



**Submission to the Green Paper for Vulnerable Children  
Every Child Thrives, Belongs, Achieves**

**Submitted by:**

Auckland Coalition for the Safety of Women and Children  
PO Box 78 271  
Grey Lynn  
Auckland 1245

**Contact:**  
Leonie Morris  
09 376 3227

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We would like to speak to our submission.

Thank you for the opportunity to present a submission on the Green Paper for Vulnerable Children. The Auckland Coalition for the Safety of Women and Children was developed in 2006 in reaction to concerns regarding responses to domestic violence in Auckland. 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.

**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

**Members:**

- Auckland Women's Centre
- Blow the Whistle on Violence
- Homeworks Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- SHINE Safer Homes in NZ Everyday
- Supportline Women's Refuge
- Women's Health Action Trust

## **Introduction.**

If children are to be truly valued in our society, and in government policy and legislation, all policies and legislation that impact on children and the ability of parents to care for and protect children, must be examined and changed to reflect the importance placed on this.

This paper comes at a time when government policy has the potential to increase both the number of families/children who are at risk and the level of risk of those who are already vulnerable. Proposed changes to welfare services, cuts and changes to social service funding, changes to the provision of social housing and employment laws and policies can all increase the vulnerability of already marginalised families and vulnerable children. Therefore, if this government truly wants to ensure that "every child thrives, belongs, achieves", a whole of government approach must be taken to policy and legislation related to children's wellbeing.

## **Underlying Coalition's responses to the Green Paper are three key principles.**

The first is that, in order for children to be safe and cared for, the safety and wellbeing of children's mothers and families must be of equal importance and value as that of the child. This is important, as a secure loving attachment with a parent is the most critical component of a child's development.

Secondly, that the universal provision of beneficial policies and services is more conducive to wellbeing than those that are means tested and targeted.

Thirdly, that prevention of harm and a strengthening of family wellbeing is much more effective and important than waiting until vulnerability occurs. Once a child is in a vulnerable position, they have already been damaged in some way and their developmental potential harmed. This means that policies and legislation that strengthen and improve the wellbeing of every member of society will be the most beneficial to preventing harm to children. This said, however, there are certain groups who are more vulnerable and require specialised support.

Even prior to the closing date for submissions, the Government is receiving the message that initiatives to keep children healthy, safe and thriving must be inclusive of entire communities. This means a focus on the elimination of poverty through education, employment and housing and addressing racism and discrimination, as well as providing health and social services for all those who require them.

On Morning Report (Radio New Zealand) January 27, it was reported that "The Minister of Social Development has been told her focus on child-centered policies to improve the lives of vulnerable children is wrong and won't work for Pacific communities." Pacific communities believe that the whole family must be nurtured and cared for in order to ensure the wellbeing of children.

This is endorsed for Maori by Dr. Fiona Cram, reported in the New Zealand Herald, January 26<sup>th</sup>. "A Maori health researcher says reducing Maori child abuse will require tackling poverty and racial discrimination. Dr Fiona Cram, in a report published today by the Families Commission, says family poverty is "the major contributing risk factor for children" - and Maori children are twice as likely as European children to live in poverty....a companion report by commission staff, published with Dr Cram's report, also recommends "a more comprehensive approach" to families that have

mistreated their children, including help with mental health and addiction problems and "systemic issues" such as poverty and discrimination." (See appendix one)

The Green Paper is based on evidence from a wide range of sources. There is however, more, very good evidence that indicates solutions to many of the issues that have been raised. If the government is sincere in its desire to improve the wellbeing of vulnerable children and their families then we must be sure that very good research is not being ignored. Some of that research is referenced in this submission – other submissions will use other research. Successive governments have ignored many of the papers that are referenced in this submission, as they require change and action. If this government truly has the wellbeing of children as its primary concern, this research must be acknowledged and actioned.

This submission will comment on specific issues raised in the Green Paper page by page. Statements from the Green paper will be in bold type.

**Page vi. Government leadership.**

We propose that government takes leadership by convening a whole of government approach to wellbeing. This would include the ministries and ministers responsible for:

- Taxation
- Welfare and benefits
- Employment
- Housing
- Education
- Disability
- Pacific Island Affairs
- Maori wellbeing
- Labour legislation and policy
- Health
- Violence against women and children
- Justice
- Police
- Alcohol and gambling regulation.

All of these areas of government impact on the wellbeing of children and their families. No real change will occur for children until the whole system is supportive of wellbeing.

Initial suggestions for policies that are known to help children thrive are:

1. The elimination of poverty
2. Safe, affordable and warm housing for everyone
3. Universal access to early childhood and life long education for children and adults

4. Increased wages and conditions that foster autonomy and a sense of personal achievement and motivation. "(to motivate people) ....pay people enough to take the issue of money off the table – pay people enough so that they're not thinking about money, they're thinking about the work."<sup>1</sup>
5. A universal, non-punitive benefit system that keeps people out of poverty and promotes opportunities to engage in education and employment
6. Gender pay equity
7. A significantly decreased gap between rich and poor through taxation, wage increases, increased opportunities for education and employment and redistribution of resources
8. Policies that prioritise the safety and wellbeing of women and children
9. Provision of a range of emergency, specialised, residential and other services to enable women and children to escape and heal from violence.

Many of these things have been articulated in the Child Poverty Action Group report *Left Further Behind: How New Zealand is failing its children*<sup>2</sup> and the report and related recommendations from *Te Ara Hou: The way forward*, produced by Every Child Counts<sup>3</sup>. This submission endorses the recommendations in these reports.

This whole of government/whole of society model is recommended by the World Health Organisation in *Preventing Violence; a guide to implementing the recommendations of the World Report on Violence and Health*.<sup>4</sup> The ecological model used helps to understand the "causes, consequences and prevention of violence"<sup>5</sup> and explains the complex links between societal influences, community, interpersonal relationships and people's individual circumstances and experiences.

This report reinforces the need to tackle prevention, rather than constantly trying to respond once harm has occurred.

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<sup>1</sup> Dan Pink. RSA Animate - **Drive: The surprising truth about what motivates us**. YouTube. Accessed December 15<sup>th</sup>, 2011

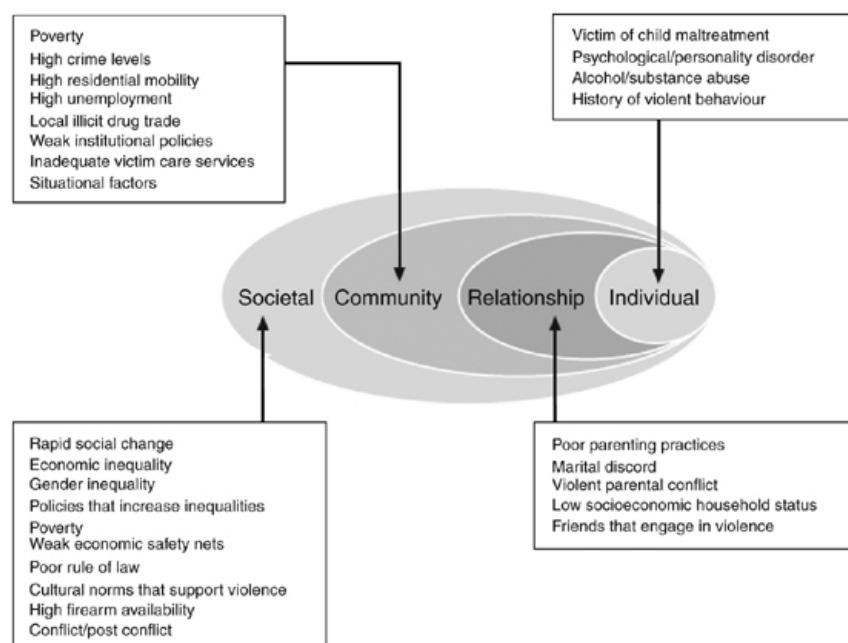
<sup>2</sup> **Left Further Behind: How New Zealand is failing its children**. September 2011 Child Poverty Action Group Auckland

<sup>3</sup> **Te Ara Hou: The way forward. Getting it right for Aotearoa New Zealand's Maori and Pasifika children. August 2011** Every Child Counts. Manuka Henare, Adrienne Puckey, and Amber Nicholson Mira Szászy Research Centre, the University of Auckland.

<sup>4</sup> World Health Organisation. 2004. *Preventing Violence: a guide to implementing the recommendations of the World Report on Violence and Health*. WHO, Geneva

<sup>5</sup> *ibid*

## Ecological Model showing shared risk factors for subtypes of interpersonal violence.<sup>6</sup>



It is regrettable that the cross party initiative was disbanded. Caring for the wellbeing of children should be a priority for all parties and should extend beyond electoral cycles.

### Page vii. Review Government spending to get better results for vulnerable children

In order to fund proposals to improve the wellbeing of vulnerable children, if money must be taken from existing spending, money should be taken from the budgets for the military and professional sport – for example, rugby and yachting. Neither of these things enhance the wellbeing of vulnerable children and may in fact role model the violence that is harming them and their families. The proceeds from horse racing could also be used to fund services for women and children. As there is a strong and well proven link between alcohol and violence,<sup>7</sup> increasing taxation of alcohol

<sup>6</sup> World Health Organisation. 2004. Preventing Violence: a guide to implementing the recommendations of the World Report on Violence and Health. WHO, Geneva. Page 9. Image sourced from Journal of Public Policy. Palgrave MacMillan. Accessed February 19, 2012 <http://www.google.com/imgres?imgurl=http://www.palgrave-journals.com/jphp/journal>

<sup>7</sup> Towns, A. J., Parker, C., & Chase, P. (2012). Constructions of masculinity in alcohol advertisements: Implications for the prevention of domestic violence. *Addiction Research & Theory*, 1-13. Peralta, R. L., Tuttle, L. A., & Steele, J. L. (2010). At the intersection of interpersonal violence, masculinity and alcohol use: The experiences of heterosexual male perpetrators of intimate partner violence. *Violence against Women*. Connor, J. L., Kypri, K., Bell, M., & Cousins, K. (2011). Alcohol involvement in aggression between intimate partners in New Zealand: A national cross-sectional study. *BMJ Open*. Fals-Stewart, W. (2003). The occurrence of partner physical aggression on days of alcohol consumption: A longitudinal diary study. *Journal of Consulting and Clinical Psychology*, 71(1), 41-52. Graham, K., Bernards, S., Wilsnack, S. C., & Gmel, G. (2011). Alcohol may not cause partner violence but it seems to make it worse: A cross national comparison of the relationship between alcohol and severity of partner violence. *Journal of Interpersonal Violence*, 26(8), 1503-1523.

and spending the income on initiatives to improve the well being of children would be constructive both to reduce alcohol related harm and increase funding available to child centred services. Extra revenue can be raised by increasing taxation of the wealthy (which assists in the redistribution of resources and helps close the gap between rich and poor) and a capital gains tax that excludes the family home.

It is well known that there is an increase in poor outcomes for most people in society as the gap between rich and poor increases. In New Zealand currently, "The richest 1 per cent of the population owns three times more than the combined cash and assets of the poorest 50 per cent. Though it is often lauded overseas as an egalitarian society, New Zealand's income inequality statistics are much worse than those of most other developed nations. More than 200,000 Kiwi children live below the poverty line....Data from the Organisation for Economic Co-operation and Development shows New Zealand's income inequality climbed dramatically in the 1980s and 1990s after sweeping economic reforms and deregulation of labour markets."<sup>8</sup> As we are entering another period of economic reforms and deregulation and asset sales, we risk increasing disparity, creating poorer outcomes for those who have the least.

Closing the gap between the rich and poor is one of the main things that government can do to prevent further vulnerability and improve the wellbeing of those who are already at risk.<sup>9</sup>

### **Improving the workforce for children**

The wellbeing of children would be significantly enhanced if there was compulsory, assessment based, training about sexual and domestic/family violence for everyone who works in services that interact with parents and children. It would be useful for politicians and ministry staff to have this training if they are making decisions about policy and legislation. Services would include health, social services, education, housing, IRD, child protection services, counsellors, justice, police, whanau ora, and the sexual and domestic violence services.

This training would need to have as its core the safety of women and children and a gendered analysis of violence. It should incorporate, among other things:

- the dynamics of sexual and domestic violence
- the mental and physical harm caused to women and children by living with or experiencing abuse
- the long term effects of sexual and domestic violence
- unconstructive/harmful responses
- constructive service responses
- relevant legislation

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<sup>8</sup> Lane Nichols 18, 11, 2011. Revealing the gap between NZ's rich and poor. Fairfax Media. Stuff.co.nz Accessed February 11, 2012, from <http://www.stuff.co.nz/national/politics/5989843/Revealing-the-gap-between-NZs-rich-and-poor>

<sup>9</sup> World Health Organisation. 2004. Preventing Violence: a guide to implementing the recommendations of the World Report on Violence and Health. WHO, Geneva

**Page 1. “Many things impact on what happens to children that are beyond the reach of government – in terms of what happens in the economy and job market and what happens in our homes.”**

The job market and economy are not things that are beyond the reach of government – they are an integral part of the responsibility of government, and as such, are crucial to the wellbeing of children, their parents and all others in society. This is why any proposals to prevent harm to children and support vulnerable children must have a whole of government approach that includes improving the economic wellbeing of those who are currently on low wages or benefits and reducing the gap between rich and poor by redistributive taxation, wage and other policies.

**Page 2, 3 Government’s vision**

**“Be protected from harm and keep themselves safe”.**

In order for children to be protected from harm and keep them safe, an environment must be created where violence prevention is a priority and children grow up understanding what being safe means.

This requires substantive funding of initiatives that encourage a whole of society attitude and behaviour change towards violence. The WHO strongly recommends mass media interventions as part of initiatives directed at changing cultural and social norms that support violence.<sup>10</sup>

The current prevention initiative “It’s Not OK” has experienced extensive funding cuts over the past few years including cuts to the domestic violence coordinator positions, which are critical for the coordinating of services at a local level and cuts to the team and the projects funded via the “It’s Not Ok” Campaign. The campaign has generated very good evidence based material about what works to prevent violence and create societal behaviour change. If the government believes in the wellbeing of children, adequate, long term funding must be made available to enable initiatives at national and local levels to be fully resourced.

The long term adequate funding of initiatives that are working must be a priority for government. Currently, all funding revolves around short cycles. Even when a programme works well, the funding runs out and essential useful programmes are lost. Most groups spend much of their time and resources raising money and have little time to progress or do the development work that is so essential to service improvement. Changing funding structures and priorities with each change of government is not conducive to good service provision and the retaining of good staff.

As is pointed out on **page 3**, maternal stress and abuse during pregnancy and when children are developing, can harm the development of children’s brains and their life long functioning.

While violence prevention is preferable, so that all children can be born and raised in non-violent households, currently we have very high levels of domestic violence and abuse. This means that many children grow up without an understanding of what safety and wellbeing means. This makes it difficult for these children to develop internal security and wellbeing because they have no sense of belonging and of being loved and supported by family and other adults in their lives.

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<sup>10</sup> World Health Organisation. 2009. Violence Prevention, the evidence: changing cultural and social norms that support violence. WHO, Geneva

When there is violence in families it is essential that there are supportive, accessible, appropriate, well resourced and well trained services to respond to victims and perpetrators to ensure that women and children are safe and perpetrators are held accountable for their actions. This includes Justice, Police, Health, MSD, Housing and NGO sexual and domestic violence services for men, women and children.

Residential and other services for women and children must be inclusive of all women and children. This includes women with mental health problems, physical disability, chronic illness, older women, very young women, women who have been raped and/or sexually abused, woman who have lost custody of children but are fighting to regain it and women with disabled children. Currently there is very little or no refuge provision for many of these women.

Over the years many children have been abused while guardians of the state. The government need to take urgent measures to protect children who are guardians of the state - especially those in CYFS care

While we have very good domestic violence legislation, there are implementation problems, articulated in many reports including "Living at the Cutting Edge."<sup>11</sup> This report clearly outlines many of the deficits in implementation of the current system and provides recommendations about how these can be redressed.

Being protected from harm also means a number of other things. It means:

- Living in homes that are warm, free from hazards, secure and affordable
- Living in environments that are free from stress and hazards such as overly busy streets, industrial pollutants, inadequate recreational areas
- Living with care givers who have adequate education and understand how to use the existing systems to nurture and enrich children's lives
- Care givers who receive enough income to afford good food, pay bills including rent or mortgages without stress and access education for themselves and their children

### **Why childhood matters.**

In order for children to have a good start in life, the families that they come from need to feel strong, self directed, well connected to community and whanau and well resourced. This requires the whole of government approach described above.

### **Page 4 Vulnerable children in New Zealand.**

To prevent vulnerability, poverty must be addressed, as it is the poorest families who are repeatedly shown to be the most vulnerable to all sorts of harm.<sup>12</sup>

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<sup>11</sup> Living at the Cutting Edge; Women's Experiences of Protection Orders. Volume 1: The Women's Stories. August 2007 Neville Robertson, Ruth Busch, Radha D'Souza, Fiona Lam Sheung, Reynu Anand, Roma Balzer, Ariana Simpson and Dulcie Paina of the University of Waikato (School of Law and the Maori and Psychology Research Unit) for the Ministry of Women's Affairs

Living at the Cutting Edge; Women's Experiences of Protection Orders. Volume 2: What's To Be Done? A Critical Analysis of Statutory and Practice Approaches to Domestic Violence. August 2007 Neville Robertson, Ruth Busch, Radha D'Souza, Fiona Lam Sheung, Reynu Anand, Roma Balzer, Ariana Simpson and Dulcie Paina of the University of Waikato (School of Law and the Maori and Psychology Research Unit) for the Ministry of Women's Affairs

<sup>12</sup> **Left Further Behind: How New Zealand is failing its children.**



As well as poverty, discrimination and racism must also be addressed. Racism causes physical and mental health problems and increases risk-taking and self harming behaviours<sup>13</sup>. Discrimination and stigma are also experienced by people with mental illness, disabled people, people with learning difficulties and those who are perceived as 'other'. Stigma and discrimination can cause mental and physical health problems and result in low self esteem, poor resiliency and other problems that prevent people parenting well, engaging with the community and caring for themselves and others in their families.

### **Child poverty is a greater issue for Maori, Pasifika and refugee communities**

Addressing systemic racism, engaging in true partnership and providing communities with resources that enable them to take control of their own circumstances will significantly improve outcomes for these groups.

### **Having a disability and/or significant health problems can be another specific risk actor. The increased stress, time and cost of caring for a child with a disability or a significant health problem can affect how a family or whanau function. Approximately 10% of children (90,000) live with some sort of disability.**

There is a lack of coordination for addressing issues facing those with disabilities. Disabled women face extra challenges - being significantly more vulnerable to abuse, poverty and poorer health. There is a need for data and policy responses on the intersecting impacts of gender and disability in New Zealand to ensure health and other government policies are sensitive to the specific needs, concerns and barriers facing disabled women and children. Disabled women parent, but face a number of difficulties that able-bodied women do not have to contend with. This is a neglected and under-resourced area of government policy in New Zealand.

Disabled mothers must be resourced to parent, including being given support, information and resources, extra accessible equipment and access to ordinary parent support such as Plunket, antenatal classes and early childhood education.

In order to ensure that disabled or chronically ill children do not become "vulnerable" children, support must be provided to families that enable them to care for their children without extra costs and stress. This would include paying parents as caregivers, providing more support in schools to enable disabled and ill children to continue their educations, having more paid, non means tested respite so that care givers can take breaks when required. Also required is In Home support, parenting classes that are accessible and designed for parents with intellectual/learning impairments and access to the community including transport.

There is very little understanding of the relationship between disability and sexual and domestic violence. Disability is related to sexual and domestic violence in two ways.

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September 2011 Child Poverty Action Group Auckland

<sup>12</sup> **Te Ara Hou: The way forward. Getting it right for Aotearoa New Zealand's Maori and Pasifika children. August 2011** Every Child Counts. Manuka Henare, Adrienne Puckey, and Amber Nicholson Mira Szászy Research Centre, The University of Auckland.

<sup>13</sup> Ricci Harris, Martin Tobias, Mona Jeffreys, Kiri Waldegrave, Saffron Karlsen, James Nazroo. Effects of self-reported racial discrimination and deprivation on Maori health and inequalities in New Zealand: cross-sectional study. *Lancet* 2006; 367: 2005–09

1) Disabled people are more likely to be abused both as children and adults than non-disabled people. It is not possible to give reliable statistics as the numbers vary according to study design, the population studied, methodology etc. However, the consensus is that "Violence against women with disabilities has been identified as not only more extensive than amongst the general population but also more diverse in nature than for women in general."<sup>14</sup>

2) Domestic violence can result in short and long term disability including acquired brain injury, mental health problems, blindness, hearing loss and muscular skeletal injuries. Deliberate neglect and abuse can cause chronic illness and loss of function (mental and physical) which results in long-term disability. Sexual violence is strongly associated with mental health problems and could also result in physical disability and brain injury as a result of physical attacks associated with the sexual violence.

