



The New Zealand Psychological Society

*Te Rōpū Mātai Hinengaro o Aotearoa*

**Submission on the Family and Whānau Violence  
Legislation Bill**

**prepared by the  
New Zealand Psychological Society  
Te Rōpū Mātai Hinengaro o Aotearoa**

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## **1. Introduction and Acknowledgements**

**1.1** The New Zealand Psychological Society (NZPSs) welcomes the opportunity to comment on the Family and Whānau Legislation Bill.

We thank Dr Alison Towns and the Auckland Coalition for the Safety of Women and Children for their input into this submission.

## **2. Domestic Violence Act**

**2.1** Important in determining whether any legislation aimed at improving the safety of people will be effective is the question: Will this legislation improve the safety of those concerned? Will this legislation improve access to the law for those who are at risk of violence?

**2.2** We have concerns that some of the changes to the Domestic Violence Act will have an impact on improvements to the safety of women and children. We note previous research which has found that the legislation is not the problem. The problem is the unacknowledged narratives (hidden messages) that underpin practice and implementation<sup>1</sup>. For example, there is a belief in the Family Court (during parenting proceedings) that the child's welfare and best interests is best served by significant contact with each parent (perpetrators of violence included).

**2.3** The literature on the effects of violence on children exposed to violence belies these assumptions<sup>2</sup>. The literature on resilience also indicates that for the child to "heal" and develop resilience, the violence needs to stop, underscoring that frequent contact between the child and violent parent is counter-indicated and should not be ordered.

**2.4** The myths, stereotypes and unconscious biases that those involved with implementing the Act carry around with them influence their actions and recommendations, which in turn influence access to safety and protection orders.<sup>3</sup> These can only be changed through training. However, the people who are often most in need of training may not take up these opportunities. There is nothing in the amendments to the Acts that legislates for training for those involved in protecting women from family violence.

**2.5** We believe the Ministry of Justice has a responsibility to ensure that those engaging in work involving the safety of women and children are trained in domestic violence and aware of best practice. Sir Nicholas Wall of the English Court of Appeal recommended that as domestic violence is the core business of the Family Court, no

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<sup>1</sup> Towns, A. J., & Adams, P. (2016). "I didn't know whether I was right or wrong or just bewildered." Ambiguity, responsibility, and silencing women's talk of men's domestic violence. *Violence Against Women*, 22(4), 496-520.

<sup>2</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.

<sup>3</sup> Dichter, M. E., & Gelles, R. J. (2012). Women's perceptions of safety and risk following police intervention for intimate partner violence. *Violence Against Women*, 18(1), 44-63.

judge should be appointed to the Family Court unless they have a firm understanding of the impact and consequences of domestic violence as well as annual training and up-skilling. In California, there is a statute requiring every professional in the Family Court to have twelve hours of domestic violence training annually.

**2.6** We applaud the current work being carried out on competency standards for those working with domestic violence. We recommend that the requirements for competency develop in parallel with the opportunities for training. As yet there are few opportunities for training available to those working in the area. There are no dedicated tertiary training centres for practitioners and few courses for those wanting to upgrade their qualifications.

**2.7** We would like to see this Bill acknowledge that it is very difficult for women to attend meetings with their perpetrators. There is little mention of commonly utilized practices of restorative justice, couples therapy, mediation, settlement conferences which may pressure women to attend such meetings, with or without any support. For example, the legislative framework regarding parenting orders often requires mediation prior to the Court proceeding even where there has been violence utilised against the woman.

### **3.0 Access and the Domestic Violence Act**

#### **1. Naming of the Act**

**3.1** The Bill proposes changing the name of the Act to the Family and Whānau Violence Act. Whānau in its entirety of meaning seems to be redefined in this Act and minimised to a colonised viewpoint. If whānau was used in its entirety it would include “those of the same bones” therefore having a much wider definition and a much more difficult implementation to undertake. To wrongly define whānau, in this Act to further oppress and commodify another person’s culture. The use of the word whānau does not make it inclusive of Māori unless used in its complete definition.

**3.2** How an Act is named determines its accessibility. The Bill effectively excludes those who are in dating relationships from accessing protection orders. New Zealand research has found that young women in dating relationships who experience violence and associated coercive control do not consider that what they are experiencing is domestic violence (which they think happens to older women) or family violence (which they consider happens to people with children.)<sup>4</sup> Renaming the Act as the Family and Whānau Violence Act will therefore hamper access to safety for young women.

**3.3** The explanatory note suggests that the Bill “modernises” and “updates” the Domestic Violence Act by virtue of renaming the Act and the relationships in it as

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<sup>4</sup> Towns, A., & Scott, H. (2008). *The Culture of Cool: Getting in early to prevent domestic violence*. NZ Family Violence Clearinghouse. Wellington.

‘family and whānau violence’. We contest this assertion. While the name is purportedly inclusive of Māori, the name narrows the definition of who is protected by excluding those young women who experience violence in dating relationships. It is questionable, for example, that Sophie Elliott, who experienced psychological and sexual violence from her boyfriend and was eventually mutilated and killed by him, would have been able to access protection orders under the changes proposed in this Bill, whereas she would have under the meaning of domestic relationship in the existing Domestic Violence Act.

