



National Council of Women of New Zealand

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Submission to the Justice and Electoral Select Committee on the Victims' Rights Bill

Introduction

The National Council of Women New Zealand (NCWNZ) is an umbrella organisation representing 43 nationally-organised societies. It has 34 branches spread throughout the country to which women from some 150 societies are affiliated.

This submission has been prepared by the NCWNZ Justice and Law Reform Standing Committee, which consists of a small nucleus committee plus corresponding members throughout New Zealand.

NCWNZ policy

NCWNZ has express formal policy favouring adequate financial support and training for victim-support groups (1991). In previous submissions on bills and discussion documents, NCWNZ has advocated: (a) public awareness programmes to assist victims (and witnesses) in dealing with the criminal justice system, (b) a system of case advocacy for victims; (c) separate accommodation in courts for victims and supporters of offenders; (d) media respect for victim privacy; (e) practical and sensitive support for victims.

Executive summary

General comment

The Bill (as amended by SOP No 112) deals satisfactorily with a number of ambiguities in the original Bill, in particular the status of the statements of principle which the amended Bill now makes mandatory.

NCWNZ supports the amended Bill in principle.

NCWNZ has concerns about the resourcing requirements to meet the additional work required of the Police and other agencies. Such agencies' resources are already stretched. This will be a particular problem for aspects of the Bill that require notification to or consultation of victims even if the victim has not provided current contact details (clauses 9, 15, and 17).

Comments on specific clauses:

Clause 4 (Interpretation)

Definition of "victim". It is unclear whether this could apply to indirect victims, such as children who suffer emotional harm from witnessing violence (including psychological or emotional abuse, such as may be entailed in the breach of a protection order) against a parent. The definition of "victim" could be amended to expressly include (or exclude) indirect as well as direct harm.



**Clause 7 (Access to services)**

We suggest that, in addition to the general statement of principle in this clause, the information provided in a victim impact statement should be assessed by an independent assessment unit to identify appropriate compensation and support systems required by the victim.

Clause 9 (Information about proceedings)

Clauses 18(b) (information provided only if the victim has given the Police the victim's current contact details) and 25 (victim may appoint representative to receive information on the victim's behalf) should apply to this clause as well as to clauses 21 to 24.

Presumably, from the context, subclauses 9(1)(a)-(e), and 9(1)(d)(i)-(v), are conjunctive rather than disjunctive. Adding the word "and" would clarify this.

Clause 10 (Victim's address not to be disclosed - exceptions)

Presumably subclauses 10(a) and (b) are disjunctive rather than conjunctive. Adding the word "or" would clarify this.

Clause 11 (Victim impact statements in sentencing of offender)

In some cases the victim may wish to present a statement in the form of an affidavit, rather than either having to appear in court themselves, or have a statement read in open court. This is excluded by the present wording. We submit that affidavits should be a permitted alternative form of presentation.

Sentencing should take the victim impact statement into account only to the extent compatible with the fundamental principle that offences are addressed as crimes against society, not against individual persons. (This view has come from some of our current committee. It was also present in the NCWNZ submission on the previous equivalent legislation in 1986.) Thus the victim impact statement should still be considered objectively (how society views a crime that has this sort of impact on a victim) rather than subjectively (this otherwise minor crime had an extraordinarily large impact on this particular victim and therefore the sentence must be higher because she suffered so much). Otherwise, vastly different sentences could be imposed for what nominally were the same crimes but which produced very different impacts on the particular victims. This could lead to ongoing appeals over indefinite periods of time. There is also a slight risk that it could lead to intimidation of victims by offenders' supporters, to persuade victims to provide a more favourable report.

Clauses 12 (Distribution of victim impact statements)

Clause 12(1) essentially provides that anyone who shows an offender a statement must not give the offender a copy of the statement to keep. It should also be made clear that the offender must not be given an opportunity to gain a copy to keep.

Clause 12(2) essentially provides that everyone who has a copy of the statement must return that copy at the end of the proceedings. The copies must be returned to "an officer of the Court". This phrase is potentially ambiguous, as it can refer to any barrister or solicitor whereas it is probably intended to refer to a Court official. This ambiguity could be resolved by defining the expression in Clause 3.

Clause 13 (Court may withhold victim impact statement from offender)

It is unclear from clause 13(2) (the statement must be shown to the counsel for the offender) whether such counsel are entitled to request a copy of the statement for their own reference (while of course being prohibited from disclosing it to the offender).

**Clause 15 (Victim's views on name suppression)**

Clauses 18(b) (information provided only if the victim has given the Police the victim's current contact details) and 25 (victim may appoint representative to receive information on the victim's behalf) should apply to this clause.

