

# Responding Together: An Integrated Report Evaluating the Aims of the Waitakere Family Violence Court Protocols

Prepared for the Ministry of Justice by

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New Zealand Government

Published in August 2008 by  
Ministry of Justice  
PO Box 180  
Wellington  
New Zealand

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ISBN 978-0-478-29063-2

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## Acknowledgements

The report integrates two studies that have been conducted by this research team in an ongoing collaborative programme of evaluation research at the Waitakere Family Violence Court. We are grateful to those who made both projects possible:

We would like to thank the participants in Study One for their willing contributions to the research and their clear commitment to successfully evolving the Waitakere Family Violence Court. We would also like to thank Phil, Helen and Glenda for the many ways in which they have facilitated this research and supported us through the process. We acknowledge the support of Te Kura Hinengaro Tangata/School of Psychology, Massey University in enabling us to prioritise this project.

We would also like to thank the women who have been clients of the Waitakere Family Violence Court Community Victim Services Network and who participated in Study Two. We are indebted for your time and your generous trust in sharing your experiences with us.

We would also like to thank the advocates who participated as key informants in Study Two. We appreciate you taking the time for this research when the demands of your work supporting victims of intimate violence are so heavy. We also appreciate the wealth of experience you have shared with us.

Advocates from Viviana, an outreach service of Western Refuge, were vigilant in helping us to keep Study Two as safe as possible for women participants. Your dedication to providing women with appropriate safety strategies during research recruitment and participation and the follow up services you provided afterwards have enabled us to proceed with this project as ethically as possible. Thank you. We value your ready willingness to collaborate with us on this project even while you were dealing with the everyday business of community service.

Our thanks also go to the Judges at the Waitakere Family Violence Court for their ongoing commitment to improving their responses to family violence and women's safety in the district. Your invitation to evaluate the Court and your consistent support for and interest in research that can assist the evolution of the Court towards best and most effective practice continues to give us confidence in the possibilities of interagency collaboration. This is the fourth project to be completed in our collaborative research programme with stakeholders in the community of Waitakere.

Our colleagues in the New Zealand Police Force have also generously given us their time for consultation, and share our commitment to living free from violence. Special thanks go to Dave Ryan.

While we have been involved with this research each of us has spent time sitting in Court on family violence days. We acknowledge, with respect, the collaborative success of WAVES in bringing the responses of community services and criminal justice together to reduce family violence in the Waitakere District. We are grateful for the warm welcome that we have received into this collaboration. From you, we inherit an appreciation of the value of working together and sharing information to enhance safety in our homes.

## Responding Together

Our cultural consultants, Dr Averil Herbert and Dr Tracie Mafile'o have played a central role in our research process and ensured that the critical importance of culturally specific understandings of intimate violence has not been subsumed by the monocultural institutions of Pākehā research traditions. We are grateful for your care, support and generous collaboration.

Denise Blake and Tracey Powis are also owed a debt of thanks - for so many and varied forms of support that we could not begin to name. We are blessed to be able to count on both of you when we are most in need.

Ever present for us are the families within Waitakere communities who inspire the vision of living free from violence.

Kia kaha!

Mandy, Leigh, Sarah and Erika

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## Executive Summary

### E.1. Background

#### E.1.1. The current report

This report draws together the findings from *An Evaluation of the Waitakere Family Violence Court protocols: Preliminary report* (Morgan, Coombes, & McGray, 2007), Study One, and *Accounting for safety: A sample of women victims' experiences of safety through the Waitakere Family Violence Court* (Morgan, Coombes, Te Hiwi & McGray, 2007), Study Two.

The integration of these studies was commissioned by the Ministry of Justice and is the fourth product within an ongoing collaborative programme of evaluation being conducted by the researchers and stakeholders in the Waitakere Family Violence Court (WFVC). The findings of Study One and Study Two assessed the extent to which the *protocols* that regulate the court's processes are effective in achieving the court's *aims*.

This report has four objectives specified by the Ministry of Justice:

- Describe the operation of the Waitakere Family Violence Court
- Discuss the role of non-government organisations in the WFVC, assess the level of support they provide, and at what cost.
- Describe programmes provided by non-government organisations to both victims and offenders who have been involved with the WFVC.
- Describe the perceptions of some victims who have been involved with the WFVC, including degree to which they feel safer as a result of this involvement.

The first three objectives are primarily met through the findings of Study One, and the fourth objective is primarily met by the findings of Study Two. In integrating the studies, this report also brings together findings that are relevant to meeting the objectives of this report, and therefore excludes some findings included in the original studies.

#### E.1.2. The Waitakere Family Violence Court

The WFVC takes an innovative approach to criminal justice cases family violence that places the best interests of victim safety and family relationships at the heart of dealing with criminal justice responses to violent offences. The court has evolved from a longstanding collaboration with Waitakere Anti-Violence Essential Services (WAVES): a network of community service organisations responding to family violence in the Waitakere district.

The WFVC and WAVES are committed to best practice in co-ordinated community and justice sector responses to family violence. Their commitment is evidenced by more than fifteen years of working together to improve the safety of local families, their consistent approach to improving their practice and responding flexibly to changes in local conditions affecting the court, and their invitation to us, as independent researchers, to evaluate the court so that they can learn more about what works and what needs to be further developed.

## Responding Together

In developing the court's innovative processes the collaboration between WFVC and WAVES has established three core traditions;

- Involving community victim advocates (CVS) within the court to support victims of family violence;
- Granting speaking rights to CVS advocates so that victims can be represented in court proceedings;
- Fast tracking family violence matters before the WFVC so that victim safety is not compromised by systemic delays in court proceedings

These traditions are now recognised among best practices in specialist domestic violence courts (SDVCs) internationally and they still inform the daily practices of the court at Waitakere.

WFVC processes are regulated by a set of protocol documents. The documents are an outcome of negotiations between WAVES, the Judiciary and other stakeholders in the District Court. They specify how the court will be conducted, and how the community will be involved in its everyday practices. The protocols are designed to meet the following aims:

- Overcome systemic delays in court process
- Minimise damage to families by delay
- Concentrate specialist services within the court process
- Protect the victims of family violence consistent with the rights of defendants
- Promote a holistic approach in the court response to family violence
- Hold offenders accountable for their actions.

### E.1.3. Research goal and evaluative criteria

Since the current report combines two studies that were conducted separately with the intent of addressing specific questions relevant to their focus, each study involved a discrete set of research questions (see Section 3.2, below).

In this report the common goal of the evaluative research programme brings these two projects together

- to understand the diverse ways in which the court protocols are understood to be successful or challenged.

Evaluative criteria for assessing the aims of the WFVC are based on:

- the current literature on best practice in SDVCs internationally;
- the aims of the WFVC and,
- the goals of Te Rito: New Zealand Family Violence Prevention Strategy (MSD, 2002), and the commitments of the Taskforce for Action on Family Violence (MSD, 2006).

## E.2. Methodology

### E.2.1. Our research approach

Study One and Study Two both aim for understanding the WFVC from the point of view of particular participants. Since women victims' experiences were of critical importance in Study Two, we needed methodological strategies that would ensure that participant safety was at the heart of our research conduct. We used principles of Fourth Generation evaluation research within an epistemological framework that emphasises knowledge as *understanding*; takes account of the *specificity* of experiences; and honours the integrity of *experience* from the point of view of research participants.

### E.2.2. Our data and analysis

Interpretive Phenomenological Analysis (IPA) to thematically analyse three sets of data:

- Interviews with twenty three participants who work for different government and community agencies involved in the WFVC (Study One).
- Interviews with nine women victims whose partners pleaded guilty to intimate violence offences within the WFVC, were convicted and sentenced to “come up if called upon” for re-sentencing. This is the most common sentence passed at the WFVC during 2006 (Study Two).
- Interviews with three key informant advocates who had between five and fifteen years of experience working with victims across CVS organisations collaborating with the WFVC (Study Two).

IPA identified superordinate and subordinate themes in all participants' accounts and the content of these themes was used to address how well the WFVC protocol is working to meet its aims from the point of view of the different participant groups. In each study a slightly different approach was taken to presenting the results of the analysis in relation to assessing the aims of the WFVC (see Sections 4.2.3 and 4.3.4, below).

## E.3. Findings and discussion: Part one, the operations of the Waitakere Family Violence Court

The first three research objectives focus on descriptions of the operations of the WFVC, the roles played by community organisations within the court's processes, as well as discussion of the services provided to victims and offenders through community organisations associated with the court. Section 5, below, meets these objectives by detailed reporting of findings that described and discussed the operations of the WFVC.

### E.3.1. The WFVC process

The WFVC process is regulated by the 2005 protocols that were negotiated as a collaborative response among community and justice sector agents. They are based on a problem-solving approach to criminal justice issues.

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All family violence cases are identified and dealt with in one court on a day set aside for these matters, usually Wednesday. When defended hearings are required they are also assigned to a specific day, usually Friday.

The WFVC process takes account of the specific socio-cultural contexts in which violence is manifest in families. Community services are provided to support victims and to address issues underlying violence for offenders.

The structure and process of the WFVC's everyday practices includes roles for those who are usually engaged in the business of District Courts and specifies how members of community agencies and organisations will exercise their rights within the court proceedings. Pathways for information sharing are specified to enable informed sentencing decisions. In these ways *consistency* is regulated by the protocol documents.

The description of the WFVC process in Section 5 (below) meets the first objective of this project: to describe the operations of the court. This section also includes information on the role of community organisations associated with the court (see Section 5.2 below).

### E.3.2. Resources

No specific government resources have been provided to support the initiatives of the collaboration between community and the justice sector at Waitakere.

Government and community agents involved in the WFVC have make use of available resources as carefully as possible to ensure that their commitment to ongoing coordinated interagency responses is realised.

The community collaboration has been a valuable resource itself. It has enabled flexible responses to changing conditions in the social and political context in which the WFVC operates.

Resources for training and education on WFVC protocols in practice have not been available throughout the history of the court's evolution. Resources are needed for training in relation to;

- the philosophy or kaupapa of the protocols,
- the relationship between the philosophy of the protocols and specific psycho-social issues relating to family violence and,
- the specific structure and function of roles within the WFVC process generally.

The research objective of describing the WFVC process is enhanced by understanding the way in which those at the Waitakere District Court have worked with community organisations to provide resources for a co-ordinated response to family violence. The limitations of available resources account for some of the needs for protocol training identified by participants in Study One, and are discussed in detail in Section 5.4 below.

### E.3.3. Victims and offenders

Reducing the time necessary to prosecute family violence cases aims to improve victim safety during court proceedings by minimising defendant's opportunities to access the victim and influence her to willingness co-operate with prosecution. The WFVC *fast-tracks* family violence

matters by concentrating them within one court on one or two days. *Fast-tracking* is especially important when defendants plead not guilty.

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The WFVC process maintained relatively high levels of guilty pleas and conviction rates during the first year of operating under the 2005 protocols. As a result fewer victims needed to remain engaged in protracted defended hearing processes.

Victim advocacy services provided by a three part Community Victim Services network are the heart of victim safety provisions made by the WFVC. CVS advocates represent their clients in court, have speaking rights to enable assessments of victim safety to be presented to the Judiciary, and provide support services for victims in the community. Beyond the CVS network, a diverse range of victim services are accessible through the court's relationship with WAVES and its associated community organisations.

Judges at the WFVC consistently encourage early guilty pleas by offering sentencing incentives if defendants take responsibility for their violence and agree to undertake treatment programmes or interventions to address underlying psycho-social problems such as poor anger management or alcohol abuse. Community service organisations provide offender programmes and judges monitor offenders' compliance with treatment recommendations before they pass sentence.

Coercing treatment is intended create to an opportunity for the offender to engage in help for changing their violent behaviour. This form of accountability requires judicial monitoring of offender compliance with change interventions so that sentencing outcomes are well informed. Judicial monitoring enables offenders to demonstrate their commitment to ending the violence they perpetrate against their partner/family.

In the first year of the operation of the current protocols, recommended sentences were used very consistently according to findings from Study One. Therapeutic options were provided to offenders more frequently prior to sentencing than as a condition of their sentence.

From the description of WFVC processes, it is clear that community organisations provide services for both victims and offenders through the WFVC. The second research objective of assessing the level of support provided, and at what cost, is met by the findings reported in Section 5.5 (below) that attends to the way in which timeframes, victim advocacy, therapeutic interventions and sentencing are focused on victim safety and offender accountability. Detailed descriptions of victim advocacy and other community services for victims, including their costs, are specifically included in Section 5.5.2 to meet the third research objective relating to the description of programmes available to victims.

### E.3.4. Programmes

Offender treatment and intervention programmes are provided by community agencies such as Man Alive or Community Alcohol and other Drug Services (CADS) to offenders who are mandated through sentences to supervision by Community Probation Services and self-referred offenders who are complying with judge's recommendations prior to sentencing.

Sentences to supervision are problematic because the policies and practices of Community Probation Service are not based on specialist understandings of family violence matters. Policies that prioritise high risk offenders and assess risk without the specialist assessment instruments that police and CVS share can mean that offenders are not necessarily suitable for a supervision sentence even though they pose a high risk to a member of their family or intimate partner (Study One).

Mandating programmes is also problematic because they stipulate a particular length of sentence and can create opportunities for offenders to avoid attending change programmes or complying with treatment. Since the release of the findings of Study One to the stakeholders at the court in May 2007, the judges of the WFVC have been passing longer sentences of supervision to ensure that there is enough time for the offenders to engage in change before the sentence is completed.

Supervision sentences also have consequences for victims. CVS advocates reported that clients were less likely to engage in independent services if their partner was sentenced to supervision. The implications of this for victim protection are discussed in E4.3 below.

Self-referred offenders have consented to undertake programmes in exchange for sentencing leniency when they take responsibility for their violence. Compliance with Judicial recommendations is not entirely voluntary.

The intent of judicial monitoring of self-referred progress through treatment or intervention programmes is that the judges are able to receive information on victim safety and offender's compliance with their recommendations at hearings scheduled for this purpose. Some offenders do actively comply from the judges' perspective (Study One). Women victims reported a lack of motivation to change in relation to their partners: they understood that their partners saw treatment or intervention as compulsory (Study Two).

Further research is required to investigate how offenders' understandings of compulsion vary under the sentencing incentive and judicial monitoring arrangements. It is also necessary to establish any systematic differences in outcomes between sentences of supervision and judicial monitoring.

The third research objective sought descriptions of programmes provided for offenders, as well as those provided for victims. This objective is met through information provided in Section 5.5.3 which specifically focuses on offender programmes and interventions available through community organisations.

## **E.4. Findings and discussion: Part two, meeting the objectives of the WFVC protocols**

The second and fourth research objectives require an assessment of the services provided by community organisations to the WFVC, and some victims' perspectives on the extent to which they felt safer as a result of their involvement with the court. Meeting these objectives involves focusing on the aims of the WFVC protocols (see Section 5.1 below) as criteria for assessing their success in service provision and in improving victims' experiences of safety. A detailed account of how the aims of the WFVC are met from the perspectives of those involved in Study One and Study Two are provided in Section 6.

### **E.4.1. Overcoming delay and minimising damage**

In criminal justice matters related to family violence, focusing on delay is based on the understanding that procedural delays provide offenders with increased opportunities to assault, coerce, manipulate, threaten or intimidate victims before they are convicted and sentenced by the court. Findings in relation to the aims to overcome systemic delays in WFVC process and to minimise damage to families by delay were:

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- Issues related to systemic delay are different in the case of guilty and not guilty pleas before the court. In the case of not guilty pleas, where defended hearings are possible outcomes of the prosecution process, time delays may provide the offender with opportunities to re-establish control over their victim for the purpose of coercing retractions and avoiding conviction.
- The WFVC strategy of coercing guilty pleas effectively acts to protect victims from the potential harms of defended hearings. The risks associated with defended hearing delays are not relevant to women whose partners enter guilty pleas to take advantage of sentencing leniency. If motivation to change cannot be compelled or coerced by the court's leniency, victims can at least be protected from the risks of attending court proceedings.
- Procedural delays in defended hearings can enhance victim safety when more time gives women opportunities to become stronger in their own personal change processes and engage with the legal process to hold their partner accountable for his violence.
- Whether systemic delay provides an advantage or disadvantage in relation to women victims' safety depends on complex psycho-social factors in each particular situation.
- Some delays in case disposals are related to re-offending. If a defendant is re-arrested before his case is disposed, then there is a delay in hearing the first matter. Delays that are related to re-offending are obviously related to women's increased risk of harm around arrest.
- The delay between arrest and sentencing involved with judicial monitoring of cases involving guilty pleas did not have negative consequences for the safety of women victim participants in Study Two.

Delays caused by re-offending are clearly connected to damaging families and need to be taken into account when addressing the complexities of damaging delays in criminal justice interventions.

The process of judicial monitoring of offenders compliance during treatment and interventions needs to be taken into account in resourcing the court and in policy related to timeframes for disposals.

- Same day sentencing reduces delay but inhibits the provision of reliable information about victim safety to the court. When disposal times are valued more highly than victim safety, then overcoming delay fails to address the aims of holding the offender accountable and protecting his victim.

Providing resources to manage delay when volume is expected to increase is critically important to the WFVC's ability to meet its aim of minimising damage to families by delay.

The aim of overcoming systemic delay is focused on minimising damage to families. In the philosophy/kaupapa of the WFVC protocols, and the operations of the WFVC, overcoming systemic delay and providing community victim advocacy services are interlinked strategies designed to enhance victim safety by protecting victims from further harm. The information reported in Section 6.1 below meets the fourth research objective by providing victim-centred perspectives on delay and safety.

#### E.4.2. A holistic approach and specialisation

Promoting a holistic approach that responds to intimate violence in relevant social and cultural contexts involves understanding the issues of family violence as more broad than criminal justice issues. Specialisation is concentrated in the WFVC so that these understandings are well grounded and shared within the inter-agency collaboration of the court.

In meeting the aims of concentrating specialist services within the WFVC process and promoting a holistic approach in the court's response to family violence we found:

- Women victim's experiences in Study Two justify the WFVC aim with regard to specialisation so that appropriate knowledge is available to address the particular character of intimate violence. The women victims' accounts of events that brought them to the WFVC emphasised the complex social and relational context of their partner's violence against them and disclosed ongoing patterns of violence such as those that define family violence in the Domestic Violence Act (1995).
- Few victims involved with cases before the WFVC are protected persons under the Domestic Violence Act (1995) at the time of their partner's arrest. The court's aim of taking a holistic approach in responding to family violence would be well served by ensuring that all victims involved with cases before the WFVC are granted appropriate Protection Orders alongside the imposition of non-association bail conditions.

The WFVC's aim to concentrate specialist services in the court is achieved most consistently through collaborating with community based specialist service providers for victims and offenders.

Concentrated specialisation of judges, government and professional agents working in the WFVC is dependent on the personal commitment and consistency of particular individuals.

- Specialist training and specialised roles within the criminal justice system need to be consistent with specialisation in the community to maximise the potential effectiveness of co-ordinated responses.
- Te Rito (MSD, 2004) recognises shortfalls in family violence specialisation and these have an impact on the delivery of effective family violence interventions by the WFVC at various times. All those who work in collaboration at the WFVC co-operate with the aim of resolving challenges to concentrating specialist services.
- Specialist community victim advocacy is particularly crucial within the WFVC because women who have access to CVS are able to engage with follow up services to plan for their safety within their community.
- Members of the CVS network provide their services to the WFVC, victims and other community organisations voluntarily and the cost is borne by the NGOs' funding bodies and volunteer workers.
- Specialist CVS advocates serve a protective function for victims and provide specialised information to the WFVC. The advantage of having three organisations share responsibility for services is that the diversity of victims' and families' needs can be better met, and responses to the specific circumstances of a particular offence can be more flexible.

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- Collaboration with WAVES provides the WFVC with specialist resources for victim advocacy, education, strengthening families, problem-solving and therapeutic interventions and promotes collaboration among services for victims and offenders.

Additional resources for community specialist victim and offender services are needed to ensure that services can be supported and extended to meet the needs of families in culturally diverse communities.

Concentrating specialist community services within the court is clearly consistent with the philosophy of the WFVC protocols and with the focus on improving government and non-government collaboration advocated by the Ministerial Task Force for Action on Family Violence (2006).

The second research objective sought to assess, as well as describe, the level of services provided to victims and offenders through the WFVC. The WFVC protocol aims, taking a holistic approach to family violence and concentrating specialist services within the court, are strategies for protecting victims and addressing issues of family violence for the purpose of reducing offending. Contrasting the level of specialisation provided to the WFVC through community organisations with that provided by those whose roles are normally within the criminal justice system in Section 6.2 below, enabled the critical importance of specialist community services to be assessed in context.

### E.4.3. Victim safety and offender accountability

The aims of protecting the victims of family violence, consistent with the rights of defendants, and holding offenders accountable for their actions are central to the intention of the WFVC protocol for effective inter-agency responses to family violence.

In relation to balancing these aims we found:

- In the collaboration between the community and the WFVC issues related to victims' safety and defendants' rights are able to be raised and openly discussed with the Judiciary, and in the Family Violence Focus Group.

In relation to protecting victims we found:

- The heart of the WFVC strategies for protecting victims is the involvement of CVS advocates in the court.

Advocates provided critically important information flow between victims and the WFVC to enable safety planning.

- Advocates representation of victims in court is crucially important to relieve victims of the burden of responsibility and the risks associated with being involved with court proceedings themselves.
- Victim protection at court needs to take account of practical safety measures that protect victims from potential and real threats from their partner, his family or associates.
- Follow up services provided by CVS advocacy and ongoing social support are highly valued by women victims to enhance their safety.

Victims were often blamed by the perpetrator, their families or friends for his violence and for his arrest and prosecution. There continues to be an urgent need for actions to change social

attitudes and behaviours that support violent offending as advocated by the Taskforce for Action on Family Violence (MSD, 2006).

- When police and CVS work together to share responsibilities for protecting victims they are best able to support victims to resist their partner's blame for arrest or bail conditions or the consequences of prosecution. This provides protection from fear of retaliation.
- Women victim participants reported that their partners did not respect bail conditions. Non-association orders were not effective in protecting victims from further harm in these circumstances.
- Inter-agency co-ordination needs to be effectively resourced to provide accurate, up-to-date information for judicial monitoring, and policing offenders' compliance with bail conditions, so that victim safety is improved following an initial arrest.
- Change programmes are most likely to improve women's safety when both offenders and the women are consulted and supported throughout the change process. When victims are not consulted they are less likely to have necessary opportunities to prioritise their own safety.
- Women victim participants reported little positive change in their safety as a result of their partner's attendance at treatment or intervention programmes.
- Women victim participants believed that involvement with justice sector interventions were effective in achieving changes in safety especially in the long term even though they experienced ongoing threats to their safety for some time after their partner's conviction at the WFVC.
- Despite re-offending that did sometimes result in arrest, none of the women whose partners received a sentence to "come up if called upon" made reference to the sentence in relation to enhancing their safety. Agencies involved did not co-ordinate well enough to ensure that re-offending resulted in re-sentencing to hold the offender accountable for ongoing violence.
- Convictions in the WFVC are important to victim safety because they provide a record of prior offences in cases of re-offending, and in some cases they provide protection from fear associated with losing custody of children.