**3.4** The term family violence is not modern but is the term coined by an outdated and unsubstantiated notion that violence within families occurs through escalating conflict between two mutually involved adults. It was introduced by Murray Straus and his colleagues in the 1970s and has been popularised in New Zealand through the Dunedin birth cohort studies. Researchers involved in these studies have argued that women and men are equally violent except when the violence is severe. Unfortunately, their use of the Conflict Tactics Scales has been severely criticised and more recently the construct validity of this scale has come under question as it is the only scale that finds equivalency in violence between genders<sup>5</sup>. Research evidence is that the Conflict Tactics Scales suffer from major construct validity problems because they do not exclude joking or horseplay and because the terms used in the scale questions are too broad.

**3.5** The term family violence mixes conflict with violence and assumes that the process involved in conflict is the same as that involved in violence. Women have told researchers that the violence they experienced from their male partners can occur quite unpredictably: when there has been no conflict<sup>6</sup>. The term family violence is a misnomer because it appears as if the whole family is the perpetrator of the violence when there is usually a primary perpetrator. Usually protection orders are sought when there is a single primary perpetrator.

**3.6** The term family violence is popular with the police because it moves them away from trivializing the violence that occurs against women from men in the home and acting as if “it’s just a domestic”, as has occurred historically through the use of the term domestic violence. However, the term family violence is evocative of mutual violence, which is problematic for women who are victims of domestic violence. The research literature is pointing to increasing instances of police dual arrest: charging both partners rather than determining who was the primary perpetrator and who was the primary victim<sup>7</sup>. The problem for some police remains one of lack of

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<sup>5</sup> Holtzworth-Munroe, A. (2005). Male versus female intimate partner violence: Putting controversial findings into context. *Journal of Marriage and Family*, 67, 1120-1125.

Hamby, S. (2016). Self-report measures that do not produce gender parity in intimate partner violence: A multi-study investigation. *Psychology of Violence*, 6(2), 323-335. doi:org/10.1037/a0038207

Hamby, S. (2015). A scientific answer to a scientific question: The gender debate on intimate partner violence. *Trauma Violence Abuse, e-version*, 1-10. doi:10.1177/1524838015596963

<sup>6</sup> Towns, A., & Adams, P. (2000). "If I really loved him enough he would be okay." Women's accounts of male partner violence. *Violence Against Women*, 6(6), 558-585.

Jacobson, N., & Gottman, J. (1998). *When Men Batter Women: New insights into ending abusive relationships*. New York: Simon & Schuster.

<sup>7</sup> Towns, A. (2009). Police-initiated protection orders (Safety Orders) and their potential impact on women: A discussion

knowledge and understanding about the dynamics of domestic violence. The New Zealand police are now shifting their language again and speaking of “family harm” rather than family violence. We believe renaming is not the solution; more practical training is required.

**3.7** Most people who seek protection orders are women who are experiencing severe levels of coercive control, physical or sexual violence (approximately 90% of applicants<sup>8</sup>). Just as it is important that untrained police officers do not come to view matters as “just domestic”, it is equally important that they do not formulate preconceived ideas of mutual violence, evoked by the term family violence, and act accordingly. Helping to improve the understanding of the mechanisms of such violence for those working on the front line such as our police will enable them to protect and support women/victims/survivors.

**3.8** If the name must be changed the Act could be renamed the Violence Against Women, Wāhine, Partners or Elders Act or Intimate Partner Violence. This would more accurately describe the intention and purpose of the Act, which was designed to protect women or young adults subjected to violence by those with whom they are or have been in an intimate or close relationship. The Children, Young Person and their Family’s Act remains the Act tasked with protecting children (although protection orders should also remain as a source of protection to the children of adult’s subjected to domestic violence).

**3.9** As we do not agree with a change to the naming of the Act we do not agree with any clauses in this Bill relating to this change, nor to the changes in definition that refer to what constitutes a family relationship or whānau in its limited definition.

## **2. Purposes of the Act**

**3.10** We note that certain objects of the original Domestic Violence Act are to be repealed under the restatement of the purposes of the Act in Clause 7 and the new sections 1A and 1B. The amendments will delete sections 5 (1)(b) “ensuring that, where domestic violence occurs, there is effective legal protection for victims.”; 5 (2) (b) “ensuring that access to the Court is as speedy, inexpensive, and simple as is consistent with justice;” and sections 5 (2) (c) (d) and (e), which relate to the provision of programmes for victims and respondents and for effective sanctions and enforcement if orders are breached.

**3.11** We are surprised at the deletion of these statements as the fundamental objects of the Act, which are central guiding objectives of the Act particularly section

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document. *New Zealand Journal of Social Policy*, 34, 40-61.

Larance, L. Y., & Miller, S. L. (2016). In her own words: Women describe their use of force resulting in court-ordered intervention. *Violence Against Women, e-version*, 1-24. doi:10.1177/1077801216662340

<sup>8</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.

5(1)(b). We note that section 5(2)(b) is now in under Principles at section 1B (l) We think they should both remain as Purposes of the Act. We do not think that the deletion of these sections as fundamental objects of the Act will improve access to the law and the safety of women and children or other victims of domestic violence<sup>9</sup>.

### **3. Principles of the Act**

#### *New Section 1B*

**3.12** This new section lists the principles of the Act and identifies who is most vulnerable to domestic violence, highlighting the impact on children. Principle 1 B(c) notes that children are at risk of harm “including seeing or hearing violence.” The research literature is clear that it is the exposure of children to violence which causes harm. They do not have to see or hear it but simply be in an environment where it is occurring. For example, one primary school age child reportedly said to her mother very matter of factly, when observing that she had yet another black eye, “Did daddy hit you again last night mummy?” The behaviour and the after effects had become normative to her.

