



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

20 October 2023

Justice Committee

Submission in support of the Family Proceedings (Dissolution for Family Violence) Amendment Bill

1. Thank you for the opportunity to provide a submission on the Family Proceedings (Dissolution for Family Violence) Amendment Bill (the **Bill**).
2. This submission is made on behalf of the New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine Trust (the **Journal**). The Journal is the only academic publication solely dedicated to publishing legal scholarship about gender justice in Aotearoa New Zealand. The Journal aims to promote awareness about gender justice in the law; and to support women in the Aotearoa New Zealand legal profession throughout their careers. This includes contributing to wider societal discourse about legal issues facing women.
3. The principal change the Bill proposes is to incorporate a new provision, s 39A, into the Family Proceedings Act 1980 (the **Act**). Section 39A provides that an application for an order dissolving a marriage or civil union may be made on the ground that a party to the marriage or civil union has been the victim of family violence inflicted by the other party. The provision expressly removes the requirement that parties to the marriage or civil union live apart for two years for this ground to be established.
4. While the Journal supports the Bill, it has concerns that the terminology of the proposed provision may unduly restrict a person's ability to leave a violent relationship and that the grounds on which an order under s 39A can be made do not sufficiently contemplate the reality of family violence. The Journal's recommendations to address these concerns are set out below. The Journal also records its concerns that the Bill does not presently address the effect of challenges to temporary protection orders on applications for dissolution under s 39A.

The Journal supports the Bill overall

5. The Journal would first like to express its support for the Bill. The Journal agrees everyone should have the right to feel safe in a relationship. Addressing family violence



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

is essential for improving the wellbeing of families and children in Aotearoa New Zealand.¹

6. It is critical that there are avenues in place for victims of family violence to leave or end an abusive relationship. Research shows this is one of the most dangerous times for such victims.² By allowing victims to apply for dissolution of a marriage or civil union on the ground of family violence, the Bill aims to remove at least one of the barriers that prevent victims from being able to leave or end an abusive relationship.
7. In expressing its support for the Bill, the Journal acknowledges that people of any gender can be victims of family violence. Legislative amendments are, generally speaking, gender neutral in this respect to ensure all victims of family violence are captured by the relevant provisions. However, family violence remains a gendered issue that is significantly more likely to be experienced by women,³ in particular wāhine Māori,⁴ transgender, and non-binary people.⁵ Emerging research illustrates that members of the LGBTQIA+ community experience intimate partner violence, both physical and sexual, more than twice as often as other New Zealanders.⁶
8. In expressing its support for the Bill, the Journal's aim is to make recommendations in respect of technical aspects of the proposed amendments to ensure the gendered dimensions of family violence are addressed.
9. Notwithstanding this, the Journal acknowledges that family violence dynamics are complex and multi-faceted.⁷ While the Bill is a starting point, leaving an abusive

¹ Family Proceedings (Dissolution for Family Violence) Amendment Bill 2023 (241-1) [**Amendment Bill**] (explanatory note).

² The Center for Relationship Abuse Awareness 2023 “Barriers to Leaving an Abusive Relationship” (2023) The Center for Relationship Abuse <www.stoprelationshipabuse.org>. See also Carrie Leonetti “Broken protection order system fails domestic violence victims” (10 May 2022) University of Auckland <www.auckland.ac.nz>.

³ Janet Fanslow and others “Change in prevalence rates of physical and sexual intimate partner violence against women: data from two cross-sectional studies in New Zealand, 2003 and 2019” (23 March 2021) <www.bmjopen.bmj.com>; and Ministry of Justice *New Zealand Crime and Victims Survey: Key Findings – Cycle 5 report* (June 2023) [NZCVS] at 4.

⁴ Nerys Udy “Conceptualising Mana Wāhine as a Legal Force” (2021) 5 NZWLJ 18 at 26. The full article is available [here](#).

⁵ Michael Johnson “Domestic Violence: It’s Not About Gender – Or Is It?” (2005) 67 J Marriage Fam 1126 at 1128.

