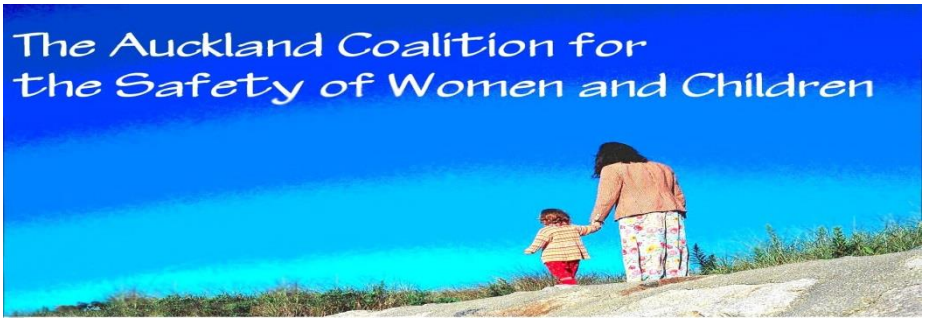

Submission to the Review of the 2014 Family Court Reforms – Second Round

March 2019

Contact:
Leonie Morris
Coordinator
Auckland Coalition for the Safety of Women and Children
PO Box 78 271
Grey Lynn
Auckland 1021

The news headline "*Andrew Little to UN: New Zealand is failing women and our justice system is broken"*[1] suggests that the government is aware of, and concerned to address, the harm done to women by the justice system – in particular in the Family Court. However, the report that has been released, *Strengthening the family justice system. A consultation document released by the Independent Panel examining the 2014 family justice reforms*, while acknowledging "*concern about how the Family Court and related services deal with family violence and its effect on children and families",* suggests very few initiatives that will address the systemic violence the court subjects women and children to when they seek the Family Court's services to escape violence and abuse.

Key points:

- Women and children do not make up abuse – research shows that they generally under-report and minimise it
- Rather than domestic violence being an exceptional circumstance in the Family Court, a significant number of cases that come to the Court involve allegations of violence, coercion or abuse. It is the Family Court to which victims of violence turn to find protection from violence. The Court's policies and processes should not add further barriers to adult and child victims obtaining such protection.
- We strongly support the reintroduction of Section 61 of COCA – and recommend also reintroducing Section 60. The Family Court must not make parenting arrangements for children unless it is satisfied that the children will be safe during

[1] Dileepa Fonseka, Stuff, Jan 22, 2019

these arrangements. S.61 creates the statutory mandated risk assessment by which the Court can assess whether the child will be safe.

- There needs to be screening for violence, coercion and abuse at every step in the Court proceedings. This screening must always be carried out by specialist domestic violence workers.
- Include 'fear' (of further harm, of previous harm, of an abusers behaviours), in every risk assessment, at every step, of the Family Court process
- Legal aid eligibility must be expanded to cover more Court applicants. Both the income and asset levels should be raised.
- Indeed, there should be no legal costs for women to engage in Family Court processes involving without notice applications. No one who seeks protection from the Court as a result of violence or exposure to it should be required to pay legal fees in order to obtain protection/safety.
- We totally oppose sanctions against applicants or their lawyers for without notice applications
- Everyone who is involved in the Family Court processes must be fully trained to understand the dynamics of violence and coercion, and the gendered nature of abuse, to ensure that they fully understand women and children's behaviours and disclosures.
- Reports to the Court must be from specialists trained in the area of domestic violence – i.e. risk assessments, psychologist's reports, lawyer for the child memoranda.
- Eliminate the requirements for mediation for any party or child who has been exposed to domestic violence, either prior to or at any stage of the Family Court process. The FDR processes posit the equal bargaining power of each party. Being the target of coercion or abuse and/or being exposed to violence counter-indicates the use of FDR and mediation

Introduction

In New Zealand 1 in 3 ever partnered women will experience psychological or physical and/or sexual abuse from their male partner or ex-partner during their lifetime[2]. For some populations of women these statistics are even higher. Maori women are more than 2 times as likely to be victims of domestic violence than non-Maori, (Te Puni Kokiri, 2017)[3], Pacific women and children experience high rates of physical and sexual violence (La Va, 2018)[4] and non-Western ethnic minorities are also at high risk[5]. Between 60 – 90% of all

[2] Fanslow, J., & Robinson, E. (2004). Violence against women in New Zealand: prevalence and health consequences. *New Zealand Medical Journal, 117 (*1206), 1-12.

[3] Te Puni Kokiri (2017). *Understanding family violence : Māori in New Zealand [Infographic]* Wellington, New Zealand: Te Puni Kokiri.

Fanslow, J., Robinson, E., Crengle, S., & Perese, L. (2010). Juxtaposing beliefs and reality: prevalence rates of intimate partner violence and attitudes to violence and gender roles reported by New Zealand women. *Violence Against Women, 16*(7), 812-831.

[4] Le Va (2018). https://www.leva.co.nz/our-work/violence-prevention/resources-research

[5] Paulin, J., & Edgar, N. (2013). *Towards freedom from violence: New Zealand family violence statistics disaggregated by ethnicity*. Wellington. Office of Ethnic Affairs. Retrieved from http://ethniccommunities.govt.nz/sites/default/files/files/Towards%20Freedom%20from%20Violence%20-%20NZ%20Family%20Violence%20Statistics%20Disaggregated%20by%20Ethnicity%20-%20Office%20of%20Ethnic%20Affairs%202013.pdf. Office of Ethnic Affairs.

disabled women are sexually, emotionally and/or physically abused[6]. International research indicates that LGBTI communities are also at higher risk[7] than mainstream women.

Many of the women who are abused have children. Most of these children are also abused and suffer the consequences of living in a violent, abusive situation[8] (See Appendix 2).

Prior to 2014, Dame Sylvia Cartwright and many others were quoted as saying "We have the best legislation in the world for dealing with violence". But in 2014, that system was changed, apparently in large part to save money. Now, instead of prioritising the safety children and their caregivers, we have a system that prioritises fiscal savings and contact over safety. We urge the review panel to correct the mistakes that were made in 2014 and reprioritise the safety of children and their mothers.

Background to the Review

Women and children's lives and their emotional, sexual and physical safety have been put at increased risk by a number of legislation and policy changes that occurred during the 9 years of the last National Government. These changes are outlined in Appendix 1. In particular, in the Family and Criminal Courts a number of changes occurred that significantly decreased the safety of women and children seeking to escape abusive/coercive relationships.

1. Fewer protection orders being made final

2. Police investigation guidelines and policies which mean that only serious domestic violence is investigated and fewer cases are taken to court[9]

3. The changes to the Solicitor General's guidelines for prosecution, 2010, which increased the threshold for evidence 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 go forward with the case. We are certain this is a major reason for the decrease in domestic violence prosecutions in the past few years, especially in Auckland.

4. The agenda that has been adopted by the courts that makes the assumption of shared care the default position for orders in most cases.

5. Family legal professionals and Judges appear to be working with a number of misapprehensions about abusive men, and the safety of women and children. This

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[6] Hager, D. (2017). *Not inherently Vulnerable: An examination of paradigms, attitudes and systems that enable the abuse of disabled women*. A thesis submitted in fulfilment of the requirements for the degree of Doctor of Philosophy in Health Science, University of Auckland.

[7] 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). DOI: 10.1177/1524838015585318

[8] Murphy, C., Paton, N., Gulliver, P., & Fanslow, J. (2013). *Understanding connections and relationships: Child maltreatment, intimate partner violence and parenting* Auckland, New Zealand: New Zealand Family Violence Clearinghouse, The University of Auckland.

[9] ODARA: http://www.nzfvc.org.nz/?q=node/561

erroneous construction of the nature of domestic violence includes the idea that violence stops when women leave abusive relationships; an abusive husband/partner can still be a good father; and women who have concerns about their ex-partner's violence or neglect of children (or of their own safety during handovers etc.) are hostile, alienating and obstructive[10].