Addressing the safety of disabled women and children, including the provision of specialised domestic and sexual violence services must be a priority.

### **Early years**

**Children are most vulnerable when they are young (under 5 years) because of their developing brain and their dependence on caring adults to provide their basic needs. During this period it is mostly factors associated with the parents that signal increased vulnerability of children.**

**Key risk factors include:**

- **Parents with drug and alcohol issues**
- **Parents who experience mental health issues**
- **Poor parenting or caregiving that is abusive or chronically neglectful**

**Research tells us that dysfunction and violence in the home...can cause long term damage.**

Rather than being separate issues, there is a strong relationship between violence in the home and maternal alcohol and drug use and mental health problems.

Living with domestic violence can cause a number of long term mental health problems including post traumatic stress syndrome and drug and alcohol abuse. This is caused primarily by emotional/psychological abuse, but also sexual and/or physical abuse.<sup>15</sup>

If children are living in situations where their mother is being abused, they will be suffering mentally and physically even if they are not being harmed themselves. In this situation the women and children require specialised residential refuge services where they can seek long term refuge while they deal with both the abuse they have experienced and the mental health problems that have developed as a result of the abuse.

What often happens now, when women have severe addiction problems or mental health problems as a result of domestic violence, is that they are seen as problematic parents so they lose custody of their children and when they enter mental health or

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<sup>14</sup> Howe K, (2000) Violence Against Women With Disabilities - An Overview of the Literature. Women with Disabilities Australia. Accessed from [www.wvda.org.au](http://www.wvda.org.au) on December 10, 2011

<sup>15</sup> Hager D, (2001) He drove me mad. An investigation into the relationship between domestic violence and mental illness. A thesis submitted in partial fulfilment of the requirements for the degree of Master of Public Health, School of Population Health, University of Auckland

drug and alcohol services the domestic violence they have experienced is not addressed along side the effects of the abuse (the mental health problems). This means that already disturbed children are removed from their mother's care, often into the unsupervised care of the abusive partner. This is not conducive to children's wellbeing.<sup>16</sup>

Currently there are no specific services for women and children in this situation. Providing a wider range of refuge, with more targeted specialised services, would enable vulnerable women and children to find safety and heal from abuse, reducing the long term harm that is otherwise done to children.<sup>17</sup>

The case study on page 5 "A real story: Tom", is interesting for what it leaves out as well as what it says. It purports to be a story about a boy who has suffered because his mother has neglected him. What is not mentioned in this story is Tom's father and the responsibility that he has to care for his child. Where is this man? Why is he not in Tom's life caring for him? Why did Tom's mother leave Tom's father? Are her mental health and substance abuse problems related to the relationship she had with this man who has left her to parent alone? Why are there no services to help this woman recover from her trauma and heal both herself and her son? What part of Tom's problems are a result of abuse experienced by his mother when she was pregnant and when Tom was a baby?

One of the critical changes that need to be incorporated into any measures being proposed to improve outcomes for vulnerable children is a more extensive analysis of causation. Unless Tom's mother is very specifically screened for previous abuse – as a child and as an adult - the possible reason for her mental health problems will remain unrecognised and she will be stigmatised as a neglectful and uncaring mother.

If this woman's problems were found to be trauma informed, and appropriate, long term refuge and therapeutic services were available to her and her son, the damage to both of these people could be mitigated and to some extent healed. Women are too often demonised, while absent and/or abusive men are enabled to avoid responsibility and consequences. This is not conducive to improving the wellbeing of children, it merely re-abuses already vulnerable women who are struggling to parent.

There are very few therapeutic programmes funded for children. All domestic and sexual violence services should be fully funded to have qualified child therapists who individually case manage children who have lived with, or experienced abuse, and provide therapeutic programmes and individual therapy as required.

## **Page 6 Young adolescence**

Sexual violence services are chronically under-funded at the moment. If children are to heal from sexual abuse and rape, there must be fully funded services for crisis responses and long-term therapy. The current ACC model – that requires people to have a DSM diagnosis - is unethical and destructive. This criteria stigmatises women and girls and means that they are unable to access appropriate therapeutic help until they have already become very unwell. If the government truly believes in improving the wellbeing of vulnerable children, it must provide free, qualified, non-

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<sup>16</sup> ibid

<sup>17</sup> Hager D, (2011) Finding Safety. Provision of specialised domestic violence and refuge services for women who currently find it difficult to access mainstream services: disabled women, older women, sex workers and women with mental illness and/or drug and alcohol problems as a result of domestic violence. 2010 Winston Churchill Fellow

discriminatory, long-term sexual and domestic violence therapy both at crisis and as required. Where necessary this therapeutic support must be matched with residential services that are age and gender specific for children and their mothers.

## **Page 8 Current government priorities**

### **Improving access to early childhood education for vulnerable children**

This government has made a commitment to improve access to early childhood education. This is a very important component of wellbeing for all children. There have been two changes in the past three years, however, that do not improve wellbeing. These are the lowering of the number of qualified staff funded for each centre and the increase in the number of children that can be cared for at each facility. These changes, announced in the 2010 budget, do not represent best practice as outlined in a number of recent reports.<sup>18</sup> Potentially this will result in less qualified teachers working with more children. This is not conducive to quality care.

If women are to be encouraged or coerced to return to work before their children are 3 years old, consideration must be given both to the standard of early child care and to how women on or below the minimum wage will pay for this? Women still earn less than men, and more women than men work in jobs that pay the minimum wage or slightly above it. This is not sufficient income to feed a family, pay bills and pay for child care. How will this situation be managed by government? If women with pre-school children are expected to work, then all these women must receive at least 20 hours free child care.

## **Page 8 Government proposed actions**

We support the proposed government actions outlined in the Green Paper. However, if these things are to truly improve the wellbeing of children they must occur in the context of a whole of government approach to change and wellbeing. In late 2011 a new committee was launched to look into child poverty. Why is this being done separately from the actions proposed in the green paper? There is already plenty of evidence and research about poverty, vulnerability and what needs to occur to improve circumstances. It's time that all of this information was collated and responded to constructively.

As detailed in the introduction, constructive progress will only be made when there is collaboration between all of the government ministries that impact on people's lives including the ministries and ministers responsible for:

- Taxation
- Welfare and benefits
- Employment
- Housing
- Education
- Disability

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<sup>18</sup> Dr Janis Carroll-Lind, Dr John Angus (2011) **Through their lens. An inquiry into non-parental education and care of infants and toddlers.** Office of the Children's Commissioner  
Dalli, C., White, J., Rockel, J., Duhn, I., with Buchanan, E., Davidson, S., Ganly, S., Kus, L., & Wang, B. (2011). **Quality early childhood education for under-two-year-olds: What should it look like? A literature review.** Ministry of Education.

- Pacific Island Affairs
- Maori wellbeing
- Labour legislation and policy
- Health
- Violence against women and children
- Justice
- Police
- Alcohol and gambling regulation.

It also requires the determination to enact universal policies – not the targeting and stigmatising of those who are already in vulnerable and complex situations. This is disempowering, and the aim of improving people’s lives must be to create opportunities that empower and motivate people to constructively direct their own lives.

### **Page 9. Share responsibility**

In order for people to take responsibility for their own decisions and actions, they must feel that the things that they do have meaning, that their actions will have a positive effect and that they can make changes in their lives and circumstances that will have a positive outcome. Disempowered people – those who are closely regulated via welfare and other oppressive regimes, and those who have reduced choices due to low income, poor education, violence, stigma, racism and/or marginalisation, will have difficulty understanding the concept of shared responsibility - especially if it comes from a punitive paradigm. The proposed welfare reforms are all punitive – they don’t encourage people to participate in improving their own wellbeing – they punish people for not doing what they’re told by a repressive system. This is merely creating more marginalisation, disempowerment and dissent.

Constructive ways to improve the wellbeing of parents, and therefore children, are suggested below.

#### **Income**

Improve welfare payments and increase the minimum wage so that people can stop worrying about money and how to survive day by day and start to plan ahead. People are generally unable make longer term plans to improve their circumstances when they are worrying about basic financial survival, paying rent, bills and food.

Considerably increase the amount of money people can earn while on the benefit and before the rebate begins and make the rebate more gradual. This encourages people back to work and provides back up while they learn new skills and routines.

Improve wages so that it is not necessary for both parents to work. This will immediately improve the wellbeing of children.

Enact equal pay polices.

#### **Value Parenting**

Valuing parenting is one of the easiest ways to encourage people to nurture and care for their children. One circumstance in which children do well is when parents are supported to stay home and parent. This would mean valuing and being supportive of sole parents and paying them for the work (parenting) that they are doing – not

penalising them for their choice and forcing them to go to work. Find innovative ways to help sole parents enter education and work in ways that fit with their parenting responsibilities. With the new punitive regime that is being imposed we risk a new kind of custody dispute – neither parent wanting to take the children.

We are deeply concerned about the recent and proposed reforms of New Zealand's social welfare benefit system. The recent changes to the Domestic Purposes Benefit included the introduction of work testing and sanctions on those who fail work tests. This has a disproportionate effect on women, who remain the majority of those receiving this benefit. Further changes proposed include collapsing all benefits into one lower paid benefit, time limiting benefits, penalising women if they have more children while on a benefit and insisting that young women on certain benefits use long term contraception to prevent pregnancy while on benefits. There are no similar provisions for men who impregnate women. These changes will not only damage the health and wellbeing of women and children already on benefits, but will prevent women leaving abusive relationships as the benefit will no longer be seen as a viable option for women while they seek legal help, heal, find safety and housing and new directions for their lives.

When gender and poverty collide there can be an exponential effect on wellbeing. Research with lone mother's receiving the DPB in New Zealand found that an accumulation of factors associated with their social and economic status contributes to the incidence of poor physical and mental health. Lone mother's<sup>19</sup> were reluctant to attend primary health care services because of the cost; they experienced emotional problems arising from relationship breakdown, abuse, and continuing conflict around care and access arrangements; high rates of stress related to their financial situation; high rates of depression; and poor nutrition including frequently skipping meals to ensure their children were fed.

Putting women under these kinds of stress does little to enhance their parenting and therefore the wellbeing of their children.

There appears to be a lack of understanding of the dynamics of abusive relationships in this paper. If women are in abusive relationships – either living with a partner or going out with an abusive person, among the many other stresses they experience, they will probably have very little choice about when and how they have sex, including possibly being prevented from using contraception. Therefore, women who become pregnant in these circumstances may not be pregnant from choice. Penalising a sole mother for having another baby aligns the state with her rapist/abuser.

If the government wants to prevent sole parents from having more children, then contraception must be free and abortion available on demand.

### **Family Court**

An area of concern is the Family Court. Currently:

1. The Courts appear to have developed a culture that is anti-women/mother and pro-father in its approach to Care of Children applications. This appears to have been a response to a strong and public pro-father lobby and the silencing of women's responses. This disturbing anti-women culture within

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<sup>19</sup>Baker, M. 2002 'Poor health, Lone-mothers, and Welfare reform: competing visions of employability', *Women's Health and Urban Life* 1 (2) December: 4-25.

the family court has severe health and legal rights repercussions on children and on mothers<sup>20</sup>.

2. Sloppy attention to legal rights pervades the Court and alongside associated cost cutting means that documentation is sometimes not sent by the Court to affected parties, resulting in violation of the rights of affected parties to due process.
  - a. E.g. a respondent did not receive any documentation relating to interim parenting orders detailing her obligations. She was admonished by the Court for violating her obligations but was not informed of them. This affected the perception of her by the Counsel for Child and by the Court.
3. This anti-woman culture results in the construction of mothers as “negative”, “hostile” or “obstructive” when seeking to protect their children or to move on with their lives.
  - a. There is clear evidence of this in the published paper by Elizabeth, Gavey and Tolmie (2010)<sup>21</sup>, but
  - b. this has also been our experience from mothers who have spoken to us about their experiences and
  - c. from women associated with the “Its still not okay” group and
  - d. in judges’ decisions relating to care of children that go against the mother’s wishes.
4. These constructions are compounded by a cost-cutting imperative to address only the present concerns rather than to view present concerns within the historical context of the parent’s contact with the child/ren<sup>22</sup> and the history of conflict with the mother.
5. Such constructions appear to have become entrenched in attitudes and behaviours towards mothers and their families in the Family Court producing a father-centric response. Fathers are judged by norms of fathers who attend the family court rather than by fathers within the community, many of whom have been able to negotiate perfectly satisfactory arrangements with their children while not impeding the mother’s freedom.

All these things add to the stress of sole parenting and can, if women are escaping an abusive relationship, put women and children at increased risk of ongoing violence. The Family Court must make the safety and well being of women and children it’s first priority in any directions and rulings. This highlights the need for all professionals involved in Family and Criminal Court proceedings to have comprehensive training in the dynamics and harm of violence against women and children.

Women also find that a number of these same issues occur in the District Court. Women report not being told of either their rights or their obligations, and often

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<sup>20</sup> J. Silverman, Cynthia M. Mesh, Carrie V. Cuthbert, Kim Slote, and Lundy Bancroft Child Custody Determinations in Cases Involving Intimate Partner Violence: a Human Rights Analysis *Am J Public Health*. 2004;94:951–957

<sup>21</sup> Elizabeth, V., Gavey, N., Tolmie, & J. (2010). Between a rock and a hard place: resident mothers and the oral dilemmas they face during custody disputes. *Feminist Legal Studies*, 18, 253-274. See also Harrison, C. (2008). Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence. *Violence Against Women*, 14(4), 381-405.

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

have no idea what's happening to them. Women complain that legal aid lawyers and agencies tell women to Just pled guilty and get it over with".

There are many problems with legal aid that increase the risks for women and children when violence is an issue. We have appended a submission that talks more about this. See appendix two.

### **Education**

Create more pathways into education and skill development. Encourage work based education; develop programmes for parents to learn alongside children in schools, resource more bridging programmes into skill and tertiary training. Changing the criteria for sole parents to enter tertiary education, preventing older people getting student loans and cutting the funding for community education classes reduced opportunities for adults to gain more skills and pathways into life-long education. Parental education improves children's lives as it encourages children's educational achievement and gives parents more resources for improved parenting and improved employment prospects.

### **Child support for non-custodial parents**

The government is supporting a bill, introduced into parliament by Peter Dunn that would redefine shared care of children of separated parents from 40% to 28% contact time with children by the non-custodial parent, usually the father. This decision would allow the non-custodial parent to stop child-care support payments if he has 28% contact time per week with his children, which will be redefined as "shared care". The changes also include "changing the penalty rules for parents defaulting on their payments so they are not so punitive as to discourage parents from resuming payments."<sup>23</sup>

These changes all appear to be a response to fathers' rights groups'. Not paying child support – and making women spend many months or years in court contesting access and child support payments - are well documented abuse strategies. This reduction in child support payment from 40% contact to 28% contact will reduce payment to the custodial parent and affect the poverty level of many women trying to raise their children alone, making it even more difficult for women to leave abusive relationships.

This is another measure that will punish custodial parents by increasing financial and other stresses and enable men to avoid their parental responsibilities – while further stigmatising women as they attempt to parent under difficult and unsupportive circumstances.

### **Violence against women**

Domestic and sexual violence must be addressed if children and their mothers are to be safe. As identified in the Green Paper, violence is a major cause of vulnerability for children. There are many areas of concern that will need to be redressed before sufficient safety and support is being offered to women and children who are being abused.

1) Over the past 3 years significant funding has been removed from the sexual and domestic violence sector. This does not contribute to increased safety and wellbeing. Changes to legal aid and proposed changes to the family court processes

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<sup>23</sup> United Future Press release. <http://business.scoop.co.nz/2011/08/21/dunne-outlines-key-child-support-law-changes> accessed September 13, 2011



also contribute to an increased number of women and children living in life threatening situations.

2) Wide disparity continues for Maori women in a number of different areas, including experiencing substantially more domestic and sexual violence than others. In a summary of the New Zealand domestic violence situation, the Leitner Institute<sup>24</sup> highlighted the need for specific interventions that targeted Maori women's needs when experiencing domestic violence<sup>25</sup> and pointed to the government's responsibility to provide for the safety of its citizens under human rights legislations.

Maori women are also constrained in their attempts to live free from violence by the structural inequity in the wider determinants of health such as income disparity, employment, access to safe and secure housing, education, structural and interpersonal racism and access to health, justice and other services.

3) Immigrant women face particular difficulties related to escaping violence. Many enter the country under the sponsorship of a visa or work permit holder. Threats to withdraw sponsorship are a key component of migrant women's experience of domestic violence. Whilst there are some concessions in Immigration policy allowing the issuance of special permits to women who leave relationships because of violence, these are difficult to prove, difficult to obtain and take considerable amounts of time to process. Family violence service providers report that the delays mean women cannot access emergency support benefits and mean that some see no option but to return to their partner/husband. Women's (and children's) rights to live free from violence must be upheld irrespective of their immigration status. Other barriers to immigrant leaving abusive relationships with a sponsoring partner include:

- Being deported into life threatening situations in their countries of origin
- Being deported and having to leave their New Zealand born children in New Zealand with the abuser
- Being arrested as an over-stayer, due to the abusive partner never allowing women to apply for residency
- Having no access to safe interpretation services during Court proceedings.

We have concerns that women are regularly appearing before the Courts without interpretation services, resulting in dangerous and unfair outcomes<sup>26</sup>. There is a need for the routine determination of the need for translation before appearance in any court in order to fulfil natural justice obligations. This is especially so for women appearing before the Family Court or the Criminal Court when violence is involved and their safety or the safety of their children is affected. Police need to make sure that they use interpreting services when attending domestic violence incidents involving new immigrants. People providing translation services for immigrant women living with violence must be professionally trained to protect confidentiality. Disclosures to members of the woman's community may endanger a woman's life or mean she is subjected to violence should her partner find out. Likewise Police, Courts, and legal services must carefully screen translators to avoid the possibility

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<sup>24</sup> LCILJ. (2008). *"It's not OK": New Zealand's efforts to eliminate violence against women*. Leitner Center for International Law and Justice, Fordham Law School, New York City

<sup>26</sup> Robertson, N., Busch, R., D'Souza, R., Sheung, F. L., Anand, R., Balzer, R., et al. (2007). *Living at the Cutting Edge: Women's Experiences of Protection Orders*. Waikato: Ministry of Women's Affairs/Waikato University.

that these individuals may give information back to the community about women's experiences or continue perpetrating abuse against women by withholding information or inaccurately translating information. There have been complaints made that the police are not trained to recognise that violence in migrant families may be intergenerational and that they should not rely on family members for translation.

4) Under current legislation, and increasingly with proposed changes to welfare policy, most women who leave abusive relationships will be substantially less financially secure than they were before leaving. This is caused by a number of things. Women are more than one and a half times more likely than men to live in a household with a total annual income of \$30,000 or less<sup>27</sup>. Three-quarters of people whose personal income is over \$75,000 per year are men. The median annual income on census night (2006) from all sources for people aged over 15 was \$31,000 for men and \$19,000 for women, a gap of 39 percent<sup>28</sup>. The Pay Equity Unit, established by the Labour government has been dismantled and there are no plans to advance equal pay processes.

5) The legal representation of women is a major concern. The income threshold for legal aid is very low so that only those in the lowest income brackets can access this service. This means that many women – those who exceed the income threshold for legal aid, yet are still on low incomes - are either unable to afford lawyers or must put themselves under considerable financial stress to be safe and seek justice for themselves. This financial stress impacts on children's health and wellbeing, women's ability to access warm, secure housing, the ability to pay water, food and other bills and for women to move on and heal from the abuse that they have suffered.

New provisions, making legal aid a loan rather than a grant, will also significantly disadvantage women on low incomes seeking to leave abusive partners, take sexual offenders to court and work out custody and other issues when separating from their partners. There is a lack of clarity about the repayment regulations. Some officials believe that Protection Orders are exempt from repayment, for applicants; however, this is not always the case and some women will be assessed as having significant assets and therefore having to repay the legal aid grant. Only Protection Orders and processes under the Mental Health Act are exempt from repayment. Prosecuting rape charges, women defending themselves after being arrested for self-defence and many processes in the family court, are not exempt.

6) Women are increasingly finding that the family court is placing them and their children at risk by, on one hand, making children's safety women's responsibility, while also requiring women to facilitate their ex-partners parenting. This means that women are exposed to considerable risk, stress and expense to facilitate men's parenting or are being labelled as difficult and uncooperative by Judges.<sup>29</sup>

7) The government has just passed the Crimes Amendment Act (no. 2). This contains a failure to protect provision based on English legislation. This Act has the capacity to further abuse and punish women who are living in a violent relationship

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<sup>27</sup> Human Rights Commission (2010) Human Rights in New Zealand 2010

<sup>28</sup> Ibid

<sup>29</sup> Vivienne Elizabeth, Nicola Gavey and Julia Tolmie, 2010 Between a Rock and a Hard Place: Resident Mothers and the Moral Dilemmas they Face During Custody Disputes. Feminist Legal Studies Volume 18, Number 3, 253-274

and, as a consequence of living with sexual and domestic violence, are unable to protect themselves and their children.

