



## **Submission to the Family Court Proceedings Bill 2013**

### **Submitted by:**

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Thank you for the opportunity to make a submission. We would like to speak to our submission. We hope that the Select Committee travels to Auckland as this is such an important issue and such a large percentage of the country's population lives in here.

## **The Auckland Coalition for the Safety of Women and Children**

The Coalition was developed in 2006 in reaction to concerns regarding responses to domestic violence in Auckland. Several community agencies met together to discuss domestic and sexual violence legislative developments and decided to form a coalition group that met regularly to strategise and work toward achieving the ultimate goal of safety for women and children in Auckland.

### **Members:**

- Auckland Women's Centre
- Auckland Sexual Abuse HELP
- Eastern Women's refuge
- Homeworks Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- Rape Prevention Education – Whakatu Mauri
- SHINE Safer Homes in NZ Everyday
- Supportline Women's Refuge
- Te Rito Rodney
- Women's Health Action Trust

**Networking:**

Tu Wahine, which provides violence prevention services for Maori, works in parallel with us, and we also link in with the National NGO Alliance, a collective of national agencies including Jigsaw, the National Network of Stopping Violence Services and the National Network of Independent Women's Refuges.

**Our Work:**

We have undertaken a number of innovative activities including:

- a competition for young people to make a video for you-tube on violence against young women
- a community development programme involving small businesses making a commitment to speaking out against domestic violence
- A flash mob drawing attention to the prevalence of domestic violence on International Women's Day 2010

**Background to the operation of the Family Courts today****1. Domestic violence increasingly trivialised**

Over the last 15 years our justice system has increasingly trivialised domestic violence, viewing it as "couple conflict", depicting women as just as violent as men, and ignoring the pattern of violence of the male perpetrator. Our Criminal Courts, Family Violence Courts and the Family Court have moved away from the analysis underpinning the Domestic Violence Act 1995, which recognised the dynamics of male power and control in domestic violence situations. The repercussions of this accelerating shift are many and serious. We have seen judges granting bail to men who have then gone on to kill their ex-partners. The Police are arresting fewer perpetrators, fewer perpetrators who are arrested are being convicted, fewer Temporary Protection Orders are being made final, fewer men are being referred to stopping violence programmes and some women are being forced to attend couple counselling with their abusers.

**2. Father's Rights agenda adopted**

Over 50 percent of applications to the Family Court under the Care of Children Act involve violence; however, the Family Court has never seriously addressed the lack of knowledge amongst Family Court professionals (judges, lawyers, psychologists and counsellors) about the dynamics of domestic violence. Incrementally, over recent years the Family Courts have adopted many beliefs from the Father's Rights agenda, including a false belief that once the couple has separated the violence between the spouses is historical and of little relevance. The violence is seen as only a product of "relationship dynamics" and that once they are separated the abuse will stop. Research, however, shows that women are most at risk for serious injury and even death within the first 18 months post separation, especially when she leaves the relationship with the children.

The Courts often characterise the father as a "good parent" despite his being abusive ("a lousy partner"). This especially happens if the violence *began* around the time of separation. If it did, it will usually be characterised as "separation engendered violence" and therefore trivialised. It will not be seen as *real* violence or as demonstrating a propensity for violence on the part of the perpetrator or as part of an already existing pattern of coercive control. It will not be seen as particularly relevant to parenting order outcomes. An example of this is the High Court decision

in the *Surrey v Surrey* case, where the husband raped his wife twice post separation, but was not seen as a possible on-going danger to her because he was in a new relationship and had said he had “moved on”. An Appeal Court decision overturned this finding, but the Courts seem to be ignoring the implications of this Appeal Court decision.

### 3. “Shared parenting” prioritised

In addition to trivialising violence, the Family Court has unofficially embraced the doctrine that “shared parenting” (defined as when the parents each have responsibility of the children 50 percent of the time) is the best outcome for all children of separated parents, regardless of their particular circumstances. This belief contradicts New Zealand research which has found that the two most important factors for children’s well-being post separation are maintaining their relationship to their primary care giver and minimising their exposure to inter-parental conflict (New Zealand Universities Law Review, Vol 24, No 1, June, 2010, *Julia Tolmie, Vivienne Elizabeth and Nicola Gavey*).

In the Family Court, mothers who have concerns about the safety or neglect of their children run a significant risk of being labelled as “litigious”, “the alienating parent”, “the hostile parent” or as “an obstructor”. This new shared parenting culture runs so deep that no credence is given to the possibility that the mother may simply want what is best for her child, or that battling to find a place of safety for her child and herself can increase women’s fear and desperation and make them appear less credible. New Zealand literature has pointed to a judicial approach in which on-going contact with fathers trumps safety of the child, when the father is an abuser.

