



Joint submission on the Better Family Violence Law Consultation

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Contents

About us.....	2
Introduction	3
The risk of domestic violence	3
The higher risk can be significantly reduced	4
Law changes.....	5
Relationships between a support worker/carer and a disabled person	5
Denying access to support and/or equipment	7
Law change recommendations:	7
General issues	8
Accessibility and domestic violence	8
Protection of Personal and Property Rights Act 1988, Welfare Guardians and domestic violence	9
Strengthening protections and investigating concerns	10
Restorative justice	10
Legal aid and counsel of choice.....	11
Bibliography	12

About us

CCS Disability Action

CCS Disability Action is a community organisation that has been advocating for disabled people to be included in the community since 1935. We provide support to over 5,000 people with disabilities and their families and whanau each year. Our support focuses on breaking down barriers to participation. We receive a mixture of government and private funding

Disabled Persons Assembly

Disabled Persons Assembly New Zealand (DPA) is the national assembly and collective voice of disabled New Zealanders. DPA is a Disabled Person's Organisation, which means disabled people govern it and the organisation's main purpose is to articulate the aspirations of its members.

IHC New Zealand

IHC New Zealand Incorporated (IHC) is a community-based organisation that has provided advocacy and support for people with an intellectual disability and their families for 65 years. IHC raises awareness and advocates for the rights of over 50,000 people with intellectual disability at both a national and an international level. Our service arm, IDEA Services, works with over 6,000 people with intellectual disability.

Introduction

We welcome the government's commitment to reducing New Zealand's high rate of domestic violence. Law changes must be backed by excellent implementation and a clear overarching strategy that addresses domestic violence across age, sex/gender identity, sexuality, impairment/disability and ethnicity. Protection from domestic violence needs to be accessible and responsive to everyone. Everyone needs to know and understand how they can report domestic violence and be confident that action will be taken to stop the violence.

Based on the available evidence, children and adults with disabilities are at a much higher risk of domestic violence as well as violence in general. The government needs to make sure that domestic violence protections and responses are accessible and work for disabled people.

We also endorse and were involved with the Waitakere Anti Violence Essential Services (WAVES) Trust's submission.

The risk of domestic violence

Quantitative data on disabled people and domestic violence in New Zealand is unavailable because most studies do not ask about impairment/disability. Disabled people tend to be invisible in a lot of existing research and statistics. Nevertheless, there is enough evidence to show that disabled people in New Zealand face a higher risk of domestic abuse than non-disabled people.

In the 2013 Disability Survey, disabled people were more likely to experience violent crime, compared to non-disabled people:

- Disabled people aged 15 plus were 2.3 times more likely to have been a victim of violent crime in the last 12 months (Statistics New Zealand, 2014).
- Disabled people aged 15 to 44 were 4.2 times more likely to have been a victim of violent crime in the last 12 months than non-disabled people (Statistics New Zealand, 2014).

Disabled people are also over represented in areas that can increase the risk of abuse and violence, such as poverty and social isolation (Pestkaa & Wendta, 2014). In the 2013 Disability Survey, disabled people, aged 15 to 64 were 1.8 times more likely to live in households that earn under \$30,000 a year. Disabled people aged 15 to 44 were 5 times more likely to have felt lonely often in the last four weeks (Statistics New Zealand, 2014).

An overseas systematic review carried out by the World Health Organisation and Centre for Public Health in 2012 found that disabled adults were 1.5 times more likely to experience violence than non-disabled people (at 95% confidence). The review also noted the need for more robust studies (Hughes, et al., 2012).

One of the most comprehensive studies of children with disabilities and the risk of abuse and neglect, which took place in America, found children with disabilities to be 3.8 times more likely to be neglected, 3.8 times more likely to be physically abused, and 3.1 times more likely to be sexually abused when compared with children without disabilities (Committee on Child Abuse and Neglect, Council on Children With Disabilities, Desch, & Hibbard, 2007, p. 1019).

Based on the available evidence, children and adults with disabilities are at a much higher risk of domestic violence as well as violence in general. This risk is compounded by a lack of visibility and awareness of the issues and barriers disability people face with domestic violence. As a result, the current law is unclear in a number of areas and does not always protect or respond effectively to keep disabled people safe from domestic violence.

The higher risk can be significantly reduced

The higher risk of violence and abuse is not inevitable for disabled people. It can be significantly reduced by disabled people having more choice and control over their lives as well as providing education and support to the people disabled people rely on. Intervening early can also help prevent violence and abuse. It is also crucial that people with disabilities have access to the same protections in the law as people without disabilities.

