National Council of Women of New Zealand
Te Kaunihera Wahine o Aotearoa

GENDER EQUAL NZ
MAKING EQUALITY REALITY

Oral Submission to the Justice Committee
on the Sexual Violence legislation Bill 185-1

By Beryl Anderson and Rae Duff on 20 February 2020

Justice Committee
Members Present: Chairperson: Nick Smith (Nat),
Ginny Anderson (Lab), (Nat), Mark Mitchell (Nat), Greg O'Connor (Lab), Chris Penk (Nat), Nicola Willis (Nat). Ruth Dyson (Lab),
Willow-Jean Prime (Lab), Harete Hipango (Nat).
Members Not Present:
Hon Meka Whaitiri (Lab), Clare Curran (Lab), Tim Macindoe

Kia Ora, Good morning, my name is Beryl Anderson and my colleague is Rae Duff. We are members of the Parliamentary Watch Committee of the National Council of Women of New Zealand.

Background

The submission we are presenting has been prepared from a background of policy decisions which have been prepared following consultation with the membership of our organisation.

The National Council of Women of New Zealand -welcomes and supports this Bill as it seeks to improve sexual violence victims' experiences in court, while preserving the fairness of the trial and the integrity of the criminal justice system. However, in our view, some of the proposed amendments do not go far enough and require some amendment.

NCWNZ members believe that victims of sexual violence who choose to go to court must be able to participate in a trial, fair to all parties. It is important to provide training for judges so that they understand the complexities of sexual assaults and can ensure the victim is not humiliated or embarrassed about their sexual experience or behaviour. The training of judges should enable them to support the women victims during their questioning so that it is culturally appropriate, and their human rights and reputation are protected while still serving the best interests of justice.

This is supported by the United Nations Committee for the Convention on the Elimination of Discrimination Against Women [CEDAW], which, in its concluding remarks after Aotearoa / NZ's eighth periodic review report in 2018, expressed concern and made several recommendations to address violence against women including general recommendation No. 19, section 26 (c) of their report:

Strengthen capacity-building and awareness-raising campaigns as well as training for judges, law enforcement officials and welfare personnel on all forms of gender-based violence and abuse…..[1]

There is a huge amount of discretion given to judges under Clause 8, the revised section 44 and 44A of the Evidence Act. In our opinion some of the conditions for granting exceptions – for example to permitting evidence of sexual experience or reputation to be given, should be restricted further. In proposed Section 44 (4) of the Evidence Act – where the defendant is charged as a "party", and subsection (1) does not apply, we are concerned that this will not only open the way for the sexual experience or disposition of the complainant to be questioned but it could also discourage victims from coming forward and lodging a complaint in the first place.

Further, we are concerned that under Section proposed 44AA (2) a judge has discretion in a sexual case which is a "specified civil proceeding," to require evidence to be given or a question put to a witness that relates directly or indirectly to the sexual reputation of the complainant. We are concerned that a woman victim whose case is categorised as a "specified civil proceeding" may be exposed to the type of invasive and damaging questioning that this Bill seeks to avoid.

Judges also have wide discretion under proposed section 44A to rule on applications made to offer evidence or ask questions about the sexual experience or sexual disposition of complainants. Any person connected with the case can make such application and it is left entirely to the judge whether to grant the application or not. Again, this does not provide the type of protection to a woman victim which is intended by this legislation. We strongly recommend that the criteria for granting exemptions to the rules governing questioning of women and girl victims be considerably tightened before this legislation is enacted.

Clause 14, Section 106C – 106J of the Evidence Act covers the regulations governing the giving of evidence and the various forms that can take. This includes evidence given In Person, by Video Recording or from a Remote Location and this Section requires judges to intervene as it seems necessary to prevent inappropriate badgering or questioning irrespective of the manner in which the evidence is given. This is a good step however we suggest that judges may benefit from training in Victim Psychology to enable them to put themselves in the victim's position.

Proposed Section 106G (3) of the Evidence Act gives reasons for disallowing pre-recorded video evidence. Apart from reasons (a) and (b), which concern the risk to the fairness of the trial and that it can't be mitigated in any other way, the other reasons (2) a – d seem inconsequential compared with victim rights. Proposed Section 106F allows judges to require a victim to give evidence "in person" in court. We would like to know under what circumstances the victims right to give evidence in the manner of their choosing should be overruled.

[1] https://women.govt.nz/sites/public_files/CEDAW_C_NZL_CO_8_31061_E%20%283%29.pdf

Clause 23 Proposed Section 28A to section 28C of the Victims' Rights Act 2002 have most situations affecting the victim's appearance in court well covered. However there needs to be provision for not only the victim but their family or whanau to have access to the support facilities provided by the court as well as agencies like – Victim support, SASH (*Sexual Abuse Support and Healing* in Nelson/Tasman) and Women's Refuge.

Finally, not included in the legislation but of considerable concern to NCWNZ is the lengthy delay which often occurs before the trial takes place and which can have an adverse effect on women and girl victims. Defence lawyers often attempt to delay the trial so that the victim either withdraws their complaint, or the quality of the victim's evidence can be called into question because their memory of the event is affected by the passing of time. It also means the victim is reliving the event over and over and finds it difficult to move on with their life.

In conclusion - this legislation is a huge step forward, but real change will only come when attitudes change. Stereotypes and myths about women's sexuality and the reasons for rape and other sexual offences are still deeply rooted, and are reflected in juries, the police, the legal profession and some judges. Immediate education on these issues is required so that hopefully, in time, the development of case law can bring real meaningful change.

NCWNZ were complemented on the submission for its clarity and for the issues raised.

The only question asked by the Chair was "did we have any suggestions to what kind of delay was considered acceptable to the victims and how could it be managed? There was nothing mentioned in our submission, but a fairly general statement was made to the effect that the longer the time frame the more difficult it was for the victim to move on but it did depend on each individual case. One of the other submitters mentioned no more than 6 months so we were happy to support a similar time frame.

The Chair, Nick Smith and the members of the committee impressed with the way they supported and respected those making the submissions, especially those who had been personally through the court system.