**3.12** Exposure to domestic violence produces similarly harmful effects to that of experiencing actual child abuse<sup>10</sup>. Exposure to such violence includes witnessing, seeing and hearing such violence; being used as a tool by the abuser, for example, by monitoring the mother; and being present during the incidents that lead to physical violence such as the rising tension.<sup>11</sup>

**3.13** We note that the principles listed in this section do not make any reference to the vulnerability of women, LGBTI communities<sup>12</sup>, the disabled<sup>13</sup> or to Māori and Pāsifika, all of whom feature more predominantly in the prevalence statistics in relation to domestic violence.

**3.14** We also do not agree with 1B (f) which states that perpetrators should “in some cases be required to engage with services to help them stop and prevent their family

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<sup>9</sup> Laing, L. (2016). Secondary Victimization: Domestic violence survivors navigating the family law system. *Violence Against Women, Online first*, 1-22. doi:DOI: 10.1177/1077801216659942

<sup>10</sup> Edleson, J.L., Mbilinyi, L.F., Beeman, S.K. & Hagemester, A.K. (2003). How children are involved in adult domestic violence: Results from a four-city telephone survey. *Journal of Interpersonal Violence, 18*(1), 18-32.

<sup>11</sup> Bancroft, L., Ritchie & Silverman, J. G. (2012). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics*. (2<sup>nd</sup> Edition) Thousand Oaks/New Delhi/London: Sage.

Edleson, J.L. (2013). *Domestic violence in the lives of children*. Plenary presented at the New Zealand Family Violence Clearinghouse and Families Commission Conference: Wellington. Available at [www.nzfvc.org.nz/files/Edleson](http://www.nzfvc.org.nz/files/Edleson)

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.

<sup>12</sup> Carlton, J. M., Cattaneo, L. B., & Gabhard, K. T. (2015). Barriers to help seeking for lesbian, gay, bisexual, transgender and queer survivors of intimate partner violence. *Trauma Violence Abuse* (May 15) e-version. doi: 10.1177/1524838015585318

<sup>13</sup> Roguski, M. (2013). *The hidden abuse of disabled people residing in the community: An exploratory study*. (Report). Gisborne: Kaitiaki Research and Evaluation.

violence". This is a substantial change from the compulsion to attend a service in the existing Act and provides too much discretion, thereby allowing perpetrators of violence to avoid attending stopping violence services and therefore being monitored.

#### **4. Definitions**

*Clause 8 amending Section 2.*

##### **Definition of child.**

**3.15** We support the change in the definition of child to a person under 18 years regardless of marital or de facto status. We believe this will assist with safety. However, consideration should be given to maintaining the protection of children into adulthood. The assumption appears to be that an adult child will no longer require protection, however, there is no evidence that this assumption is correct. Allowing an adult child to have protection maintained would avoid the expense to them of seeking legal protection once they reach 18 years.

We support the inclusion of any child who ordinarily or periodically resides with the applicant regardless of whether or not they were born before or after when the order was made.

##### **Contact**

**3.16** We support the inclusion of this definition. However, we believe that "indirect contact" should also include waiting outside the applicant's residence or work, parking a vehicle within sight or near the applicant's residence or work place, blocking the applicant's entranceway or driveway or being outside or at the applicant's residence or place of work, placing themselves in a known pathway of the applicant in a public place, and not removing themselves from a place when the applicant is clearly present.

The definition could also include the use of other family and community members, such as the church, to harass, abuse and taunt.

##### **Digital Communication**

**3.17** We support the inclusion of the definition for digital communication.

##### **Family relationship and family violence**

**3.18** As noted previously we do not support any changes that occur through changing from domestic violence to family violence. We note that these changes narrow potential applicants to those in a family or whānau relationship (current or past) and exclude those in dating relationships.

##### **Approved organisation**

**3.19** We support the approval of organisations for work in this area as the work requires specialist knowledge. Approved organisations should also include approved

culturally specific organisations such as Māori and Pāsifika providers who are able to demonstrate cultural responsiveness capability.

### **Ill-treat**

**3.20** We support the inclusion of the ill-treatment of animals. Consideration should also be given to threats to ill-treat or ill-treatment of children and other family or whānau members. Ill-treatment of children includes using the children as a carrier of objects, notes, messages that taunt, harass or abuse the other parent<sup>14</sup>.

### **5. Clause 9 new sections 3 3A and 3B**

#### **3.21** New Section 3 (1)

As stated previously, we prefer the retention of the term domestic violence.

### **Defining violence**

#### **3.22** New Section 3 (2) and 3 (3)

We believe these sections overly complicate the definition of violence and by introducing these sections there is a risk that applicants will have to carry out two stages of proof to obtain protection orders: that they have experienced physical, sexual or psychological violence that (a) has the effect of coercive control and that (b) may cause harm or cumulative harm.

Because physical, sexual and psychological violence are acts of violence they are, by their very nature, coercively controlling. The moment a woman experiences an act of violence she will regulate her behaviour in order to ensure that she does not experience another. The act produces coercive control.

