

WAVES Trust Notes for Select Committee: Family Court Proceedings Reform Bill

Introduction

WAVES Trust is a Family Violence Network organisation representing over 55 agencies and services including both statutory agencies and non-government organisations working with victims, perpetrators and their children in Waitakere.

WAVES has had considerable involvement with the Waitakere District Court since our organisation's beginnings as victim advocacy service in the District Court in 1993. WAVES's model provided the basis for Victim Advisers in the District Court in 2000, and in 2004 the MOU was signed between the Ministry of Justice and WAVES enabling Community Victims' Service to advocate on victims behalf in the criminal jurisdiction of the Waitakere District Court. In 2005 WAVES supported the development of the Waitakere Family Violence Court protocols.

WAVES Trust has always had a District Court Judge as its chair, the current chair is Judge David Mather, Family Violence Court Judge and former Family Court Judge.

WAVES has invested considerable time and energy into our submission, which we have developed in consultation with professionals and service providers from Waitakere and wider Auckland community. Those involved included the WAVES network, concerned Waitakere community members, Family Court counsellors and legal professions, coordinators from other Family Violence Networks, and representatives from National organisations. In addition to holding public meetings attended by over 40 individuals we have:

- Communicated with 207 individuals by email during the process of constructing the submission.
- Our webpage giving information about the Bill, draft submission and helpful links has had 254 views by 188 unique visitors since the new website was launched on 23 November 2012.

We wish to emphasise to the committee that driving our submission is a choir of voices resonating with the collective knowledge and experience of many different professionals and providers who work with individuals and families who use the Family Court. Our written submission has assessed the clauses in this Bill in terms of the ways that people move through the court system. For this oral presentation our key question is:

'how will this new system (indicated by the Bill) work to produce outcomes for children and families affected by family violence that are as good as or better than those we are already getting?'

We will raise some points about the Bill which we believe need your careful consideration in order to ensure that the outcomes from this legislation will enhance the government's commitment to a comprehensive approach to reducing violence against women and girls (as

presented to the United Nations today by the Minister of Women's Affairs Jo Goodhew) and to intervening earlier and more effectively to support vulnerable children (as proposed by the Minister of Social Development Paula Bennett's White Paper for Vulnerable Children).

Our recommendations for definitions

The Bill and the Care of Children Act repeatedly describe the requirement to assess children's safety. There is a presumption in the legislation that we all understand what 'safety' means but there is no definition given to ensure consistency in approach. We suggest clarifying the definition of safety by introducing a definition into clause 6 of the Bill. To support the Select Committee we have suggested the definition should read:

Clause 6:

'Safety of a child means that reasonable steps are taken or in place to ensure a child is protected from harm or exposure to harmful experiences including those referenced in Section 14 of the Children, Young Persons and Their Families Act 1989 and Section 3 of the Domestic Violence Act 1995.'

We have also made a similar suggestion in relation to clause 14. Given the emphasis in the Bill on widening the definition of domestic violence we suggest that the Care of Children act definition of an allegation of violence should be consistent with the DVA definition of violence:

Clause 14:

'allegation of violence, in relation to a party to the proceedings, means an allegation that that party has ~~physically or sexually abused~~ committed acts of violence as defined in Section 3 of the Domestic Violence Act 1995'

We support the clauses in the Bill that allow the provision of joint programmes (with some amendments), enable programme providers to transfer protection order respondents between programmes, and extend the penalty for breaching a protection order.

Other recommendations

A number of changes promoted in the Bill were not a feature of the Family Court Review consultation and have not had sufficient consultation to assess their value or impact on the goals of reducing violence against women and better supporting vulnerable children. We feel that a 10 week consultation period over the Christmas break is insufficient to adequately assess the impact of such sweeping changes to the family law system as the removal of lawyers from some family court hearings, removing of requirement on the court

to assess the safety of children before granting unsupervised contact with a violent person, for example.

