



PARLIAMENT OF THE COOK ISLANDS

PARLIAMENT PAPER NO. 90

Rarotonga.

Madam Speaker,

I have the honour to present the Interim Report of the Family Law Bill Special Select Committee for the period ending 3rd June 2016

I have the honour to be,

Sir,

Mr Mona Ioane
Chairman of the Family Law Bill

The **HON. NANDI GLASSIE**, Minister of Justice



PARLIAMENT OF THE COOK ISLANDS

3 June 2016

Honourable Speaker
Office of the Speaker of Parliament
Parliament of the Cook Islands
Nikao, Rarotonga
COOK ISLANDS

Honourable Speaker

In accordance with the Family Law Bill Special Select Committee's Terms of Reference, it is my honour and privilege to present to you this Interim Report on the work of the Committee for the period ending 3 June 2016 for tabling in the House at the upcoming sitting of Parliament.

Madam Speaker, owing to funding and scheduling challenges as well as staffing circumstances beyond the Committee's control, the Committee was not able to complete its final report in time for the upcoming sitting of Parliament. I therefore submit the following recommendations to facilitate the completion of the final report:

That the House:

- 1) Consider and approve an extension of six months duration to the Committee's work time-frame to enable the Secretariat to complete the Committee's Final Report for tabling at the next sitting of Parliament.
- 2) Consider and approve the Committee's recommendations on proposed amendments to the Bill in order that arrangements may be made for the Bill's Reviewer to update the Bill for tabling in Parliament when completed.

Please accept, Honourable Speaker, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Mona Ioane'.

Mona Ioane (MP)

Chairman

Family Law Bill Special Select Committee



PARLIAMENT OF THE COOK ISLANDS

INTERIM REPORT OF THE FAMILY LAW BILL SPECIAL SELECT COMMITTEE FOR THE PERIOD ENDING 3 JUNE 2016

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TERMS OF REFERENCE

1. The Family Law Bill Special Select Committee was established by Parliament on 11 June 2015, to go over the Family Law Bill and inquire into how the Bill could be improved in order for its proper administration and to report its findings to Parliament.

MEMBERSHIP

2. The membership of the Committee is as follows:

Chairperson	Mr Mona Ioane	(Govt)
Deputy Chairperson	Mrs Selina Napa OBE	(Opposition)
Members	Mr George Angene	(Opposition)
	Mrs Rose Brown	(Govt)
	Mr Toka Hagai	(Govt)
	Mrs Tetangi Matapo	(Opposition)

TECHNICAL SUPPORT

3. The Bill was initially drafted in 2010 by UNDP-funded Consultant Ms Christine Forster, a senior lecturer at the University of New South Wales' faculty of law and is reviewed by Mr Ian Jamieson of the New Zealand Parliamentary Counsel Office. Technical support was provided to the Committee by the Crown Law Office through the Senior Crown Counsellor Ms. Catherine Evans who provided the legal opinions in response to questions on the Bill. She was ably assisted by the Secretary of Justice Mr. Tingika Elikana who provided much needed guidance during the consultations with stakeholders; and the Secretary of Internal Affairs Ms. Bredina Drollett and Manager of the Child and Family Division Mr. Edward Browne both provided invaluable input.

4. The Office of the Editor of Debates of Parliament led by Mr Isaac Solomona and all his staff provided the communications and editorial support to the Committee.

5. The Corporate Services Division under the leadership of Director of Corporate Services Mrs Ina Pierre provided the administrative support and financial services to the Committee.

SECRETARIAT

6. A number of Parliamentary Staff and other officials served as the Secretary to the Committee at various times during the report period including the Secretary of Committees Mr John Henry, the Deputy Clerk of Parliament Mrs Helen Maunga, the Clerk of Parliament Mr John Tangi and the Executive Director of the Pacific Legislatures for Population and Governance (PLPG) Mr Tangata Vainerere.

WORK-PLAN FORMULATION

7. The Committee began its work with an informal meeting with the Secretariat and Parliamentary Executives on 10th July 2015 to formulate a strategic work plan to enable the Committee to effectively perform its functions as tasked by Parliament.

8. Consultations with the core agencies and relevant stakeholders were held in the Parliament Chamber where all interactions were recorded for the Hansard reports. Recording of proceedings of all other consultations were also conducted.

CONSULTATIONS ON RAROTONGA

9. From the 7th of September 2015 to the 9th of December 2015, the Committee embarked on face to face consultations with various stakeholders including Heads of Ministries of the core public service agencies that will be responsible for the administration of the anticipated Act following its enactment by Parliament.

10. The core agencies consulted include the Ministry of Internal Affairs; Ministry of Justice; and Cook Islands Police.

11. Numerous consultative meetings were also conducted with other Non-Government stakeholders such as the Punanga Tauturu, Cook Islands Family Welfare Association, House of Ariki, Koutu Nui, Cook Islands National Disability Council, Religious Advisory Council, Cook Islands Child Welfare Association, National Council of Women, and the Tereora College Student Counsellor.