**3.23** There is strong evidence that physical, sexual or psychological violence cause harm so adding this as a second standard of proof is unnecessary. In particular, violence affects people's human rights as stated under the 1948 Universal Declaration of Human Rights, including the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (Article 5) and the right to freedom of movement (Article 13). Astbury (2010, p. 25)<sup>15</sup> stated that gender-based violence affects women's rights to:

“dignity, liberty and security of person; their right to health given the multiple negative mental health outcomes of such violence; and in a significant number of cases, their right to life.”

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<sup>14</sup> Hayes, B. E. (2015). Indirect abuse involving children during the separation process. *Journal of Interpersonal Violence, Online first*, 1-23. doi: 10.1177/0886260515596533

<sup>15</sup> Asterbury, J. (2010) The social causes of women's depression. In D. C. Jack & A. Ali (Eds). *Silencing the self across cultures: Depression and gender in the social world*. Oxford: Oxford University Press,19-45.

Violence, by its very nature, limits the victim's agency and therefore their potential. Applicants should not have to reveal the mental and other health impacts of the violence<sup>16</sup> in order to get orders.

**3.24** We would suggest that sections 3 (2) and (3) be changed as follows:

In this section violence means a pattern of coercive control involving all or any of the following:

- (a) physical abuse
- (b) sexual abuse
- (c) psychological abuse

This definition would more realistically reflect the lived experience of victims of domestic violence, where coercive control is the predominant experience, reinforced by periodic episodes of physical, sexual and psychological abuse by the perpetrator<sup>17</sup>.

## **6. New section 3B**

### **3.25** New Section 3B (1)

This section changes the wording of psychological abuse from "including, but not limited to," to "includes". Although we note new Section 5A we are concerned that the definition of psychological abuse is not limited. We would like the new phrase to be "includes but is not limited to".

**3.26** There are many more forms of psychological abuse that victims experience, which are not listed. In particular, denying the essentials of living such as food, surveillance or stalking (constantly checking up on her)<sup>18</sup>, confinement<sup>19</sup> and/or entrapment<sup>20</sup>, degrading and humiliating name calling<sup>21</sup>, reproductive control<sup>22</sup>, and "gas-lighting" (or attempting to make the woman feel she is crazy by denying her

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- <sup>16</sup> Kwako, L. E., Glass, N., Campbell, J., Melvin, K., Barr, T., & Gill, J. M. (2011). Traumatic brain injury in intimate partner violence: A critical review of outcomes and mechanisms. *Trauma Violence Abuse, 12*(3), 115-126.
- Loxton, D., Schofield, M., & Hussain, R. (2006). Psychological health in midlife among women who have ever lived with a violent partner or spouse. *Journal of Interpersonal Violence, 21*(8), 1092-1108.
- Mechanic, M. B., Weaver, T. L., & Resick, P. A. (2008). Mental health consequences of intimate partner abuse: A multidimensional assessment of four different forms of abuse. *Violence Against Women, 14*(6), 634-654.
- <sup>17</sup> Stark, E. (2007). *Coercive Control: How men entrap women in personal life*. Oxford/New York: Oxford University Press.
- <sup>18</sup> Melton, H. (2007). Predicting the occurrence of stalking in relationships characterized by domestic violence. *Journal of Interpersonal Violence, 22*(1), 3-25.
- Logan, T. K., & Walker, R. (2009). Partner stalking: Psychological dominance or "Business as usual"? *Trauma, Violence & Abuse, 10*(3), 247-270.
- <sup>19</sup> Hilton, N. Z., Harris, G. T., & Rice, M. E. (2010). *Risk assessment for domestically violent men: Tools for criminal justice, offender intervention, and victim services*. Washington DC: American Psychological Association.
- <sup>20</sup> Stark, E. (2007). *Coercive Control: How men entrap women in personal life*. Oxford/New York: Oxford University Press.
- <sup>21</sup> Jacobson, N., & Gottman, J. (1998). *When Men Batter Women: New insights into ending abusive relationships*. New York: Simon & Schuster.
- <sup>22</sup> de Bocanegra, H. T., Rostovtseva, D. P., Khera, S., & Godhwani, N. (2010). Birth control sabotage and forced sex: Experiences reported by women in domestic violence shelters. *Violence Against Women, 16*(5), 601-612.
- Moore, A. M., Frohwirth, L., & Miller, E. (2010). Male reproductive control of women who have experienced intimate partner violence in the United States. *Social Science and Medicine, 70*, 1737-1744.
- Taft, A. J., & Watson, L. F. (2008). Depression and termination of pregnancy (induced abortion) in a national cohort of young Australian women: the confounding effect of women's experience of violence. *BMC Public Health, 8*(75), 8 pages.

reality) are not listed here but are common forms of psychological abuse experienced by women living in this context.

**3.27** New section 3B(1)(e) inserts “unreasonably” before denying or limiting access to financial resources. We are concerned that this insertion will allow arguments about what is and is not reasonable control of finances, suggesting patriarchal control. We would prefer the exceptions to be named, allowing more public scrutiny. Denying or limiting access to financial resources allows the perpetrator to control the victim’s access to the essentials of living. It is important that the Act protect the victim’s right to finances including access to essentials such as food, health services, clothing and shelter as well as any other requirements for the protection of dignity and self-respect<sup>23</sup>.

### ***Access to Safety for the Disabled and Elderly***

**3.28** There is no provision in the Act for the seeking of protection orders by those people or their representatives who reside in rest-homes or in care. We are aware that some of these residents have suffered abuse at the hands of their care-givers. We believe that residents and their families should have access to protection orders in order to ensure that the vulnerable person does not suffer any further violence or harm (see below).

