Aotearoa New Zealand Association of Social Workers
Submission on the Domestic Violence
(Enhancing Safety) Bill

27 February 2009

Submission on the Domestic Violence (Enhancing Safety) Bill to the Justice and Electoral Select Committee

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ANZASW would welcome the opportunity to speak to this submission, to further represent and give voice to the views of Social Workers.

1. Background to ANZASW

1.1 The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional body for Social Workers in Aotearoa New Zealand. It was formed in 1964 and currently has approximately 3900 members.

1.2 The ANZASW operates under a bicultural model in accordance with Te Tiriti o Waitangi. Some components of this include: the Tangata Whenua Takawaenga o Aotearoa (Māori caucus), a parallel Niho Taniwha (kaupapa Māori model) competency assessment tool and process, and principles of partnership, participation and protection of rights woven into and throughout the organisational structure. Through this, ANZASW is unique amongst professional bodies in its ability to provide specialist support to Māori members.

2. Introduction

2.1 The ANZASW recognises that the Domestic Violence Act 1995 is a core piece of legislation in the framework for providing legal protection to victims of domestic violence, and generally supported the purpose of the review announced in mid-December 2007 to strengthen the Act and related legislation to ensure an optimal response to domestic violence.

2.2 In part our current submission reflects our earlier submission to a Ministry of Justice consultation, of February 2008. At the same time we are aware that the current Domestic Violence (Enhancing Safety) Bill represents at most one specific area of reform. One of our key concerns at that time was that unlike other Family Law legislation, the Domestic Violence Act lacks a set of overarching principles to be applied by the Courts and others exercising powers under the Act. It should also do more to extend its powers of protection to children.

2.3 We are still concerned to know whether the Ministry of Justice fulfilled its intention to consult directly with disabled people and their families to

ensure they have the opportunity to provide comment given "strong evidence internationally that show disabled people are more likely to be subjected to abuse and violence and find it difficult to escape".

[**Note:** *For the purposes of comprehensiveness we have appended our earlier submission to the Ministry of Justice – see APPENDIX from page 5 onwards*].

3.0 **Protection Orders and Enforcing Protection Orders**

3.1 As stated in an earlier submission to the Ministry of Justice in 2008, the extension of powers for Police to issue short-term protection orders to mitigate the risk and danger a victim and his or her children could otherwise be exposed to, is generally considered to be a positive step.

3.2 Protecting the safety of all affected persons should be paramount. In many if not most situations a victim, due to trauma, is not in the best position to make decisions, so that passing greater "ownership of the problems surrounding domestic violence" to Police is a reasonable option.

3.3 In relation to such an extension of powers, there is a concern that Police use of discretion would need to be accompanied by improved, comprehensive education about and interpretation of the Domestic Violence Act across all forms of abuse – physical, sexual and psychological. Variations in interpretation would need to be monitored to ensure consistency of police operations throughout the country.

3.4 The view is still held that provision for assigning children their own protection orders needs to be given greater attention and discussed in more detail.

3.5 ANZASW would wish it noted that there is a strong view held that the criteria for arrest without a warrant for breach of a protection order was not working well in practice, with a consequence that affected women in particular lose faith in the process. It was considered that Police responses to breaches need to be strengthened to ensure that acts of bullying or harassment or intimidation, including actions such as repeated texting or emailing, are given due weight.

3.6 The amendment that will lead to failure to attend a programme being treated as a separate offence is supported. However it was considered that such a change should be contingent on the need for more follow-ups to be made on respondents who fail to attend programmes. Experience reported to ANZASW has shown that some men who have failed to attend stopping violence programmes joke about the length of time that the Courts take to 'catch up' with them. (For example: "It has taken the court three years to catch up with me. I thought they had forgotten about me!")

4.0 **Further non-legislative reform as detailed in "Adequacy statement"**

4.1 ANZASW would urge the Select Committee to give some attention to the statements in the "Adequacy statement" accompanying the Domestic Violence (Enhancing Safety) Bill.

