



Family and Whanau Violence Legislation Bill

In September 2016 Justice Minister Amy Adams announced decisions about the Government's response to family violence. The Family and Whanau Legislation bill implements those decisions. The Bill has to go through a number of stages before becoming legislation. It has had its first reading in the House (parliament) and now the public are able to make submissions (share their ideas on it). The submissions need to be received by **24 May 2016**. The submissions get read by a select committee. The group on the select committee is called the Justice and Electoral Committee. The people in that committee are listed here <https://www.parliament.nz/en/pb/sc/scl/justice-and-electoral/tab/mp>

The said aim of the bill is

“aimed at breaking the pattern of family violence and reducing the harm and cost inflicted on those who suffer violence and wider New Zealand society, including increasing access to risk and needs assessments and services, more accurately recording family violence offending in the criminal justice system, enabling the introduction of codes of practice, and new information sharing provisions.”

If passed the Bill will come into effect July 2018.

There is no discussion document available from Ministry of Justice to help explain the Bill or its likely impact. It is difficult reading scanning through all of the proposed changes and the legal terminology.

You can read the Bill online here

<http://www.legislation.govt.nz/bill/government/2017/0247/latest/DLM7159322.html?src=qs>

You can make an online submission by clicking here

<https://www.parliament.nz/en/ECommitteeSubmission/69feb170-ee5c-4f2a-aff1-a75300f24f4b/CreateSubmission>

https://www.parliament.nz/en/pb/sc/make-a-submission/document/51SCJE_SCF_BILL_72556/family-and-wh%C4%81nau-violence-legislation-bill

Please remember that your submissions will be public.

- **Submissions are publicly released and published to the Parliament website.** Only your name or organisation's name is required on a submission. Please keep your contact details separate, as if they are included on the submission they will become publicly available when the submission is released.



- *If you wish to include information of a private or personal nature in your submission you should discuss this with the clerk of the committee before submitting.*
- *If you wish to speak to your submission, please state this clearly.*

The committee will make a decision if it wants to hear oral submissions (in person or by phone).

Please note if your submission contains any serious claims about a government agency then your submission will be shared with the agency concerned under the principle of natural justice. If you want to speak to your submission via phone then officials from that agency will also need to be present in the room when you are on the phone according to the select committee's natural justice protocols.

If you want to speak to the select committee in confidence then your submission can't contain any serious claims about a government agency.

A submission from Backbone

The Backbone Collective will be making a submission based on the findings from our Family Court survey and Family Court Watchdog Report. We will put our submission on the website and Facebook when we have done it but as the timeframe is quite tight we might not get it finished until close to the deadline. If you do not want to make your own submission but would like to share your comments with us we can include them anonymously in our submission. Please keep your responses to no more than 400 words if possible and email to deb@backbone.org.nz.

You can follow this link to read the Q and A about the Bill here [Q&A on the Bill](#)

For an overview of all the changes and new things proposed in the Bill please read the explanatory note and clause by clause analysis here

<http://www.legislation.govt.nz/bill/government/2017/0247/latest/whole.html#DLM7159335>

The following information is a summary of some of the Family and Whanau Legislation Bill written by Backbone based on what we see as important aspects for your interest and information.

This is not a detailed summary. We have only focused on some of the changes we think have a potentially negative impact on women and their children. There are some positive things in the bill (new strangulation charge, and prosecuting for forced marriages) but overall our submission will be calling for a complete overhaul of the Family Court rather than relying on amending legislation in an attempt to improve safety for women and children.

Women have been telling us that the main issues with the Family Court are not going to be fixed by legislative changes. The problems they experience are because of the interpretation, implementation



and decision making that is happening in the court right now. We think the Government should be listening to the voices of the women who use the system. Our submission will be giving them Backbone member's ideas about how the Family Court should respond when women and their children experience violence and abuse.

Lack of explanation about the Bill and time limits impact on women's right to be heard

The Backbone Collective is disappointed that a discussion document did not come out at the same time as the proposed Bill. It is difficult to read through the Bill (even using the explanatory notes and clause by clause analysis) and make sense of the impact of the proposed changes. We believe that Ministry of Justice has failed women's right to be heard by not producing a discussion document which would support them in making comprehensive submissions.

The Bill had its first reading on 11 April 2017 before being referred to the Select Committee. This has meant that the time for submissions is only a little over a month. Backbone does not feel that this gives women sufficient time to read, understand and write a submission on the bill.

Language and terms

The Domestic Violence Act 1995 is being reformed by the Family and Whanau Legislation Bill.

The new bill proposes changing the name of the Domestic Violence Act to 'The Family and Whanau Violence Act 1995'.

The Domestic Violence Act covered those in a '**domestic relationship**' which has now been replaced with the term '**family relationship**' but the relationships covered have not changed and still include

*a person is in a **domestic relationship** with another person if the person—*

(a) is a spouse or partner of the other person; or

(b) is a family member of the other person; or

(c) ordinarily shares a household with the other person; or

(d) has a close personal relationship with the other person

Backbone is concerned that the term 'family relationship' has a particular meaning for women which may result in many women not understanding that the Act will cover them. It implies a relationship that happens in a 'family' (mother, father, children, extended family). We wonder why the term 'whanau' was left out. It seems unusual to include family and whanau in the title of the bill but not include whanau in the definition of the types of relationships covered by it? Whanau has much wider meaning for Maori women than 'family' and we do not see that this has been built into the new bill. We are also concerned that women in dating relationships (particularly younger women) or women without children will no longer feel the Act covers them.