We strongly support giving victims more say about name suppression.

Clause 16 (Offences to which specified notification rights apply)

Clause 16 expressly includes sexual violation, but is ambiguous as to which other offences are included. We presume that "serious assault or injury" extends to murder and manslaughter at the highest point of the scale, but it is not clear which offences are covered by "serious" at the lower end of the scale. It is not clear who makes the decision that clause 16 applies: it could be the respective agencies responsible for action under sections 17 to 26, or it could be a discretionary decision by the Court. This should be clarified. One straightforward approach would be to require the sentencing judge to specify whether section 16 applies.

Clause 17 (Victim's views about release on bail)

Clauses 18(b) (information provided only if the victim has given the Police the victim's current contact details) and 25 (victim may appoint representative to receive information on the victim's behalf) should apply to this clause.

Clause 22 (Notice of offender's release)

We consider this is one of the most important clauses in the Bill, and we support it. In a 1986 submission, NCWNZ expressed concerns that such notification could lead to a lynch-mob or vengeance mentality. This concern was again canvassed for the present submission: committee members now either rejected this as a prospect, or commented that - even if this already occurs to some extent - most of the anger is at the judicial system that is seen to lack support for the victim, and this Bill could help to assuage such anger.

We assume that this clause includes notification of release from custody on parole, not merely on expiry of sentence, but would prefer that this be expressly stated. Depending on the interpretation of "release from custody" (i.e. whether "release" and "custody" are administrative concepts or physical concepts), the clause may perhaps not apply to weekend leave: there should be some provision for notification to victims of such leave.

Clause 23 (Notice of parole hearing)

At original sentencing and at parole hearings it should be obligatory to state when (if at all) parole will next be considered, and to notify the victim of this. At least with respect to the original sentencing hearing, such statement should be required for all crimes (perhaps as part of clause 9), not just for the crimes specified in clause 16.

Clause 27 (Complaints)

We particularly support the right of access to an Ombudsman.

We note that the complaints procedures need to be independent and effective. If there is a valid complaint, procedural changes need to be implemented so the issue does not arise again. Clause 28(2) may diminish the likelihood of such changes being implemented.



Clause 28 (Enforcement of rights)

Clause 28(2) prohibits awards of money in respect of breaches. Several of our Committee are doubtful about this. If the relevant sections are breached, and if harm ensues, appropriate compensation ought to be available on the same principles as for other breaches of statutory duty (and equivalent). Otherwise the legislation is a wish-list with minimal incentive for compliance. Given that most of the victims of sexual violation are women, and that sexual violation is the most clearly-specified offence to which the notification provisions apply (Clause 16), the prohibition on damages is of particular concern to NCWNZ.

Clause 28(2) and Clause 27(d) (which latter clause permits complaints to the Privacy Commissioner) appear contradictory. One possible interpretation would mean that a privacy complaint involving the prohibited disclosure of information purportedly protected by this specific Bill (such as Clauses 10 and 12) could not result in an award of damages by the Complaints Review Tribunal. Yet if this Bill were to omit such express protection, unauthorised disclosure of the victim's personal information might well still constitute a privacy breach under the Privacy Act, and could then be compensated for by an award of damages. It is not clear whether, if an action is a privacy breach under the Privacy Act, as well as a breach of (say) Clause 12 of this Bill, monetary compensation will still be possible under the Privacy Act despite Clause 28(2). Clause 27 appears to confuse the respective legislative obligations under the Privacy Act and this Bill. If it is intended simply to ensure that this Bill does not override the Privacy Act or preclude complaints under the Privacy Act, it needs rewording.

A similar concern arises with Clauses 28 and 29. Given that 28 precludes monetary compensation for a breach of Clause 29 (return of property by enforcement agencies, once it is no longer needed for evidentiary purposes), it is unclear whether monetary damages are still available if the facts would also support a common-law action for conversion, or whether Section 28 precludes compensatory damages in such an action.

Clause 31 (Amendments to other statutes)

Criminal Justice Act 1985 s 106A: We support the express provisions allowing the victim to choose whether to make submissions orally (in person or through a representative), and/or in writing, or not at all. We also support the express provision allowing a victim to require that the victim's oral submissions be heard at a place other than the prison where the offender is to make oral submissions (or have oral submissions made on the offender's behalf).

Conclusion

NCWNZ supports the Bill in principle. In general the ideas in the Bill are an improvement on the present situation

There are concerns about some of the specific wording, and also about practical issues of resourcing and enforcement.

NCWNZ appreciates the opportunity to comment on this Bill, and would appreciate being informed of future developments and proposals.

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Justice & Law Reform Standing Committee