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Waitakere Anti-Violence Essential Services

WAVES Trust

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**Committee Secretariat:
Social Services Committee**

Crimes Amendment Bill No. 2, 2011

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We wish to speak with the Committee about our submission

WAVES Trust is an interagency family violence network organisation. The membership is primarily government and non-government service providers who work in the area of family violence. There are also members who are not specifically family violence agencies but their work complements or supports efforts to reduce violence in Waitakere City.

We are committed to strengthening the work of those who educate and support victims of family violence and those who hold offenders accountable and support them to make positive changes to their behaviour. WAVES acts to support and resource all member agencies to practice to the highest standards of integrity and professional ethics.

WAVES Trust provides:

- Links to other organisations through the interagency network
- A networking forum to encourage and support statutory and community services to provide integrated and collaborative services to reduce family violence
- Community advocacy and representation on initiatives that target family violence
- Information about best practice in family violence intervention and support for the implementation of best practice

- Primary prevention, capacity building and education opportunities for those working to reduce family violence
- Contract management of interagency projects and contracts
- Access to current, relevant research
- Monitoring of community initiatives such as the Waitakere Family Violence Court
- An overview of information deficits and initiation of local research

WAVES Trust is a charitable trust. Governance is vested in the Board. There are four staff positions – a manager, two part-time coordinators, and an administrator.

We present this submission from the viewpoint of agencies working with victims and perpetrators of family violence and child abuse. With the support of Shane Henderson, from Waitakere Community Law Service we have consulted with Michelle Hazeldine, Child Advocate; Poto Williams, CEO Western Refuge Society; Paula Bold, Manager Waitakere Community Law Service; and SAFVPN. We have written this submission focusing the discussion on the needs of children but we support the inclusion of vulnerable adults in the same category.

Summary

The Bill has been introduced to ensure that children and vulnerable adults are adequately protected from assault, neglect, and ill-treatment and implement the Law Commission's recommendations in this area. WAVES Trust supports the intention of the Bill to strengthen and clarify children's and vulnerable adults' right to the protection of adults in their household. However, we are concerned that the current wording of the Bill presumes that it is always in victim(s) interests to prosecute household members who failed to adequately protect them from abuse, and that those adults always have the capacity to protect victims from abusers.

Local and international research tells us that abuse of children within the home often co-exists with intimate partner violence (IPV) and family violence (FV). These phenomena can result in significant power disparities among adults living in these homes, reducing some adults' capacity to protect children and producing responses that may not seem adequate to citizens unaffected by IPV/FV.

We suggest that the Bill's wording should be altered to recognise that factors within the family dynamic might diminish adults' capacity to protect children and others from abusers. In addition, we argue that purpose of any action taken against adults under the proposed new law should be to promote justice for the victims of abuse and that the best interests of other dependents in the family should be considered.

We have attempted to strike a balance in our submission between society's need to punish adults who are complicit in the harming of children and vulnerable people and the need to recognise that these victims' wellbeing and that of others in the family may be dependant upon an ongoing relationship with those family members.

Family Violence and Abuse

Aspects of this Bill related to the duty of adults to protect children and vulnerable people from harm are based upon UK legislation, namely section 5 of the 2004 Domestic Violence, Crime and Victims Act. The declared intention of this Act was to provide opportunities to prosecute family members where their silence meant that other charges could not proceed. In practice the law has more commonly been used to prosecute parents who have failed to protect children in cases where the perpetrator of abuse is known.¹ This trend suggests that the latter is likely to be the main type of prosecution under the New Zealand law if this Bill is passed.

Our research indicates that since enactment of the UK legislation at least five cases have been prosecuted. Whilst we are not in a position to critique these cases, some of the details available in the public arena raise questions about whether the New Zealand Bill should be modified to take account of adults' capacity to act. One UK case involved the prosecution of a family for their roles in failing to protect a vulnerable adult, leading to his murder in 2009. There do not appear to have been any concerns raised by this case. Of concern for this submission are the other four UK cases where young women were charged with familial homicide after their male partners killed their child.

The details of these four cases are remarkably similar in many respects. All four of the women were very young, having given birth in their teens or first year of their twenties, and each had only one child. Two of the children were tiny infants when they died, just six-weeks-old and three-months-old respectively, and were killed by their biological fathers. The other two children were older, 13 months and two years of age, and were killed by their mothers' new partners who had only recently entered the family home (around two months beforehand). In all the cases the prosecutions' case rested on the fact that the evidence of earlier, serious injuries to the children warranted concerns for their wellbeing if not their lives.