In relation to holding offenders accountable we found:

- The partners of women victim participants were not held accountable for breaching bail conditions.
- The women sought a form of accountability that would enable their partner to be removed when he repeatedly breached bail to relieve them of the responsibility for managing his continuing controlling, abusive and violent behaviour. They did not, however, suggest that imprisonment was an appropriate way to hold men accountable for intimate violence.
- To ensure that women's hopes for genuine change in their partner's violent behaviour are founded on expectations that can be realised by community based offender treatment and intervention programmes, evaluations are needed so that effective motivational strategies can be developed to maximise the potential for coercing change.

## Responding Together

- Throughout its evolution, the WFVC has been relatively successful at holding offenders accountable to the court through coercing guilty pleas and obtaining relatively high conviction rates (Study One).
- Participants in Study One reported confidence that offenders were being held accountable for complying with referrals to attend and complete community based treatment and intervention programmes. However, on the basis of evidence from women victims' and advocates' experiences in Study Two, the WFVC does not successfully hold offenders accountable to victims for changing their violent behaviour.
- Sentencing leniency as a strategy for coercing offender engagement in change programmes needs to take account of the offender's ongoing risk to his partner's safety and the safety of her family. If re-offending and bail breaches can be better monitored by all those engaged in a co-ordinated response, including CVS, police and offender service providers, then judges may have greater opportunity to lend their symbolic authority to the seriousness of the offender's ongoing pattern of violence throughout the process of judicial monitoring.

The research objectives, assessing the level of services provided to victims and offenders by community organisations and describing victims' perceptions of their safety throughout the WFVC process, are most fully met through addressing the WFVC aims of protecting victims and holding offenders accountable. In Section 6.3 below, these assessments are made in detail.

## E.5. Summary of findings

Having met the four objectives for this research through reporting relevant findings in Sections 5 & 6, we provide a summary that attends to the perspectives of participants in Study One and Study Two on the successes and future of the WFVC. We also consider New Zealand Government policy and international literature on best practice in criminal justice responses to family violence in relation to our findings evaluating the WFVC. In drawing the report to a close we turn to issues of collaboration; the WFVC's commitment to taking family violence seriously and women victim participants' suggestions for improving victim safety.

### E.5.1. Collaboration

Findings on collaboration were:

- The clearest success of the WFVC is its collaboration with the community for over fifteen years to produce protocols that are consistent with recent findings on best practice in specialist domestic violence courts internationally.
- The collaboration between WAVES and the WFVC is consistent with the rights and responsibilities of communities to be involved in preventing family violence in the home, as specified in *Te Rito* (MSD, 2002).
- The collaboration allows the WFVC to flexibly respond, as specifically as possible, in the best interests of victim safety and family relationships.
- Collaboration with specialist community victim services provides the WFVC with reliable information needed to assess the risk of further harm to victims and families so that judicial decision making is well informed.

- A shared understanding of family violence is critically important to ensure that all participants in collaboration between community and court are working towards the same goals and share understandings of the dynamics of family violence and their effects on criminal justice process.
- Whether or not the WFVC meets the needs of local whānau, iwi and hapu for safety, how Māori protocols could be integrated into the court's practices, and whether that would be appropriate from the point of view of local whānau, iwi and hapu remain crucial questions for the court.
- Independent evaluative research needs to be incorporated into community and court collaborations to ensure that all agencies involved in the collaboration are able to continue to learn best practices for responding to family violence.

### E.5.2. Taking family violence seriously

Findings on the WFVC's commitment to taking family violence seriously were:

- The diverse ways in which those participating in the WFVC meet Te Rito's (MSD, 2002) first goal of taking family violence seriously and encouraging its intolerance is another clear success of the court.
- The Judiciary are crucial to ensuring that the message which the WFVC sends to the community is that family violence offences are serious and that the court will hold the offender accountable.
- The possibility that Section 106 Discharge indications might undermine the message that family violence is serious has been acknowledged by judges at the WFVC, who have become more cautious in their use of the sentence more recently.
- Offenders are encouraged to be accountable to the court by entering guilty pleas. This is intended to convey the message that the court is serious about addressing the problem of family violence.
- The WFVC's potential for broadening its scope to include other models of jurisprudence, such as those based on principles of social harmony or communitarian justice is still to be realised. This potential could serve to increase the scope of its partnership with the community and create a more inclusive collaboration towards preventing family violence within Waitakere communities.

### E.5.3. Suggestions for improving victim safety

- The development of a closer relationship between the District Court and the Family Court so that matters of child custody and property settlement were not dealt with in isolation from matters of criminal offending, and ongoing systematic abuse.
- A wider adoption of modified court processes which allow victims to have easier access to support without the necessity for them to face their abusers in court – such as that available when defendants plead guilty at the WFVC.
- Provide more extensive, accessible and ongoing victim services that pay more attention to the needs of victims generally.
- Extend and develop specialist services because they are essential to effective interventions that enhance women's safety, both within the processes of legal intervention and beyond.

## Responding Together

- Agencies involved in collaborating to maximise victim safety need to take account of the specific needs of victims for safe communication media: letters and pamphlets are often not safe means of communication with victims.

From the women participants' point of view the whole of the justice sector needs to be more supportive of victims. This extends to supporting the services that were offered by CVS advocates and the attempts that the WFVC was making to enhance victim safety through a co-ordinated interagency response to intimate violence.

## 1. Introduction: The Report in Context

This report is the fourth product of a programme of evaluative research on the Waitakere Family Violence Court (WFVC). The WFVC convenes weekly within the Waitakere District Court. It involves professional, government and community agents in a dynamic process of coordinated response to family violence offences. The practices of the WFVC are regulated by protocols that have evolved since 1992. The aims of the current protocols (2005) are:

- To overcome systemic delays in court process
- To minimise damage to families by delay
- To concentrate specialist services within the court process
- To protect the victims of family violence consistent with the rights of defendants.
- To promote a holistic approach in the court response to family violence
- To hold offenders accountable for their actions.

Completed studies within the programme have been conducted independently and under contract from the Ministry of Justice. This integrated report brings together the studies that assessed the extent to which the protocols are effective in achieving the WFVC's aims from a variety of different vantage points including the perspectives of those who participate in the court's everyday practices and women victims whose partners have been convicted of intimate violence offences and sentenced to "come up if called upon".

This report integrates findings from two studies conducted during 2006 and 2007. The first study: *An evaluation of the Waitakere Family Violence Court protocols: Preliminary report* (Morgan et al., 2007) was conducted independently and assessed the extent to which the protocols are effective in achieving the court's aims from the perspectives of the Judiciary and court administration, and also from the perspectives of community organisations, lawyers, police and community probation (Study One). The preliminary report from this study was provided to WFVC participants in May 2007, and subsequently published electronically by Massey University. The second study integrated into this report was conducted under contract to the Ministry of Justice. *Accounting for safety: A sample of women victims' experiences of safety through the Waitakere Family Violence Court* (Morgan et al., 2007) reported an assessment of the effectiveness of the court's protocols from the point of view of some women victims and advocates who had worked with women victims in the WFVC (Study 2). This report is also available separately. Aspects of these two reports have been brought together in the current report to meet specific objectives posed by the Ministry of Justice and outlined in Section 3 below.

As negotiated with participants consenting to the preliminary study, Sarah McGray is currently completing an analysis focused on identifying different understandings of domestic violence and offender accountability among those who work in the WFVC. This study is due to be completed in February 2008. A statistical analysis of data held by community agencies and police identifying time lags, rates of referral, uptake of services, sentences and recidivism rates at the WFVC has been completed (Coombes, Morgan & McGray, 2007). An evaluation of the Community Victim Services provided to the court by Viviana has been contracted by Western Refuges (Inc.) and is currently underway.

## Responding Together

By developing an evaluation research programme incorporating studies that assess the WFVC's protocols through multiple vantage points we aim to ensure that the diverse views of all stakeholders in court processes are taken into account. Our goal is to produce a holistic understanding of how well the WFVC responds to family violence within the Waitakere District. This understanding will form the basis for identifying any improvements that need to be made in the implementation of WFVC protocols through feedback to the court, to the service providers, and to the community of legal professionals and academics advocating for collaborative approaches to reducing family violence. Like the WFVC itself, this programme of evaluation is a dynamic, evolving process.

## 2. Background to the Report

### 2.1. Social context

Family violence is an increasing problem worldwide and has been described as an epidemic in Aotearoa/New Zealand (Hand, 2001). Because family violence takes multiple forms, including psychological, emotional, economic, physical and sexual abuse, and because these forms of abuse are interconnected, the complexity of family violence is difficult to define, explain or measure. The majority of statistical analyses focus on family violence against women by their intimate partner. This is not the only recognised type of family violence however it is the most researched because of its prevalence (New Zealand Family Violence Clearinghouse, 2007).

The seriousness and gendered specificity of violence within intimate relationships were first brought to attention in the 1970s when the problem was commonly referred to as 'wife battering'. The terms 'domestic violence' and 'intimate partner violence' have also been used to refer to the same phenomena. 'Domestic violence' sometimes includes violence against children within a household, but its most common meaning is specific to heterosexual partner violence.

In the late 1970s, women's refuges were established in Aotearoa/New Zealand (Hann, 2001). The refuge movement emerged from the activities of the women's movement and advocates for victims of rape and domestic violence. Social and legal reform has largely been influenced by the advocacy and lobbying of community organisations, like refuge and rape crisis, and community responses to family violence emerged earlier than legislative and government policy responses. Alongside these movements were also political, social and academic movements of Māori protest at Crown treatment of te Tiriti o Waitangi/the Treaty of Waitangi.

The Domestic Protection Act was introduced in 1982 as the first legislative response to domestic violence in Aotearoa/New Zealand (Graham, 1995). It was intended to address the protection of those involved in 'domestic disputes' through a quasi-criminal strategy that enabled the police to arrest without needing to lay charges (Webb et al., 2001). Three years later the National Collective of Women's Refuges' coordinator and a New Zealand police inspector organised a conference on family violence. A partnership emerged between government and non-government organisations called the Family Violence Co-ordinating Committee which was established to facilitate and co-ordinate national interagency responses to family violence.

Also by the mid-1980s the Labour Government had began the process of placing Māori concerns "firmly on the policy agenda" (Wilson & Yeatman, 1995, p.xv) and te Tiriti/Treaty became a pivotal document in policy reform (Campbell, 2005). Tino rangatiratanga, "Māori control and Māori management of Māori resources" (Te Puni Kōkiri, 1994), remains a clear goal for Māori communities especially in seeking justice interventions.

In 1991 the Family Violence Co-ordinating Committee was responsible for introducing the Duluth Abuse Intervention Project from Minnesota, USA as a community response to reducing occurrences of family violence. The Duluth project became a model for the establishment of the Hamilton Abuse Intervention Pilot Project (HAIPP) as the first collaborative and coordinated response to domestic violence. Among other projects that emerged after HAIPP was

established, (for example, DOVE in Hawke's Bay or The Hutt Family Violence Prevention Network), was the Waitakere Anti Violence Essential Services (WAVES) (Pond, 2003).

By the early 1990s an estimated prevalence rate for domestic violence commonly agreed by service providers in Aotearoa/New Zealand was 14% (Snively, 1994). The New Zealand Safety Survey (Morris, 1997) estimated that 44–53% of New Zealand women had experienced psychological abuse in the previous twelve months. 15-21% of women had experienced physical abuse. The lifetime prevalence rate for physical and/or sexual abuse was estimated at 15-35%. Leibrich, Paulin and Ranson's (1995) study of men's self reports of abusive behaviour towards their partners reported lifetime prevalence rates of 35% for physical abuse and 62% for psychological abuse. More recent evidence from clinical population studies put lifetime prevalence at between 44.3% and 78% (Fanslow, 2005). In 2006 Women's Refuge provided services to 16,738 women and 12,107 children (National Collective of Independent Women's Refuges, 2007). Over half the murders in New Zealand are the result of domestic violence (New Zealand Family Violence Clearinghouse, 2007).

On the first of July 1996 the Domestic Protection Act (1982) was replaced by the Domestic Violence Act (1995). This Act recognises the changing nature of relationships and takes account of the variety of situations and circumstances where domestic violence can occur (Busch & Robertson, 2000). Multiple forms of domestic violence are also recognised as unacceptable. The Act provides a legal framework for protective action (Butterworths, 2000) that involves empowering courts to make orders for protection, enabling access to the courts in a simple and time effective manner, providing programmes for victims of violence, providing mandatory programmes for perpetrators of violence, and providing sanctions and enforcement mechanisms for breaches of orders that protect victims from further harm.

The term 'family' violence is consistent with the more broad definitions of domestic relationships included in the Domestic Violence Act (1995) (Busch & Robertson, 2000); heterosexual or same sex partners, family or whānau members, household members or people in a close or domestic relationship, such as flatmates. But the use of such generic terms for family violence mask the social context in which the anti-domestic violence movement originated (Stewart, 2004), and represent a gendered social problem as if it were gender neutral. While it is clearly the case that women *can* be violent to male partners, women's violence is often self-defence, and does not usually result in the same degree of hurt and injury, as does men's violence to women (Ritchie, 2005). Men are more likely to be the perpetrators of intimate partner violence, and women are more severely affected by partner abuse than men (New Zealand Family Violence Clearinghouse, 2007). Women are more likely to be the perpetrators of physical punishment of children, but men are more likely to perpetrate physical violence that leads to serious or fatal injury of children (New Zealand Family Violence Clearinghouse, 2007; Ritchie, 2005). Barwick, Gray, and Macky (2000) established that the majority of applicants for protection orders in New Zealand were women (92%) and the majority of respondents were men (92%). Respondents were most frequently (80%) the applicant's current or previous partner and the vast majority of partner relationships were heterosexual. Few changes in these statistics were reported in Bartlett's (2006) publication of Family Court statistics. Intimate partner violence against women is strongly linked to violence against children, homicide, suicide, health and mental health morbidity. There is a substantial overlap between the occurrence of child abuse and partner abuse in families, with up to 60% of families who report one type of violence also experiencing the other type of abuse (Fanslow, 2002). Of the families where partner abuse is perpetrated, 30-75% will also have child abuse occurring. International and national research findings indicate that child abuse is more likely in homes

where mothers are abused by their partners (Bennett et al., 1999; Richie, 2005; Ross, 1996). Police attended 46,682 family violence incidents in 2002/3, and around 55,000 children were present at those incidents (New Zealand Family Violence Clearinghouse, 2007). By 2006 New Zealand Police reported 63,385 family violence offences (New Zealand Family Violence Clearinghouse, 2007). Violence against women partners significantly affects the well-being of families and thus constitutes the core of family violence.

The term family/whānau violence is sometimes used in reporting family violence prevalence research in Aotearoa/New Zealand, and we are mindful of the critique offered by the Second Māori Taskforce on Whānau Violence (2004). They remind us that the concept of whānau does not simply translate to the Pākehā concept of family. In relation to whānau violence, they suggest that “the assumption in making whānau violence criminal and therefore punishable is that rehabilitation may only occur after punishment, not as an immediate alternative to whānau violence” (p.17). This assumption is based on dominant Western paradigms and interventions from these perspectives do not necessarily facilitate change for Māori. The Western gender analysis that underscores services and interventions for victims does not necessarily enable the space for Māori concepts of wellness, for Māori women, to be engaged. The Māori Taskforce cites the example of ‘closure’ which “for Pākehā means severing the ties, but that cannot happen for Māori” (p.32). Māori have been seeking the space to develop legitimate models of intervention to eliminate whānau violence for some time (Second Māori Taskforce on Domestic Violence, 2004). We are concerned that such space is particularly limited in the context of collaboration within the justice system. The court is a tradition of the Tikanga Pākehā House (Bishop, 1999), and its principles and practices draw on monocultural customs that exclude Māori knowledge and values. Outside the sphere of the court, Māori communities are building culturally specific, co-ordinated responses to family violence.

Ten years after the introduction of the Domestic Violence Act (1995) the Government established the Taskforce for Action on Violence within Families to advise the Family Violence Ministerial Team on strategies for improving responses to family violence (Ministry of Social Development (MSD), 2006). The Taskforce is an alliance of government and community agents, independent Crown entities and the Judiciary to achieve the shared vision of eliminating family violence in Aotearoa/New Zealand. It supports community interventions for preventing family violence through funding and resources and has established a nationwide local case co-ordination scheme to aid collaboration. The Taskforce has acknowledged the value of local, community-based interventions that have already been established and has clearly endorsed locally responsive strategies “*so that we are developing services that engage particular communities, especially hard to reach families where violence is prevalent*” (MSD, 2006, p.26).

## 2.2. International criminal justice responses to intimate violence

The history of the Waitakere Family Violence Court begins more than a decade before the Government established the Taskforce, so the collaboration between government, professional and community agents that produces the court’s unique practices offers one established example of the possibilities of collaboration within the justice system where the goal of eliminating family violence is a priority.

The growing awareness of an epidemic of intimate partner violence over the past 20 years has resulted in a variety of responses from justice systems dealing with family violence,

internationally. These responses involve both policing and prosecution and each of these aspects have implications for the effectiveness of criminal justice responses that aim to enhance victim safety and hold offenders accountable for their violence.

Internationally, it is recognised that few victims of intimate violence report violent occurrences and fewer occurrences result in arrest and the consequent criminal justice process (Hirschel, Hutchinson & Dean, 1992; Hirschel & Hutchinson, 2003). Nonetheless, legal interventions are currently one of the few means available to victims for stopping violence (Holder, 2001). While in Aotearoa, Protection Orders provide an alternative to criminal justice interventions, they rely heavily on criminal justice processes to hold respondents accountable for any breaches of a victim's legal protection. Recent research by Robertson et al (2007) reports that women participating in their study experienced repeated breaches of Protection Orders. Protection Orders were inadequately implemented in terms of achieving their potential for protecting victims. Effective criminal justice interventions are therefore critically important government responses to intimate and family violence.

Historically, criminal justice interventions have trivialised violence in intimate relationships. Police have acted as mediators between victim and perpetrator rather than making an arrest. Even if a perpetrator was arrested, cases were often dismissed by police prosecutors. If a case did proceed as far as sentencing then men who assaulted their intimate partner were likely to be "treated with more lenience than those who assaulted strangers" (Bennett et al., 1999, p.761). In the United Kingdom, fines continue to be a popular sentence for domestic violence cases (Cook, Burton, Robinson, & Vallely, 2004). Fines are rarely used as sentences for stranger assault, and when used as sentence for intimate assault they minimise the culpability of the offender. When criminal justice interventions aim to send the message that the Government is taking intimate violence seriously, then a consistent approach to overcoming the legacy of trivialisation is necessary. It is also necessary for courts to respond to dangers that are posed to victims when the justice system intervenes in their most intimate relationships.

### 2.2.1. Policing

Internationally mandatory arrest and 'no drop' prosecutions were introduced as policing strategies from the 1980s onwards. Mandatory arrest removes the responsibility for victims to make complaints against their partners if there is other evidence available for police to arrest them, and 'no-drop' prosecutions meant that police prosecutors did not need to rely on victim's evidence to proceed with cases.

In the international context, research on mandatory arrest policies found that arrest was an effective deterrent in cases of intimate violence. It was believed to enhance victim safety by diffusing the immediate situation and removing the offender from the scene. It also removes the victim's responsibility for deciding to lay charges against the defendant. This is intended to protect her from subsequent reprisal for that decision. Since their introduction, however, research on the 'success' of the policies has raised questions about whether or not such arrests ensure improvements in victim safety (Hoyle & Sanders, 2000). Even when convictions are demonstrated to be the outcome of prosecutions based on arrests that are intended to protect victims, it is necessary to understand how victims have experienced the legal intervention into their relationship before concluding that the policy is working (Cook et al., 2004).

In many places mandatory arrest has been adopted alongside 'no drop prosecution' where the prosecutor is responsible for ensuring that all charges with adequate evidence proceed through

to prosecution. This also aims to enhance victim safety by reducing the risk that the defendant will coerce and intimidate the victim to withdraw charges. No drop policies and mandatory arrest are often seen as a “step forward in criminalizing violence against women and holding batterer’s responsible for their abusive behaviour” (Hartley, 2003, p.413). Taking an approach where intimate violence is policed and prosecuted without apparently needing victims’ cooperation has been termed a “crime against the State” approach to family violence (Mills, 1998). However, criminal legal systems that take this approach often continue to treat intimate violence as if it is composed of individual events (Robinson & Cook, 2006). Although intimate violence often takes the form of an ongoing pattern of abuse, adversarial legal systems restrict the kinds of evidence that may be presented to demonstrate a pattern of ongoing violence. Criminal justice responses to intimate violence alone inadequately address the ongoing character of intimate partner violence.

Despite their intent to protect victims and provide the Government’s validation of victims’ right to live free of violence, mandatory arrest and no drop policies continue to attract international debate as strategies for enhancing victim safety. Whether mandatory arrest and no drop prosecutions achieve their aims of enhancing victim safety depends, in part, on how well the justice response is embedded in a whole-of-community co-ordinated response and how well victims understand the implications of the policies (Dobash & Dobash, 2000; Römken, 2006).

### 2.2.2. Specialist domestic violence courts

Internationally, court responses to domestic violence have been varied and there are many different models of domestic violence courts in Aotearoa, USA, Australia and the UK (Cook, et al., 2004; Stewart, 2005). In the USA there are more than 300 specialist family violence courts. Canada has specialist courts in five main cities and the province of Ontario alone has set up 55 specialist domestic violence courts (Stewart, 2005). The UK has at least five specialised courts in operation with more being implemented (Cook et al., 2004).

Specialised courts have developed in a variety of different forms because they are governed by varying legislative requirements, although they each seek to meet local needs for coordinated responses to family violence. Current models for specialised family violence courts are, therefore, diverse both structurally and through processes that are dependent on community involvement. Ongoing debates within the literature about the establishment and evaluation of specialist domestic violence courts in the USA, UK and Australia suggest that the effectiveness of many of these practices in terms of how well they protect victims is difficult to ascertain. Empirical evidence has failed to show declines in re-offending rates or improvements in reporting of intimate violence to government authorities (Bennett et al., 1999; Mills, 1999). Many approaches to specialised courts do not take account of the holistic character of intimate violence, and do not aim for the court to serve a therapeutic function in response to the need to reduce family violence. A smaller number of specialist family violence courts have in common, an approach to intimate violence which both prioritises the protection of women and children through a collaborative process with communities, and aims to enhance victim safety and increase offender accountability. A recent review suggests that co-ordinated interventions are showing promise in reducing intimate violence, although more research is needed (Shepard, 2005). Rather than only focus on fast-track adversarial process, they recognise the courts’ potential contribution in response to intimate violence as a significant psycho-social problem. These courts have shifted to a wider perspective on dealing with the problems underlying violent offences in intimate relationships through interagency collaborations for intervening in ongoing patterns of violence.

No problem solving court necessarily functions the same way as another because they need to take account of local community responses and collaborative relationships. However there are some common characteristic practices that have been implemented to varying degrees in courts that take a therapeutic approach including: co-ordinating the criminal court's response with other responses; engaging victim advocacy in the court process; sharing information between the victim and the court; referring offenders to intervention programmes for change and monitoring their progress through those programmes; and improving the specialist knowledge of those working in the court (Robinson & Cook, 2006).

