



Aotearoa New Zealand Association of Social Workers
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AOTEAROA NEW ZEALAND ASSOCIATION OF SOCIAL WORKERS (ANZASW)

To

The Constitutional Advisory Panel

Submissions due 5pm 1st July 2013

The Constitution Conversation



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2. INTRODUCTION

Aotearoa New Zealand Association of Social Workers, or ANZASW, is the professional body for social workers in New Zealand. Therefore it is imperative that we as an organisation provide a voice for our members on the proposed single document constitution and its direct effect on the social work profession.

In order to be in a position to write this submission on behalf of our membership ANZASW conducted a survey. This was sent to 3,078 members through email via Survey Monkey and we received 161 replies.

The questions in the survey were related to the proposed single document constitution and its possible effects on social justice and human rights, the proficiency of the Bill of Rights Act 1990, what else could be done to improve human rights and social justice, the inclusion of the Treaty of Waitangi in the proposed single document constitution and how Maori views should be represented in both parliament and local government.

These topics of conversation are relevant and imperative to a profession that aims to support people in the process of influencing their social environments to achieve sustainable wellbeing. Social work facilitates social development and social cohesion and through theories of social work, social sciences and indigenous knowledge, the social work profession promotes social change and problem solving in human relationships, providing professionally supported and guided opportunities for the empowerment and liberation of people to enhance wellbeing. The principles of human rights, collective responsibility and social justice are fundamental to social work practice. As a result of this our members have a significant and professional interest in the potential or intended effects the constitutional change will have on these principles.

Our members have answered both from their unique view as social workers and their individual views as people, and the summary of their views and opinions surrounding these relevant topics are below for your consideration.

3. BILL OF RIGHTS ACT 1990

When asked how well the Bill of Rights Act currently upholds the principles of human rights and social justice in New Zealand, 5.0% selected very well, 53.9% selected well, and 41.1% of responses selected not very well.

Reasoning behind 'not very well' responses

The Bill of Rights Act is unclear and difficult to understand which propels it to fail to provide the level of human rights protection people deserve. It also fails to cover economic, social, property and privacy rights, and it therefore needs to be broadened.

There are still social, racial and economic inequalities within New Zealand society which reflects the ineffectiveness of the Bill of Rights and its ability to uphold the principles of human rights and social justice. It seems that in reality inequality is increasing which would in turn imply that the efficacy of the Act is decreasing. This follows on to assume that the current Bill of Rights Act protects some but not all which is contradictory to its existence, a document that was intended to be completely inclusive has been transformed to be exclusive by its use and application in society.

It appears that the Bill of Rights Act needs to be strengthened around indigenous rights, as it is currently not protective or applicable in many cases for Tangata Whenua, and the indigenous voice is overpowered and undermined at times.

Another on-going issue with the current Bill of Rights Act, and its ability or inability to uphold the principles of social justice and human rights, is not the way in which it is written or formatted but in the way it is adhered to and enforced in reality. It is not fully recognised, and there are too many exceptions or opportunities for the government and the public to ignore its content. It is not strong enough as legislation and needs to be implemented into society in such a way that all people know they must adhere to the legislation and feel protected by it.

For this, understanding and education is vital. People need to be more informed about the Bill of Rights and our legislation. Education needs to be focused on the entire country, implemented at schools and all other institutions in order for the principles of human rights and social justice within the Bill of Rights to be acknowledged, comprehended and adhered to.

Reasoning behind 'well' and 'very well' responses

It is clear, effective and flexible when applying to social work situations. It is useful as a reference and fair and helpful when dealing with issues of discrimination as it promotes equality amongst all New Zealanders. It is legislation that has had the intended effect of giving precedence to individual interests over that of collective interests. The Act itself provides clarity, a forum for disputes, a process for hearing complaints and the ability to address issues in the battle against discrimination. As a document it sends the message that the rights within it are applicable and available for each and every person in New Zealand.

