



## **NWCI Submission to Seanad Éireann**

### **Recommendations for Legislative Amendments: Domestic Violence Bill 2017**

**February 2017**

#### **National Women's Council of Ireland**

Founded in 1973, the National Women's Council of Ireland (NWCI) is the leading national women's membership organisation. We represent and derive our mandate from our membership, which includes over 190 groups and organisations from a diversity of backgrounds, sectors and locations across Ireland. We also have a growing number of individual members who support the campaign for women's equality in Ireland. Our mission is to lead and to be a catalyst for change in the achievement of equality for women. Our vision is of an Ireland and of a world where women can achieve their full potential and there is full equality between women and men.

NWCI is the chair of the National NGO Observatory on Violence against Women and convenor of the Women's Human Rights Alliance. At a European level, NWCI is represented on the Executive Committee of the European Women's Lobby. NWCI's expertise in informing the development of government policy and legislation has been widely recognised. We currently sit by invitation on the National Steering Committee on Violence Against Women and the Women, Peace and Security Monitoring Group and the Department of Foreign Affairs NGO Standing Committee on Human Rights.

#### **NWCI Observations on the Domestic Violence Bill 2017**

Ending violence against women is critical to achieving equality for women and ensuring women are safe and free to participate fully in society.

NWCI welcomes the new measures to be introduced in the Domestic Violence Bill, and the fact that Ireland is moving towards ratification of the Istanbul Convention. NWCI welcome in particular the enhanced protection of and support for victims when they are going to court, the removal of the barrier of property ownership when applying for interim barring orders and the recognition of the new reality of online abuse.

We also welcome and strongly support the Tánaiste's stated intention to bring forward amendments to the Bill at Committee Stage to extend access to safety and protection orders to those in intimate and committed relationships, who are not cohabiting.

We recognise that this Bill is primarily focused on reforming the civil law with regard to domestic

violence. We do not wish to delay the progress of this Bill by recommending that it should be amended to include a number of recommendations that concern criminal matters, as we accept that they may require detailed analysis. However we would like to take this opportunity to draw attention to the fact that in order to fully implement the prosecution pillar of the Istanbul Convention future consideration should be given to establishing a specific offence of domestic violence separate from the general offence of public assault under which it is currently prosecuted. A specific offence would recognise the particularly harmful and complex nature of domestic violence, assist in the effective policing of domestic violence incidents and send out a clear message of zero tolerance towards violence in the home. NWCI recommends that the process of drafting a separate bill that specifically addresses criminal and prosecution needs should be initiated after the passing of the Bill in order to effectively address domestic violence in a holistic manner. This would also concur with the 2014 recommendations of the Oireachtas Committee on Justice, Defence and Equality.<sup>1</sup>

The following are amendments to the current Bill that NWCI and our members wish to see adopted in order to strengthen the Bill and provide further protection for victims, predominantly women.

### ***Defining Domestic Violence***

The effectiveness of the new Bill is undermined as it does not include a clear and comprehensive definition of what constitutes “domestic violence”. The Istanbul Convention defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (Article 3), but organizations working at the coalface have found that it is extremely difficult to obtain an order for non-physical forms of violence.

**NWCI recommends the Bill be amended to include a clear statutory definition of “domestic violence” and it should capture not only acts of physical (including sexual) violence, but also acts of psychological and economic abuse, including stalking and other forms of harassment, and acts which are undertaken in order to exercise “coercive control” over their victim.**

The Bill does not outline criteria governing the standard or type of proof necessary for the Court to determine the basis for the granting of an order. One of the major findings of a 2016 study<sup>2</sup> was that the law in relation to domestic violence is being applied inconsistently in different courts throughout the country. As a consequence, legal professionals find it difficult to predict outcomes for women; this in turn deters women from reporting and pursuing legal cases, undoubtedly contributing to the low levels of reporting and high levels of withdrawals of complaints.

**NWCI recommends developing guidelines in relation to criteria and considerations for granting orders under the domestic violence legislation.**

### ***Specific offence of Stalking***

Women experiencing domestic violence are often controlled, followed, harassed and stalked by

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<sup>1</sup> Joint Committee on Justice, Defence and Equality *Report on hearings in relation to Domestic and Sexual Violence*, October 2014, 31/JDAE/018.

<sup>2</sup> SAFE Ireland. (2016) *In Search of Justice: Women and the Irish Legal System*. Athlone: SAFE Ireland. Available at: [http://www.safeireland.ie/safeireland-docs/INASC\\_SAFEIreland\\_report.pdf](http://www.safeireland.ie/safeireland-docs/INASC_SAFEIreland_report.pdf)

their abusers both during the relationship and after separation. Stalking often escalates after separation and is linked to the abuser wanting to continue to control the victim. Stalking and/or harassment are not distinct, recognisable grounds upon which a woman can seek a safety or protection order.

