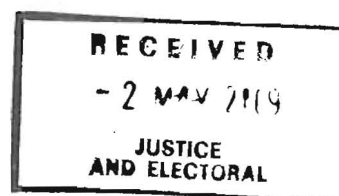


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**Human Rights Commission**  
**Submission on the**  
**Domestic Violence (Enhancing Safety) Bill**



**Justice and Electoral Select Committee**

27 February 2009

The Commission is not seeking to make an oral submission

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## 1. Introduction

- 1.1 This submission on the Domestic Violence (Enhancing Safety) Bill (the Bill) is made by the Human Rights Commission (the Commission). The Commission is an independent Crown Entity mandated by the Human Rights Act 1993. The Commission's primary functions include advocating and promoting respect for, and an understanding of, human rights in New Zealand society; encouraging harmonious relationships between individuals and the diverse groups in New Zealand; receiving complaints of discrimination; and leading, monitoring and advising on Equal Employment Opportunities.
- 1.2 Section 5(2)(m) of the Human Rights Act requires the Commission to develop a National Action Plan for the promotion and protection of human rights in New Zealand. This was published in 2005 as *Mana ki te Tangata: the New Zealand Action Plan for Human Rights* (the Action Plan).<sup>1</sup>
- 1.3 Research and extensive consultation undertaken in the course of developing the Action Plan showed that people viewed the right to be safe from violence as the second most important right, after the right to health.<sup>2</sup> The research highlighted the presence and tolerance of violence in too many of New Zealand's homes and communities as a significant human rights concern. All forms of family violence, including partner and elder abuse, were identified in the report as requiring action for improvement as a priority. In particular, the vulnerability to abuse and the need for better protection of the human rights of children and young people, was viewed as being one of New Zealand's most pressing human rights issues.
- 1.4 A review of progress on the Action Plan in 2008 found that there have been significant efforts to address the issue of domestic violence, such as community based interventions and the review of the Domestic Violence Act. Yet despite these measures, the Commission found that there is a need for a continued

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<sup>1</sup> Human Rights Commission, (2005), *Mana ki te Tangata: New Zealand Action Plan for Human Rights*, Wellington: Human Rights Commission.

<sup>2</sup> Human Rights Commission (2004), *Human Rights in New Zealand Today / Ngā Tika Tangata o te Motu*, Auckland: Human Rights Commission.

integrated focus on reducing violence and for interventions to be actively monitored, adjusted and extended on the basis of robust empirical evidence.<sup>3</sup>

- 1.5 The Commission accordingly supports the aim of the Bill to improve justice sector responses to domestic violence and to strengthen the protections afforded to victims.
- 1.6 This submission addresses human rights implications of the Bill, including the balancing of rights that is required in order to protect the rights of victims while not unfairly limiting other rights.

## **2. Human rights approach**

- 2.1 The 'human rights approach' forms the conceptual base that the Commission uses in all aspects of its work. This approach, developed internationally and adapted for New Zealand by the Commission, is designed to ensure that those most directly affected by a policy or law – especially those who are vulnerable or disenfranchised – are better able to enjoy the rights they are entitled to under international law. It involves linking decision making at every level to the agreed human rights standards and balancing rights, where necessary, in a way that maximises respect for all rights and protects the most vulnerable. The use of this approach also promotes transparency and accountability in decision making, as well as empowerment, participation and non-discrimination.
- 2.2 Measures to address domestic violence often entail a degree of balancing of one person's right to protection from violence alongside another's right to natural justice and procedural protections.
- 2.3 The right to live safe from violence and abuse is a fundamental human right. This right is embodied as the right to security of the person in the Universal Declaration of Human Rights and in subsequent international treaties that protect the rights to life, to security of the person, to respect for human dignity

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<sup>3</sup> This was one of fourteen recommendations that the Commission highlighted in its submission to the United Nations Human Rights Council (UNHRC) in relation to New Zealand's first Universal Periodic Review before the UNHRC in May this year. A copy of the Commission's submission is available at: <http://www.hrc.co.nz/home/hrc/internationalhumanrights/nzsnationaluniversalperiodicreviewupreport/nzsnationaluniversalperiodicreviewupreport.php>

and physical integrity.<sup>4</sup> In addition, the international human rights framework contains specific requirements to ensure that women, children and disabled people, are able to enjoy these rights on an equal basis with others.<sup>5</sup> These include specific responsibilities to take measures to eliminate violence against women as a form of discrimination.

- 2.4 Criminal justice responses to domestic violence involve a number of rights protected in the International Covenant on Civil and Political Rights (ICCPR) and general law, such as the rights to justice and procedural fairness.<sup>6</sup>

### **3. Human rights issues in the Bill**

- 3.1 The Commission believes that the Domestic Violence Act 1995 is a valuable piece of legislation that provides a comprehensive framework for protecting some of the most fundamental human rights. Research and the recent review of the Domestic Violence Act show that improvements are needed to ensure that the Act is implemented to full effect.<sup>7</sup> The Commission made a submission to that review and supported many of the changes proposed.

- 3.2 The Bill would enact a number of changes proposed in the Domestic Violence Act review. Subject to the comments below, the Commission supports the changes that have been included in the Bill in order to improve and strengthen domestic violence responses.