There has also been an assumption from judges that:

- men's poor parenting is just from lack of practice and will improve over time
- children's contact with their abusive father outweighs the harm caused by spending unsupervised time with him
- (a) even if he has committed violence against the child or their mother or anyone with whom the child has a domestic relationship,
- (b)with substance abuse or mental health problems, or
- (c) who neglects the welfare of his child

6. Judicial approaches to parenting orders, which fail to implement the law by instead adopting non-empirically based "typologies of violence" which trivialise the potential for, and effects of violence on women and children. Specifically, this refers to "separation violence", the violence that occurs at separation or within 18 months thereof. Based on lethality and serious injury risk assessments, this is the most dangerous time for women and their children (Ontario FV Lethality Assessment), but Courts too often see violence occurring during a this time as not indicating a predilection for, or pattern of, violence by the respondent.

No one who turns to the legal system for protection should be further abused by the processes employed by the Court. There is ample evidence that this has happened, and continues to happen. It arises because the Courts trivialise the occurrence of violence and its consequences and label as "historic" violence that is still all too real for the adult and child victims impacted and/or exposed to it.[11].

Domestic violence is the core work of the Family Court

If one looks at the number of applications for: protection orders; applications for parenting orders made containing domestic violence allegations; and matters arising under the Care of Children and Their Families Act, it becomes clear that a large percentage of the Family Court's work involves domestic violence. It is to the Family Court that adult and child victims of violence turn to obtain protection. When dealing with these cases, it is imperative that the processes and approaches adopted by the Family Court to handle its caseload do not re-expose victims and their whanau/families to further violence.

[10] 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.

[11] Coombes L. Morgan M. Blake, D. McGray, S. (2009) *Enhancing Safety, Survivors experiences of Viviana's advocacy at the Waitakere Family Violence Court*. Massey University, Palmerston North

The language used in the Court and by related professionals

There are a variety of terms used in the review document. For example, *complex cases, high conflict cases, situational violence, historical abuse*. To specialists in violence and abuse, all of these terms commonly indicate that there is, or has been domestic violence in the spousal relationship.

However, rather than these terms clarifying issues involved, the use of jargon such as *complex, high conflict and situational violence* invisibilises the violence that has occurred in the spousal relationship. The jargon also contributes to reframing the woman as entrenched, intransigent and/or even pathological (the partner who is at fault) rather than the target of her former partner's violence.

One indication of the minimising of violence that occurs in the Court process is the labelling of abuse as "historic'. Abusers do not perpetrate the same levels of violence at all times. They do not have to be physically or sexually violent all the time to achieve their objective. Once a woman (and the children) are frightened, all the perpetrator has to do is use certain language, behaviours or facial expressions to induce fear and have control. Many women talk about 'the look'. This is a particular signal to victims, including children, generally not obvious to people outside the relationship, which indicates to them that they must behave in a certain way and/or that there will be consequences for them later if they persist in certain behaviour. Fear is one of the main objectives of a pattern of coercive control[12] and/or violent behaviour – its purpose is to have power and control over another person (not over all people, so it is specific and often invisible to outsiders). This meaning is defined in the Family Violence Act 2018. (See footnote 13).

Mediators, counsellors, lawyers and Judges may often not appreciate what they were seeing and the control this imposes on what an abused woman/child can say and do.

Calling abuse "historic" is one way of trivialising the ongoing risk to children of further violence occurring to either themselves or to their primary caregiver.

It is a psychological truism that past behaviour is the primary indicator of what future behaviour will be.

This understanding of violence also relates to the term 'situational violence'. As identified in other parts of this submission, the most dangerous time for a woman is when she is planning to leave/leaving a relationship. Violence, coercion and abuse escalate during this

[12] The meaning of coercion from the Family Violence Act, 2018
S9.3 Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:
(a)
it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):
(b)
it causes the person, or may cause the person, cumulative harm.

time. Violence at separation should act as a red flag for lawyers, police, Judges and others – not provide an excuse for violence or a reason to minimise it.

The reframing of violence as 'conflict, 'complex relationships', 'situational' or 'historic' is enabling violence to be ignored and women to be judged and blamed for the violence they and their children have been endured/exposed to . The review must address this inequity.

On page 7 of the review document it states that one of the complications of the Family Court is the "*increasingly complicated cases that involve family violence, drug use, poverty, mental health issues and the changing nature of family structures and relationships*." Many of these things are domestic violence related – for example, the mental health of women as a consequence of living with violence and abuse; and drug and alcohol use also as a consequence of abuse[13]. Also, the poverty women experience after leaving abusive relationships is often a consequence of having lived with an abuser who controls his partner's finances or prevents her from keeping a job. Domestic violence is often the underlying reason for many of the complications.

All cases brought to the Family Court in which there are allegations of violence must be triaged by domestic violence professionals and there should be on-going screening by such professionals throughout the court process.

All staff – Judges, lawyers, court staff, psychologists, lawyers for the child etc, must be fully trained in the dynamics of violence to prevent the court re-abusing women and children including making orders that cause harm and undermine resilience.

<u>Recommendations</u>
The Court processes and approaches need to be constantly interrogated/vetted; triaged and on-going screening by domestic violence specialists is a primary requirement to ensure that the Family Justice system itself is not a source of victimisation and re-traumatisation. Include 'fear' (of further harm, of previous harm, of an abusers behaviours), in every risk assessment, at every step, of the Family Court process

All staff who are involved with the Family Court, including the two new positions suggested by the review panel, Judges, lawyers, court staff, psychologists, police, social workers, report writers etc, must be fully trained in the gendered dynamics of violence and its consequences for adult victims and children.

That the Courts stop using language that misrepresents violence against women as mutual, or that ignores/excuses/trivialises violence, coercion and abuse and instead names domestic violence specifically – physical, sexual, coercion and control – and the harm caused to children and their non-abusive care giver.

[13] Hager, D. (2001). *He drove me mad: The relationship between domestic violence and mental illness*. (Unpublished Master's thesis). Auckland, New Zealand: University of Auckland.

Paramountcy of the child

Section 5 of the Family Court Proceedings Reform Act, 2014, "Principles relating to child's welfare and best interests" states the principles relating to a child's welfare and best interests are that—

> *(a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence as defined in section 3(2) to (5) of the Domestic Violence Act 1995:*
>
> *"(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:*
>
> *"(c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians and any other person who has a role in his or her care:*
>
> *"(d) a child should have continuity in his or her care, development, and upbringing:*
>
> *"(e) a child's relationship with his or her parents, family group, whānau, hapu or iwi should be preserved and strengthened:*
>
> *"(f) a child's identity (including without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.*

When domestic violence has been present in the spousal relationship, there is frequently a contradiction between ensuring the safety of children and the assumption that parents should collaborate and consult. When there has been violence in a relationship, on-going contact between parents can be dangerous for women and harmful for children. Indeed, many researchers have found that the most dangerous time for a woman (for death or serious injury) is when she leaves a relationship with an abuser and takes the children[14]. It needs to be noted, that this most dangerous time is the very period when women are engaged in negotiating parenting arrangements. This latter fact reinforces the need for the Family Court to have rigorous on-going screening conducted by domestic violence specialists.

In all applications under the Care of Children Act, the welfare and best interests of the child/ren is the paramount consideration. As noted s.5A states:

> *a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi*

Section 5(a) is the only principle set out in the section 5 principles that is framed in mandatory language. All the other subsections state aspirational goals; s.5(a) states that the child's safety must be protected. Protecting the child from violence and prioritising safety over any other factor (including unsupervised contact with an abusive parent) is statutorily mandated.

Each process and approach utilised by the Family Court in dealing with parenting order applications under COCA (including the work of Lawyer for the Child and psychologists

[14] Accessed from http://cdhpi.ca/brief-1-domestic-violence-death-review-committees, February 2019

appointed by the Court) needs to be interrogated/vetted to demonstrate that the child's safety is not being compromised by these very approaches.

We support the re-enactment of ss.60 and 61 of COCA in order to ensure the safety of children. S60 says that if there has been violence/coercion in the relationship the Court cannot award anything except supervised access, unless the Court can be satisfied that the child will be safe. S61 then lists the factors that the Court must consider to make a determination of safety.