#### ***1. Definitions***

**3.29** For older and disabled women and men the relationships that the concept of domestic can include are much wider than for younger and/or able-bodied people, as disabled and older people are often reliant on a range of people to support them and in some cases to perform very intimate functions<sup>24</sup>. This can include family, friends and partners but can also be paid or unpaid carers and support people and those who provide medical, welfare, transport and other services. While some of these relationships are included within the Domestic Violence Act, many are not, as the current Act specifically excludes people who are in employee - employer or landlord - tenant relationships, which effectively excludes many carers and support people and the myriad of health, education and social service professionals who may be intimately involved in a disabled/older person’s life. As the new Bill is only changing the word domestic to family, this exclusion will continue.

#### ***2. Relationships between a support worker/carer and a disabled person***

**3.30** The law is particularly unclear around the relationship between disabled people and their support workers/carers (unless they are family members).<sup>25</sup> The Domestic

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<sup>23</sup> Postmus, J. L., Plummer, S.-B., McMahon, S., & Murshid, N. S. (2012). Understanding economic abuse in the lives of survivors. *Journal of Interpersonal Violence*, 27(3), 411-430.

<sup>24</sup> Gilson, S. F., Cramer, E. P. & DePoy, E. (2001) Redefining abuse of women with disabilities: a paradox of limitation and expansion. *Affilia* 16 (2) 220- 235

<sup>25</sup> Grammer, B., Russell, D., Van Eden, K. (2013) Putting People First  
A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services

Violence Act should cover these relationships, when the relationship is close and personal. Changing the name of domestic violence to family violence is a step in the wrong direction for being inclusive of these relationships.

**3.31** Some relationships between support workers and disabled people are long-established, close and personal. They can involve a support worker having access to a person's home and significant involvement in their private life, including very intimate functions. This can give them significant control and power over a person's life.

**3.32** Participants in Debbie Hager's PhD research<sup>26</sup> talked about disabled children and adults who experience intimate handling from personal support staff which makes it difficult to identify where necessary but rough or incompetent treatment becomes abusive, incompetent and invasive.

“But I think when disabled kids are talked to about the good and bad touching, the bad, the touching is so random often, especially if you've got a really high form of physical disability, that touching always happens and so your body isn't your own, you know? And so, from that point onwards for lots of young people and kids that, you know, that it starts off, it's a game, not being in control, but that's, this is the real practical stuff... and they can become desensitised to what it means” (PhD research participant, 2015).

**3.33** Closely related to this, for women who have very few choices over where they live, who they live with and who provides intimate support, is the fear of speaking up about abuse because of the risk of retribution and losing the small amount of stability and support that they have.

**3.34** Currently, courts cannot find a relationship to be a domestic relationship if it is an employer-employee relationship. This poses potential issues for people using Individualised Funding or any support arrangement where they employ a support worker.

**3.35** CCS Disability, in their submission to the original discussion document, proposed that the law was changed to give courts the discretion to decide if a support worker and disabled person's relationship meets the threshold of a close personal relationship, regardless of any employer-employee relationship. Currently, the courts have no discretion. The change should only apply to employment relationships that involve the provision of support services. For people, not in a direct employment relationship with a support worker, the new law should also cover relationships that are close and personal. For example, it should cover people living in residential group homes or people accessing home and community support services through a provider.

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<sup>26</sup> Hager, D. (2015) PhD forthcoming

**3.36** In residential group homes the existing law should cover both relationships between residents as well as relationships between support workers and residents, where the relationship is close and personal and the resident is not the support worker's employer. Yet even in these situations there still appears to be ambiguity about the relationship between support worker's and residents.

**3.37** One way to reduce the ambiguity may be to add a criterion to the threshold criteria for a close personal relationship: that Court's and the police can take into account whether the person in the relationship is reliant on the other person for significant care and/or support. This may increase awareness that support workers working in a person's home (whether it be a residential facilities or private home) can be in a domestic relationship, providing other criteria around the nature and intensity of the relationship are met.

**3.38** This added discretion to include employment relationships involving support services would be much more inclusive of disabled and some elderly people's domestic circumstances. There could still be a degree of ambiguity. Courts and the police would have to judge whether a relationship is close enough to justify being classified as a domestic relationship. The aim is to reduce the ambiguity. Any change would need to be accompanied by guidance and training. Judges and the police need to understand disability and the relationships that exist between carers and disabled people and the intent of the changes.

### ***3. Denying access to support and/or equipment***

**3.39** The law also does not currently explicitly cover situations where a person in a domestic relationship deliberately denies the other person access to support and/or equipment they need to be independent and/or have a good quality of life. We feel it would add an extra layer of protection to explicitly mention this situation in the Act.

#### **3.40 We therefore suggest:**

The following wording is added to Section 4, subsection 3a of the Domestic Violence Act 1995:

- (a) an employer-employee relationship, unless that relationship is for the provision of personal support and/or care:

The following wording is added to Section 4, subsection 4a of the Domestic Violence Act 1995 (Changes in red):

- (iv) any reliance of the person on the other person for significant personal care, food, medicine and/or support.

The following wording is added to Section 3, subsection 2c of the Domestic Violence Act 1995 which defines psychological abuse:

- (vi) denying or limiting access to support, medication, communication or mobility aids or equipment that a person needs to be independent and/or have a good quality of life.