**NWCI recommends that stalking should be explicitly recognised as a ground upon which a woman can seek a safety or protection order.**

#### ***Out of Hours Barring Orders***

The Bill provides for the making of emergency barring orders where there are reasonable grounds to believe that there is an immediate risk of significant harm. However for these orders to be truly available in an emergency situation they need to be available outside of traditional court hours. The Bill is silent on this matter, and makes no reference to what a victim should do in circumstances where the court is not sitting. There is a clear need for these orders to be available outside of traditional court hours, so that victims of domestic violence do not find themselves without protection for extended periods of time.

**NWCI recommends including a provision in the Bill to facilitate a situation where on request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorise the calling of an on-call judge to apply for an out of hours barring order. The return date would be the next sitting day in the nearest available Court.**

#### ***Domestic abuse and child abuse***

The Bill does not address the pressing need to craft robust legislative and procedural links between domestic abuse and child abuse. The courts when dealing with domestic violence orders, custody or access, are usually not supplied with expert assessment of the safety of children in the relationship and it is common that the abuser has unsupervised access. Access to children is also systematically used as a way to further abuse and threaten the victim which has serious consequences for the child. When supervised access is ordered, there are no suitable access centres with staff trained on the dynamics of domestic violence and with the capacity to provide both physical safety and psychological support for children. In 2015 it was disclosed to Women's Aid that in 82 contacts children were being abused during access and on 124 occasions mothers disclosed that they themselves had been directly abused during access visits. Funding for the successful Barnardos/One Family Pilot Child Contact Centre was terminated in 2013, notwithstanding its evaluation finding that such service was essential.

**NWCI recommends including in the Bill a provision by which, when granting a Barring Order, the Court should consider the safety and well-being of any children of the relationship and take interim measures, as necessary, for their protection. To provide for experts being available to the Court to assess the risk the perpetrator poses to children and the impact on them of direct and/or indirect abuse.**

**NWCI recommends establishing a national system of Child Contact Centres to facilitate post-separation contact for children of victims of domestic abuse that ensures and protects their physical and psychological wellbeing.**

#### ***Court Proceedings***

Fear of the judicial process itself is a significant deterrent to victims, let alone the opportunities perpetrators have to abuse the process to punish or intimidate their victims. Current family court procedures allow perpetrators of domestic abuse, some even with criminal convictions, to directly question their victims. This means that someone convicted of a domestic violence

related offence, can represent themselves in family court proceedings, enabling them to cross-examine their victim. The treatment of domestic abuse victims in family courts needs to be addressed in this Bill in order to ensure that a perpetrator is prohibited from directly interrogating their ex-partner during court proceedings.

**NWCI recommends including a provision in the Bill to ensure that a perpetrator is prohibited from directly interrogating their ex-partner during court proceedings.**

A further tactic that has been employed in court proceeding is for the respondent to appear without legal representation and then refuse to progress the matter until they have such representation. Judges often adjourn the matter based on this request only for the respondent to appear at the next court date without legal representation, and the cycle repeats. This is done to intimidate a victim into dropping the court proceedings. Respondents should not be able to repeatedly delay a court hearing in this manner.

**NWCI recommends including a provision in the Bill to ensure that a perpetrator cannot delay a court hearing without reasonable cause.**

### ***Undertakings***

The Bill should be amended to ensure that where a woman is seeking a domestic violence court order, and she has met the standard of the court to obtain such an order, then a judge cannot instead choose for the application to be determined by an undertaking (a sworn promise given by a perpetrator to a Judge). As an undertaking is not a court order it comes without the protection of a court order. In practical terms this means that where the perpetrator breaches the undertaken, the Gardaí have no power of arrest, and therefore can offer no real protection to victims of domestic violence.

**NWCI recommends including a provision in the Bill to ensure that where a woman is seeking a domestic violence court order, and she has met the standard of the court to obtain such an order, then a judge cannot instead choose for the application to be determined by an undertaking**

**NWCI respectfully recommend that the Bill be amended to include:**

- **a clear statutory definition of “domestic violence” and it should capture not only acts of physical (including sexual) violence, but also acts of psychological and economic abuse, including stalking and other forms of harassment, and acts which are undertaken in order to exercise “coercive control” over their victim.**
- **guidelines in relation to criteria and considerations for granting orders under the domestic violence legislation.**
- **that stalking should be explicitly recognised as a ground upon which a woman can seek a safety or protection order.**
- **a situation where on request from a Garda attending a domestic violence incident, a Garda of appropriate rank, can authorise the calling of an on-call judge to apply for an out of hours barring order. The return date would be the next sitting day in the nearest available Court.**

- a provision by which, when granting a Barring Order, the Court should consider the safety and well-being of any children of the relationship and take interim measures, as necessary, for their protection. To provide for experts being available to the Court to assess the risk the perpetrator poses to children and the impact on them of direct and/or indirect abuse.
- establishing a national system of Child Contact Centres to facilitate post-separation contact for children of victims of domestic abuse that ensures and protects their physical and psychological wellbeing.
- that a perpetrator is prohibited from directly interrogating their ex-partner during court proceedings.
- that a perpetrator cannot delay a court hearing without reasonable cause.
- that where a woman is seeking a domestic violence court order, and she has met the standard of the court to obtain such an order, then a judge cannot instead choose for the application to be determined by an undertaking.