- There is now voluminous scholarly research describing and analysing the deleterious effects on children of being exposed to violence (see Appendix 2). There is also a great deal of scholarly research on the ways in which the resilience of children exposed to violence can be enhanced. Research stresses that for resilience to develop, the violence that the child experiences needs to stop and the non-violent caregiver made safe from on-going violence. It needs to be noted that "being exposed to violence" includes being the direct intentional target of violence, the unintended target (the baby who is dropped when his/her caregiver is abused) or "simply" witnessing or hearing such violence.

Given that New Zealand has the highest rates of child homicides in the OECD; it is amazing that cost saving considerations led the ss 60-61 rebuttable presumption against unsafe contact arrangements with violent parents to be removed. Rather than reinforce the focus on the safety of children (as required by the UN Convention on the Rights of the Child, which NZ is a signatory to) this omission allowed contact arrangements with abusers to triumph over children's safety.

Recent research highlights unequivocally the close links between domestic violence and child abuse. Under the NZ Domestic Violence Act 1995, abuse is defined as both the direct abuse of the child and the harmful effects, on the child, of living with and witnessing domestic violence[15]. Depending on the context, methodology and definitions used, it has been found that between 30% and 65% of the children of abused women are themselves abused. These children sustain psychological harm from being witnesses to violence against their mother and being themselves the targets of their father's violence.

Abuse, whether a child is abused directly, abused by exposure to the abuse of the other parent, or is neglected by the abusive parent during custody visits is de facto poor parenting. Any arrangement that gives the abusive parent shared parenting or unsupervised contact creates unacceptable risks for both the children and the abused parent and provides the abusive parent with too many opportunities to continue a pattern of intimidation and control. This means that requiring on-going negotiations between the parents over major

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[15] Hamby S, Finkelhor D, Turner H, Ormrod R. The overlap of witnessing partner violence with child maltreatment and other victimizations in a nationally representative survey of youth. Child Abuse and Neglect. 2010;34:734–41. http://www.unh.edu/ccrc/pdf/CV200.pdf

Edleson JL. The overlap between child maltreatment and woman abuse. VAWnet Applied Research Forum: National Online Resource Center on Violence Against Women, 1999. http://www.vawnet.org/applied-research-papers/print-document.php?doc_id=389

decisions involving the children is unacceptable, because the abused parent and children will remain hostage to the abusive parent's agenda.

From Sturge and Glaser, psychologists from whom the UK Solicitor General commissioned a Report on DV and Children:

> *There should be no automatic assumption that contact with a previously or currently violent parent is in the child's interests; if anything, the assumption should be in the opposite direction and the case of the non-residential parent one of proving why he can offer something of such benefit not only to the child, but to the child's situation, (i.e. act in a way that is supportive to the child's situation with his or her resident parent and able to be sensitive to and respond appropriately to the child's needs), that contact should be considered*[16].

What is more important to the functioning of the State than the safety of its citizens, particularly children? NZ guarantees this under the NZ Bill of Rights Act as well as by being signatories to UNCROC and CEDAW. Given our OECD record on child homicides, providing safety to our children and their mothers needs to be a paramount concern.

Recommendation
Sections 60-61 must be used in every case that is considered in the Family Court.

What is the 'harm' that the Family Court Proceeding Act should protect children from?
The New Zealand domestic violence legislation and judicial approaches to it, give/legitimise messages to police, perpetrators, victims and society about what is acceptable behaviour in relationships and to children. The legal system colludes with violence unless it gives clear and unambiguous messages that domestic violence is wrong and will not be tolerated. Section 5 of the Domestic Violence Act (DVA) specifically states that "*violence in all its forms is unacceptable behaviour*" but this is not the approach commonly taken by our Courts, even in cases of serious physical violence.

Violence is defined in the law (see Appendix 3) as physical sexual or psychological abuse, including behaviour that is "coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person), harming pets or other animals, threats of abuse, harassment and intimidation and isolating and denying access to education and employment. This legal definition of violence clearly states that violence against women is a pattern of behaviour – not isolated one off incidents as they are frequently described by the Courts, police and those who advise the Courts. When assessing for, and prosecuting, violence against women and children these definitions must be fully understood and used in the Court. It is not acceptable for Judges, police, psychologists and others to minimise the violence, coercion and abusive tactics used by men to frighten, harm and control women and children. The legal definition of domestic violence is written to guide all participants in the justice process – it must be used by the Family Courts as intended.

[16] Sturge, C.,& Glaser, D. (2000). Contact and domestic violence: the experts' court report. *Family Law*, 615-629.

However, this is difficult if the meaning of this definition is not fully understood by those people who must work with it. Women who are abused understand the definitions of violence – they live with these experiences/behaviours every day. But Judges, police and others associated with the justice system are not trained to fully understand the gendered dynamics of violence and this results in inadequate and dangerous interpretations of the law, and frequently behaviours from professionals that mirror the power and control (coercive) behaviours of abusers.

Recommendation

In order to prevent this occurring, it must be mandatory that everyone who is involved in the investigation and prosecution of domestic violence be trained in a gendered understanding and analysis of the dynamics of violence, including the processes of coercion and control, what these definitions mean in practice, the harm they cause to victims, and the danger and harm caused by the minimising of this behaviour. Without this understanding from all parties (police, Judges, court staff, psychologists, lawyers, court report writers, those who will go into the new positions suggested by the review, etc) Family Court orders are made that put children and their mothers at ongoing risk of long-term further harm.

What does *safe* mean?

The purpose of the Family Violence Act, 2018, is stated to be:

> *(1) …to stop and prevent family violence by—*
> ***(a)*** *recognising that family violence, in all its forms, is unacceptable; and*
> ***(b)*** *stopping and preventing perpetrators from inflicting family violence; and*
> ***(c)*** *keeping victims, including children, safe from family violence.*

What is not defined in the legislation is what safe means for abused women. Safe for children is also not described in this Act but is, as noted above, defined in the Care of Children Act s.5A

Not having a definition of safe anywhere in the legislation means that, unless the link is legislatively made with s5A, this concept, *safe*, can be interpreted in any way a Judge or other professional wants. It also means that the safety of parties can be negotiated – for example if a person is 'only' being psychologically abused a judge can discount the harm and fear this causes.

We believe that the word safe should be defined in the Family Violence. Act (2018) and the Family Court Proceedings Reform 2014 legislation and should mean for women and children:

- Having the same meaning as that of s5A
- Not subjected to any forms of violence, coercion, fear or bullying
- Not witness or be in the same household where violence and abuse are occurring
- Not have to associate with the abusive partner/parent without active supervision
- Women and children have to be able to disclose abuse without that abuse being used to further harm them – so they must be believed – and the Court must hear, believe and respond positively to disclosures of violence

- The Family Court must order provisions that relieve the fear that women and children have from prior abuse and the fear of ongoing or future abuse

One of the ongoing problems, noted by women and researchers, is that the Family Court frequently holds mothers (the non-abusive parent) responsible for the ongoing contact with the abusive parent and the ongoing safety of the child. Family legal professionals and Judges appear to be working with a number of misapprehensions about abusive men, and the safety of women and children. This erroneous construction of the nature of domestic violence includes the idea that violence stops when women leave abusive relationships; an abusive husband/partner can still be a good father; and women who have concerns about their ex-partner's violence or neglect of children (or of their own safety during handovers etc.) are hostile, alienating and obstructive[17].

Section 4 of the Family Court Proceedings Reform Act, 2014, that provides for the paramountcy of a child's welfare and best interests, makes it clear that, "*in respect of a person who is seeking to have a role in the upbringing of a child, account may be taken of that person's conduct to the extent that it unnecessarily delays decisions, is obstructive, or is otherwise relevant*." This section may seem to be constructive as it seemingly prevents men from using the courts to further harass and abuse their partners. However, if we examine the way this concept is being used in the courts it is increasingly used to paint women, who are concerned about their own and their children's safety, as obstructive and alienating[18].