8) The prevention of violence against women, as opposed to early or late intervention, is significantly under funded and undervalued by the present government. Recently the government has cut funding for nearly all health promotion and prevention services. This includes dating and domestic violence prevention with young people and community initiatives to stop family and sexual violence.

9) There are about 30 specialised sexual violence services for victims in New Zealand covering about 70% of the female population, however, many of these are severely under funded as funding has been reduced over the past three years due to changes in the ACC<sup>30</sup> clinical pathway and other government decisions. Changes to ACC resulted in a 90% reduction in access to counseling. This means that many victims and survivors either have no access to services or must go on waiting lists to access therapy and/or crisis services. There are very few specialised services for sexually abused children.

In New Zealand, of the less than 10 percent of sexual violence offences that are reported to police<sup>31</sup>, only 13 percent result in a perpetrator being convicted.<sup>32</sup> This is an unacceptable conviction rate. There are concerns about some judicial decisions, for example, two recent decisions resulting in discharge without conviction on the basis of the offender's career in entertainment (a musician and a comedian) and many concerns about defence lawyers, particularly the ways that they work the system to "get the offender off at any cost"<sup>33</sup>.

Survivors have demanded changes to the criminal justice system that, they feel, places them on trial, rather than the offenders. Specialist services have asked for many changes including specialist judges and legal advocates for rape complainants.

The Taskforce for Action on Sexual Violence stated in the 2009 report<sup>34</sup> that changes would be made to NZ legislation to reduce the stress and trauma sexual assault complainants face in the criminal justice system. In response, the New Zealand Government stated that it would look into improving the justice sector response to sexual violence victims and the Law Commission has been tasked with this inquiry. Changes that have occurred include the Ministry of Justice re-prioritising \$1 million of funding over two years for sexual violence prevention education programmes and improving the level of support available to victims of sexual violence as they go through the criminal justice system. This includes funding for 18 specialist court victim advisers, a discretionary grant to assist with expenses incurred as a result of sexual violence, new information resources, and increased financial assistance for travel, accommodation, and childcare. While other work may be going on 'behind the scenes', as of September 2011 very little progress has been made to implement the taskforce recommendations. We believe that this is an important issue that requires urgent attention if the Government wants to improve the wellbeing of children.

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<sup>30</sup> Accident Compensation Corporation. The government organization tasked with providing resources to rape and sexual abuse victims for therapy and rehabilitation.

<sup>31</sup> Mayhew P. Reilly J. 2006 NZ Crime and Safety Survey, Ministry of Justice, Wellington

<sup>32</sup> MOJ. *Te Toiora Mata Tauherenga*, Report of the Taskforce for Action on Sexual Violence, 2009. Ministry of Justice, Wellington

<sup>33</sup> Personal correspondence, Auckland Sexual Abuse Help

<sup>34</sup> *ibid*

Excellent research has been undertaken by the Ministry for Women's Affairs "*Strong and Safe Communities – Effective Interventions for Adult Victim/Survivors of Sexual Abuse*". However, policies informed by this research need to be implemented immediately. Furthermore, this research needs to be replicated looking at domestic violence against women and the impacts of sexualisation and gender representation in the media.

10) Despite the high prevalence of domestic violence in New Zealand the number of protection orders<sup>35</sup> issued since the introduction of the Domestic Violence Act 1995 appear to have decreased substantially in the period from 1999 to 2008<sup>36</sup> and the number of temporary protection orders made final have dropped substantially since the introduction of the Act<sup>37</sup>. Around ninety percent of those seeking protection orders under the Act are women and only approximately 75% of protection orders are granted. Between 2004-2009 there has been no change in the number of temporary protection orders granted and no change in applications to the court for temporary protection orders (around 4000 annually), despite increasing rates of reported abuse.

In 2008 a significant appeal court case, *Surrey vs Surrey*, stated that the intention of the Act was to make the provision of protection orders for those experiencing domestic violence relatively easy. Our observation is that the *Surrey vs Surrey* case has not made any change to judicial practice.

11) The introduction of Family Violence courts was to streamline family court cases through the criminal courts, but there are very real concerns about justice for women whose cases come before these courts. These concerns include:

- that the rushed process does not allow women, who are the primary victims, to represent themselves well
- concerns about the safety of women in these courts, when forced to make decisions about their futures in front of their violent partners
- the lack of provision of advocates in the court to support women
- the lack of effective responses to men, many of whom are repeat offenders, despite being referred to drug and alcohol treatment and stopping violence programmes

12) There have been, over recent years, increasing numbers of women arrested for assaulting their partners. These women are virtually always the victim of an abusive partner and are being arrested for charges such as with 'assault with a weapon' when defending themselves from assault with minor items such as mobile phones, keys and fruit bowls. Service providers report that this is because new recruits to the police have very little domestic violence training and no primary offender training so do not understand the primary victim's context. This results in arrests for self-defence. This is devastating for all women who find themselves criminalised for trying to protect themselves and their children from assault. Many new migrant women in this situation say they will never call the police again because

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<sup>35</sup> Court issued orders to abusive men to prevent them contacting or further abusing their partner and children

<sup>36</sup> Families Commission (2009). *Family Violence Statistics Report: A Families Commission Report*. Wellington Families Commission.

<sup>37</sup> Towns, A., & Scott, H. (2006). Accountability, natural justice and safety: The protection order pilot study (POPS) of the Domestic Violence Act 1995. *New Zealand Family Law Journal*, 7(7), 157-168.

they have not been believed and have been the one arrested. Other concerns include that:

- some female police officers have been described as being very harsh to women
- some women arrested have described being refused the right to make a phone call
- police have left children with the primary offender when women have been arrested even when women have explicitly told them not to for safety reasons
- children being taken into care when the woman is arrested and the decision about where the child goes is at the police discretion. If the woman is arrested on a Friday she will often not appear in the arrest court until Monday - even if breastfeeding
- commonly lawyers advise women to plead guilty even when the action was self-defence. Women plead guilty based on perceived negative effects on family/children if they defend the charge.
- when released on bail, if women have been living with a partner, they can't go home and must leave with or without the children. In some situations women are invited by their partners to return home to collect the children or clothing etc, only to find that their partner has called the police and they are then charged with breaching bail conditions.

13) There are still many women who are unable to access domestic violence services, especially women's refuge. While the services do their best to accommodate diversity, they often do not have the funding, expertise or facilities to work with, and provide safety for, women who present with more complex issues or who don't fit the criteria for mainstream services. This list of underserved women includes:

- Young women – those under 18 years needing refuge from parental abuse, forced marriage or partner abuse
- Women over about 50 years old
- Women with physical disabilities requiring disability friendly accommodation and services
- Women with mental health and/or substance abuse problems
- Sex workers escaping abuse related to their work

There are very similar barriers for women accessing specialist sexual violence services including for young women, children, and women with mental health and/or drug and alcohol problems and disabled women. Women's refuges do not provide services for women escaping sexual violence.

14) From July 1, 2011, the police have been able to immediately issue Safety Orders to perpetrators of domestic violence. It is not yet known how this new measure is contributing to women's safety and how it is being implemented. We recommend that this policy implementation will be researched to measure its outcomes in relation to increasing safety for women and children.

15) Survivors of domestic violence believe that there many barriers to escaping abuse and living lives free from violence. These are detailed in the excellent report

Protecting Victims Rebuilding Lives Sending the Right Message.<sup>38</sup> This reports details a whole of government response to providing safety and constructive responses to abused women and their children.

### **Women in prison**

Up to 87% of women in prison, in New Zealand, have been violently and sexually abused since they were young children and babies.<sup>39</sup> This may well be why they end up in prison. Understanding the link between abuse and poor outcomes for women, and putting therapeutic processes in place to address the harm that has been done, is essential to preventing this harm from occurring in each succeeding generation. This means ensuring that comprehensive sexual and domestic violence therapy programmes are available to all women in prison and when the leave, to reduce offending, help women heal and therefore encourage them to be better, more nurturing parents for their own children – to prevent another generation being harmed.

### **Mental health**

Women have higher prevalence of anxiety, mood and eating disorders than males. Men have higher prevalence of substance use disorders than females. Life time prevalence for suicidal behaviours is significantly higher in females than males (ideation, planning and attempts).<sup>40</sup> There is an eight times higher risk of suicide attempts for women who have experienced severe physical or sexual violence from an intimate partner.<sup>41</sup>

Women have higher rates of mental illness for several reasons - poverty, discrimination and social disadvantage, social isolation, lower paid less stable jobs with less status, the double work load of work and home including the care of children, and widespread gender based violence (both sexual and domestic), with the severity and length of exposure to violence being highly predictive of the severity of mental health outcomes.<sup>42</sup>

One area of particular concern is the lack of available Women's Refuges that can cater to women with mental health problems. Post traumatic stress disorder, which is associated with domestic and sexual violence towards women, is commonly associated with mental health problems such as depression, anxiety and substance abuse disorders. Women's Refuges do not have the resources to deal with the seriously disabled. This means that these women do not have the same access to resources that other women who experience violence have. Consideration needs to be given to ensuring equity of services for these women.

It is also of concern that the mental health sector in NZ has yet to specifically incorporate a gender perspective into service delivery. Gender-informed care needs to be developed in partnership with women service users, in both the hospital and community settings. There are good examples from overseas including how women's

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<sup>38</sup> Protecting Victims Rebuilding Lives Sending the Right Message. A Discussion Paper written by Survivors of Domestic Violence January 2010 It's Still Not OK. Upper Hutt.

<sup>39</sup> Celia Lashlie, 2010. *The Power of Mothers; releasing our children*. Harper Collins, Sydney

<sup>40</sup> MA Oakeley Browne, JE Wells, KM Scott (eds) 2006 *Te Rau Hinengaro The New Zealand Mental Health Survey*, Wellington – Ministry of Health

<sup>41</sup> Fanslow, J.L., & Robinson, E (2004). Violence against women in New Zealand: prevalence and health consequences. *New Zealand Medical Journal*, 117-1206: 1173.

<sup>42</sup> Ibid.pg 2-3

safety can be prioritised in in-patient settings, how gender stereotypes in diagnosis can be challenged, and how different life situations (eg for lesbian or refugee women) need to be integrated into an overall strategy<sup>43</sup>. This includes the provision of gender specific, women-only drug and alcohol and mental health inpatient services that incorporate an understanding of the effects of sexual and domestic violence.<sup>44</sup>

For mothers of babies and young children, who are having mental health problems, specialist units are required that take women and children to ensure that mothers can address their mental health problems without damaging the attachment between mother and child. Currently there are very few resources for women with post natal mental health problems.

### **17) Sexualisation of children and young women**

Young women have expressed considerable distress at the on-going use and objectification of their bodies to promote consumer products in advertising and the sexualised use of their bodies in music videos<sup>45</sup>. Excessive advertising displays of "gorgeous and perfect" representations of women have been associated with the epidemic of eating disorders amongst young women. New Zealand young women are experiencing high rates of body dissatisfaction, poor body image and eating difficulties, with impacts on their physical and mental health.

Young women have also attributed these media representations to the abuse that they experience from boyfriends. They have argued that these media representations that draw from the objectification of women or the treatment of them simply as sexual objects provide the platform for young men to treat them as disposable objects: there to be used and then discarded<sup>46</sup>. Furthermore they create dissatisfaction amongst young men who try to mould girlfriends into the consumer ideal representation. Young women say these actions by young men towards young women have profound effects on their freedom of expression and harmful effects on their identity and mental health<sup>47</sup>.

Young girls are increasingly portrayed as sexually available mini-adults. This is being driven by sexualised music videos, magazines, billboards, toys, games, clothing and marketing. As a result, girls are developing physical and mental health problems such as eating disorders, depression and anxiety. The culture changes are being driven by marketers targeting pre-teens with disposable incomes, the rise of pornography and the mainstreaming of pornographic messages. In the past five years it had also been especially perpetuated by the internet. It is harmful to girls as the message they are getting about how they have to act and look is very negative.

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<sup>43</sup> National Institute for Mental Health in England (2008) Informed Gender Practice (2008) Royal College of Nurses, United Kingdom

<sup>44</sup> Hager, D. 2011 Finding Safety. Provision of specialised domestic violence and refuge services for women who currently find it difficult to access mainstream services: disabled women, older women, sex workers and women with mental illness and/or drug and alcohol problems as a result of domestic violence. Winston Churchill report. Accessed October 2<sup>nd</sup>, 2011, from [http://www.communitymatters.govt.nz/vwluResources/WCMFReport10Hager/\\$file/WCMFReport10Hager.pdf](http://www.communitymatters.govt.nz/vwluResources/WCMFReport10Hager/$file/WCMFReport10Hager.pdf)

<sup>45</sup> Towns, A., & Scott, H. (2008). The Culture of Cool: Getting in early to prevent domestic violence (pp. 150). Auckland: ACC/Mt Albert Psychological Services Ltd.

<sup>46</sup> *ibid*

<sup>47</sup> *ibid*

## **18) Housing**

Critical to the wellbeing of all people is safe, secure, warm and affordable housing. Recent changes to government social housing policy will make it more difficult for those at risk to find safe affordable housing. People who are vulnerable because of, for example, physical, sexual and emotional violence, racism, stigma, unemployment and /or mental and physical disabilities require access to housing that is appropriate, affordable and which provides long term secure accommodation.

Housing policy must recognise the gendered nature of housing need, prioritising women and children. A variety of housing is required for women needing to escape violence.

In relation to the last 18 points above, we recommend that:

1. equal pay polices be enacted
2. social welfare benefit system reforms be carefully considered to assess the potential harm to already vulnerable children and their mothers
3. the proposed new Bill to change provisions for child support payments to custodial parents be reviewed for it's potential to seriously disadvantage women as the main custodians of children
4. the new Legal Aid provisions be reviewed for their potential to prevent women accessing legal representation to escape and prosecute violence against themselves and their children
5. immigration and other polices are changed to ensure the safety and wellbeing of migrant and refugee women experiencing domestic or sexual violence
6. all sexual and domestic violence services – front line, therapeutic and preventive, be well resourced with the intention of helping women and children escape violence and heal from their experiences
7. funding is provided to ensure ongoing evaluation of prevention and service provision for sexual and domestic violence
8. government provide adequate resourcing for the provision of interventions that target specific populations experiencing domestic and sexual violence who are currently underserved by existing services. These populations include:
  - Maori women
  - Pacific women
  - Refuge and migrant women
  - Lesbian women
  - Disabled women
  - Women with mental illness
  - Women with substance abuse problems
  - Young women
  - Older women
  - Sex workers



- Women without dependant children
  - Children
9. all policy is examined for the intersecting impacts of gender and disability to ensure health and other government policies are sensitive to the specific needs, concerns and barriers facing disabled women and women parenting disabled children
  10. mental health services include a gender analysis and gender specific services
  11. government take responsibility to prevent the objectification of women's bodies and the sexualisation of children by advertisers, the media, the music industry and business
  12. the Ministry of Justice Report, Te Toiora Mata Tauherenga, Report of the Taskforce on Sexual Violence, 2009, be fully implemented immediately
  13. the justice system prioritises the safety of women and children over the rights of offenders
  14. police, lawyers and Judges receive ongoing training about domestic and sexual violence including the gendered nature of this crime, the need to ensure safety of survivors and the intent of the legislation
  15. police, lawyers and Judges receive ongoing training about primary offenders and primary offender policies are implemented into police processes
  16. that all housing staff be educated about sexual and domestic violence and the need to put the safety of women and children as a first priority in housing allocation.

## **P 11 Communities**

Community – and community responsibility - has been discouraged over the past 30 years since the economic reforms of the 80s and 90s encouraged people to think not in terms of collective bargaining and wellbeing, but of individual promotion and ambition. Alongside this economic individualism was a conscious stigmatising of those who are reliant on benefits, work in low paid jobs, require help and support and/or find it difficult to manage their lives on the resources that are available to them.

It is therefore disingenuous to now ask 'communities' to take responsibility for the most vulnerable among them.

As previously discussed, in order for people to take responsibility for their own decisions and actions, they must feel that the things that they do have meaning, that their actions will have a positive effect and that they can make changes in their lives and circumstances that will have a positive outcome.

## **Page 13. Vulnerable Children Action plan.**

If the government is to put together an action for vulnerable children, it will need to take an ecological approach to wellbeing, have a primary focus on prevention and have a considerable budget attached to ensure that it can be implemented. It must also be based on best evidence, which includes the need to keep women safe and care for women in order to ensure that they can effectively parent their children.

In *Violence Prevention, the evidence: overview*<sup>48</sup>, the strategy that is most recommended to prevent violence against children is home visiting and related parent training. This suggests that a critical part of any plan to improve the wellbeing of children must include an increase in resources – both financial and human – to increase home visiting for the first year of every child’s life. Ideally this would mean weekly visits for the first three months with the opportunity to extend this to 6 months if the visitor had concerns about the child’s wellbeing and monthly visits until the child is one year old. Asking women to visit a professional does not confer the same level of safety or oversight, nor does it enable the home visitor to engage in the same levels of one to one individual parent training that can occur as a relationship of trust develops.

The other strategies that WHO recommend to prevent violence are to develop life skills in children and adolescents via social programmes in schools, reduce the availability and harmful use of alcohol, reduce access to guns and knives, promote gender equality to prevent violence against women, change cultural and social norms that support violence and victim identification, care and support programmes.<sup>49</sup>

If the government is sincere about preventing harm to children, all of these issues must be addressed as part of an action plan for vulnerable children.

Two programmes that directly encourage children to learn non-violent behaviours are *Roots of Empathy* and the Peace Foundation’s peer mentoring programme, *Cool Schools*. Both of these would be useful to include in all school curriculum.

As we have identified on page 5 of our submission, the wellbeing of children would be significantly enhanced if there was compulsory, assessment based, training about sexual and domestic/family violence for everyone who works in services that interact with parents and children. This training should be a core part of any action plan as it has implications for so many of the initiatives.

As well as training, staff in government organizations should be trained to focus on enabling rather than excluding and regulating. This is an empowering approach that encourages people to use the resources that are offered, to take control of their own lives.

It would not be constructive to take money away from existing successful programmes in order to fund this action plan.

### **Page 18. Working from an evidence base**

As we indicated in the introduction to our submission, there is very good evidence available to the government from both New Zealand and overseas research.

Some of that research is referenced in this submission – other submissions will use other research. Successive governments have ignored many of the papers that are referenced in this submission, as they require change and action. If this government truly has the wellbeing of children as its primary concern, this research must be acknowledged and actioned.

### **Page 19. Targeting services and programmes to vulnerable children**

We support the universal provision of services and programmes. However, in order to meet the needs of children who have been abused, programmes for children

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<sup>48</sup> World Health Organization. 2009. *Violence Prevention, the evidence: overview*. WHO, Geneva

<sup>49</sup> *ibid*

traumatised by sexual or domestic violence should be available in all areas of the country.

We do not support the idea of taking money from existing health, social service or education budgets to support these initiatives.

#### **Page 24. Mandatory reporting of child abuse**

We support the idea of mandatory reporting of child abuse but only when this is combined with mandatory training for professionals who will be expected to be involved and adequate resourcing for the agencies charged with responding to the notifications. It is pointless having information sharing and mandatory reporting if there is insufficient resources and expertise to respond. Currently, with the lack of training and severe under-resourcing of many agencies, mandatory reporting could result in more vulnerable children being overlooked as cases pile up.

NZ reports and enquiries have repeatedly pointed to the problem of children falling through gaps in spite of a number of professionals being involved in their lives. If professionals are required to engage in ongoing education and are resourced to follow up all notifications, many children's lives could be improved by mandatory reporting.

Dr. Ben Matthews in his paper on mandatory reporting clearly states that 'Statistics from several countries suggest mandatory reporting does work to identify the majority of cases of severe child maltreatment that are detected.'<sup>50</sup>

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<sup>50</sup> Dr. Ben Matthews, Queensland University of Technology: Issues Paper: Does the protection of Vulnerable Children require a system of mandatory reporting of abuse and neglect?

### **We have consulted with:**

Pacific Women's Watch

Maternity Services Consumer Council

Women's International League for Peace and Freedom

Tamaki Treaty Workers

AUT Midwifery Students Association (AMSA)

Homeworks Trust

NZ Federation of Graduate women

DVD – the domestic violence and disability working group

### **Appendix one.**

Maori child abuse linked to poverty and discrimination

By [Simon Collins](#)

5:30 AM Thursday Jan 26, 2012

A Maori health researcher says reducing Maori child abuse will require tackling poverty and racial discrimination.

