

**Submission to the Social Services Committee.**

**Crimes Amendment Bill (no. 2)**

**Submitted by:**

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Thank you for the opportunity to make this submission.

We wish to speak to our submission.

We are submitting from the perspective of a group who are concerned about the wellbeing of women and children and also the wellbeing of disabled people.

1) We agree with the following provisions:

- New section 195 to increase the age of a child from 16 years to 18 years.
- Extending the scope of section 195 to include vulnerable adults. We will comment further on this.
- The amendment of section 131B in Part 7 of the Crimes Act 1961 to include situations where the offender believes they are interacting with a person aged under 16 years but are in fact interacting with someone posing as a young person.

We strongly support measures to protect children from neglect and abuse, but have some problems with the legislation as it is proposed in this Bill.

2) Vulnerable adults

As this legislation is to be extended to cover the care of vulnerable adults, (to those who are unable to withdraw themselves from care or charge by reason of detention, age, sickness, mental impairment, or any other cause<sup>1</sup>) we suggest that it be linked to the Domestic Violence Act, 1995, as this piece of legislation clearly outlines the legal definition of abuse and the circumstances that it occurs in. Therefore, the Crimes Amendment Act (2) should also amend the Domestic Violence Act 1995 to extend the

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<sup>1</sup> Crimes Amendment Bill (no. 2), New Zealand Parliament, May 2011

definition of who is in a domestic relationship with a disabled or vulnerable person to include paid caregivers as well as unpaid ones. Paid caregivers include residential staff, home-helpers, health professionals, taxi drivers – any one who assists a disabled or vulnerable person to live their day to day lives.

We also strongly recommend that the definition of a vulnerable adult is extended to cover abused women and/or other family members who are unable to protect themselves or others as a consequence of experiencing severe abuse. This will help to prevent the unjust criminalisation of women and others as explained in the next section.

### 3) Failing to protect a child or vulnerable adult

“New section 195A provides for a new offence of failing to protect a child or vulnerable adult from risk of death, grievous bodily harm, or sexual assault. A person is liable if that person—

- is a member of the same household or is a staff member of a hospital, institution, or residence where the child or vulnerable adult resides; and
- has frequent contact with the child or vulnerable adult; and
  - has knowledge of the risk; and
  - fails to take reasonable steps to protect the child or vulnerable adult from the actions or omissions of a third party.”<sup>2</sup>

On first reading this provision, based on English legislation, seems a sensible response to families that protect family members who have abused a child. It has the capacity, however, to further abuse and punish women who are living in a violent relationship and, as a consequence of living with abuse, are unable to protect themselves and their children.

Domestic violence is not, as many people believe, about living with a person who has an anger problem or who uses violence occasionally. Domestic violence is a set of behaviours designed to gain power and control over another person.

“Male role control works by physically, verbally or emotionally destroying your partner’s physical, intellectual and emotional integrity so that she will be afraid to be herself, will control herself, and therefore be available to be controlled by you.”<sup>3</sup>

The range of behaviours used by abusers have been incorporated into the power and control wheel<sup>4</sup> that explains the complexity of an abusive relationship. (see next page)

Domestic violence is a gendered issue. “The predominant pattern is one of male violence directed at a female partner...”<sup>5</sup>

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<sup>2</sup> ibid

<sup>3</sup> Man Alive, Stopping violence programme participants manual, 1995

<sup>4</sup> Developed by the Domestic Abuse Intervention Project 202 East Superior Street, Duluth, MN

<sup>5</sup> NZ Ministerial Taskforce for Action on Violence Within Families (2006)



Women do not stay in abusive relationships because they want to or because they in some way enjoy the abuse. They stay for a variety of reasons that include:

- Knowing that it is safer to stay than to go – most women and children are murdered after they have moved away from the abuser. Approximately one woman is murdered by her partner every five weeks in New Zealand. New male partners are also murdered by abusive ex-partners. In Scotland, the killing of children and murder suicide are very common threats/actions in abusive relationships. One man kills himself and his children every 6 weeks.<sup>6</sup>
- Having nowhere to go – refuges are unable to house women with complex needs, especially if they have mental health or drug and alcohol problems, as the staff are not qualified to work with this level of intensity. This will only get worse as a result of the funding cuts that have halved the amount of money that is available to refuges, as they will become even more reliant on voluntary and less skilled staff. There is also a chronic lack of affordable and safe housing available to women who need to move quickly to protect themselves. This is not a situation that is prioritised by Housing NZ.
- Believing the rhetoric that is very pervasive at the moment, that children need to live with their father and that women are harming the development of their

