the HRA states it is intended to provide better protection of human rights in New Zealand in general accordance with United Nations Human Rights Covenants and Conventions.

3. The Bill aims to ensure legislation relating to family violence is more complete and fit for purpose, and supports a coordinated and effective response to family violence.

4. As highlighted in the Commission's submission to this Committee on the Victim's Protection Bill, domestic violence is so prevalent in New Zealand that it is thought there could be around half a million victims.[1] It is believed that only 20% of victims report to the Police.[2] In 2015 there were over 110,000 domestic violence callouts or one every five minutes for Police.[3]

5. The Commission strongly supports the intent of the Bill and the need to address the prevalence of domestic violence in New Zealand. The Commission has focused this submission on the following areas of concern, which are fully addressed in the clause-by-clause analysis:

    - removing the reference to "domestic" from the title of the legislation
    - Māori and the Treaty of Waitangi

[1] Ministry of Justice (2015), *New Zealand Crime and Safety Survey: 2014,* Available: https://www.justice.govt.nz/justice-sector-policy/research-data/nzcass/, Last accessed 24 May 2017
[2] ibid
[3] New Zealand Family Violence Clearinghouse (2016), *Data Summaries Snapshot, July 2016, quoting Data Scientist, National Performance & Insights Centre*, New Zealand Police. Available: http://areyouokay.org.nz/family-violence/statistics/ Last accessed 18 April 2017

- disability
- children, and
- information sharing principles.

6. A full summary of recommendations is included at the end of this submission.

Human rights implications

7. Overall, the changes proposed in the Bill are likely to have a positive impact on human rights in New Zealand. The right to live safe from violence and abuse is a fundamental human right. This right is embodied as the right to security of the person in the Universal Declaration of Human Rights (UDHR), and in subsequent international treaties that protect the rights to life, to security of the person, and to respect for human dignity and physical integrity.[4]

8. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) does not explicitly mention domestic violence but the Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) stated that articles 2, 5, 11, 12, and 16 of CEDAW require State parties to act to protect women against violence of any kind occurring within the family, at the workplace, or in any other area of social life. Gender based violence, such as domestic violence, is viewed as a form of discrimination that seriously inhibits the ability of women to enjoy rights and freedoms on an equal basis with men.[5]

9. The Commission supports the development of a Global Treaty on Violence against Women and Girls, with its own monitoring body working in conjunction with CEDAW and other established regional monitoring mechanisms. This would further strengthen the international legal framework for addressing violence against women.

10. New Zealand appeared before the CEDAW Committee in 2012. The CEDAW Committee's concluding observations included recommendations on domestic violence, such as encouraging reporting of domestic violence cases, strengthen training for Police,

[4] The right to security of the person is recognised in paragraph 9(1) of the International Covenant on Civil and Political Rights (ICCPR).
[5] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992, A/47/38, Available: http://www.refworld.org/docid/453882a422.html Last accessed 23 May 2017

prosecutors, judiciary, and others, and provide adequate assistance and protection to women victims of violence, including Māori and migrant women.[6]

11. Other treaties, such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, contain specific requirements to ensure that women, children, disabled people, and LGBTI and indigenous people can enjoy these rights on an equal basis with others.[7]

12. The Sustainable Development Goals (SDGs) are goals and targets that set out a universal agenda to achieve sustainable development globally by 2030. For example, SDG goal 5 aims to achieve gender equality and empower all women and girls. This includes the elimination of all forms of violence against women and girls.[8] In New Zealand, the SDG goals and targets are being currently analysed by government to inform a discussion on how best to focus its policy efforts.[9]

13. In summary, the Bill is broadly consistent with the New Zealand Government's obligations under the above international human rights treaties and agreements to protect women and other vulnerable groups from violence.

Clause by clause analysis

Clause 4 – Name of principal act changed

14. This clause changes the name of the Domestic Violence Act to the Family and Whānau Violence Act.

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[6] A comprehensive list is provided in Appendix Two

[7] The right of children to security of the person is recognised in Article 19 of the United Nations Convention on the Rights of the Child (UNCROC), which requires effective and appropriate measures to protect children from all forms of physical or mental violence. Article 16 of the Convention on the Rights of Persons with Disabilities affirms disabled people's right to freedom from exploitation, violence and abuse. Article 22(2) of the UN Declaration on the Rights of Indigenous Peoples requires states to "take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination". In the preamble to Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). State Parties agree to "condemn discrimination against women in all its forms," was interpreted as covering violence against women. On 30 June 2016, The Human Rights Council of the UN adopted resolution 32/2 affirming protection against violence and discrimination based on sexual orientation and gender identity.