Dr Fiona Cram, in a report published today by the Families Commission, says family poverty is "the major contributing risk factor for children" - and Maori children are twice as likely as European children to live in poverty.

Families Commission chairman Carl Davidson said Dr Cram had "a particular perspective on Maori children in care" which the commission did not necessarily share.

But a companion report by commission staff, published with Dr Cram's report, also recommends "a more comprehensive approach" to families that have mistreated their children, including help with mental health and addiction problems and "systemic issues" such as poverty and discrimination.

The two reports show that 52 per cent of all New Zealand children who have been taken into state care from abusive or neglectful parents are Maori, compared with only 22 per cent of the population under age 20.

In contrast, only 39 per cent of those in care are European, compared with 71 per cent of the under-20 population. Pacific children make up 11 per cent of the young population but only 6 per cent of those in state care.

Dr Cram said other countries that had been colonised by immigrant groups showed similar patterns.

"Around the world, indigenous children are over-represented in child welfare systems for many reasons: systemic racism, the application of white, middle-class standards and values to [indigenous] communities, and inter-generational fragmentation of the family and community structure," she said, quoting an Australian study.

"The high proportion of these children whose families live in deprivation suggests

that this over-representation can be substantially accounted for by structural risk factors such as poor housing and poverty."

In New Zealand, the Social Development Ministry says one-third of Maori children and a quarter of Pacific children, but only one-sixth of European children, lived in homes with incomes below 60 per cent of the median after adjusting for housing costs between 2007 and 2010. It says the main factor pushing up the Maori figure was a high number of sole parents. Almost half (43 per cent) of sole parents on the domestic purposes benefit in the period were Maori.

Dr Cram, who comes from the East Coast iwi of Ngati Pahauwera, found that 54 per cent of Maori, but only 24 per cent of non-Maori, lived in the most deprived 30 per cent of areas in the country at the 2006 Census. She said Otago University research showed that this was partly due to ethnic discrimination.

"If you take a cohort of Maori and a cohort of non-Maori who are the same in age, gender and education levels, the Maori will end up in lower-status jobs," she said. "Structurally, it's discrimination. You could say personally, in terms of whanau, it's because the knowledge of how to move through education into employment is not as embedded in whanau."

She is evaluating a programme run by Auckland tertiary institutions, Maori Into Tertiary Education (MITE), which helps Maori students to get from school into tertiary education

## **Appendix two. Submission for the Review of the Family Court**



### **“Reviewing the family court: A public consultation paper”**

#### **Submitted by:**

Auckland Coalition for the Safety of Women and Children  
PO Box 78 271  
Grey Lynn  
Auckland 1245

#### **Contact:**

Leonie Morris  
09 376 3227

27 February 2012

#### **We would like to speak to our submission.**

Thank you for the opportunity to present a submission on the Green Paper for Vulnerable Children. The Auckland Coalition for the Safety of Women and Children was developed in 2006 in reaction to concerns regarding responses to domestic violence in Auckland. Community agencies met together to discuss domestic 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.

#### **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

#### **Members:**

- Auckland Women’s Centre
- Blow the Whistle on Violence
- Homeworks Trust
- Inner City Women’s Group
- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- SHINE Safer Homes in NZ Everyday
- Supportline Women’s Refuge
- Women’s Health Action Trust

### Question 1.

**A. Are these the main issues facing the Family Court? If not, what other issues should we look at? Do you have any evidence that supports your view?**

A. Response to A.

Perhaps the major and most disturbing issues facing the Family Court are that

- (1) There are indications that the Courts appear to have developed a culture that is anti-women/mother and pro-father in its approach to Care of Children applications<sup>51</sup> consistent with a similar media and community discourse. This appears to have been a response to a strong and public pro-father lobby and the silencing of women's responses<sup>52</sup>. This disturbing anti-women culture within the family court has severe health and legal rights repercussions on children and on mothers<sup>53</sup>. While data presented by Judge Boshier suggests a more balanced approach<sup>54</sup> this data does not indicate how many findings were in favour of what mothers wanted at the start of the application process and how many were in favour of what fathers wanted.
- (2) Given that 93% of protection orders applications are made by women<sup>55</sup> it is likely that a good proportion of the Care of Children applications will be in relation to protection order applications where safety is a concern. The overlap between women and child abuse is very high – in the region of 30-60%<sup>56</sup>. The NZ Women's Safety Survey indicated that 75% of separated women had experienced at least one act of physical or sexual violence from their ex-partners and this proportion is likely to be much higher for those women going through the family court process<sup>57</sup>. 22% of separated women had experienced 10 or more acts of such violence. Maori women were disproportionately represented. 90% of those who experienced sexual violence are women and for 25-45% this violence is from a current or ex-partner<sup>58</sup>.
- (3) Sloppy attention to legal and civil and political (NZBORA) rights pervades the Court and alongside associated cost cutting means that documentation is sometimes not sent by the Court to affected parties, resulting in violation of the rights of affected parties to due process.

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<sup>51</sup> “...despite the provisions of the Domestic Violence Act 1995 and sections 58-61 of the Care of Children Act 2004, ongoing contact with an abusive father trumps safety for women and children.” Robertson, N., Busch, R., D'Souza, R., Sheung, F. L., Anand, R., Balzer, R., et al. (2007). *Living at the Cutting Edge: Women's Experiences of Protection Orders*. Waikato: Ministry of Women's Affairs/Waikato University, p.4.

<sup>52</sup> Flood, M. (2010). "Fathers' Rights" and the defense of paternal authority in Australia. *Violence Against Women*, 16(3), 328-347.

Rosen, L., Dragiewicz, M., & Gibbs, J. C. (2009). Fathers' rights groups: Demographic correlates and impact on custody policy. *Violence Against Women*, 15(5), 513-531.

<sup>53</sup> J. Silverman, Cynthia M. Mesh, Carrie V. Cuthbert, Kim Slote, and Lundy Bancroft Child Custody Determinations in Cases

Involving Intimate Partner Violence: a Human Rights Analysis *Am J Public Health*. 2004;94:951-957

<sup>54</sup> Boshier, P., & Spelman, J. (2011). What's gender got to do with it in New Zealand family law? *NZ Family Law Journal*, 7, 61-69.

<sup>55</sup> Boshier & Spelman (2011) above

<sup>56</sup> Edleson, J. L. (1999). The overlap between child maltreatment and woman battering. *Violence against Women*, 5(2), 134-154.

<sup>57</sup> NZ Women's Safety Survey, 1996, MOJ: Wellington <http://www.justice.govt.nz/publications/publications-archived/1996/a-summary-of-the-crime-victims-and-womens-safety-surveys-a-summary-of-the-two-reports-1996/publication#WomenSafety>

<sup>58</sup> MWA (2009) Restoring soul: Effective interventions for adult victim/survivors of sexual violence. MWA: Wellington.

- a. E.g. a respondent did not receive any documentation relating to interim parenting orders detailing her obligations. She was admonished by the Court for violating her obligations but was not informed of them. This affected the perception of her by the Counsel for Child and by the Court when dealing with her partner’s application for parenting orders.
- (4) This anti-woman culture results in the construction of mothers as “negative”, “hostile” or “obstructive” when seeking to protect their children or to move on with their lives and these constructions create an unsafe environment for revisiting abuse issues should they reoccur.
- a. There is clear evidence of this construction in the published paper by Elizabeth, Gavey and Tolmie (2010)<sup>59</sup>, but
  - b. this has also been our experience from mothers who have spoken to us about their experiences and
  - c. from women associated with the “Its still not okay” group and
  - d. in Judges’ decisions relating to care of children that go against the mother’s wishes.
  - e. The use of “alienation” as a category for care of children applications suggests a pre-determined assumption relating to mothers who might be attempting to protect their children from neglect or abuse<sup>60</sup>. The evidence for “alienation” as a valid social science concept has been repeatedly questioned<sup>61</sup>.
- (5) These constructions are compounded by a cost-cutting imperative to address only the present concerns rather than to view present concerns within the historical context of the parent’s contact with the child/ren<sup>62</sup> and the history of conflict with the mother.
- (6) Such constructions appear to have become entrenched in attitudes and behaviours towards mothers and their children in the Family Court producing a father-centric response (see the case studies in. Fathers are judged by norms of fathers who attend the family court rather than by fathers within the community, many of whom have been able to negotiate perfectly satisfactory arrangements with their children while not impeding the mother’s freedom.

Example: This attitude is evident in the report “Reviewing the Family Court: A public consultation paper” Case Summary Josh and Will (p. 46).

#### Issues

1. In this construction the mother is cast as the villain for wanting to move with her new partner to another city five hours away from the father of her children. The norm within the community is that families do move about for various reasons,

<sup>59</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. See also Harrison, C. (2008). Implacably hostile or appropriately protective? Women managing child contact in the context of domestic violence. *Violence Against Women*, 14(4), 381-405.

<sup>60</sup> Boshier & Spelman (2011).

<sup>61</sup> Robertson, N., Busch, R., D'Souza, R., Sheung, F. L., Anand, R., Balzer, R., et al. (2007). *Living at the Cutting Edge: Women's Experiences of Protection Orders*. Waikato: Ministry of Women's Affairs/Waikato University.

<sup>62</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.



although we are not given the reason for her wanting to move in this case summary. (Other jurisdictions have legislated for consideration to be given to the reasons for moving<sup>63</sup> but reasons for moving have not been considered in NZ in family courts until a recent Supreme Court decision which found in favour of the mother's relocation.)

2. The Court's action for "non-removal of the children" in this instance is essentially father-centric and puts the children in the care of their father if the mother wishes or needs to move away. It is a manipulative move on the part of the Court to prevent the mother from moving. This is a common response by the NZ Family Court to women's desire to leave a Court location that moves the children away from the father and it is a human rights violation of the mother's right to move freely<sup>64</sup>. It is not exercised in some other countries (e.g. Germany) for this reason<sup>65</sup>.
3. A "family therapist" is used to then assess the reasons for the relationship breakdown between the mother and the father – father's rights groups are often negative to professionally trained family court psychologists. There is no registered professional qualification in NZ for a family therapist and the use of this person rather than a Family Court approved psychologist means that the children would not have been fully assessed, their wishes professionally determined and the parent-child relationship assessed professionally.
4. The mother is blamed for the breakdown of the relationship between the father and the children. Mother-blaming is a common response from professionals not properly competent in gendered responses<sup>66</sup> or familiar with the research literature on alienation<sup>67</sup>. The Court action in employing a father therapist to make this assessment might be a cost cutting endeavour by the Family Court with unfortunate repercussions for children and the potential for repeated legislative applications.
5. This assumption of the competence of the family therapist to do assessments that really require attention to the well-being of children, and the following actions of the Court in then giving the day to day care of the children to the father, may well be why the children have on-going anxiety issues rather than because of the action by the mother in seeking to move.
6. Of note is that the Care of the Children's Act acknowledges the importance of this primary attachment to the primary care-giving parent, and the paramountcy and welfare and best interests of the child, but in this case illustration this primary attachment is disrupted by the Family Court decision, a potential explanation for the children's anxiety.

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<sup>63</sup> Boshier, P. (2010). Have judges been missing the point and allowing relocation too easily. *NZ Family Law Journal*, 6, 334 - 340.

<sup>64</sup> See international Covenant on Civil and Political Rights and NZ Bill of Rights Act.

<sup>65</sup> Boshier, P. (2010). Have judges been missing the point and allowing relocation too easily. *NZ Family Law Journal*, 6, 334 - 340.

<sup>66</sup> Chesler, P. (1991). Mothers on trial: The custodial vulnerability of women. *Feminism and Psychology*, 1, 409-425.

<sup>67</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.

Robertson, N., Busch, R., D'Souza, R., Sheung, F. L., Anand, R., Balzer, R., et al. (2007). *Living at the Cutting Edge: Women's Experiences of Protection Orders*. Waikato: Ministry of Women's Affairs/Waikato University.

Contrast this action with normative actions of families in the community.

Case 1: In this case a mother and her new partner wanted to move from a city several hours away from the father of her children. The parents had been separated for about five years and the father had had regular contact with the children aged 12 and 16 years, who lived with their mother. The reason for moving so far away was so that her new partner could be near his extended family so he could help with their serious health needs. The response of the father (not abusive) was to move too, so that he could maintain contact with his children. There were no Family Court proceedings and the children maintained contact with the father.

Case 2: A father and his partner separated when their child was 8 months old. The mother moved to be with her family in a city five hours away from the father. The father travelled every other weekend to see and spend time with his infant child and when the child was old enough had her for a week in the school holiday periods as well. He continued this contact after developing a new relationship and having other children.

A father-centric culture in the Family Court means that:

1. The norms of fathers in the Family Court pervade the culture of the Court and trump the norms of the community, where caring fathers support both the child and the estranged partner, and the welfare and best interests of the child.
2. Unrepresented fathers become represented by defacto by Counsel for the Child, who lose sight of the interests of the child as a result.
3. The rights of the father trump the rights to safety and well-being of the child and the impact on children of contact with a batterer or abusive father is ignored. There is a wealth of research that articulates the effects of contact of a child with an abusing parent<sup>68</sup>.
4. A “gender-neutral” approach to Care of Children applications means that there are assumptions made that women respondents in care of children cases are not subjected to violence and abuse from applicants, and due diligence is not undertaken to determine the full extent of violence and abuse to women and children in these cases.
5. The “child’s best interest” to contact with the father at times trumps “welfare” of the child, which involves not only protection from any form of abuse but also a stable living situation, stable contact with the custodial parent and protection of any interruption of this attachment<sup>69</sup>. (This is indeed what happened in this case illustration of Josh and Will).
6. Professionals who focus on the welfare and best interests of children are constructed as hostile to fathers and are potentially used less. There are associated costly repeated legal processes.

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<sup>68</sup> Graham-Bermann, S. A., & Edleson, J. L. (2001). *Domestic Violence in the Lives of Children: The future of research, intervention and social policy*. Washington D.C.: American Psychological Association.

Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks/New Delhi/London: Sage

McDonald, R., Jouriles, E. N., Tart, C. D., & Minze, L. C. (2009). Children's adjustment problems in families characterized by men's severe violence towards women: Does other family violence matter. *Child Abuse & Neglect*, 33(2), 94-101.

<sup>69</sup> 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, 136.

Tolmie, J., Elizabeth, V., & Gavey, N. (2009). Raising questions about the importance of father contact within current family law practices. *NZ Family Law Journal*, 659-694.

7. Mothers and women, who may well be concerned about their children's well-being, or traumatised from abuse, are constructed as vindictive or negative and hostile.
8. Such father-centric constructions are not in the child's best interest as they will impede mother's ability to return to the Court to address the welfare of the child if there are concerns in the future.
9. Grandparents or extended family relatives with important and meaningful relationships with the children are disenfranchised or their views considered irrelevant as they are not guardians.
10. If welfare considerations are serious and continue, repeated and unnecessary applications occur.
11. Appeal court decisions that go contrary to the best interests of fathers or men are ignored – e.g. the Appeal Court decision known as *Surrey vs Surrey*, which spells out how decisions regarding protection orders should be made.

**Suggested solutions:**

- (1) Experts on domestic violence, counter-intuitive evidence and on child abuse should be available in-house to all family violence courts. The Court should understand that the area of abuse is complex and that child abuse expertise does not necessarily equate to expertise on domestic violence against women, the elderly, sexual abuse or on abuse towards the disabled.
- (2) There should be screening for domestic violence or child abuse (physical, sexual, emotional) of all cases before the family court by skilled risk assessors who can not only screen for such violence, but determine the level or risk and provide immediate access to safety plans<sup>70</sup>. On-going risk assessment should occur during the course of the family court process according to NZ best practice standards<sup>71</sup>.
- (3) Where screening has identified domestic violence or child abuse evidence of such violence should be gathered from the victim or their advocate and from other sources including family, friends, and independent professionals such as health professionals. Advocacy should be put in place to provide support and should be routine.
- (4) Judges, counsel for child and all professionals (psychologists, family therapists, counsellors, lawyers working in the Family Court, mediators, etc) need to be fully educated about what domestic violence and child abuse is, the extent of domestic violence and child abuse in New Zealand and about the development, emotional and physical impact of such violence on

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<sup>70</sup> Fields, M. D. (2008). Getting beyond "What did she do to provoke him?": Comments by a retired judge on the Special Issue on Child Custody and Domestic Violence. *Violence against Women*, 14(1), 93-99.

<sup>71</sup> NZS. (2006). Screening, risk assessment and intervention for family violence including child abuse and neglect: NZ Standard. In S. N. Zealand (Ed.) (pp. 99). Wellington: Standards Council.

women and on children, and the risks associated with it. They also need to be trained about how primary offenders present and on the language employed by them to explain, justify and excuse their violence. This training should be a pre-requisite before appointment to the court and should be on-going to maintain competency. Competency standards should be developed and monitored.

- (5) The Court should conduct research on key social science constructions such as “alienation” to determine their validity in order to counter their inappropriate use as a defence. Findings should be disseminated widely through local conferences and on the Family Court website, as well as through judges’ seminars.
- (6) The Court should work to educate family court professionals and counter constructions of the “vindictive woman” which were shown to be nonexistent in evidence from the research from the Law Commission on Dispute Resolution in the Family Court, 2003.
- (7) Protection orders should be automatically granted to those victims where there has been a finding of assault in the Criminal Court. This would make unnecessary applications for protection orders in the Family Court following criminal procedures. The Criminal Court should be required to inform the Family Court of this action.

**B. Should the law continue to focus on reconciliation or should the duty on lawyers, counsellors and the Court be on conciliation only?**

- (1) In order to answer this question there needs to be research on the effectiveness of FC counselling on reconciliation. If the FC is effective in producing reconciliation over the long term (2 years) then this role would seem to be beneficial.
- (2) The primary focus of the Court should be on safe separation that supports the welfare of the child and of the child’s primary care-giver.
- (3) Regarding the role of the Family Court in family affairs, where the application does not concern violence or abuse:  
There should be an imperative for parents to attempt to solve contact problems before taking a matter to court and parties should produce evidence of attempts to solve this problem on at least three separate occasions.
- (4) Where there are allegations of violence or abuse there should be an imperative for the Family Court to work with other agencies including Women’s Refuge, CYF, criminal courts, Police, Stopping Violence Services, and women’ and children’s advocacy or support organisations. Collaboration between agencies is essential for safety.
- (5) In instances concerning applicants increased contact with young children, and where the respondent says there has been fear or abuse, attempts by applicants for resolution prior to coming to court should include arrangements by the applicant to seek supervised contact with certified FC

supervision centres. Adequate funding should be in place to ensure ready access to certified FC supervision centres.

**C. How can we better ensure that professionals working in the Family Court have adequate training? What changes are needed to the skills of people working in the Family Court?**

C. Response to C.

There is lack of knowledge of what constitutes domestic violence, and child abuse and the effects of domestic violence and abuse, amongst those involved in the legal profession and family court who are making decisions that involve the potential for injury and indeed serious physical and emotional harm.

This lack of knowledge can be addressed by competency standards that require training prior to appointments as judges, counsel for child and family court lawyers. There should be regular and on-going training that brings the legal profession and other professionals working in the family court up to what are current legal findings as well as what is current knowledge and peer reviewed research in relation to domestic violence, violence against women and child abuse. Overseas experts should be used to promote this training when there is not local knowledge.

There is a lack of understanding of psychosocial research amongst legal professionals –a lack of recognition of this research as evidence and as significant for its findings of the impact of separation from the primary caregiver on the well-being of children and a consequent trivialising of psychosocial research findings.

There is a trivialisation of the skills of those expert Family Court psychologists who have knowledge of both domestic violence and child abuse and a lack of understanding of their understanding of social science research and their professional skills in determining the well-being and best interests of children. Not all psychologists practicing in the Family Court, however, are trained in domestic violence and child abuse and understand the limitations of their knowledge. These professionals are in a position to evaluate the risks and safety to children and to women and to make recommendations that should lead to long-standing decisions, particularly when there are high levels of conflict that impact on the well-being and best interests of the child.

- b. The rights of children to safety has been compromised by the focus on parent’s rights to contact with children when there are safety concerns. The recognition that the Court will expect usually unsupervised contact with a biological parent regardless of their level of abuse has resulted in legal professionals and psychologists seeking compromises around contact with the non-resident parent that impacts on the child’s wellbeing and safety and sometimes on the mother’s safety.
- c. The safety of a past child abuse offender cannot be determined within supervised contact centres. It needs to be professionally assessed by psychologists skilled in domestic violence and child abuse risk assessment measures.
- d. There is a focus on the “credible witness” when there is evidence that those who abuse women and/or children commonly present themselves as credible in the Court context,<sup>72</sup> and are known to effectively deceive judges.

