

Family Proceedings (Dissolution for Family Violence) Amendment Bill

Introduction:

We would like to thank the Justice Select Committee for the opportunity to submit on this Bill. The National Collective of Independent Women's Refuges (NCIWR) is a non-governmental organisation that has been delivering services to women, children, and whānau affected by family violence in Aotearoa for 50 years. In 2021/22, our network of 40 affiliated refuges supported 52,000 referrals, and 59,000 safe nights in safe houses. Children made up 50% of clients who accessed safehouses across the country. The population group that we represent are victims of family violence, specifically women and children, who are the primary groups subjected to and impacted by family violence in Aotearoa.

Our position:

We strongly support the Government's focus on safety for family violence victims and their children. We are in support of the Bill. We strongly agree that "everyone deserves to live a life free of violence and all people should have the right to feel safe in a relationship and to leave that relationship if they experience family violence." To improve the overall utility of the Bill, and to ensure that all victims of family violence have equal access to the safety afforded by this Bill, we strongly recommend removing the requirement "An order could be granted where a protection order has been registered under the Family Violence Act 2018". Having proof of a protection order certainly evidences family violence, it is however, only one of many reliable indicators of family violence victimisation.

Overall statement:

Navigating relationship breakdown, separation, and divorce is made exponentially more unsafe and burdensome due to the ongoing risk presented by family violence. Far from creating instant safety, separation is a time of critical risk for victims of family violence (and their children). Over 50% of family violence homicides occur at the time or intended or actual separation. Family violence can continue for years after separation, with over half of our client population reporting that they have experienced post separation physical stalking, and 80% reporting digital stalking throughout and after separation from their relationships.

The provisions as they are currently outlined in the Bill will only support a specific subset of victims to separate their lives from violent perpetrators – namely, those who have a protection order registered. Setting the threshold for evidence of family violence as "an order could be granted where a protection order has been registered under the Family Violence Act 2018" immediately excludes the majority of victims of violence. To further potentiate the safety opportunities the Bill offers, and improve victim eligibility, we recommend that the evidential threshold be broadened.

Broadening the threshold for 'sufficient evidence':

Despite high rates of family violence in Aotearoaⁱ, only 4,500 people apply for protection orders each year (90% are women). Two thirds of these applications go unchallenged and become final, but when an application goes to court, they are significantly less likely to be granted.

Protection orders that aren't automatically granted risk being declined by the Family Court or falling into the Ministry of Justice's category of "lapsed, discontinued, or withdrawn". In 2018, 59.7% of challenged protection orders fell into this category. A further 13.1% were declined, leaving only 27.3% as granted.ⁱⁱⁱ

All Women's Refuge clients, regardless of their protection order status, are victims of serious violence. Our latest risk assessment data (taken from the initial risk assessments of 3,500 women) show that 55% believed that their perpetrator could kill them, 46% had been strangled or suffocated, and 55% had been held hostage.

Only a small subset of our roughly 52,000 annual clients successfully obtain a protection order. Many of our clients report that obtaining a protection order is a hostile, prohibitive, and often unsafe process. Claire*, for example, stated: "I couldn't believe how dehumanising the whole process was for a victim." Emily* found the process so prohibitive that she was forced to abandon her application: "The court process was a nightmare, and in the end, I agreed to give up the Protection Order despite knowing that I needed it more than anything."

Our frontline social workers frequently report that many victims at the highest risk of homicide opt not to apply for protection orders on the basis that the risk of escalating violence combined with the risk of financial disadvantage outweighs the (anticipated) gains to their physical safety.

Of the Women's Refuge clients that are able to obtain a protection order, 44% reported that their abuser had breached a protection order or bail conditions. The frequency of legal order breaches is reported by our clients as another reason that they do not pursue protection orders. Further to this, 57% of women experienced more severe violence from their partners when they tried to seek safety.

Having proof of a protection order certainly evidences family violence, it is however not the only available, or most accessible evidence of family violence, and should not be used as a metric to prove a victim's right to be safe from family violence. The huge difference between the high rates of family violence in Aotearoa and the low number of final protection orders granted each year exemplifies the need to broaden what is considered to be 'sufficient evidence' beyond that of a protection order.

Recommendations:

To improve the utility of the Bill, we draw on *The Domestic Violence Victims' Protection Act 2018* to provide an example of an evidential threshold within current legislation that is inclusive of all victims of violence. It is victim focused, safety focused, and family-violence informed. The DVVPA (2018) allows for evidence of family violence to be provided by the victim themselves, or in short form by a family violence specialist organisation, other supporting organisation, health or medical practitioners, or by way of any court or police documentation. This threshold reduces the risk of retraumatising victims or putting their safety at further risk. We recommend utilising an equivalent threshold for 'sufficient evidence' in *39A Dissolution for family violence (3)(a)(b)*.

NCIWR strongly believes that victims of family violence should not be further burdened by having to prove they are eligible for safety. Broadening the scope of evidence required can ease the safety workload of victims, support a more expedient pathway to actualised safety for them and their children, and allow more victims to be legally separated from their violent partners.

ⁱ Fanslow, J. L. & Robinson, E., 2011. Sticks, stones, or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women. *Journal of Aggression, Maltreatment & Trauma*, 20(7): 741-759. <http://dx.doi.org/10.1080/10926771.2011.608221>

ⁱⁱ NZ Police, 2022. <https://www.police.govt.nz/about-us/statistics-and-publications/data-and-statistics/daily-occurrences-crime>

ⁱⁱⁱ Johnston, K. (2020, Sept. 24). She spent \$50,000 trying to get safe. In the end, she gave up. Stuff News. <https://www.stuff.co.nz/national/crime/300113758/she-spent-50000-trying-to-get-safe-in-the-end-she-gave-up>