New Zealand Law Society
Te Kāhui Ture o Aotearoa

Corrections (Victim Protection) Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

6 May 2024

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Corrections (Victim Protection) Amendment Bill (**Bill**).

1.2 The Law Society commends the overarching aim of the Bill to protect victims of crime, and victims of family violence. The Law Society's submission points to minor issues with the drafting and some workability concerns in the Bill that should be addressed before it is progressed.

1.3 This submission has been prepared with assistance from the Law Society's Criminal Law Committee.[1]

1.4 The Law Society does not wish to be heard in relation to this submission.

2 Definitions

Victim

2.1 We note neither the Corrections Act 2004 (**Act**) or the Bill include a definition of "victim". It would be difficult for the Department of Corrections (C**orrections**) to know about all victims, as it is not always apparent. We also note that the Act (in other sections) makes mention of victims in a wider sense than is intended by the amendment provisions.

2.2 The proposed amendment should define the term "victim" according to its intended meaning and include the definition within the specific provision. This will ensure it is not broadly applied to other situations in which the Act refers to victims in different contexts.

2.3 The Law Society suggests that a "victim" in this context could be someone who is on the victim notification register, for example. This would ensure that Corrections knows who the people requiring protection are, as well as having their address to ensure they can prevent mail being sent to them.

Unwanted contact

2.4 It may be necessary to define the term "unwanted contact" to ensure that what is unwanted contact is clear and provides for various types of contact that would not be in breach, even if not consented to, such as contact provided for by section 96 of the Family Violence Act 2018 (**FVA**). Most importantly, this would ensure that if contact is authorised by a parenting order/agreement, contact in accordance with the agreement is not a breach and is allowed.

2.5 An example of such a scenario is:

(a) Parent A is in prison, with parent B having a protection order against them. Children C and D are included in the protection order by virtue of being in the care of parent B.

(b) There is a written parenting agreement/order permitting parent A to write/call children C and D.

[1] More information on the Law Society's law reform committees and sections can be found here: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/criminal-law-committee/.

(c) Parent B informs the prison that they – and children C and D – no longer want contact with parent A and Corrections starts to block communications, notwithstanding the parenting order.

2.6 It is the Law Society's view that if a written parenting order is in place, that should take precedence and contact in line with the order should be allowed.

2.7 The Law Society suggests a definition along the lines of:

> **"Unwanted contact** for the purpose of section 8(1)(ja) and section 12(ca) means –
>
> (a) **Contact** as defined in section 8 of the Family Violence Act 2018 to which either:
>
> (i) No consent has been given by the protected person or victim; or
>
> (ii) Any consent given to the contact has subsequently been withdrawn;
>
> (b) In order to be valid, any consent to contact in respect of a protected person must be either written, or by digital communication (for example, in a text message, email, letter, or standard form) (see section 94(1) Family Violence Act 2018); and
>
> (c) Does not include contact which:
>
> (i) For a protected person, is authorised by section 96 of the Family Violence Act 2018; or
>
> (ii) For a victim, would be authorised by section 96 of the Family Violence Act 2018 if the victim was a protected person."

3 Amendments to the Corrections Act 2004

Addition of new sub-section 8(1)(ja)

3.1 Clause 4 inserts a new subsection 8(1)(ja), requiring the Chief Executive to ensure that Corrections has arranged systems to protect victims and persons who are subject to protection orders under the FVA from unwanted contact with "persons under control or supervision".

3.2 "Person under control and supervision" is currently defined in the Corrections Act 2004 as:

> (a) a prisoner:
>
> (b) a person who is subject to a community-based sentence:
>
> (c) a person who is subject to a sentence of home detention:
>
> (d)[Repealed]
>
> (e) a person who is subject to conditions under the Parole Act 2002 or under section 80N or 93 of the Sentencing Act 2002

3.3 The Law Society suggests this may be an unintended extension, as it would include persons sentenced to supervision, community work, or other low-level sentences that are community-based. Practically, there could not be the oversight in place for most community-based offenders to control their contact attempts.

3.4 Even in the case of a sentence of home detention, monitoring would be impracticable. While a person is in custody, there are processes in place to control contact – phone calls

have to be approved, and letters are scrutinised. This enables a degree of control and oversight – meaning it can be verified if contact is wanted, and unwanted contact can be intercepted. For community-based and home detention sentences, as well as post-detention, a client is at home by themselves. There is not the same degree of control able to be exercised, and no requirement to get approval for phone calls/letters/contact etc. Even if such approval was required, monitoring would not be practicable. At best, contact would be identified after the fact, and would not protect against the harm this bill seeks to prevent.

3.5 The Law Society suggests that the wording should instead be "ensuring that processes are established and maintained to protect the following from unwanted contact with *prisoners*".

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