



**National Council of
Women of New Zealand**

Te Kaunihera
Wahine O Aotearoa

National Office
Level 4 Central House
26 Brandon Street
PO Box 25-498
Wellington 6146
(04) 473 7623
www.ncwnz.org.nz

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**Submission to the Ministry of Justice on the Discussion Paper:
Re-evaluation of Human Rights Protections in New Zealand**

The National Council of Women of New Zealand (NCWNZ) has a long history of commitment to human rights, particularly the rights of women, children and minority groups. We welcome this opportunity to comment on the Discussion Paper.

Executive Summary:

Clearly human rights legislation should reflect New Zealand's current position as a democracy. There is an urgent need to clarify whether the New Zealand Bill of Rights Act 1990 overrides the Human Rights Act 1993. It would appear that the NZBOR should have primacy. Increasing domestic commitment to international treaties and covenants which elevate human rights principles emphasise New Zealand's failure to enshrine the Bill of Rights as supreme law from its inception. Complex parallel issues of how Treaty of Waitangi principles can be conjoined with HR legislation to the benefit of all New Zealanders is of ongoing concern to our nation and must be addressed fairly and sagely.

NCWNZ would agree with the importance of shifting public perception of the Human Rights Commission from focussing on individual complaints by educating New Zealanders to the international obligations imposed by Human Rights legislation. The benefits New Zealand as a nation receives from bringing these principles to fruition universally is clearly a major driver behind this re-evaluation process and NCWNZ is always supportive of education as a means of increasing individual choice and understanding.

Recommended Institutional Changes:

The public perception of the Human Rights Commission has been that it is not easily accessed by the public, that it is a large amorphous body similar to the UN which is beyond the reach of ordinary citizens. Despite the organisation's high-profile complaints service, it has not been clear where and how a complaint should be lodged. Clearly, the role of the range of human rights institutions needs to be re-evaluated and the public need to be given clearer understanding of how to access strategic information on human rights issues of current relevance. This educative role would become the principal focus rather than the complaints aspect and as such would have a greater impact on societal attitudes.

22. The introduction of an independent Proceedings Commissioner to ensure consistency of standards in Complaints Review Tribunal cases is encouraged by the Report to counter concerns about in house knowledge and possibly increase public acceptance of the Tribunal. NCWNZ shares the concern of Dr Harrison that, given the source of funding for such a position, he/she would not be truly independent.

24-26. The report fails to clearly enunciate the roles of the Commissioners under the proposed NHRI. NCWNZ would be interested in Commissioners views of the recommendations.



**Early consideration of Human Rights Issues and Obligations in Policy Making:**

28. NCWNZ supports and encourages the early consideration of relevant international human rights norms in any government policy-making process. It is a positive sign that governments view it as sound policy and that they have become aware that public consultation inspires confidence and support for the process.

Funding:

31. Although we are assured that the purpose of the recommendations is efficiency not financial, it is easy to be cynical about the saving of \$1m when the recommendations include a Proceedings Commissioner, use of District and High Court Judges, setting up a new council comprising the NHRI, drawing up a NPA and increasing the education programme. The estimated \$1m saving is a drop in the bucket in this context.

PART ONE: THE DEVELOPMENT OF INTERNATIONAL AND DOMESTIC PROTECTIONS FOR HUMAN RIGHTS

18. We note that the endeavours of the UN to awaken states to their national human rights obligations has been a slow process. This globalisation of accountability is continuing to evolve through international human rights instruments which New Zealand has generally ratified. Violence against women in an area which New Zealand initiative has been commended by the CEDAW Committee with the enactment of the New Zealand Domestic Violence Act 1995. Since 1996 female genital mutilation has been expressly illegal here. This momentum offers hope for women whose freedoms are restricted.
23. In view of the lack of cohesion of the separate domestic human rights laws and organisations and the fragmented approach to New Zealand's international human rights obligations, we welcome this report.

PART TWO: NEW ZEALAND'S HUMAN RIGHTS LAW

Kofi Annan's words are an inspiration and, if adhered to, provide a rallying point for human rights legislation for 2001.

Primacy – the problem and how we got here:

32. NCWNZ supports the principle that when government is acting as an employer or landlord it ought to be subject to the same standards as a private person, and considers that recourse for those complaining of a breach should apply equally to the public sector and government, and clients of government should not be forced to take a civil case using costly Bill of Rights remedies.