#### **Family or domestic violence in Aotearoa New Zealand**

*“Family or domestic violence” ... “a broad range of controlling behaviours, commonly of a physical, sexual and/or psychological nature, which typically involve fear, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family.”<sup>1</sup>*

Family violence remains one of our most pressing social problems, with a high prevalence in the population as a whole, and with extensive consequences in terms of health, criminal justice, social, and economic costs.

Research has clearly established that it is women and children who are most often the victims of domestic violence. Aotearoa New Zealand population-based estimates of partner abuse suggest that 15 to 35 percent of women are hit or forced to have sex by their partners at least once in their lifetime. While seven percent of men report experiencing this type of abuse<sup>2</sup> research also indicates partner abuse perpetrated by women against men is likely to be less severe, less likely to result in injury, and more likely to be perpetrated in self-defence<sup>3</sup>.

Between 15 and 21 percent of women report having experienced physical or sexual abuse, and 44 to 53 percent report having experienced psychological abuse in the previous 12 months<sup>4</sup>

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<sup>1</sup> As yet, no precise definitions of family violence have been accepted or implemented by government policy. This definition of family violence used in the Taskforce for Action on Violence within Families’ indicators report is the Te Rito definition: Taskforce for Action on Violence within Families, *Background to the family violence indicators*. 2011, Ministry of Social Development.

<sup>2</sup> Young W, Morris A, Cameron N, Haslett S. 1997. *New Zealand National Survey of Crime Victims*. 1996. Wellington: Victimisation Survey Committee.

<sup>3</sup> Dobash RE, Dobash RP. 1992. *Women, violence, and social change*. London and New York: Routledge Press.

<sup>4</sup> Leibrich J, Paulin J, Ransom R. 1995. *Hitting Home: Men speak about abuse of woman partners*. Wellington: Department of Justice.

<sup>5</sup>.The majority of perpetrators of partner violence, in both heterosexual and same-sex couples are men<sup>6</sup>.Ninety percent of partner homicides in Aotearoa New Zealand were committed by men against their female partners or ex-partners<sup>7</sup>.

Research indicates that four to 10 percent of New Zealand children experience physical abuse and approximately 18 percent experience sexual abuse. Among females alone, the lifetime prevalence of sexual abuse may be as high as 30 percent<sup>8</sup>.The majority of perpetrators of child abuse are male family members and men are more frequently responsible for the most serious forms of child abuse<sup>9</sup>.

Child abuse has detrimental effects on children's physical, cognitive, emotional, behavioural and social development. The long-lasting and pervasive nature of the effects warrants a strong approach to early identification and intervention by the health sector<sup>10</sup>. Evidence also suggests that incidence of child abuse and partner abuse is likely to overlap with between 30 and 60 percent of families experiencing both<sup>11</sup>.

From 2002 to 2008 186 deaths were defined as family violence deaths, mostly this involved either the death of a partner or a child<sup>12</sup>. Most of the perpetrators were men. One of the common contributing factors is separation and threats of violence or violence often preceded the death. Research in the 1990s by Snively found the economic costs of domestic violence are also very high<sup>13</sup>. According to a 2009 study

*"The figures contained in Snively's research are now 15 years out of date but no more up to date economic analysis is available. If Snively's figures are adjusted to 2008 levels the most conservative figure increases to \$1.678 billion and the highest scenario becomes \$7.495 billion. According to Statistics Aotearoa New Zealand's population projections there are 2,203,200 women living in Aotearoa New Zealand in 2009. Based on the rate of 1.1 homicides for 100,000 women in Aotearoa New Zealand each year we can expect 24 women to be murdered in 2009. At a projected cost of \$4m per homicide this equates to an impact on the New Zealand economy in one year, of \$97m for the homicides of women and girls<sup>14</sup>."*

<sup>5</sup> Morris A. 1996. *Women's Safety Survey*. Wellington: Victimisation Survey Committee.

<sup>6</sup> Tjaden P, Thoennes N. 2000. *Extent, nature and consequences of intimate partner violence:Findings from the National Violence Against Women Survey*. Department of Justice and Centers for Disease Control and Prevention and Fanslow J, Kotch, J, Chalmers D. *Partner Homicide in New Zealand, 1978-1987*. Unpublished manuscript.

<sup>7</sup> Fanslow J, Kotch, J, Chalmers D. *Partner Homicide in New Zealand, 1978-1987*. Unpublished manuscript.