### 2.2.3. Co-ordination

The acknowledged value of local, community-based interventions recommended by The Taskforce for Action on Violence within Families (MSD, 2006) is supported by international research. The court may be able to introduce practices and processes that fast track cases, or encourage guilty pleas, yet this strategy alone does not provide a response that addresses interagency and community co-ordination (Cook et al., 2004). Research has found that when court processes are linked to a coordinated community response, safety outcomes for victims are improved (Holder, 2001). For example, in South Carolina the specialised court has moved to co-ordinating its responses to domestic violence with multiple social service organisations so as to take a more active approach to holding offenders accountable and protecting victims (Gover, Brank & MacDonald, 2007).

As well as co-ordinating responses with the community, some problem solving courts involve co-ordinating civil and criminal courts to increase victim safety. Fritzler and Simon (2000) argue that the Vancouver combined court overcomes problems associated with being 'shuffled' from one court to another to seek redress for an offenders' violence against his partner. In Aotearoa/New Zealand, the Family Court and the District Court deal with different aspects of family violence: the granting of Protection Orders and the prosecution of criminal offences against family members, including breaches of Protection Orders, respectively.

Some specialist family violence courts have attempted to address victim safety at court through ensuring that there are separate, secure spaces for victims (Fritzler & Simon, 2000). Other courts have attempted to address such practical issues by reducing, or even eliminating, the need for victims to attend court. The Standing Together collaboration have systematically collected victim feedback on the court procedures in West London and have consistently found that focusing on practical details, such as secure docks, can improve victim's experiences of safety and security (Standing Together, 2006). Where advocates have the right to speak in court on behalf of victims, victims are not compelled to attend court and need only witness the proceedings if they choose.

### 2.2.4. Community Victim Advocates

Advocates can function as a buffer and contact person between the victim and the court, providing the victim with some voice and less risk of harm in the process. Victim advocacy has been associated with reduced rates of revictimisation in studies by Bell and Goodman (2001) and Cateanno and Goodman (2005). Robinson and Cook (2006) also report that victim advocacy is highly valued by those victims, and survivors, who were involved in SDVCs in the United Kingdom.

The provision of victim advocacy is common in North American SDVCs. At the Brooklyn Felony Domestic Violence Court, established in New York State in 1996, advocates are

provided from two sources, within the justice sector itself from the districts attorneys' office and from Safe Horizon, an independent victim organisation. The work is divided equally, alternating by weeks. Every victim is assigned an advocate as soon as possible. Safe Horizons have their offices in the courthouse which provides victims with easy access to advocates (Wolf, Aldrich & Moore, 2004) so long as there is a safe, secure entry for the victims. In West London, research has shown that practical and immediate help from the point of crisis is essential for improving victim safety (Standing Together, 2006). Resources for follow-up and a commitment to longer-term well being of women victims and their children are also essential in view of studies showing that flexible responses to victim needs through advocacy and ongoing social support are rated by victims themselves as more helpful for safety than criminal justice interventions (Goodman & Epstein, 2005).

Improvements in victim support services have also been associated with increasing victim participation in the justice process. All five specialist family violence courts in the UK engage independent victim advocacy for this reason (Cook et al., 2004). Providing practical support and resources for improving victim safety may also be related to victims following through with involvement in court processes if it is necessary for the prosecution to proceed (Bennett, et al., 1999).

### 2.2.5. Information sharing

Information sharing among community and government agencies involved in collaborative responses within specialist family violence courts is vital to the reliability of the information that informs judges' decisions with regard to offender accountability for intimate violence. Effective information sharing requires careful negotiation among those involved in specialist courts to ensure that the rights of victims and defendants are respected appropriately while the objectives of sharing information are also met.

Some international studies on information sharing in the operation of specialist courts point to its importance with regard to bail conditions in particular. Well founded decisions on bail take account of reliable information on victim safety in the context of an ongoing relationship with the defendant. Community victim advocates provide these assessments in some international courts. They also assist victims to plan for safety, and in West London SDVC they have found that providing advocates with information on bail hearings or monitoring outcomes as quickly as possible is crucial to improving victim safety (Standing Together, 2006). Passing information to an advocate, who can provide the victim with information about court processes, reduces the necessity for victims to be at court to find out what is happening and therefore reduces risk of exposure to threats or intimidation by their partner.

Cook et al (2004) report on the importance of developing information sharing protocols within the organisations that collaborate with specialist courts. Protocols allow for consistency in information sharing practices. Historically, at WFVC, CVS advocates had open access to information from the court so that it could be provided readily to victims. For example, the CVS could access court files so that they could let victims know the outcome of an offender's appearance in court if the advocate had not been in court on that day. This open information sharing between the WFVC and the community service providers was restricted by provisions of the Victim Rights Act (2002) which prevented third parties from accessing information. However, since CVS advocates are able to be present during court proceedings as members of the public, they were able to compensate by collecting information themselves to pass on to the victims. The 2005 protocol documents of the WFVC include procedures for information sharing

between the agents of the justice sector and CVS and have enabled information flow to be restored to CVS.

Evaluations of specialist courts in the U.K. (Cook et al., 2004) draw attention to the importance of evaluating information flow between agents involved in specialist courts. There were usually many situations in which information flow needed to be improved so that the agencies were better able to meet the aims of the specialist courts. Training for judges and others who work in the criminal justice sector on the dynamics of family violence was regarded as essential to effective information flow: agencies involved in co-ordinating responses need to share understandings of the character of the violence they are responding to.

### 2.2.6. Referrals to offender programmes and judicial monitoring

A common component of specialised courts is the engagement of specialist intervention services, often from the community, to work with offenders. In some cases, referrals to intervention programmes are a component of sentencing, and Community Probation Service monitor the offender's attendance. In some cases, monitoring is undertaken by the Judiciary prior to sentencing, and sentence leniency is associated with programme completion and the Judiciary's assessment of personal change in their relationship with the victim. Most commonly, intervention programmes work with the offender to address issues of violence or problems involving alcohol and other drugs.

In the WFVC a defendant who pleads guilty may be referred to an individual intervention or programme that addresses the psycho-social issues implicated in the offence. In such cases sentencing is deferred while the judge monitors the offender's progress through the process of intervention. During this monitoring period, the offender is called to appear in court from time to time and bail conditions are reviewed depending on their progress. The judge may also choose to receive a report on the offender's progress without the offender appearing on a particular occasion. Victim's views of how the programme is working to facilitate changes that will improve their safety are sought throughout the monitoring period. Monitoring is also used when the judge is considering a discharge without conviction and needs assurance that the offender has attended a required programme or taken the steps the WFVC requires them to take to address the psycho-social issues implicated in the violence. In this way, current interagency legal and social histories are included in the decision making process.

Judicial monitoring is used in problem solving courts so that symbolic authority and ability to coerce an offender's cooperation with interventions can be mobilised to stress the seriousness of intimate violence and the court's genuine interest in addressing violence as a social problem. Cook et al., (2004) recognised the importance of Community based programmes for the purpose of coercing change provided that offenders are closely monitored for both compliance with referrals and completion of recommended interventions across all agencies involved. While little research on the effectiveness of judicial monitoring is available, Mears and Visher (2005) report that an evaluation of three sites taking part in an initiative to introduce judicial monitoring, did not have the inter-agency information systems in place to enable the courts to monitor offenders in the community. This finding suggests that courts which involve judicial monitoring are critically dependent on interagency co-ordination and communication to successfully hold offenders accountable for their violence and monitor them effectively through change interventions that therapeutically address ongoing victimisation of their partner.

## 2.3. Waitakere Anti-Violence Essential Services and the Waitakere Family Violence Court

From its earliest beginnings what is now known as the Waitakere Family Violence Court (WFVC) included aspects of specialist family violence courts that are regarded as best practice within the international literature at present. The evolution of the WFVC has had a significant bearing on its current practices as described in Section 5 below.

In 1992 Judge Coral Shaw, a resident judge of the then Henderson District Court persuaded the Mayor, the local Police Commander and a prominent Māori citizen to join her as Trustees for a new Community Trust to be initially known as the Waitakere Domestic Violence Project. The project was later renamed Waitakere Anti Violence Essential Services (WAVES). WAVES established a steering committee responsible to the Trust Board to investigate the possibility of implementing a domestic violence programme similar to the Hamilton model, Hamilton Abuse Intervention Pilot Programme (HAIPP), in the Waitakere community. The steering committee included representatives from those agencies compatible in their response to domestic violence within the community: the police, community corrections, the Family Court, Victim Support, Western Refuge, the then Department of Social Welfare and SAFE/ Men for Non Violence. This membership worked in consultation with the Judiciary.

WAVES became a family violence network organisation. The idea of the network collaboration was derived from the model of the Duluth Abuse Intervention Project which promoted a coordinated response to domestic violence, and a fast tracking system as used in the Westminster Municipal Court in Colorado, U.S.A. at that time.

In its initial stages, the collaboration was focused on the needs of victims. In the early 1990s the Government had not legislated for the inclusion of victims in court processes, and those who were involved in family violence victim advocacy were aware of the dynamics through which reconciliation, coercion, or both resulted in offenders being able to avoid responsibility or accountability for their violence. Taking victims into account, and acknowledging the effects of processes of victimisation within intimate violence, was understood by community advocates and the Judiciary at that time, as vital components of addressing both safety and accountability within the justice system.

Establishing WAVES provided a structure and process for co-ordinating local responses to family violence from community organisations, local government, Māori and the Judiciary. WAVES facilitated consultation with the community resulting in an approach through which family violence cases were put into a *fast track* process at the same time that advocacy and support services for victims and specific programmes for offenders were provided by community organisations to the WFVC.

Fast-track had an immediate effect; pleas of guilty rose from 15% to 65%, and it was estimated that 80% of victims were able to remain in the process through to the completion of their case (Johnson, 2005). Unfortunately over time the fast track became the slow track again and in March 2001, Resident Judge Johnson called a meeting of stakeholders to consider ideas for addressing the problems associated with the delays in court. From this meeting the Family Violence Focus Group (FVFG) was established to put together the Family Violence Court Protocol (2001) which forms the basis of the WFVC as it runs today. A system was introduced whereby the opportunity to plea was not offered to defendants until they had the chance to cool off and take advice, typically one or two weeks after arrest. At the first hearing, a “status-

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hearing” enquiry would take place and the defendant would be asked to plead. The WFVC set aside a specific day each week to hear family violence prosecutions exclusively, and has undertaken to schedule defended cases within six weeks. Victim advocacy continued to be provided by non government organisations from the local community. This was, as it is now, not a special court process but a sequestration of time within the Summary Court, with a modified process within the authority of the Summary Proceedings Act 1957 (Johnson, 2005).

Considerable change occurred in 2002 when the Victim Rights Act (VRA) came into force and created victim advisors employed by the court. Their role was to provide information to victims but to remain neutral in the process. The VRA (2002) does not make any allowance for a third party to take up this role and having both court appointed Victim Advisors and Community Victim Services advocates in court presented some problems with regard to the flow of information. The 2001 WFVC protocol was reviewed and updated in 2005 after these issues were identified, in particular clarifying the respective roles of court staff and Community Victim Services (CVS) for family violence victims, and how the court staff work with the community to enable those services to be provided at the court. The current protocols relating to the Waitakere Family Violence Court consist of two separate but related protocol documents; The Waitakere District Family Violence Court Protocol and the Protocol for Family Violence Victim Services at Waitakere District Court (see Appendix A). Attached to the protocol documents is the Practice Note (1 Dec, 2004, issued by Chief District Court Judge in November 2004) that specifies 2 (plea), 4 (status hearing), 6 (defended hearing) week time frames for family violence matters before the District Court. Finally, there is a Family Violence (Not Guilty) pre-hearing checklist that is to be used to facilitate the quickest possible time frame for *defended hearings*.

The focus of the current report is the findings of two studies evaluating the WFVC protocols from different points of view and addressing specific objectives as set out in section 3 below.

### 3. Evaluation Objectives

The integrated evaluation research reported here is to meet the following four objectives set out by the Ministry of Justice.

- Describe the operation of the Waitakere Family Violence Court
- Discuss the role of non-government organisations in the WFVC, assess the level of support they provide, and at what cost.
- Describe programmes provided by non-government organisations to both victims and offenders who have been involved with the WFVC.
- Describe the perceptions of some victims who have been involved with the WFVC, including the degree to which they feel safer as a result of this involvement.

The first three research objectives were met through the findings of independent research conducted during 2006 in collaboration with stakeholders in the WFVC, including the Judiciary and non-government organisations. The focus of the 2006 study was the effectiveness of the WFVC protocols as far as participating professional, government and community agents are concerned. These objectives were met by prioritising WFVC participants' everyday experiences within the court processes, and honouring the integrity of their understandings of the court's operations, including interagency collaboration.

The fourth research objective seeks an understanding of the diverse ways in which the WFVC protocols may bear on positive or negative outcomes in terms of enhancing safety for victims. In this study the objective was met by prioritising the experiences of a sample of women victims whose partners had been convicted in the court, and the specialist experiences of Community Victim Support Service advocates who had worked with women victims in the WFVC.

In both studies the research methodology needed to be able to accommodate diverse experiences and both divergence and convergence within participants' accounts of their experience. In Study Two the methodology also needed to accommodate specific ethical considerations for intimate violence research.

#### 3.1. Ethical considerations in intimate violence research

##### 3.1.1. Safety

The safety of research participants is a priority of this research. Some research strategies have been identified as putting victims at risk of further harm. Random sampling and cold calling telephone surveys have both been identified as potentially increasing risk of harm. Random sampling usually involves sending invitations to participate in the research to potential volunteers without previously negotiating with the recipient. Cold calling involves ringing or visiting a potential participant to invite them to take part in the research without previously negotiating the call or visit with the recipient. Random sampling and cold calling sometimes mean that people are unable to voluntarily consent to participate, or are unable participate candidly because of the presence of an abuser during the researcher's contact. It is also possible that women currently victimised in abusive or violent relationships will be physically or emotionally punished for receiving a researcher's invitation to participate. Potential participants who can be asked about their interest in the research during a scheduled meeting or phone call

with a known victim advocate are less at risk because the approach takes place at a negotiated contact time when advocates can make safety assessments and offer follow up support if required.

### 3.1.2. Minimising and stereotyping

Qualitative research has documented victims' use of various minimisation strategies to cope with violence in their lives (Kelly, 1988; Kelly & Radford, 1996). Minimisation strategies involve limiting the significance or severity of incidents that the women understand as violent or abusive. Minimisation is an adaptive strategy that enables women to focus on positive experiences within their relationship. It also enables women to escape identifying as victims of violence. Stereotyping contributes to supporting minimisation. Stereotypes of family violence that only recognise physical violence, potentially inhibits women who are victimised through psychological and emotional violence from identifying their experience as victimisation. Severity of violence may be associated with frequent physical violence so that incidents of physical violence, which occur infrequently or do not result in visible physical injury are minimised. This association also enables psychological and emotional abuse to be discounted as violence. Minimisation and stereotyping can be addressed in research by engaging in data collection techniques that allow participants to disclose abuse as they understand it, and attending to the effects of minimisation and stereotyping on the ways in which victims understand safety in the analysis of data.

### 3.1.3. Mistrust

In addition to these problems, researchers have increasingly paid attention to the possibility that some women are more likely to be alienated from and mistrustful of research processes that are insensitive to cultural and socio-economic differences. Research that has consistently demonstrated negative outcomes for Māori, Pasifika, and those who are disadvantaged by their socio-economic status, their positions as immigrants, or their locations in relatively isolated rural communities has been criticised for methodological strategies that do not take cultural and social context into account. As a consequence of scientific methodologies that are assumed to be culturally neutral, the complexities of specific experiences have been undervalued. Research strategies that are sensitive to diversity necessarily involve negotiating safe encounters between researchers and participants. By valuing culturally specific interpretations of evidential data we seek to enhance trust with members of the Waitakere community.

### 3.1.4. Privilege of experience

Researchers and women who have been victimised in intimate relationships do not always share an understanding of the incidents and acts that constitute violence. Survey and questionnaire methodologies involve defining constructs and variables of interest prior to collecting data. These strategies privilege the researchers' definition of relevant constructs, events or relationships. Participants whose understandings of violence differ from those of the researchers may not consider that the research is relevant to their own circumstances and may self-select out of studies to which they could contribute valuable information.

## 3.2. Meeting the objectives

We chose qualitative methods of gathering evidence for our analysis because they generate rich and thick textual data. Conversations with participants in both studies were collected and systematically analysed using Interpretive Phenomenological Analysis (IPA) (Smith, Jarman, &

Osborn, 1999; Smith & Osborn, 2003). IPA was selected as the most appropriate methodology in both cases because it posits that the meanings ascribed by individuals to events should be a central concern for researchers. IPA does not attempt to test any predetermined hypotheses. Instead, research questions are broadly framed to provide the researcher with the flexibility to explore areas of interest in detail, guided by the research participants. The central aim of IPA is to discover what a process or event is like from the participant's perspective by collecting their stories, in their own words, about the topic under investigation; in this case the effectiveness of the WFVC protocols. The result of an Interpretive Phenomenological Analysis is a set of super-ordinate and subordinate themes which represent interactions, experiences, points and patterns of meanings.

Although a similar methodology was employed in both studies, slightly different use was made of the results of the interpretive analysis in each case, and each study addressed independently formulated research questions as described below.

### 3.2.1. Objectives one, two and three: Study one

In Study One, IPA derived themes provided content that addressed a range of questions including:

- How did the Waitakere Family Violence Court evolve?
- Who is involved in the court and what role do they play?
- What kinds of support do community organisations offer the WFVC?
- How well do the current protocols of the WFVC work to meet their aims?
- What issues and challenges currently affect the court process?

Addressing these questions enabled us to meet objectives one, two and three for this report. The thematic outcome of the IPA reads something like a description of the WFVC's operations, and a list of what works, and what doesn't work in general. It provides a preliminary breakdown and re-categorisation of data that can either be reported as a thematic analysis or be used as the first stage in a process of discursive or narrative analysis.

Since those participating in the operation of the WFVC contribute to the ongoing collaboration in the court's processes from different institutional and, in some cases, different disciplinary contexts, their daily practices are regulated within organisations that have different goals, structures and interests. In this situation we needed an analytic strategy that would take these differences into account and also provide some evaluative analysis. To provide feedback to the WFVC participants we chose a second analytic strategy: narrative analysis. Narratives are contextually rich, and also enable the inclusion of different understandings, and points of view. With respect to the participants, this analysis enabled us to represent and contextualise understandings of family violence and personal commitments in relation to reducing intimate violence within a collaborative framework. Given the significance of this feedback in relation to the development of other family violence courts in Aotearoa/New Zealand, the narrative analysis was conducted by senior researchers with forensic and domestic violence research specialisations.

Narrative theory holds that we all engage in the process of producing and reproducing stories that organise the events and relationships of our lives into meaningful sequences. It is through the narratives available in our cultural and social contexts that we make sense of ourselves and each other (Sarbin, 1986; Rose, 1997). Stories are part of our daily interactions with each other

and the narrative form of stories enables us to share our understandings. By using narrative to organise the content of the thematic analysis, and supplementing this with documentary evidence, we were able to identify events and relationships that were significant to the participants in the WFVC, and organise a sequence that represented a shared story of the evolution and operation of the court. Narratives also involve evaluations that are performed by storytellers through the way in which the events and relationships of the story are represented (Labov & Waletzky, 1997). The narrative analytic strategy thus also enabled us to evaluate the evolution and processes of the WFVC through representing the way in which court participants understand the meaningful operation of the court: how it works, who is involved, what kinds of events and relationships produce successes or challenges in the everyday practices that are intended to meet the aims of the court. A full description of the research methodology for the study that provided findings for research objectives one, two and three is provided in section 4.2 below.

For the current report, findings from the narrative analysis in Study One have been transferred from their original context in the preliminary report (Morgan et al., 2007).

### 3.2.2. Objective four: Study two

The fourth research objective set by the Ministry of Justice was met using the findings of Study Two. This research aimed for an understanding of victims' experiences of safety, including how the process of the offender's referral to a community intervention, and the judicial monitoring of that process, affected their lives. We sought an understanding of how women victims personally experienced the effects of these processes.

In Study Two the themes identified through IPA provided the content necessary to address the following research questions:

- Which specific events involved the women with court processes?
- Based on descriptions of these events, which processes specifically involve the women and to what extent are they involved in the WFVC?
- How did the WFVC and the community service providers take account of the circumstances of the family and the holistic context in which the offences were committed?
- From the women's points of view were the services they received effective and were they the most needed or most appropriate for the circumstances. Was it helpful to have access to these services through the court process?
- How did victims understand a 'delay'? Were the temporal gaps between arrest, court appearances and sentencing experienced by the women as delays? What were the positive or negative consequences due to delays or the minimisation of delays?
- What constitutes protection/safety for women and their children from their point of view? What constitutes harm? To what extent have the women and their families felt safer as a result of being involved with WFVC?
- How do the women understand accountability? In what way were offenders held accountable?
- How might WFVC improve the safety of women from the point of view of victims themselves?

In Study Two, the thematic results of the IPA identified specific events within the WFVC processes that enhanced victims' sense of safety. This focus on criteria of safety as an evaluative standard reflects the intention of the protocols of the WFVC and the priorities of the Taskforce for Action on violence within families (Taskforce for Action on Family Violence, 2006)

The research objective is intended to inform strategies and policies concerning the reduction of the incidence and impact of intimate partner violence in women's lives. To be consistent with this intention our methodological design placed safety as the central consideration in the conduct of the research. The potential for any participation in the research project to put someone at risk of victimisation or harm has been addressed wherever possible and we were guided throughout the research process by an ethical protocol with safety as its highest priority.

For the current report, findings from the thematic analysis in Study Two have been transferred and adapted from their original context (Morgan et al., 2007).

In Section 4 below the research methodologies for both studies are described in detail, separately.

## 4. Evaluation Methodologies

### 4.1. Ethical issues

Te Tiriti o Waitangi informs our understanding of ethical research practice and we are respectful of te tino rangatiratanga of Māori with regards to taonga (such as mātauranga and hauora). The spirit and intent of Te Tiriti unequivocally speaks of a partnership between Māori and Pākehā. In this research, the process of Māori and Pākehā coming together to collaborate involved culturally sensitive data collection techniques and specifically bicultural attention to the data analysis. The spirit of Te Tiriti also incorporates the principle of protection. We attend to issues of protection through many dimensions: the overall goal of the research, to enhance the safety of people who experience family violence in Aotearoa/New Zealand, requires attention to the specific vulnerabilities of victimised people, and attention to protecting the mana of those who participate in the research projects (participants, researchers and consultants). Protecting the mana of participants involves research processes that demonstrate respect for each other in our diversity, a spirit of aroha, and ongoing consultation and collaboration.

The ethical principles that underlie the Massey University Code of Ethics inform the ethical conduct of both projects within a Pākehā institution. The guidelines of *Massey University Code of Ethics* necessitate that care be given to ensure informed consent, confidentiality, avoidance of harm and deception, social and cultural sensitivity, and understanding that the rights of participants supersede those of the researchers. These ethical considerations were addressed through various strategies involving recruitment, data collection, analysis and collaboration and are outlined in the following sections. An ethical protocol for the conduct of Study One was approved by the Massey University Human Ethics Committee (Southern B Application 06/04) in early 2006. In mid 2007 a separate ethical protocol for the conduct of Study Two was also approved by the Massey University Human Ethics Committee (Southern B Application 07/18).

