

25 September 2003

SUBMISSION ON THE CARE OF CHILDREN BILL

To the Justice and Electoral Select Committee

Introduction

- 1 This submission is by the Wellington Women Lawyers Association, PO Box 118, Wellington.
- 2 We do not wish to appear before the Committee to speak to our submissions.
- 3 WWLA has a membership of approximately 200 women lawyers who work throughout the Wellington region. One of the objects of the WWLA is to work for the reform of the law and its administration, and for the advancement of social policy, in order to promote and protect the interests of women.
- 4 Please note that these submissions do not necessarily reflect the views of all members of WWLA.

Comments

- 5 We first note that it is important for the Committee to reflect upon the provisions of the Convention on the Rights of the Child (UNCROC) as well as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) when considering this Bill. (Copies of both Conventions are attached.) The articles in UNCROC that are particularly relevant are: articles 3, 4, 5 and 12. The articles in CEDAW that are particularly relevant are: articles 3, 16(1)(d), 16(1)(e), and 16(1)(f).
- 6 We support the policy objectives of the Bill, in particular the need for the law relating to children to reflect the diversity of family arrangements that now exist in New Zealand, subject to the suggested amendments discussed below.
- 7 We wish to make the following comments:

Clause 7

We note that the definition of "child" in the Bill differs from that contained in the Domestic Violence Act 1995. The Bill defines a child as being a person under the age of 18 years. This is consistent with UNCROC. However, the Domestic Violence Act defines a child as a person under 17 years. The Committee needs to consider whether the definitions in both Acts should be consistent and if so, either change this clause, or make a consequential amendment to the Domestic violence Act.

Clause 9(1)

We support the inclusion of same-sex couples in the definition of defacto relationship. This is consistent with the requirements of the Human Rights Act 1993 and recognises the diversity of families who are raising children in New Zealand.

Clause 17

We support the policy behind clause 17(2) though we consider there are problems with the wording as it presently stands in the Bill. The phrase "father of a child" is a gender-loaded phrase and may not appropriately reflect how lesbian women, who are also a parent of their partner's child, identify themselves in relation to the child.

Clause 23

We support the prohibition on step parents not being appointed guardians where the step parent has been a respondent in proceedings under the Domestic Violence Act 1995 or has been convicted of an offence involving violence to a child. The Committee should also consider extending this provision to prohibiting a step parent being appointed a guardian if that person has been convicted of any offence involving violence or any sexual offence unless the court is satisfied that the appointment is in the best interests of the child, in particular that the appointment will not compromise the safety of the child.

Clause 21(2)

This clause needs to be qualified to allow one parent to appoint another guardian of a child where the other parent/guardian is not available (for example, cannot be found with reasonable diligence) to consent to the appointment.

Clause 35

This clause should also allow 16 and 17 year olds to consent to (or refuse) use of medication or other medical treatment which are not necessarily included in the term "medical procedure" contained in the clause. This could be qualified by words such as: "following advice (including an explanation of benefits and risks, if any) by a person professionally qualified to provide such advice".

Clause 37

This clause allows a female of child bearing age to herself consent to an abortion without requiring the consent of her parents and/or guardians. This clause should also include the use of contraception because if a child or young woman is physically able to become pregnant she should, in our view, be allowed to control her own fertility including being permitted at law to consent to (or refuse) the use of contraception. Article 16(1)(e) of CEDAW is relevant. It recognises the rights of women to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

Thus two sub-clauses should be added to clause 37 as follows:

"(c) a consent to the use of medication or a medical procedure (including the use of any device) for the purpose of contraception, following advice (including an explanation of the benefits and risks, if any) by a person professionally qualified to provide such advice; and

(d) a refusal to consent to the use of any medication or medical procedure (including the use of any device) for the purpose of contraception."

Clause 46

We support parenting orders being subject to conditions to ensure the safety of children in circumstances where a person has used violence against a child or other parent.

Clause 49

We support the court being able to make interim orders about day to day care and contact with children when dealing with proceedings under the Domestic Violence Act 1995.

Clause 52

The Committee should consider whether to extend the definition of violence to include psychological abuse. This recognises the harm that can result from psychological abuse and will allow the court to take account of this in appropriate cases.

Clause 56(3)(b)

We support provision of publicly funded supervised contact with children.

Clauses 57-69

We are concerned that the enforcement provisions relating to parenting orders (including payment of a bond) could be used by violent parties against parents who take steps contrary to a parenting order because they feel it is necessary to do so to keep a child safe. In particular, in our view, neither payment of a bond (under clause 62) nor the costs of contravening a parenting order (payable under clause 63) should be able to be ordered where contravention of a parenting order arose because of a belief that compliance with the order could mean that a child's safety would be endangered. In this situation a parent should not have to choose between their child's safety and a possible financial penalty which would particularly affect people of limited means.

Clause 129

This clause needs to include a reference to the Judge being required to take into account the safety of any person who may attend a hearing.