<sup>8</sup> See for example Ministry of Health. 1998. *Our Children's Health: Key Findings on the Health of New Zealand Children*. Wellington: Ministry of Health and Fergusson D, Horwood L, Woodward L. 2000. The Stability of Child Abuse Reports: a longitudinal study of the reporting behaviour of young adults. *Psychological Medicine* 30:529-544.

<sup>9</sup> See for example [29] Featherstone B. 1996. *Victims or villains? Women who physically abuse their children*, 424-446.In: Fawcett B (ed). *Violence and Gender Relations: Theories and Interventions*. London: Sage. And Cooney C, Baun N. 1997. *Toward An Integrated Framework for Understanding Child Physical Abuse*.*Child Abuse and Neglect* 21(11):1081-94 and Chalk R, King P. *Violence in Families: Assessing Prevention and Treatment Programs*. National Research Council and Institute of Medicine. Washington: National Academy Press and Langdon C. 2001 and *Child killing: our grim role of shame*. *Dominion* 16 May 2001: 1-2 and Anderson JC, Martin JL, Mullen PE, Romans S, Herbison P. 1993. *The prevalence of childhood sexual abuse experiences in a community sample of women*. *Journal of the American Academy of Child and Adolescent Psychology* 32:911-19.

<sup>10</sup> Eiskovits Z, Winstok Z, Enosh G. 1998. *Children's Experience of Interparental Violence: A Heuristic Model*. *Children and Youth Services Review* 20(6):547-68.

<sup>11</sup> Edleson J. 1999. *The overlap between child maltreatment and woman battering*. *Violence Against Women*; 5:134-54. And Ross SM. 1996. Risk of physical abuse to children of spouse abusing parents. *Child Abuse and Neglect* 20:589-98.

<sup>12</sup> Family Violence death Review Committee. *Second Report: October 2009 to November 2011*. Family Violence Death Review Committee. Wellington.

<sup>13</sup> Snively S. *The New Zealand Economic cost of Family Violence*. Coopers and Lybrand Dec 1994 for Family Violence Unity Department of Social Welfare, Wellington

<sup>14</sup> The Roundtable on Violence Against Women. 2009. *Violence Against Women in Aotearoa New Zealand – The case for an integrated plan of action*. Pg. 10.

## Family or domestic violence and wellbeing

Experience of domestic violence has multiple and complex negative effects on health many of which can remain even when the person has left the violent situation. Studies indicate domestic violence is a predictor of both psychological distress and physical illness<sup>15</sup>.

The New Zealand Medical Association (NZMA) believes that family violence is a serious health issue in Aotearoa New Zealand because of the adverse acute and long-term physical, mental and social health consequences and significant economic cost to the nation<sup>16 17</sup>.

Domestic violence affects women in all areas of life including employment, connection to friends and family, cultural connections, financial status and in particular on mental and physical health. Physical and sexual abuse can lead to death or permanent disability and long term illness including infertility, broken teeth, and unwanted pregnancies, not being able to have healthy sexual relationships, STDs, bruises, pain and trauma as well as psychological effects. Hager's 2003 research identified that women who are abused by their intimate male partners also experience significant psychological effects including serious mental illness<sup>18</sup>.

The psychological effects of emotional and /or physical abuse include feelings of apathy, self-blame and whakama or shame. Depression, PTSD, suicidality, increased alcohol and drug use, eating and sleeping problems and anxiety are common. These effects are not transitory but for many may be a lifelong experience. Living in constant fear, isolation, copying violent or controlling behaviour and withdrawing from family and community are also problems<sup>19</sup>. The effects on children are also considerable<sup>20</sup>.

One of the main ways abusers control and intimidate their partners and family members is through psychological or emotional abuse. This psychological violence can easily 'slip' over into physical and sexual violence. Given that mediation must entail equal bargaining power, we question how in this situation mediation can be an appropriate process. There is significant evidence that mediation should not be used to resolve issues for abused women<sup>21</sup>.

## The Family Court Proceedings Bill 2013

1. This bill does nothing to address the problems outlined above. In fact it will exacerbate these issues. The Government has stated that the primary purpose of these reforms is to save the Government money. While the Bill talks about improved responses to victims of family violence there is nothing in this legislation that indicates how domestic violence will be identified

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<sup>15</sup> Kazantzis, N. Flett, R.A. Long, N.R. Mac Donald, C. & Millar, M. *Domestic violence, Psychological Distress and Physical Illness amongst New Zealand Women: Results form a Community based Study*. NZ Journal of Psychiatry. Vol 29. No 2. 2000.

<sup>17</sup> Hassall I, Fanslow J. *Family Violence in New Zealand: we can do better*. NZMJ 27 January 2006, Vol 119 No 1228 URL : <http://www.nzma.org.nz/journal/119-1228/1830/>.