### 4.2. Study One: Viewpoints of court participants

Following the principles outlined in Fourth Generation Evaluation Research (Guba & Lincoln, 1989) and the collaborative approach advocated in the Government's Te Rito Policy (MSD, 2002) the researchers for the preliminary project were committed to a collaborative approach to the research. The research was undertaken after an invitation from Judge Phil Recordon, a resident judge at Waitakere to negotiate an evaluation the WFVC. The researchers spent five months prior to undertaking this programme of research meeting with the key stakeholders of the WFVC including the Judiciary, Community Victim Services and WAVES. During this time we also identified the different dimensions of the court's sphere of influence, and developed research proposals for four separate but interrelated studies to provide evaluative evidence of the WFVC's effectiveness in responding to family violence. The research design for Study One was developed through collaboration between the research team and the key stakeholder consultants.

#### 4.2.1. Participants recruited

Guidelines in qualitative research suggest that optimum sample sizes for complex, unstructured data is around 15–20 participants. A larger sample size is unlikely to provide any advantage because of a phenomenon known as saturation. Saturation refers to the point at which

collecting new data does not add new information to the analysis and it is generally agreed that this occurs once a sample size exceeds fifteen (Guest, Bunce, & Johnson, 2006).

30 participants representing all the key stakeholders; Waitakere Judiciary, Waitakere Anti Violence Services (WAVES), the Community Victim Support Network, (Viviana, Tika Maranga, Victim Support), police, Community Probation Service, Man Alive, court staff, including victim advisors and defence counsel were invited to participate in Study One. The list of potential participants was compiled with the assistance of Judge Phil Recordon, Helen Jones (WAVES coordinator) and Glenda Ryan (Viviana CEO).

Each potential participant was sent a letter, from one of the researchers, Sarah McGray, providing information on the purpose of the research and their rights if they decided to participate. The researcher only initiated additional contact with participants if they indicated an interest to take part in the research or contacted the researcher with additional questions. All participants were required to be over the age of 18 and did not include persons whose capacity to give informed consent may be compromised. All participants were proficient in English. Consent to participate was given to the researcher in writing. Information sheets and consent forms for Study One are included in Appendix B.

Of the 30 potential participants initially contacted, the researcher received replies from 26 indicating a willingness to participate. This was representative of a response rate of over 85% which exceeds acceptable response rate standards by a considerable percentage (60% would be regarded as excellent, and 30% as acceptable). Therefore the sample size was more than sufficient for the purpose of the qualitative research that was being undertaken. Due to work commitments not all of the 26 potential participants who initially responded contributed to the research: 23 took part in the study and there were at least two participants from each professional, government or community group represented.

#### 4.2.2. Data generation

Two types of qualitative data collection strategies were used with court participants: individual one-to-one interviews and focus groups. Both interviews and focus groups have the potential for generating complex accounts and stories of experiences. Interviews are conducted more privately in that the participant meets only with an interviewer. Focus groups enable participants to meet together with the interviewer, and in relation to others. Collecting data through both interviews and focus groups enables us to be flexible with regards to the needs of particular participants. It also provides two different, socially salient data collection modes: a conversation between two people, and a group discussion which increases the potential for collecting rich and complex data. All participants had the option to participate in interviews and/or focus groups.

Interviews and focus groups were organised around open-end questions intended to explore the participant's experience of working with the protocols of the WFVC and how they understand the difference between the WFVC and the unmodified Waitakere District Court. The interviews and focus groups used conversational style interviewing to maximise the potential for participants to contribute to the discussion from their own point of view, and include as much detail as they were willing to provide. In total, three focus groups were held and 16 individual interviews. One focus group was homogeneously comprised of participants who were WFVC employees and the other two groups were heterogeneously comprised of participants from various government and community agencies involved in the court process.

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Interviews were conducted privately in a place that was convenient and safe for the participant and researcher. Focus groups were conducted with four to five participants, who had agreed to keep the conversation confidential, and in a setting that was convenient and safe for the participants and researcher. To avoid any discomfort (physical, psychological or social), incapacity or other risk of harm to individual participants as a result of participation in focus groups, facilitation strategies were put in place so that every person involved was ensured a fair hearing and was not intimidated or dominated.

Interviews and focus groups were run as a conversation around the how the WFVC works in terms of the experiences of people who are involved in a professional capacity. The following prompts were used when required, but participants were also encouraged to pursue matters of their own interest:

- What is your role with the WFVC?
- What do you think is the purpose of the WFVC?
- Is the WFVC working based on your understanding of its purpose?
- What do you see as the benefits the WFVC, i.e. what is the WFVC doing well?
- What are the problems with the way the WFVC is currently working, i.e. what could the WFVC be doing better?

All interviews were audio-taped, and focus groups audio-taped and videotaped. Tapes were transcribed to include the content of all contributions to the conversation, including those of the interviewer. Guided by the understanding that the rights of participants supersede those of the researchers, all transcripts from the interviews were returned to participants to make corrections to their contributions, delete any parts they did not want included and to make any additional comments. Participants returned the transcripts with signed release forms authorising their use in the analysis stage.

As well as the research method detailed above, this research ensured the confidentiality and privacy of the participants and minimised any risk of potential harm to participants and researcher through incorporating the following elements. No information that could identify participants has been given to any person outside the research team. Participants were given a unique identifier and the participants' identities have not and will not be disclosed in reports of the research. As an additional precaution, where quotes from participants' transcripts identify their role in the court and are used in the report, a second unique identifier has been assigned to ensure that these excerpts cannot be 'matched' to any other quotes used from their transcripts. We note that the identity of judges of the WFVC is available as public information and have not removed their names when participants have referred to them. Tapes and transcripts are stored in a secured location in the researchers' work place. Computer files holding any identifiable data are stored on a computer with a password only known to the researcher. All backups are stored in a secure, off site location. Consent Forms are stored in a separate secure location at Massey University.

In addition to transcript data, we also collected archival data on the evolution of the WFVC provided by WAVES, and correspondence provided by various participants. Archival data was used alongside participants' accounts as evidence of the process of the court's evolution. It also provided a set of documentary accounts that served to verify participants' points of view. A full list of documents made available to the researchers appears in Appendix C.

In keeping with the principle of collaboration that informs this research programme, a draft preliminary report was made available to three representatives of key stakeholders for feedback, before its release to the Waitakere Family Violence Court Focus Group in May 2007.

#### 4.2.3. Analytic strategies

Interpretive phenomenological analysis (IPA) uses thematic textual analysis as its primary analytic strategy. This involves coding transcriptions of the interviews and focus groups alongside any salient reflections of the interviewer related to interpreting transcripts. Coding following the IPA framework allowed for the emergence of interactions, experiences, points, and patterns of complex stakeholder issues, which aided the analysis and evaluation process.

##### IPA: Coding and themes

IPA involves intense analysis of each transcript in an attempt to understand the complex meanings of the respondents' stories and accounts. In order to organise and represent the meanings that were interpreted, the researcher engaged in the following process:

Initial notes were made as transcripts were analysed individually, line by line. The left-hand margin was used to note anything that was significant or interesting, including poignant background information, descriptive labels, similarities and differences, and preliminary interpretations.

The right-hand margin was used to note emerging themes by making connections among the codes. In essence, the initial notes in the right-hand margin became succinct phrases representing the interpretation of the text, and using the participants' own words as far as possible. As the connections between codes became more systematic, the emerging themes were recorded. Quotes from transcripts were then organised thematically. Each quote identified the participant by a two letter initial, and provided the line number of the beginning of the quote from the relevant transcript. Wherever quotes are included in the report, they are presented in this format.

The content of the emergent themes were organised into groups by identifying relationships and making connections that resulted in clusters of themes. These clusters were checked against the transcripts for validity, and a set of quotes were identified as providing evidence of the theme. Finally, a codebook of themes for the clusters was compiled, giving each cluster of themes a name that represented the overarching or superordinate theme, and listing the relevant subordinate themes beneath them. The codebook developed through this process is summarised in Table 1 below.

**Table 1: Superordinate and Subordinate Themes: Analysis of WFVC Participant Interviews**

<p><b>Superordinate Theme:</b> Development of the court</p> <p><b>Subordinate Themes:</b> The Victim Rights Act 2002 Legality of the process - (fairness, natural justice) Victim statements from CVS Set up of the day Judicial monitoring Funding/Resources Training Stakeholder collaboration Information sharing - (Police/CVS; VA/CVS) The Family Violence Focus Group Developing the protocols</p>	<p><b>Superordinate Theme:</b> Roles within the WFVC</p> <p><b>Subordinate themes:</b> Police Police prosecutors The Judiciary Community Victim Services advocates (CVS) Court Victim Advisors (VA) Service providers - (Man Alive, Salvation Army, CADS) Defence counsel Community probation Defendants/Offenders Complainants/Victims</p>
<p><b>Superordinate Theme:</b> Relationships between the different roles</p> <p><b>Subordinate Themes:</b> Police and defence counsel Defence counsel and CVS - (extravagating, templates, differing views) Judges and defendants - (coercion/pressure; encouraging; therapeutic, parenting, repair/healing, more damage) Judges and victims/families Victims and CVS and VA - (neutrality, advocacy) Judges and CVS - (speaking rights)</p>	<p><b>Superordinate Theme:</b> Aims of the court</p> <p><b>Subordinate Themes:</b> Overcoming systemic delay and minimising damage to families by delay - (efficiency, speed, tension with a therapeutic approach, timeframes – 2,4,6) Concentrating specialist services within the court process - (Judges, defence counsel, police prosecution; community services) Protecting victims consistent with rights of defendants - (safety of victims, sharing information, rights of offenders) Promoting a holistic approach Therapeutic jurisprudence Holding offenders accountable - (accountability to the court – conviction and punishment; getting off easy, Section 106s and sentencing options; accountability to victims – the violence stops, accountability and change, presumption of guilt)</p>
<p><b>Superordinate Theme:</b> Understandings of family violence</p> <p><b>Subordinate Themes:</b> Alcohol Cycle of abuse Gendered Low end versus high end Minimisation/exaggeration/underreporting</p>	<p>One offs Poor/Māori She asked for it? Criminal or private matter Possibility of change</p>

### Narrative analysis: Sequences and stories

The aim of the second stage of the analysis was to represent the participants' perspectives on events and relationships that were significant to their understanding of how well the protocols of the WFVC were meeting their aims. These perspectives were contextualised through identifying current government responses to family violence in legislation and policy, and the research literature that informs contemporary knowledge and competencies related to family violence.

As a first step in the narrative analysis, the contents of the first three superordinate themes were reorganised into temporal sequences representing the evolution of the WFVC. Key events, such as the meeting of initial stakeholders interested in a collaborative response to family violence in Waitakere, or the introduction of the Sentencing Act (2002), were identified, and connected with participants' interpretations of the impact of such events on roles, relationships and practices within the court. In representing the evolution of the WFVC through temporal sequencing, evaluations were incorporated through linking significant events and relationships with reference to the context of Government responses and specialist research.

In the second step of the narrative analysis, the contents of the first four superordinate themes were reorganised around three sets of aims set out in the WFVC protocols: those related to timeframes, those related to specialisation, and those related to safety and accountability. These sets of aims provided organising principles based on evaluative criteria: they specified the outcomes that the WFVC protocols were designed to achieve. Within each of these sets of criteria participants' perspectives on successes and challenges were linked to particular events, roles and relationships as well as the context of government responses and specialist research and practice. In representing the successes and challenges of the WFVC in relation to specific intended outcomes, evaluations were also able to be incorporated through linking significant events and relationships with reference to the context of government responses and specialist research and practice.

These two phases of narrative analysis produced two distinct but interrelated narrative representations: The story of the evolution of the WFVC and the story of its protocols in practice.

The contents of the fifth superordinate theme were not included in the narrative analysis and form the basis of a specific dimension of a subsequent discourse analysis due to be completed by Sarah McGray in February 2008.

## 4.3. Study Two: Viewpoints of women victims and advocates

In designing Study Two, primacy was given to ethical considerations relating broadly to safety. This requires taking account of research traditions that have been identified as potentially harmful to participants and these were addressed through specific strategies of recruitment, data generation, analysis and collaboration. The following sections outline each of these strategies.

### 4.3.1. Representation and sampling

The most common version of representational sampling derives from traditional quantitative research designs. In these designs representational sampling seeks to ensure that members of the population under investigation have an equal chance of being selected to take part in the

research. This version of representational sampling is intended to ensure that the sample accurately represents the population. It depends on relatively accurate estimates of population parameters and random selection from the population. Representational sampling would not be appropriate for this project for three critical reasons; safety, underreporting, and diversity.

Rather than aiming for representational accuracy, we aimed for a purposeful sample of experiences that represents diversity and complexity across social dimensions. It would be ideal to have samples that include the experiences of women victims whose partners had received other sentences on conviction, or had charges withdrawn or been acquitted, as well as including proportional representation of family relationships, gender and ethnicity based on those who have been involved in the court's processes *and* on the different victim support services that are provided in the community. However the scope of Study Two prohibited such broad sampling. We prioritised one sentence type: conviction and come up if called upon. This sentence was the most common sentence passed at the WFVC in the year July 2005-June 2006, the first year in which the current protocols were in place (Coombes et al., 2007). Data from the Case Management System (CMS) shows that in 2007 this sentence was the third most common, with supervision and community work imposed more frequently<sup>1</sup> (Ministry of Justice, 2008). When offenders have pleaded guilty they have usually been referred to treatment and intervention programmes to address problems underlying their offences. Sampling experiences from women whose partners have received this sentence enabled us to select a purposeful sample from a small but socially diverse group of participants while retaining an adequate sample size for data saturation.

Saturation is a term used to refer to the point in qualitative data collection and analysis when new information does not add to the findings already produced – no new codes, themes or theoretical categories are able to be developed. At this point, the findings may be regarded as a robust analytic account of data. Saturation is ideally reached through theoretical sampling which is an ongoing process that enables the researcher to identify gaps in the analysis and return, sometimes repeatedly, to collect more information from participants, or select new participants to purposefully provide the missing information. However, this ideal is difficult to practice where resources for the research are restricted or there are time limitations on the project. In these circumstances Guest, Bunce and Johnson (2006) recommend a sample size of 12 as likely to reach saturation if the sample is relatively homogeneous, and a sample size of six can produce the basic elements of superordinate themes. They point out that a sample of this size will “not be enough if a selected group is relatively heterogeneous, the data quality is poor, and the domain of inquiry is diffuse and/or vague” (p.79). Larger samples are necessary if the objective involves comparing variations among groups, however this study does not aim to make such comparisons.

Restricting our sample to one sentencing group meets the criterion of homogeneity because the participants have experienced similar processes through the WFVC procedures. The domain of inquiry is specifically focused on these processes and victims' experiences of safety. To ensure that we generated data of sufficient quality, we used conversational interviewing to collaboratively produce rich textual accounts of the participants' diverse experiences of the processes resulting in this particular sentence.

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<sup>1</sup> The authors note that we do not have information on the charges relating to sentences in the CMS database. Therefore, we cannot ensure that this sentence information represents all cases before the WFVC or only Male Assaults Female and Breaches of Protection Order cases. We also do not know whether this CMS data is specific to the WFVC or whether it is district or national data.

We recognise that by limiting our sample to women victims whose partners have received a particular sentence as a result of WFVC proceedings we are unable to draw conclusions about the safety of victims who were involved in other kinds of court processes that resulted in other sentence outcomes. In some cases, this may be the result of a not-guilty plea or charges may have been withdrawn during the period of time required for preparing a defended hearing. In other cases the seriousness of the violence or the offender's criminal history may have resulted in imprisonment. These circumstances are likely to be related to very different experiences of safety. For example, where a defended hearing takes longer to dispose of the matter before the court, the victim is more likely to re-engage in a relationship with the defendant, and the defendant has more opportunity to re-exert control over his partner. In the case of an ongoing relationship there is more opportunity for them to enter a 'honeymoon' phase, a reconciliation phase that has been identified in research on the cycle of intimate violence. In many instances, violence escalates after this phase but it is not possible to predict escalation accurately. Coercion or re-engagement may result in the victim withdrawing evidential statements *and* being at greater risk of victimisation. These are circumstances in which invitations to participate in research may trigger incidents of violence.

Although the scope of this project is not sufficient for safe sampling techniques that will produce robust analytic findings on victims' experiences of safety across *all* WFVC processes, we obtained insights into a variety of these experiences through interviews with community advocate key informants. To obtain these insights we interviewed three key informants with a range of experiences of working as victim advocates for non-government organisations collaborating with the court. Key informants were invited to contribute their insights on victim safety if they had more than five years experience working with victim services associated with the WFVC. We sought their experienced views of how the WFVC protocols affect victims' safety, based on their witnessing hundreds of victims' experiences over the years of their collaboration with the court. The information generated from these interviews was not sufficient to be confident of saturation independently, however they were analysed because interviewers reported that they strongly supported the accounts given by the women participants. Although both the women's and advocates' interviews were analysed separately, the commonality of their thematic structure suggested that saturation had been reached in relation to various understandings held in common by the women and the key informant advocates.

#### 4.3.2. Recruitment and participants

Nine women victim participants were recruited in negotiation with Viviana, one of organisations of the Community Victims Services Network. Advocacy staff chose a pool of clients who met the safety criteria for participating in the research: they were over 18 years of age; there had been at least a two month time lapse since they had any involvement with the Waitakere Family Violence Court; and, the advocates assessed that they were safe enough to be invited to take part in the research. From this pool, the researchers chose 20 clients who received invitations to participate. Six participants were recruited from the first round of invitations. The second round of invitations from a further pool of 20 resulted in no participant volunteers. Between the first and second round of invitations, Annan Lui, who was known in the Waitakere community, was murdered by her violent partner. Her death resulted in an increase in demand for the Community Victim Services as women in the district became more anxious about their own situations. At the same time the women who spoke with the advocates became more cautious about being involved in the research. After advocates advised the research team that demand for their services had returned to normal levels for this time of year, a third round of recruitment was negotiated. From this round, three more participants were recruited.

Advocates participating in recruitment noticed that women often declined to take part because they did not want to re-visit painful experiences from their past.

By collaborating with Viviana in recruitment for the research, the researchers were assured that each participant's safety had been assessed at the time the invitations were made. Each volunteer was able to negotiate their participation and choose whether they would prefer a Māori or Pākehā interviewer, or both, where and when they would like to be interviewed, whether they needed a safety plan to feel confident of their safety, and how their needs for cultural safety could be taken into account. Although it was possible for participants to choose not to inform advocates of their participation in the research, all of them chose to tell the advocates who worked with them and some of them chose to be interviewed at a Community Victim Service office. Victim advocates also offered ongoing support after the participant interviews.

We did not collect demographic information about women who volunteered to participate in this study. However, based on the accounts the women provided to interviewers and the interviewers' experiences of meeting and talking with women participants we became aware that the women and their partners were Māori, Pākehā, and immigrant. In some cases their intimate relationships involved differences of culture and language. For some participants the relationship in which they had been victimised was an early, first relationship that had not continued for more than a few years. For others, their relationships were more permanent and some participants had been married to their partner for most of their adult life.

Some participants had migrated to Aotearoa/New Zealand and English was not their first language. Some participants had been born in Aotearoa/New Zealand and their partners had immigrated and were culturally immersed in non-English speaking communities in the Waitakere district. All the participants were employed and either owned or tenanted their homes. They were not financially dependent on their partners and they did not rely on Government financial support at the time of the interview.

All three key informants invited to contribute to the research accepted our invitation. They had between five and fifteen years of experience working with women victims of partners prosecuted in the WFVC. Their combined experience included services provided through Viviana, Tika Maranga and Victim Support, as well as other organisations that provide services to victims of family violence in the Waitakere district.

### 4.3.3. Data generation

Both women and advocate participants took part in a conversational interview with one or two interviewers. Conversational interviews allow the generation of data which is rich in detail and includes information that is unanticipated and of critical relevance. The aim of conversational interviews is to ensure that it is not only the researcher's agenda that is met by the interview process, and to enable participants to have the opportunity to raise issues, or talk of events that are significant to them. If a structured or semi-structured interview protocol is used, participants are less likely to openly discuss their experiences and more likely to depend on the researcher for direction. In such circumstances we lose the opportunity to learn about experiences that we have not already thought to include in an interview schedule. Conversational interviews are designed to provide the researchers with adequate qualitative data for analysis that addresses the research questions specified in Section 3.2.2 above. Interview schedules were developed to ensure that prompts could be used by interviewers to cover the specific interests of the Ministry of Justice (see Appendix D).

Prior to interviews being conducted, all participants received an information sheet. These were either posted to CVS clients who had let advocates know that they were interested in the research and were safe to receive invitations in this manner, or they had been provided at meetings between clients and advocates involved in recruitment. All participants had the opportunity to ask questions about the research prior to their interviews and all signed consent forms before interviews began. Information sheets and consent forms for Study Two are included in Appendix E. Interviews were conducted privately in a place that was convenient and safe for the participant and researcher, either the participant's home or an office in one of the community service organisation buildings. They were held between September and October, 2007. All but one of the interviews were audio-taped and then transcribed by transcribers who had signed a confidentiality agreement. So that participants could be more confident in our confidentiality protocols, we also ensured that transcribers did not reside in the Auckland region. One participant did not agree to her interview being taped and negotiated for the interviewer to make notes during and after the interview. Transcripts from the interviews were returned to participants to make corrections to their contributions, delete any parts they did not want included and to make any additional comments unless they did not want to see the transcript again. Participants gave written or oral consent for the use of transcripts in the analysis stage either at the end of the interview or when returning their edited transcripts to the researchers.

#### 4.3.4. Data analysis

The whole of the research team were involved in analysing the interview data through a consultative and collaborative process. The team comprises specialist domestic violence and forensic psychology researchers, Māori, Pākehā and tau iwi interviewers and transcribers, and Māori and Pacific Island consultants. Our collaborative process involved discussions around the aims, objectives and specific research questions we were addressing, our understanding of our methodology and our assumptions, our ethical conduct, and our experiences of interviews and transcription. Interviewers debriefed together and with other members of the team. We talked about how to protect participants' confidentiality, about the detailed information they had disclosed to us and how we could represent our respect and admiration for their courage and resistance of their partner's violence. Our experiences and our discussions informed our understandings of the accounts we had heard, read and encountered, providing those who had responsibility for analysis and report writing with multiple interpretations of prioritising victim safety to bring to the analysis.

Transcriptions of interviews are often regarded as the first stage of data analysis since they involve interpretive decisions about how to represent conversations between interviewers and participants. Transcripts included word by word interactions between the interviewers and the participant, hedges (e.g. 'hmmm', 'ah', 'you know') and significant gestures (e.g. 'points down') with adequate punctuation to enable meanings to be interpreted. Pauses were not timed, verbal interruptions involving others (e.g. children) were not transcribed and interactional features such as overlaps in conversational turns were not recorded. Transcriptions were completed as soon as possible following interviews.