4.2 In particular we would wish the Select Committee to inquire into the sentence (on page 7) that reads:

> Further non-legislative reform is being undertaken, including improvements to the law enforcement procedures and changes to NGO sector funding.

4.3 On behalf of all our members, including those who work in the NGO sector (at minimum one-in-five of our members), we are concerned at the lack of public communication about the direction and nature of "non-legislative reform".

4.4 It is our understanding that NGO sector funding is potentially at some jeopardy in terms of decisions about funding allocations, and that without such changes the overall goals for reducing domestic violence could well be undermined.

4.5 We would hope and expect the Select Committee will consider the 'bigger picture' in its deliberations.

5.0 **Closing comments**

5.1 Any increase in the numbers of protection orders being issued will be felt across the justice sector, therefore we believe that the Police will need extra resources and training and that this should be explicitly addressed prior to the enactment of this proposed legislation.

5.2 Further to that we note that extra resourcing will be a priority for areas such as extending children's right to have a lawyer to represent them, and to extend various opportunities for respondents and protected persons to attend programmes. Extra costs will extend beyond the justice sector alone and should be reviewed across the board. Dealing with domestic violence should not become a financial burden on victims.

5.3 The ANZASW has no objections to the release of information contained in this submission. An ANZASW representative/s would also be available to make an additional oral submission.

APPENDIX:

Submission for Ministry of Justice Review of Domestic Violence Act 1995 and Related Legislation

1. Background to ANZASW

1.1 The Aotearoa New Zealand Association of Social Workers (ANZASW) is the professional body for Social Workers in Aotearoa New Zealand. It was formed in 1964 and currently has approximately 3500 members.

1.2 The ANZASW operates under a bicultural model in accordance with Te Tiriti o Waitangi. Some components of this include: the Tangata Whenua Takawaenga o Aotearoa (Māori caucus), a parallel Niho Taniwha (kaupapa Māori model) competency assessment tool and process, and principles of partnership, participation and protection of rights woven into and throughout the organisational structure. Through this, ANZASW is unique amongst professional bodies in its ability to provide specialist support to Māori members.

2. Introduction

2.1 The ANZASW recognises that the Domestic Violence Act 1995 is a core piece of legislation in the framework for providing legal protection to victims of domestic violence, and generally supports the purpose of the review announced in mid-December 2007 to strengthen the Act and related legislation to ensure an optimal response to domestic violence.

2.2 While ANZASW acknowledges the Ministry of Justice decision that this is not a "fundamental review" (Overview, page 8), the discussion document in fact includes no fewer than 19 proposals related to proposed legislative amendments. Collectively this is a substantive amount of potential change to be considered fully and responded to, and the time allowed for written submissions, although extended, was insufficient.

2.3 This submission of feedback on the discussion document reflects initial canvassing of as wide a range of representative views of ANZASW membership and expertise as possible within the available timeframe, however we would expect the Ministry of Justice to make provision for further consultation with the ANZASW in addition to this submission.

Responses to preliminary proposals for legislative amendment and related questions

3. Protection Orders

[Discussion Document ref 1.1.1]

3.1 It was considered that an extension of powers for Police to issue short-term protection orders would be a positive step to mitigate the risk and danger a victim and his or her children could otherwise be exposed to.

3.2 Protecting the safety of all affected persons should be paramount. In many if not most situations a victim, due to trauma, is not in the best position to make decisions, so that passing greater "ownership of the problems surrounding domestic violence" to Police is a reasonable option.

3.3 In relation to such an extension of powers, there is a concern that Police use of discretion would need to be accompanied by improved, comprehensive education about and interpretation of the Domestic Violence Act across all forms of abuse – physical, sexual and psychological. Variations in interpretation would need to be monitored to ensure consistency of police operations throughout the country.