<sup>18</sup> Hager, Debbie .*Domestic violence and mental illness: is there a relationship?* Incite : The Mental Health Journal of New Zealand 2(2) 2003 : 24-34

<sup>19</sup> Hager, Debbie .*Domestic violence and mental illness : is there a relationship?* Incite : The Mental Health Journal of New Zealand 2(2) 2003 : 24-34

<sup>20</sup> See for example, Fergusson D, Lynskey M. *Physical punishment /maltreatment during childhood and adjustment in young adulthood*. *Child Abuse and Neglect*. 1997; 21:617-30 and Millichamp J, Martin L, Langley J *On the receiving end: young adults describe their parent's use of physical punishment and other disciplinary measures during childhood*. NZ Med J. 2006; 119(1228) URL: <http://www.nzma.org.nz/journal/119-1228/1818/>. and Martin J, Langley J, Millichamp J. *Domestic Violence as witnessed by New Zealand Children*. NZ Med J. 2006;119(1228) URL : <http://www.nzma.org.nz/journal/119-1228/1817>.

<sup>21</sup> FVDR. 2012. *Submissions on Reviewing the Family Court: A Public Consultation Paper*. Ministry of Justice. Wellington . New Zealand and Chisholm R, *Family courts violence review: a report by Professor Richard Chisholm*, Attorney General's Department, Canberra, 2009. These three key elements are translated into Practice Recommendations in Karen Wilcox (Good Practice Officer, Australian Domestic and Family Violence Clearinghouse), *Family Law and Family Practice: Research to Practice*, January 2012, Australian Domestic & Family Violence Clearinghouse at p 9.

and how victims of violence will be resourced and protected. Overall, these changes are likely to keep more women and children trapped in abusive relationships - they won't be able to afford to leave.

This in turn will increase inequalities in this country:

- Maori women are more likely to experience domestic violence than Tauitihi women. Maori entitlement to live free from violence, and to address this using Maori concepts and with adequate resourcing, should be a basic principle of this Bill.
- Already marginalised populations will be further disadvantaged by this Bill, including refugee and migrant women, disabled women, Pacific women and poor women
- All abused women risk becoming even more economically and socially marginalised as they will be denied the use of the justice system to leave abusive relationships.

2. The Bill states that part of the purpose of the amendments is to make the proceedings less adversarial. However, expecting a woman to go 'one-to-one' against her abuser puts women and children at increased risk of mental, physical and sexual harm. It fails to understand that placation by women, of perpetrators, is a primary strategy that women use to protect themselves and their children and that this will be played out in dispute resolution and court processes. The Australian experience of child homicides has resulted in the strengthening of domestic violence provisions in parenting order legislation. One would have hoped that the deaths of the Bristol children would have been enough of a price for legislation to focus on and prioritise the safety of children.

3. For abused women and others it seems that this system will potentially increase danger and stress and prolong the proceedings, as the costs will cause hardship or discourage engagement with the court. The lack of legal representation will increase the time taken to present information, will enable abusers to use court time to question, intimidate and criticise their partners and make it more difficult for judges to understand the information that is being presented. All of this increases the chances of lack of access to justice for abused women and their children.

4. There are a number of concepts used in the Bill to indicate that the protection of abused and vulnerable people is of prime concern with this Bill. However, there is **no substance behind this language**.

a. Page one of the Bill says: "... children and vulnerable people..." Nowhere does it say who 'vulnerable' people are or how the court and pre-court processes are going to be responsive to these people.

b. "... to improve the court's response to victims of domestic violence" Nowhere does it say how they are going to do this.

c. Page 2 says "...support children and vulnerable people who most need protection" How is this Bill and the processes it outlines going to support them?

d. Page 3 says "enabling a more flexible and proportionate response to allegations of violence". What does the Bill mean by a more flexible and 'proportionate' response?

e. Page 4 lists how the Bill will supposedly 'Improve the court's response to domestic violence'

f. "The Bill better supports vulnerable people, including through improving responsiveness to domestic violence. It does this through—

- expanding the definition of psychological abuse in the Domestic Violence Act 1995 to include financial and economic abuse:
- increasing the maximum sentence for breaching a protection order from 2 years to 3 years:
- providing for greater flexibility in the development and delivery of mandatory non-violence programmes."

None of these concepts will protect abused women and children unless the systems that are set up to protect them are more robust – police, courts, crisis services and social service responses. Currently the government is reducing service response to domestic violence in all of these areas.