Interpretive phenomenological data analysis involves coding each meaningful unit line by line in each transcript as a first step. Women victim participants' transcripts were coded first. Codes initially took the form of words or phrases that represent as meaningful a unit as possible. For example, the following text

*...he tried to make me go back to the police station and say he didn't do it (T1, 66-67).*

was coded 'retraction/coercion' because it referred to the participant's account of her partner's attempt to coerce her into retracting her initial statement to police. As well as codes, memos of salient reflections on the interpretation were also kept. Sections of transcript were excluded from the coding if they involved interactions in which the interviewer was explaining an aspect of the legal system such as the difference between a Protection Order and the older non-molestation orders, or the participant and interviewer were negotiating for the woman to receive follow up advocacy services, or the interviewer was engaged in counselling interactions that were necessary to address an issue that emerged from the conversation.

The first six transcriptions were coded individually and then the codes were compared and contrasted to develop a draft codebook which comprehensively recorded the codes and arranged them into clusters where their meanings were related. In this way the analysis allowed for the thematic emergence of interactions, experiences and patterns of understanding that were similar across the interview transcripts. It is important to note that different kinds of events were sometimes thematically similar. For example, one participant talking about her partner returning to her home and another talking about her partner contacting her by cell phone would be thematically similar events, if both participants were describing how their partner reasserted his relationship with her as soon as possible after he was arrested. At other times similar events were thematically quite distinct. For example, two participants talking about their partner 'leaving them alone' for a period of time would constitute thematically distinctive events if in one case their partner did not make contact because he lost interest in the relationship, and in another, he did not make contact because of the provisions of a Protection Order. The draft codebook became an initial scaffold for organising the thematic analysis and the evidence of themes provided in the transcripts. Interviewers and consultants on the research team discussed the codebook and their reflections on the interviews with the analysts and report writers.

Throughout the interviews the women participating had told us stories of their experiences - both spontaneously and in response to particular prompts/questions. Although their stories were not organised into a coherent temporal account of the events of their partner's involvement with the WFVC, and its subsequent effects on their lives, each story was located somewhere within the temporal sequence beginning before their partner's arrest, then moving through the period of time in which court proceedings were conducted. Interviews also included stories of how the process of legal intervention into their partner's violence against them had impacted on their lives after the court proceedings had been concluded. In the second stage of the analysis, we organised the themes that emerged from the analysis of the transcripts so that they also represented sequences of events over time from before the arrest until after the court proceedings. This involved carefully separating accounts of the women's experiences of violence within their relationships to ensure that historical incidents and offences were identified distinctly from re-offending during and after court proceedings. The women's reflections on relationships that were involved in enhancing their safety were retrospective and were, therefore, represented as subsequent to the WFVC's intervention.

In the next stage of the analysis, coded sections of each transcript were copied into Microsoft Word files so that all the evidence for particular themes related to specific periods in the temporal sequence were gathered together. At this stage any specifically identifying, detailed descriptions of violent events were not transferred from transcripts to evidence files in full and participants were allocated pseudonyms so that they were not identifiable at this stage of the

analysis. Within each theme transcript evidence was then carefully re-examined and re-organised into subordinate themes and each subordinate theme was named to represent the way in which its meaning was unified. The codebook was then redrafted to incorporate each sub-ordinate theme.

The codebook developed through this three stage process is reproduced in Table 2 below.

**Table 2: Superordinate and Subordinate Themes: Analysis of Victim Participant Interviews**

Part One: Before this arrest	
<b>Superordinate Theme:</b> A history of violence <b>Subordinate Themes:</b> This incident was not the first Drugs Weapons Mental health	<b>Superordinate Theme:</b> Emotional turmoil <b>Subordinate Themes:</b> Fear Shame Love and sympathy Control
Part Two: Arrest and court proceedings	
<b>Superordinate Theme:</b> Intimidation, coercion and threats <b>Subordinate Themes:</b> He came straight back I'm afraid Denying Blaming	<b>Superordinate Theme:</b> Going to court <b>Subordinate Themes:</b> (Not) going Love and fear If it had been safe Delays
<b>Superordinate Theme:</b> Contact with court <b>Subordinate Themes:</b> Community advocates and victim advisors Statements for court Helpfulness Disappointments Follow up	<b>Superordinate Theme:</b> Chances to change <b>Subordinate Themes:</b> He had to do it Still angry
Part Three: After court	
<b>Superordinate Theme:</b> He didn't learn <b>Subordinate Themes:</b> It wasn't a lesson More of the same It means nothing	<b>Superordinate Theme:</b> What keeps me safe and doesn't <b>Subordinate Themes:</b> Silence Making the decisions Neighbours Friends Family support Protecting the kids

**Table 2: Superordinate and Subordinate Themes: Analysis of Victim Participant Interviews**

<p><b>Superordinate Theme:</b>  <b>Things have changed</b>  <u>Subordinate Themes:</u>                  Different, and yet                  Family healing</p>	<p><b>Superordinate Theme:</b>  <b>My responsibilities</b>  <u>Subordinate Themes:</u>                  Leaving my home                  Separating                  Legal orders for protection                  Aftermath</p>
<p><b>Superordinate Theme: Messages</b>  <u>Subordinate Themes:</u>                  For other women                  For the court</p>	

Subsequently, the remaining interview transcripts and notes were individually coded, and special attention was paid to identifying substantive differences from the information provided in the initial interviews. Only the first subordinate theme of 'going to court' was altered in this process to account for occasions when a participant had attended her partner's hearings at the WFVC. No new themes or sub-themes emerged from the analysis of this data. Despite the small sample size of nine participants the results of this analysis suggest that superordinate themes were saturated after six interviews. Further sampling may have added specific detail to particular themes or sub-themes however the saturation of the superordinate themes suggests that the small sample produced a robust analysis.

Key informant interviews were separately analysed, and the same process of individual coding, comparing and contrasting codes, identifying emerging themes, organising sub-themes and developing and re-drafting a codebook was followed. The codebook that emerged from the key informant interviews is reproduced in Table 3 below.

Table 3: Superordinate and Subordinate Themes: Analysis of Advocate Participant Interviews

Part One: Knowing her history	
<p><b>Superordinate Theme:</b> Taking history into account</p> <p><b>Subordinate Themes:</b> Understanding the dynamics Specialisation The role and value of advocates</p>	<p><b>Superordinate Theme:</b> Fear</p> <p><b>Subordinate Themes:</b> Risk of retaliation Intimidating court proceedings</p>
<p><b>Superordinate Theme:</b> Blame</p> <p><b>Subordinate Themes:</b> Responsibility and guilt Pressure to rescue</p>	<p><b>Superordinate Theme:</b> Protecting the kids</p>
Part Two: Court and other legal interventions	
<p><b>Superordinate Theme:</b> Statements for court</p> <p><b>Subordinate Themes:</b> Reliable safety assessments Benefits of collaboration for victim safety</p>	<p><b>Superordinate Theme:</b> Chances to engage in change programmes</p> <p><b>Subordinate Themes:</b> Consulting her Sentenced to change Paying for it Taking their time</p>
<p><b>Superordinate Theme:</b> Going to court</p> <p><b>Subordinate Themes:</b> Only if necessary Love and fear Evidence from defended hearings Safety measures Delays and judicial monitoring Delays and defended hearings Making the decisions</p>	<p><b>Superordinate Theme:</b> Chances to stop re-offending before imprisonment</p> <p><b>Subordinate Themes:</b> The path to prison Protection from orders</p>
Part Three: Other safety considerations	
<p><b>Superordinate Theme:</b> Meeting the needs of immigrant victims</p> <p><b>Subordinate Themes:</b> Limited community services Accounting for cultural difference Obstacles to safe intervention</p>	<p><b>Superordinate Theme:</b> Safety and sentencing</p> <p><b>Subordinate Themes:</b> Imprisonment Home detention Community work Fines Section 106 discharges without conviction Same day sentencing</p>

In the final stage of analysing the interview data, we drew on the thematic analysis of interviews with women victims and advocate key informants to identify the specific events and relationships involved with the implementation of the protocols of the WFVC, the conditions under which the WFVC affects safety for victims, and the way in which participants understand key constructs informing the court. The research questions enabled us to use this information

to assess the successes and challenges of the WFVC's protocols from the point of view the participants.

The report of Study Two presented the thematic analysis associated with three main temporal stages of the women's experiences of the WFVC. Each subordinate theme is presented through interpretation and evidence provided by the interview data. We selected extracts from the evidence files to illustrate our interpretation. Some extracts could be used to illustrate more than one subordinate theme. For example, the extract below was used to illustrate the sub-theme 'he came straight back' in which participants' experiences of their partner's disrespect for the non-association conditions of their bail were represented.

*I woke up because I could smell something. My ex has always smoked dak and I hate the stuff. I smelled something and thought, "What the hell is that?" and I could taste it. He's sitting in the lounge smoking P (WP9, 101-103).*

The same extract could have been used to illustrate the sub-theme 'drugs' because it includes references to her partner's history of drug use. Even though extracts could often provide evidence of more than one sub-theme we chose not to illustrate thematic overlap by choosing the same extract to illustrate different thematic content.

In reproducing the evidence from the transcripts we excluded all potentially identifying detail and where information has been necessary for the sense of the participant's account to be maintained, specific details have been replaced with general categories. For example, all names were replaced with [name], and details of places have been substituted with such phrases as [place that we went to]. In some cases, even the gender of particular relatives has been obscured, for example replacing 'my brother' with [relative], to assist in maintaining participants' confidentiality. As an additional device to protect confidentiality, we did not follow the usual practice of providing pseudonyms for participants when citing evidence from their transcripts. Even though we have removed identifying material, it is possible that confidentiality could be breached if specific episodes were able to be connected with a particular participant. To disrupt the possibility of breaching confidentiality by providing evidence, we have allocated transcript numbers within each theme. This allows readers to identify different voices within each theme without being easily able to connect them between themes. All evidence from the transcripts is archived for five years and then destroyed.

### 4.4. The current report

The current report integrates findings from Study One and Study Two. Where narrative accounts from Study One were consistent with thematic analysis from Study Two the two reports are integrated under headings provided by the Ministry of Justice. Where one study or the other provided distinctive findings in relation to the topics of interest to the Ministry they are represented sequentially in this report. No substantial changes were made to the findings of either Study One or Study Two in the process of integrating the reports into the current report: the only new material included in this report takes the form of transitional paragraphs or commentary on the relationship between the findings from the two studies.

In providing evidential quotations from Study One the unique identifiers attached to participants' interview transcripts are included as they appear in the original report. Evidence from key informants' transcripts from Study Two is also reported here as it appears in the original. However to provide additional protection of women victim participants' confidentiality, the

original report on Study Two did not include unique identifiers and the system employed to allow readers to distinguish among evidential extracts did not transpose easily to the current report. For this reason evidence from women victims' transcripts is included here with additional information locating the quotation within a sub-theme from the results of the initial interpretive phenomenological analysis. The identifier for each of these extracts is comprised of the participant number assigned to the extract as it appeared in the original report within a particular sub-theme, the line numbers of the text in the interview transcript, and the name of the sub-theme, for example:

*...he said he was going to kill me because I had called the cops...so that was...I didn't call the police again for about six or seven years (WP3, 658, 662; Control).*

Extracts represented by the same participant number (i.e. WP3) but different sub-themes are taken from different interview transcripts.

There are two main sections to this integrated report: Findings and discussion related to the operations of the WFVC and findings and discussion related to the successes and challenges of meeting the aims of the court through the everyday practices of its current protocols.

## 5. Findings and Discussion: Part 1, Operation of the Waitakere Family Violence Court

### 5.1. Objectives of the WFVC: The protocol documents

The operation of the Waitakere Family Violence Court has been regulated by a protocol document since 2001. The initial protocol was revised in 2005 to take account of changes resulting from the introduction of court victim advisors into the District Court. The WFVC and community were able to reach agreement about continuing to work together to provide the comprehensive victim services that had previously been a feature of the court.

*We wanted to reinstate that high level of service to family violence victims. So there was a willingness on behalf of courts to do that and certainly we were working towards that outcome. In the end we ended up with two documents and one related to protocols around Community Victim Services in court, and the other was the original Family Violence Court Protocol (WO, 106).*

The current working document *Protocols Relating to the Family Violence Court at Waitakere District Court* represents significant agreements within the collaboration between the court and community and forms the basis for the operation of WFVC. These are specified in two separate but interrelated documents: The Waitakere District Family Violence Court Protocol and the Protocol for Family Violence Victim Services at Waitakere District Court. The documents were developed by the Waitakere Family Violence Focus Group (Focus Group) comprising members of the Waitakere Anti-Violence Essential Services network (WAVES) and government agents involved in the Waitakere District Court.

The introduction to the protocols briefly outlines the court's history and the collaborative processes through which it has evolved. While these statements are concise, they clearly identify the Waitakere District Court as taking an innovative approach to domestic violence offences that provides community advocacy and support for victims, community programmes for offenders, and attempts to deal with domestic violence matters quickly. The innovation indicated in the introduction provides two key considerations for assessing the WFVC's successes and challenges from the point of view of those who work within the court; how well the current practices of the court reflect the collaboration between the court and the community as partners in responding to domestic violence within the Waitakere district; and how well the current practices reflect a specialised understanding of the dynamic processes of intimate violence which motivate the need for community, government and professional responses to be efficient and timely. The introduction to the protocols acknowledges the Focus Group's appreciation of the commitment of all who were involved in their development, and thus points to the value which the WFVC and community stakeholders place on their collaborative effort to meet the needs of families affected by intimate violence.

The WFVC protocol document begins with the six aims that the structure and process of the court is intended to meet as specified in Section 1 above. The first three aims; overcoming systemic delay, minimising damage to families by delay and concentrating specialist services within the court process are common to both the 2001 and 2005 protocols. Together with the additional aims of protecting victims, promoting a holistic approach to the court's response and holding offenders accountable, they provide a set of discrete criteria for identifying the court's

successes and challenges in as much as they specify an agreed trajectory for responding to family violence within the District Court at Waitakere. The protocol aims also represent an implicit philosophy underlying the WFVC collaboration where each of the aims is connected to principles which locate the WFVC's practices within a 'problem solving' or therapeutic jurisprudence approach.

*It's [the aims] so the criminal justice system can respond appropriately and with a degree of flexibility to work for the betterment of the people who are the victims of family violence and the perpetrators of family violence, (remembering of course, a lot of the perpetrators have been victims of family violence). So it's really looking at the cycle of violence and what we can do to affect real and meaningful change in that area, while still holding offenders accountable but perhaps being creative in terms of the ways we do that so we get some positive outcomes (RRH, 135).*

The first two aims take account of the way in which cycles of violence in family relationships involve psychological abuse, coercion and manipulation which act to undermine interventions aimed at minimising damage experienced within the family. *Reducing systemic delays* in the court process maximises the opportunity for interventions to be effective before further damage occurs. Aiming to *concentrate specialist services* in the court provides the best opportunity for effective intervention by ensuring that those who are involved in the WFVC's processes have expertise in addressing the problems which affect the offender before the court, and family members who have been victimised, as well as ensuring a consistent approach to problem solving among those participating in the court. The aim of *protecting victims of family violence consistent with the rights of defendants* recognises the critical importance of victim protection within the context of an ongoing familial relationship with the defendant. The general principles of defendant's rights within the justice system are *not* specifically premised on the assumption that victims and defendants will continue to engage with each other in intimate personal relationships. In the case of family violence, however, the obligation of the law to protect citizens from victimisation may not be adequately met if the process of prosecution does not take account of this ongoing relationship and its dynamics<sup>2</sup>. *Promoting a holistic approach* to family violence responses, recognises the responsibilities of the court to the wider social context in which individual offenders and victims, their families, and communities are damaged by violence as well as acknowledging the physical, emotional, economic, relational, and spiritual character of the damage that violence perpetuates. The sixth aim of *holding offender's accountable for their actions*, emphasises the critical importance of accountability in a therapeutic context. If offenders refuse to take responsibility for their actions, or refuse to be accountable to the court, their communities or their families for the damage that results from their offences, then problem solving interventions are unlikely to produce meaningful psycho-social changes that reduce re-offending. Together then, the six aims interconnect to recognise, acknowledge and address aspects of a criminal justice intervention directed at redressing a specific psycho-social problem.

Following from the opening statement of the WFVC's aims, the court protocol specifies the structure and process of the court, as outlined above, including procedures to be followed on

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<sup>2</sup> The researchers recognise that victims are not necessarily willing to stay in relationships where they are victimised by their partner. However, the dynamics of intimate partner violence suggests that the actions victims are able to take to protect themselves from their partner's violence do not often include the capacity to simply and swiftly "end" their relationships. Where families are also involved, an ongoing relationship is often necessary even if the victim and her partner do not remain in an intimate relationship with each other.

guilty and not guilty pleas, sentencing, bail issues and the involvement of Community Victim Services.

The second protocol document making up the WFVC protocols sets out the principles, resources and procedures for Community Victim Services in relation to the court. The principles combine a commitment to providing quality services to victims with acknowledgement of their rights as specified in the Victim Rights Act (2002); recognition of the ongoing collaborative partnership between CVS and the Waitakere District Court and the value of engaging the expertise of local CVS; support for the court protocol; recognition of the statutory obligations of government agents involved in the court's processes and a pledge to avoid confusion about the services provided to victims; and re-establishing a formal relationship with the WFVC in the wake of the terminated 1999 Service Level Agreement. These principles summarise CVS' allegiance to the aims of the court and to continuing collaboration towards reducing family violence offending in the Waitakere district. Alongside the resources and realities facing CVS, it is acknowledged that CVS working within the court are necessarily subject to the statutory regulations which govern the court and must take account of the way in which those statutory regulations create particular obligations for government agents who are employed in the court. The section on resources and realities also includes specific reference to the *flow of information* between CVS and the police according to a separate Memorandum of Understanding. In specifying the procedures for CVS involvement, the protocol pays attention to clarifying the roles of VAs and CVS, down to the details of the liaison expected to ensure that there is no duplication of services. Procedures for CVS physical access to the court, including details of seating arrangements within the court are also stipulated in the protocol.

Attached to the protocol documents is the Practice Note (1 Dec, 2004) which specifies time frames to be adhered to by all District Courts dealing with all summary domestic violence prosecutions. The Practice Note specifies that pleas should be heard within two weeks of the defendant's first court appearance, status hearings should be held within four weeks of a not guilty plea being made, and defended hearings should be held within six weeks of the status hearing, so that the whole matter is resolved within 3 months. This time frame for defended hearings is commonly referred to as the 2-4-6 timeframe. A sample checklist to be used to facilitate efficient preparation for defended hearings at WFVC is also attached to the protocol document.

## 5.2. The Waitakere Family Violence Court process

### 5.2.1. Structure

Each Wednesday one court of the Waitakere District Court is set aside to deal solely with matters of family violence and this is commonly referred to as 'Family Violence Day'. In effect this means that summonses and remands related to family violence offences are all referred to the Family Violence Day. The only exception is custody arrests where the matter is dealt with as soon as possible. On Family Violence Day pleas, sentence indications, judicial monitoring and sentencing are dealt with. Defended hearings are allocated time on Family Violence Day, or on a day now set aside specifically for defended hearings related to family violence (currently, a Friday).

*I think [a strength] is concentrating the subject matter into dedicated days so that all the players can be there, economically for them and for the court. Separating it from burglary and thefts and street violence and other things and giving it it's own treatment I*

*think I like that...the concentration not only provided the economy of everybody being available only once instead of being dotted around the week, but it means you can more effectively utilise any support you can get from the community towards the system (PB, 212).*

*Waitakere is quite a big catchment area and we are big enough to have one Family Violence Court a week. And it's very clear it works better when there are no other list court matters (BB, 343).*

Structurally separating family violence matters from other matters within the Waitakere District Court has a twofold benefit in relation to meeting the aims of the protocols: it allows for matters to be dealt with more expediently and it enables specialist services to be concentrated in the court more efficiently.

### 5.2.2. Process and roles

Prior to a defendant appearing in WFVC, information about pending charges is provided by the police to the Community Victim Service Network; Viviana, Tika Maranga and Victim Services under the provisions of a Memorandum of Understanding between the police and CVS. All family violence cases are recorded by police on Police Family Violence Reports and these reports are subsequently provided to CVS so that they are made aware of all family violence incidents attended by police and resulting in prosecution. This flow of information is regarded as critically important to the interagency collaboration within the court. It is also explicitly regarded as appropriate if the information contained in the reports is consistent with that which would be disclosed to the public in an open court. Both police and court staff have responsibility for identifying the case as a family violence matter at the time that the police file an information sheet with the court. A red FV stamp is used on the file for this identification process.

When a defendant first appears before the court they are not required to enter a plea. This practice discourages the use of 'not guilty' pleas to give defence counsel enough time to take instruction or to obtain disclosure from the police. 'Not guilty' pleas that are entered for these reasons are regarded as occurring prior to a proper consideration of the charges, and the protocols are designed to ensure that defendants have appropriate opportunities to take responsibility for their actions. The time delay between first appearance and plea also provides CVS advocates with adequate opportunities to make contact with victims and begin the process of gathering information on their behalf to present to the court. Guilty pleas are accepted on first appearance.

To facilitate this first stage in the court process, the police make basic disclosure packs available when they are first called for by the prosecutor, if this is feasible. Duty Solicitors act quickly to assign counsel to the case and complete appropriate legal aid applications on the day of the defendant's first appearance. Each of these provisions in the WFVC's process enables defence counsel to be informed of the evidence available to the prosecution and provide their clients with information about the court process as quickly as possible.

Since a plea is not required on first appearance, the Court Registrar adjourns the case until the following week unless standard bail conditions such as non-association or residential conditions are opposed, in which case the judge will hear the matter in the usual way. The victim's views on the defendant's bail conditions are taken into account by presenting them to the court in a Memorandum or a Victim Impact Statement.

## Responding Together

Both Community Victim Services advocates (CVS) and court Victim Advisors (VA) are able to prepare and present memoranda to the court under the 2005 protocols, which also makes provision for information to flow between them. Community Victim Services operate a call-out service for victims that is a function of the services that their non-government organisations offer in the community. When court Victim Advisors make contact with victims they outline the services that they provide, and they also include information on Community Victim Services. VAs do not offer the community based services that are offered by CVS advocates.

Police and CVS are expected to liaise over bail conditions that reflect the circumstances and safety of victims. Only CVS advocates are present in the court on the day of the defendant's appearance; however both CVS and VAs are expected to be available if the police prosecutor or judge requires them to attend. If CVS advocates want to speak to the court, then they advise the prosecutor, who then informs the judge.

Between the first and second appearance of the defendant in court, defence counsel are expected to discuss the summary of facts and the plea with the police prosecution officer in charge of the case. Police are expected to discuss the victim's views on bail with CVS. Information sharing ensures that victims continue to be informed of the process in which the defendant is involved, and have the opportunity to provide the court with an informed approach to their safety or factors which may be relevant to their safety. The intention of these practices is to ensure that police, CVS, and VAs collaborate to maximise the potential for the victim to establish a trusting relationship with the WFVC and remain engaged in the court process, safely.