Assumptions about disabled people can also increase the risk of abuse by lessening the chance of perpetrators getting caught and taken to trial. Sometimes the Police and prosecutors assume disabled people, particularly those with intellectual/learning disabilities will not be able to give evidence. The Solicitor General's guidelines discourage the Police from taking a prosecution to court if they think a conviction is unlikely. As a result, perpetrators of domestic violence against disabled people can feel like they can act with impunity.

Violence can also be normalised within institutional settings, such as residential care, and within support services in general. By challenging the normalisation of violence against disabled people, the higher risk can be reduced. This requires more intervention to stop violence against people with disabilities by the Police as well as more prosecutions of offenders who target disabled people by the court system.

Everyone needs to be able to access justice and legal processes to report and stop domestic violence. These need to be accessible, timely and safe for everyone. People need to know and understand how they can report domestic violence and be confident that action will be taken to stop the violence. Information needs to be accessible formats, including for people with sensory impairments as well as plain language and easy read. Legal processes need to be explained to people in a way they understand.

Law changes

Relationships between a support worker/carer and a disabled person

The law is particularly unclear around the relationship between disabled people and their support workers/carers (unless they are family members) (Grammer, Russell, & Van Eden, 2013, p. 16). The Domestic Violence Act should cover these relationships, where the relationship is close and personal. Changing the name of domestic violence to family violence could make it less clear that non-family relationships can be domestic relationships, if they are close and personal (for example, flatmates are in domestic relationships).

Some relationships between support workers and disabled people are long-established, close and personal. They can involve a support worker having access to a person's home and significant involvement in their private life. This can give them significant control and power over a person's life. Currently, courts cannot find a relationship to be a domestic relationship if it is an employer-employee relationship. This poses potential issues for people using Individualised Funding or any support arrangement where they employ the support worker.

We proposed that the law is changed to give courts the discretion to decide if a support worker and disabled person's relationship meets the threshold of a close personal relationship, regardless of any employer-employee relationship. Currently, the courts have no discretion. The change should only apply to employment relationships that involve the provision of support services.

For people not in a direct employment relationship with a support worker, the existing law should cover relationships, providing they are close and personal. For example, it should cover people living in residential group homes or people accessing home and community support services through a provider.

In residential facilities (such as community group homes or age care facilities), the existing law should cover both relationships between residents as well as relationships between support workers and residents, where the relationship is close and personal and the resident is not the support worker's employer. Yet even in these situations there still appears to be ambiguity about the relationship between support workers and residents.

It is important people living in residential facilities are protected under the Domestic Violence Act. The residential facility is their home and staff members have a lot of potential power over them. There is also a risk of violence from other residents. There have been a number of high profile cases involving abuse and neglect in residential facilities, with others likely to be undiscovered or dealt with quietly (Grammer, Russell, & Van Eden, 2013, pp. 27-29, 35-40).

One way to reduce the ambiguity may be to add a criterion to the threshold criteria for a close personal relationship. A criterion could be added that the courts and the Police can take into account whether the person in the relationship is reliant on the other person for significant care and/or support. This may increase awareness that support workers working in a person's home (whether it be a residential facility or private home) can be in a domestic relationship, providing other criteria around the nature and intensity of the relationship are met.

Together with the added discretion to employment relationships involving support services, this would make it clearer that support workers can be in a domestic relationship, providing the relationship is close and personal. This would still leave a degree of ambiguity. Courts and the Police would have to judge whether a relationship is close enough to justify being classified as a domestic relationship. The aim is simply to reduce the ambiguity.

Any change would need to be accompanied by explanations of the changes and training for the Police, lawyers and judges as well as changes to the Solicitor-General's Prosecution Guidelines. Lawyers, judges and the Police need to understand the threshold and intent of the changes.

Denying access to support and/or equipment

The law also does not currently explicitly cover situations where a person in a domestic relationship deliberately denies the other person access to support and/or equipment they need to be independent and/or have a good quality of life. This may already fit in the general category of psychological abuse, but we feel it would add an extra layer of protection to explicitly mention this situation in the Act.

Law change recommendations:

The following wording is added to Section 4, subsection 3a of the Domestic Violence Act 1995 (Changes in red):

- (a) an employer-employee relationship, **unless that relationship is for the provision of personal support and/or care:**

The following wording is added to Section 4, subsection 4a of the Domestic Violence Act 1995 (Changes in red):

- (a) the nature and intensity of the relationship, and in particular—
 - (i) the amount of time the persons spend together:
 - (ii) the place or places where that time is ordinarily spent:
 - (iii) the manner in which that time is ordinarily spent:
 - (iv) any reliance of the person on the other person for significant personal care and/or support.