In direct relation to the social work profession the Bill of Rights Act supports the principles of social justice and provides insight into and understanding behind the fundamental views that are employed in every day social work practice. Human rights principles can be identified and outlined which creates opportunities to educate others. The Act currently covers multiple political and civil rights of the individual whilst also providing a sound framework of democratic freedom, opportunity and redress. As a result, the principles of social justice and human rights that are upheld within the Bill of Rights Act are an intrinsic part of the everyday social work practice and provide a reference point for rights without discrimination.

4. WHAT MORE CAN BE DONE TO PROTECT AND ENHANCE HUMAN RIGHTS AND SOCIAL JUSTICE

Social and Economic Equality

Currently in society there are many issues of inequality that need our attention. There is a need for more political attention and a stronger political voice for the minority or marginalised groups. Whilst a strong sense of 'haves' vs. 'have nots' or 'deserving' vs. 'undeserving' exists within society we cannot move forward or implement change to protect human rights and social justice. Highlighting issues of social and economic inequality should be a priority enabling a situation in which to inform the people in power and the people of New Zealand in general that these issues need to be resolved. While issues like poverty are causing social and economic gaps and inequality to grow, it is important that we prioritise the need to find or create solutions to bridge them.

This will come through implementing and adhering to specific policies that intend to encourage and support attitudinal changes within society, towards a common goal of social and economic equality. The policies we have currently need to be upheld and enforced to ensure our society is one that is fair and equal, and the people in positions of power need to be committed and willing to do so. Policies need to be equality focussed for social and economic development, and once put in place they need to be effective in reality. The legislation needs to be reviewed often enough to ensure that it is carrying out its intended purpose and, if not, change needs to be initiated or systems implemented to rectify this. This would result in a better understanding of our rights as individuals and groups, along with the ability to strengthen rights and policies surrounding current social concerns and issues e.g. poverty and rights of victims of crime. Our legislation would then be more reflective of our unique society and a better vehicle for promoting social and economic equality.

Providing and strengthening the public voice

New Zealanders should all feel that they have a voice within or for all social issues and concerns, and that their voice will be a considered part of any major decision our government makes. There need to be more opportunities and systems provided for people to lobby against social injustices or simply be able to present their views and opinions and have them heard. People need the ability to voice their frustrations and highlight social issues that they feel need to be considered with the confidence that this voice will be heard by the current decision makers.

There is need for a louder voice of the marginalised within our political debates, and a stronger sense of the voice of the people in all decision making concerning human rights, social justice, freedom and democracy. More public debate and consultation is needed to allow this voice some significance.

Each community and each individual needs to take on the responsibility of using their voice to highlight social concerns and become proactive about solutions to the problems.

Education and Understanding

There is a lack of understanding and education within New Zealand on all levels with regard to the rights and responsibilities we have under our current legislation and this needs to be rectified in order for society to progress toward a common goal. More education needs to be provided, along with current and informative resources not only in schools but in all aspects of the public and private sectors.

This would have the hopeful intent of promoting a better understanding of our legislation within New Zealand society leading us to be more informed and aware. This would also allow people to have a better grip on current social issues, injustices and inequalities which should encourage or instill the confidence in society to stand up for what they believe in and provide opinions, feedback and hopefully solutions to pertinent social topics. Public opinion would then consist of viewpoints that come from a place of knowledge and understanding.

5. THE TREATY OF WAITANGI AS A FORMAL PART OF THE CONSTITUTION

Yes, it should be and in what capacity

The Treaty of Waitangi, included in both languages, should be the foundation of our constitution and its principles should be implemented throughout the entire document. It should underpin any constitution that we go forward with. This is to ensure that the rights of New Zealand's indigenous people are acknowledged, protected and followed through with and that partnership, participation and protection are encompassed. Accordingly, the inclusion of the Treaty (if it is a prominent document) will also provide opportunities to better our awareness, understanding and education of our indigenous people.

If the Treaty of Waitangi becomes an integral part of our constitution this will create a foundation for political, economic and social relations between Maori and Pakeha, and further progress the ideals and acceptance of a bi-cultural country and society. Allowing the history, identity, values, rights, responsibilities and knowledge of the document to be honoured and respected as a formal part of the constitution is essential for social development and the continuation of current race relation work being done.