12. Two Radio talk-back sessions were also executed by the Committee on Cook Islands Radio, the first being on the late afternoon (4pm – 6pm) of Wednesday 14 October 2015 with the Kave Korero Program led by Radio Host Mr Tony Hakaoro and the second session took place on Thursday 15 October 2015 from 9am to 10am with the Karangaranga Daily Community Program sponsored by the Cook Islands Trading Corporation and led by Radio Host Mr Rurutura Tauta.

13. The Vaka consultations on mainland Rarotonga were also conducted by the Committee, beginning with Vaka Puaikura on Monday 23 November 2015 from 5.30pm at the Arorangi CICC Calvary Hall with 40 attendees. This was followed by Vaka Takitumu at the newly dedicated Matavera CICC Sunday School Hall on Tuesday 24 November 2015, from 5.30pm with 50 attendees. The last of the three Vaka meetings (Vaka Teauotonga) was conducted at the Avarua CICC Sinai Hall on Thursday 26 November 2015, at 5.30pm with 18 attendees.

14. On 1st December 2015 the Cook Islands National Youth Council conducted a Youth Parliament as part of its Triennial Conference. A pre-Youth Parliament briefing on Parliamentary rules and procedures was conducted at the Pukapuka Hostel prior to the Youth Parliament.

15. The Youth Parliament used Question time to engage in debates on the principles and merits of the Family Law Bill with a special focus on Part 5 of the Bill relating to Care and Protection and completion of the First, Second and Third Readings of the Bill.

16. Expert inputs were also presented to the Committee by Lawyer Norman George, the Secretary of Education Ms Gail Townsend, Tereora College Principal Ms Tania Morgan, Director of Funding and Planning Directorate of the Ministry of Health Ms Roana Mataitini, Ministry of Health Policy and Planning Officer Mr Valentino Wichman, Gender and Women's Advocate Ms Lyndsay Francis and Psychotherapist Dr Erika Anderson.

17. A number of recommendations arose out of the above submissions and most are incorporated in the recommendations in this report. However, the Committee required more research into some of the issues raised and will incorporate these into the final report.

CONSULTATIONS IN THE PA ENUA

Mangaia

18. The visit to Mangaia took place on Wednesday 2 December 2015, when a six member delegation flew to Mangaia and returned to mainland Rarotonga on Friday 4 December 2015.

19. While on Mangaia, the Committee held one meeting with the Mayor and the Members of the Mangaia Island Council on the morning of Thursday 3rd December. During the afternoon the second scheduled island meeting was staged at the Oneroa Community Hall which was attended by 35 people.

20. A number of suggestions on various clauses of the Bill were raised during the meetings which forms part of the recommendations in this report.

Aitutaki

21. The second and final visit to the Pa Enua for the year 2015 was to the island of Aitutaki, with a six member delegation visiting the island, on Monday 7 December 2015 and returning to Rarotonga on Wednesday 9 December 2015. While in Aitutaki the Committee met with the Aitutaki Mayor and Members of the Island Council of Aitutaki.

22. The delegation also carried out two public meetings, the first in Vaipae on Monday 7 December 2015 at 5.30pm (for all residents residing within the "Country" villages of Vaipeka, Vaipae and Tautu). The second and final meeting was staged in the Ngapuariki Hall in the village of Arutanga, for all residents of the "Town" villages of Amuri, Ureia, Arutanga, Reureu and Nikaupara.

23. As with the Mangaia consultations, a number of suggestions on improvements to the Bill were raised during the meetings in Aitutaki which forms part of the recommendations in this report.

Mauke

24. The delegation departed Rarotonga on Monday 11 January 2016 at 9.30am and returned on Wednesday 13 January 2016, at 9.10am.

25. The transcript for the consultations is yet to be made available to the Committee.

Atiu

26. The delegation departed Rarotonga on Friday 15 January 2016 at 11am and returned on Monday 18 January 2016 at 2.05pm

27. The transcript for the consultations is yet to be made available to the Committee.

Mitiaro

28. The delegation departed Rarotonga on Monday 25 January 2016 at 1.00pm and returned on Friday 29 January 2016 at 2.50pm.

29. The transcript for the consultations is yet to be made available to the Committee.

Pukapuka - Manihiki - Penrhyn - Rakahanga

30. The delegation held consultations in the Northern Group Islands as follows: Pukapuka - 18 April; Tukao, Manihiki - 19 April; Tauhunu, Manihiki - 20 April; Omoka, Tongareva - 21 April; and Tetautua, Tongareva - 21 April.

31. It is with pronounced regret that the Committee was not able to conduct consultations in Rakahanga due to adverse weather conditions preventing travel to the island. The Committee was also unable to conduct consultations in Nassau.