The following wording is added to Section 3, subsection 2c of the Domestic Violence Act 1995 (Changes in red):

psychological abuse, including, but not limited to,—

- (i) intimidation:
- (ii) harassment:
- (iii) damage to property:
- (iv) threats of physical abuse, sexual abuse, or psychological abuse:
- (iva) financial or economic abuse (for example, denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education):
- (v) in relation to a child, abuse of the kind set out in subsection (3):
- (vi) denying or limiting access to support or equipment that a person needs to be independent and/or have a good quality of life.

General issues

Although these general issues may sit outside this law review, they should be considered in tandem with legal changes.

Accessibility and domestic violence

A lack of choices and options can compound the risk of domestic violence. For disabled people with access needs, a lack of accessible housing and transport can limit their alternative living options, which makes it harder for them to leave an abusive relationship and increases the implicit power others have over them. Some domestic violence services have inaccessible buildings and/or provide information in inaccessible ways (Including easy read formats), which can make it harder to get

help. Domestic violence support services also sometimes lack the capacity and capability to support disabled people.

Improving the accessibility of housing, transport, information and public buildings, is likely to indirectly decrease the risk of domestic violence for people with access needs. If people have more choices, they have more power and control over their lives. Improving the accessibility of domestic violence services is likely to directly decrease the risk of domestic violence for people with access needs, by allowing them to access help more readily.

The government needs to put in place measures to make sure legal and court processes are accessible (such as providing communication assistants or advocates, responding to the different ways people communicate, allowing more video testimony and providing Plain English language information, Easy Read and judgements)

Protection of Personal and Property Rights Act 1988, Welfare Guardians and domestic violence

Welfare guardians and property managers are not given adequate education about their role, including the limits of their guardianship and the need to take the person's best interest into account. As a result, lawyers report welfare guardians can feel licensed to do anything, which can create very dangerous situations for all parties involved (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, p. 40). From our own work we are aware of situations where there has been coercion and unethical behaviour. This has resulted in decisions that have not been in the person's best interests and have negatively impacted on people's lives.

Welfare guardians and property managers need to be educated about their roles and given support, if needed. Reviews need to be more regular and monitoring needs to be increased to prevent financial abuse and other types of domestic violence. People under guardianship often lack the knowledge to request a review and there is no straightforward way for friends or other people to raise concerns (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, p. 40).

Strengthening protections and investigating concerns

It can be unclear where people can take concerns. The discussion document makes multiple references to Victoria Australia as a good example of domestic violence processes (Ministry of Justice, 2015, pp. 17,21,39). Victoria also has an Office of the Public Advocate. The Office is mandated by law to promote and safeguard the rights and interests of people with disabilities (Office of the Public Advocate). This includes:

- advocating for people with disabilities who have no other advocacy options and are at risk of abuse, exploitation or neglect
- advocating for the best interests of clients under statutory guardianship
- promoting supported decision-making
- responding to concerns and complaints about misrepresentation, exploitation, abuse and neglect
- making inquiries, intervening and requiring others to complete actions.

This model could work in New Zealand and could provide better protection and advocacy for disabled people and other groups that can be vulnerable. This in turn would increase the protection of people under welfare guardianship and lessen the risk of domestic violence. The government should investigate options to implement functions similar to the Office of the Public Advocate. There may be multiple ways to do this. It is important, however that there is an independent body or individual who has the authority and resources to investigate and respond to concerns about the exploitation of vulnerable people.

Restorative justice

In addition to being at greater risk of violence, some disabled people, particularly those with challenging behaviour, are a risk of harming others, including family members. Restorative justice processes as well as behaviour and early intervention support can be key to preventing violence and helping people with challenging behaviour and/or intellectual/learning disabilities understand the consequences of their behaviour (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, pp. 44-456).

It is essential that restorative justice processes are accessible to all the participants. This means everyone involved needs to understand what is going on and have the processes explained to them in a way they understand.

Legal aid and counsel of choice

Judges and lawyer have noted that the restrictions on legal aid and counsel of choice have deeply affected disabled people, especially people with intellectual/learning disabilities. For people with intellectual/learning disabilities being able to request a lawyer they knew was of enormous benefit. For some disabled people lawyers were the only uncompromised advocates in their life, especially if family members were not acting in their best interests (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, pp. 14, 58-59).

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