[8] United Nations Development Programme (2017), Sustainable Development Goals, Available: http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-5-gender-equality.html Last accessed: 23 May 2017

[9] New Zealand Foreign Affairs and Trade, *Sustainable Development Goals*, Available: https://www.mfat.govt.nz/en/peace-rights-and-security/work-with-the-un-and-other-partners/new-zealand-and-the-sustainable-development-goals-sdgs/ Last accessed 23 May 2017.

15. The Commission supports the proposed reference to whānau in the title of the legislation. Māori are over-represented in family violence statistics as both victims and perpetrators.[10] The causes of this are complex and approaches need to be culturally responsive.

16. The Commission does not support removing the reference to "domestic" from the title of the legislation. International bodies use the term domestic violence, for example the Committee's General Recommendation No. 19: Violence Against Women uses the term "domestic violence". The UN Handbook for Legislation on Violence Against Women uses the term "domestic violence".

17. Furthermore, the term "family" is narrower than "domestic" and may be misinterpreted by members of the public. For example, people who are dating, but not married nor living together, may incorrectly think that the term "family violence" does not apply to them.

Recommendation 1: Amend the name of the principal Act to the Family, Whānau and Domestic Violence Act.

Clause 7 – New sections 1A and 1B inserted

ss 1A and 1B – Purpose of this Act and principles

18. The Commission supports the stated purpose and principles of the Act. These recognise that domestic violence is unacceptable and that it is often a pattern of behavior. The principles align with the Committee's General Recommendation 19 urging states to provide rehabilitation programmes for perpetrators of domestic violence, criminal penalties where necessary and civil remedies in cases of domestic violence, and establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation, and counselling.

19. As explained above, the right to be free from violence is a human right. The Commission recommends that the Bill makes explicit reference to international treaties and laws, and recognise that domestic violence constitutes a breach of human rights.[6] This would help ensure that the legislation is implemented in a manner that is consistent with international and regional human rights frameworks.

[10] For example, New Zealand Family Violence Clearinghouse (2014), *Kaupapa Māori wellbeing framework: The basis for whānau violence prevention and intervention*, Available: https://nzfvc.org.nz/sites/nzfvc.org.nz/files/issues-paper-6-2014_0.pdf Last accessed 23 May 2107

Recommendation 2: Amend clause 7 of the Bill to:

a. Augment s 1B(a) to state, "family, whānau and domestic violence, in all its forms, is unacceptable and constitutes a breach of human rights"; and

b. Insert a new s 1B(m) to state "decision makers must, at all times, recognise and act in a manner consistent with, the state's duties and obligations under international human rights treaties."

20. As noted above, Māori are over-represented in domestic violence statistics. The Commission welcomes the principle in (i) that responses should be culturally appropriate and when involving Māori should reflect tikanga. The Commission suggests this approach could go further and recommends that the Bill is amended to include a principle that recognises and provides a practical commitment to the principles of the Treaty of Waitangi and to the United Nations Declaration on the Rights of Indigenous People (UNDRIP). Together the Treaty and UNDRIP affirm the rights of tangata whenua to:

- Equal enjoyment of the right to be safe from violence (and for current disparities to be addressed); and
- Full and effective participation in determining how these issues are dealt with.

Recommendation 3: Insert a principle to state "decision makers must, at all times, recognise and act in a manner consistent with the principles of the Treaty of Waitangi and the UN Declaration on the Rights of Indigenous People."

Clause 8 – Section 2 amended (Interpretation)

21. The change to the definition of 'child' from someone who is under the age of 17 to someone who is under the age of 18 aligns with New Zealand's international human rights obligations. The Convention on the Rights of Child defines a child "every human being below the age of eighteen years".

22. The Commission notes that "whānau" has not been included in this interpretation section, although "whānau or other culturally recognised family group" is included in the definition of "family member". Given the title and intent of the Bill, the Committee may wish to consider whether a separate definition of "whānau" in the Bill's interpretation clause is required to ensure that cultural factors unique to Māori are duly recognised.

Recommendation 4: That the Committee consider whether clause 8 should be amended to include a definition of whānau within the Bill's interpretation provisions.

