

Domestic Violence – Victims Protection Bill

Submission from the Office of the Children’s Commissioner 28 April 2017

Children are significantly impacted by family violence. They can be direct and indirect victims, witnesses, and even perpetrators. It is therefore important that the impact of domestic violence on children – and the impact of any potential law change – is directly considered.

Children have the right under Article 19 of the UN Convention on the Rights of the Child to be protected from all forms of abuse and neglect, and to access services that help them to recover from the impact of such abuse. It is therefore important that domestic violence legislation is supportive of children’s rights and needs.

The Office of the Children’s Commissioner has considered the Domestic Violence – Victims Protection Bill from a child-centred perspective, and supports its passage into law. We understand the intent of this Bill is to support victims of domestic violence to stay in paid employment and to address workplace-based discrimination that may be experienced by victims of domestic violence.

We support this Bill as it has significant potential benefit for young people who are in permanent employment and children and young people whose parents or caregivers are in permanent employment who are directly and indirectly affected by family violence.

OUR CHILD-CENTRED ANALYSIS OF THE BILL

We have assessed the potential impact on children of the proposed law changes based on our child-centred framework. We have summarised our response to three key questions here.

1. What impact will the decision (or lack of decision) have on children?

This should include consideration of how the decision might affect children both directly and indirectly, in the context of their home, family and community, as well

as potential impacts on their health, education, and provision of basic needs.

A large number of children are affected by family violence and thus potentially impacted by the Bill. Every year, approximately 150,000 notifications are made to Child, Youth and Family (now Oranga Tamariki) when someone is concerned about a child’s safety or exposure to abuse or neglect. 36 percent of these (or around 16,000) result in substantiated findings of abuse and neglect. In addition, Police make about 60,000 family violence referrals to Oranga Tamariki each year at which children have been present at a family violence incident. These are referred to community agencies for assessment and further action. The 2012 Youth ‘12 survey of the wellbeing of secondary school students reported that 7 percent of participants had witnessed adults at home hitting or physically hurting each other, and 14 percent had witnessed adults at home hitting or physically hurting children.¹

The direct and indirect impact of this violence on children is significant, ranging from physical injury (and in the worst cases, death) to psychological trauma. Depending on the severity and recurrence of the exposure, these impacts can be life-long.

This Bill has the potential to mitigate some of the negative impacts on children of domestic and violence in a number of ways:

- For young people who are victims of domestic violence who are also

¹ These figures and others are summarised in the Family Violence Clearinghouse’s 2016 Data Summary of Children and Youth affected by Family Violence, available from: <https://nzfvc.org.nz/family-violence-statistics#statistics-at-a-glance>

The OCC represents **1.1 million** people in Aotearoa New Zealand under the age of 18, who make up 24 percent of the total population.

We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

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employed, the Bill's provisions have the potential to directly benefit them by making it easier for them to remain in employment while navigating the impact of that violence.

- The Bill makes it easier for a parent (usually a mother) who is the victim of domestic violence to retain employment. This is likely to have significant benefits for her children in terms of security of income, and the benefits that are known to accrue to children as a result of having a parent in stable employment.
- When domestic violence disrupts a child's life (for example necessitating a move to a new home or school), the Bill allows for a parent to take leave to assist their child to settle into the new arrangement, for example by accompanying them on school visits, or ensuring that they have a comfortable and secure home environment set up as quickly as possible.
- The Bill allows for a parent or caregiver who has been the victim of domestic violence to have time away from work to access professional care and support (for example counselling or parenting assistance) that will help them to care for their children as the family recovers from the violence.
- By making it easier to retain employment and financial security, the Bill may in some cases make it easier for victims of domestic violence to leave abusive relationships and permanently remove their children from potentially dangerous and harmful situations.
- Depending on the length and severity of the exposure, children and young people who have experienced or witnessed family violence are likely to have higher needs for services and support (such as counselling or behaviour management programmes). By providing for their parent or caregiver to take paid leave to deal with the effects of domestic violence, the Bill could allow for these needs to be more comprehensively met with the support of their parent.

One potential negative impact of the Bill on children that will need to be carefully considered is the privacy risk to a child or

young person if they are named on a Domestic Violence Document that is shared with an employer. Children have the right not to have their privacy arbitrarily impinged on under Article 16 of the UN Convention on the Rights of the Child.