[Discussion Document ref 1.1.2]

3.4 It was considered the Act would be strengthened if the Court was required to give written reasons when a section 13 application for a temporary protection order is either declined or put on notice.

3.5 Where an application is placed on notice a query should be made to the applicant as to how they want the application to proceed.

[Discussion Document ref 1.1.3]

3.6 An applicant who has had his or her application for a temporary protection order declined should be eligible for a hearing to address the issues that led to the decline.

[Discussion Document ref 1.1.4]

3.7 It was considered that any discharge of a protection order by a Judge should be conditional on attendance at a programme as part of the criteria that have to be met.

3.8 It was considered that provision for assigning children their own protection orders needs to be given greater attention and discussed in more detail.

3.9 There was a strong view that the use of undertakings in domestic violence proceedings should be discontinued based on a perceived ineffectiveness across the board (the ones that don't work), and strong doubts as to whether they are used equitably by or accessible to all sections of the population.

4. Enforcing Protection Orders

[Discussion Document ref 1.2.1]

4.1 A strong view was expressed that the criteria for arrest without a warrant for breach of a protection order was not working well in practice, with a consequence that affected women in particular lose faith in the process. It was considered that Police responses to breaches need to be strengthened to ensure that acts of bullying or harassment or intimidation, including actions such as repeated texting or emailing, are given due weight.

4.2 It was considered there is no reason why the law should treat arrest without a warrant for breaches of protection orders differently from arrest without a warrant for other offences.

[Discussion Document ref 1.2.2]

4.3 The current two-tier system for penalties was supported as was the proposal that failure to attend a programme be treated as a separate offence. That is, it was considered appropriate for the Court to enforce respondent programme attendance by way of legal sanction.

4.4 However it was considered that such a change should be contingent on the need for more follow-ups to be made on respondents who fail to attend programmes. Experience reported to ANZASW has shown that some men who have failed to attend stopping violence programmes joke about the length of time that the Courts take to 'catch up' with them. (For example: "It has taken the court three years to catch up with me. I thought they had forgotten about me!")

5. Links between the Family and District Courts

[Discussion Document ref 1.3.1]

5.1 It was considered that there would be no disadvantages in allowing affidavits from protection order proceedings to be made available to Judges hearing bail applications, with a correlation drawn between an increased amount of information leading to an increased amount of safety.

5.2 Given instances where defendants have had repeated protection orders in multiple cases there was no support for making affidavits specific only to cases related to single or same incidents.

5.3 It was considered the full extent of the victims' situation should be considered by a Judge, including the victims' current safety, active support being received, state of fear and information from Programme providers related to programmes being undertaken.

[Discussion Document ref 1.3.2]

5.4 The proposal to allow the court to issue protection orders when sentencing an offender for a domestic violence related offence was supported.

5.5 However it was considered there needs to be a process to ensure the victim is informed and educated about the benefits of a protection order, and involved in the sentencing process. It was not considered that the victims' consent to an order should be necessary.

5.6 A special concern for the children of the offender/ respondent would be that access should be supervised until such time as a process or programme, such as the Parenting through Separation programme, is completed.

6. Children

[Discussion Document ref 1.4.1]

6.1 Concern was expressed that leaving decisions too open on contact issues can give rise to unintended negative consequences, especially for victims and children. Where there is contact, some monitoring mechanism for checking on the actual status of contact issues would be ideal.

[Discussion Document ref 1.4.2]

6.2 The principle of having Counsel for the child appointed for any domestic violence cases where children are affected was supported. It was observed that in reality there would be a shortage of lawyers available to be appointed for children in protection order proceedings.

[Discussion Document ref 1.4.3]

6.3 It was considered that a protection order should continue to cover the children when the protected person dies, until the children reach the age of 18.

[Discussion Document ref 1.4.4]

6.4 It was further considered that the protection order should continue for affected children up to the age of 20 and regardless of whether they continue to live at the home of the protected person or not.