Defendants appear for a second time no more than two weeks from their first appearance. At this time a plea is entered, although a further period of remand may be appropriate if the defendant has been held in custody. Counsel may seek a sentence indication at this stage, and there may also be a discussion about the available processes that would be in the best interests of victim safety and family relationships. Guilty pleas are encouraged. The therapeutic philosophy underlying the WFVC protocols intends to engage the offender in a change process based on the assumption that guilty pleas facilitate offenders taking responsibility for their violence.

Where the defendant does challenge the facts of the case, or for other reasons chooses to plead 'not guilty', there is no status hearing and the charges are adjourned to the earliest available defended hearing date. On the day of the adjournment, police and defence counsel complete a checklist that records which facts are admitted by the defence, which facts will be at issue during the hearing, which evidence will be admitted by consent of both parties, and details such as requirements for translators, the number of witnesses to be called for each party and an estimation of the time required for the hearing. This checklist assists the court to arrange the hearing as efficiently as possible. Defended hearings are expected to be held within ten weeks of the defendant's first court appearance. The tight time-frame for defended hearings is intended to maximise the probability of the victim remaining engaged with the court process, and minimising the risk to victim safety that is posed by coercion or manipulation, both recognised characteristics of abusive strategies in intimate relationships. Under current practice, every attempt is made to ensure that defended hearings are heard by one of the family violence court judges so that the specialist knowledge brought to the family violence day is also consistently applied to defended hearings.

Where the defendant pleads guilty, sentencing options are considered, taking account of the community services available to address the psycho-social problems that are interrelated with the violence, such as living free from violence programmes, alcohol and other drug treatment programmes or relationship counselling. Community Probation Service may prepare sentencing reports for the court. The views of victims are provided to the court again to ensure that they are up-to-date. This practice recognises the ongoing character of the relationship between offender and victim, and the possibility that changing conditions within the family may affect victim safety over the period of time that the offender is involved in the WFVC process. Victim views are also sought if there is any variation to the charges laid or the facts presented by the prosecution. For such variations to be acceptable, their justifications must be principled, open and clearly recorded. The protocols also include a note which is intended to ensure that defence counsel are protected from unwittingly becoming party to a defendant's attempts to manipulate or coerce the victim. The note specifies that the WFVC objects to counsel and victims having contact except when that contact is mediated by the presence of CVS or VAs.

Sentencing also occurs on the same day that the defendant pleads guilty except in three particular circumstances. If a full pre-sentence report is required by the judge, the case is stood down while Community Probation Services prepare the report. If the offender agrees to undertake a programme that addresses the psycho-social issues implicated in the offence then sentencing is deferred while the judges monitor the offender's progress through the process of intervention. During this judicial monitoring period, the offender is called to appear in court from time to time and bail conditions are reviewed depending on their progress. The judge may also choose to receive a report on the offender's progress without the offender appearing on a particular occasion. Victims' views of how the programme is working to facilitate changes that will improve their safety are sought from CVS throughout the period of judicial monitoring. Same day sentencing is also excepted when the judge is considering a discharge without conviction and needs assurance that the offender has taken the steps the court requires them to take to address the psycho-social issues implicated in the violence. Discharge without conviction is only considered when the judge regards the offence as 'truly minor' and the offender has made adequate progress within an appropriate programme.

### 5.3. Consistency

Consistency in the daily operations of the WFVC is regulated by the protocols. Various dimensions of court practice related to consistency emerged from the thematic analysis in Study One: consistency in staff, in sentencing, in co-ordinating interagency responses and ensuring the flow of information between them and in understandings of the dynamics of family violence. Consistency in staffing affects how well the court is able to meet the protocol aim of concentrating specialist services in the court, and is discussed specifically in relation to that aim in Section 6.2 below. Additional information from Study Two is also included in this section. Consistency in sentencing is discussed in relation to the specialisation of the judges at Waitakere in Section 6.2.1 below. Throughout Section 6 issues other issues related to consistency will be addressed in the context of their influence on the successes and challenges in meeting the protocol aims.

## 5.4. Resources

### 5.4.1. History

In 1992, when the *fast track* and victim advocacy processes were first established at the then Henderson District Court, they were local initiatives by the resident judges in collaboration with community stakeholders. Since it was not a special court process but a modified process within the authority of the Summary Proceedings Act 1957 (Johnson, 2005) the local initiative received no additional resources to facilitate the implementation of *fast track* or to support the involvement of the WAVES victim advocate.

*...it was such a new thing. Looking back, in hindsight, you can say “oh yeah, we really needed that.” Looking at it back then, they might have thought “yeah, it doesn’t really need anything because it’s basically just a movement of dates and stuff like that.” But, people don’t realise how much work is involved (BG, 599).*

The lack of resources from the beginning has created various difficulties throughout the WFVC’s history. For example, the WAVES advocate was provided with a small meeting room that had health and safety approval for two people and was equipped with a toll barred phone. Toll calls were to be made on their personal phone, and any other facilities needed were to be provided by WAVES. Significantly, too, although the court relies on services offered by the community, there is no contribution made to the running of these services through the justice system, except where the cost of offender programmes are met through Community Probation Services. In effect, the WFVC has consistently depended on the goodwill of community organisations, and their funding bodies, to be able to modify the proceedings of an ordinary Summary Court, and it continues to do so.

Court participants recognise that ongoing limitations arising from funding and resource inadequacies crucially affects the way in which WFVC can achieve its objectives. However, these issues are not as significant as the continuing collaboration that makes the court process possible.

*We tend to highlight the issues of it [resources] because it is always the things that stay in the front of your mind when things aren’t working well, but generally we are really lucky; I think we are really lucky to have the support of all our stakeholders to actually operate a Family Violence Court (GG, 1133).*

The shared vision of a court process that involved improving timeframes and the inclusion of victim advocates who had the traditional right to speak on behalf of victims to effectively intervene for victim safety, and offender accountability, continued to hold the community and WFVC collaboration through years in which resourcing continued to be problematic.

### 5.4.2. Community

In 2000 the District Courts received significant funding from the Ministry of Justice to provide court victim services. This pre-empted the Victim Rights Act (2002) which mandated the provision of assistance and information to victims, making the implementation of the Act more feasible when it was introduced. The Ministry of Justice decided to train in-house their own advisors to provide victim services.

Although there were no apparent problems or issues with the services being provided by the WAVES victim advocate at the time, the local court manager made the decision that the court would take over all victim services from February 2001. However, the 1999 Service Level Agreement could only be disestablished with consent of both parties. WAVES agreed to step out of their advocacy role in February 2001, on the condition that the level of services to victims of family violence did not reduce.

*[Court management] felt they couldn't provide that level of service at every court in the country, so for that reason they made the decision they would provide court services and they would train in-house their own advisors to provide that role (WO, 19).*

*In fact WAVES' main focus for the whole period up until 2001 was around supporting family violence victims through the criminal court process. At that stage the victim advisors in Waitakere, at the insistence of the Ministry of Justice, took over (YB, 39).*

A month after the WAVES victim advocate stepped out of court, Resident Judge Johnson called together a meeting of stakeholders including WAVES, local refuges, the Judiciary and court management, Community Probation Services, lawyers, police and police prosecutors. It had become apparent that the fast track process was not working for several reasons. The number of complainants not wishing to give evidence to the court was unacceptable, and Judge Johnson questioned whether justice was being done. He attributed the failure of the WFVC process at that time to the level of support available to victims throughout the process, and to delays longer than six weeks that were too long for complainants to stay engaged in the process. He was also aware that the workload for everyone involved had increased over the nine years since the *fast track* processes had been established. Resources had not increased over this time, aside from those provided for implementation of court victim advisors.

As a result, a more focussed and concentrated system was devised. To ensure that all parties were involved in any revisions to the WFVC's processes, Judge Johnson recommended that a working party be set up to consider the new initiative and it was agreed to form the Family Violence Focus Group which was to be chaired by the WAVES coordinator. The Focus Group had representation from the police, Viviana, the Waitakere District Court, and defence counsel as well as the WAVES chairperson.

From the evidence of those who were involved in the establishment of the Focus Group, the process mirrored that used to establish WAVES and develop the initial WFVC intervention: a resident judge, in this case, Judge Johnson, called a meeting of local community members, non government organisations, professionals and government agents involved in responding to family violence.

*Some time after [WAVES] had stopped providing those services; Judge Johnson called together a group of stakeholders including WAVES and the refuges, courts and probation, lawyers, and police and prosecutors. He requested that we look at improving services in court to family violence because the fast track system that had been initiated by himself and Judge Shaw was no longer fast track for various reasons. And since WAVES had stepped out of the role of advocacy there was extreme lack of information coming through from victims. He kind of got the ball rolling (WO, 29).*

As with most local initiatives, the Focus Group began as an organic process of collaboration towards a common goal. The group met for the first time on the 27th March 2001. The meeting started with each person raising relevant issues about court processes from their particular

vantage points. Over a period of three months and many meetings, the protocol for the operations of the WFVC was developed. In this way, the group's goals were set through a process of negotiation, and its practices established through interagency collaboration.

The protocol that emerged from the Focus Group's meetings addressed most of the issues that group members had raised at the initial meeting. The central issue of concern had been the slowing of the *fast track* system. This was addressed by changing the court roster so that family violence cases were allocated to one court, one day a week, a Wednesday. All other criminal work was excluded from that court on that day. The usefulness of status hearings was also discussed, and it was decided that not guilty charges should go straight to a defended hearing. Other issues that were raised and resolved were related to the provision of same day reports by community probation, standardising bail conditions, clear identification of family violence cases, and pathways for sharing information. In November 2001, the protocol was formally recognised by the Waitakere District Court.

Throughout the evolution of the WFVC, community organisations and stakeholders have been involved with the development of court practices and protocols, and according to Cook et al., (2004) interagency involvement in the development of specialist family violence courts are necessary to best practice outcomes. The community of Waitakere has an active stake in the operations of the WFVC and also provide the court with essential resources for contributing to a local, co-ordinated interagency response to family violence. Community organisations also provide essential resources necessary for the court's protocols to operate effectively since they include aims and practices designed to intervene therapeutically into intimate family relationships. Specific community resources that are provided for the operation of the WFVC with regard to victims and offenders are described in Sections 5.5.2 and 5.5.3 below.

### 5.4.3. Training in the WFVC protocols

At the time that the 2001 protocol was introduced, there was no specific provision made for training court participants in the practice of the protocols. Several organisations and agencies contributing to the WFVC, including the New Zealand Police, Community Victim Services and providers of offender services trained their own staff in relation to family violence dynamics and issues to different levels of specialisation. The Focus Group had discussed the need for training everyone who participated in the court process, specifically in the protocols. However none of the agencies and organisations involved with the WFVC had sufficient resources for training across the various disciplines and interests represented in the court. This meant that specific protocol training was not incorporated into the implementation phase. The Focus Group made particular attempts to ensure that defence counsel would be able to discuss the protocols but for several relatively mundane reasons, such as running out of time at meetings, these attempts were frustrated.

The need for training and education on WFVC protocols in practice continue to be issues for the court participants. The scope of the identified need is broad and includes education in relation to the philosophy or *kaupapa* of the protocols; the way in which this philosophy is linked to specific psycho-social issues relating to family violence, such as the cycle of abuse and reconciliation which so often affects the outcome of defended hearings; and the specific structure and function of roles within the court system generally.

The Judiciary recognise the need for a shared understanding within their participating group, and the value of specialist education in the field of family violence. From their point of view this

is critical to maintaining consistency in decision making and improving the quality of those decisions.

*I would also like to have a meeting with an identifiable group of judges in the early part of next year over a couple of days and try to hammer out some common perspective and maybe getting some outsiders and have a bit of education to start something there. I do think it's not enough to just have a process, there has to be some quality control, and there are people who know more than judges know (PB, 297).*

Court participants made specific suggestions about other participants who they believed were not familiar with the protocols or the issues related to family violence. Police with no experience of the protocols of the WFVC were one group that were identified as needing further training to ensure consistency within the interagency response:

*An issue that we need to address is training within police section staff - this is the police that are out on the street. A lot of them are quite young and new and there is a real lack of experience for them and their supervisors. So a lot of them don't quite know exactly what to do about the protocol (WW, 297).*

Court staff and non-government organisations were identified as needing education to ensure that each understood the roles of the other and the philosophy of the WFVCt. This is consistent with Cook et al.'s (2004) recommendation that ongoing joint training is likely to increase each agency's understanding of the others' roles:

*I think before you even enter into getting people into an area, is to really educate the community groups on what the court and Victim Advisors roles are, for one. Likewise really educate court staff on what their roles are going to be. Because just getting in there and hoping like hell it's going to work is not going to work. (BG, 184).*

*I have pondered about collective training for the providers as such. Pretty much everyone is flying by the seat of their pants and the training is sort of on the job and so on. For people to come into a field like this, which in itself is so complex, there actually needs to be some education stuff happening around that amongst the providers (MH, 105).*

Lack of education and training are particular dimensions of the problems encountered by participants because of resource inadequacies, but ongoing training is also necessary to the evolving development of best practice, including effectively integrating legislative changes into the court's practices.

*It's an issue we have across the board, every time one little bit of legislation changes or comes in or the family violence protocols come in, or anything like that we absorb it, we absorb it, we absorb it, we absorb it until we are stretched to the hilt (BG, 624).*

The identification of specific needs within and among the groups who are involved in the practice of the WFVC protocols suggests that a more systematic approach to the provision of training and education would have been advantageous to the successful introduction of the protocols. That the court participants remain concerned about the lack of training and education in the protocols suggests that it would still be beneficial, at least as a means of ensuring that everyone involved has confidence that the services which are concentrated in the court are, indeed, specialist services. The question of who would provide such training

however, remains: none of the court participants have access to resources that would enable appropriate education and training to be provided. The training that the Focus Group initially discussed might go part way to addressing the issues that relate to ensuring that all participants are clear about the specific roles they play in the court and how these roles relate to the philosophy or kaupapa of the protocols. Under the circumstances in which the Focus Group introduced the protocols resources for training were difficult to gather. Ensuring the consistency of interagency responses within the court's daily practice through ongoing training in the WFVC's protocols remains an issue that needs to be addressed especially in the context where interagency collaboration is encouraged by the Taskforce for Action on Family Violence (MSD, 2006).

## 5.5. Victims and offenders

### 5.5.1. Safety: Timeframes

When the *fast track* court process was first introduced in Waitakere it was the aim of the resident judges and WAVES as representatives of the local community to address the long delays in the criminal system when dealing with family violence. The focus on delay was based on the understanding that there was less likelihood of perpetrators facing any legal sanction for their violence where the time delay reduced the likelihood of victims giving evidence against their partner/family member. Long delays in any court system set up some of the conditions under which victims become alienated and disengaged from court processes. Ensuring quick turnaround of cases, reducing the amount of time between plea and defended hearings, is intended to give the court a greater chance of facilitating the process of defendants taking responsibility for their actions. By *fast-tracking* cases defendants are less likely to have time to influence victims, even if they plead not guilty. In this sense, fast tracking aimed to improve victim safety during court proceedings by minimising opportunities for the defendant to access the victim and influence her willingness to provide the court with evidence of offences.

Short timeframes are also connected with holding offenders accountable because they encourage more guilty pleas at the beginning of the court process. When *fast-track* was introduced it had an immediate effect; pleas of guilty rose from 15% to 65%, and in the order of 80% of victims were able to remain in the process through to the completion of their case. From 1994 until 1999 the conviction rate in family violence matters was maintained at around 75%. This contrasts sharply with the 10% rate of conviction reported before 1994 (Johnson, 2005).

In a study of intimate partner violence cases through the WFVC in 2005-2006, it was found that pleas of guilty at 64% of arrests and conviction rates at 84.8% of guilty outcomes. 73% of arrests resulted in guilty outcomes (Coombes et al, 2007). Although figures on victim engagement throughout the process were not available, withdrawals and dismissals may be representative of victim engagement in defended hearings because of the relationship between these outcomes and victim retractions of statements. It is important to note, however, that withdrawals may be the result of negotiations between prosecution and defence counsel that do not involve any engagement with the victim.

In Study Two, advocates expressed some concern with coercion of guilty pleas being achieved through a reduction in charge where victim's views on the appropriateness of lesser charges or her willingness to testify were not considered.

*But even that in itself, with the lessening of the charges, and he enters a guilty plea, I had a client who said, "I was more than willing to have my say in court that day." She didn't want the charge lessened. She had no input into that (KI2, 31-33).*

Although coercing guilty pleas to lesser charges does provide opportunities for the defendants to be held accountable and to engage in change programmes, if the victim's views are not taken into account then the strategy may alienate her from the rest of the court proceedings making it more difficult for the court to be well informed about her safety.

During 2005-2006, 26% of the arrest cases analysed resulted in a not guilty plea. Of these cases, 25% were dismissed and 18% were withdrawn. While these outcomes make up a relatively high proportion of all defended hearing outcomes over all arrest cases, withdrawn and dismissed outcomes combined represent 16% of cases (Coombes et al., 2007). The WFVC process appears to have maintained relatively high levels of guilty pleas and conviction rates during the first year of operating under the 2005 protocols resulting in fewer victims needing to remain engaged in protracted defended hearing processes.

### 5.5.2. Safety: Victim advocacy

From its outset the WFVC has depended on a culturally embedded psycho-social understanding of domestic violence that justified a court process intent on therapeutic problem solving *and* community involvement for that process to achieve its aims. A key feature of combining community involvement and therapeutic process in the earliest operations of the WFVC was the introduction of a victim advocate *alongside* the fast track process. The first victim advocate was employed by WAVES and began working in the Waitakere District Court (then Henderson) around 1993, supporting victims through the court process and providing advocacy for victims in court (Johnson, 2005). The role was governed by a principle of obligation to safety for women. In 1999 the relationship that existed between WAVES and the WFVC, and the role of the advocate in the court, were formalised in a service level agreement. The service level agreement detailed the roles and responsibilities of the WAVES advocate, and provided a framework where the specified roles were agreed by both parties. The WAVES advocate assumed responsibility for providing information to and from the court for victims of family violence offences and represented the victim in an assessment of her safety. The advocate enabled safety plans and ongoing support for the victim.

Consistent with practice of the WAVES victim advocate providing information to the court, it was agreed that a tradition giving victim advocates speaking rights in the District Court would be established. The tradition of allowing speaking rights to victim advocates meant that there was someone mediating the relationship between the court and the victim in the context of ongoing patterns of violence. The tradition makes a double move towards a therapeutic intervention – it recognises the rights of the victim to be involved in the court process, and it also respects the victim's right to protection and safety. Alienation from court processes has been a common finding of evaluative studies focused on women and Māori (New Zealand Law Commission, 1999; Morris, 1999). For example, Māori women risk complex processes of alienation by trusting in a Pākehā court process. Legitimising a victim's right to give an account of their experience - to say how they have been affected by violence and by the services offered through the court - affirms their status as citizens entitled to protection under the law. Therapeutically, this affirmation has the potential to promote a sense of safety within the court processes. By providing a mediator from the victim's community, accountability for the victim's safety is shared between the community and the court, as well as being required of the offender.

## Responding Together

In the 2001 protocol the advocacy role previously played by WAVES was taken on by the Tri Parté Community Victims Services Network (CVS). The CVS consisted of Viviana, an Independent Women's Refuge, Tika Maranga, Māori Women's Refuge, and Victim Support. These organisations are currently involved with the WFVC through provisions of the 2005 protocols.

In Study One, participants understood that CVS provide a more holistic service for supporting change than the court can provide by itself. Within the WFVCt, CVS provide advocates for the victim through a representation of her risk that is also informed through specialisation that prioritises victim protection and victim safety. For example,

*The role of Viviana, as part of the Community Victim Services, is to advocate for the victims by producing memorandum and detailing the sort of history of the relationship, the circumstances that the recent assault happened in, what could be the issues and problems that need to be addressed, how scared the victim is about the situation and whether she intends to continue the relationship or not. So...give the judge an overall feeling of what the situation is about. Part of the role is also to be there, well I look on it as protecting victims interests, so if counsel come up with something or say something which could possibly affect the victims standing, credibility or safety or anything like that, I see it as our role to advocate for her for that as well (SW, 3).*

*The way in which Community Victim Services are incorporated into the court processes enables a flexible process of information flow between the victims and the court.*

*A large part of our court process is having our case managers/victim advisors on hand, or roaming the foyer/court to take statements from victims/complainants we have been unable to contact by phone. And being available - if a judge requests a stand-down for a statement to be taken from a victim (GR, 212).*

*We really don't know what's happening in the family without having some independent voice telling you what's going on, apart from the defendants' lawyers saying that everything's fine (MB, 180).*

Court participants in Study One understood that CVS advocates provided a specialist understanding of the victim's circumstances and risks to her safety that is also based on their regular contact with their clients. The advantages of CVS perspectives and their advocacy for victims were clearly appreciated:

*I like the fact that the victim services play an important part in the family violence days and, if necessary, they can stand up and say something. Because often they've dealt with the victim a lot more than the police have, so they know these people a lot better and they know what their concerns are and I think that's working pretty well (WW, 128).*

*It wouldn't really work without them. They are an integral part of the system and if you didn't have them you probably wouldn't be able to run the court the way it's run (MB, 174).*

Community Victim Services have not been evaluated to ensure that local experiences are taken into account adequately in their specialisation. This is a crucial dimension of the programme of evaluative research for the WFVC that is currently underway with Viviana's services. However, participants in Study One provided views of the value of community

advocacy that are consistent with international research on the potential for victims to be re-victimised through legal interventions (Koss, 2000), and research which supports practices of community advocacy as beneficial for victim's safety (Allen, Bybee & Sullivan, 2004; Goodman & Epstein, 2005). Early research findings have found that women rate domestic violence advocacy as far more helpful in keeping them safe than justice interventions (Cook et al., 2004). In the specific case of the WFVC, victim protection and safety is a high priority because of a shared understanding of the ongoing safety issues that victims of family violence frequently experience.