⁶ NZCVS, above n 3, at 34.

⁷ See, for example, Julia Tolmie et al “Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence” [2018] NZLR 181; Evan Stark and Marianne Hester “Coercive control: Update and review” 25(1) Violence Against Women 81; and Family Violence



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

relationship is not as simple as dissolving a marriage or civil union. In this respect, the Journal emphasises the Bill should be viewed merely as one pathway to support victims to leave or end an abusive relationship. Ultimately, even with the recommendations as set out by the Journal below, the proposed amendment is futile if social and financial mechanisms are not in place to support victims trying to leave an abusive relationship.

The proposed Bill provides a narrow definition of who can apply for dissolution under the family violence ground

10. As proposed, s 39A provides that “an application for an order dissolving a marriage or civil union may be made on the ground that a party to the marriage or civil union *has been the victim of family violence* inflicted by the other party.”⁸ Subsections (2) and (3) suggest “family violence” will be established where a party can provide evidence that they are a protected person under an existing protection order (either domestic⁹ or foreign).¹⁰ Section 39A therefore requires the existence of a protection order in order for a victim of family violence to benefit from the Bill’s scheme.
11. The Journal considers this highlights a material issue with the current wording of the proposed s 39A, where an order for dissolution may be interpreted as being contingent on there being an existing protection order in place. This may have the unintended effect of excluding persons who experience or report family violence, but have not sought or obtained a protection order, from using s 39A.
12. Under s 79 of the Family Violence Act 2018, the court may make a protection order if it is satisfied that: (a) the respondent has inflicted, or is inflicting, family violence against the applicant, or a child of the applicant’s family, or both; and (b) the making of an order is necessary for the protection of the applicant, a child of the applicant’s family, or both.
13. In the Journal’s view, this ground is premised on the (incorrect) assumption that all victims of family violence obtain a protection order against their abuser. To the contrary, there remain several flaws in the protection order system which mean such orders are difficult to obtain.¹¹ First, family violence is significantly underreported. Research indicates only 33 per cent of family violence cases are reported.¹² From 2021

Death Review Committee “Fifth Report: January 2014 to December 2015” (New Zealand Health Quality and Safety Commission, 2016) 39.

⁸ Amendment Bill, cl 6 (emphasis added).

⁹ Under the Family Violence Act 2018 or made under the Sentencing Act 2002.

¹⁰ See further pt 8 of the Family Violence Act 2018.

¹¹ Leonetti, above n 2.

¹² New Zealand Police “Annual Report 2020/2021” (November 2021) at 15 <www.police.govt.nz>.



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

to 2022, the police conducted 175,573 family harm investigations, noting that over half of these investigations (62 per cent) did not involve an offence being recorded.¹³

14. Even where family violence is reported this does not automatically mean that victims will or can obtain a protection order. Only 5,121 people applied for protection orders in 2021.¹⁴ When viewed against the number of family harm investigations undertaken, this is a very low proportion.
15. There are many reasons why a person may not seek a protection order if they are experiencing family violence, including fear of their abuser, sharing the care of children, and/or reliance on their abuser for financial means. Similarly, not all victims of family violence have the physical or financial means to obtain a protection order. And, not all people who obtain a protection order also obtain a conviction against their abuser. The police may receive numerous reports of family harm before a conviction is ever entered.
16. Ultimately, the Journal is concerned that the difficulties in obtaining a protection order significantly limit the scope of those who are able to utilise s 39A. It also perpetuates the view that people experiencing family violence are “burdened with keeping themselves safe”.¹⁵ To require a person to obtain a protection order when they have decided to leave an abusive marriage or civil union, which is the most dangerous time for a person experiencing family violence, places that person under further, undue pressure.¹⁶
17. The Journal has three suggestions to amend the wording of s 39A.
18. First, the wording of s 39A(2) and (3) could be amended to capture “persons involved in a family violence proceeding”:
 - (2) The ground for the order is established in law if—
 - (a) a party to the marriage or civil union is a protected person under a protection order or under a registered foreign protection order and the other party is the respondent; or
 - (b) **a party to the marriage or civil union is a person involved in a family violence proceeding where the other party is the respondent.**

¹³ At 1.