How, therefore, are women's voices to be heard regarding the safety of their children? Will they be branded as "obstructers" or "alienators" if they continue to articulate/have concerns about the safety of their children when they are with their abusive fathers during unsupervised contact? Men's bad parenting is seemingly increasingly acceptable to judges while women are penalised and criminalised for trying to keep their children safe.[19] In what must surely not be in accord with the paramountcy principle, various reports demonstrate how a violent father's contact "rights" trump safety concerns about the child. There are many examples of unsafe contact orders in the name of the father's right to a normal relationship with his child. A v X and B v M[20], are two High Court judgments that

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[17] 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.

[18] See for example:
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.

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.

[19] ibid

[20] A v X [2005] NZ Family Law Review 123 (HC)
B v M [2005] NZ Family Law Review 1036 (HC)

dealt with this phrase as used by a Family Court judge in justifying unsupervised contact to a recidivist abuser.

If women are not considered to be reliable witnesses to the wellbeing of their children, and if children's safety is to paramount, there are questions which must be asked and addressed by this review.

- Who monitors the parenting of abusers with unsupervised access, even when there are Court imposed conditions on such contact? We note that Court imposed restrictions can include such things as: he (the abusive parent) can't be on P during access visits; or, he must not use pornography or have it in the house during access visits. Is it the responsibility of a child to monitor this? The non-abusive parent? How does the Court monitor compliance with the requirements and ensure the safety of children in the care of a person who has to have such restrictions placed on them?
- Who monitors the safety of women forced by the Courts to engage with their abuser to enable him to have access to the children?
- Who monitors the veracity of a complaint if a child reports violence, neglect, and/or sexual or other abuse from the abusive parent?
- Who monitors the veracity of a complaint if a mother reports violence, neglect and/or abuse from the abusive parent?
- Who has responsibility to report abuse?
- If women are forced to take this role, then are judged as alienating when they do report neglect and abuse, how are they meant to ensure their children's safety?

As domestic violence is not a subject that is taught to social workers, psychologists, Judges and others who have input into the Family Court system, there is no one in the present system who is qualified to monitor these situations.

Parental alienation

We have discussed the practice of labelling women as alienating above. It has come to our notice that there may be some Family Court Judges and psychologists working with them, who regularly use this concept to redefine women's concern about the risk to their children, who may have been further influenced by the conclusion about parental alienation arrived at in Lee Anne James' 2018 LLM thesis, *Parental Alienation: The New Zealand Approach*.

In her thesis, James states:

> *Violence and abuse clearly have a detrimental impact on children.[128] The relationship between justified estrangement (relating to abuse or neglect) and alienation must, therefore, be considered in terms of minimising the consequences of each where both are present. The level of or exposure to violence must clearly be considered in terms of the impact on a child. However, given the research findings [Sousa et al 2011],* ***assuming the risk of further abuse or violence could be prevented (where this had previously occurred), the research suggests the best outcomes for children is where he or she has an attachment to both parents even when there has been exposure to violence or abuse****." (emphasis added)*

We attach, in Appendix 4, an appraisal of this thesis, authored by Dr Neville Robertson, which specifically critiques James' conclusion. He analyses the sole source which James cites for her conclusion (Sousa et al 2011), and demonstrates that the Sousa article does not support James' conclusion.

Recommendation

If the Review Panel does not prohibit the use of alienation and/or alienation syndrome and related concepts in the Family Court, we request that the Panel initiates a retrospective review of all the cases where this, and related, concepts have been used and tracks the outcomes for the children.

Expert victim testimony

The Backbone Collective provided the Independent Panel examining the 2014 family justice reforms the extraordinary opportunity to hear direct commentary about the problems women have had using the Family Court to escape violence and abuse – and in fact, how the Court frequently appears to collude with abusers in the orders made, and treatment of women. In the 2018 consultation document the review panel state "*We would like to hear from users of the family justice system so we can understand the overall effect of the 2014 changes. We want to know if they are achieving outcomes that focus on a child's welfare and best interests*." Hundreds of women replied to the surveys distributed by the Backbone Collective, all telling similar stories about the poor decisions that the Court has made in regards to safety of children, failing to keep women safe, enabling abusers, making women responsible for the safety of their children and then sanctioning them – or removing their children when they disclose abuse that is occurring on access visits with their ex-partners. Yet the Review panel, having sought this information, has chosen to ignore it, privileging instead the testimonies of the professionals who have perpetrated these inequitable and dangerous processes and who will benefit professionally and financially from this system continuing.

Once again the legitimate voices of women who are disclosing violence, coercion and abuse from partners and the state, are being silenced and ignored. We cannot build healthy, safe and connected communities if the institutions that are entrusted with creating safety are riven with gender bias and are structurally re-abusing women and children who seek to escape violence.

Australian experience

Many of the ideas initiated in New Zealand in 2014, and now being reviewed, were tried in Australia under Commonwealth law changes brought in in 2006. Many of these changes were seen to be harmful to women and children and have since been amended.

In November 2011, the Commonwealth Parliament enacted reforms that amended a number of key sections of the Australian Family Law Act 1975 (Cth). The genesis of the new act emerged from a growing unease among researchers and practitioners across several disciplines. In particular, there was substantial concern about the ways in which families experiencing domestic and family violence were being managed within the new family law

system (ADFVCH 2012)[21]. Many of the provisions were repealed, as numerous studies demonstrated that women and children were at greater risk of violence, abuse and death from abusive partners/fathers as a consequence of the changes[22].

We strongly recommend the comprehensive Australian study by *Wilcox, K. Thematic review 2. Intersection of Family Law and Family and Domestic Violence (2012) Australian Domestic & Family Violence Clearinghouse. University of New South Wales Sydney NSW* http://pandora.nla.gov.au/pan/128101/20121214-0001/www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_2_Reissue.pdf

This paper outlines the evidence of harm caused particularly to children by the implementation of the 2006 legislation and is very relevant to the review that is currently being undertaken. Key points from the review are:

1. *… children who have experienced domestic violence remain exposed to contact with the perpetrator of violence after separation. Therefore, there is concerning potential for ongoing exposure to fear, trauma and harm for a growing number of children and their protective parent (upon whom their wellbeing is intertwined). This not only undermines safety but also reduces the capacity for women and children to recover and heal from abuse*

2. *… protective measures…have not appeared to be effective in protecting or providing safety and recovery pathways for victims of family violence, in part because of their overriding 'success' in entrenching a pro-contact imperative into parenting outcomes.*

3. *the family law system provides an additional layer of complexity and struggle for victims of family violence.*

4. *victims of family violence are not encouraged to disclose to family law system professionals and, when they do, they are often not believed.*

5. *separation cannot be relied upon as a pathway out of a violent relationship, given that contact arrangements provide a framework for potential ongoing interaction of victim and abuser that is sufficient to enable patterns of abuse to continue* (p.8).

What do the terms '*welfare and best interests of the child'* mean if they don't primarily mean the right to live in safety and, in the long term, the enhancement of a child's resilience and his or her ability to flourish?. The changes suggested so far in the review of the Family Court will not achieve either of these objectives.

[21] Wilcox, K. Thematic review 2. Intersection of Family Law and Family and Domestic Violence (2012) Australian Domestic & Family Violence Clearinghouse. University of New South Wales Sydney NSW http://pandora.nla.gov.au/pan/128101/20121214-0001/www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_2_Reissue.pdf

[22] ibid

Specific responses to the review document.

We are primarily proving feedback on the sections:

- limited participation of children in the issues that affect them and no certainty that their voices are heard
- concern about how the Family Court and related services deal with family violence and its effect on children and families.

On page 8 the report states "*Ultimately, the Family Court has a responsibility to ensure children's safety and wellbeing when they are making decisions about them*." Our comments are intended to support this occurring.

There should be no costs at all to women to engage in any Family Court process including no costs associated with without notice applications. The costs of these processes have been prohibitive for many women wanting to leave abusive partners. Many women in abusive relationships have no access to money of their own and therefore have no resources to share the very high costs that have been imposed by the 2014 reforms. When women leave an abusive relationship, they are usually poorer and have barely enough money for themselves and their children. Costs also provide another avenue for men to abuse women by refusing to pay their share and hence preventing women being able to make progress with their attempts to leave their abusive partners.