We note that the Human Rights Commission has been urging the government to revise the Bill of Rights to enable courts to strike down or refuse to give effect to legislation which is inconsistent with the Bill of Rights and the Covenant but this has not occurred. It seems a positive move that in recent New Zealand case law, judicial declarations of inconsistency have the potential to enhance constitutional values, building greater trust between parliament and the judiciary which may create a shared sense of values and enhance our constitution.

Relationship between the Treaty of Waitangi and human rights law:

- 57-60. We note that the needs of single parent families, particularly young Maori mothers has in part been addressed in 1997 by free health care for all children under six years. But



more must be done to address the disparity between Maori and non-Maori in economic health and educational status, which is the most pressing issue of equality currently.

The Consistency 2000 Project.

66. The decision in 1997 to abandon the Consistency 2000 review which had been required, under section 5 of the Human Rights Act 1993 was viewed by NCWNZ as a lost opportunity to research and assess all legislation in the light of human rights consistency. If this was directly related to economic restructuring it is simply a trade off of human rights for commercial gain.

Section 21 of the Human Rights Act 113 was not brought into effect until 1 January 2000. The new prohibited grounds of discrimination could not be applied to government and the Human Rights Act can not override existing and future Acts and regulations. We are concerned that exemptions and exceptions may further restrict domestic human rights legislation impact on government.

Our Family Affairs Committee comments that though section 21 of the Human Rights Act specifically prohibits discrimination on the basis of marital status, the Government has discriminated in assessment for eligibility for benefits for partnered women (and occasionally men) who work primarily as caregivers of their own children. This gradual marginalisation of parenting as work has significant negative effects on society. Concerns have been expressed in CEDAW and other international covenants and New Zealand cannot ignore its commitment to these instruments.

PART THREE: THE NEED TO REASSESS OUR IMPLEMENTATION AND PROTECTION OF HUMAN RIGHTS IN NEW ZEALAND

Time for reassessment?

98.106 Consultation reveals dissatisfaction concerning fragmented focus within human rights agencies, duplication of systems but little drive for co-operation and strategic planning. We support the call for reassessment and a more satisfactory implementation process.

102.106 The five human rights agencies appear to operate under separate and independent 'brands'. There is no clear guidance from the Report regarding which of these should be included in the new NHRI though one recommendation incorporates both the Human Rights Commission and the Race Relations Office.

An effective NPA should refocus and encourage these five groups to act as trail-blazers promoting enterprising co-operative ventures which model tolerance and human rights as their common 'brand'.

Confusion of management and governance:

107-109. It is surprising that there are no systemic means to provide quality assurance on the work of commissioners. The Report strongly advises separation of governance from managerial accountability and is openly critical of present duplication of resources. Its signal that restructuring will solve these problems is not entirely convincing.

Dependence on Commissioners as leaders:

119-122. The Report calls for less reliance on strong leadership and more on team building. However, the effectiveness of many organisations rests on leadership. The outstanding popularity and accessibility of our current Governor-General is testimony to that fact.



The Report in para 139 itself acknowledges the importance of high-calibre leadership. It is also a fact that quality attracts quality. The vacuum left when a good leader departs is no reason to change the structure but rather to strive for excellence in order to attract quality staff and lead from the top down.

Impact on staff:

123-124. Outstanding leaders, as noted in para 120, will still attract and retain quality staff despite the size or resources of an organisation and are the key to success.

International reassessment of National Human Rights Institutions:

126. We endorse the recommendations from the International Council on Human Rights' recent Report. Both this and the recent Canadian review advocate a move from the Human Rights Commission being complaints driven but, we note that as the public become more aware of the broad range of rights available to them, this is not going to be an easy task.

PART FOUR: THE NATIONAL HUMAN RIGHTS INSTITUTION**Human Rights in a Changing Society:**

128-130. Major changes in New Zealand's social order over nearly thirty years since the establishment of principal human rights bodies here mean that peace and stability could be threatened if the human rights environment fails to change. We would fully endorse the key points made by stakeholders regarding the work of human rights bodies in this regard.