2. Will the decision have differential impacts on different groups of children?

Consideration of this question should include (but not be limited to) the potential differential impacts of a decision on Maori, Pasifika, refugee and migrant children, children from urban and rural areas, children with disabilities, younger and older children, LGBTI children, and children in the care and protection system.

The Bill is likely to particularly benefit those groups of children who are more likely to experience or be exposed to domestic violence. A 2013 report that disaggregated New Zealand's family violence statistics by ethnicity found a significantly increased risk for Māori and Pacific Island people, meaning children from these groups are particularly likely to experience benefits if this Bill is passed.² Likewise, children who have had contact with the care and protection system are likely to have experienced or witnessed domestic violence. To the extent that this Bill could help to reduce their risk of exposure to further violence and mitigate their risk of ongoing harm, it is likely to help children and young people remain safely with their family rather than be taken into State care.

The leave provisions in this Bill would benefit the group of children who experience domestic violence whose parents are in permanent paid employment. It follows that children whose parents or caregivers are employed on short-term contracts will not experience the same benefits, because their parents will not be entitled to domestic violence leave. Children whose parents are not in paid employment will also not experience the same benefits, although they may experience some other benefits by virtue of having a parent who is more available to

² See: <http://ethniccommunities.govt.nz/sites/default/files/files/Towards%20Freedom%20from%20Violence%20-%20NZ%20Family%20Violence%20Statistics%20Disaggregated%20by%20Ethnicity%20-%20Office%20of%20Ethnic%20Affairs%202013.pdf>

support them. Thought should be given in the wider reform of family violence legislation currently underway to how to ensure the best possible outcomes for *all* children and young people who experience or are exposed to domestic violence.

3. What do children say about this issue?

Children have the right to have a say, and to have their voice heard, on issues that affect them. Often the best way to determine what is in the best interests of the child is to ask them. When this is not possible, efforts should be made to review what children have said about the issue previously.

We are not aware of any recent specific consultation with children and young people about their experiences of family violence. We suggest that this should be carried out as part of the larger reform of family violence legislation that is currently underway.

In 2015, UNICEF and Save the Children engaged youth ambassadors to talk to children and young people about their rights and experiences. From this they produced the *Our Voices, Our Rights* report, which was submitted to the UN Committee on the Rights of the Child to inform its 5th periodic report on New Zealand's compliance with the UN Convention.³ Responses to that consultation revealed that domestic violence is an area of concern.

When asked "what would you do for children in New Zealand if you could" and "in what areas should stronger attention be given by the government to help children in New Zealand?" responses from young people included:

"Reduce child poverty, better protection against domestic violence."

"Protect them from harm/violence."

"Prevent them from poverty, violence, starvation, depression family financial problems."

"Help them recognize family violence."

In 2012, the OCC spoke to young people aged 12 to 18 years about the issues raised in the

Green Paper on Vulnerable Children.⁴ They also raised issues and concerns that are relevant to this Bill.

Young people spoke of the importance of a stable environment with responsible adult role models:

"Give children [the] best environment to grow up in, one which is safe, with responsible adult role models".

They emphasised the need for an environment free of abuse, with support from wider family and community if things are not going well at home:

"[Provide] them with a supportive, nurturing environment free from violence or emotional guilt."

"[Make available] alternative family members, or alternative accommodation with family for friends if the primary accommodation isn't working."

"Make sure the children know that there are various support networks available for them so they don't feel neglected."

Of particular potential relevance to this Bill, many young people spoke about the need for more close and communicative relationships with their parents, particularly to work through challenging experiences:

"Listen to what we have to say."

"Involve [us] in decision making."

"Be more available and interested in young people's lives."

"Parents need to listen to their children to know what they are supporting and helping them achieve: children need voices."

"Make it easier for their kids to share problems with them by developing better comfortable relationships with them."

"Give them space sometimes, let them know you are loved let the child know they can tell their parents anything."

This would tend to support the proposition in the Bill that it is desirable for parents to be available to spend more time with their children when dealing with the impact of domestic violence, in addition to accessing their own services and supports directly.

³ See: <https://www.savethechildren.org.nz/assets/Uploads/Our-Rights-Our-Voices2.pdf>

⁴ See: <http://www.occ.org.nz/assets/Publications/WE-ALL-NEED-TLC-youth-groups-on-green-paper-2012.pdf>