We totally oppose sanctions for without-notice applications – the only possible reason for this is to frighten women (and their lawyers) into not using the Family Court for safety and keeping women out of the system. Women have been applying for without-notice applications partly because of the dangerousness of their situations and partly because without this they were unable to get a lawyer. Once lawyers are reintroduced into the Family Court process from the beginning, there will be far fewer without-notice applications. Do the Labour/Green/New Zealand First coalition want what National wanted – to be able to show that the numbers of people using the Courts/experiencing violence, coercion and abuse in their relationships had fallen, by excluding so many women from using the system intended to support and help them escape?

We strongly support women getting legal aid and lawyers right from the start of the Family Court process. People with money (often abusers/men) have been able to get legal advice even before starting the process. Poorer people – usually women who have few or no assets after leaving an abusive partner – must also have an equal right to this representation from the beginning of the process. Legal aid must be non-refundable unless it is being used by an abuser to prolong the Court process and/or use the Court process to re-abuse their partner.

Reports to the Court must all be from domestic violence specialists, trained specifically in the gendered dynamics of violence, coercion and abuse. These reports would include risk assessments and psychologist's reports. Reintroduce reports 132 and 133 that assess the nature and seriousness of the violence and what the victim thinks is the likelihood of reoccurrence.

Questions from the review document.

Q1. What should be included in a comprehensive safety list?

- A definition of what safety means as an outcome for the Courts to achieve for women and children
- A very specific screening that is inclusive of all the various kinds of violence outlined in the legislation, including coercive control – and very specific screening for fear
- Bristol Clause (sections 60 – 61) lists for children
- Screening that includes disability and the particular risks and abusive behaviours associated with disability
- Screening that understands the particular needs and circumstances of Māori and other non-white women and the particular risks, violence and constraints they face.
- In order to gain this information every woman, and every child able to participate, should be triaged/assessed for domestic violence by a specialist domestic violence professional who has been trained to have a gendered understanding of coercion, power and control. Women and children must not be assessed by an untrained court worker or other untrained professional including psychologists or counsellors. Women and children must be reassessed at each stage of the Family court process - before counselling, when parenting orders are being discussed etc. If a woman is a domestic violence survivor the children are unsafe (from the perpetrator).

Q2. What information should be available to the Family Court to assess children's safety?

- The whole history of abuse from police, Oranga Tamariki and any other government and NGO agencies that have been involved with the family, particularly domestic and sexual violence specialists – but also generic social and health services.

Q3. What role should specialist family violence workers have in the Family Court? Should there be separate support workers for adults and children?

- Specialist staff should assess/triage women and children at all stages of the Family Court process, as discussed above.
- Psychologist and other reports should only be written by people with specialist training in domestic violence
- Counselling should only be carried out by people who are accredited to the Courts (similar to ACC accreditation) and who have had mandatory and ongoing training about the gendered dynamics of violence
- Professionals who are trained in the dynamics of domestic and sexual violence and neglect, and working with children should assess/triage children at all stages of the Family Court process, as discussed above.

Q4. Do you have any other suggestions for more child-responsive court processes or services?

- Reintroduce Sections 60 and 61 of the previous Family Court Proceedings Act
- All lawyers for the child must have mandatory and ongoing training in the gendered dynamics of domestic violence and the harms of violence for women and children

Q9. What information do you think would help service providers, community organisations, lawyers and family justice professionals to achieve a joined-up approach to the Family Justice Service?

Compressive, mandatory, ongoing training about:

- the dynamics of domestic and sexual violence
- the gendered nature of violence against women and children
- the harm caused to women and children by domestic and sexual violence
- the particular circumstances and expressions of violence against Maori, Pacific, migrant and refugee women
- the particular circumstances and expressions of violence against disabled people
- what safety means for women and children who have been abused
- what constructive empowering practice is, and what constitutes poor practice

This is necessary to ensure that everyone involved has a shared understanding of the particular problem they are working with and the most constructive ways to respond to minimise harm and increase safety and recovery.

Q10. Would the three proposed types of counselling meet parties' needs, or are there other gaps in the counselling services that need to be filled? For example, should there be counselling available to children?

- There should be counselling for children
- Women should never be directed to attend counselling sessions with their partners
- Information about the timing of counselling appointments, the venues for counselling or any other information that could put women or children at risk must not be shared with the abusive partner, his lawyers or other support people/professionals
- There should be no sanctions for not attending counselling
- Counselling should be voluntary – not mandatory. Mandatory counselling mirrors power and control of abusive partners and infringes women's rights as autonomous adults. Abused women have not committed any crime and should not be compelled to any action by the Court.

Q11. Are Parenting Through Separation/Family Dispute Resolution suppliers, Family Justice Service Coordinators and Judges best placed to refer people to counselling? Are there any other service providers who should be able to refer to counselling or should people be able to refer themselves?

- Any people in the process should be able to refer people to counselling, including the person themselves. However, we believe that both PTS and FDR should be discontinued.

Q12.Should confidentiality be waived when parties are directed by the court to therapeutic intervention, in what circumstances and about what matters?

- Confidentiality should be waived when the (specifically trained) counsellor or other professional hears any threats or other indications of violence, coercion or abuse towards the other party in the dispute.

Q13. Do you agree that there should be an expectation on parties to attend PTS , rather than having it as a compulsory step for everyone?

- We do not support the provision of this service when there is any form of coercion or violence/abuse in the relationship. If this service is retained it should be entirely voluntary for participants, with no coercion, costs or sanctions attached to attending or not attending. Also, if it is retained, everyone who provides the service must be fully trained in the gendered dynamics of violence before they can be employed and provide the service. None of these processes must be left to generic providers or organisations that are not domestic violence specialists. Any couple seeking this service must be fully assessed by domestic violence specialists to ensure that the relationship is not abusive before being able to start.

Q15. Do you agree with the idea of a rebuttable presumption? If so, how might it be worded to make sure that parties take part in Family Dispute Resolution unless there are compelling reasons not to?

- We note that the quote you use to demonstrate the efficacy of the FDR process comes from a provider – not from a woman who has been forced to engage in this practice with her abuser.
- We believe that FDM should be discontinued as it is contraindicated for people in violent/abusive/coercive relationships. It provides further opportunity for an abuser to frighten, control and intimidate his partner and perhaps physically harm her.
- Therefore, we do not support the provision of this service when there is any form of coercion or violence/abuse in the relationship. If this service is retained it should be entirely voluntary for participants, with no coercion, costs or sanctions attached to attending or not attending. Also, if it is retained, everyone who provides the service must be fully trained in the gendered dynamics of violence before they can be employed and provide the service. None of these processes must be left to generic providers or organisations that are not domestic violence specialists. Any couple seeking this service must be fully assessed by domestic violence specialists to ensure that the relationship is not abusive before being able to start.
- Until there is robust and ongoing triaging/assessing of participating couples for violence and abuse (by domestic violence professional), and until all FDR professionals are fully trained in the gendered dynamics of violence, harm and how to mitigate this, FDR only benefits abusers and the professionals who support men's right to parent over women and children's rights to safety.
- There is no evidence that mediation, especially that which fails to recognise power and control, will work. In fact, there is only evidence that it doesn't. In his 1993 review of the Family Court, Judge Boshier stated that mediation should not be used in the context of domestic violence because of the inherent power disparities between the parties. Judge Boshier specifically concluded that:

> *Domestic violence, as a reflection of power, is obviously an important concept when it comes to considering how a Court process should operate when domestic violence exists. We believe that mediation should be avoided by the judicial process as a legitimate means of dispute resolution in such circumstances.*[23]

Q19. How do you think we could improve the efficiency of court processes?

- We strongly support the simplifying of the Court processes to two case tracks
    - on notice (standard)
    - without notice (urgent).

Q20. Will reinstating legal representation be enough to reduce the number of without notice applications? Or would other interventions be required? For example, are sanctions required for unnecessary without notice applications? If so, what sanctions would be appropriate?