### **3.41 We also support the following provisions proposed by others:**

- Disabled people in domestic violence situations should have their accommodation needs receive priority when making protection orders.
- Access to protection orders should be improved in terms of the forms required to be completed (simplified) and the process followed. Evidence of supported decision making should be required in the protection order process.
- An Office of a Public Guardian should be created under the Act and added to the list of people eligible to apply for protection orders on behalf of the disabled person.
- The law should provide more means to proactively check on adults who have care and support needs, and is experiencing (or is at risk of) abuse and neglect and as a result of those needs is unable to protect themselves against the abuse or neglect (or the risk of it).

### ***4. Changes to policy***

**3.42** In 2010 changes were made to the Solicitor General's guidelines for prosecution (Crown Law, 2013), which increased the threshold for evidence required in order for crimes to be prosecuted. This means that in cases where it is he says/she says (domestic and sexual violence) the prosecutor is less likely to proceed to prosecution as police find it difficult to gather sufficient evidence – especially if the abuse occurred in private and left no physical marks or if rape myths and other myths hinder belief in the victim's veracity. A disclosure of abuse against a disabled person is even less likely to proceed to prosecution as it is a strongly held opinion of many police and judges that disabled people will not make credible witnesses in court.

This situation was described in Debbie Hager's PhD research:

“I know from personal experience - my sister who lives with Idea Services had been assaulted by staff within the place where she was living. And the prosecution of that person wasn't taken forward by the police because they believed that the only witnesses were other people living in the facility and although those people are quite articulate and able to speak for themselves, and probably the main reason for their being there is actually their physical disability, they do have a, kind of a disability component, but quite able to describe in detail, she was lying on the couch and didn't wanna go to bed, the staff member came in and dragged her across the floor kicking her as she went. If you can say that, to me that's adequate testimony. But the police believed that that wasn't gonna be sufficient. Or a credible witness because of the fact of their living in an institution and having an intellectual disability. So nothing was done about that, other than the person losing their job.” (PhD participant, 2015).

**3.43** This lack of credibility extends to people who communicate in alternative ways. Support and training that challenges the stereotypes about disabled people, such as being 'childlike', will help their complaints to be taken seriously by those around them, including the police who might be asked to investigate such complaints.

Policies that promote better understanding of those with a disability would improve our ability to ensure they are given the same rights to protection.

### ***5. People in need of safeguarding***

**3.44** There are some critical situations of risk that are caused by gaps in current policy and legislation for people such as people with learning disabilities. What is needed is a legal framework with an integrated approach. This recognises the circumstances in which an adult who is experiencing family violence or sexual violence is in need of safeguarding and that ensures safeguarding procedures are implemented.

**3.45** No statutory organisation in New Zealand is responsible for safeguarding adults, in the same way that Child, Youth and Family protects children. In England, for example safeguarding procedures require each Local Authority to establish local safeguarding multi-agency policy, procedures and practice for working with adults at risk of abuse and neglect. The UK Care Act is a great example of legislation that supports agencies to work together to reduce adult abuse and improve outcomes for vulnerable adults. Such a framework in New Zealand would ensure all parts of the system protect adults who fall within the definition of a vulnerable adult. An adult in need of safeguarding is described as an adult who has needs for care and support and is experiencing (or is at risk of) abuse and neglect and as a result of those needs is unable to protect her/himself against the abuse or neglect (or the risk of it).

**3.46** An integrated system response to safeguard adults, such as that proposed by Keeping Safe, Feeling Safe (People First), will support agencies to work together to respond to family violence. This would be in addition to the inclusion of disabled people in the Family, Whānau and Domestic Violence Act. Most disabled and elderly people are not vulnerable adults, yet still deserve protection from violence in intimate and domestic relationships.

#### ***Current Bill discriminatory.***

**3.47** When we have inquired about the inclusion of disabled people's circumstances in this Bill we have been told:

- that they are included – or-
- that crimes against them can be prosecuted under the Crimes Act.

We have conducted a brief analysis of the existing Domestic Violence Act, the Crimes Act and the proposed Family Violence Bill (see below) to look at the potential for justice for abused disabled people. We find that none of these provide protection and justice for disabled and some elderly people.

**3.48** This is discrimination under both the CRPD – in particular Articles 5, 6, 7, 10, 12, 13, 14, 15, and 16; and CEDAW – in particular Articles 3, 15 and 16. Therefore we urge you to amend the proposed Family Violence Bill to ensure that it is inclusive of disabled and elderly people's circumstances.

## ***Safety and the Domestic Violence Act***

### **1. Consent to contact**

New section 10.

**3.49** We are concerned about the introduction of this section, which makes exception to the contact on the provision of the applicant's consent. We are not convinced that consent can be given freely when the applicant is experiencing coercive control and violence from the perpetrator. Consent for contact should not be assumed when the perpetrator is living with the applicant, because the applicant may not have consented to his entering her premises. Visiting the respondent in prison is not necessarily without coercion.

### **2. Interim parenting orders**

**3.50** Clause 24 New section 28B (4) concerning interim parenting orders. We support the protection of children and understand that this order would be taken to be an interim parenting order made under section 48(1) of the Care of Children Act 2004.

**3.51** We are concerned that this consistency in application should not cause any delay in the provision of protection orders to the applicant and her children. An applicant who has children has the same right to safety as any other person and the expectation is that these orders will be made in a speedy way in order to ensure the victim's safety and that of her children.