Since Community Victim Services support clients within the community and not only in relation to court proceedings, they are able to provide additional follow up services for clients well after the proceedings have ended. In Study Two women victim participants provided us with information on how highly they valued follow up services from Community Victim Services especially in a context of ongoing needs for their safety to be planned. For example,

*...it was just the [advocacy service] who have keep in contact with me so religiously and... you know they are always saying; "please call us back" (WP1, 87-88).*

*...it was good they supported me through that, like they didn't really ignore me or anything, they just, if I needed to talk to someone I could just go down and just talk to them about what was going on, which I did quite a bit actually. Like I say I felt safe (WP2, 183-187).*

Viviana and Tika Maranga both offer ongoing advocacy, including safety planning, and can also provide refuge services and assist women with relocation if necessary. The specific services that are available to victims through the collaboration between the WFVC and the community do not only involve the advocacy services provided by the tri-parté CVS network. They also include specialist and generalist education programmes and counselling. Family social support services are also available and include parenting support and services for children. Table 4 presents a summary of available victim services including costs and funding sources where available. The range of victim services accessible through the WFVC's relationship with WAVES and its associated community organisations provide for a variety of victim needs. The heart of the safety provisions made by the 2005 protocols for the WFVC lies in the relationship between the court and the Community Victim Services network

Table 4: Summary of community based victim services available at Waitakere, including costs and funding sources

Name & Provider	Costs	Details
Viviana and Western Refuge	Free service to clients  Funding Sources: CYFS, ASB Trust, private donation, Portage Trust	Viviana is an independent Women's Refuge, through their office in Henderson they employ 5 staff that provide on going support and advocacy for victims of family violence in the Waitakere area. Viviana also provides advocacy in court for women whose partners are charged with family violence related offences.
Breaking the Cycle Inner City Women's Group <a href="http://www.innercitywomensgroup.org.nz/index.htm">http://www.innercitywomensgroup.org.nz/index.htm</a>	\$80 wage \$40 unwaged Eight weeks 7pm to 9.30pm weekly.  Funding Sources: United Way, Telecom NZ, Lottery Grants, CYFS, The courts, JR McKenzie, The Lions Foundation, COGS	Breaking the cycle is a course for women who are currently in or have been in an abusive relationship. The course provides information to help women break free from the cycle of violence, while also being a place of support. The course aims to build self esteem, provide strategies for handling conflict and educate women on the cycle of abuse and power and control issues that are present in abusive relationships. Courses are also available specifically for women in refuge.
Waitakere Abuse and Trauma Counselling Service <a href="http://www.abusehelp.co.nz/">http://www.abusehelp.co.nz/</a> WATCS is accredited by ACC, Child Youth & Family and the Department for Courts to provide services	Most, but not all, of costs are covered by ACC, the Family Court, CYFS or WINZ. This requires the client to apply for funding from services such as ACC and/or WINZ as applicable.  They also request a personal contribution towards counselling costs from the client. This contribution is based on a sliding scale  For clients who are not entitled to any government funding WATCS has a sliding scale of fees based on income. This is discussed and decided on an individual basis.	A service for Women, teenagers, children and families. They offer individual, family and group counselling for women who have experienced sexual abuse, family violence and trauma and for children who have seen or experienced violence or abuse.
Tika Maranga Refuge	Free Service to Clients, if women enter the refuge then payment towards rent and expenses is negotiated.  Funding Sources: Government, Private Donations	Tika Maranga is a member of the of Women's Refuge Collective, an independent community organisation run by women for women and children. They provide support and information for women and children dealing with violence in their lives. Tika Maranga provide advocacy in court for Māori women whose partners are charged with family violence related offences.

Table 4: Summary of community based victim services available at Waitakere, including costs and funding sources

Name & Provider	Costs	Details
Victim Support <a href="http://www.victimsupport.org.nz/index.htm">http://www.victimsupport.org.nz/index.htm</a>	Free Service to client  Funding Sources: Ministry of Justice	Victim support provides around the clock support to victims of crime. They offer advocacy services for victims and assistance to attend court, parole board and family group conferences. They help victims prepare victim impact statements. They offer some financial support drawing from a number of different funds.
Family Start Waipareira Pasifika	Funded by Ministry of Health	Most of Waipareira Pasifika activities involve working with families with newborns for their first five years of life. Waipareira Pasifika Family Start has 16 whanau workers who have a similar role to social workers and community health workers. One of their main goals is to work with other providers in the community to develop plans and strategies to address the needs of young families.
Shakti Asian Women's Centre Inc <a href="http://www.shakti.org.nz/">http://www.shakti.org.nz/</a>	Free Service  Funded by Child Youth & Family (CYFS), NZIS, Department of Labour, Lottery Grants Board, Work & Income, COGS, LTNZ, Road Safety Trust, J.R. McKenzie, ASB Trusts, United Way, Lion Foundation, Auckland City Council and other private trusts	Services for immigrant women including advocacy, Domestic Violence Intervention Programmes, Refuge Services and 24-hour Domestic Violence Crisis Call Centre.
Kidslines <a href="http://www.kidslines.org.nz/">http://www.kidslines.org.nz/</a>	Free service  Funding Sources: ASG, Lions Foundation, Mid City Holiday Shoppe	Phone support for children and young people.
Parent Aid <a href="http://www.parentport.co.nz/">http://www.parentport.co.nz/</a>	Free service  Partly funded by CYFS with the remainder attributed to competitive funding bids.	Parent Aid offers short term practical help in the home in times of family crisis, illness/accident, stress, pregnancy and exhaustion. Services include child minding (while you rest), light housework and cooking
Family Works Presbyterian Support Initiative	Families are asked to make a voluntary contribution/koha towards the provision of services and programmes.	Support agency for children/tamariki and families/whanau in Waitakere. They offer a wide range of services including social workers in nine Waitakere schools. Counselling and group programmes are available as are various parenting programmes.

Table 4: Summary of community based victim services available at Waitakere, including costs and funding sources

Name & Provider	Costs	Details
Waitakere Community Law Service	These services are usually provided free to eligible members of the public	Provide legal information, advice and assistance
West Auckland Women's Centre	Free service	A place for women to drop in or phone for information, referral and advice
Te Whanau O Waipareira Social Services <a href="http://www.waipareira.com/about.html">http://www.waipareira.com/about.html</a>	Cost of services is based on a sliding Scale depending on income.	Trust incorporating 50 pan-tribal organisations delivering psycho-social services to Māori including specialist intervention services, education programmes and services to strengthen families and young people.
Youth Horizons	Free Service	Services focused on families and young people where their behavioural or mental health needs put them at risk of poor outcomes. Multi-systemic theory informs treatment programmes for young people diagnosed with severe conduct disorder.
Waitakere Youth Transition Service Youth Horizons <a href="http://www.youthorizons.org.nz/waitakere-youth-transition-service/">http://www.youthorizons.org.nz/waitakere-youth-transition-service/</a>	Free Service Funded by Ministry of Social Development	A drop in centre for youth aged 15 – 17 who have left school. The service aims to empower young people at risk of poor outcomes to transition from school to work.
Tu Wahine Trust		A confidential counselling service for Māori women, children and their whanau who have been affected by sexual abuse and related violence
Home and Family Counselling <a href="http://www.homeandfamily.org.nz/">http://www.homeandfamily.org.nz/</a>	Funding Sources: ASB Community Trust, JR McKenzie Trust, Auckland City Council, CYFS	Offers family counselling and specialist counselling for women who are the victims of violence or abuse or who have experienced trauma in their lives. Programmes are also available. Services are provided to women who are living in a refuge.
West Auckland Family Services Methodist Mission Northern	Funding Sources: Government and Private funding	Family Workers providing support and guidance to families attending to issues around parenting and parenting relationships, partner relationship issues, domestic violence, health and mental health concerns, financial and housing problems, and drug and alcohol addictions.

Table 4: Summary of community based victim services available at Waitakere, including costs and funding sources

Name & Provider	Costs	Details
Youthline	Free Phone Service	Phone support and counselling services for young people.
Footsteps to Feeling Safe Barnardos <a href="http://www.barnardos.org.nz/">www.barnardos.org.nz/</a>	No mention of costs on their website in relation to this programme	A programme for children aged 5-13 dealing with the effects of being a witness to or being a victim of domestic violence.
Children's Supervised Contact Barnardos <a href="http://www.barnardos.org.nz/">www.barnardos.org.nz/</a>	Fees for this service vary and are paid by the visiting parent.	Barnardos staff provide supervision during visits or changeovers for children visiting their non custodial parent where there is concern for their safety
Together time Salvation Army		A supervised access service providing a safe environment for children to have supervised visits with their parent(s) and/or family.
Grandparents raising Grandchildren <a href="http://www.raisinggrandchildren.org.nz/index.htm">http://www.raisinggrandchildren.org.nz/index.htm</a>	Free Service	Support network for grandparents raising grandchildren

### 5.5.3. Accountability: Therapeutic jurisprudence

When *fast track* was first introduced it was justified by the contemporary recognition of the cycle of family violence which suggested that violent events are followed by a 'honeymoon phase' in which the relationship is re-established, often coercively. In these circumstances it was understood that the victim may gain renewed faith in her partner's commitment and be less interested in his accountability before the court. This understanding of the specific circumstances of domestic violence enabled the psycho-social context of the offence to be taken into account. The North American literature on therapeutic jurisprudence and problem solving courts provided a coherent framework, and underlying principles, for the WFVC because it emerged from a shared understanding that some criminal justice issues needed psycho-social redress.

Therapeutic jurisprudence "*is a perspective that regards the law as a social force that produces behaviours and consequences*" (Wexler, 1999, p.1). Judge Johnson (2005) advocates for the importance of therapeutic responses to incidents of domestic violence because of the psycho-social context of family violence, in particular the likelihood that an offender will return to the domestic situation. Therapeutic responses use a problem solving, instead of adversarial, approach to determine outcomes for the family concerned. Family violence is understood as specific in each particular context and solutions address the needs of the family, as far as possible, within the criminal justice system. Problem-solving courts have emerged from identifying the difficulties that courts face in addressing the underlying problems of an individual before the court, the social problems of communities or the structural and operational problems of a fractured justice (Johnson, 2005). With the move towards problem solving courts using therapeutic jurisprudence as their theoretical foundation, we find the merging of law, psychology and criminology to produce law as a therapeutic agent (Arrigo, 2004).

This therapeutic framework justifies the WFVC's practices of coercing guilty pleas by offering sentencing incentives when defendants accept responsibility for their offending and agree to undertake treatment programmes or interventions to address underlying psycho-social problems such as poor anger management or alcohol abuse. The assumption of this form of accountability is that offender programmes create an opportunity for the offender to engage in help for changing their violent behaviour and the court provides an opportunity for them to demonstrate their commitment to ending the violence they perpetrate against their partner. This form of accountability requires judicial monitoring of offender compliance to change so that sentencing options are well informed.

### 5.5.4. Accountability: Sentencing

The sentences available to the Judiciary are regulated by legislation and are based on an adversarial system in which penalties are the outcome of defendant's guilt as established by the court. Therefore, from the judges' point of view, sentences do not always provide the resources necessary for a therapeutic intervention.

*...they are trying to achieve...early resolution of the criminal prosecution with therapeutic justice overtones so that it is, except in worse cases of violence which you can't avoid punishing, so that it aims for a repair of the family problem if possible (PB, 112).*

*...does our practice fit into our sentences that are available to us? They don't fit easily (MB, 309).*

Within the 2005 protocols there are 10 types of sentences recommended for special consideration by the Judiciary of the WFVC in cases of family violence. Specifying sentences as appropriate for this specialised court helps maintain consistency in decisions. The sentences include: Section 106 discharge; conviction and discharge; conviction and come up for sentencing if called upon; community work; supervision and prison sentences.

Of 323 guilty outcomes in intimate violence cases at the WFVC during 2005-2006, 15.1% were discharged without conviction. The most common sentence, passed in 32% of cases, was to "come up for sentence if called upon". Imprisonment occurred in 8.4% of sentence decisions. From the data available it was not possible to identify prison sentences that also involved mandated treatment or specialised intervention. However, mandated treatment or intervention programmes were involved in supervision and community work/supervision sentences that accounted for 21% of sentences. Less than 5% of cases involved a sentence that was not recommended in the current protocols and in all of these cases the sentences were fines (Coombes et al., 2007).

The statistical analysis of sentencing during 2005-2006 demonstrates that in the first year of the operation of the current protocols, recommended sentences were used very consistently. On the whole, therapeutic options were provided more frequently prior to sentencing than as a condition of the sentence.

## 5.6. Programmes

As is the case with Community Victim Services there are a range of community offender services available to the WFVC through WAVES. The services most commonly used for mandated and self-referred WFVC clients are the specialist violence prevention services of Man Alive and the specialist alcohol and other drug services provided by CADS. Relationship counselling is the third most commonly referred or mandated form of offender service provided to WFVC. It is also possible for defendants and offenders to be referred to generalist social or psychological services, especially where these programmes meet culturally specific needs (Coombes et al, 2007). A summary of available offender services including costs and funding sources where available is provided in Table 5, below.

International research that evaluates the efficacy of offender treatment and intervention programmes is inconclusive. Measures of efficacy, mandated attendance, and differences between programmes are subject to ongoing debate (Cook et al., 2004). Baseline recidivism data related to Man Alive clients is currently being established as part of the evaluative research programme. Under these circumstances a comprehensive evaluation of the efficacy of offender treatment or intervention programmes is not available.

Table 5: Summary of community based offender services available at Waitakere, including costs and funding sources

Name & Provider	Costs	Details
CADS Waitemata District Health Board <a href="http://www.cads.org.nz/">http://www.cads.org.nz/</a>	Free Service funded by the Waitemata District Health Board  Funding Sources: Ministry of Health	CADS offer comprehensive services for people dealing with issues around alcohol and other drugs. Services include in- and out-patient care, individual and group counselling and medical intervention.
Living Without Violence Man Alive <a href="http://www.manalive.org.nz/">http://www.manalive.org.nz/</a>	Costs vary depending on programme and source of referral.  Funding Sources: Lions Foundation, Portage Licensing Trust, ASB Trust, Lottery Grants Board, Telecom, Waitakere Licensing Trust, COGS, Adult and Community Education (ACE), JR McKenzie Trust, The Southern Trust, Perry Foundation, Todd Foundation, CYFS, Microsoft Foundation, Catholic Caring Foundation, Scottswood Charitable Trust.	Man Alive offer one on one and group counselling for men dealing with issues of anger and violence. The programme is run only by men. Man Alive aims to help men by encouraging them to take responsibility for their actions and learn how to avoid and manage conflict. <i>Te Ara Taumata Ora</i> - Uses the same themes as Living Without Violence but they are delivered in culturally appropriate ways. A kaumātua attends most sessions and course is run by Māori facilitators.
The Bridge Salvation Army		The Bridge Programme uses a 12 Step Recovery framework for intervention into alcohol and other drug problems. Offers a live in programme and day services.
Independent Counsellors	Range of costs, some offer subsidised sessions through ACC	The court provided a list of 18 counsellors ranging in areas of expertise that include family therapy, behaviour management, mental health and conflict resolution.
Isa Lei Pacific Mental Health and Alcohol & Drug Services Waitemata District Health Board	The costs are taken up by mental health services, providing the clients meet their criteria post intake assessment.  Funding sources: Ministry of Health	Isa Lei provides services supporting Pacific Peoples and their families in dealing with mental health issues. The service has a holistic, Pacific approach and collaborates with Māori Mental Health Services and District Mental Health Services at Waitemata Health.
Tupu: Pacific Alcohol and Drug Regional Team Pacific Mental Health and Alcohol & Drug Services Waitemata District Health Board	The costs are taken up by mental health services, providing the clients meet their criteria post intake assessment.  Funding sources: Ministry of Health	Tupu provides support services for Pacific people and their families in dealing with addiction issues. Tupu has a holistic, Pacific approach and collaborates with Community and Drug Services Auckland (CADS).
Mensline integrated part of the Lifeline service <a href="http://www.mensline.org.nz/">http://www.mensline.org.nz/</a>	Free Service	Mensline is a free and confidential telephone counselling service specifically for men and staffed by male only counsellors.

Table 5: Summary of community based offender services available at Waitakere, including costs and funding sources

Name & Provider	Costs	Details
Waitakere Community Law Service	These services are usually provided free to eligible members of the public	Provide legal information, advice and assistance
Adult Community Mental Health Teams and Crisis Assessment and Treatment Team (CATT) Mental Health Services Waitemata District Health Board	The costs are taken up by mental health services, providing the clients meet their criteria post intake assessment.  Funding Sources: Ministry of Health	Adult CMHTS provide ongoing support in the community for adults 25-65 years of age who are dealing with mental health issues.
Te Whanau O Waipareira Social Services <a href="http://www.waipareira.com/about.html">http://www.waipareira.com/about.html</a>	Sliding Scale based on income	Trust incorporating 50 pan-tribal organisations delivering psycho-social services to Māori including specialist intervention services, education programmes and services to strengthen families and young people.
CAPS Anger Change Programme Anger Change Trust		Programme for mothers of young children who have been violent or fear being violent towards their children.
Relationship Services (previously known as Marriage Guidance) Family Court Approved	Sliding Scale based on income. A lower rate may also be available when children are involved or affected by the issues brought to counselling. As a Family Court approved service, some clients may be eligible for up to six sessions of counselling paid for by the court.	Relationship Services is a New Zealand wide counselling service that specialises in personal and couple relationship counselling

### 5.6.1. Mandated

The community offender services associated with the WFVC provide their services to offenders who have been referred to a treatment or intervention prior to sentence, as well as to those who have been sentenced to undertake programmes or treatment under supervision of Community Probation Services (Study One). In this section we discuss programmes in the context of sentences that mandated offenders' engagement in community based offender services. During 2005-2006, 21% of guilty outcomes at WFVC resulted in sentences to undertake change programmes. Prior to the introduction of the Sentencing Act (2002) the Judiciary were able to sentence offenders to a community programme.

*...prior to the 2002 Sentencing Act, there was a sentence called community programme and we had a standard community programme between corrections and Man Alive. And a person could be sentenced to a six month community programme. They would report to a probation officer at the beginning, once in the middle and once at the end... But the 2002 Sentencing Act removed that sentence. That was one of the changes...that had an affect because it means now the only community based sentence is one of supervision (TB, 300).*

Community based sentences now involve supervision by the Community Probation Service and their policies require offenders meet certain criteria, including prioritising high risk offenders. A crucial consequence of the removal of community programmes as an available sentence in the WFVC involves the policies and protocols of Community Probation Service around sentences to community service. Offenders are regarded as higher risk if they are more likely to re-offend. At the same time, the seriousness of the offence is taken into account so 'high risk' carries a double meaning that includes both the severity of the specific violent act or acts for which the offender is charged, as well as likelihood of the offender repeating those acts.

*We try and avoid bringing into the system first offenders, or people with low motivation to change, or people with very little previous history...So when we are asked to be involved it's usually for people facing very serious charges of violence, injury with intent and assault with a weapon rather than, perhaps, common assault or violence against a female, perhaps the lower end of violence. We are not so much seeing those people (RA, 82).*

As a consequence of the probation service's policy of high risk priority, many of those who plead guilty within the WFVC would not be suitable for a sentence of community service under supervision. Although the Judiciary still have the option of imposing this sentence where they deem it appropriate, probation staff remain constrained in terms of the time they may allocate to low risk offenders. Community service thus becomes:

*...a top end sentence really because it's so time consuming (MB, 347).*

Aside from the restriction in the sentencing possibilities that began to affect the court in 2002, there are two issues specific to the family violence specialisation of the WFVC that arise as a result of the priority placed on high risk offenders under the supervision policies for Community Probation Service: the question of the appropriateness of risk assessment methods for intimate violence, and the question of the assessment of the seriousness of specific acts of intimate violence.

In relation to risk assessment methods, one of the participants drew attention to the potential inaccuracies of static factor risk assessment tools.

*So there is that concern that supervision is supposed to be for the higher risk offender, but some of the people who score low on our rating system are very high risk, so it's all built on static factors. I mean it's not always correct (RB, 151).*

Predictors based on static factors provide the foundation for actuarial methods of risk assessment. They cover four domains of psycho-social functioning; disposition (e.g. personality); history (e.g. previous criminal activity); contextual (e.g. perceived levels of social support); and clinical (e.g. substance abuse) (Borum, 1996). Most of the static factors included in these domains are not amenable to therapeutic interventions. More importantly, though, many actuarial models of risk assessment do not take account of dynamic factors such as employment status or education, and they do not take account of protective factors which may exceed static risk factors in terms of the significance of their contribution to re-offending (Rogers, 2000). Reliance on actuarial models of risk assessment have the additional risk of producing negative expectations of clients among professionals engaged in therapeutic interventions, with the consequence that clients experience stigmatisation that produces poor prognosis (Coombes & Te Hiwi, 2007). The employment of these assessment models therefore, risks inaccuracy in predicting re-offending as well as interference in the therapeutic outcomes intended by the WFVC's protocols. In addition to these problems, actuarial risk models do not necessarily take account of the specific, dynamic and intimate psycho-social context in which family violence occurs.

The specific context of family violence is also critical in regard to the assessment of particular acts of violence as more or less serious. Where the practices of the broader District Court system include either implicit or explicit reference to the specific charge of male assaults female as one of the less serious charges, it evokes an understanding of family violence as composed of discrete acts that can be individually assessed for the seriousness of their threat to the victim's wellbeing. Common sense provides justifications for this understanding in that a specific act may be obviously or evidentially linked to, say, specific bruising or broken bones, internal injury or death. However, this common sense understanding does not take account of ongoing patterns of behaviour that are defined as violence within the Domestic Violence Act (1995). In the context of the Act's definition, a particular act that could be regarded as 'less serious' in terms of its immediate effect on the victim's physical wellbeing, may contribute significantly to a pattern that compromises the victim's long term emotional and physical wellbeing, such as severe anxiety and depression linked to suicide or disabling arthritis associated with repeated minor physical injuries. While medical and psychological evidence for the severity of the effects of repeated but 'less serious' acts of domestic violence has gathered over the last two decades, common sense has continued to understand these acts as isolated events of relatively little consequence for the victim in the long term. Within this common sense understanding those who are charged as a result of committing such acts are also understood as being of 'lower risk'.

While the police and CVS share a risk assessment method that is specific to family violence and takes account of specialised knowledge of the dynamic processes involved for offenders and victims, this method is not always accessible in the same way to Community Probation Services. Issues related to methods of assessing risk are consequences of the different resources available to those who work within the court depending on their affiliation with particular professional, government or community organisations.

In Study Two, advocates talked with us about some of their hesitations around sentences to undertake change programmes under the supervision of probation services. At some courts internationally, sentencing to change programmes is not regarded as best practice (Standing Together, 2005) as perpetrators are less likely to engage in change without taking responsibility for it themselves. The advocates explained that supervision sentences provided opportunities for men who did not want to engage in change programmes to avoid doing so. At least in part, this chance to avoid the change programme to which they were sentenced arises because of systemic difficulties in providing adequate resources.

*Can I say, with all due respect to probation, they are overwhelmed with the amount of work they are dealing with, they very often, in the past I have had, say, some one has been sentenced to supervision with special conditions to attend a programme, what will happen is they will turn up at the probation office and they will report to the duty probation officer on the desk for the first three months and half way through that six month supervision sentence, if they are lucky there is enough money left in the kitty they will be sent to a anger management programme which the probation officer can only enforce during the period of that probation. So literally that means he will only go for as long as his probation officer tells him. Now that gives him three months to go and do twenty weeks, well its not necessarily going to happen like that. Add into that mix that the probation officer might have one or two days off where he doesn't actually meet with that guy so the guy just turns up and reports to the duty officer again. He could put in a couple of excuses to the probation officer why he didn't go that week or he had overtime or the car broke down or whatever and time and time again I have met up with women on the streets and asked how's it going. "Oh well that was a joke, he didn't go until three months in to his sentence and he only went twice and then he didn't keep it up anymore." So again I don't actually believe that probation conditions is the best way to go if they are going to go down that route of sending them to a programme (K11, 348-367).*

The length of the supervision sentence becomes critical to ensuring that there is a genuine opportunity for Community Probation Service to supervise the men's engagement in change programmes and to be able to provide informed assessments of their genuine attempts to engage. We were told that more recently the judges at the WFVC had been giving longer sentences of supervision to provide more opportunity for effective supervision of the sentence.