- Reinstating legal representation will be enough to reduce the numbers of without notice applications. There must be NO sanctions attached to this. Sanctions will discourage participation in the system from women and lawyers. It undermines the purpose of the Act and the family court processes.

Q22. How best should integrated assessment, screening and triaging be implemented? What other measures would you like to see implemented in order to improve the interconnection of the Family Justice Service?

- We strongly support triaging and on-going screening by domestic violence specialists for every woman who presents to the Family Court. However, this screening/triaging cannot be carried out by people without specialist training. All screening and triaging must be carried out by people who are trained, and experienced in, the gendered dynamics of violence, coercion and abuse against women and children.
- An FJSC is not an appropriate person to triage all applications to the Family Court unless she is a fully trained and experienced domestic violence specialist – or, again, she will expose women and children to greater risk from institutional and partner abuse and may frequently inadvertently collude with the abusive partner.

Q23. What other powers do you think might be helpful to enable judges to better manage complex cases?

- As we have discussed above (pp. 4 – 6) the term ‘complex case’ strongly suggests that violence/coercion and abuse are occurring in the household. Therefore these cases must be treated as domestic violence and all efforts must be made to ensure that the women and children in the family are safe from current and future harm.

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[23] Boshier, P. (1993). *The review of the Family Court: A report for the Principal Family Court Judge.* Auckland, at p. 119

Q24. What types of therapeutic intervention would be useful in complex cases? For example, should a judge have the power to direct a party for psychological or psychiatric assessment or alcohol and other drug assessment?

- If abusers require psychiatric assessment and/or drug and alcohol services then this should be ordered – but attendance at these services should not enable an abuser to then gain unsupervised access to his children. Domestic violence is not caused by alcohol[24], nor is it a mental illness[25]. It is a pattern of behaviour designed to make a person frightened in order to have power and control over them. This behaviour does not stop because an abuser attends substance abuse or mental health services.
- If abused women require these services they should not be used to undermine her parenting or as an excuse to remove her children. These women have kept their children as safe as possible in frightening and abusive circumstances – frequently not helped by the institutions we are taught to rely on. Therefore, while women may require therapy, this must be offered in a supportive, not coercive or punitive, way.

Q28. What do you think of the proposal to create a new role; the Family Justice Service Coordinator (FJSC)?

- If this role is to be created, it must be a person who is fully trained and experienced in domestic violence and the gendered analysis of violence. An untrained person puts women and children at increased risk of ongoing harm from institutional and partner abuse.
- If the FJSC refers parties to PTS, FDR, legal advice or community services these processes must be voluntary, non-coercive, and without penalties for non-attendance.
- As expressed above, an FJSC is not an appropriate person to triage all applications to the Family Court unless she is a fully trained and experienced domestic violence specialist – or, again, she will expose women and children to greater risk from institutional and partner abuse and may frequently inadvertently collude with the abusive partner.

All applications for protection orders should be referred to a Judge. All Judges who work in the Family Court must have training in the Family Violence legislation 2018, the dynamics of violence, the gendered nature of violence and the harms caused by violence.

Q29. What do you think of the proposal to establish a Senior Family Court Registrar position?

Q30. What powers do you think Senior Family Court Registrars should have in order to free up judicial time?

Q31. What sorts of competencies should Senior Family Court Registrars have?

[24] Heise, L., & Garcia-Moreno, C. (2002). Violence by intimate partners. In In E. G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, & R. Lozano, (Eds.), *World report on violence and health* (pp. 87-121). Geneva, Switzerland: World Health Organisation.

[25] ibid

- If this role is to be created, it must be a person who is fully trained and experienced in domestic violence and the gendered analysis of violence. An untrained person puts women and children at increased risk of ongoing harm from institutional and partner abuse.

Appendix 1
Government legislation 2008- 2017 that has harmed women and children attempting to escape violence and abuse

1. The changes to Housing NZ:
(a) which made it much more difficult to qualify for a house
(b) Women's Refuge has been told that domestic violence is no longer a priority for the allocation of housing and
(c) Housing NZ now make women who hold the tenancy liable for damage done by an ex-partner.

2. Decreased funding to sexual and family violence services, including loss of funding to sexual violence support services resulting in (nationwide) 1/3 cutting staff or hours.

3. All of the changes to the provision of welfare that disproportionately discriminated against women and children and further impoverish and marginalised sole parents, including changes that prioritise paid work over parenting

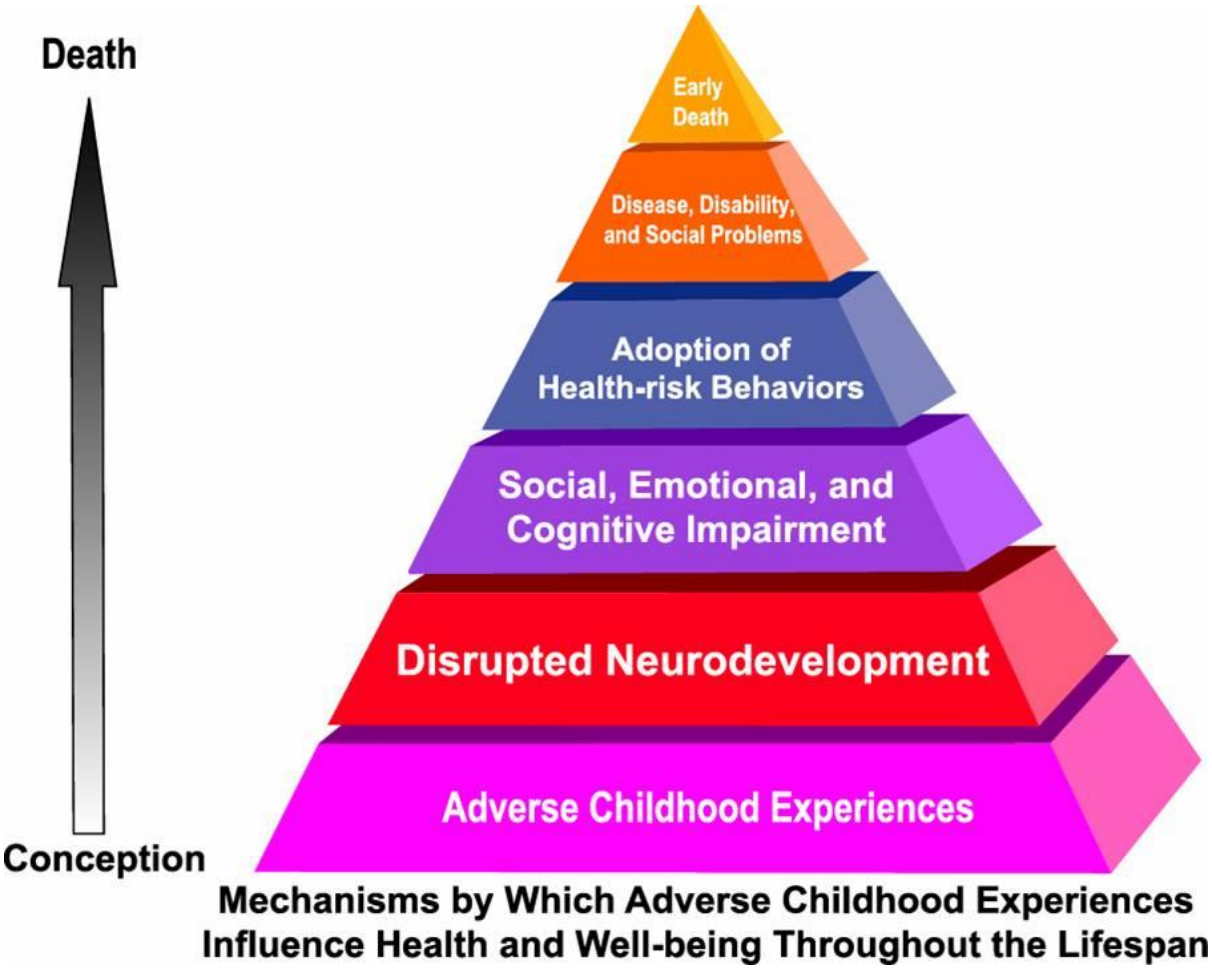
4. The changes to Legal Aid which make it much more difficult for women to get legal aid and therefore have access to justice

5. The Crimes Amendment Act which has the capacity to further abuse and punish women who are living in a violent relationship and, as a consequence of living with sexual and domestic violence, are unable to protect themselves and their children, by criminalising them for this failure.