Clause 9 – Section 3 replaced (meaning of domestic violence

23. This section defines family violence. The UN Handbook for Legislation on Violence Against Women states that in defining domestic violence States should "include a comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence."

24. The Commission supports the recognition of coercion or controlling behavior causing cumulative harm as a form of family violence and the acknowledgement that family violence may be a single act or a pattern of behavior.

25. However, as indicated above, the term "family violence" does not align with international terminology and may lead the public into thinking that the term excludes relationships between people who do not live together. The word "domestic" should be included in the title, as well as reference to family and whānau.

Recommendation 5: Amend the term "family violence" in clause 9 to "family, whānau and domestic violence".

Clause 10 – Section 4 replaced (meaning of domestic relationship)

26. New Zealand evidence shows disabled women are up to three times more likely to be victims of physical and sexual abuse, and rape, and have less access to physical, psychological, and judicial interventions.[11] International evidence also shows disabled women worldwide are more likely to be victims of violence.[12]

27. These risks are compounded by a lack of accessibility and visibility of the barriers people with disabilities face. Many people with disabilities live in residential care and supported environments and have relationships of a close, often dependent, nature with their caregiver and support workers. These relationships are of a personal nature and can involve a person exercising significant physical control over someone else. In the Commission's view, the Bill should be accordingly broad enough in scope to cover these types of domestic relationships.

[11] World Health Organization (2009), *Promoting Sexual and Reproductive Health for Persons with Disabilities WHO/UNFPA Guidance Note*, Available: https://www.unfpa.org/sites/default/files/pub-pdf/srh_for_disabilities.pdf Last accessed 23 May 2017

[12] Brownridge, D (2006). *Partner violence against women with disabilities: Prevalence, risk and explanations*. Violence Against Women, 12 (9), 805-822.

Recommendation 6: Amend "family relationship" in clause 10 to "family, whānau or domestic relationship" and include, within this definition, the relationship between a person and their non-family caregiver or paid support worker.

Clause 14 – Sections 9 to 12 replaced

S 9 – Applications by a child

28. This section provides that a child can only make an application for a protection order through a representative or if authorised under rules of court. The current Domestic Violence Act enables those aged 16 years and above to make an application for a protection order of their own accord or with a representative.

29. The Care of Children Act provides that a parenting order for someone aged 16 years or over must not be made unless there are special circumstances. Those aged sixteen can leave home without the consent of their parents, and may enter full-time work. It follows that the law provides a person aged 16 with relative autonomy when making decisions about their living environment and arrangements. It is also reflective of the "evolving capacity" principle under Article 12 of the UN Convention on the Rights of the Child. On this basis, we suggest the current provisions under the Domestic Violence Act that enable 16 and 17 year olds to apply for a protection order, are retained.

Recommendation 7: Split section 9(2) into two sub paragraphs, one for children aged under 16 and one for children aged 16 and over. In the section concerning children aged 16 and over, retain the current wording in the Domestic Violence Act, namely "a minor aged 16 years may make an application either on his or her own behalf under subsection (4), or by a representative pursuant to rules of court."

s 10 – Applications against children

30. This section enables a protection order to be granted against a child if justified in special circumstances. The current section 10 of the Domestic Violence Act allows an application to be made against a minor under the age of 17 only if the minor is or has been married or in a civil union or de facto relationship.

31. This current section of the Domestic Violence Act recognises that an order such as a protection order and the consequences it carries should not be placed on a child or youth, unless that child is 16 or over and is in a relationship in the nature of marriage. Youth justice or care and protection proceedings are clearly more appropriate and better tailored for addressing family violence by children or young people.

Recommendation 8: Retain the current section 10 in the Domestic Violence Act enabling an application for a protection order to be made only if the child is or has been married or in a civil union or de facto relationship.

s 11 – Applications on behalf of people lacking capacity

32. This section states reasonable steps must be taken to ascertain the views of the individual in relation to the appointment of a representative and an application for a protection order. Any views ascertained must be included in an application for a protection order.

33. The Commission suggests this provision could better align with the supported decision making principles under Article 12 of the CRPD if the section required the representative to ascertain the "will and preferences" of the person lacking capacity, in addition to their views.[13]

Recommendation 9: Amend s 11(3) and (4) to provide for ascertainment of views, wills and preferences.