6.5 Anyone with an active protection order against them should not have day-to-day care (custody) of children.

7. Programme

[Discussion Document ref 1.5.1]

7.1 Extending the period for a respondent to file a notice to object to attending a programme was supported. ANZASW members who have experience in facilitating stopping violence programmes commented that many respondents (male and female) do not read the fine print and do not file notice of objections in time – they often do not understand this right until it is explained to them.

7.2 Delaying attendance at programmes until a final order is made was not supported as this would be “too late”.

[Discussion Document ref 1.5.2]

7.3 It was considered that failure to attend a programme, particularly where no effort is made to contact the programme provider about absences, should result in a compulsory summons to a Family Court – be that a hearing or a matter to be handled by a Registrar.

[Discussion Document ref 1.5.3]

7.4 It was considered that enabling a respondent to attend further programmes would be positive.

7.5 The criteria for being eligible for and taking up more than one course should be left to be determined by the person/s involved based on their desire to change their behaviour and be aligned to the application process of the programme providers. There is on-the-ground evidence that a respondents' resistance over the first half of a programme inhibits learning. If they chose to attend a second programme it would likely reinforce and build on any learning gained first time around.

[Discussion Document ref 1.5.4]

7.6 It was considered that the principle of introducing a power under the Act to direct a respondent to attend a drug and alcohol or gambling addiction programme or receive mental health treatment should only proceed on the basis that respondents would follow the standard steps accorded to any client around client assessment and client agreement, and not proceed purely from information in the victim's affidavit.

7.7 Suggestions as to how to encourage respondents to attend such additional programmes included suggestions that would involve a meeting with the counsel for the child (for at least one session), or a session with a related professional, or through involvement in other programmes, such as the Parenting through Separation programme. It was considered that sessions focused on recognising the needs of the children, with a mix of both individual and group sessions (with other respondents) would increase the level of encouragement.

[Discussion Document ref 1.5.5 and 1.5.6]

7.8 The principle that programmes be available for "as long as it takes" was supported, particularly given the high incidence of long-lasting effects of extensive and traumatic abuse.

7.9 It was considered that the Family Court should provide victims with a point of access to a wider range of social services but that this would be ancillary to considering the financial burdens that act as barriers for most victims, from the burden of court costs associated with protection orders through to lack of financial support for travel, childcare and housing needs.

7.10 It was considered that there should be more publicity about programmes available for protected persons to attend, that programmes should be extended to children who used to be protected persons and that there should be more information on the affects of domestic violence on children.

[Discussion Document ref 1.5.7]

7.11 Support was expressed for the principle that if they so wish protected persons be able to be contacted to be informed about the respondent's progress on a programme and that this information extend beyond information purely about attendance.

7.12 It was suggested an opportunity could be provided for protected persons to identify issues that may not have been openly identified, such as identifying relapse triggers or "early warning signs", therefore potentially contributing to progress on issues such as relapse prevention and increased safety for all concerned.

8. Interface with the Care of Children Act 2004

8.1 In general it was noted that there is a low awareness of the relationship between the Acts and lack of awareness, generally, about the Care of Children Act.

[Discussion Document ref 2.1.1]

8.2 Including psychological abuse in the definition of violence in the Care of Children Act 2004 was strongly supported. Concern was expressed about the risk of joint care of children being granted despite issues of psychological abuse.

[Discussion Document ref 2.1.2]

8.3 It was considered important for the Court to retain and exercise the ability to obtain a report from a specialist in domestic violence where relevant to the case.

[Discussion Document ref 2.1.3]

8.4 Whether a report from a psychologist (or another professional) should be obtained before a party who has used violence against the other party is granted unsupervised contact should be a decision made by the Judge.

[Discussion Document ref 2.1.4]

8.5 Section 4 of the Care of Children Act should make specific reference to relocation as a result of domestic violence.

[Discussion Document ref 2.1.4]

8.6 There was strong support for the age of a child in the Domestic Violence Act to be raised to 18 so as to be consistent with the definition in the Care of Children Act and UNCROC.