No, it should not be

The document that we should be using as a foundation to the constitution is not the Treaty of Waitangi but Te Tiriti O Waitangi as this is the indigenous and internationally recognised document.

There is a possibility that the Treaty of Waitangi could be watered down or overridden by the rest of the constitution, which would in turn undo years of progress and hard work. It therefore needs to remain a document in its own right to maintain and honour the history and significance behind it and in order to continue to protect Maori people and their knowledge. The Treaty of Waitangi is our founding document and should hold precedence over other legislation. To undermine this would be to allow the significance, meaning and sense of partnership to be diminished. Perhaps keeping it as it is now and using it as a reference or guide for the rest of the constitution would be a good solution.

Treaty issues at present are being disputed, ignored or overlooked and to start this conversation in the midst of them would be to place another obstacle in front of them and divert attention. There are longstanding issues surrounding the Treaty such as higher laws to protect Te Tiriti O Waitangi and on-going restitution issues that need to be resolved before any other work can be done. Our current race relations journey needs to be nurtured in order to continue rather than disrupted.

6. HOW MAORI VIEWS SHOULD BE REPRESENTED IN PARLIAMENT AND LOCAL GOVERNMENT

Parliament

The current Maori seats, Maori party and Maori MP's are supported with the intent to gain more general seats and have a stronger voice. This could be achieved through increased public acknowledgment of the Maori electorate roll and by encouraging Maori people to vote for the Maori MP that would best represent them and their concerns. This would mean that Maori will have a strong political voice surrounding Maori views and issues through a unique voting system. The Maori population would then have a system of consultation and an avenue to steer their thoughts and opinions at all levels of decision making. For this to work all Maori would need to firstly become familiar and educated on Maori views/issues and then take an interest in how these will be resolved by using their vote wisely. Without this involvement no system put in place would be effective.

Other options for representing Maori views in Parliament would be an open dialogue with hapu and iwi on all issues and providing a Maori representative at all levels of decision making to ensure the applicable knowledge and rights are honoured and accounted for. These representatives could be the collective voice on all Maori views and concerns.

If Parliament gave Te Tiriti O Waitangi the force of fundamental law it would restore the rights and control of Maori knowledge and views, which in turn allows for a stronger voice and more weight in decision making. This would also be a good step towards bringing balance and partnership to Parliament, so that Maori are proportionately represented and equally consulted.

Local Government

To have dedicated seats in each council for relevant iwi, a Maori elder or a designated Maori seat/s so there is fair and accurate representation. These seats need to be on an equal par with other council members and not just token representation.

Alternatively there could be iwi consultants or advisory groups for each council, Tangata Whenua lobby groups in each area or a designated Maori advocate group so that Maori views and opinions in each area of local government can be collated, analysed and brought to the attention of the council. Issues and concerns could then be highlighted and addressed collectively.

For any of these options to work the public need to be informed and educated through resources, publications and awareness groups or campaigns on Maori views and issues particular to their local area. From this platform it will then be easier to encourage Maori to get involved in the process of resolution and recognise the importance of voting for council members. It will also allow each local government to look at their unique structure from a Maori perspective which will help to highlight and hopefully solve current issues of inequality in decision making and opportunities.

7. THE PROPOSED SINGLE DOCUMENT CONSTITUTION AND ITS EFFECTS ON HUMAN RIGHTS AND SOCIAL JUSTICE

Advancement of human rights and social justice

The proposed single document constitution will provide a single platform from which to tackle, discuss and solve issues of social justice and development. It will allow all New Zealand Citizens to be on an even playing field, and provide an environment in which they (along with social justice and social development issues) can be heard.

Reformatting or merging our current constitutional documents will serve to outline how social justice and social development can be achieved and improved within New Zealand. This also gives us an opportunity to review and scrutinise our current issues of social justice and development thus providing a more focussed and understandable record of our constitution, allowing it to reflect the specific needs of our unique and dynamic society.

If the final document is clear, concise and formatted in a way that is easy for everybody to understand, New Zealand will have a single point of reference for all social justice and social development issues while maintaining the true essence and importance of each original document. This will also allow every New Zealand citizen the opportunity to educate themselves on social justice and development policies, as well as be able to easily access sections of relevant or applicable legislation. This will in turn build understanding amongst the people of New Zealand.