34. The Commission notes that section 11(5) provides that an incapacitated person's views need not be ascertained if they wholly lack the capacity to communicate decisions. The Commission is concerned that this provision has the potential to be applied in an overly broad manner. The Commission considers that, in all circumstances, reasonable attempts should be made to ascertain the views, will and preferences of the incapacitated person. This could include making enquiries with family members, close acquaintances, or representatives as to what the incapacitated person's views, will or preferences may be.

Recommendation 10: Section 11(5) is deleted from clause 14.

Clause 19 – Sections 19 and 20 replaced

S 20B - Standard no-contact condition: other exceptions

35. The exceptions to the no-contact conditions are carried over from the Domestic Violence Act. These exceptions include orders or written agreements regarding the role of providing day-today care, contact and custody of a child. These circumstances carry inherent risk for the protected person. As the *UN Handbook for legislation on violence against women* recognises, "The need for ongoing contact…to make custody and visitation arrangements

[13] UN Committee on the Rights of Persons with Disabilities (CRPD), (2014) *CRPD General Comment No. 1 on Article 12: Equal Recognition Before the Law,* CRPD/C/GC/1 adopted on 19 May 2014 Available: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement Last accessed 23 May 2017

is often used by the perpetrator to continue abuse of the survivor." [14],[15]

36. The Commission therefore recommends that the Committee consider whether a written agreement is sufficient to justify an exception, or whether a court order should be the minimum standard, given the inherent risks.

37. Another exception is contact necessary to attend a Family Group Conference. Under new s 20B(1)(d) it is unclear who decides whether it is 'necessary'. The Family Group Conference Coordinator should be familiar with the family and their situation, and is well placed to determine if it is necessary both the perpetrator and victim attend a Family Group Conference. The Commission recommends that section 20B(1)(d) is amended accordingly.

Recommendation 11: That, in respect of s 20B(1)(b), the Committee consider whether a written care agreement is a sufficient to justify an exception to a no-contact condition, or whether the exception ought to be limited to court orders.

Recommendation 12: In s 20B(1)(d) replace "necessary" with "determined by the Family Group Conference Coordinator as necessary".

Clause 22 – Section 27 amended (Court may impose special conditions)

38. The Commission supports the ability to impose special conditions to protect people who are particularly vulnerable. As noted earlier in this submission people with disabilities are more likely to be victims of violence. The ability to impose special conditions in recognition of these vulnerabilities will go some way to address this.

Clause 27 – Section 47 amended (Power to discharge protection order)

39. The Commission agrees that a protection order should not be discharged unless satisfied the order is no longer necessary.

[14] Department of Economic and Social Affairs Division for the Advancement of Women (2010) *Handbook for legislation on violence against women*, Available: http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf Last accessed 23 May 2017

[15] Refer to *Angela Gonzālez Carreño v Spain* Communication No. 47/20 12, UN Doc. CEDAW/C/58/D/47/2012 (2014). This was a communication to the Committee on the Elimination of Discrimination Against Women about Spain's failure in its structures and practices leading to a denial of appropriate protection. Ms Gonzālez Carreño left her husband due to violence. She was awarded custody of their daughter with a regime of visits between the daughter and the ex-husband. The violence against Ms Gonzālez Carreño continued. It ended when the ex-husband killed the daughter and committed suicide.

Clause 31 – Part 2A replaced

s 51B – Assessors and service providers

40. The Commission supports a wide range of programmes being made available for both the respondent and protected person. This will require the funding and provision of a variety of suitable assessors and service providers across the country.

s 51C – Assessor or service provider to notify safety concerns

41. This section enables an assessor or service provider to notify if they have concerns that are "imminent, escalating or grave". The Privacy Act allows personal information to be disclosed if it is necessary to prevent or lessen a serious threat to the life or health of the individual concerned or another individual.[16] The Commission considers the law already allows the provision of information when someone is at risk and this further provision is unnecessary.

42. Further, an assessor or service provider is required to notify the Registrar, the District Commander at the appropriate Police District headquarters, and the chief executive of Oranga Tamariki. This is a complex process and practically it may be hard for an assessor or service provider to notify all these people without delay. In the case of serious concerns about the safety of others a simple process would be preferable and would support those best placed to act on the threat or concern (i.e. the potential victim and/or police) to receive the information as quickly and directly as possible.

Recommendation 13: Section 51B is deleted and the Committee give consideration to other methods of ensuring that risks and threats are appropriately notified.

s 51D – Safety programmes for protected persons

43. The Commission supports applicants being able to attend a safety programme. However, not all applicants will have lawyers to inform them of their ability to attend such a programme, for example if a protection order is issued in the criminal court.