9. Interface with the Family Proceedings Act 1980

[Discussion Document ref 2.2.1 and 2.2.2]

9.1 There was support for the point made (p.61) that where parties are referred to counselling or mediation in situations where allegations of domestic violence have occurred, there is a genuine risk of victims being "re-victimised".

9.2 The ANZASW understands that the use of family mediation (i.e. non-judicial mediation) by request or direction, and as an alternative to counselling, may increase subject to the passage of the Family Court Matters Bill due to be reported on by the Social Services Committee in April 2008.

9.3 Any situation where domestic violence has occurred to the extent where a protection order or orders have been issued and/ or may be currently in force, must be weighed as a significant factor in deciding whether to make a referral to a mediation conference, with the paramount principle being the safety of the protected persons.

10. Conclusion

10.1 Those making input to this submission acknowledged the ground breaking nature of the Domestic Violence Act 1995 and commended its inclusion of psychological abuse within the meaning of domestic violence.

10.2 The initial feedback gathered by ANZASW has indicated general support for the preliminary proposals put forward in the discussion document for the review of the Domestic Violence Act 1995 and related legislation.

10.3 However, unlike other Family Law legislation, the Domestic Violence Act lacks a set of overarching principles to be applied by the Courts and others exercising powers under the Act. It should also do more to extend its powers of protection to children.

10.4 The ANZASW notes that the discussion document released in December is being positioned as "part of the continuing focus on

reducing family violence in New Zealand" (Overview, page 6). Given the importance of that "continuing focus" to the social work profession the ANZASW was concerned that the discussion document did not more clearly identify the process upon which the statement is made that "most stakeholders support the current objectives and framework of the Act".

10.5 As with all similar consultation, it would have been helpful for the discussion document to be more explicit by listing out in full all of the stakeholders who have raised concerns about the operation of the Act and its provisions as referred to in the discussion document Overview (page 4). At minimum the discussion document should have listed which stakeholders were engaged in "preliminary consultation" (Overview, page 8). The ANZASW considers that more information should be made available publicly on both of those points, including the detail of any proposals made by consulted stakeholders that were not included in the discussion document.

10.6 As stated in the accompanying Cabinet Paper made available at the same time as the Review discussion document, there should be no complacency about "family violence" given intense public interest in "domestic violence" matters (an example of the now interchangeable use of the terms family violence and domestic violence).

10.7 As stated, with a greater profile this work should hopefully go some way toward building "some genuine consensus about the continued need for, and importance of, a framework which gives victims of domestic violence access to legal protection".

10.8 It was encouraging to read the acknowledgement contained in the Cabinet Paper that any changes to the legislative regime will have particular significance for women and that any future policy proposals to amend the Act will be analysed for gender implications. That analysis should include an assessment of the extreme pressures that vulnerable, often traumatised women are often put under when making decisions in regard to protection orders – from matters such as care of children through to property issues.

10.9 It was encouraging also to read that the Ministry of Justice intends to consult directly with disabled people and their families to ensure they have the opportunity to provide comment given "strong evidence internationally that show disabled people are more likely to be subjected to abuse and violence and find it difficult to escape".

10.10 We note points raised in the accompanying Cabinet Paper that any increase in the numbers of protection orders being issued will be felt across the Justice sector and that if this proposal proceeds the Police will need extra resources and training.

10.11 Further to that we note that extra resourcing should be a priority for areas such as extending childrens' right to have a lawyer to represent them, and to extend various opportunities for respondents and protected persons to attend programmes. It should be noted that extra costs will extend well beyond the Justice sector alone and should be reviewed across the board. In particular, dealing with domestic violence should not become a financial burden on victims.

10.12 On behalf of its members the ANZASW will continue to take a strong interest in the progress of the legislative amendments proposed by this Review.