<sup>6</sup> Personal correspondence, Inverness Women's Aid. 2010

- children if they move away from the relationship. This is being reinforced by Government funding that is going to agencies mandated to keep families together. This policy will result in fewer women feeling able to leave abusive relationships, which in turn puts their children at greater risk of harm.
- Having no source of income. Part of domestic violence is economic abuse. Many women have been prevented from getting jobs and don't know much about the system, so feel unable to support themselves and their children financially. Also, it is a frequently occurring reality that women will be poorer when they leave an abusive relationship, as the abuser will use the separation process as an opportunity to further abuse and harass his partner, including denying her appropriate post separation income.
  - Being unable to plan and implement an escape process. Fear, depression, anxiety and sleep disturbances all prevent women thinking clearly and this inhibits their ability to make plans and seek the help of outside agencies. This means that women may not have, because of the effects of abuse, the ability to organise moving away from the abuser.
  - Feeling like there is no one to help, no place to go and no point in trying any more. Many women have tried over and over again to find help and escape to a place of safety, but have been hindered by inappropriate responses from those they sought help from.

There is a range of long-term effects of living with abuse, that are a reasonable response to the stress, uncertainty and fear that are experienced. These include:

- On-going fear
- Lack of volition
- Severe anxiety
- Diminished ability to deal with stress
- Being superwoman
- Hyper-vigilance
- Suspicion
- Ongoing severe trauma responses
- Exhaustion
- Isolation
- Disassociation
- Reality checking becomes poor
- Severe depression
- Obsessive compulsive behaviours
- Alcohol and other substance use/misuse

These effects make it very difficult for women to function. In situations where women are living with abuse, most will be doing their best to parent safely and effectively and to protect their children from being abused. Some women, however, will become unable to protect themselves or their children. This should not be used as an opportunity to criminalise women, but to help get them to a place of safety where they can recover their self esteem and mental health, regain effective parenting skills and learn to live without violence in their lives.

Ensuring that these very vulnerable women are not trapped and criminalised by this new Act, but are in fact recognised and helped, will require further provisions. We believe that these should include:

- requiring all police involved in the murder or abuse of a child, to investigate the possibility of domestic violence in the relationship of the parents or care givers to ascertain whether there are vulnerable adults, for example an abused woman or abused older care givers (parents etc), also being abused by the primary abuser and/or others in the family. This must involve checking their own files, CYF, children's schools and other agencies – statutory and NGO - to see if there has been previous contact with the woman either as a victim, or reporting concerns about her children's safety. Domestic violence experts, used to working with abused women, should be involved in this investigation and the questioning of women and other potential adult victims.
- not criminalising people who are found to be in this position, but recognising them as victims of the abuser and providing appropriate care and support to them.
- requiring the training of all police, lawyers, court psychologists, court staff and judges so that they understand the dynamics of domestic violence, and can understand and fully appreciate the inability of a vulnerable abused woman to influence circumstances and keep children safe from harm.
- providing care and support to abused women throughout the criminal proceedings, so that they feel safe enough, and empowered enough, to give evidence against the person who harmed their child.

Often, abused women have tried repeatedly to get help for their children, reporting their fears about physical, emotional and sexual abuse to police, CYF, health services, schools and a range of NGOs, yet, for a variety of reasons, have been ignored or told that they are trying to create trouble for their partner.

Especially since the rise of the Men's Rights movement, there is a widely accepted belief that women maliciously use protection orders and alleged fears about their children's safety to harass men and prevent them getting access to, and custody of their children. Also, women are expected to be the primary care givers for children and are vested with the responsibility of keeping children safe, but are also expected to facilitate men's parenting. These two things are often contradictory and place women and children at risk of further abuse when women are attempting to leave an abusive relationship. Often, when women attempt to raise safety concerns about their children, in relation to an abuser, their fears are not even recorded and are certainly not followed up, and in some cases women are penalised by Judges, lawyers, police and others for falsely accusing a 'good' man of abuse for their own malicious ends.

Therefore, if this Act is to become legislation, there need to be systems in place that ensure that women are believed when they raise fears about the safety of their children, that judges are trained and directed to place the safety of women and children first in their Family Court judgements, over-riding the imperative for fathers to have access if there is any risk of harm raised by the children's mother or other family members, and that all

reports of risk to the wellbeing of children are followed up and investigated. It is well known that CYF only have capacity to investigate a small percentage of the notifications they receive and anecdotal evidence that social workers have, because of fears about their own safety, failed to investigate allegations against very violent and lethal abusers.

This piece of legislation has been designed because of specific circumstances where it is difficult to ascertain who has harmed a child, in situations of multiple potential abusers. In order to ensure that innocent people, who are already victims of abuse are not further criminalised by this legislation, robust systems must be put in place.

**Who are we?**

Homeworks Trust is an Auckland based group of women who are concerned about the lack of specialised housing options and services available for women.

**Structure and membership**

Homeworks Trust is a voluntary charitable trust. Governance is vested in the Board. There are no paid staff.