44. Safety programmes need to be appropriately explained to protected people. Informing the applicant through the Judge or Registrar during a Court hearing is not ideal. An applicant may feel under pressure to make a quick decision with limited information or may be scared if the respondent is also in court. The ability to attend safety programmes could be explained to an applicant before court by their lawyer, the prosecutor, or a victim's advisor.

[16] s 6, Principle 10, (d)(ii), Privacy Act 1993

Recommendation 14: Add a subsection requiring a prosecutor or victim's advisor, if applicable, to inform the applicant of the applicant's right to make such a request.

s 51E – Directions for assessments, non-violence programme, and prescribed standard services

45. The Commission supports the requirement for respondents to attend a non-violence programme. However, programmes must be available across the country and at varying times to ensure the respondent can complete the course without, for example, having to take time off/leave employment.

46. Programmes may also need to be made available in prisons for people against whom a protection order is granted during sentencing.

Clause 33 - Power to make occupation order

47. This clause allows the accommodation needs of the applicant and children, and existing arrangements such as childcare employment, and education to be taken into account when deciding whether to grant an occupation order.

48. The Commission supports this change. A key reason women return to an abusive situation is the inability to get safe, secure, and affordable accommodation.[17] Domestic violence severely limits a victim's ability to find and maintain employment.[18] The addition of a test requiring these factors to be considered when deciding whether to grant an occupation order goes some way to addressing these problems.

Clause 42 – Section 67 amended (Power to make furniture order)

49. The Commission notes that the *UN Handbook for legislation on violence against women* recommends that, in regards to a protection order or similar intervention, the defendant is required to vacate the home and hand over the means of transportation and personal effects.

50. The Commission accordingly supports the inclusion of an order relating to "means of transportation" within this section.

[17] Hager, Debbie (2007) *Homelessness – a hidden problem for women in New Zealand*. Homeworks Trust, Auckland.
[18] Adams AE, Tolman RM, Bybee D, Sullivan CM, Kennedy AC. (2012), *The impact of intimate partner violence on low-income women's economic well-being the mediating role of job stability*. Violence Against Women 2012;18(12):1345-67

Recommendation 15: after "household effects in the dwellinghouse" insert "and means of transport".

Clause 50 – Sections 96 and 97 replaced

s 96 – Enforcement of New Zealand orders overseas

51. The Commission supports the ability of the Court, on application, to request enforcement of a protection order in an overseas jurisdiction.

Clause 56 – Section 1244B amended (Qualified constable may issue Police safety order)

s 124D – Police safety order against child

52. The current Domestic Violence Act does not allow a Police Safety Order to be issued against a child. Police Safety Orders are unlikely to be effective, nor are they appropriate responses in respect of children and young people. Care and protection or youth justice interventions are more appropriate and enable supports to be put in place through the Family Group Conference process.

Recommendation 16: Delete section s 124D and the ability to order a police safety order against a child.

Clause 62 – New section 124HA inserted (Police safety orders: risk and needs assessment of bound person)

s 124HA – PSO: risk and needs assessment of bound person

53. The Commission agrees with the intent of this aspect of the Bill. Studies have shown "well-designed and delivered interventions that focus on offending-related attitudes and behaviour, and use recognised psychological methods can significantly reduce re-offending rates."[19]

Clause 69 – New Part 6B inserted

Part 6B – Information requests, use, disclosure, and service delivery codes of practice

54. The Commission considers the proposed discretionary information sharing provisions could be confusing in terms of clarity and intent, and may lead to uncertainty amongst agencies

[19] Wales, D. & Tiller, N. (2011). The changing nature of interventions. In K. McMaster & D. Riley (Eds.), *Effective interventions with offenders: Lessons learned* (pp. 33 – 52). Christchurch: Hall McMaster & Associates and Steele Roberts Aotearoa

and practitioners. These sections do not seem to require compulsory information sharing, they require compulsory consideration about whether to share but still provide grounds permitting refusal.

55. The Privacy Act already provides a scheme for sharing information in certain circumstances where there are risks to others and these provisions should be familiar to agencies and practitioners.

56. Alternatively, the Commission considers an Approved Information Sharing Agreement (AISA) under the Privacy Act may be required if any information sharing practice under the Bill will, or is likely to, contravene any of the Information Privacy Principles. An AISA would prescribe the circumstances under which information can be shared, and thus lead to consistent application, and is developed under the jurisdiction of the Privacy Act.