10.13 The ANZASW has no objections to the release of information contained in this submission.

Selected References

Adams J, Giddings L, Koziol-McLain J, Davies E. Hospital responsiveness to Family violence:Enablers, Barriers and Sustainability, 2007 Apr; Report 5.Commissioned by the New Zealand Ministry of Health.

Centre for Asian Health Research and Evaluation (in review). *Improving particular communities responsiveness to family violence: combining research, programme development and evaluation.* Prepared for The Social Policy Evaluation and Research Committee, Ministry of Social Development. Auckland UniServices Limited, University of Auckland, 117pp.

Crichton-Hill, Y. (2007). Family violence and cultural context. *Social Work Now, 37*, 12-16.

Crichton-Hill, Y. (2001). Challenging ethnocentric explanations of domestic violence: Let us decide, then value our decisions - a Samoan response. *Trauma, Violence, & Abuse: A Review Journal, 2*(3), 203-214.

Davies E, Koziol-McLain J, Nicholls P, Stasiak K. *How to Do Things Better For Children And Young People Living WIth Domestic Violence - an exploratory qualitative study of mothers and young peoples' views of domestic violence interventions*, 2005 Oct; Report 2. Commissioned by the New Zealand Ministry of Health.

Giles J, Adamson C. *The Social Sanctioning of partner abuse: Perpetuating the message that partner abuse is acceptable in New Zealand.* Social Policy Journal of New Zealand 2005; (26), 97-116

Koziol-McLain J, Rameka M, Giddings L, Fyfe E, Gardiner J. *Partner violence prevelance among women attending a Maori Health provider clinic*. Australian and New Zealand Journal Of Public Health, 2007; 31 (2): 143-148.

Koziol-McLain J, Adams J, Davies E, Balzer R, Harvey S, Coben J H. *Hospital Responsiveness to Family Violence: 12 month Follow Up Evaluation,* 2006 Feb; Report 4. Commissioned by the New Zealand Ministry of Health.

Koziol-McLain J.,Giddings L.S.,Rameka M, Fyfe E. *Womens Perceptions of Partner Violence Screening in two Aotearoa New Zealand Settings: " What Took you So Long,"* 2005 Oct; Report 3. Commissioned by the New Zealand Ministry of Health.

Koziol-McLain J, Adams J, Neitzert E, et al. *Hospital Responsiveness to Family Violence: Baseline Audit Findings,* 2004 Nov; Report 1. Commissioned by the New Zealand Ministry of Health.

Koziol-McLain J, Gardiner J, Batty P, Rameka M, Fyfe E, Giddings L. *Prevalence of Intimate Partner Violence among Women Presenting to an Urban Adult and Paediatric Emergency Care Department.* New Zealand Medical Journal, 2004;117(1206):U1174.

Lammers M, Ritchie J, Roberston, N. *Women's Experience of Emotional Abuse in Intimate Relationships: A Qualitative Study*. Journal of Emotional Abuse (2005)

McMaster K, and Wells A (eds.) *Innovative Approaches to Stopping Family Violence* (2003) HMA, Lyttelton

Robertson N, Busch R, D'Souza R, Sheun FL, Anand R, Blazar R, Simpson A and paina D; *Living at the Cutting Edge: Women's Experiences of Protection Orders*, A report prepared by the University of Waikato for the Ministry of Women's Affairs, 2007.

Sachs C, Koziol-McLain J , Glass N, Webster D, Campbell JC. *A population-based survey assessing support for mandatory domestic violence reporting by healthcare personnel.* Women & Health, 2002;35(2/3):121-134.

Vallant S, Koziol-McLain J, Hynes B. Plunket Family Violence Evaluation Project, 2007 Jun; Report 6. Commissioned by the New Zealand Ministry of Health.

Key website: New Zealand Family Violence Clearinghouse, www.nzfvc.org.nz