- 3.3 The Commission also supports a number of further changes that emerged through the Domestic Violence Act review (and which were included in the Domestic Violence Reform Bill introduced in 2008) but which are not currently part of the present Bill. These additional measures include:

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<sup>4</sup> For example, the right to security of the person is recognised in paragraph 9(1) of the International Covenant on Civil and Political Rights (ICCPR)

<sup>5</sup> For example: Art. 19, United Nations Convention on the Rights of the Child (UNCROC); Art. 16, Convention on the Rights of Persons with Disabilities; Art. 2, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>6</sup> Art. 14, ICCPR; s 27, New Zealand Bill of Rights Act 1990 (NZBORA)

<sup>7</sup> For example: Robertson et al, (2007), *Living at the Cutting Edge: Women's Experiences of Protection Orders*, A report prepared by the University of Waikato for the Ministry of Women's Affairs; Hann, S, (2004), *The Implementation of the Domestic Violence Act 1995*, Wellington: National Council of Women's Refuges. See also: Ministry of Justice, *Review of the Domestic Violence Act 1995*, at: <http://www.justice.govt.nz/pubs/reports/2007/domestic-violence-act-review/index.html>.

- amending the definition of a child to a person under the age of 18 years, consistent with the definition in the United Nations Convention on the Rights of the Child;
- including psychological abuse in the definition of domestic violence in the Care of Children Act 2004 in order to align with the Domestic Violence Act definition and provide greater protection for children;
- requiring written reasons to be provided when a without notice application is declined; and
- enhancing access to programmes for respondents, protected persons, and their children.

3.4 The Commission offers the following comments in relation to the proposed introduction of Police Orders (clause 7). This aspect of the Bill provides for immediate, temporary protection orders to be issued by Police in the absence of an arrest but where they have reasonable grounds to believe that an order is necessary to ensure the immediate safety of a person at risk of domestic violence. The Police Orders require the person against whom they are issued to vacate the property occupied by a person at risk, whom they are also prohibited from (among other things) assaulting, threatening, or contacting. The Police Order can be issued for a period of up to five days, and non-compliance with the order may result in detention by Police. Parenting, care or contact orders are suspended for the duration of the order.

3.5 The consequences of the new orders on those against whom they are issued are quite severe. The rights to freedom of movement and personal liberty may be affected, as well as the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. There are also implications on aspects of the right to justice, in particular the principles of natural justice and procedural fairness that are affirmed in the New Zealand Bill of Rights Act.<sup>8</sup>

3.6 A human rights approach recognises that rights may be limited in some circumstances. However competing rights should be balanced in such a way as to maximise respect for all rights and rights holders as far as possible. The human rights approach gives particular attention to those who are most

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<sup>8</sup> Art. 12, 17, ICCPR; s 18, 27, NZBORA

vulnerable or would bear the greatest risk should their human rights be infringed. In cases where the right to safety is at clear risk, the balancing exercise may therefore weigh in favour of protecting the right to safety.

3.7 The Commission agrees that the immediate safety of persons at risk of violence is an important objective, and it is evident that temporary removal of a violent person can assist in ensuring that vulnerable people are protected.<sup>9</sup> However, if other rights are to be limited as a result, such limitation should be minimised as far as possible.

3.8 As there are indications that orders of a shorter duration can provide effective protection for victims,<sup>10</sup> reducing the period of the order may provide an appropriate means of balancing competing rights.

3.9 Given the expansion of police powers that the new orders represent, and the consequences of the order on the person against whom it is issued, the inclusion of adequate safeguards is also particularly important.

3.10 While the Bill requires any Police Order to be authorised by a senior officer (a sergeant or higher ranking officer), it does not provide for judicial oversight or an avenue of appeal. The absence of the ability to challenge or appeal against the issuing of an order is a limitation on natural justice rights, which provide that a person should have an opportunity to be heard and to be able to challenge the lawfulness of decisions that affect them. The Commission recommends that such provision is included in the Bill if Police Orders are to be introduced.

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<sup>9</sup> Department of the Attorney General, Western Australia, (2008), *A Review of Part 2 Division 3A of the Restraining Orders Act 1997*, available at: [http://www.justice.wa.gov.au/R/review\\_of\\_family\\_and\\_domestic\\_violence\\_legislation.aspx?uid=7605-5494-2642-9121](http://www.justice.wa.gov.au/R/review_of_family_and_domestic_violence_legislation.aspx?uid=7605-5494-2642-9121)

A similar scheme has operated in Western Australia since 2004, and the evaluation completed in 2008 reported favourably on the effectiveness of police-issued orders (of either 24 or 72 hours duration). The report noted that "there was universal agreement" amongst those consulted during the review that police orders were successful in improving victim safety.

<sup>10</sup> Ibid. The review of the Western Australian system noted that the 24 hour orders could provide for a 'cooling off' period, while 72 hour orders enabled sufficient time for the protected person to access the courts to seek a longer term protection order. The evaluation recommended the retention of police orders of up to 72 hours duration. The report also notes an alternative approach taken in the Northern Territory, where police-issued orders are not of a fixed duration but last until confirmed (or dismissed) by a court – which is to be 'as soon as practicable'.

#### **4. Conclusion**

- 4.1 The Commission supports most aspects of the Bill, and its general aim of reducing domestic violence and strengthening protections for victims. Further action to implement other proposed changes that emerged through the Domestic Violence Act review is also supported.
- 4.2 The Commission believes that restrictions on the rights of persons issued with Police Orders could be lessened by reducing the duration of the orders and expressly providing for an avenue of appeal.