Potential to obstruct or disrupt current models of human rights and social justice

Merging our current constitutional documents will serve to muddy the waters rather than clarify issues of social justice and development as there are many opportunities for misinterpretation and misunderstanding. The current constitution is flexible the way it is now. Merging documents will only restrict us and fail to meet the needs of all. In particular the Treaty of Waitangi could be diluted, misinterpreted and no longer reflect the knowledge and rights of our indigenous people as it does now. This could create an opportunity for Maori values and needs to be ignored and overlooked in place of the needs of the 'majority'.

It seems to be unlikely that all our current documents can be maintained and adhered to once they have been merged and there is doubt whether or not a single document constitution would be reflective of New Zealand society as a whole and serve to protect the rights of all New Zealand citizens or just a selective group/s.

Our current constitution and system is not perfect but improvements are currently underway and perhaps our time would be better served working on what we have rather than embarking on a complete overhaul. Only actions can advance social justice and development and the way we act within society and enforce our current documents is what needs to be changed. Therefore having a single document constitution will not have any effect on the efficiency of the country nor would it advance social justice and social development.

8. AOTEAROA NEW ZEALAND ASSOCIATION OF SOCIAL WORKERS

Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional body for a national collective of more than **4,000 social workers**, who have day-to-day involvement with the most vulnerable people in our society. Our work is guided by a Code of Ethics that is aligned with the International Federation of Social Workers (IFSW). Our members work at the interface of whānau interactions and are well placed to comment on the implications of proposed amendments to the Crimes Act 1961 (Crimes Amendment Bill, No 2).

Social work is founded on principles of human rights and social justice. We are guided by the Treaty of Waitangi and respect the equality, worth and dignity of all people. As stated by the 1988 Royal Commission on Social Policy, we believe *"social well-being exists when all members of the community have a reasonable expectation of achieving those things which are generally accepted as necessary for a healthy and happy life"*. Our mission is to enable people to develop their full potential; our skill-set is problem solving and facilitation of positive change in individuals, organisations, whānau and communities. We recognise the environment contains opportunities for people to be both agents of change and victims of factors beyond their control. As a profession, we strive to alleviate poverty, foster social inclusion and liberate those who are vulnerable or oppressed. Social work is evidence-based and draws on theories of human development, behaviour and social systems.

Social workers respond to crises and emergencies along with the personal or social problems that arise from experience of barriers, inequities and injustices within our society. Our interventions involve problem solving, development of coping strategies, one-on-one counselling and therapy, family and group work, agency administration, community organisation and helping people to access services, resources and support systems within their community. We work across government and non-government settings including community organisations, iwi agencies, private practice, youth justice, child protection, mental health, addictions and disability.

We are involved in research, training, education, professional development, competency assessment, data gathering, risk assessment, structural analysis, interagency protocols and the improvement of social policy.

CONCLUSION

The hope is that with a single document constitution circumstances will improve within society providing the opportunities for New Zealand to ensure that every person is treated equally, and for our legislation to be understood, enforced and adhered to. The success of this should then have a unifying effect on the nation as we will feel more connected with our rights and responsibilities protected from prejudice and discrimination.

The fear is that we will be taking a step backwards and lose our unique sense of history and bi-culturalism as well as the ability to voice our opinions and enforce change towards creating a fair and equal society for all. Work towards social and economic equality within society could be undone, overlooked or buried under new issues that take precedent. Our constitution has the potential to become a culmination of the views and opinions of an elite group of decision makers, rather than the people of New Zealand.

The reality is that whatever decision is made, we need to ensure that it is made with the intent to advance social justice and development working towards social and economic equality for all. Improvements can always be made within the realms of human rights and social justice, and we should continue to strive for and recognise the need for improvements in health, education, social services and society. To aid this we need to make sure that there are appropriate avenues to voice our opinions on what these improvements will be and how they will be employed and monitored. Our goal should be to ensure that New Zealand society is free of inequality of all forms through not only the presentation but the implementation and enforcement of our legislation regardless of the format of our constitution.