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<sup>72</sup> Jacobson, N., & Gottman, J. (1998). *When Men Batter Women: New insights into ending abusive relationships*. New York: Simon & Schuster. Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks/New Delhi/London: Sage.

The effects of trauma may make women victims appear more emotional and less credible.

- e. This lack of knowledge and understanding impacts on decisions relating to the safety of women and children, and there has been an associated loss in confidence in decisions made in the Family Court which has impacted on the safety of women and children<sup>73</sup>.
- f. There is a failure to use the published evidence and safe practice guidelines of overseas experts<sup>74</sup>.

### **Suggested solutions**

- (1) Competency standards and requirements should be enforced for all judges, lawyers and other professionals (psychologists, social workers, counsellors, mediators) working in the Family Court. These should require on-going reporting on competency standards and annual training, particularly in relation to domestic violence and child abuse knowledge. The Family Court should work with academic and tertiary institutions to ensure that appropriate training is available.
- (2) Best practice standards for Care of Children when child abuse is present should be followed (see below)
- (3) Where there is recognised domestic violence to a partner or the child the offender should not be permitted unsupervised contact with the child according to best practice guidelines.
- (4) Where unsupervised contact is unavoidable and is allowed with an offender contact visits should not be overnight.
- (5) When a child says they do not want to go to an offender they should not have to go.
- (6) These last three principles should be enshrined in legislation and in best practice standards and should be final in any child contact decisions.

### **Question 2.**

**What do you consider are the most important social, economic and environmental changes that may affect the Family Court over the next five to ten years.**

*The number of applications before the Family Court have not changed, however there are overlapping applications under the Domestic Violence Act and the Care of Children Act 2004 which increase complexity. Care of children/Hague applications make up the majority of applications (39%) with Domestic Violence cases making up 11% of applications in 2009/2010. Applications to vary parenting orders have increased since the Care of Children Act came into effect by 62% (between 2005/2006 and 2009/2010).*

Repeat applications concerning care of the child(ren) suggest that there are issues to do with the safety of the children or their well-being and best interests which were not satisfactorily

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<sup>73</sup> Towns, A. & Scott, H. (2006) Accountability, natural justice and safety: The protection order pilot study (POPS) of the Domestic Violence Act 1995, *New Zealand Family Law Journal*, 7, 157-168.

Robertson, N., Busch, R., D'Souza, R., Sheung, F. L., Anand, R., Balzer, R., et al. (2007). *Living at the Cutting Edge: Women's Experiences of Protection Orders*. Waikato: Ministry of Women's Affairs/Waikato University.

<sup>74</sup> See "The Batterer as Parent" by Lundy Bancroft and Jay G. Silverman (2002) Sage: London

resolved in the first instance. Repeat applications are hugely costly to the Court and might also suggest a more aggressive response present amongst fathers who have now have strong advocacy groups and who are prepared to contest safety measures associated with their contact more than in the past.

There are a number of social factors at play that will impact on the Family Court functioning and that mean that the focus of the Family Court must stay on the well-being and care of the child and on safety of children and their primary caregivers.

1. NZ society is no longer prepared to accept child abuse in any form and the Family Court must be prepared to take a zero tolerance of any form of child abuse when making decisions about care of the child. There are likely to be more child abuse cases reported and Family Court processes required. Note that concerning neglect alone in the 2005 financial year there were 995 children found to have been maltreated by Child Youth and Family whereas in 2009 there were 1461<sup>75</sup>. These findings suggest that the Family Court must be prepared to address more allegations of child abuse under CYF Act in Care of the Child applications in the future and to handle these in a way that stops repeat applications when the child's safety has been the paramount decision in stopping or resisting unsupervised contact.

Children's voices need to be heard and they should not be expected to go for visits or overnight contact to a parent who has a domestic violence or abuse history if they say they do not want to. This action on child choice is considered to be good practice when a parent is a batterer<sup>76</sup>.

2. There is greater knowledge of the effect of child abuse on the development of the child and the potential for child abuse to set certain (male) children up to become the abusers of the future<sup>77</sup>. This should mean that no child is put unsupervised in the care of a parent who has physically, sexually or emotionally abused that child, either directly or through exposing that child to domestic violence.
3. The Family Violence Death Review Committee has as its terms of reference working with agencies to stop family violence deaths and maintaining a data base. This means that data relating to agency responses to child abuse and domestic violence will in the future be in the public arena annually and the Family Court is now more open to scrutiny in relation to its contact with those who die through family violence or child abuse.
4. There is a strong government led push to involve fathers more in the lives of their children. There are strong media savvy fathers' rights groups who are small in number but have a disproportionate influence. These groups have emerged out of disgruntled fathers who have had contact with the Family Court and which ride on the back of these initiatives. These fathers' rights groups use every opportunity to

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<sup>75</sup> Mardani, J. (2010). *Preventing child abuse and neglect in New Zealand: A public health assessment of the evidence, current approach, and best practice guidance*. Wellington: Commissioner for Children.

<sup>76</sup> Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks/New Delhi/London: Sage.

<sup>77</sup> Wilcox, K. (2012). Family law and family violence: Research to practice, *Research and Practice Brief: Australian Domestic & Family Violence Clearinghouse* (Vol. 2, pp. 14). Sydney: Australian Domestic & Family Violence Clearinghouse.

Ehrensaft, M. K., Cohen, P., Brown, J., Smailes, E., Chen, H., & Johnson, J. G. (2003). Intergenerational transmission of partner violence: A 20 year prospective study. *Journal of Consulting and Clinical Psychology*, 71(4), 741-753.

- attack the actions of women and mothers<sup>78</sup>. These groups work to position fathers as victims of (feminist) women, women's advocates and the Family Court. Their media approaches, which invite sympathetic but naive women to engage with men against the Family Court, are creating a hostile environment for mothers not only within the family court but more widely, which the Family Court must resist.
5. Women's voices in relation to the Family Court have, to date, been given little media attention probably because victimised women are not in a position to speak publicly about their experiences for fear of their safety and the media require personal stories to encourage readership. However, more is being done to give such women a public voice through strong advocacy. This advocacy has and will result in more public exposure of poor decision making with regard to the safety of women and children and the impact on their well-being<sup>79</sup>. In addition research is now being carried out within New Zealand detailing women's and their children's experiences of the Family Court<sup>80</sup> and the impact of these decisions on children. This research calls into question practices that unquestioningly assume contact with the non-resident parent is good for children, particularly those non-resident parents who have not developed a good relationship with the child prior to separation or who are or have been abusive.
  6. Until recently the Police have not attended to sexual violence in the family violence context but this is changing. The increase in sexual violence offenses identified by the Police recently is almost exclusively in the context of family violence. This increased identification is likely to increase the demand for protection orders from the family court.
  7. There is an increasing proliferation of alcohol outlets<sup>81</sup>. Evidence suggests that the concentration of outlets is associated with increased alcohol consumption that impacts on the extent of domestic violence<sup>82</sup> and that alcohol advertising consolidates forms of masculinity that are harmful for domestic violence prevention<sup>83</sup>. There is also evidence that alcohol consumption increases the severity

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<sup>78</sup> E.g. Carlin, Darrell (2012). Weepu strays into ideological minefield. *The New Zealand Herald*, Friday February 10.

Flood, M. (2010). "Fathers' Rights" and the defense of paternal authority in Australia. *Violence Against Women*, 16(3), 328-347.

<sup>79</sup> See the discussion document *Protecting victims, rebuilding lives, sending the right messages* written by survivors, published by It's Still Not Okay. Report available through itsstillnotok@gmail.com.

<sup>80</sup> Tolmie, J., Elizabeth, V., & Gavey, N. (2009). Raising questions about the importance of father contact within current family law practices. *NZ Family Law Journal*, 659-694.

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, 136.

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>81</sup> MOH. (2009). *Alcohol use in new Zealand: Key results of the 2007/08 New Zealand alcohol and drug use survey*. Wellington: Ministry of Health.

<sup>82</sup> McKinney, C. M., Caetano, R., Harris, T. R., & Ebama, M. S. (2009). Alcohol availability and intimate partner violence among US couples. *Alcoholism: Clinical and Experimental Research*, 33(1), 169-176.

<sup>83</sup> Towns, A. J., Parker, C., & Chase, P. (2012). Constructions of masculinity in alcohol advertisements: Implications for the prevention of domestic violence. *Addiction Research & Theory*, 1-13. Peralta, R. L., Tuttle, L. A., & Steele, J. L. (2010). At the intersection of interpersonal violence, masculinity and alcohol use: The experiences of heterosexual male perpetrators of intimate partner violence. *Violence against Women*.

Connor, J. L., Kypri, K., Bell, M., & Cousins, K. (2011). Alcohol involvement in aggression between intimate partners in New Zealand: A national cross-sectional study. *BMJ Open*.



of domestic violence<sup>84</sup>. Harm through alcohol and increasing effects on family violence will impact on care and protection activities within the family court until the government takes decisive action to control the proliferation of alcohol outlets and the normalisation of heavy consumption.

8. Poverty is an outcome of domestic violence and is also compounded by failure of non-residential parents to pay child support. Poverty will impact on the number of parents attending the Family Court who require legal aid. In a restricted legal aid environment there are real concerns about justice for those who require legal aid in order to seek safety for themselves or their children.
9. Women with mental health problems, drug and alcohol problems or other disabilities resulting from domestic violence are not necessarily unsafe parents. Many of these problems are resolved with the abuse stops. The family court needs to look at the context of women's problems before deciding who the fit parent is.

#### Questions 3.4

**Should the Family Court be an open court, what would be the risks and benefits of such a proposal? How can we further promote the Family Court's transparency and accountability? What sort of information could the Family Court provide that would achieve these outcomes?**

The Family Court is to be commended for placing key decisions on its website. The Court should continue this practice. However the Family Court website is not kept up to date with current statistics that would help the media to understand the case within the Family Court context. More attention needs to be applied to timely placement of annual reports and of quarterly statistics on the website. Assistance from Statistics New Zealand might improve practice here.

More openness would ensure that the Family Court is accountable to the New Zealand public in its decision making and less subject to an internal culture that is counterintuitive to current thinking with regard to the care of children and the safety of women and children. Attendance by the media at hearings does not currently allow transparency as the media will view the Court proceedings without access to documentation that would make sense of the proceedings. A summary by the judge at the outset of the reasons for the Court hearing and of the decisions the Court will be attending to would help with transparency without undue disclosure. This summary would also assist applicants and respondents to understand more the processes of the Court in attending to their concerns.

- (1) The Court should progress towards even more openness in order to resist a culture isolated from current social and community thinking particularly in relation to child abuse and safety and to the safety of women.
- (2) All measures should be in place to ensure the confidentiality and safety of victims of violence and their ability to disclose when considering open court measures.

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<sup>84</sup> Fals-Stewart, W. (2003). The occurrence of partner physical aggression on days of alcohol consumption: A longitudinal diary study. *Journal of Consulting and Clinical Psychology, 71*(1), 41-52.

Graham, K., Bernards, S., Wilsnack, S. C., & Gmel, G. (2011). Alcohol may not cause partner violence but it seems to make it worse: A cross national comparison of the relationship between alcohol and severity of partner violence. *Journal of Interpersonal Violence, 26*(8), 1503-1523.

- (3) The Court should provide more timely access to statistical information on its website.
- (4) The Court should provide a brief summary at the outset of hearings for the media in order to ensure understandings of the significance of the hearing.

#### **Question 4.1 & 4.2**

**What measures do you think could be used to manage and reduce conflict between parents following separation? How might these be achieved?**

**How can we ensure children can participate earlier in the decision making process? What would you recommend as the crucial safeguards to enable this to happen?**

**Should participating in child inclusive mediation be compulsory before an application is filed in the Court?**

**To what extent should parents contribute to the costs of such a service?**

How might these be achieved?

The Family Court should pay attention to research data on the social and psychological outcomes for children (particularly those under five years of age) who are separated from their primary caregiver and the recommendations for the extent of contact of children from different age groups and with different needs, in a particular Australian research conducted by prestigious researchers from a range of Universities<sup>85</sup>. “The manner in which living arrangements were maintained did, however, have an impact on children’s emotional well-being over time. Rigid arrangements, often fuelled by acrimony and poor cooperation and set out in court orders, were associated with higher depressive and anxiety symptoms in children as reported by their parents, and this form of living became something children often sought to change”. (McIntosh et al, 2010 p. 8)

There are particular concerns about overnight stays with parents when the child is under two:

“.. young infants under two years of age living with a non-resident parent for only one or more nights a week were more irritable, and were more watchful and wary of separation from their primary caregiver than young children primarily in the care of one parent. Children aged 2–3 years in shared care (at the policy definition of 5 nights or more per fortnight) showed significantly lower levels of persistence with routine tasks, learning and play than children in the other two groups. Of concern but as predicted by attachment theory, they also showed severely distressed behaviours in their relationship with the primary parent (often very upset, crying or hanging on to the parent, and hitting, biting, or kicking), feeding related problems (gagging on food or refusing to eat) and not reacting when hurt. Such behaviours are consistent with high levels of attachment distress, and the second report details this body of work as an important context for understanding the pathways of disruption indicated by these findings. Thus, regardless of socio-economic background, parenting or inter-parental cooperation, shared overnight care of children under four years of age had an independent and deleterious impact on several emotional and behavioural regulation outcomes.” (McIntosh et al., 2010, p.9)

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<sup>85</sup> McIntosh, J., Smyth, B., Kelaher, M., Wells, Y., & Long, C. (2010). *Post-separation parenting arrangements and developmental outcomes for infants and children: Collected reports*. North Carlton, Victoria, Australia: Family Transitions.

The authors suggest that overnight stays away from the primary care givers should not occur with preschool age children. Furthermore there needed to be transition management into and out of care arrangements when it was clear that the child was suffering.

“Practice and legislative guidelines are needed that assist professionals to recognize families who are not yet “ready” to share care, who may need a period of preparation to develop the necessary demographic and co-parenting equipment, or who simply need supportive educational input to understand why it matters to wait for children to be ready to share cared. Equally, it is important to provide support and resources for families who may have tried shared care but wish to move to another arrangement. In other words, pathways to and *from* shared care need to be supported.”

The authors advocate the development of best practice guidelines to assist professionals in dealing with disputing parents and child inclusive dispute resolution while noting that effective models of consultation with very young children remain to be developed.

- (1) The Family Court should work to identify or develop best practice guidelines that address care issues of pre-schoolers and that are flexible about moving towards as well as away from any overnight non-residential care arrangements if these arrangements are affecting the wellbeing of the child.
- (2) With regard to children where one parent has been a batterer the Family Court should follow the recommendations and best practice guidelines provided by experts. Here overnight visits are not recommended and the child’s wishes are taken into account: that is if they do not want to go they should not be made to go, and there should not be an assumption that the resident parent who was the victim of battering has “alienated” the offender<sup>86</sup>. Due diligence should occur during parenting order applications to ensure that any child abuse or domestic violence has been identified.
- (3) Child inclusive mediation should not be expected when there is a history of domestic violence as the outcomes are more likely to depend on the extent of influence of the offender rather than the wishes of the child. An adultcentric approach assumes that children will talk to any adult whereas children need time to develop a trusting relationship in order to disclose with confidence what they want.
- (4) Where there is clear evidence, as above, that children are affected by overnight stays away from the primary caregiver attention should be paid to educating the non-resident parent of these deleterious effects and moving towards the welfare and best interests of the child immediately. Child inclusive mediation would assist here where there is no abuse or domestic violence.
- (5) Parents should not have to pay. Child focused approaches are likely to be less costly in the long-run as parents are able to see the wisdom of the approach taken with the child. Expecting parents to pay will simply mean that these services are only available to the rich.

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<sup>86</sup> Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks/New Delhi/London: Sage.

### **Question 4.3**

#### **Would an obligation for parents to consult with their children about care arrangements following parental separation be helpful? What might be the risks and benefits?**

There is high risk for children of this obligation when a parent is also abusive, and when the Family Court is unaware of this abuse. An abusive parent who wants a child to say that they prefer time with them may subject the child to physical punishment if that child does not say what is wanted. Children may also side with an abuser in order to ensure their own safety. There needs to be screening for child abuse and domestic violence and a skilled child investigator should be used.

In high conflict situations where there is no domestic violence or child abuse child inclusive mediation may help the child to say what they want. However there should be an awareness that such abuse may not emerge at during preliminary screening and may emerge later.

- (1) There should not be an obligation on parents to consult their children when there is child abuse or domestic violence.
- (2) There is the potential for harm to the child through abuse if the child does not say what the abuser wants.

### **Question 4.4**

#### **Who should be responsible for obtaining a child's views on the Court's behalf?**

See above. These questions need to be addressed through good research and the development of best practice guidelines for professionals.

Psychologists may be cheaper than Counsel for Child and should be, due to competency standards, more versed in risk assessment in relation to child abuse and domestic violence.

- (1) The family court could speak more to trusted family members who are in substantive contact with small children and who are trusted by those children to tell them what they want.
- (2) The Counsel for the Child should not be discharged for at least a year after the final case findings in order that any matters concerning care of the child as a result of the Family Court decision have an opportunity to be revisited on the behalf of the child. For example an abusive parent may present themselves very well in Court, attend appropriate parenting programmes, but when tasked with unsupervised care of a child fall back on old practices. Time is needed to see if these practices emerge. Discharge of the Counsel for Child after a year should allow a determination of the safety of the child to be more fully assessed post final court order.
- (3) The Court should use in-hour lawyers. Using in-house lawyers as Counsel for Child would allow these lawyers to become highly skilled in Counsel for Child work and would allow training and skills to be supervised and performance monitored. Currently Counsels for Child are variable in their skills and in the quality of representation that they give to the child. Children and their mothers are not usually

in a position to take complaints about poor representation and practice to lawyer's professional organisations.

#### **Question 4.6**

**What changes, if any, do you consider are necessary to clarify the welfare and best interests of the child principle in the Care of the Children Act, for example should principles such as the 'delay', 'no order' or 'finality' principles be introduced?**

**How else might more certainty be achieved in law when making care arrangements for children? What might be the risks and benefits of any of the proposals or suggestions you have made?**

- (1) There needs to be a much stronger emphasis on the Paramountcy Principle of the welfare of the child. Best interests are very subject to judicial prejudice. We would support stronger legislation such as that of the Children Act 1989 in Wales and England.
- (2) Research suggests that rigidity in decision making impacts on the well-being of children (McIntosh et al, 2010), but rigid decisions about no unsupervised contact may be supportive of those children who would not benefit from contact with abusive parents. Rigid decisions may harm those children where contact arrangements are made that require change when abuse is experienced again in the future.
- (3) The starting point for care arrangements should be the welfare of the child, and should reflect pre-separation arrangements where these are safe for the child. Best practice guidelines should be developed for professionals based on sound research.
- (4) Where there is domestic violence the protected person should have sole responsibility for guardianship matters in order to prevent the abuser from engaging in power and control tactics through decisions about the child.
- (5) Weight should be given to relocation when there is excessive conflict or domestic violence as relocation is likely to support the welfare of the child and the abused parent who is the primary care giver.
- (6) A focus on the welfare of the child is likely to have substantially greater benefits for the child, and prevent them from being exposed to excessive conflict which is harmful to the child.
- (7) Section 58 of the Care of Children Act 2004 should be amended by adding "psychological violence" to the types of violence which trigger the rebuttal assumption that a violent party should not have a role in providing the day-to-day care of a child or have unsupervised contact with a child.
- (8) The Care of Children Act 2004 be amended to the effect that unsupervised contact with a party who has used violence against the other party or a child of the other party shall not be granted.

### **Question 5.1**

**How can we improve the provision and delivery of information to those who need it, including children?**

- (1) The Family Court should develop a comprehensive communication strategy that
  - updates website information consistent with current Court practice
  - Has translated material. Translators should be routinely available to the Court.
  - Cultural advisors should be available to the Court to advise on the most suitable means of providing information to diverse groups.
  - A telephone helpline would assist people who are struggling with the Court process.
  - All legal material should be in plain English.
- (2) The Ministry of Justice should develop information systems that ensure that
  - Judges in the criminal court considering sentences in domestic violence cases can access relevant records of proceedings in the Family Court (including applications for protection orders, affidavits in support and judges decisions and memoranda
  - Judges in the Family Court considering applications under the Domestic Violence Act 1995 and the Care of Children Act 2004 can access records of domestic violence offences from the criminal courts and Police Family Violence recording forms.
  - Judges in one Family Court registry can access records relating to matters involving the parties in other registries.
  - The records referred to above are retrievable under the name of each party and each child.