32. The transcript for the consultations is yet to be made available to the Committee.

RECOMMENDATIONS

33. Based on submissions received during the stakeholder consultations, the Committee recommends the following amendments to the Family Law Bill:

Clause Reference	Issues	Proposed Amendments (endorsed by the Committee on the advice of Crown Law)
1. Title	The title of the Bill translates awkwardly in the Maori language. Family Law Act 2016 - <i>Ture Nui no te Ture Ngutuare Tangata 2016</i>	Alternative title: Family Protection and Support Act 2016 - <i>Ture Nui no te Paruru e te Turuturu Ngutuare Tangata 2016</i>
2. Purposes of Act	For consistency with the preamble of the Constitution which states “...recognising the heritage of Christian principles, Cook Islands custom and the rule of law...”	” the inclusion of Christian principles in subclause (f) as a new paragraph “(iv) Christian principles”. Members may wish to put subclause (f) first in the list as a new subclause (a), or make a similar rearrangement.
3. Notification of Abuse Part 5, Subpart 2	Clause 49 provides that doctors are one of the people who must report abuse on reasonable grounds for believing a child has experienced or is experiencing sexual abuse or non-accidental injury. Note that some Pa Enua do not have doctors and the Bill does not provide that nurses may be required to notify in those circumstances.	doctors to be retained on the list, and nurses to be added to the list.
4. Uipaanga Koputangata Part 5, Subpart 9	Clause 79 introduces the uipaanga kopu tangata – is this the appropriate name?	The Committee opted to retain this name
5. Reduction of Domestic Violence Clause 89 (c)	The Parliamentary Group on Population and Sustainable Development of the Cook Islands Parliament in agreement with the Women’s National Council of Women disagreed with the inclusion of the term “reduce” and advocated for a zero-tolerance approach	remove the words “ reduce and ” from Clause 89 (c)
6a. Authorised persons Part 6, Subpart 1	The Ministry of Justice proposed that clause 97 which provides for an authorised person to receive applications for protection orders, is not necessary, because the Pa Enua has Deputy Registrars who would receive any application and who have a duty to check that all that is required in the application is there before sending it to Rarotonga for forwarding to a Judge.	Crown Law to check with Justice

6b. Authorised persons Part 6, Subpart 1	The term "Secretary" must be defined in Part 6, Subpart 1 to mean the Secretary of Justice, because otherwise the Bill defines "Secretary" in Clause 4 as the Secretary of Internal Affairs.	approved
7. Temporary Protection Orders Part 6, Subpart 2	Clause 101 should provide that if the Court is satisfied that (a) to (c) are met by the evidence then it "must" and not "may" make a temporary protection order.	insert "must" in place of "may"
8. Police Safety Orders Part 6, Subpart 3	The requirement in Clause 109(2) for a person who is not a sergeant to obtain authorisation from a sergeant before making a police safety order will be difficult to apply in the pa enua.	It is suggested that for pa enua police safety orders may be made by constables , but there should be a requirement that the constable later informs a sergeant in Rarotonga that the PSO was made and provides background details.
9. Police Safety Orders Part 6, Subpart 3	Clause 114 provides that a person who fails to remain in a place where they have been detained commits an offence and on conviction is liable to a maximum fine of \$200.	Since fines may mean that the protected persons are disadvantaged, it is proposed that there be no fine but that the sentence imposed be community service of up to six months .
10. Harassment	Submissions were made that the Family Law Bill does not provide protection for people who are not in a domestic relationship but who are being harassed by a person they know or don't know, for example a neighbour.	A bill which deals with harassment should be drafted along the lines of the New Zealand Harassment Act 1997 (reprinted 2016).
11. Repeal of Infants Act 1908 Part 7, Clause 147(b)	Crown Law letter to the Select Committee dated 4 February 2016 advised that the full repeal of the Infants Act 1908 as provided for in	The Bill should be amended to provide that only Part 1 of the Infants Act 1908 be repealed and the definition of an infant in the Infants Act 1908 to be amended .
12. Amendment to the Prevention of Juvenile Crime Act 1968 Part 7, Clause 151	A review of clause 151 has found that this repeal provision needs to be amended to ensure that the repeals do not leave gaps or create issues that can be avoided.	<p>Clause 151 should be amended as follows:</p> <p>Subclause (5) paragraph (c) should have added in as a new (3)(ii) "direct an inquiry under section 13;"</p> <p>a. Subclause (7) paragraph (a) should be amended to read "adding in subsection (1) the following paragraph after paragraph (d) a new paragraph (e) "The victim or victims of the offence or offences"</p> <p>b. Subclause (8) delete paragraph (e).</p>

		<p>c. Subclause (12) delete the words "or application in relation to any child" after the words "a child," and delete the words "or application" at the end of the provision. Insert after subclause (12) a new subclause (13) "Section 26(3) is deleted and the following subsections 4, 5, 6, 7, and 8 are renumbered to become 3, 4, 5, 6 and 7.</p> <p>d. Delete subsection (b) of section 28.</p>
13. References to Title	All references to the Family Law Act 2014 should be amended to refer to the Family Protection and Support Act 2016.	Family Protection and Support Act 2016

34. The Committee further invites the House to:

- 1) Consider and approve an extension of six months duration to the Committee's work time-frame to enable the Secretariat to conduct further research on some additional recommendations in order to complete the Committee's Final Report for tabling at the next sitting of Parliament.
- 2) Consider and approve the Committee's current recommendations on proposed amendments to the Bill in order that arrangements may be made for the Bill's Reviewer to update the Bill for tabling in Parliament when completed.



Mr. Mona Ioane
Chairman
Family Law Bill Special Select Committee