**3.52** There is evidence to show the overlap between domestic violence and child abuse<sup>27</sup> and that the parenting of perpetrators of domestic violence is problematic and can involve the use of the children to further harm the victim<sup>28</sup>. Our experience is that decisions concerning the children can become a site for further power and control practices against the victim and punishment of her. Some children have been killed in this context<sup>29</sup>. Speedy orders that protect the children are therefore imperative.

### **3. Discharging the order**

#### **New section 47 (1A)**

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<sup>27</sup> Knickerbocker, L., Heyman, R. E., & Smith Slep, A. M. (2007). Co-occurrence of child and partner maltreatment. *European Psychologist, 12*(1), 36-44.

Edleson, J. L. (1999). The overlap between child maltreatment and woman battering. *Violence Against Women, 5*(2), 134-154.

Hayes, B. E. (2015). Indirect abuse involving children during the separation process. *Journal of Interpersonal Violence, Online first*, 1-23. doi:DOI: 10.1177/0886260515596533

<sup>28</sup> Bancroft, Silverman & Ritchie, (2012). *The Batterer as Parent: Addressing the impact of domestic violence on family dynamics (2<sup>nd</sup> edition)*. Thousand Oaks/New Delhi/London: Sage.

<sup>29</sup> Martin, J., & Pritchard, R. (2010). *Learning from tragedy: Homicide within families in New Zealand 2002-2006*. MSD: Wellington.

Browns, T. (2015, 21 April 2015). Livingstone Inquest: Killer father deceived psychiatrist, News. *New Zealand Herald*. Retrieved from [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11435540](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11435540)

**3.53** We support the prohibition of the discharging of the order unless satisfied that the order is no longer necessary for the protection of any protected person. We believe that pressure is sometimes placed on the applicant to discharge the order because the presence of the order is detrimental to the respondent when seeking care of the children under the Care of Children Act 2004. We believe that judges have to treat any application for discharge with considerable caution.

Under new section 47 (1B) we suggest that the Court should also take into account any breaches of other orders (such as trespass and restraining orders under the Harassment Act), any assault charges heard through the Criminal Court and the respondent's criminal record.

#### ***4. Breaching the order***

**3.54** We support the extension of section 49 (1) in New section 49 (1).

**3.55** We support the extension of the powers to arrest in new section 50

#### ***5. Programmes***

**3.56** We support the new Part 2A requirement for approved assessors to undertake assessments for stopping violence programmes and understand that the service provider will no longer include assessment, which will be undertaken by a prescribed service. We understand that the approved assessor may be part of the prescribed service but they may not be.

**3.57** From a programme and cultural perspective, the relationship built between the assessor and respondent of a programme is critical to the retention of the respondent on a programme and the quality of their engagement in the programme. If assessments were "out-sourced" or done elsewhere, it is highly likely that it will impact on the respondent's engagement and retention levels in programmes therefore the effectiveness. Culturally, there is a multitude of evidence that gives importance to relationship/whakawhanaungatanga that is critical to the effectiveness of their engagement and levels of participation. Placing any respondent in a programme without this mechanism will severely affect the outcomes and success of the programmes.

**3.58** We think there needs to be a distinction made between women and men respondents. We would not support assessments of women respondents by an agency which does not specialise in women or LGBTI. Coalition providers of programmes to women respondents have found that approximately 90% of female respondents to their non-violence programmes are primary victims who have been charged with domestic violence because of retaliation or self-defence. Specialist knowledge of women who are victims of domestic violence means that these providers are able to identify and respond more effectively to these women.

**3.59** We support the requirements of new section 51C that the service provider must report safety concerns not only to the Registrar but also to the District

Commander of the Police and, if there is a risk to children, to the Chief Executive of the department responsible for the administration of the Children Young Person's and Their Families Act 1989.

**3.60** We support New Section 51D(2) which states that the Judge or Registrar must inform the applicant of the applicant's right to make a request for a safety programme.

### **New Sections 51.**

**3.61** We support the flexible provision of programmes to a respondent depending on the assessed readiness for change of the respondent and assuming that all programme providers are adequately educated about the nature and dynamics of domestic violence and the coercively controlling practices that constitute domestic violence. We also suggest that all programme providers will be required to undertake on-going training and that the Ministry of Justice ensures that training will be made available for providers to attend.

**3.62** We are concerned that the introduction of an approved assessor might result in a delay between the assessment of the respondent and the introduction of the respondent to the approved programme. Any delays are likely to introduce safety concerns. We suggest that a mechanism is introduced to ensure that delays between assessment and programme provision are kept to a minimum.

### ***6. Non-compliance with direction***

**3.63** We support the requirements on service providers of programmes to the respondent to report non-compliance with the programme to the Registrar or if it is no longer appropriate for the service provider to provide the programme. We agree that it is important that the Court and potentially the police are informed of any failure on the part of the respondent to act to change the abusive behaviour.

**3.64** We support the increased accountability of the Registrar and the Judge to ensure that matters concerning non-compliance are addressed.

### **Part 6B**

#### ***Information requests***

#### **Section 124T**

**3.65** We support the sharing of information between agencies solely for the purposes of increasing the safety of victims of domestic violence and their children. However, such information must be focused on the safety concerns, and evidence based rather than anecdotal. We have had experience of shared information that has been false because care was not taken to ensure that the names of people were the actual people involved (for example, John Smith may refer to a number of people).

**3.66** We support the development of a Code of Practice for the safe sharing of information and for the safe provision of services. We suggest that these Codes of Practice be developed speedily in order to ensure that they are in place before the changes to Acts come into force.