### **Question 5.2**

**Should attendance at Parenting Through Separation be compulsory before making an application to the Court? What might be the risks and benefits to this approach?**

**Should PTS be provided more widely in the community?**

**Should parties be required to contribute to the cost of PTS?**

- (1) Attendance at PTS should not be compulsory as the issues for parents where domestic violence is involved are not consistent the same as those for distressed separating couples.
- (2) Research should be undertaken to determine if the programme can be made available on the Family Court website. For example there are now depression programmes available on websites. Website access might make the programme accessible to more people and might pre-empt family court applications reducing cost. Web access might also reduce the cost of providing the programme.
- (3) People should not be charged for access to this programme as charging will make it only available to the rich.

### **Question 5.3**

**To better balance lawyers' professional responsibilities with the needs and interests of children, should lawyers who specialize in family law:**

- **Be accredited? Should accreditation be voluntary or mandatory?**
- **Be obliged to work collaboratively in the interests of children rather than their clients?**
- **Be encouraged to assist their clients to resolve their issues without using the court system?**
- **Be required to demonstrate that they tried to get the parties to reach an agreement as a pre-requisite to filing non-urgent applications in court?**

**What would be the impact of changing lawyers' professional responsibilities on the way lawyers practice, and on their clients?**

- (1) Lawyers working in the Family Court should be accredited and this accreditation should be mandatory.
- (2) It should be mandatory that all lawyers and professionals working in the Family Court are competent to screen for domestic violence or child abuse, are competent to identify risks and develop safety plans, and to monitor on-going risk.
- (3) Lawyers need to be able to represent their clients but this representation should not be contrary to the best interests of the child.  
Lawyers working collaboratively may be more concerned with representing their clients' best interests rather than those of the child. Issues concerning domestic violence and the safety of the child may be over-ridden by the parents' interests, particularly the more powerful voice.

### **Question 6.1**

**If counselling is to remain, how could it be targeted, for example, to people with children who cannot afford to pay for it?**

**What role should counselling play in a broader Alternative Dispute Resolution system ahead of Court**

**Is it appropriate to access counselling via the Court?**

**Should counselling focus more clearly on conciliation?**

- (1) The Family Court should carry out research to determine the effectiveness of counselling, who it works with, clients' experiences of counselling, and its outcomes in various contexts including when both want to try to sort the relationship out, when one partner wants to separate and when both partners want to separate.
- (2) That all counsellors are part of a professional body and are trained in the screening, risk assessment and safety planning and on-going risk assessment in relation to domestic violence and child abuse according to best practice guidelines.
- (3) That where such violence is identified all couple counselling or family counselling should be stopped until there is professional verification that the perpetrator of the abuse has been held accountable, accepts responsibility and is professionally assessed to be safe by experts training in perpetrator assessment and therapy. No further counselling should occur if the adult victim of this violence does not want it. Adult victims should be referred to specialist support groups for women who experience domestic violence.

- (4) There should be a specific focus to counselling and some indication at the outset of the intended outcome.
- (5) Counselling and mediation should not be required for those experiencing domestic violence or child abuse.
- (6) That the Family Court encourages counsellors from across the wide range of linguistic and cultural communities within New Zealand to become accredited so that culturally appropriate counselling can be provided whenever possible. That such counsellors are trained in screening, risk assessment and safety planning and on-going risk assessment in relation to domestic violence and child abuse according to best practice guidelines.

### **Question 6.2 & 6.3**

**Do you agree that some form of alternative dispute resolution (ADR) should be mandatory before an application can be filed in the Family Court in certain circumstances? What are the benefits and risks in making these processes mandatory?**

**Who would pay for the parties to attend ADR?**

**What is the best way to ensure both parties engage in ADR?**

**How could modes of ADR be developed that are responsive to the cultural needs of Maori, Pacific and ethnic communities?**

**Do you think a separate forum for resolving low level disputes would be useful? Risks and benefits?**

- (1) There is a risk in these processes that domestic violence and child abuse will not be identified.
- (2) Alternative dispute resolution approaches should not be mandatory for those experiencing domestic violence or child abuse. There is a high level of risk in making ADR mandatory in these cases and the identification of abuse by participants should be sufficient to preclude involvement in ADR.
- (3) Counselling should not be mandatory.
- (4) The best way to ensure that both parties engage in ADR is to provide this service free and to have skilled mediators appointed.
- (5) If a party does not engage in ADR then there needs to be due diligence to determine the reasons for not attending including the possibility of domestic violence and child abuse.
- (6) If there is no domestic violence and child abuse then the finding should immediately be in favour of the attending party. If there are issues of child abuse and domestic violence identified ADR should be stopped immediately and the matter referred to the Court.
- (7) Consideration should be given to involving extended family with all cultures in all cases of ADR especially if extended family members have been involved in providing child care. ADR should not be implemented when domestic violence or child abuse has occurred.
- (8) Where there has been domestic violence the victim(s) it would not be appropriate to involve extended family as there is a risk that the victim's position will be undermined by the extended family of the abuser.

### **Question 7.1**

**Do you have any views about limiting access to the Family Court? What might be the impacts associated with restricting access to the Court? What are the risks and benefits?**



The case of Josh and Will is a fine example of the Court operating against the wellbeing and best interests of the child, which is to promote the well being of the child and the child's resident care giver at the outset. Had the Court operated to promote the child's well-being and that of the child's resident care-giver at the outset, and been mindful of the rights of the mother for relocation according to the NZBORA (New Zealand Bill of Rights Act) there would have been greater clarity about the way forward and more ability to prevent repeat litigation. (See first section).

Good practice in the Family Court according to the law (both Family Court and Civil and Political Rights law as well UN Conventions) would prevent repeat litigation. Judges need to follow Appeal Court findings such as Surrey vs Surrey rather than ignoring these findings.

- (1) Access to the Family Court can be prevented already if the applicant is demeaned to be a vexatious litigant.
- (2) Otherwise access to the Court should not be limited.
- (3) The competency of judges to practice safely should be monitored.
- (4) Any victim loss of life or serious injury through domestic violence or child abuse of participants who have been through or are participating in the Family Court should be fully internally reviewed and best practice enhanced to prevent further serious injury or death.

#### **Question 7.1b**

**Should all Family Court applications be screened to determine their appropriate pathway? What kinds of skills and training should the person carrying out the screening have?**

- (1) All Family Court applications should be screened to determine their appropriate pathway particularly for domestic violence and child abuse (see above). There should be recognition that screening may not reveal such violence in the first instance and screening should be on-going for this reason.
- (2) Training in child development and in domestic violence and child abuse are essential as well as the disproportionate impact on those with disability and on Maori. Competency requirements and on-going trainings should be mandatory.
- (3) Those conducting the screening should have professional training in the social sciences as in Australia and the UK and on domestic violence and child abuse.
- (4) All universities should be encouraged to provide professional post-graduate training for social scientists wishing to work in the Family Court such as that provided at Canterbury University.

#### **Question 7.2b**

**Do the criteria for urgent (without notice) applications need to be made clearer? If yes, in what way?**

**Should lawyers be required to certify that all urgent applications are appropriate in the circumstances? If not, why not?**

**Should there be penalties for making unmeritorious without notice applications? What might be the risks and benefits associated with imposing penalties?**

- (1) Criteria for urgent (without notice) applications do not need to be made clearer.
- (2) The Family Court needs to follow the Surrey vs Surrey case which clarified many aspects of the implementation of the Domestic Violence Act 1995.
- (3) Section 13 of the Domestic Violence Act 1995 should be amended to the effect that a without notice application for a protection order may not be declined or placed on notice unless the applicant and her lawyer have had an opportunity to participate in an (ex parte to the respondent) hearing, in the court in which the application was filed, to address any questions which might have led the judge to decline the application or put it on notice.
- (4) That section 13 of the Domestic violence Act 1995 be further amended to require Family Court judges to give reasons (in writing) when they either decline or put on notice a section 13 application for a temporary protection order.
- (5) Lawyers should not be required to certify that all urgent applications are appropriate in the circumstances as this requirement is already in the Family Court rules for lawyers.
- (6) There should not be penalties for making unmeritorious without notice applications as there is no evidence that these are made without justification. There are risks that penalties will prevent people from making urgent applications that are required for safety.

**Question 7.2c**

**Does the 'any evidence' rule in proceedings need to be clarified?**

**Should there be an obligation/time limit on the filing of direct evidence after hearsay evidence is used in support of an application?**

**What are your views on a standard questionnaire form of affidavit and what information do you think it should include?**

The Family Court operates under a less stringent evidence basis than the Criminal Court as many applications come before the Family Court in order to avoid taking the matter to the Criminal Court but in order to stop family violence and child abuse.

- (1) The primary focus of the Family Court should be the safety and well-being of the child and of victims of violence.
- (2) Aspects of the Evidence Act that promote the paramountcy of victim well-being should be incorporated into the practices of the Family Court. For example, self-litigated applicants or respondents should not be allowed to cross-examine alleged victims.
- (3) A short time limit on the filing of evidence should not apply when there is domestic violence and child abuse as time may be needed to access evidence. The dynamics of domestic violence involve isolation which makes evidence difficult for victims to access.
- (4) A standard questionnaire form of affidavit, such as that used in Ontario would assist legal representatives to ensure that all relevant information is provided.

**Question 7.2d**

**Should applications be focused on the issues to be determined and the outcomes sought?  
Should filing joint memoranda be mandatory?**

- (1) Consideration in any application to the Family Court should also involve determination of whether domestic violence or child abuse is occurring as the presence of such violence will impact on the determination of outcomes and the processes required.

**Question 7.3**

**In what further circumstances should the Family Court impose applications, setting down and hearing fees? What would be the impact of imposing these different fees, and what might be the risks and benefits?**

- (1) Court fees should not be charged when there are vulnerable adults or when the fees are likely to impact on the well-being of children and their primary care-giver.
- (2) Court fees should not be charged for DVA hearings or for parenting orders where there are vulnerable adults and children.
- (3) Court applicants and respondents should not be punished for poor legal practices through fees.
- (4) Lawyers should be fined for poor practices but these costs should not be redeemable from the associated applicants and respondents.

**Question 8.1a**

**If the court is only dealing with serious cases should counselling or mediation be part of court processes?**

**Should lawyers appointed to assist the Court be used as mediators?**

- (1) Mediators should be trained in mediation. It should not be assumed that lawyers or judges will be skilled mediators. Any lawyer or judge appointed as a mediator should have training in mediation and should be an accredited mediator.
- (2) Mediators should comply with competency standards and on-going training requirements. Lawyers should have a comprehensive analysis of domestic violence and prioritise the safety of women and children.
- (3) Mediators should operate according to ethical standards and avoiding conflicts of interest. If being a lawyer appointed to assist the Court is a conflict of interest to mediation then such lawyers should not be appointed as mediators.

**Question 8.1b**

**How can we help people with complex social needs? Are proceedings in the Family Court the right response or should social agencies be involved?**

- (1) The Family Court must focus on the well-being of the child even when there are vulnerable adults involved. Court orders should be made that protect the well-being of the child and to avoid constant changes that are harmful to the child and that take the child away from the primary and resident care-giver.
- (2) Constant applications that unsettle the child when the child is doing well in their existing circumstances should be discouraged. Child focused mediation might help here. In the case of Ashleigh, the Family Court was not focused on the well-being of the child but was fathercentric in its approach with poor outcomes for the child and negative impact on her development and living arrangements.
- (3) The Family Court should recognize that settled living arrangements are essential for the well-being of the child and for their development. Multiple changes to the child's living arrangements run counter to the Care of the Children's Act.
- (4) The Court should be aware that one of the major effects of domestic violence and child abuse on mothers and on children is symptoms of trauma. These symptoms will usually resolve with the trauma has been resolved and when the victims are safe, but the Court should work very hard at not re-traumatizing these individuals through insensitive processes that involve adversarial processes. In addition to ensuring adequate resources to women's support groups and for child therapy trauma counselling should be funded and available free of charge for abused women and children from professionals experienced, skilled and competent in trauma therapy.
- (5) Good Family Court management should ensure a consistent case manager and a consistent judge.
- (6) Counsel for Child should be required to ensure that the Judge is consistent for the duration of the case and for any further litigation. If the Counsel for Child fails here they should be subject to admonishment from the Chief Family Court judge and required to undergo supervision of their practice. Changes to judges should be monitored.
- (7) The Family Court needs to work in collaboration with social agencies when there are complex social issues such as addiction.

## Question 8.2

**Do you agree that a standard process for hearing Family Court proceedings should be introduced? Could all non urgent cases be dealt with in this way? Should the number of steps in any process be restricted? What would be the impact of this proposal, what might be the risks and benefits?**

There is not enough information to answer this question. It is not clear what the implications would be for vulnerable adults or children.

The Court needs to be responsive to individual circumstances.

## Question 8.3

**Should the Court attempt to make predictive assessments of a family's circumstances or make decisions on the basis of the evidence before them?**

**How could orders be varied (because a family's circumstances have changed) without the need for a court hearing? What could a simpler process to vary parenting orders look like?**

**Should the number of interim orders made in any one case be restricted?**

**Should interim orders automatically become final after a certain period of time?**

- (1) The Court should make a decision based on the evidence before them so long as this does not impact on the safety of vulnerable adults or children and provided that it also allows for representation of a history of domestic violence or child abuse. Prediction in the social science area is a finely developed specialist area and the Family Court judge does not have these skills. Where an offender has participated in programmes there should not be the assumption that behaviour change will now occur. Offenders must be able to prove, by providing evidence in court, that they have changed and this evidence will require an extended period of time (years rather than months). The paramountcy principle of the well-being of the child must remain the primary consideration.
- (2) Orders could be varied by e-mail agreements between the parties. If the varied orders are not successful or if there are circumstances which impact on the safety of children or vulnerable adults the original Court orders should be reinstated.
- (3) Interim orders should be avoided when these involve parenting orders and vulnerable children. Attendance at parenting courses or at stopping violence courses, often used in interim orders, does not equate with behaviour change which may take years.
- (4) If interim orders are used for safety reasons they should be made final after a limited period of time (e.g. 3 months).
- (5) The Court must fund adequately the necessary courses that it expects respondents and applicants to engage in.

#### **Question 8.4**

**Is there any merit in introducing penalties to reflect a party's or lawyer's behaviour during proceedings? If so, what sanctions would be useful, and how can we ensure the sanctions are applied when appropriate.**

- (1) There should be professional competency and standards for lawyers involved in the Family Court that relate to good practice and to good conduct at hearings. These should involve the requirement to file documents, particularly those involving vulnerable children and adults in specified times before Court hearings. Good behaviour for Counsel for Child should involve consideration of the child's perception of the conduct of the Counsel towards the mother and father.
- (2) Professional sanctions could then be applied through the requirement to engage in supervised practice or to engage in training to improve practice.
- (3) Judges should be able to refer lawyers to professional competency bodies that assess their competency and promote improved practice. These competency requirements, if not followed, would then result in further repercussions such as more formal complaints procedures.
- (4) Where continued practice is questionable more formal complaints procedures should be followed through the Law Association.

- (5) Fines etc are unlikely to improve practice.

### **Question 8.5**

**Do you believe that breaches of orders should be subject to greater sanctions or penalties? If yes, what types of sanctions and penalties would be appropriate?**

- (1) The Court should respond immediately to breaches of the Domestic Violence Act. Commonly judges apply their own rules about when breaches will be acted on. This means that respondents may not be held accountable for repeated breaches, which suggests that they can breach with impunity. This lack of breach action makes vulnerable people unsafe.
- (2) Section 50(2) of the Domestic Violence Act 1995 should be repealed and replaced by a provision that, unless there are special circumstances, police shall arrest where there is cause to suspect that the respondent has committed a breach of a protection order.
- (3) Care should be taken with action on breaches of parenting orders particularly if these orders are breached for safety reasons or in order to provide protection to the child.
- (4) When non-resident parents repeatedly breach parenting orders and the child is left disappointed because of expected visits, which have not occurred, the contact arrangements should be withdrawn as this lack of attendance is setting up harmful issues in relation to attachment and rejection of the child.

### **Question 8.6a**

**Do you consider that the process to be followed in situations where allegations of physical and sexual abuse have been made in Care of Children Act matters needs to be amended? If so, how? What would be the impact of your suggestion? What might be the risks and benefits?**

- (1) The Court should follow the paramountcy principle of the welfare of the child in all its Care of Children considerations.
- (2) Where any form of violence has occurred all contact should be suspended immediately.
- (3) Where the Court has been violence towards a child (emotional, physical or sexual) all contact should be supervised and should remain so as there is no means of determining whether the abuser will be safe with the child unsupervised. The child's welfare must remain paramount. The Care of Children Act should be amended accordingly.
- (4) If any unsupervised contact decision is made there should not be overnight visits.
- (5) If the child does not want to see the abusive parent they should not have to.
- (6) That the Care of Children Act 2004 be amended to the effect that, where allegations of domestic violence have been made in parenting order proceedings no consent parenting orders be made unless they comply with (2), (3) and (4) according to best

practice standards<sup>87</sup> and unless they have been scrutinized by a Family Court Judge in order to comply with the safety and welfare of the child(ren). The impacts and effects of the violence on the child must be evaluated and the Court must be satisfied that the physical, sexual and psychological safety of the child will be ensured during the specified arrangements.

- (7) Section 4 of the Care of the Children Act 2004 should be amended to the effect that where domestic violence has been used against the other party or a child of the party the Court must, in determining what best serves the child's welfare and best interests allow relocation of the other party so that this party and the children can recover from the trauma of the violence and to better provide an environment which will support the recovery of the child.
- (8) Any indication of harm to the child such as nightmares, or attachment issues relating to contact with an abusive parent should immediately result in supervised contact or if supervised contact is occurring when these problems arise contact should be stopped.
- (9) Regardless of the arrangements put in place by the parties prior to the Family Court involvement the Court must determine the safety of the child, act on the paramountcy principle and put in place arrangements to ensure the safety of the child. Batterers and child abusers may be able to behave until the Court hearings have taken place and the Court cannot assume that a brief change is a permanent one.<sup>88</sup>
- (10) The Court must adequately fund Family Court certified Supervised Contact Centres in order to allow ready access.

These recommendations would work to improve the safety of children and to align them with best practice standards when the safety of children is a concern. They are also likely to improve the safety and well-being of adult victims, which should result in less suicide attempts by victims, which are 8 times more likely to occur for women victims of domestic violence experiencing severe levels of domestic violence than for those in the general population.<sup>89</sup>

### **Question 8.6b**

**How might specialist information for the Court be more targeted, focused and timely?  
What criteria might be used to decide whether to request a specialist report?**

**Should a broader range of people, such as social service providers provide information to the Court?**

**Should more use be made of cultural reports? What might be the risks or benefits of suing more cultural reports?**

**Should a critique of a court-appointed psychologist's report be allowed or should parties be limited to cross-examination of the report writer?**

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<sup>87</sup> Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks/New Delhi/London: Sage.

<sup>88</sup> See Bancroft & Silverman (2002).

<sup>89</sup> Fanslow, J., & Robinson, E. (2004). Violence against women in New Zealand: prevalence and health consequences. *New Zealand Medical Journal*, 117(1206), 1-12.

The cost of specialist reports is substantially less than the cost of other Court services. Attempts to reduce these costs have essentially resulted in repeat litigations which have increased the cost to the Court rather than reduced it. The treatment of specialist report writers in the Court and the lack of valuing of their expertise in the Family Court have resulted in a reputation that means many professionals avoid working in this context. This has limited the expertise available to the Court with the outcome the delays in getting reports written. Much work will be needed to make the Court an attractive setting for experts and specialist report writers, including the provision of specialist training.

- (1) Specialist report writers should have knowledge of domestic violence and child abuse and of the identified steps to change of batterers<sup>90</sup>. This knowledge should include the observation by skilled clinicians that certainty of change from men who have been batterers requires consistent nonviolent behaviour for years not weeks or months<sup>91</sup>.
- (2) This knowledge should be updated and maintained as a competency requirement for those providing specialist services to the Family Court.
- (3) The Court may benefit from experts able to address counter intuitive evidence in relation to the actions of parties associated with domestic violence.
- (4) Requests for specialist reports should clearly specify the questions that the referrer wants addressed and be limited to four questions.
- (5) Psychologists writing family court reports should comply with the best practice guidelines published by the NZ Psychological Society<sup>92</sup>.
- (6) Requests for specialist reports should not use concepts which have not been scientifically validated such as “parental alienation” in the brief<sup>93</sup>.
- (7) Highly experienced programme providers of DVA programmes may be useful in providing specialist information about domestic violence to the Family Court based on their clinical practice. Such providers would need to become Family Court approved specialist experts, and their competency would need to be regularly reviewed.
- (8) The Police and forensic evidential interviewers or evidence from such interviews may also provide useful information to the Family Court.
- (9) Regardless of culture domestic violence and child abuse are criminal offences in Aotearoa New Zealand and is no justification for such violence. Cultural reports may assist the Court to understand more the impact of such violence on people from different cultures. They might also assist the Court to understand who, within the family, will provide safe refuge. Cultural reports will need to be provided by those trained in domestic violence and child abuse screening, risk assessment and safety planning.
- (10) A critique of a Family Court specialist report should only be allowed if there are clear issues to do with competency. An in-house specialist psychologist with expertise in domestic violence and child abuse would be able to determine if competency is an issue on a reading of the report. The competency of the report writer might not be evident to the cross examining lawyer or judge. Where there is clear evidence of a lack of competency a complaint should be lodged with the registration board of the professional concerned.