Contributors to our submission point out that the Bill in its current form presents a major reduction in the court's 'de-facto' family violence screening processes (legal services and counselling) without presenting any information about how the gap in family violence screening will be addressed under the new system, if at all. We ask the committee when it reads our clause by clause submission to consider how will this Bill enable the court to identify and respond better to victims of family violence and their children? And how will it contribute to the government priorities of reducing violence towards women and children, and holding perpetrators of abuse to account?

Specific clauses we direct the committee's attention to (*suggest opportunity here for committee to ask specific questions rather than read it all out*)

We have made recommendations to alter or delete certain clauses because we believe these actions will enhance the outcomes from the Bill when it is passed.

We were concerned some clauses could operate to diminish the role of the court in ensuring children's safety where there is violence in the family and might, if passed in their current form, increase the risks to some children and work against achieving the goals of the White Paper for Vulnerable Children. These clauses are:

- Clause 4 reduces the scope of the principle of the welfare and best interests of children by removing reference to wider family and whanau relationships
- Clause 5 proposes reduction in access to lawyer for child and legal representation for parties without adequate investigation into whether there are family violence issues or care and protection issues for children
- Clause 12 imposes a duty on the court to finalise interim orders without requiring that family violence or care and protection concerns are addressed/finalised first
- Clause 14
 - Enables court to change orders without safeguards against the potential for coercion to agree with a request for changes
 - Repeals section 60-61 requiring the court not grant unsupervised contact with children when allegations of violence have been made
- Clause 27 enables the court to refuse repeat applications but does not require the court to look into allegations of violence affecting children before making such decisions
- Clause 76 encourages court to review arrangements for children in care on papers without a hearing

We suggest that some clauses may also act as a disincentive to family violence victims either initiating or completing court proceedings in particular clauses 5, 24, 60 and 66, leaving

victims (most of whom are women) and their children vulnerable to on-going abuse and denying them the right to protection by the court:

- Clause 5 removes the right to legal representation and therefore legal aid, meaning that issues of violence under the DVA may not be presented to court
- Clause 24 requires the court to impose report-writing costs on parties to a COCA dispute with relief only given in cases of severe hardship
- Clause 60 requires applicants to provide an affidavit alleging domestic violence in order to be exempted from having to attend FDR but it appears there will be no legal aid for this service
- Clause 66 requires parties to share the cost of FDR but provides insufficient exit points for parties affected by violence

In relation to holding perpetrators accountable, we recommend removing or altering clauses 5, 40, 43, 45, and 53 which we fear will produce the opposite outcome:

- Clause 5 enables family violence perpetrators to use self-representation as a way of further victimising their families
- Clause 40 wording change reduces the imperative on the court to refer respondents to programmes
- Clause 43 is inadequately worded to require that programme providers notify the court when a programme concludes not when the respondent has concluded the programme
- Clause 45 removes most requirements on providers to keep court updated as to respondents' progress
- Clause 53 removes right to appoint a lawyer for children and other parties under the DVA except for those who are incapable of acting for themselves (disabled, elderly etc)

Closing

We fear the overall impact of the Bill in its current form will be to reduce the court's ability to perform its important protective functions for children and vulnerable people including victims of family violence and the suggested new title for the Family Court Act minimises these protective functions under the label of 'family disputes', which creates the impression that Bill is problem-focused rather than solution-focused.

We want close by reminding the committee that the changes implemented by it must not save money at the expense of best practice within the court and wider family law environments. And that any legislative changes emerging from this Bill must be consistent with the Government's commitment to reducing violence against women and intervening more effectively for vulnerable children, and holding perpetrators of violence to account.

Endorsements

In relation to the right to legal representation we support the submissions of:

- Christchurch Family Court Judges (Judge Robert Murfitt)
- National Network of Stopping Violence Services
- Judith Surgenor and Barry Hayes, Waitakere Barristers
- Salvation Army

In relation to the need for the Court to be able to protect children and requirement to hear their views:

- Office of the Children's Commissioner
- Barnardos
- Every Child Counts
- Families Commission

If you have any questions please contact:

Peter Toews
Manager, WAVES Trust
PO Box 12 1450
Henderson, 0650
Email: peter@waves.org.nz
Ph: 09 838 4656

This script will be available on the WAVES Trust website, www.waves.org.nz