Comparative organisational Models:

131-135. Re-evaluation of NHRIs in Australia, Canada and elsewhere reveals that there is no single model for successful NHRIs but it is common ground that the individual complaints system has dominated resources and become the focus to the detriment of education and the promotion of broader systemic issues. We would agree that countries need to find their own solution based on social and political circumstances and resources remarking that all countries need to undertake periodic revision of their systems in response to social change.

Organisational Design – Choices of Approach:

139. The concept of leadership by example which promotes a rights-conscious society is a worthy one. After thirty years of operation of these bodies in New Zealand, it is to be hoped that the Commissioners have themselves been setting the example.

140. The report criticises the "quasi-judicial" approach used in Australia and New Zealand which emphasises the complaints process. The example of four-re-organisations of HREOC in Australia within seven years indicates wasted resources at the taxpayers' expense and is not balanced by any information from countries where "optimal arrangements" have been successfully introduced. New Zealand needs to proceed carefully to avoid making the same mistakes.

A New Organisation: Key Features.

143. We consider that the model is verbose and portrays images of cumbersome layers within the public service. It does not reflect a vibrant accessible image which will inspire public confidence in a passionate, rights-dominated democratic process.

**Organisational Capability**

168-9. We agree that there would be advantages in combining several of the HR agencies thus consolidating resources to conduct targeted education, a stronger delivery of the message through united reinforcement of HR principles, functional efficiency and a move from HR Commission's image as a complaints body. At the same time we would not wish to see specialist capability compromised if agencies were combined. Women's advocacy, disability, children and racial harmony issues are distinct and must not be lost in an amorphous whole.

NCWNZ are supportive of the NZ Federation of Ethnic Council's opposition to any proposed abolition of the Race Relations Conciliator if it means that racial issues will lose priority. An increased budget may be the best outcome.

Independence:

174-176 Recommendations that the establishment of an NHRI, in accordance with the "Paris Principles", would ensure greater independence and resourcing and allow the Institute to function independently of Government are not transparently clear. A source of disquiet is who pays and thus calls the tune? Independence, it seems, is only assured where there are no financial considerations.

There is no guarantee that a larger NHRI will be better equipped to fulfill its mandate. We are again concerned that it is individual leadership, passion and commitment to the specific human right that inspires public confidence in the performance of NGO's such as the Women's Refuge, not its size or style and that this is reflected in the level of public support financially.

Accountability arrangements:

179. An organisation is only as effective and transparent as its key personnel. The NHRI by modelling its own principles will gradually attract public support and trust. The face to face model for judgement calls has never been disputed and the laboured explanations in this section of the report regarding accountability fail to stress the pivotal importance of the individuals who would make up the Institute, whose initiative and mana would be vital to the credibility of the NHRI. We note however that para 139 does refer to the quality of leadership.

180-188. By proposing that the NHRI becomes answerable to the Secretary of Justice, the Report appears to contradict its recommendations regarding independence. The accountability cycle is an elaborate and wordy public-sector proposal which is complex and unnecessarily opaque.

190-193. Links between other Commissioners are not clearly enunciated. Given that the highest number of HR complaints come from disabled persons, it seems that this office would benefit from closer liaison with the Health and Disability Commissioner. The report recommends (xi) that the two should not be combined at present but if Health and Disability were to benefit from a greater pool of expertise and funding by the formation of a NHRI then implementation of such a body would be commended by NCWNZ. What we would oppose would be a down-grading of the office in the interests of cost-cutting or the assertion of other rights at the expense of the wide range of disability rights.

**International Considerations:**

196. Critical to our unique socio-political circumstances is the issue of race relations being effectively dealt with in the absence of a separate office. There needs to be clear empirical support for the supposition that benefits will outweigh disadvantages.

Recommendations:

- (iii) These are again clearly based on a state sector model and reflect the collective where individual energy and initiative can easily be lost. There is increasing public support to counter globalisation and the corporate image. Small is not necessarily weak if it commands *mana*. For example, media attention and public support for The Women's Refuge has resulted from the energy and outspoken approach of Merepeka Raukawa-Tait. We reiterate that the choice of individual council members is crucial if a NHRI is to successfully replace individual Commissions.
- (ix) National Council of Women's December 2000 Survey of our membership considered the priority focus for 2001 to be the rights and welfare of children. Recent events have brought the role of the Commissioner for Children into the spotlight and shown the importance of safeguarding children's rights.