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<sup>90</sup> Bancroft, L., & Silverman, J. G. (2002). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. Thousand Oaks/New Delhi/London: Sage.

<sup>91</sup> Bancroft and Silverman above.

<sup>92</sup> Seymour, F., Blackwell, S., Thorburn, & John. (2011). *Psychology and the Law in Aotearoa New Zealand*. Wellington: NZ Psychological Society.

<sup>93</sup> France, K. & Tarren-Sweeney, M. Preparing psychologists to work within the Family Court. In Seymour, Blackwell & Thorburn (2011) above, p. 95-108..



### **Question 8.6c**

**How can we improve processes so that Hague cases are dealt with adequately and promptly and meet our obligations under the Convention?**

- (1) The Family Court should allow relocation where domestic violence and/or child abuse has occurred in order to allow the victims of such abuse to recover in a safe and nurturing environment.
- (2) The Court should comply with the time requirements of the Hague Convention. The Court should be adequately resourced to ensure that it can comply with this Convention.

### **Question 8.6d**

**Would there be any benefit to allowing some cases involving children in State or organisational care to be reviewed on the papers rather than by way of Court hearing?**

**For children who are not in State or organisational care should reviews of cases only be at the direction of the Court rather than the norm?**

These questions relate to some of the most vulnerable children that come before the Family Court and require the utmost sensitivity of the Court.

- (1) The paramountcy principle of the welfare of the child should apply in these cases.
- (2) Where the child is doing well and the welfare of the child is likely to be disrupted by changes to their circumstances the paramountcy principle should apply and the welfare and best interests of the child should apply.
- (3) Children should not be subjected to repeated Court hearings where these hearings will disrupt their already settled and happy state.
- (4) Those cases where the child may be disrupted by yet more hearings or reviews should at the first instance be subjected to a paper review.
- (5) If the child is safe, settled and happy the status quo should apply.

### **Question 8.6e**

**Should permanent caregivers be given sole guardianship responsibility for some matters? What might be the implications of this approach?**

- (1) The paramountcy principle should apply. When it is in the best interests of the child some decisions regarding guardianship should be given to the permanent caregiver. This will support the primary caregiver of the child and therefore create a more settled environment for the child.
- (2) Where there has been domestic violence or child abuse the permanent caregivers should be given sole guardianship responsibility for some matters. This would prevent abusers from continuing to exert power and control tactics over permanent caregivers.

### Question 8.6f

#### **What is your view on removing the mandatory requirement for respondents to attend stopping violence programmes and focus the justice system on swift and effective enforcement of protection orders?**

Stopping violence programmes will be ineffective with certain offenders with a long history of violence in a variety of contexts. Skilled stopping violence programmes assessors should be able to identify these offenders, who may require specialist provision of courses for psychopaths rather than stopping violence programmes.

Theories of change indicate that change is not a single one-off process but rather an on-going process involving several stages including contemplation of change, motivation to change, and experimenting with change as well as eventual change. This change process may take several years. Stopping violence programmes are essential and should continue.

- (1) There should be better communication systems between service providers and between the Court to ensure that the Court's attention is brought quickly to nonattendance by respondents at stopping violence programmes.
- (2) Family systems approaches are not safe with domestic violence offenders and are dangerous for victims of violence: "It may be frightening for family members of a batterer to accept how limited their control over his behaviour actually is. The illusion that they can manage the batterer, an illusion that can be reinforced by periods of time during which they seem to succeed in doing so, can be a source of comfort for traumatized women and children. However, this illusion can simultaneously increase their danger because a batterer cannot, in fact, be reliably managed. It also increases the tendency of family members to blame one another; each time the batterer has an abusive incident, family members may seek a scapegoat on the assumption that someone must have failed to manage him properly. Therefore, the restoration of relationships within the family involves coming to terms with the fact that family members cannot control the batterer's behaviour and are not responsible for doing so." (p.193)<sup>94</sup>
- (3) Breaches of protection orders need to be referred to the Police (see above) for immediate enactment.
- (4) Skilled assessors trained in violence assessment and who operate according to best practice standards and competency requirements should assess respondents for the suitability for stopping violence programmes.
- (5) Those respondents who will not benefit from group programmes should be assessed for specialist individual programmes according to best practice standards.
- (6) The Court needs to seriously consider the dangerousness of offenders who will not benefit from group or individual programmes and the safety and well-being of the women and children with whom they associate.
- (7) The mandatory requirement for respondents to attend stopping violence programmes should remain at least for the assessment interview.
- (8) Offenders who have been violent to women and children must be held accountable. Where respondents will not benefit from the programme there should be provision for them to be held accountable in other ways (such as through safe compensatory action to the victims of their violence). These compensatory actions should be

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<sup>94</sup> Bancroft and Silverman (2002)

- monitored by the stopping violence programme provider to ensure that they are safe and have been carried out.
- (9) If the offender breaches these compensatory provisions they should be charged with a breach and sent before the criminal court.
  - (10) The family court should be adequately funded to ensure that administration and family court co-ordinators are in place so that respondents and applicants can be referred promptly to domestic violence programmes. This funding should be sufficient to ensure that family court co-ordinators can contact applicants who would benefit from women's support programmes to ensure that they are adequately informed and assisted to make contact with these programmes.
  - (11) Unnecessary and repeated auditing of domestic programme providers should be stopped.

### Questions 8.6g

**Should government investment be refocused on supporting families including providing protection order applicants and respondents with access to social services?**

- (1) The Family Court services relating to interventions associated with the DVA and with Care of Children should work in collaboration with existing social service provision. It is not the function of the family court to provide social services.
- (2) The government need to recognise the cost to the country of domestic violence and child abuse and to provide adequate resources to prevent it. Best current estimate of domestic violence alone is that it is costing the country up to 8 billion dollars per year. The government needs to put resources into all levels of the spectrum of prevention from stopping it before it starts, to providing the social services required to stop when it is severe. **If this was an earthquake there would be huge systems in place to address the cost. We need to place the same value on the lives and well-being of our vulnerable women and children.**

## Appendix 1.

### HEALTH IMPACT of DOMESTIC VIOLENCE

Prepared by Dr Alison Towns 12 February 2009

Gender-based violence has been recognised, internationally, as having profound effects on women's health (Campbell, 2002; Stark and Flitcraft, 1996).

- A World Bank review (Heise, Pitanguy and Germain, 1994) detailed these effects including injury, sexually transmitted diseases, pelvic inflammatory disease, unwanted pregnancy, miscarriage, chronic pelvic pain, gynaecological problems, headaches, alcohol/drug abuse, asthma, irritable bowel syndrome, injurious health behaviours such as smoking and unprotected sex, partial or permanent disability, post-traumatic stress disorder, depression, anxiety, sexual dysfunction, eating disorders, identity disorder, and obsessive-compulsive disorder. Suicide and homicide were the fatal outcomes.
- A World Health Organisation study explored the health effects of men's domestic violence on women from 15 international sites (Garcia-Moreno, Jansen, Ellsberg, Heise and Watts, 2005; Ellsberg, Jansen, Heise et al. 2008). Of those women who had ever experienced physical violence the prevalence of injury ranged from 19% in Ethiopia province to 55% in Peru.
- Reports of suicidal thoughts and attempts were significantly higher among women, in all sites, who had experienced physical or sexual domestic violence compared to those who had not.

Knowledge of the extent of health effects has continued to grow over the past ten years.

- Health service utilization by those who had experienced such violence was found to be higher: those who had were twice as likely to have visited a health care provider in the previous 4 weeks than those who had not (Fanslow & Robinson, 2004).
- Elsewhere, higher healthcare utilization continued for up to 5 years after the violence had ceased and total healthcare costs were 19% higher amongst those who had experienced such violence compared to those who had not (Rivara, Anderson, Fishman, Bononi, Reid, Carrell et al, 2007).
- An Australian study found that such violence among women aged 15-44 years was the leading contributor to death, disability and illness making more of a disease burden than high blood pressure, smoking and obesity (VicHealth, 2004).
- The mental health burden to women included the effects of post-traumatic stress disorder (Dutton, Green, Kaltman, Roesch, Zeffiro & Krause, 2006), depression and anxiety (Ehrensaft, Moffitt & Caspi, 2006; Ludermir, Schraiber, D'Oliveira, Franca-Junior & Jansen, 2008; VicHealth, 2004), and marijuana dependence (Ehrensaft et al., 2006).
- Suicide attempts were found to be significantly higher amongst those women who had experienced men's domestic violence than those who had not (Ellsberg et al.

2008; Ludermir et al, 2008) and were 8 times more likely among those New Zealand women who had experienced severe domestic violence than among those who had not experienced domestic violence (Fanslow and Robinson, 2004).

- New health impacts continue to be documented including oral and maxillofacial injuries (Zeitler, 2007), traumatic head injuries (Jackson, Philp, Nuttall & Diller, 2002; Valera & Berenbaum, 2003), the effects of strangulation on prolonged neck and throat injuries and neurological functioning (Smith, Mills & Taliaferro, 2001) and on the potential for morbidity (Glass, Laughon, Campbell, Block, Sharps & Taliaferro, 2008; Wilbur, Higley, Hatfield, Surprenant, Taliaferro, Smith & Paolo, 2001), difficulties with walking, daily activities, pain, memory loss, dizziness and vaginal discharge (Ellsberg et al, 2008).
- Other health associations include unintended pregnancy (Pallitto & O'Campo, 2005) and preventable foetal loss (Fanslow, Silva, Whitehead & Robinson, 2008; Alio, Nana & Salihu, 2009).

The overlap with violence towards child has been found to be high and impacts on children's physical, sexual and emotional health:

- 30% to 60% of children whose mothers experience violence from their partners are also abused themselves (Edleson, 1999, 2001).
- Children exposed to inter-parental aggression, particularly that initiated by the father, are vulnerable to relational developmental difficulties, anxiety, conduct disorders, and alcohol and drug problems in their teenage years (Fergusson & Horwood, 1998; Holden, Geffner et al. 1998, Rossman, 2001)

The extent of men's domestic violence towards women is widespread suggesting that carefully developed population-based interventions or public health approaches will be required for prevention.

- The WHO study found a range from 13% in Japan of ever-partnered women who had experienced violence from a male partner to 61% in Peru with most sites experiencing 23% to 49% (Garcia-Moreno et al, 2005).
- Comparable NZ figures are 33% in a large urban area and 39% in a rural area (Fanslow & Robinson, 2004)

The widespread extent of such violence calls for interventions in addition to existing early intervention or late intervention with individuals and small groups (Garcia-Moreno, 2009; Harvey, Garcia-Moreno & Butchart, 2008).

- Population interventions are required to reach the numbers necessary for change but they need to be thoughtfully implemented in order to avoid unintended consequences or harm (Davies, Hammerton, Hassall, Fortune & Moeller, 2003).
- Public health approaches aimed at primary prevention with populations - involving intervening with the risk factors and thereby preventing the problem before it starts - are well understood in the health sector.

- Evidence based public health approaches, focused on the risk factors for men's domestic violence towards women, are increasingly being explored by innovative organisations, researchers and practitioners (Barker, Ricardo & Nascimento, 2007; Foshee, Bauman, Ennett, Schindran, Benefield & Linder, 2005; Harvey et al., 2008; WHO, 2008).

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### **Appendix three Legal issues that must addressed**

1. Do you consider any other elements need to be added to the components of an effective legal aid system?

We consider that the needs of victims – women and children affected by domestic

violence - need to be prioritised by the system and that these people should receive services from Legal Aid in a way that supports them and ensures that they are not re-traumatised and re-victimised by the systems set up to help them. This would mean that the safety of women and children would be a fundamental principle and focus of all Legal Aid services.

This would require informed practice – legal practitioners who understand the dynamics and effects of domestic violence on women and children – not just the law.

A good Legal Aid system would not only not exacerbate underlying problems, but fix as many of them as possible, including underlying social problems.

People's experiences of justice systems can cause problems such as lack of trust in the system and also a feeling that the system is designed for the wellbeing of the perpetrator, rather than the safety and wellbeing of victims. A good Legal Aid system would ensure that victim's experience of justice systems was as constructive and positive as possible; to ensure that the experience solves problems, not create more.

## CAN THE RIGHT PEOPLE ACCESS SERVICES?

2. Do you consider that there are any areas of legal need in the community that are not being met to some extent by existing services?

If the safety of women and children was one of the fundamental principles of the Legal Aid system, then women who required help with domestic violence issues would be prioritised.

Currently many of the services that women who have been abused need Legal Aid for, are required to be paid back. This has two effects. It can prevent women receiving the services that they require because they feel too afraid to embark on a process that will mean that they accumulate more debt. This means that women are at risk of losing custody of their children or being placed at ongoing risk of abuse because they have insufficient protection from the abuser. Or women do receive the services, then find that paying back the Legal Aid assistance places them in extreme financial hardship – which can result in them returning to the abuser or putting themselves at risk of ongoing abuse as they have to ask for financial assistance for their children.

This means that women are required to pay to keep their children safe. This is not in the best interests of children.



Also – there are often many areas of unmet legal need in families where abuse occurs. Women may need help with tenancy claims caused by damage to houses, with claims from WINZ, they may have criminal charges themselves as a result of being forced into criminal activity, have debt related to gambling or financial abuse, or they may have employment problems as a result of their partner continuing to harass and abuse them at work. It would be useful if these issues could be referred to a Community Law Service so that women can try and solve a number of legal problems at the same time. This would make their lives less complicated and stressful and would allow women more energy to concentrate on recovering and remaining free from abuse.

Women also have complex cases in relation to child abuse and neglect. Inexperienced practitioners will have trouble understanding the dynamics of keeping children safe in abusive relationships. In many cases it is not the obvious parent who is the abuser – and women, who have experienced mental health problems, or substance abuse as a result of abuse, will still often be the safer parent. This is difficult for a court to understand unless the women and children have experienced and trained representation.

If women do not have experienced representation in these cases, they can go on being fought through the court for years, in some cases until the child attains adulthood. This is hugely wasteful of court and other resources.

### 3. Are services provided in ways that meet the particular needs of Māori and Pacific peoples, and certain vulnerable groups of people (e.g. victims or people with disabilities)?

Women seeking to escape domestic violence will almost inevitably be much poorer when they leave the relationship. Those who are beneficiaries or who are from low or middle income circumstances will find it especially difficult to leave an abusive relationship and cope with all of the costs of leaving – sole care of children, housing costs, medical care, schooling etc. On top of this, in order to keep themselves safe, women also have to factor in the costs of protection orders (the legal fees) the care of children, custody etc. Therefore, all women leaving abusive relationships should have access to legal aid for all of the services that they require, protection orders, custody, care of children, parenting orders etc – without having to pay these fees back. This would increase women's confidence in the systems determination to protect them and would be one less stress that they have to endure. This Legal Aid cover should be available until all of the related legal issues are sorted out and the woman and children are safe.

Women who have physical disabilities, women with mental health problems, and women with substance abuse problems and women affiliated with gangs will all have particularly complex legal issues to sort out if they are to be kept safe. These

women require specialised legal representation from lawyers who have particular training and expertise in these specialised areas of domestic violence dynamics – as treating these women the same as anyone else will often result in years of legal entanglement and continuing victimisation for the affected women and children.

There have been fears expressed that women would misuse a system that offered free legal aid by making false claims of abuse in order to get free protection. We believe that this would very rarely occur and that specialised staff – such as those in the support agencies, Police and specialised lawyers - would soon pick the inconsistencies in these stories.

4. Are there any categories of people who should be able to receive legal aid but who cannot currently do so?

Occasionally there are circumstances where abusers access legal aid but their partners (abused women) are unable to because they are slightly above the earnings threshold. This creates another avenue for the abuser to control and abuse his partner – drawing out proceedings that he doesn't have to pay for – knowing that she can't afford representation.

In these circumstances it is imperative that women have access to Legal Aid, to ensure that the system is not complicit in the ongoing abuse and that her circumstances, as the person requiring protection from the law, are not compromised.

5. Are there any barriers that prevent eligible people from accessing legal aid services?

As above, many women who require Legal Aid are prevented from getting it because their income is perceived to be too high. This means that the income threshold is too low – many women fall into the hole between Legal Aid and being able to afford a lawyer – especially as they are (at the time of requiring the legal services) solely responsible for the support of themselves and their children.

Other barriers include:

A lack of translation services in the Courts – especially people who have a specialised knowledge of domestic violence and the related dynamics, legislation and processes. If interpreters do not have specialised knowledge they will be unable to adequately represent what women are saying as they will not understand the dynamics of the

situation and the importance of exactly what women are saying. Also, they will not properly interpret the information that women need to understand from her lawyer, the judge etc.

Lack of knowledge about the services that are available and how to access them

Literacy – there are high rates of functional illiteracy in New Zealand – especially among Maori and Pacific populations.<sup>95</sup> This has two implications:

Women who require services will not be able to find out about them from brochures and other written material, nor will they be able to fill out forms and understand what is written about them without literacy support

#### 6. Are there any specific barriers faced by Māori or Pacific peoples in accessing legal aid services?

Literacy

Trust in the system – the New Zealand legal system has not dealt well with Maori and Pacific people – there is evidence of institutional racism in the decisions, the high number of Maori who are convicted and incarcerated and the difficulties that Maori and Pacific people have with accessing the system and achieving justice.<sup>96</sup>

Obviously this institutionalised racism is not confined to the Legal Aid system and representation, however this is one part of it – lawyers will bring their own prejudices and values to their work – especially inexperienced young lawyers who are often used for Legal Aid work

#### 7. Do people who use the legal aid system also use other social services (e.g. housing, budgeting services, Work & Income)?

This question is particularly relevant for women who are attempting to escape domestic violence. They will, as mentioned previously, be much poorer when they leave the abusive relationship and also, it is very common that their partner will use lack of financial support as another avenue of ongoing abuse.

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<sup>95</sup> “Literacy skill levels range from level 1 (very poor) to level 5 (very good). Level 3 is regarded as being the minimum required to meet the ‘complex demands of everyday life and work’ in the emerging ‘knowledge society’. The results of the survey indicate that 66.4 percent of Māori were below this minimum level in prose, 72.2 percent in document and 72.3 percent in quantitative literacy. In contrast the figures for non-Māori were 41.6 percent, 47.0 percent and 45.6 percent respectively.” Statistics NZ, accessed September 2009. <http://www2.stats.govt.nz/domino/external/web/nzstories.nsf/>

<sup>96</sup> Khylee Quince, 2007. Chapter 12: Maori and the criminal justice system in New Zealand. In: Criminal Justice in New Zealand. Brok, Banks and Tolmie, LexisNexis Nz. Wellington.

Therefore they will potentially be using all of the above services, plus requiring support from agencies such as Barnardos and other child and family services.

Women leaving abusive relationships require income support, housing, social and health service support, child care, employment and perhaps disability services.

These women may also have legal problems with some of these services, relating to the abuse that they have experienced. For example, partners refusing to make rental, mortgage or bill payments while having total control of the family finances, destroying property so that women owe money to landlords or HNZ and are unable to get further tenancy because of bad references, abusers moving in with women on the DPB and then having her investigated for fraud, constantly phoning women at work so that they are put on notice or lose their jobs. It would be useful if legal services could be coordinated to resolve all of these problems and also integrated with the other services women are accessing.

Women also have complex cases in relation to child abuse and neglect. Inexperienced practitioners will have trouble understanding the dynamics of keeping children safe in abusive relationships. In many cases it is not the obvious parent who is the abuser – and women, who have experienced mental health problems, or substance abuse as a result of abuse, will still often be the safer parent. This is difficult for a court to understand unless the women and children have experienced and trained representation.

#### 8. What are the likely consequences of limiting eligibility for legal aid?

If more women are denied Legal Aid to escape abuse, more women will remain in abusive situations for longer. This will result in increased harm to children.

Children who live in an environment where abuse is occurring suffer trauma whether or not they are abused themselves. The children's stability is threatened and this influences their sense of security and ability to survive, which causes them lasting damage. Being exposed to violence in the first three years of life can prevent the normal physical, mental and emotional development of children and this can cause life long disability.

Children can suffer sexual and physical abuse, including being killed.

The psychological effects of domestic violence include low self-esteem, lack of empathy, depression, passivity, sleep disorders, eating disorders, anxiety, teen

pregnancy, suicide and suicide attempts.