Of interest to our submission are the similarities between the two young women whose small babies were killed by their birth fathers. These women were particularly vulnerable to exploitation. Both were just 20 years old when they gave birth and were in relationships with much older men who, at their own trials, were categorised as having a history of domestic violence,² were manipulative and exploitative,³ and in one case had psychopathic traits.⁴ At each woman's sentencing the Judge acknowledged that her experience of the relationship had been of domination and abuse at the hands of her partner.⁵ Critics of the UK legislation have cited these cases as evidence that there should be an exemption from liability for victims of family violence.⁶ Whilst we do not offer an opinion on the cases themselves, we think it is valid to question whether young first time mothers with very young infants have the ability to recognise the dangers men

¹ Mark Drakeford and Ian Butler, 'Familial Homicide and Social Work', *British Journal of Social Work*, 40, 5, 2010, p. 1430.

² <http://www.voice-online.co.uk/content.php?show=8734>

³ <http://www.uk-war.com/2010/02/illegal-immigrant-killed-six-week-old.html>

⁴ The Telegraph, 20 February 2010, <http://www.telegraph.co.uk/news/uknews/crime/7272513/Dad-jailed-for-killing-six-week-old-daughter.html>

⁵ http://www.peterboroughtoday.co.uk/news/environment_2_17112/baby_leeya_trial_mum_who_allowed_her_baby_to_die_walks_free_1_142555; <http://www.newsshopper.co.uk/news/758214.print/>

⁶ See for example Drakeford and Butler, pp. 1421–2; <http://durhamlawreview.co.uk/article/home-made-apple-pie-and-allowing-children-die>

like these present to their infants or whether they and others like them have the capacity to safely extricate themselves and their child from the relationship. We would like to see any New Zealand legislation show some sensitivity to factors that diminish the capacity of individuals to act to protect children and other vulnerable people including, but not limited to, those living with family violence.

Family violence (FV) or intimate partner violence (IPV) is not uncommon in New Zealand. Research suggests that as many as six percent of ever-partnered Auckland women will have experienced physical or sexual violence at the hands of an intimate partner or former partner in the previous year.⁷ Abusers often deploy psychological, financial, and emotional abuse alongside physical and sexual assaults as strategies to gain power and control over intimate partners and other family members. Within the family, abusers frequently appropriate the power to construct and define reality for other family members to minimise their opportunities to resist the abusers' control or leave the relationship. It can be very difficult for victims to leave violent relationships, even for those who are well-resourced. Individuals who are very young, socially isolated, or unable to care for themselves are particularly vulnerable, and it can seem impossible for them to do anything other than attempt to appease their abuser.⁸

National and international literature show clear, well established relationships between child abuse and IPV/FV. Some 30% to 60% of the children resident in homes affected by IPV/FV will also experience physical or sexual violence from adults in the household.⁹ Family members' existence within FV/IPV-affected households is often a delicate balance between maintaining 'relative' safety for everyone and avoiding the risks of greater violence that might be caused by challenging the behaviour of the abuser(s) in the family. This situation can lead non-abusers to respond to threats against their children in ways that appear counter-productive or inadequate to outsiders. But it is well-known that in New Zealand, as elsewhere, leaving an abusive relationship can cause violence to escalate rather than abate. Nearly four in every five couple-related homicides between 2002 and 2006 occurred in the context of separation and/or custody disputes.¹⁰ Children can be affected in a number of ways. Additional to the trauma of losing one parent and the incarceration of the other, nearly half of the children of those involved in couple-related homicides were present or in the vicinity at the time of the homicide, some witnessed the event or found the body afterwards.¹¹ During the same period six of the 15 cases of filicide (child homicide not related to physical assault or discipline) occurred in the context of parental separation, where an abusive partner took the lives of his children in response to custody disputes or as revenge on the mother for leaving him.¹² Often such events are forecast by threats and warnings, leading the police to treat these as high

⁷ Janet Fanslow & Elizabeth Robinson, 'Violence Against Women in New Zealand: Prevalence and Health Consequences', *New Zealand Medical Journal*, 117, 1206, 2004, p. 5.