6. The review of Community Law services especially the specialised services such as disability and youth, which appear to be aimed solely at saving money – not to improve access to justice.

7. The Bill to change provisions for child support payments to custodial parents, including shared care measured as two nights a week and fewer sanctions for non-payment.

Appendix 2. Immediate and long-term harm to children of experiencing, living with, witnessing or hearing, violence and abuse



Diagram[26]

The harm caused by violence

Women

Men's violence against women causes a great deal of harm to women, much of it long term[27]. Physical harm includes high rates of injury including long term brain injury, disability and wounding including leading to death; physical illness related to stress and lack of medical care; and the effects of rape and sexual abuse including unwanted pregnancies, sexually transmitted infections and genital damage. However the mental health effects are considerably more acute and include all of the trauma and shame related impacts of rape and sexual abuse; fear – often extreme fear; high levels of distress, post-traumatic stress disorder, depression and anxiety; and self-harming and self-medicating behaviours such as

[26] http://www.cdc.gov/violenceprevention/acestudy/pyramid.html

[27] Black, M. C. (2011). Intimate partner violence and adverse health consequences. *American Journal of Lifestyle Medicine*, *5*(5), 428-439.

alcohol and substance abuse. There is also an eight times (8x) greater risk of suicide attempts than for women with no history of violence[28].

Children

The children of abused women are some of the most defenceless in New Zealand and susceptible to ongoing harm as children and on into their adult lives. Children living in abusive environments experience a great deal of both immediate and developmental harm, not only from being physically, sexually and emotionally abused, but from being exposed to abuse, living in an environment where violence against women is occurring, and from related neglect[29]. This harm, and the consequent developmental problems, can occur in utero and from the moment children are born. The harm children experience is developmental, cognitive, physical, sexual and emotional[30] [31]. Bruce Perry explains the in-utero, developmental, consequences of adverse childhood experiences as:

…in any brain-mediated function examined, from speech to motor functioning to social, emotional, or behavioural [sic] regulation, developmental trauma and maltreatment increase risk of dysfunction[32].

This indicates that a child's brain development is compromised by the violence and abuse their mother is living with, regardless of the abuse children are exposed to/suffer themselves.

Physical harm to children encompasses injuries including long-term brain injury; sexual and reproductive problems including unwanted pregnancies; and chronic health problems as adults. The mental health effects of living in an abusive environment include post-traumatic symptoms such as disassociation and panic attacks; self-harming behaviours such as substance abuse (as children and adults); excessive risk taking; violence towards others; suicide attempts; and a range of maladaptive behaviours including low self-esteem, poor relationship development and poor educational and employment outcomes[33].

The children who are conceived and born to mothers who live in an abusive situation already have significant difficulties developing and functioning in society. If women leave violent relationships they are significantly more likely to be poor, to have housing problems

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[28] Fanslow, J., & Robinson, E. (2004). Violence against women in New Zealand: prevalence and health consequences. *New Zealand Medical Journal, 117 (*1206), 1-12.

[29] Nobilo, H. (2016) Why should we care: The abuse and neglect of children in New Zealand. *Brainwave Review, 24,* Spring

[30] 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.

[31] Child abuse and neglect by parents and other caregivers in E. G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, & R. Lozano, (Eds.), *World report on violence and health* (pp. 57-85). Geneva, Switzerland: World Health Organisation

[32] Perry, B. D. (2009). Examining Child Maltreatment Through a Neurodevelopmental Lens: Clinical Applications of the Neurosequential Model of Therapeutics. *Journal of Loss and Trauma. 14*. 240–255

[33] CDC. (2016). https://www.cdc.gov/violenceprevention/acestudy/about.html

and to feel alone and unsupported. These issues also impact on their children. Currently many women in these complex circumstances have their children removed and placed with the abusive parent or more recently, with foster parents. This further harms children already traumatised by living in an abusive environment. Harm is also perpetuated and increased by the shared parenting arrangements insisted on by the Family Court, as the stress of contact with the abusive parent causes ongoing harm to children.

Children have more chance of recovering from the developmental and ongoing trauma of living with violence if they are able to stay with their mother (the non-abusive parent) in a safe and secure environment and for both mother and children to receive long term specialised trauma counselling.

The harm children experience by living in violent and/or abusive households – and with the ongoing abuse experienced because of enforced contact with an abusive parent - is developmental, cognitive, physical, sexual and emotional. As identified in the diagram above, adverse childhood experiences have a cumulative affect – the more adverse experiences a child is exposed to, the greater the risk of life long damage to the person's health and wellbeing – culminating in a greater risk of premature death[34].

Physical harm includes:

- Abdominal/thoracic injuries
- Brain injuries
- Bruises and welts
- Burns and scalds
- Central nervous system injuries
- Disability
- Fractures
- Lacerations and abrasions
- Ocular damage
- A range of long-term chronic health problems as adults

Sexual and reproductive harm includes:

- Reproductive health problems
- Sexual dysfunction
- Sexually transmitted diseases, including HIV/AIDS
- Unwanted pregnancy

Psychological and behavioural harm includes:

- Alcohol and drug abuse
- Cognitive impairment
- Delinquent, violent and other risk-taking behaviours

[34] For more information see: https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Facestudy%2Findex.html

- Depression and anxiety
- Developmental delays
- Eating and sleep disorders
- Feelings of shame and guilt
- Hyperactivity or difficulty in concentrating
- Poor relationships
- Poor school performance
- Poor self-esteem
- Post-traumatic stress disorder
- Psychosomatic disorders
- Suicidal and self-harming behaviours[35].

The American Centre for Disease Control and Prevention (2016) describes the possible long-term harms of being exposed to adverse childhood experiences (ACEs), the most common ACE is living in a violent/abusive family[36]. They note: "… *Study findings repeatedly reveal a graded dose-response relationship between ACEs and negative health and well-being outcomes across the life course*." (ibid). A graded dose-response means that as the dose of the stressor increases, the intensity of the outcome also increases.

- Alcoholism and alcohol abuse
- Chronic obstructive pulmonary disease
- Depression
- Foetal death
- Poor health-related quality of life
- Illicit drug use
- Ischemic heart disease

- Liver disease
- Poor work performance
- Financial stress
- Risk for intimate partner violence
- Multiple sexual partners
- Sexually transmitted diseases
- Smoking
- Suicide attempts
- Unintended pregnancies
- Early initiation of smoking
- Early initiation of sexual activity
- Adolescent pregnancy
- Risk for sexual violence
- Poor academic achievement

[35] Child abuse and neglect by parents and other caregivers in E. G. Krug, L. L. Dahlberg, J. A. Mercy, A. B. Zwi, & R. Lozano, (Eds.), *World report on violence and health* (pp. 57-85). Geneva, Switzerland: World Health Organisation
[36] https://www.cdc.gov/violenceprevention/acestudy/about.html

Appendix 3. Legal definition of violence and abuse from the NZ Family Violence Act, 2018.

Meaning of family violence

(1) In this Act, *family violence*, in relation to a person, means violence inflicted—
(a) against that person; and
(b) by any other person with whom that person is, or has been, in a family relationship.
(2) In this section, *violence* means all or any of the following:
(a) physical abuse:
(b) sexual abuse:
(c) psychological abuse.
(3) Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:
(a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):
(b) it causes the person, or may cause the person, cumulative harm.
(4) Violence against a person may be dowry-related violence (that is, violence that arises solely or in part from concerns about whether, how, or how much any gifts, goods, money, other property, or other benefits are—
(a) given to or for a party to a marriage or proposed marriage; and
(b) received by or for the other party to the marriage or proposed marriage).
(5) Subsection (2) is not limited by subsections (3) and (4) and must be taken to include references to, and so must be read with, sections 10 and 11.
Compare: 1995 No 86 s 3(1), (2)

Meaning of abuse

(1) A single act may amount to abuse.