In 1998 NCWNZ urged the Government to establish a National Child Register for "at risk" children. Although we welcome Judge Brown's recent call for a National Child Register following Roger McClay's recommendations, we would question why three more years of abuse has occurred without our original request being implemented. Here the protection of the Privacy Act was carried too far, infringing the rights of those children most in need.

PART FIVE: THE DISPUTE RESOLUTION MODEL

196. We note that The International Council on Human Rights 2000 recommend that a complaints-led approach will not be sustainable.
197. We welcome the suggestion of a conciliation approach with 'unconciliated' complaints being referred to a Proceedings Commissioner. This should reduce the work load for the Complaints Review Tribunal but would require greater numbers of trained staff at the "coalface".
198. We note that the establishment of the office of Proceedings Commissioner which is independent of the Council and Crown counters the earlier argument that small agencies are not the optimum model. We are also not convinced that the position would be truly independent and would as how the office would be financed.
202. We support the view that the Complaints Tribunal be given increased status and that District Court Judges be included on the Tribunal.

Recommendations:

- (ii) The example is given of a discretionary approach where conciliation is not considered appropriate. We know of a company which was ordered to conduct an education programme for an entire day because a job advertisement had discriminated against an applicant with physical disabilities. The huge cost to management and the cynicism which the 'education programme was greeted by busy staff, who had never been discriminatory in their attitudes towards disabled persons, completely undermined the process. Such programmes need to be sensitively handled or risk alienating the



employers and staff, where a day's loss of production and the necessity for overtime to meet deadlines was viewed as an expensive and pointless exercise.

- (v) NCWNZ supports this clause.
- (vii) Although we agree with the recommendation of specific case notes for the Complaints Review Tribunal, it spells extra expense.
- (viii) The appointment of District Court Judges to the Tribunal is an important institutional change. The improved status of the Tribunal would need to outweigh the increased cost of the exercise. Its success will depend on the quality of those appointees. We ask what the criteria will be in making these decisions.

PART SIX: EARLY CONSIDERATION OF HR ISSUES AND OBLIGATIONS IN POLICY MAKING

Human rights make good policy

NCWNZ believe it is essential that policy-making within government is visionary and vigilant in its promotion and protection of human rights. The place of international law, particularly the binding nature of international human rights law, needs to be endorsed but not to the detriment of good domestic policies and our unique Bill of Rights obligations.

- 206-209. NCWNZ supports this clause. Early consideration of human rights when policy is being formulated will generate an atmosphere of fairness and inclusiveness.
- 210-220. Again, NCWNZ supports integration of human rights into policy at the time of formulation rather than a risk management approach. Education of public sector and society to the positive outcomes of a flourishing human rights approach will diminish and gradually make redundant current negative 'vetting' attitudes which are often only superficial placatory gestures towards compliance. The suggested single consolidated human rights requirement would clearly simplify Cabinet Office processes and address the increasingly blurred demarcation between national and international law.

PART SEVEN: A NEW ZEALAND NATIONAL PLAN OF ACTION FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

We recognise the importance of New Zealand having its own NPA but are cautious about the cost benefits of such initiatives. It is crucial that a national plan of action for children's rights be implemented without delay but with the widest possible consultation so that the rights of children at risk will be monitored effectively in areas of health, education, housing and welfare. NCWNZ consider there is no time to develop theoretical phases which accord with past practice when it comes to protecting children's rights.

- 234. We ask what incentives countries have to endorse NPA's and their rate of success elsewhere.
- 236. We consider that a fine balance must be maintained between open consultation and the implementation of policies. Lengthy consultation delays rapid response to crises. Resources need to be made available urgently to organisations in direct contact with children whose rights are being eroded and threatened daily so that practical outcomes will see justice done.



237. So much depends on how much *mana* the NHRI commands: its leadership, how progress is monitored, whether it inspires public confidence as an avenue for change. The forecasted completion of the NPA by December 2002 is not appropriate in this crisis area. Funding to uphold human rights is a basic responsibility of Government and should not haphazardly hinge on public goodwill nor be hindered by the grinding formulation of current policy.

Barbara Glenie
National President

Elizabeth Lee
**Convener,
Parliamentary Watch Committee**