⁸ See for example Alison Towns, Peter Adams, 'Staying quiet or getting out: Some ideological dilemmas faced by women who experience violence from male partners', *British Journal of Social Psychology*, 48, 4, 2009, pp. 736–7.

⁹ J.L. Edleson et al, 'Assessing Child Exposure to Adult Domestic Violence', *Children and Youth Services Review*, 29, 2007, p. 964. See also J.L. Edleson, 'The Overlap Between Child Maltreatment and Woman Battering', *Violence Against Women*, 5, 2, 1999, pp. 134–54; Sara Bennett, Carolyn Coggan, Jacqui Fill, Mildred Lee, *An Evaluation of the Child Crisis Intervention Project*, University of Auckland, 2004, p. 24.

¹⁰ Jennifer Martin and Rhonda Pritchard, *Learning from Tragedy: Homicide Within Families in New Zealand, 2002–2006*, Wellington, 2010, pp. 34–5.

¹¹ *Ibid.*, p. 36.

¹² *Ibid.*, pp. 51–2.

risk indicators.¹³ For those living in families affected by FV/IPV on a daily basis, their ability to avoid risk of future harm is severely limited and sometimes staying and continuing to be abused is safer for everyone than leaving.

This Bill asks us to consider whether the public should decide if adults have acted reasonably to protect their dependants from the risk of future harm by drawing on the benefits of hindsight after harm has actually occurred. We believe that the Bill must recognise that there is a fundamental difference between complicity in abuse and failing to prevent abuse and should err on the side of punishing complicity. Our submission seeks to achieve legislation that holds adults accountable for not acting within their capacity to respond to real and tangible risks, but which is tempered by the recognition that there is no level playing field when measuring adults' capacity to act and in some cases their capacity may be diminished by forces such as FV/IPV.

Critics of the UK legislation have argued there should be a specific exemption for victims of FV/IPV. Although our submission is based upon the needs of IPV/FV families, we feel an exemption so specific would unnecessarily limit the reasons for considering whether diminished capacity is relevant. It would also create opportunities for some individuals to avoid taking responsibility for actual complicity.

Our submission seeks to impose a duty on the court to examine the context in which the abuse has occurred, taking into account the circumstances of the defendant and asking the jury to decide whether their actions were 'reasonable in the circumstances'. We envisage such circumstances might include the age and education of the defendant, any information about the perpetrator that is relevant to the defendant's ability to act independently, and the family circumstances — particularly whether it is in the interests of the victim or other dependents in the family that a prosecution is brought.

There is one aspect of the Bill that we do not agree with at all, which is the imposition of a duty on parents who are under the age of 18. We feel that this provision is inconsistent with the principles of the UN Convention on the Rights of the Child.

Our submission on each of the clauses in the Bill is outlined on the following page.

¹³ The police risk assessment tool contained in the 'PoIFVIR' lists threats to harm as one of the events with the highest impact on risk assessment and applies these to all parties including children.

Submission

Clause 4. WAVES Trust supports the definition of a ‘vulnerable adult’ presented in the Bill and the inclusion of vulnerable adults in the protections afforded by the following clauses.

Clause 5. We support the proposed amendments to enable prosecution of individuals who attempt sexual grooming of fictitious persons.

Clause 6. We support the changes to section 150A parts (1) and (2) with particular emphasis on the wording in part (2) ‘in the circumstances’, see our comments below in relation to the proposed section 195A.

We support the proposed changes to sections 151 and 152.

Clause 7. We support some of the proposed changes to section 195 as outlined below.

Section 195A (1):

- (a) we support this amendment
- (b) we propose amending the wording of this subsection to say:
‘fails to take reasonable steps *in the circumstances* to protect the victim from that risk’

We request the addition of another subsection to section 195A (1) that states the following:

S.195A (1) (c)

‘it is in the interests of justice for, and the continued wellbeing of, the victim or other dependents in the family to pursue prosecution under S.195A.’

We support the proposed changes to section 195A (2).

We **reject** the proposed exemptions (a) and (b) to section 195A (3) as we believe that children who are also parents do not have the same capacity to act as adults and this should be recognised by the law.

We support section 195A (4).

Clause 8. We do not offer an opinion about this clause.

We support the changes proposed in Part 2. of the Bill.

We thank you for the opportunity to submit on this piece of legislation and look forwarding to speaking with you about our submission if the opportunity arises.

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