5. We are pleased to see that economic and financial abuse is being added to the definition. What will this mean in practice? Does it extend to the non-payment of child support or generally withholding economic support for children? How will this be identified under the current constraints on protection orders and women's testimony about violence and abuse being ignored by courts? We are also concerned that because women's access to the Family Court will be severely reduced by this Bill that this step forward, the theoretical recognition of economic will rendered meaningless.

6. We note that this Bill does not reflect either the findings of Aotearoa New Zealand and international research or the Family Court Review undertaken by the Aotearoa New Zealand Law Society. We also suggest that research indicates the long term economic costs of family violence are substantial and may well outweigh the short term benefits of cost cutting in this area.

## Specific Amendments in the Bill

- **Changes to the provision of legal counsel for children**

Care of the child was an important focus of the NZ Family Court when it was established in 1981. This amendment restricts the ability of the court to appoint a lawyer for the child. Children who have been exposed to any form of family violence may suffer serious long term health effects including anger and distress, failure to thrive, as well as the short term physical and psychological effects<sup>22</sup>. Guardianship and parental disputes cause significant distress to children. Allowing children access to a lawyer helps ensure their view is heard and allows for any care and protection concerns to be revealed and investigated. While provision does exist to appoint a lawyer where there are safety concerns, how these concerns will be identified is not clear.

- **Legal representation**

We support and endorse the concerns that lawyers and legal academics have expressed about the lack of access to legal representation in these processes. The lack of professional legal support will put women at risk in a number of ways:

- they may be unable to articulate their level of risk and what they need to keep themselves and their children safe;
- men may use the court process to question, cross examine, intimidate and harass women;
- wealthy men will be able to get legal advice prior to entering court, which will disadvantage their partners if they have no access to joint finances during the separation;
- who will ensure that information is presented to the courts in a coherent manner?

- **Mediation with your abuser**

Women who have been abused should not be pressured into dispute resolution with the perpetrator of that abuse. While the intention to make disputes less adversarial is laudable, for abused women this increases danger and may prolong proceedings. It also offers abusive partners the opportunity to intimidate their partners and disparage their parenting ability and prolongs the process. There is ample evidence from overseas that this approach does not work. For example, in 2011, Australia revoked similar legislation enacted in 2006 mandating pre-court mediation and emphasising shared care of children<sup>23</sup>. Fehlberg argues the 2006 amendments provided *"statutory architecture to the policy interests of the growing and vocal 'fathers' rights' pressure groups, creating one of the first legally enshrined shared care regimes in the western world along with mediated agreements and less adversarial court trials"*<sup>24</sup>. In particular, there was substantial concern about the ways in which families experiencing domestic and family violence were being managed within the new family law system<sup>25</sup>.

The FVDRC noted research and experience demonstrates that victims of violence will not always disclose<sup>26</sup>. For example, the Australian Domestic & Family Violence Clearinghouse notes that *"Shame, the anticipation of negative judgment, cynicism or disbelief by the practitioner and the*

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<sup>22</sup> Elizabeth, V., Gavey, N., Tolmie, J. (2010). *Between a rock and a hard place: resident mothers and the moral dilemmas they face during custody disputes*. Feminist Legal Studies, 18, 253-274.

<sup>23</sup> For example Wilcox. (2012). *Thematic review 2. Intersection of family law and Family and Domestic violence*. Australian Family and Domestic Violence Clearing House. University of NSW. Sydney. NSW.

<sup>24</sup> Fehlberg et al. *Caring for children after parental separation: would legislation for shared parenting time help children?* Department of Social Policy and Intervention, University of Oxford, 2011, pp. 3-5, 11

<sup>25</sup> See Alexander 2006; Chisholm 2006; National Council for Reducing Violence Against Women and their Children [NCRVWC] 2009;

<sup>26</sup> Karen Wilcox (Good Practice Officer, Australian Domestic and Family Violence Clearinghouse), *Family Law and Family Practice: Research to Practice*, January 2012, Australian Domestic & Family Violence Clearinghouse at p 3.



*consequences of living with abuse combine to provide real and understandable disincentives to disclose” by victims of domestic abuse<sup>27</sup>.*

It is also dangerous for some abusers to know where a woman will be at a certain time. Women have been murdered going to and from post separation meetings with their ex-partners. A NZ example is Kathryn Coughlin who was killed emerging from a Family Court ordered counseling session. The centre understood that they were dealing with a separating couple and were not aware of the homicidal risk of the perpetrator/husband.