(2) A number of acts that form part of a pattern of behaviour (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial) may amount to abuse.

(3) This section does not limit section 9(2).

Meaning of psychological abuse

(1) Psychological abuse includes—

(a) threats of physical abuse, of sexual abuse, or of abuse of a kind stated in paragraphs (b) to (f):

(b) intimidation or harassment (for example, all or any of the following behaviour that is intimidation or harassment:

(i) watching, loitering near, or preventing or hindering access to or from a person's place of residence, business, or employment, or educational institution, or any other place that the person visits often:

(ii) following the person about or stopping or accosting a person in any place:

(iii) if a person is present on or in any land or building, entering or remaining on or in that land or building in circumstances that constitute a trespass):

(c) damage to property:

(d) ill-treatment of 1 or both of the following:

(i) household pets:

(ii) other animals whose welfare affects significantly, or is likely to affect significantly, a person's well-being:

(e) financial or economic abuse (for example, unreasonably denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education):

(f) in relation to a person unable, by reason of age, disability, health condition, or any other cause, to withdraw from the care or charge of another person, hindering or removing (or threatening to hinder or remove) access to any aid or device, medication, or other support that affects, or is likely to affect, the person's quality of life:

(g) in relation to a child, abuse stated in subsection (2).

(2) A person psychologically abuses a child if that person—

(a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a family relationship; or

(b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring.

(3) However, the person who suffers the abuse in subsection (2)(a) and (b) is not regarded, under subsection (2), as having (as the case may be)—

(a) caused or allowed the child to see or hear that abuse; or

(b) put the child, or allowed the child to be put, at risk of seeing or hearing that abuse.

(4) Psychological abuse may be or include behaviour that does not involve actual or threatened physical or sexual abuse.

Appendix 4. Critique of James's Thesis on Alienation. Dr. Neville Robertson.

In my view, Lee James has clearly mis-represented the study by Sousa and others[37].I can find only one reference to the study – at page 42. This is in the literature review under the heading *The Detrimental Impact of Violence vs Alienation*. Despite the heading, the section contains no references to research on parental alienation. In fact, apart from another study cited to support the non-controversial statement that "*Violence and abuse clearly have a detrimental impact on children*"[38] the Souza study is the **only** work cited in this section.

The Sousa et.al. study did not examine parental alienation. Instead, its focus is the so-called "*double-whammy hypothesis*": the idea that children exposed to both child abuse and domestic violence (i.e. intimate partner violence involving the parents) do worse that children exposed to just one of these forms of violence. Thus, the authors compared four groups of children: those who had been exposed to neither child abuse nor domestic violence, those exposed to child abuse alone, those exposed to domestic violence alone and those exposed to both child abuse and domestic violence.[39] Two outcomes were of interest: (a) antisocial behaviour (self-reports of felony assault, minor assault, general delinquency, and status offenses) and (b) parent-child attachment (measured by adolescent self-reports). Crucially, the questions used to measure parent-child attachment asked the adolescent to rate statements about their experience of being parented in general. For example, participants were asked to rate statements such as "*I like to get my parents' point of view on things I'm concerned about*," "*My parents respect my feelings*," and "*I have to rely on myself when I have a problem to solve.*" Because the adolescents were not asked separately about each parent, the data cannot be used to make claims about the value of attachment to "both" parents as opposed to attachment to one parent or the other.

In the first paragraph of the section, James summarises some of the findings of the study in what I would consider a very brief but adequate way. She then writes:

> *The importance of this study, with reference to alienation, is the strength of the attachment between the child and the parent. Clearly, it is important to prevent children's exposure to violence and abuse, but the findings support the best outcomes for children as being when the attachment to* ***both*** *parents is maintained. (my emphasis*)

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[37] C Sousa, TI Herrenkohl, CA Moylan, EA Tajima, JB Klika, RC Herrenkohl and MJ Russo "Longitudinal study on the effects of child abuse and children's exposure to domestic violence, parent-child attachments, and antisocial behavior in adolescence" (2011*) Journal of Interpersonal Violence*, *26*(1), 111-136.

[38] Gayla Margolin and Elana B. Gordis "The Effects Of Family And Community Violence On Children" (2004) *Current Directions in Psychological Science 13*(4) 152-155

[39] It is important to note that the method of classifying children as abused was such that children abused by their father only may often have been placed in the non-abused group.
There were two ways in which children were categorised as "abused". The first was that there was an official record of substantiated abuse. The second way related to the **mother's** use of certain forms of physical discipline. These were: slapping a child so as to bruise; hitting a child with a stick, paddle, or other hard object; or hitting a child with a strap, rope, or belt. Children were considered to have been abused if both mother and child (interviewed at approximately 18 years of age) agreed that at least two such incidents had occurred during childhood. Thus, the use of such tactics of physical discipline by a father – let alone the much wider forms of child abuse – would not result in the child being classified as abused unless there was an official record of substantiated abuse.

This is clearly problematic.
Firstly, in the context of the thesis "alienation" clearly refers to parental alienation but this was not examined in the study. "Alienation" does appear in the article but this is not parental alienation. Instead, "Alienation" is one of three subscales of the measure of Parent–child attachment. (The other two subscales are parent–child communication and trust.) In this context, the concept of alienation as used by the researchers was measured by adolescent responses to questions such as "*I have to rely on myself when I have a problem to solve*," "*Talking over my problems with my parents makes me feel ashamed or foolish*," and "*I don't get much attention at home*." To conflate these two quite different uses of the term alienation is at best very sloppy work: at worst, it is deliberately mis-leading.

Secondly, it is true that study participants who self-reported comparatively high levels of "*Parent-child attachment*" did tend to score better on anti-social behaviour measure than those who reported low levels, but this seems a very narrow test of "*best outcomes*". If all we wish of our children is that they do not become delinquents or commit assaults or status offences, the bar is being set very low indeed.
But more importantly, as explained above, James has no grounds for arguing that the study shows the value of attachment to "both parents". Such a claim is counter to the weight of research pointing to the deleterious impact of exposure to an abusive parent and the advantages of a close bond with a nurturing and protective parent. James has made a claim about the importance of attachment to both parents using research which did not distinguish one parent from the other but treated parents as a single unit.

James repeats the "both parents" claim in her final words in this section.

> *…the research suggests the best outcomes for children is where he or she has an attachment to **both** parents even when there has been exposure to violence or abuse. (my emphasis)*

At a superficial level, this sounds like good common sense. No doubt, having good relationships with both parents is good for children. But in fact, the "research" to which James refers is a single study which could not evaluate the advantages of attachment to one parent as opposed to attachment to two, and had nothing to say about parental alienation.

As mentioned, James refers to the study by Sousa et.al in a section entitled *The Detrimental Impact of Violence vs Alienation.* The overall impression conveyed by her use of the study seems to be that perhaps violence is not so bad compared to parental alienation – or at least, the deleterious effects of violence can be ameliorated by maintaining contact with both parents. If James wanted to support that proposition with reference to the research, she needed to find studies which investigated the roles of abusive and non-abusive parents in the lives of children exposed to violence. Instead, she has used a single study which focused on the double whammy hypothesis: a study which did not look at the role of each parent in a child's life and which did not – and could not – say anything about the assumed value of having both parents involved in the lives of their violence-exposed children post-separation[40].

[40] For more information contact Dr. Robertson. nevillerobertson.nz@gmail.com

The Auckland Coalition for the Safety of Women and Children

The Auckland Coalition for the Safety of Women and Children was started in 2006 in reaction to women's concerns about justice and other responses to domestic and sexual violence in New Zealand. Non-government organisations 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.

Members:

- Auckland Sexual Abuse HELP
- Auckland Women's Centre
- Backbone Collective
- Eastern Women's Refuge
- Homework's Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services
- North Shore Women's Centre
- Rape Prevention Education Whakatu Mauri
- SHINE Safer Homes in New Zealand Everyday
- Women's Centre Rodney
- Women's Health Action Trust