Both children who experience abuse and those who only witness it have many of the same emotional and behavioural problems, including:

- psychological and emotional problems such as anxiety, depression, low self-esteem, social withdrawal, hostility, nightmares, disobedience and aggression.
- poor school performance.
- cognitive functioning problems such as lower verbal and quantitative skills and the development of attitudes supporting the use of violence.
- somatic health complaints and physical problems such as delayed motor skills, speech difficulties and multiple health problems.

#### Long Term Effects on Children

Childhood exposure to abuse and other adverse experiences is strongly linked to:

- chronic adult health problems, including ischemic heart disease
- cancer
- chronic lung disease
- diabetes, hepatitis, and liver disease
- juvenile offending
- alcohol and drug abuse
- increased risk of mental health problems later in life
- increased risk of later physical and sexual assault
- interpersonal and parenting difficulties<sup>97</sup>

Not having legal support to leave relationships will leave women trapped – or attempting to leave with out protection. This will result in increased rates of severe injury and murder of women and children. The longer a woman remains in an abusive situation, the more risk the violence will escalate. The most dangerous time, however, is when women leave their relationships. If legal protection is not available at this time, more women will suffer lasting abuse and will be killed. The United Nations call this femicide.

It will also result in women having more severe mental health problems, possible substance abuse problems, increased risk of head injury and other permanently disabling injury and long term physical health problems.

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<sup>97</sup> Homeworks Trust. 2007. Fact Sheet. The Effects of Domestic Violence. He Drove Me Mad. A teaching resource about domestic violence and mental illness. Available from: [www.homeworkstrust.org.nz](http://www.homeworkstrust.org.nz). September 21<sup>st</sup>, 2009

On the other hand, limiting the amount of Legal Aid that an abuser can access may have the effect of making him take some responsibility for his actions. While abusers can get free legal representation they suffer very few consequences of abusing. As the lawyers who do Legal Aid are often junior and not specifically trained in the dynamics of domestic violence, they will not understand how they are being manipulated to further abuse and intimidate women who 'dare' to try and complain or leave an abusive partner. Limiting Legal Aid in this circumstance could be very constructive.

9. Are there any groups of litigants that should be eligible for legal aid?

Women requiring support to protect themselves from domestic violence. Children requiring protection from abuse. Women and children who have been raped or sexually abused – who are victims of sexual violence.

10. How could the merits test be strengthened to ensure civil/family legal aid is not available for unmeritorious cases, or cases that have slim prospects of success?

It is important that all women trying to seek protection from domestic violence be eligible for Legal Aid. Mental illness, substance abuse and other problems can be the long term effects of living with abuse, and while they complicate help seeking, they must not be used to disqualify women from being able to access Legal Services and Legal Aid. These women may, in fact, be more in need of legal representation as their cases are often very complex.

There may also be complex issues of child abuse and safety. If practitioners are experienced they will also be able to help resolve these issues – and these should always be eligible for legal aid.

11. Should civil/family legal aid be refused on the basis that the matter is one that should be resolved by alternative dispute resolution?

Not family related Legal Aid. All women who want it should be able to access legal support and representation to escape domestic violence. If a family matter goes to Court it means that it is probably not able to be resolved by mediation. It is very dangerous to ask abused women to have counselling/mediation with the abusive partner. If abuse has not been disclosed in a separation or custody case, mediation could be used inappropriately and women and children could be put at more risk of harm.

12. Should civil/family legal aid be granted if parties fail to resolve the dispute through alternative dispute resolution?

It is not appropriate or safe for domestic violence to be resolved by mediation or counselling, as abuse women are not safe in situations where their partner is present.

Therefore, women need the immediate support of protection orders, parenting orders etc, and of perpetrators being convicted.

13. If an applicant cannot find a lawyer who will enter into a conditional fee agreement, should that be a relevant consideration in the merits test (e.g. in assessing the prospects of success)?

In cases of domestic violence, it is important that women can find lawyers who have the experience and expertise to represent them and help them obtain safety and justice. This means that the Legal Aid system has a responsibility to ensure that trained practitioners are available to women in all areas of the country to help women resolve the legal issues relating to domestic violence.

14. Should all State-funded legal assistance be administered by one agency?

If that agency has an informed and trained understanding of the complexities and dynamics of domestic violence – not only of the law, but of the behaviour of perpetrators, the effects on women and children and the complexities of supporting women to leave these situations.

15. What reasons make it important for people to make some contribution towards their legal costs where they can afford to do so?

When there are circumstances that require that people take some responsibility for their behaviour. If people are offenders, especially repeat offenders, then contributing to the cost of their court appearances and representation would reinforce the concept of taking personal responsibility for their actions.

If women are arrested, this could be used as another form of financial abuse by offenders. An analysis has been done of the women arrested as offenders for family

violence over the six months from April – September 2008. Out of the 40 cases of women offending against male victims, 19 women – nearly one third of all female offenders in the study – had previously been victims of the men they offended against. In some cases the police recorded the violence as self-defence. In a number of these cases the male partner had previously been assessed as very high or extreme risk.<sup>98</sup>

These women are still victims and should not be denied Legal Aid.

16. Do you think that people who are in the low-income bracket (e.g. entitled to a Community Services Card) should have to repay legal aid?

If they are repeat offenders/abusers then this could be considered. Otherwise, in regard to family violence, or victims of sexual violence, No.

17. Is there a risk that the repayment regime will create or exacerbate problems of indebtedness?

Yes. For women who are attempting to leave abusive relationships and stabilise their own lives and the lives of their children, any extra debt will exacerbate stress and make her ability to remain out of the relationship more precarious. Financial problems are one of the key reasons that abused women stay in relationships and send them back to the abuser when they've left. It is also, as previously mentioned, a common form of abuse – so financial precariousness will always be used by an abuser to re-abuse – by saying that women can't care adequately for children etc.

Will asking men who are abusers to contribute to costs increase indebtedness in the family? This is debatable. Most abused women will experience financial abuse – will have little or no control over the family finances. So men control how and where money is spent – therefore, apart from those who are very poor and struggling to pay bills and buy food, perpetrator re-payment may not make any difference to abused women.

18. Is there a risk that the repayment regime will dissuade people from applying for legal aid?

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<sup>98</sup> Arrested Female Offenders in Auckland City. April – September 2008. Deborah Mackenzie, SHINE (Safer Homes in New Zealand Everyday). Auckland. April 2009.



Yes – women may not get representation for all of the legal services that they need to keep themselves and their children safe.

## ARE WE PROVIDING THE RIGHT MIX OF SERVICES?

19. Does the legal aid system enable people's needs to be viewed in a holistic way, and is there room to do this better?

Generally Legal Aid only deals with one-off events, without consideration of either the underlying issues or the range of services that are required to help women and children become safe. The Report references the UK experience of Legal Aid reforms. The UK has moved to providing more outreach in the form of one-stop, wrap around services, with an emphasis on those who have the greatest need.

This could work well for women attempting to escape abuse if a number of processes were put in place.

- First, a commitment to use lawyers who are experienced and who are trained to understand the dynamics and related issues of domestic violence. This would be a requirement for both the counsel for women and for children.
- That these organisations prioritise the safety of women and children
- That the legal services are connected to social and health services, police and other areas of justice – for example through interagency networks - with a commitment to engagement and collaboration.

This would have the effect of making women feel more empowered by the process and, hopefully, more protected by the system.

This could also mean that all of women's legal issues – many of which are a direct effect of living with abuse – could be responded to at the same time. This could shorten the amount of time that it would take women to regain independence and could help her regain some control over her life.

20. What advantages do you see from focusing on early advice and support?

Having access to free, non-judgemental and holistic Legal Aid services could help many women address their domestic violence related legal and related issues before they become entangled and complex and could help women access options for

safety before she and the children are seriously damaged by living with abuse. It would also provide an important part of the 'pie' of agencies working to support abused women and hold perpetrators accountable.

21. Can you identify any particular legal advice and information services that could work more effectively if they were joined up or co-located with other services?

It is important that knowledge about, and access to, Community Law Centres is part of the Legal Aid information that women receive, and that advocates support them to access these services. This assumes that the safety of women and children would be prioritised by these services to ensure that women can access them when they require help and are in a position to receive it. Often women will be able to access services while a perpetrator is in prison. Legal Aid and Community Law Services must be responsive to this time constraint/opportunity.

22. What do community law centres (CLCs) contribute to the justice system that is unique to them?

Community Law Centres are important for a number of reasons.

- They're free
- They are in community settings which makes them less intimidating and formal
- People can drop in – they can be used when an opportunity presents This makes them much safer for abused women who's behaviour and actions are monitored – it is very dangerous for some women to make appointments as the abuser can discover these
- They can be responsive to the needs of specific communities

23. If CLC services were to be standardised, how should they be made accountable for those services?

If CLC staff were able to train in the dynamics of abuse and be experienced in family law and also the range of issues that women will bring as a result of living with

abuse, this could be a constructive, wrap-around service for women to access.

24. What could be done to improve the performance of legal aid lawyers in terms of efficiency and quality?

Domestic violence work requires lawyers who are experienced and have an understanding of the dynamics of abuse. Law firms frequently give Legal Aid work to juniors, partly because of the relatively low amount that is earned from legal aid and partly because domestic violence is not considered to be important work.

If women are to escape from abusive relationships and move on in their lives, they need expert legal counsel to ensure that:

- parenting is worked out to ensure the safety of the children
- prevent on going harassment and abuse of women
- to ensure that women retain some equity from the relationship property
- effective protection is in place for the ongoing safety of women and children
- all of these things can be worked out quickly and effectively to minimise stress and ongoing abuse.

Lawyers who do family work – much of which is domestic violence related, including counsel for the child, should have attended training on:

- the legislation related to domestic violence, care of children, custody and other related issues
- the dynamics of domestic violence, dangerousness, the profile and tactics of abusers and how they manipulate situations and people to enrol them in ongoing abuse, gender of abusers/abused, myths about violence and why women stay, the effects of domestic violence on women and children, including mental health effects and substance abuse, the most constructive responses to abuse and the lawyers role in maximising safety and supporting change. These should be run by domestic violence professionals and child advocates.

25. Should publicly provided services (e.g. the Public Defence Service) be used to increase the standard of legal aid services where there are particular problems?

Yes. If this would improve the standard of representation for women who are victims of domestic or sexual violence. Currently women are often represented by people who have no understanding of the dynamics and effects of these forms of abuse and will make women do things that are not in their best interests and that

place them at increased risk.

26. Could a different approach to legal aid remuneration encourage firms and practitioners to participate in legal aid work?

Sole practitioners, who specialise in family violence work with women, would be able to better manage their practice if they were bulk funded for their work. Currently they invoice separately, not only for each case, but often for each part of it – i.e., protection orders, parenting orders etc, and don't know when they are going to be paid. Being bulk funded would mean that they could manage a woman's entire legal process from the beginning – the protection order - through all of the processes, without having to slow the process waiting for permission to use Legal Aid and without the stress of waiting for payment to come through.

From the point of view of women who require support to leave abusive relationships, having Legal Aid payments linked to training and experience would be constructive. This would encourage more experienced lawyers to represent women escaping domestic violence and also encourage lawyers to attend training and updates about domestic violence and legislation and therefore be more constructive in their advocacy for women's safety.

27. Can you identify any issues other than remuneration that are discouraging lawyers from providing legal aid services?

It is seen as low status work. The importance of this work needs to be enhanced – this would include recognition of the skills that are required to do it well.

28. Do you have any suggestions for ways of reducing compliance costs for legal aid lawyers?

Allowing them to access Legal Aid funding to address all of women's legal needs at the same time. Paying regularly so that lawyers have regular income.

29. Do you see advantages in making performance monitoring and quality standards an express part of the legal aid system?

Yes. Poor representation creates more problems for women – this makes their lives more stressful and also means that they lose faith in the ability of the system to protect them.

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30. What would be the most effective way of enabling practitioners to meet quality standards?

There could be review boards, made up of lawyers with specialised expertise, plus specialists from the community who have expertise in, for example, domestic violence or sexual violence. Lawyers would then have to be accredited to access Legal Aid funding and this accreditation could be monitored and reviewed.

31. Do you consider that any of the following levers may help to enhance the quality of legal aid services:

- time limits and panels for legal aid listings
- training, supervision, peer review requirements
- performance review
- specialisation in the lawyer banding system, such as for lawyers doing appellate work.

Yes, these sound like processes that could ensure experienced and specialised representation for women. It would be important to ensure lay – i.e. non legal representation on these boards where specialised knowledge was required – especially for sexual and domestic violence.

32. Can you suggest any additional levers to enhance the quality of legal aid services?

Training.

33. Do you consider that either the Legal Services Agency or the New Zealand Law Society should have primary responsibility for the quality of legal aid services, or is there a shared responsibility?

N/A

34. What do you see as the most effective ways of improving accountability in the legal aid system?

One way would be to talk to the people who have been represented. It is important that constructive outcomes, that don't re-traumatise women, are obtained – not just cost containment. Many other boards have consumer representatives – having consumer reps on auditing and review panels would help hold the service accountable.

35. How should cases of poor service delivery be handled in a quality-focused framework for legal aid services?

Women should have access to lists of quality, experienced and trained lawyers and also lists of those lawyers who women feel are not useful or safe.

36. Are there any other forms of performance monitoring which might have the same effect?

N/A

37. Do you consider that the Legal Aid Review Panel would be better administered independently of the Legal Services Agency?

A Legal Aid review panel should have independent representatives from the specialised areas of concern – for example domestic violence and also consumer representatives.

38. Do you have any suggestions for the matters which should be subject to review by Legal Aid Review Panel?

Expertise and training in specialised areas

Client satisfaction

Legal outcomes





## LEGAL AID'S EFFECT ON THE COURT SYSTEM

39. Do you consider that legal aid payment steps could help to improve the efficiency of court proceedings, as well as encourage the use of less costly means of progressing cases through the court system?

Address all of women's needs for safety and representation as one package. Have specialised lawyers who understand these complexities to represent women, to ensure that their issues will be able to be resolved. This will save a huge amount of money.

40. How could legal aid payment steps be structured to achieve these objectives?

N/A

41. Do you agree that the preferred lawyer policy is distorting the allocation of criminal legal aid cases?

N/A

42. Do you have any suggestions for changes to the preferred lawyer policy that could address the problems identified in this paper?

N/A

43. Do you have any suggestions for ways of enhancing the role of duty solicitors?

Training in the dynamics etc of domestic and sexual violence – so that duty solicitors can recognise the games that abusers play and not be manipulated into processes that are designed to re-abuse women via the court process.

44. Do you have any suggestions for enhancements to the supervisory structure for duty solicitors?

N/A

#### DOES THE SYSTEM MANAGE TAXPAYER FUNDS EFFECTIVELY?

45. Would there be advantages in capping the legal aid budget?

Not for women who are victims of rape and domestic violence, or for children who require protection. Capping the Legal Aid budget would mean that victims of domestic violence would miss out on protection from abusers and victims of sexual violence would not be able to get representation.

46. Are there any categories of legal aid expenditure that might be more amenable to capping?

Perhaps for men who are repeat domestic/sexual abusers or rapists?

47. How could any disadvantages from capping the budget be avoided or mitigated?

Excluding family and sexual violence victims from the cap.

48. Can you identify any ways of reducing demand for criminal legal aid?

Providing women with trained, experienced legal representation when they first come to the attention of the court or the justice system could prevent years of ongoing legal processes. By having good legal representation, that provides them

with protection from abusers, women will be able to free themselves from abuse faster and therefore there will potentially be less time that their partner spends in court for crimes perpetrated against them.

Lawyers, including counsel for the child, who understand the dynamics of domestic violence, will be able to help women obtain protection orders, parenting orders, custody, housing and other requirements for safety in a way that could prevent the years of ongoing abuse, via the courts, that abusers engage in.

Some women spend up to 16 years in court as men contest custody, violate protection orders and generally abuse the system to abuse their ex-partners. Inexperienced lawyers are unable to provide the right information, understand women's circumstances or appreciate the level of manipulation of abusers and therefore are unable to prevent this wastage of court resources.

For women in these situations, wrapping experienced services around her from the beginning – and resolving her other legal issues at the same time - can prevent abusers having levers to continue to harass. This will save huge amounts of money and court/professional time.

Ensuring that duty solicitors, criminal lawyers – i.e. those who represent abusers in the criminal and family courts, understand the dynamics of abuse and don't allow themselves to be used to harass and abuse women via the court process.

#### 49. What do you see as the main drivers of administrative inefficiency in the legal aid system?

Lack of adequate remuneration to attract experienced lawyers with the time to adequately represent their clients. Also the payment system for lawyers who are prepared to take on Legal Aid work. There needs to be certainty of regular income.

Lack of expertise – lawyers who are involved in Legal Aid are often juniors without training and experience in family violence. This actually complicates process and situations as they are unable to resolve situations – which mean that they keep coming back to court.

Treating each situation as 'one-off' and not considering the whole range of legal issues that are required to be resolved in order to keep a woman safe and prevent ongoing court appearances. This means that women's problems are never resolved – issues drag on for years, it also means that there is unnecessary administrative complexity – if lawyers could apply for Legal Aid to resolve all of women's needs at once, the system would be faster and court time would be less clogged.

50. Do you have any suggestions for streamlining administration of the legal aid system?

As above. Enabling lawyers to apply for funding to address a range of issues at once. For women requiring protection, this would mean protection orders, parenting orders, custody, housing and any other related problems – such as tenancy, criminal charges etc - that have been caused by living in an abusive relationship.

51. Do you have any comments on alternative funding models for purchasing legal aid services?

Sole practitioners, who specialise in family violence work with women, would be able to better manage their practice if they were bulk funded for their work. Currently they invoice separately, not only for each case, but often for each part of it – i.e., protection orders, parenting orders etc, and don't know when they are going to be paid. Being bulk funded would mean that they could manage a woman's entire legal process from the beginning – the protection order - through all of the processes, without having to slow the process waiting for permission to use Legal Aid and without the stress of waiting for payment to come through.

From the point of view of women who require support to leave abusive relationships, having Legal Aid payments linked to training and experience would be constructive. This would encourage more experienced lawyers to represent women escaping domestic violence and also encourage lawyers to attend training and updates about domestic violence and legislation and therefore be more constructive in their advocacy for women's safety.

We strongly support the concept of specialisation. However, as indicated previously, specialising in domestic and/or sexual violence work means also understanding the complexities of issues related to abuse and escaping abuse, including tenancy, criminality, mental health issues, custody and care of children and especially, the tactics and dynamics of abuse. It is certainly not enough to understand the law. It is also important that this training is compulsory and is run by people who have specialised knowledge of family and sexual violence.

52. What are the benefits and challenges of public provision of legal aid services?

From our perspective, without public provision of legal aid services, many women will remain trapped in abusive relationships their whole lives and the lives and potential

of many children will be permanently damaged.

Having good Legal Aid services, which expertly represent women, will save vast amounts of money in down stream government costs.

The ongoing costs, to the state, associated with domestic violence include:

- Years of life lost because of suicide and homicide
- The time that women are unable to function without support
- The cost of service responses to abused women – CYF, social services, child and family services
- Women’s unattained potential, diminished realisation of educational, employment and personal potential and unattained service to the community
- The long-term effects on the children and wider family, including the perpetuation of intergenerational violence, and a wide range of ongoing developmental and health problems for the children, including as adults.
- Placing and keeping children in foster care or in the care of the state
- Ongoing judicial costs related to the Family and Criminal Courts
- Women and children’s ongoing use of mental health and substance abuse services
- Personal health services such as A&E and GP services for ongoing physical health problems and problems associated with self harming behaviours
- The inappropriate care of women who have been abused – i.e., placed in mental health services when they really require domestic violence services<sup>99</sup>

Many of these costs could be mitigated by expert help at the beginning of a woman’s journey to free her from abuse.

53. Do you consider the Public Defence Service should be extended into any other regions? If so, where and why?

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<sup>99</sup> Deborah Hager. 2001. He Drove Me Mad. An investigation into the relationship between domestic violence and mental illness. A thesis submitted in partial fulfilment of the requirements for the degree of Master of Public Health, The University of Auckland,

If this will provide more skilled and experienced representation for women, with adequate time to resolve the complexities of their situations. However, if these people don't have specialised training this will not be constructive.

54. Can you suggest for any ways to simplify and standardise the process for determining eligibility?

N/A

55. Can you suggest any ways to streamline piloting and consultation procedures in the Legal Services Act 2000 (the Act)?

N/A

56. Do you have any examples of unnecessary prescription that could be removed from the Act?

N/A

57. Can you identify any operational inefficiencies in the legal aid system?

Treating each issue as 'one-off'. This means that women's needs are compartmentalised and dealt with at different times and sometimes by different people. It is important that women's issues are all understood as one package, so that she can get through the court processes and move on with keeping herself, and her children, safe.

58.