In his 1993 review of the Family Court, Judge Boshier stated that mediation should not be used in the context of domestic violence because of the inherent power disparities between the parties. Judge Boshier specifically concluded that:

*"Domestic violence, as a reflection of power, is obviously an important concept when it comes to considering how a Court process should operate when domestic violence exists. We believe that mediation should be avoided by the judicial process as a legitimate means of dispute resolution in such circumstances."*

- **The legislation does not define who the “vulnerable parties” are**

While expressing concern about ‘vulnerable people’ the legislation does not define who they are or how pre court processes will identify them or respond to them.

- **The cost to parties will deter women from initiating the ‘disputes process’**

The costs will be prohibitive for many people, particularly women wanting to leave abusive partners who may be vulnerable to economic abuse. The need to share this high cost also provides another avenue for men to abuse women by refusing to pay their share, thus preventing women from being able to make progress with their attempts to leave their abusive partners.

- **Children’s safety**

The Bill holds the interests of the child as paramount and lists five items of importance regarding paramountcy, including safety of the child. However, it does not state that the safety and enhancement of resilience in children who have been exposed to and/or may be the targets of violence is the most important aspect of children’s well-being. One of the five aspects is the child’s right to be brought up by both parents. Specifically, the principle also states that both parents are to be involved in decision-making about the child. If the parents cannot agree, then it’s off to mediation or counselling, or, rarely, a Court hearing.

Interestingly, Australia introduced shared parenting legislation in 2006. However, it was found that there was not enough judicial attention to the violence of the perpetrator and to the safety of the child. The Australian Parliament amended their law in 2011, strengthening the focus on child safety and domestic violence. The Australians realised that too many children were being exposed to violence; the last straw was an incident involving a five year-old girl who was thrown off a Melbourne bridge by her father, whose previous violence had been minimised and ignored by the Court.

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<sup>27</sup> FVDR. 2012. *FVDR Submissions on Reviewing the Family Court: A Public Consultation Paper*. P. 10. Ministry of Justice. Wellington . New Zealand.

- **The “Bristol clauses” introduced in the 1990s after the deaths of the Bristol children, which included the requirement for thorough risk assessments of child’s safety will be removed by this Bill.**

Despite having three protection orders against him Alan Bristol was regarded by the Court as an excellent parent. Mr Bristol subsequently murdered his three daughters and killed himself. The resultant law change that judges are required to undertake risk assessments before allowing parents with a history of abuse access to children will be removed.

Under the NZ Domestic Violence Act 1995, abuse is defined as both the direct abuse of the child and the harmful effects on the child of living with and witnessing domestic violence. Recent research also highlights the connection between partner violence and abuse of children<sup>28</sup>.

- **Privatisation of the family disputes process**

The new family disputes resolution processes will be privatised and Not for Profit and For Profit agencies will be funded to provide the service. There is no description in the new legislation of any processes for monitoring or evaluating these services and no comment about whether any evaluations will be available to the public. There is no description of how those providing these services will be trained or monitored. Oversight of safety, ethics, and professional practice is unclear.

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<sup>28</sup> Edleson J. 1999. *The overlap between child maltreatment and woman battering*. *Violence Against Women*; 5:134-54. and Mamby, S. Et al. 2010. *The overlap between the witnessing of partner violence with child maltreatment and other victimisations in a nationally representative survey of youth*. *Child abuse and neglect*: 34:734-41.

## Concluding summary

The Coalition for the Safety of Women and Children submits the proposed legislative changes have significant flaws which place vulnerable families, and in particular women and children at risk.

### We recommend:

- Family Court legislation must have as a priority the safety of women and children. The legislation must send clear and unambiguous messages about family violence to the court, the police and society that all forms of domestic violence are wrong.
- Evidence shows mediation does not help in cases where violence or abuse is present. We support the FVDRC recommendation that all applications are screened by a suitably qualified person<sup>29</sup>.
- Any short term economic benefits to the New Zealand taxpayer from the application of fees are likely to be outweighed by the long term social costs for those who are unable to access the system and exposed to further violence.
- While lack of consistency in the definitions of family violence used in Aotearoa New Zealand does impede comprehensive data collection, there are a number of agencies which provide information on the incidence of family violence in Aotearoa New Zealand. They include the police, the courts, government social agencies, and hospitals<sup>30</sup>. In addition there is a wealth of research that documents family violence in Aotearoa New Zealand. The research shows that it is women and children who suffer most from family/domestic violence and abuse. The collection of data should be standardised as part of any reforms and the term "vulnerable people" requires more definition.
- The development of a consistent definition of domestic or family violence including harassment, threats and economic violence should be part of any Family Court reforms. In particular, we are concerned that these reforms will lead to increased court delays, exclude individuals who cannot cope with the increased expense, and worst of all places the health of women and children at risk from exposure to continued violence or threats of violence. We note that Australia made similar legislative changes in 2006 with similar intentions. Subsequently they were found to be unsuccessful and detrimental to the health and safety of women and children. The legislation was amended in 2011 when it was found that women and children

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<sup>29</sup> FVDRC. 2012. *FVDRC Submissions on Reviewing the Family Court: A Public Consultation Paper*. Ministry of Justice. Wellington . New Zealand.