Recommendation 17: That the Committee considers whether further discretionary information sharing provisions are necessary or whether:

- the Privacy Act itself is sufficient together with a non-regulatory code of practice to guide decision making; or
- a specific regulatory framework is required, and whether an Approved Information Sharing Agreement should accordingly be developed to govern all info sharing requirements.

For both these proposals it is recommended that s 124X be retained to provide immunity to any agency or practitioners who do disclose information.

Clauses 77, 78, and 79 - Bail

57. The Commission welcomes the addition that, when granting bail, primary consideration is given to the need to protect the victim of the alleged offence and others in a family relationship with the alleged victim.

Clause 93 – New section 189A inserted (Strangulation or suffocation)

S 189A – Strangulation or suffocation

58. The Commission supports the addition of the offence of strangulation and considers that it recognises the future risk of a more serious or even fatal attack.

Clause 94 – New section 194A inserted (Assault on person in family relationship)

s 194A – Assault on person in a family relationship

59. The Commission agrees with the introduction of this offence. It is gender neutral, unlike the offence of male assaults female that is commonly used in domestic violence situations. It encompasses a greater range of domestic relationships, such as LGBTI+ relationships. The law should reflect the seriousness of the assault and not the gender of the victim and perpetrator.

Clause 97 – New section 207A inserted (Coerced marriage or civil union)

s 207A - Coerced marriage or civil union

60. The Commission strongly supports the proposed prohibition on coercion to marry. This aligns with New Zealand's obligations under CEDAW to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations," in particular the right to freely choose a spouse and enter into marriage only with free and full consent.[20]

61. The Marriage (Court Consent to Marriage of Minors) Amendment Bill, a Member's Bill in the name of Jo Hayes, proposes amendments to the Marriage Act so those aged 16 and 17 years who wish to marry must obtain consent from the Family Court to marry. The Marriage (Court Consent to Marriage of Minors) Amendment Bill provides greater protection from forced marriage for young people and will go further in upholding New Zealand's obligations under CEDAW. The Commission considers that the provisions of the Marriage (Court Consent to Marriage of Minors) Amendment Bill should be incorporated into the Bill.

Recommendation 18: Clauses 97 and 98 are amended to include clauses from the Marriage (Court Consent to Marriage of Minors) Amendment Bill, and the headings of these clauses are amended to make it clear these are amendments to the Marriage Act 1955.

[20] Article 16, CEDAW

Clause 109 – New sections 168A and 168B inserted

s 168A - No-contact conditions if family violence offence defendant remanded in custody

62. The Commission understands that there have been problems with defendants in custody attempting to/contacting the complainant and supports the addition of an ability to impose non-contact conditions if the defendant is in custody.

Clause 124 – New sections 106A and 106B and cross-heading inserted

s 106A - Giving of evidence by family violence complainants

63. This clause enables a complainant to give evidence by a video made before the hearing, often at the time Police attend a situation.

64. The New South Wales Police introduced video statements at domestic violence crime scenes in June 2015, following the passage of the Criminal Procedure Amendment (Domestic Violence Complainants) Act 2014. Preliminary accounts suggest this has led to an increase in conviction rates for domestic violence cases and more early guilty pleas.[21]

65. The use of a video record made before the hearing is promising. The Commission welcomes this provision, combined with the procedural safeguards of cross-examination.

Clause 127 – Section 9 amended (Aggravating and mitigating factors)

66. This clause adds an additional aggravating factor for sentencing, namely the offender being subject to a protection order at the time of the offence. Breaching a protection order is an offence under section 49 of the Domestic Violence Act, with a maximum sentence of three years. An offender subject to a protection order and who is being sentenced on family violence charges will likely also be charged with breach of a protection order. This may lead to the offender being penalised twice for the same action. While we support the deterrent intent of this aspect of the Bill, we suggest that the Committee give consideration to its natural justice implications.

[21]For example, Ferguson, S. (2015) Domestic violence: Recording crime scenes on video the new tool for police tackling Australia-wide crisis, ABC news Available: http://www.abc.net.au/news/2015-11-24/recording-domestic-violence-incidents-to-help-victims-in-court/6969310 Last accessed 23 May 2017.

Appendix One: Summary of Recommendations

Recommendation 1

Amend the name of the principal Act to the Family, Whānau and Domestic Violence Act.

