



waves

Waitakere Anti-Violence Essential Services

WAVES Trust

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**Committee Secretariat:
Justice and Electoral Committee**

Victims of Crime Reform Bill, 2011

Submitted by:

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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.

We are committed to strengthening the work of those who support and inform 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:

- A networking forum to encourage and support statutory and community services to provide integrated and collaborative services to reduce family violence
- Links to other organisations through the interagency network
- 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, as well as one contracted part-time Project Leader.

We present this submission from the viewpoint of agencies working with victims and perpetrators of family violence and child abuse. Our submission is informed by consultation meetings held in 2009 with agencies in our network which discussed the proposed Review document.

Summary

The Bill has been introduced to enhance victims' rights and roles within criminal justice processes. WAVES Trust supports the general intention of the Bill to ensure greater clarity and certainty around criminal court processes for victims, to ensure that victims are adequately informed of developments in relation to offenders that might affect them, and to enable victims to feel their voices have been heard by the court.

We do raise three concerns about the wording of the Bill and request minor amendments to ensure that all victims are treated fairly in relation to:

1. the United Nations Convention on the Rights of the Child,
2. robust restorative justice processes,
3. their ability to nominate persons to read victim impact statements to the court.

We note that not all aspects of the 2009 Review of Victims' Rights have been translated into the Bill. This is a shame. We want to draw attention to the need for the Ministries of Justice and Courts to collaborate with agencies involved with the Community Victims Service. Whilst we applaud the initiation of a Ministry Code for Victims, we argue that this should not be seen as a replacement of good relationships between Court staff and NGO-based victim advocates.

Submission

WAVES Trust supports the general intention of the Bill to ensure greater clarity and certainty around criminal court processes for victims, to ensure that victims are adequately informed of developments in relation to offenders that might affect them, and to enable victims to feel their voices have been heard by the court. We do, however, have concerns about three areas of the Bill that we would like to see amended:

1. Age of a young person,
2. Restorative justice providers,
3. Person able to read victim impact statements.

Age of young person:

Section 4 (1) of the 2002 Victims' Rights Act (VR Act) provides the definition of a **young person** as: 'a boy or girl of or over the age of 14 years but under 17 years; but does not include a person who is or has been married or in a civil union.' WAVES Trust suggests that this section should be amended to meet the terms of the United Nation's Convention on the Rights of the Child which categorises a child or young person as under the age of 18 without regard to their marital status. WAVES does not believe that it is appropriate for any NZ legislation to use marital status to exclude those aged under 18 years from the benefits of being considered a young person. Therefore we suggest that the Victims of Crime Reform Bill should include an amendment to Section 4(1) of the VR Act as follows:

'young person means a boy or girl of or over the age of 14 years but under 18 years.'
(deleting all references to marital status)

Restorative Justice Providers:

We note from submissions made to the 2009 victims' rights review that there were concerns expressed about the suitability of restorative justice processes for victims of family violence.¹ However, recent research suggests that there is some demand for these processes from this quarter and that robust processes focusing on safety and power relations can mitigate some of the areas of concern.² We are heartened to hear that the Ministry of Justice now requires restorative justice meetings be delivered by accredited facilitators using robust assessments of suitability and safety before any such conference proceeds.³ It is our view that the current procedures should be the minimum standard for the delivery of restorative justice processes now and into the future, given that such meetings are initiated in response to criminal offending.

¹ See for example submissions made by WAVES Trust, SAFTINET, ANZASW, Victim Support.

² Anne Hayden, 'Why Rock the Boat? Non-Reporting of Intimate Partner Violence', PhD Thesis, Auckland University of Technology, 2010, pp. 228–34.

³ Thanks to Western Refuge for this information.

WAVES supports the intention of the Bill to require court staff make available information on restorative justice proceedings to victims at their request and make referrals to a qualified person. However, we are concerned that the Bill's wording of 'suitable person' does not reflect the robust standards of delivery necessary for such proceedings. We suggest the following changes to the Bill:

New Section 9(1) We approve the proposed changes

Section 9(2) We suggest that 'suitable person' be amended to 'accredited person' to ensure that referrals are only made to those accredited by the Ministry of Justice to offer this service.

Persons able to read Victim Impact Statements

The amendment to Section 22 (1) (c) (ii) states that a victim impact statement can be read to the court by a person nominated by the victim who is not 'an accused or offender ... [of] another offence arising from the same incident or series of incidents as the offence' in question.

At WAVES Trust we have concerns that this sub-section is unnecessarily restrictive and fails to acknowledge the complex nature of family violence offending. For example, it is not uncommon for household members to intervene to protect victims during assaults or to retaliate against offenders afterwards. If the police attend such situations a dual arrest may result and the victim's protector may be charged with an offence. We feel that it may sometimes be appropriate for victims to nominate their protector to read their victim impact statement and legislation should allow the court some discretion to approve the victim's request. Our suggested amendment to this section of the Bill is to reword subsection 22(1)(c) as follows:

22(1)(c) a person nominated by the victim, not being an accused or offender in relation to—

- (i) the offence; or
- (ii) another offence arising from the same incident or series of incidents as the offence unless permission is granted by a judicial officer having duly considered the circumstances of the offending in question.

Closing Comments

The Ministry's intention to bring victims and their rights into sharper focus within criminal court processes is welcomed by the Family Violence sector. WAVES Trust supports the measures in this Bill that improve victims' access to information affecting them, improving their safety, and ensuring that their voices are heard within criminal court processes.

In addition we want to take the opportunity to remind government that the Review of Victims' Rights had a wider scope than the issues addressed in this Bill. We are aware that submissions to that Review included some in support of the Community Victims Service and the role of independent victim advocates in court. The Ministry's reforms aim to take better care of victims in court. It is our view that these efforts will be enhanced if the Ministry of Justice actively engages with NGOs and supports the provision of wider social work services to victims of crime. Therefore these reforms should include the Ministry fostering within the court and its staff a positive view of independent victim advocates and developing good communication pathways between court staff and NGOs.

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