<sup>30</sup> See for example Family Violence Death Review Committee. First annual report to the Minister of Health: October 2008 to September 2009. Retrieved May 2012 from <http://www.hqsc.govt.nz/assets/FVDRC/First-FVDRC-report-2009.pdf> and Health Quality and Safety Commission New Zealand. The Family Violence Death Review Committee's Second Report, October 2009 to November 2011. Retrieved May 2012 from <http://www.hqsc.govt.nz/assets/FVDRC/Publications/FVDRCreport-Dec11.pdf> and New Zealand Police. Homicide Victims Report, 2010. Retrieved 18 November 2011 from [http://www.police.govt.nz/sites/default/files/homicide\\_victims\\_report\\_2010\\_final.pdf](http://www.police.govt.nz/sites/default/files/homicide_victims_report_2010_final.pdf) and New Zealand Police. Police Statistics on Culpable Deaths in New Zealand, 2009. Retrieved 18 November 2011 from [http://www.police.govt.nz/sites/default/files/services/statistics/Culpable\\_deaths\\_report.pdf](http://www.police.govt.nz/sites/default/files/services/statistics/Culpable_deaths_report.pdf) Retrieved from <http://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/action-family-violence/indicators-may-2011.pdf> and Ministry of Social Development. Learning from Tragedy: Homicide within Families in New Zealand 2002-2006. Retrieved 17 November 2011 from <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/learning-from-tragedy/index.html>

were at greater risk within the new family Law Court system. We recommend that the committee review these studies in depth.<sup>31</sup>

**In summary, we suggest this reform Bill is not implemented or at least heavily modified. We believe it will result in significant harm, particularly for women and children and will not achieve the stated aims of providing a “modern accessible family justice system that is responsive to children and vulnerable people”.**

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<sup>31</sup> For example Wilcox. (2012). Thematic review 2. Intersection of family law and Family and Domestic violence. Australian Family and Domestic Violence Clearing House. University of NSW. Sydney. NSW.

## Further References

*There is a wealth of research in this area as well as recent reviews of family courts and family violence data collection. These references, additional to those already cited in the text of our submission, are taken from various studies we have reviewed along with references available on the Family Violence Clearing House and the Family Court reviews. We have attached a selection below.*

Anderson JC, Martin JL, Mullen PE, Romans S, Herbison P. 1993. The prevalence of childhood sexual abuse experiences in a community sample of women. *Journal of the American Academy of Child and Adolescent Psychology* 32:911-19.

Asiasiga L, Gray A. 1998. *Intervening to Prevent Family Violence in Pacific Communities: A literature review for the Offending by Pacific Peoples Project*. Wellington: Ministry of Justice.

Barnes HM. 2000. Kaupapa Māori: explaining the ordinary. In: *Pacific Health Dialog* 7(1):13-16.

Balzer R, Haimona D, Henare M, Matchitt V. 1997. *Māori Family Violence in Aotearoa*. Wellington: Te Puni Kokiri.

Clark, T.C., et al., *Youth'07: The health and wellbeing of secondary school students in New Zealand. Findings on young people and violence*. 2009, University of Auckland: Auckland.

Child Youth and Family Annual Statistical Report 2002. Wellington: Department of Child, Youth & Family Services.

Durie, M. 1994. *Whaiora Māori Health Development*. Melbourne: Oxford University Press.  
*Elizabeth, V., Gavey, N., Tolmie, J. (2010). Between a rock and a hard place: resident mothers and the moral dilemmas they face during custody disputes. Feminist Legal Studies, 18(3): 253-274.*

*Access abstract online*

*Elizabeth, V., (2010). Turning mothers into villains. Feminist Media Studies, 10(1): 51-67. Access abstract online*

Families Commission, *Family violence statistics report*. 2009, Families Commission: Wellington.

Fanslow, J.L., *Family violence intervention guidelines: child and partner abuse*. 2002, Ministry of Health: Wellington.

Fanslow, J. and E. Robinson, *Violence against women in New Zealand: prevalence and health consequences*. New Zealand Medical Journal, 2004. **117**(1206).

Fanslow J, Norton R. 1994. *Violence against women: priorities for public health research in New Zealand*. New Zealand Medical Journal 107:63-4.