The Family and Whanau Legislation bill replaces the term ‘domestic violence’ with ‘family violence’ and has added some more definition to what ‘family violence’ includes (section 3). It is worth reading over the definition. The section on psychological abuse has more examples added and includes reference to coercive control and cumulative harm. Causing harm to pets has also been included.

Purpose and Principles

Two new sections have been added which outline the purpose and principles of the Act. The sections outline that ‘family violence’ is not acceptable and the purpose of the act is to stop it and that those using the Act should be guided by the new principles of the Act. The principles are worth reading and set out that those in authority must place victim safety – including children – at the forefront of their decision making, must recognise that ‘family violence’ is often a pattern of harm that results in cumulative harm, must be culturally response and decisions makers should collaborate and that access to the court should be speedy and inexpensive.

No contact order except in special conditions outlined in section 20B of the Bill

Section 20B sets out the conditions when a no contact order does not apply. Backbone advises women to read this section. We understand that it is this section which is being used by Judges to order contact of children with abusive fathers even when a Protection Order has been granted and in doing so places father’s right to contact over children’s right to safety and protection. Section 20 B makes it possible for the court to put contact orders above the no contact provision and also mean that Child Youth and Family Proceedings can force women into contact with the person they have a Protection Order against in a FGC (see below – our emphasis added).

20B Standard no-contact condition: other exceptions

(1) Contact by the respondent with the protected person is **authorised**, and not in breach of the standard no-contact condition, if the contact is—



(a) reasonably necessary in any emergency; or
 (b) permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of,—
 (i) any child (within the meaning of section 8 of the Care of Children Act 2004); or
 (ii) any child or young person (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or
 (c) permitted under any special condition of the protection order; or
 (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or
 (e) necessary to attend any court proceeding, or to attend any other matter that is associated with a court proceeding and that is a matter that the parties to the court proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).

(2) The contact authorised by **subsection (1)** may be contact made—
 (a) if the protected person is present on or in any land or building; and
 (b) by or after the respondent entering or remaining on or in that land or building.

(3) **Subsection (2)** does not limit **subsection (1)**.

In addition, section 124E (2A) of the Police Safety Orders (point 58 of amendments) states that in certain conditions the no contact part of PSOs is overridden by existing child contact/care orders.

Backbone will be providing a full response to this section of the Bill and demanding that Protection Orders should supersede parenting orders made for children.

Part 6B – 124 Information requests, use, and disclosure, and service delivery codes of practice

Part 6 A sets out new rules around government agencies, non-government agencies, health practitioners and schools/early child hood centres sharing and releasing information about victims or perpetrators of 'family violence'. While information sharing to inform risk assessment may be considered good practice – **it is concerning that nowhere in this section is it mentioned that women should be made aware that their information has been shared or with which agencies, or asking their permission to do so.** Considering that information is intended to be shared with Government Ministries like Child Youth and Family (now the Ministry for Vulnerable Children), Work and Income and Housing NZ we think women should have some control over this process.

There is currently no shared risk assessment in operation among government ministries/agencies or non-government agencies so the rationale for information sharing is not sound. It is of concern that some non-government agencies will have/and already do have access to women's information but women might not want that agency to have that information at all (church groups, cultural based



services, groups who are not specialist domestic violence providers, groups associated with their ex-partner).

Care of Children Act changes – section 5 A. (Sub part 2 Care of Children Act)

There is a new clause added into Care of Children Act which means that when considering guardianship, the Court must still consider if there is a Protection Order in place and the reasons the Judge had for making that order. It also now includes direction that convictions for Breaches of a Protection Order or family violence offences and any safety concerns advised by an assessor or service provider must also be considered. Backbone suggests women read this section in detail and think about the implications of it – will it make a difference in your case? If not why not?

Amendment of Crimes Act 1961

Section 194A Assault on person in family relationship

Backbone is concerned that the insertion of the new Assault on Person in a family relationship charge will impact more heavily on women than men. Currently men are most often charged with Male Assault Female charge (MAF) – which recognises that men’s strength etc. is likely to have a bigger impact when used against a woman and thereby result in more harm and injury. Currently if a man is charged with MAF he is liable for imprisonment term of up to **2 years**. If he is now convicted with Assault on person in family relationship the longest term of imprisonment remains at **2 years**.

In comparison women who are currently charged with family violence assaults are charged with Common Assault – the maximum term being **1 year** for these offences. If women are charged under the new umbrella charge of family relationship the maximum term increases to **2 years**. The new charge makes the law gender neutral thereby ignoring the difference in intent, harm and injury likely when men assault women.

It is also of concern that Backbone knows that NZ Police are using dual arrest against women who are ordinarily the primary victims in the relationship. We have heard from women who are arrested for assaults on their partner when they are acting in self-defense, are retaliatory or are wrongfully accused by their violent partner. Therefore the new charge will impact more heavily and negatively on women experiencing violence and abuse.