#### **Amendments to the Bail Act.**

**3.67** We support New Section 21 (2A) which means that when granting police bail consideration must be given to the safety of the victim when the victim is of an alleged family violence offence and anyone in a relationship with the victim. We support new section 30AAA which is concerned with similar safety provision regarding court bail.

**3.68** We support New Section 21 (3) which states that the safety and protection of this victim is paramount.

#### **Amendments to the Care of Children Act 2004.**

**3.69** We support New Section 5A (3) which requires the court to have regard to any convictions for an offence against section 49 of the revised DVA involving breaches of the protection order or any other family violence offence. We suggest that consideration should also be given to the court having regard to any charges and convictions for assault of any form and any imprisonment of the respondent.

**3.70** We support Clause 88 only if section 46E makes clear that no person who has been subject to a domestic violence need participate in a dispute resolution process or any other form of mediation with the perpetrator of the violence exercised against them.

**3.71** We support the insertion of new Section 57A, which gives the court power to make an incidental temporary protection order.

**3.72** We believe that sections should be added to the Care of the Children Act and the Domestic Violence Act that prevent the use of the discredited concept of Parental Alienation and Parental Alienation Syndrome. Accusations of Parental Alienation are usually levelled against the mother when she has made allegations that the man has used violence against her. They deflect the court's attention away from abuse and violence thereby impeding any attention to the woman and children's safety<sup>30</sup>.

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<sup>30</sup> Hoult, J. (2006). The evidentiary admissibility of parental alienation syndrome: Science, Law, and Policy. *Children's Legal Rights Journal*, 26(1), 1-61.

Jeffries, S. (2016). In the best interests of the abuser: Coercive control, child custody proceedings and the "expert" assessment that guide judicial determinations. *Laws*, 5(14), 1-17. doi:10.3390/laws5010014

Meier, J. S. (2010). Getting Real About Abuse and Alienation: A Critique of Drozd and Olesen's Decision Tree. *Journal of Child Custody*, 7(4), 219-252. doi:10.1080/15379418.2010.521032

## **Amendments to the Crimes Act 1961**

### **1. Coerced Marriage or civil union**

**3.73** We support the amendments to the Crimes Act 1961 concerning coerced marriage or civil union and the replacement of section 208.

### **2. Strangulation**

New section 189A

**3.74** We support the insertion of new section 189A, which makes blocking or impeding a person's breathing an offense. We understand this action to be exceedingly dangerous and believe it should be treated accordingly.

## **Amendments to the Evidence Act 2006**

**3.75** We support the insertion of new section 106A which provides for a victim of domestic violence to give their evidence via video.

## **Amendments to the Sentencing Act 2002**

**3.76** We support the inclusion of new section 123CA concerning the sharing of information to assessors or service providers to help them perform their functions under the DVA or amended Act. We support the naming of the specific documents, which are to be shared. However, we request that all matters to do with the sharing of information are part of a Code of Practice and that this Code of Practice is developed with the Privacy Commissioner.

## **Amendments to the Criminal Procedures Act.**

### **No contact**

**3.77** We support the inclusion of sections 168A and 168B and associated changes which allow Corrections to limit contact of a prisoner with a victim or associated victim of domestic violence. We are aware that those people who are imprisoned as perpetrators of domestic violence are some of the individuals most at risk of causing serious harm and even death to their victims and the victims' children, family or whānau and associates. We are aware that some of these victims are coerced into visiting.

**3.78** We believe that victims of domestic violence and their children, who are associated with a primary aggressor who has been imprisoned, should be able to get on with their lives. The prisoner's rehabilitation should not be at a cost to their well-being. There is a body of research which shows that children of such prisoners may suffer as a consequence of a parent's imprisonment and that children may be harmed by such contact<sup>31</sup>.

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<sup>31</sup> Murray, J., & Farrington, D. P. (2008). Parental imprisonment: Long-lasting effects on boys' internalizing problems through the life course. *Development and Psychopathology, 20*, 273-290. doi:10.1017/S0954579408000138  
Murray, J., & Murray, L. (2010). Parental incarceration, attachment and child psychopathology. *Attachment and Human*

We believe that these provisions should be able to over-ride any contact arrangements made through the Care of Children Act 2004.

**3.79** There is a proviso, however, with regard to women who have been imprisoned for domestic violence. Because of our experience that many women are charged when they have used self-defence we are concerned that attention is paid to whether these imprisoned women are primary perpetrators or victims of domestic violence. If the woman is a primary victim of domestic violence and it is in her children's interest to maintain a relationship with her then we would expect that there is enough flexibility in this provision to allow contact in these circumstances.

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## **About the New Zealand Psychological Society**

The NZPsS is the largest professional association for psychologists in Aotearoa New Zealand with over 1700 members and subscribers. The NZPsS aims to improve individual and community wellbeing by representing, promoting and advancing the scientific discipline of psychology and psychology practice. Many of our members are engaged in work across the health, justice, education and other sectors.

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

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

### **Members:**

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

### **Networking:**

Tu Wahine, which provides violence prevention, services for Maori, works in parallel

with the Coalition which also links in with the National NGO Alliance, a collective of national agencies including Jigsaw, the National Network of Stopping Violence Services and the National Network of Independent Women's Refuges.

### **Contact details**

Any comments on this submission or requests for further information should be addressed to:

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