Fanslow J, Norton R, Robinson E, Spinola C. 1998. *Outcome Evaluation of an Emergency Department Protocol on partner abuse*. Australian and New Zealand Journal of Public Health 22:598-603.

Fergusson D, Horwood L, Woodward L. 2000. *The Stability of Child Abuse Reports: a longitudinal study of the reporting behaviour of young adults. Psychological Medicine* 30:529-544.

Justice Sector Strategy Group, *The New Zealand Crime and Safety Survey: 2009. Main findings report*. 2010, Ministry of Justice: Wellington.

King A. 2000. *The New Zealand Health Strategy: Discussion Document*. Wellington: Ministry of Health.

Knaggs, T. & Harland, A. (2009). *The Parenting Hearings Programme pilot: evaluation report*. Wellington: Ministry of Justice.

*Read online*

Leahy H. 1999. *Te Puni Kokiri response to Māori family violence*. Presentation to 'Children and Family Violence Effective Interventions Now' Conference 4-5 July 1999. [On-line] Available: [http://www.justice.govt.nz/justicepubs/reports/1999/family\\_conference/author\\_19.html](http://www.justice.govt.nz/justicepubs/reports/1999/family_conference/author_19.html)

Leibrich J, Paulin J, Ransom R. 1995. *Hitting Home: Men speak about abuse of woman partners*. Wellington: Department of Justice.

Mansell, J., *The underlying instability in statutory child protection: Understanding the system dynamics driving risk-assurance levels*. Social Policy Journal of New Zealand, 2006. **28**: p. 97-132.

Mikaere A. 1994. Māori Women: Caught in the Contradictions of a Colonised reality. In *Waikato Law Review* 2:125-149.

Ministry of Health. 1998. *Family Violence: Guidelines for the development of practice protocols*. Wellington: Ministry of Health.

Morris A. 1996. *Women's Safety Survey*. Wellington: Victimisation Survey Committee.  
Morgan, M. et al. (2007). *Accounting for safety: a sample of women victims' experiences of safety through the Waitakere Family Violence Court*. Palmerston North: Massey University.

*Read online*

Morgan, M., Coombes, L., McGray, S. (2007). *An evaluation of the Waitakere Family Violence Court protocols*. Palmerston North: Massey University & WAVES.

*Read online*

National Collective of Independent Women's Refuges Annual Statistics 1999-2000, 2000-2001.

New Zealand Health Funding Authority. 1998. *Te Kaupapa Hauora Mo Nga Wahine: The Health of Women Consultation Report*. Auckland: New Zealand Health Funding Authority.

Office of the Commissioner for Children. *Final Report on the Investigation Into the Death of Riri-o-te- Rangi (James) Whakaruru*. Wellington: Ministry of Social Policy 2000.  
<http://www.mosp.govt.nz>

Peteru, M.C., et al., *Nga vaka o Kaiga tapu: A Pacific conceptual framework to address family violence in New Zealand*. 2012, Ministry of Social Developments, Pasefika Proud, Taskforce for Action on Violence within Families: Wellington.

Ross SM. 1996. Risk of physical abuse to children of spouse abusing parents. *Child Abuse and Neglect* 20:589-98.

Robertson, N. (2007). *Living at the cutting edge: women's experiences of protection orders*. Hamilton: University of Waikato.

*Read online*

Taylor, N.J. (2006). *Care of children: families, dispute resolution and the Family Court*. Ph.D Thesis, Dunedin: University of Otago.

*Read online*

Tjaden P, Thoennes N. 2000. *Extent, nature and consequences of intimate partner violence: Findings from the National Violence Against Women Survey*. Department of Justice and Centers for Disease Control and Prevention.

Tolmie, J., Elizabeth, V., Gavey, N. (2010) *Is 50:50 shared care a desirable norm following family separation? Raising questions about current family law practices in New Zealand*. *New Zealand Universities Law Review*, 24(1): 136 -139.

Tolmie, J., Elizabeth, V., Gavey, N. (2009). *Raising questions about the importance of family contact within current family law practices*. *New Zealand Law Review*, 659-694.

Wainohu R. 1991. Correcting the Stories Te Whakamarama. In: *The Māori Law Bulletin* 10:5-6.

Williams. 1992. In: Gray A. 1994. *Intervention programmes for domestic violence abusers: A literature review*. Wellington: Family Violence Prevention Co-ordinating Committee, Department of Social Welfare.

Young W, Morris A, Cameron N, Haslett S. 1997. *New Zealand National Survey of Crime Victims 1996*. Wellington: Victimisation Survey Committee.

Young, W., et al., *The New Zealand National Survey of Crime Victims*. 1997, Department of Justice: Wellington.