Recommendation 2

Amend clause 7 of the Bill to:

a. Augment s 1B(a) to state, “family, whānau and domestic violence, in all its forms, is unacceptable and constitutes a breach of human rights”; and

b. Insert a new s 1B(m) to state “decision makers must, at all times, recognise and act in a manner consistent with, the state’s duties and obligations under international human rights treaties.”

Recommendation 3

Insert a principle to state “decision makers must, at all times, recognise and act in a manner consistent with the principles of the Treaty of Waitangi and the UN Declaration on the Rights of Indigenous People.”

Recommendation 4

That the Committee consider whether clause 8 should be amended to include a definition of whānau within the Bill’s interpretation provisions.

Recommendation 5

Amend the term “family violence” in clause 9 to “family, whānau and domestic violence”.

Recommendation 6

Amend “family relationship” in clause 10 to “family, whānau or domestic relationship” and include, within this definition, the relationship between a person and their non-family caregiver or paid support worker.

Recommendation 7

Split section 9(2) into two sub paragraphs, one for children aged under 16 and one for children aged 16 and over. In the section concerning children aged 16 and over, retain the current wording

in the Domestic Violence Act, namely “a minor aged 16 years may make an application either on his or her own behalf under subsection (4), or by a representative pursuant to rules of court.

Recommendation 8

Retain the current section 10 in the Domestic Violence Act enabling an application for a protection order to be made only if the child is or has been married or in a civil union or de facto relationship.

Recommendation 9

Amend s 11(3) and (4) to provide for ascertainment of views, wills and preferences.

Recommendation 10

Section 11(5) is deleted from clause 14.

Recommendation 11

That, in respect of s 20B(1)(b), the Committee consider whether a written care agreement is a sufficient to justify an exception to a no-contact condition, or whether the exception ought to be limited to court orders.

Recommendation 12

In s 20B(1)(d) replace “necessary” with “determined by the Family Group Conference Coordinator as necessary”.

Recommendation 13

Section 51B is deleted and the Committee give consideration to other methods of ensuring that risks and threats are appropriately notified.

Recommendation 14

Add a subsection requiring a prosecutor or victim’s advisor, if applicable, to inform the applicant of the applicant’s right to make such a request.

Recommendation 15

After "household effects in the dwellinghouse" insert "and means of transport".

Recommendation 16

Delete section s 124D and the ability to order a police safety order against a child.

Recommendation 17

That the Committee considers whether further discretionary information sharing provisions are necessary or whether:

- the Privacy Act itself is sufficient together with a non-regulatory code of practice to guide decision making; or
- a specific regulatory framework is required, and whether an Approved Information Sharing Agreement should accordingly be developed to govern all info sharing requirements.

For both these proposals it is recommended that s 124X be retained to provide immunity to any agency or practitioners who do disclose information.

Recommendation 18

Clauses 97 and 98 are amended to include clauses from the Marriage (Court Consent to Marriage of Minors) Amendment Bill, and the headings of these clauses are amended to make it clear these are amendments to the Marriage Act 1955.

Appendix Two: CEDAW's concluding observations relating to domestic violence

The Committee calls upon the State party:

(a) To take the necessary measures to encourage the reporting of domestic and sexual violence cases, including by ensuring that education professionals, health-care providers and social workers are fully familiar with relevant legal provisions and are sensitized to all forms of violence against women and are capable of complying with their obligation to report cases;

(b) To strengthen training for the police, public prosecutors, the judiciary and other relevant government bodies on domestic and sexual violence;

(c) To provide adequate assistance and protection to women victims of violence, including Māori and migrant women, by ensuring that they receive the necessary legal and psychosocial services;

(d) To improve the level of representation on the Task Force for Action on Violence within Families and ensure appropriate resourcing with a view to enhancing the perception of its status within the State party;

(e) To ensure systematic collection and publication of data, disaggregated by sex, ethnicity, type of violence, and by the relationship of the perpetrator to the victim; to collect data on the number of women killed by partners or ex-partners; and to monitor the effectiveness of legislation, policy and practice relating to all forms of violence against women and girls.

The Committee recommends that the State party:

(a) Revise the legal minimum age of marriage to 18 years without any exceptions for parental consent; and

(b) Introduce legal measures to prohibit underage and forced marriages and promote measures to protect women harmed by polygamy and dowry-related violence.