¹⁴ Ministry of Justice Factsheet (2021) <www.justice.govt.nz>.

¹⁵ Kirsty Johnston “She spent \$50,000 trying to get safe. In the end, she gave up” (24 September 2020) Stuff NZ <www.stuff.co.nz>.

¹⁶ Leonetti, above n 2.



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

- (3) For the purposes of subsection (2), it is sufficient evidence to provide a copy of—
- (a) the court's decision to make or register the protection order under the Family Violence Act 2018, or to make the order under the Sentencing Act 2002; or
 - (b) the order; or
 - (c) **documentation that establishes the involvement of both parties in a family violence proceeding.**
19. Second, in respect of the reference to a “victim” in the proposed s 39A(1) the Family Proceedings Act 1980 could adopt the following definition of “victim” from the Family Violence Act 2018:¹⁷
- victim, of family violence, means a person who—
- (a) has experienced, is experiencing, or may experience family violence (even if no offence involving the violence was, is, or is to be admitted or prosecuted); or
 - (b) is, has been, or may be affected by family violence (even if no offence involving the violence was, is, or is to be admitted or prosecuted).
20. Third, the Journal proposes adding the following definitions into the existing amendment under the proposed s 39A(6):
- Victim** has the meaning given in section 19 of the Family Violence Act 2018 and includes any person involved in a family violence proceeding.
- Family violence proceeding** means any proceeding brought under the Family Violence Act 2018 or any other proceedings that involve family violence.
21. The Journal considers these changes would acknowledge that not all incidents of family violence result in a protection order being imposed. The amended wording contemplates a wider scope for the provision, providing for people who have experienced family violence without excluding those that do not have a protection order in place. The amended wording simultaneously requires there be an official record of allegations of family violence, ensuring people are not arbitrarily accused of family violence as a ground of separation.

¹⁷ Family Violence Act 2018, s 19.



New Zealand Women's Law Journal
Te Aho Kawe Kaupapa Ture a ngā Wāhine

The Bill does not presently address challenges to temporary protection orders

22. Finally, the Journal considers the Bill requires clarification to ensure a challenge to a temporary protection order,¹⁸ does not constitute a challenge to an application for dissolution under s 39A. Without firm guidance that an application for dissolution under s 39A cannot be challenged as a result of a challenge to a temporary protection order, there is a risk the provision could open the door to litigation abuse. This is a form of violence that uses court processes as a continuation of family or intimate partner violence.¹⁹ Such an interpretation may delay dissolution of the marriage or civil union and undermine the efficacy of s 39A to reduce the harm that family violence causes.

Conclusion

23. The Journal commends Angie Warren-Clark for introducing the Bill. It is a step forward in ensuring the safety of victims of family violence. In order for the Bill to achieve its aim of reducing the harm caused by family violence, appropriate support mechanisms must be in place so that victims of family violence can safely leave an abusive relationship and safely remain separated from the other party.
24. Thank you for the opportunity to submit on the Bill. The Journal looks forward to following its progress. If necessary, members of the Journal are available to discuss this submission and to make oral submissions to the Justice Committee.

Ngā mihi nui,

Rebecca D'Silva
Advocacy Team Manager

New Zealand Women's Law Journal – Te Aho Kawe Kaupapa Ture a ngā Wāhine

¹⁸ As “protection order” has the meaning given to it by s 8 of the Family Violence Act, the Journal considers a temporary or permanent protection order will satisfy the requirement of s 39A.

¹⁹ See further Dr Bridgette Toy-Cronin “Responding to abusive litigation: *Short v Short*” (2022) 7 NZWLJ 64 at 68. The full article is available [here](#).