*I know [community offender service organisation] gave the feedback that say a person got, sometimes they were just given six months supervision sentences, and so by the time the probation centre get into it and do their paper work and stuff there is only, by the time they actually got them starting [the programme] there was only two months of the probation period left. So for those guys who didn't really want to do it? As soon as their probation period finished they stopped going to [the programme], so I think maybe that doesn't happen so much now because the judges now started, mainly the supervision sentence is nine months (K13,568-574).*

While the collaboration between CVS and the judges enables flexible opportunities for negotiating victims' needs for safety, advocates still expressed some concern about sentencing to change programmes because they have noticed that when the offender's partner is a client of their service, she is less likely to engage with advocacy and thus less likely to have the opportunity to be independently supported through the process herself.

*Quite often if partners are put on supervision, quite often those women are the ones that don't keep up as much contact with us, for some reason. Now whether that's because... maybe, you know, they see a probation officer, you know quite often a probation officer is talking to them both, seeing them both and stuff like that so I'm wondering whether that might be the reason (KI3, 545-549).*

In noticing that their clients were less likely to engage in independent advocacy services if their partner was sentenced to supervision, the question of whether Community Probation Services were engaged with the victim as well as the offender was raised. This study is unable to address the questions of how Community Probation Service take victim safety into account in supervising offenders during their probation period and how victims experience their safety during the time their partners are on probation. These questions need further investigation.

### 5.6.2. Self-referrals

On a plea of guilty, sentencing may be deferred while the judges monitor the offender's progress through programmes provided by community agencies such as Man Alive or Community Alcohol and other Drug Services (CADS). Defendants who are involved in judicial monitoring are self-referred court clients of these services. They are not sentenced until the Judiciary have monitored their progress for some time.

*...monitoring does seem to be an internationally accepted way of follow-up and, in American and other examples, monitoring occurs whereby the judge participates in observing what's going on. One of the failures in the system can be that sentences ordered aren't actually carried out, particularly sentences that require a programme to be done. And if there is no clear way of making sure they are done then maybe the whole thing has a more dangerous outcome than it ought to. So I think I would have to accept that monitoring is good practice (PB, 192).*

In the first year of the protocols' operation, around 94% of guilty pleas resulted in referrals to community intervention services. 57% of referrals were to Man Alive for stopping violence programmes or individual counselling and around 19% were to Community Alcohol and Other Drug Services (Coombes et al., 2007).

Since the philosophy underlying the WFVC protocols and collaboration fits a therapeutic jurisprudence framework, judicial monitoring is consistent with the court taking a role that intrudes into the private lives of victims, offenders and their children and coerces treatment for change. Through the monitoring process, the Judiciary oversee progress of offender treatment and victim safety through receiving ongoing reports on their circumstances and the offender's behaviour from Community Victim Services while they are still involved in the WFVC process. If the responsibility for overseeing the offender's progress through programmes is diverted from the court it is more likely that programmes will not be completed, and less likely that meaningful change can result.

In Study One, court participants understood that judicial monitoring works as a means of coercing treatment. The offender has the opportunity to undertake recommended programmes before being sentenced so that any psycho-social changes which improve the safety of the family can be taken into account when sentencing. In these circumstances, sentence indications encourage the offender to engage in treatment programmes by clearly giving the message that progress in the programmes will result in a more lenient sentence, and refusing

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to co-operate with the court's recommendations for treatment will result in a more severe sentence.

*They're there to 'til they finish. It means they do it. And they know if they don't do it that they're going to get whacked, pretty much. It's one or the other (MB, 434).*

*I also think that the monitoring of people is good because it keeps the pressure on (RRH, 442).*

*...and I think that we might have actually stumbled onto the system that works. The fact that the [sentencing] system at the moment is geared up towards a supervision sentence doesn't mean that it's right. I mean that's where, I reckon, there must be some research about the effectiveness of supervision sentences as opposed to this system [monitoring] (MB, 423).*

Some court participants raised the issue of whether or not a sentence involving supervision would be preferable to the judicial monitoring system as a method of coercing treatment.

*Is it more effective than sentencing someone to supervision?...if I knew that it's just as effective to sentence them to supervision and send them on their merry way to do counselling under the monitoring and supervision of the probation officer, then fine (MB, 315).*

*Supervision - it is a great idea for them to use that and [yet] we have seen with our statistics that supervision has just dropped away (BG, 386).*

At present there is no available New Zealand research comparing outcomes of the two processes. However, all of the partners of women victims participating in Study Two had been referred to offender programmes after pleading guilty to intimate violence offences. Participants in that study talked to us about their partners' motivation to change in circumstances where the WFVC provided sentencing incentives to undertake change programmes. No one reported that their partner was enthusiastic about the opportunity. The women spoke of the court's coercion as a motivation that was only taken up so that sentences would be lighter. For example,

*That's the only reason he was going to it... I remember at the time there was something, that he had to do all of these [programmes] to basically get away with a bit [less] punishment... he didn't get any punishment. I mean anyone can sit through ten sessions... or twenty of something and nod your head and go; "I'm a good boy now" (WP1, 618-621, 625).*

Sometimes even the court's sentencing incentives were not sufficient motivation for the women's partners. One participant told us that her partner had pleaded 'not guilty' initially and only changed his plea, and undertook the referred programme because of the expense of defending the charge,

*He denied it at first and then...it wasn't until [his lawyer] charged him \$600 that he realised that it would be better for him to say: "yes I do have an anger management problem" and then he did that course and then he had to do a drug [intervention] (WP2, 115, 161-163).*

Sometimes the women spoke of their partners' referral to programmes as being a compulsion, rather than a choice that he made to take up a sentencing incentive. For example,

*The [alcohol and other drug intervention] didn't mean anything; he did [it] because he had to (WP3, 453).*

In this case, the participant explicitly linked her partner's lack of change to her understanding of the intervention as compulsory.

Despite evidence of considerable variation among the participants' understanding of the coercive intention of the WFVC's sentencing incentives and referrals, they shared an understanding that their partners had undertaken referred interventions without any intent to change towards living free from intimate violence. This finding suggests that the difference between mandated and self referred attendance at treatment or intervention programmes is unlikely to depend on a difference in the experience of compulsion attached to the different processes. Further research is required to investigate offenders' understandings of compulsion under the sentencing incentive and judicial monitoring arrangement and establish any systematic differences in outcomes between sentences of supervision and judicial monitoring.

Although some court participants in Study One considered that sentences to supervision may be more efficient than the court's current practice of judicial monitoring, this perspective was challenged by Community Probation Services' policy at the time. Under this policy, high risk offenders are prioritised and the same opportunities for sentences with supervision are not available for first offenders or those whose motivation suggests that court monitoring of their progress would be more effective than supervision.

*...the outcome would be a supervision order with conditions...and let probation monitor that. However they are stuck, because I know from a Judiciary point of view, some of them have said supervision isn't an option with Probation for the reason of their priorities (GG, 365).*

While a sentence with supervision would redistribute the workload of judicial monitoring from the WFVC to Community Probation Service it also risks disrupting the therapeutic process of an offender's involvement with the court. Several participants recognised that the active involvement of the Judiciary in monitoring had unique effects in relation to an offender's progress through programmes.

*The way the judges engage with the defendants, the way they encourage, the way they do the carrot and stick thing...(DM, 34).*

One of the principal intents of monitoring self-referred progress through treatment or intervention programmes is that the Judiciary are actively involved in observing offenders' engagement with change processes. Deferring this responsibility to Community Probation Service would undermine one of the key principles of a therapeutic approach to addressing psycho-social problems that underlie family violence. Furthermore, specific evaluation of the programmes to which offenders are referred and their motivation and engagement with change, as well as comprehensive research on the differences in victim safety outcomes between monitoring for offender compliance with court referrals and monitoring changes in offenders' patterns of violent behaviour are needed to enable fully informed decisions on the advantages of judicial monitoring over sentences to change.

## 5.7. Summary

The *Protocols Relating to the Family Violence Court at Waitakere District Court* are an outcome of long term collaboration between the Waitakere (previously Henderson) District Court and a network of various government and community agencies involved in responding to family violence within the area. The protocols specify aims for the WFVC based on a problem-solving or therapeutic jurisprudence approach to criminal justice issues. They take account of the holistic context in which violence is manifest in families and seek to provide services for victim safety and treatment or intervention programmes for offenders that address underlying issues in their relationships. The structure and process of the court's everyday practices include roles for those who are usually engaged in the business of District Courts and members of community agencies and organisation who have specific rights within the Waitakere Family Violence Court, and pathways for information sharing to enable informed sentencing decisions.

Over time the collaboration between the District Court and community at Waitakere has enabled flexible responses to changing conditions in the social and political context in which the court operates. No specific government resources have been provided to support the initiatives of the collaboration, although government and community agents involved in the court have made use of available resources as carefully as possible to ensure that their commitment to ongoing coordinated interagency responses is realised.

The protocols regulating the WFVC provide the framework for identifying success and challenges within the court's revised structure and process. With the aims specified in the WFVC protocol as criteria, and discussions with professional, government and community agents as content, Study One identified the court's successes and challenges in relation to its operation and aims. The following section reports these findings with additional information from Study Two which assessed how well the WFVC is meeting some of its aims from the point of view of a specific sample of women victims who had received advocacy services in the court. The experience of advocate key informants was used to provide a wider perspective on victims' safety.

## 6. Findings and Discussion Part Two: Meeting the Objectives of the WFVC Protocols

### 6.1. Timeframes

*Aim: To overcome systemic delays in court process and to minimise damage to families by delay*

Concern with the effects of delays in court processes on victim safety and family wellbeing in matters of family violence has been a priority of those involved in the collaboration between the community and the justice system at Waitakere since the formation of WAVES in the early 1990s. The revision of *fast track* that occurred in 2001 was precipitated by the recognition that the system was unable to achieve its aims without the wider services of community advocates and interagency information flow.

#### 6.1.1. Defended hearings

In assessing the successes and challenges facing the WFVC around the issues of systemic delay and minimising damage to families that is the result of delay, it is crucial to recognise that 'delay' has different meanings in relation to guilty and not guilty pleas. Court participants in Study One recognised that the aims of overcoming systemic delays and minimising damage to families are interlinked. This is especially crucial in relation to defended hearings resulting from 'not guilty' pleas where there is greater risk that coerced victim retractions will result in withdrawal or dismissal of cases.

*Timing is a big thing. I think if people don't plead guilty then there's every chance that they won't get convicted (MB, 122).*

*Unless the Waitakere system is slowing down...(but its not), we would be achieving the aim of getting an end to the case and the court deciding what's to happen rather than giving up in court because of delay and it being decided back home usually by the dominant partner (PB, 128).*

This recognition brings together the understandings that inform the specialist Family Violence Court at Waitakere and the aim of the Chief District Court Judge in introducing the Practice Note for all summary domestic violence offences across every District Court in New Zealand.

*We were given by the Judiciary, by the Chief Judge, timeframes of 2,4,6, which was how we should be dealing with family violence matters, so throughout the country there is a consensus that they have to be moved through quickly otherwise as the statistics show something like...where the defendants plead not guilty, 85% of them walk free because the victim won't come up to brief or doesn't turn up or bruises heal (BB, 132).*

The Practice Note is clear that the specified timeframe applies to defended hearings, and, that where status hearings are not held for domestic violence cases, the defended hearing is to be held within six weeks of the plea being entered. The court protocol at Waitakere specifies that status hearings are not held for domestic violence cases, which means that the timeframe which applies at Waitakere is 2 (for plea) and 6 (for defended hearing), reducing the overall timeframe from three months to two months.

## Responding Together

Advocates in Study Two provided us with a range of reasons for prioritising timeframes in relation to victim safety. They talked with us about the way in which not guilty pleas were understood by some lawyers as an option for defendants to avoid convictions, and responsibility, although that may not be in the best interests of victim safety and family relationships.

*The main thing with the defended hearings is that, I think there's no doubt about it, that guys are getting legal advice from their lawyers to say they are not guilty and it's not in the best interest of the whole family (KI3, 11-13).*

In some cases, they were aware of defendants who choose to plead not guilty specifically because of the likelihood that charges would be withdrawn or the case dismissed.

*With defended hearings, I think it is, some of these people know how to work the system. Plead not guilty, go to a defended hearing, she's not going to show up or she's not going to give evidence (KI2, 27-30).*

This understanding depends on realising that victims often do retract statements or refuse to give evidence and it does not reflect a lack of knowledge of the dynamics of intimate violence. 'Working the system' involves a considered strategy by an offender who is intent on exercising control over his partner. In some cases, control strategies included using the court system to deliberately prolong the case and distress the victim,

*...that in itself was a head game to her, delaying the process again, now having to go in front of a whole lot of other people saying to her "you're crazy, no one is going to believe you." (KI2, 22-23).*

Advocates also talked about the way in which delayed defended hearings impact on their clients' likelihood of reconciliation with her partner, even when their clients anticipate this possibility with some fear.

*I also think [in] the distance between them is that fear - the fear is there because they know it's going to be, you know, two months away or three months away, so it's either they have been strong up to now and are really trying to do this, and then they know in that three months the possibility of him actually getting back under her skin, getting on her good side is there, and it's like the women know that themselves (KI3, 37-41).*

Delays provide defendants who are "playing the system" with more opportunities to access victims and engage in coercive strategies that are aimed only at avoiding conviction and are not genuine attempts to reconcile and heal their relationships. Delay also provides more opportunity for the defendant to threaten the victim.

*Then all of a sudden it's going to be dragged out for that little bit longer...and umm, you know, how are they going to do it? How are they going to keep it together?...and obviously the threat stuff (KI3, 49-52).*

The strength required for victims to remain cooperatively engaged with a drawn out legal process in the face of coercion and threats puts significant demands on their psychological wellbeing. Sometimes, when their clients have separated and are living more safely, they simply do not want to re-visit the emotional turmoil of their victimisation at the hands of their former partner by giving evidence against him in court.

*I think you do get those women who just say, "I don't want to go and give evidence, it's over and done with, I've moved on", you know, but, but it's about being dragged back to that place again (KI3, 107-109).*

Advocates also told us of cases where defendants were engaged in tactics of control such as coercion or threat during the delays that are involved in defended hearings, and yet their client did give evidence in the end,

*...it can work for us in so far as, I mean he started his programme and of course he's doing the real honeymoon period stuff, after the assault he's trying to win her back and do that same stuff but then, quite often when the defended hearing is like three months away, he can't quite keep it up for that long, and so in that last month he actually starts to display some of that [abusive] behaviour. You know when you're talking to her she's actually starting to see it, so it has been sometimes that a woman who's kind of like really wavered, and [was] then saying, "no I don't want to go to a defended hearing, I won't give evidence", in that last month it's like, "right I'm going to [do it], and be there (KI3, 117-124).*

In this example the advocate draws on her understanding that the complex psycho-social effects of intimate partner violence change over time, and their clients' strength for personal change to achieve outcomes where her determination to co-operate with legal interventions can result in her partner accepting responsibility for his violence and pleading guilty,

*And sometimes when we get to the court on that day because she has shown up, sometimes you will find they will change their plea or they will negotiate with the prosecutor about a plea to a lesser charge (KI2, 30-33).*

In the advocates' experience, delays involved with defended hearings do have consequences for their clients' safety. They are aware that defendants sometimes "play the system" to ensure they have as much time as possible to re-exert control over their partner so that it becomes more likely for the charges against him to be withdrawn or dismissed. Clients sometimes experience their partner's attempts to delay proceedings as a form of psychological abuse. Staying engaged with the process of legal intervention over long periods of time demands considerable strength from the advocates' clients. None-the-less there are situations in which the time delays involved in defended hearings enable the women to become stronger in their own personal change process and engage with the legal process to hold their partner accountable for his violence. Whether delay provides an advantage or disadvantage in relation to women victims' safety depends on complex psycho-social factors in each particular situation.

In Study One there seems a clear consensus among court participants on the importance of timely defended hearings. However there is less agreement on whether or not the WFVC is achieving the specified timeframes.

*I think that if we're not within the protocol we're pretty close to it. I know we are giving good early dates for family violence...as family violence has taken priority. So if there's an early date it's going to this court, which is the way it should be (MB, 113).*

*Another concern I have relates to the time delays in waiting for defended hearing dates for our family violence cases. We need to have the hearings much sooner than we currently are. This is an area we need to continue to work on (RRH, 497).*

## Responding Together

To address the issue of timely defended hearings, as well as attempting to ensure consistency in the judicial approach to family violence matters, the WFVC currently sets aside specific Fridays for hearing defended matters.

*But we do get disposals...We changed the way we structured the days so we could allow an easier cap on listings...So we made it a bit easier to try and increase disposals, increase the effectiveness of the court and then gave five out of every six Friday's a family violence defended hearing day as well (BG, 301).*

This practice recognises the priority given to timeframes in family violence hearings. However, even with additional dedicated days, this priority needs to be balanced in relation to the resources required for other matters before the District Court.

*There's always this constant tension between trying to adopt a therapeutic approach in court and trying to deal with sheer volume of people coming through the court (MB, 10).*

At times there are simply not enough resources within the WFVC to meet the timeframe requirements.

*As far as things we are not doing that well; timeframes are too far out. We are not dealing with matters as quickly as we should. Defended hearings, which we have on Fridays for family violence matters, are far too far down the track...If we got another day for family violence something else would have to go and the court can't just do that...Our Friday defended family violence day is helping - we sit in court until well after 5pm on Friday to ensure as many cases as possible are finalised (BB, 218).*

*I guess part of the family violence day is family violence defended hearings that we are setting down on Fridays now....that falls into the whole family violence court protocol. It's not part of the every Wednesday session, but if someone pleads not guilty then they go off to a defended fixture and the protocol says we should be setting that within two months. But that is another problem where there are not a lot court dates, so the dates are going further out and that's a really big issue for witnesses, trying to remember stuff and their lives change quite a bit over that time and that's a problem (WW, 335).*

The timeframe objectives for defended hearings also impact on the resources available to the police to proceed with prosecutions or counsel to prepare adequately for the defence.

*When we bring defended hearings closer in and we load more into a date that is close by, which is what's been happening, we might have 12 defended hearings set for a Friday. That is twelve cases and it's virtually impossible to know one from the other then...you don't have a chance to come up with a strategy or look at any potential defences or holes, you don't have time to do it justice really. So they have to be careful not to schedule too many in, and I know that was done in an effort to bring the cases forward a bit more (PA, 437).*

During 2005-2006, 61% of not guilty pleas for offences of intimate partner violence resulted in a defended hearing. Of these cases, 68% took longer than 14 weeks. The majority of cases were disposed within six months and less than 7% of cases took longer than 12 months. The volume of cases in the WFVC was significantly and positively related to the time lapse between offence and disposal (Coombes et al., 2007) suggesting further resource requirements in court allocation are needed.

Delays that result from inadequate resourcing of the WFVC, the police or defence counsel impact on both victim safety and offender accountability. Even if the court process remains within the total of 13 weeks specified within the Practice Note as the maximum time in which any domestic violence charge should be heard and an outcome determined, it still may not be adequate to enable the victim's continuing engagement in the court process of ensuring the offender is accountable for their violence.

*...a date has been given. It's still like 3 months down the track. So those old things still come up, because 3 months down the track, she's gone from hating him now back to living with him, maybe. Or she has kind of moved on and doesn't want to have anything to do with him, and just doesn't even want to remember it happened (SW, 217).*

While there are continuing issues of resource requirements to meet the timeframe objectives in relation to defended hearings, the WFVC participants demonstrate their commitment to overcoming systemic delays in the specific case of family violence offences by mobilising the resources that they have available to redress such delays. Although the timeframe objectives may not yet be achieved, the strategies that have been put into place represent significant progress towards addressing systemic delays in conducting defended hearings. It is also the case that some delays may be a result of offenders "working the system" or a consequence of re-offending that affect both volume and delays. Other effects of re-offending are considered in relation to the aim of holding offenders accountable, discussed in Section 6.3.8 below

### 6.1.2. Judicial monitoring and time frame objectives

Judicial monitoring fits within the WFVC protocol as an exception to same day sentencing where a defendant pleads guilty. The exception occurs when the offender agrees to undertake a programme and compliance may be more likely where sentence indications provide a clear incentive that effectively coerces the offender to undertake treatment. It may also occur when a discharge without conviction is being considered and the court seeks to ensure that issues within the family have been addressed satisfactorily before discharging the offender. In both these cases, the exception to same day sentencing operates within a therapeutic framework that coerces offender engagement in treatment to produce change in the offender's violent behaviour.

In Study One, some of the court employees drew attention to a tension between the monitoring process that is often involved when a defendant pleads guilty and the timeframe objectives that are set for all summary domestic violence matters in District Courts. These participants deal with all summary matters in the District Court and, in their understanding, an institutional requirement to reduce delay does not necessarily take account of the local practices regulated by the WFVC protocols.

*The [District] Court process doesn't allow for the flexibility that Judiciary want, in terms of outcome, result, disposal of a case, so if they rely on a community programme to operate...before they make a decision in terms of sentencing, then they will use a court process to monitor it...I just question the usefulness and effectiveness that we are talking about. I guess what we are trying to achieve is [reducing] the delay, but bringing them back for monitoring how an individual is doing will achieve maybe the outcome for the individual, to attend a programme. I am just not sure whether it achieves our objective which is to reduce the delay. It might have other outcomes, I am sure it is all positive but...our dates are not getting pulled back (CA, 338).*

## Responding Together

*Then we have on top of that things like...men's groups programmes and stuff which need time to go through and we have that strict 2,4,6 timeframe as you know, and then they might need 8 weeks...20 weeks (CB, 353).*

In the situation where the WFVC protocols allow for referring a defendant to a community based programme between guilty plea and sentencing, or between a not guilty plea and a defended hearing, there is a potential for conflict between the aims of reducing systemic delays and minimising damage to families. This potential is realised where there is a "strict" interpretation of the 2,4,6 timeframe in the context of institutional requirements rather than a local specialist aim linked with minimising damage to families.

Court employees are acutely aware of the differences between the family violence court practices and the procedures involved for other matters before the District Court, including the intention to engage offenders and victims in processes that have therapeutic outcomes for the whole family.

*Family violence matters take up a considerable amount of our time because we have a reasonable number of them and because their process is more lengthened. They have more remands than the normal process that takes place, there's probably more involvement with them because of the fact that the defendants are monitored. The victims of family violence tend to take a fairly active participation in it. Obviously because of the fact of where they're wanting to continue their family as a whole, they want to make sure that their futures are the way that they want them to be and to participate in that court process (CC, 55).*

Despite their appreciation of the therapeutic intention of the WFVC processes, including judicial monitoring, the more limited institutional aims that regulate their performance leave them vulnerable to criticism.

*So [monitoring throughout a 20 week programme] that's something they encourage, yet at the end of the day we get [criticised] for it. And it's completely beyond our control (CB, 358).*

Judicial monitoring becomes problematic for court employees because the time lag between guilty plea and sentencing is not necessarily institutionally understood as an outcome of a therapeutic court process. At present it appears that all time lags are assumed to indicate damaging systemic delays in summary court processes. Court employees are constrained by the institutional requirements that regulate all District Courts and which do not accommodate the practices of the specialist WFVC.

*You see the system at the moment I think is geared up for people to plead guilty and be sentenced pretty much straight away. That's how the system is designed. What we're doing here is quite at odds with the way the system is designed (MB, 359).*

Rather than being sentenced on the same day, judicial monitoring may involve offenders in court proceedings for more than twelve months from arrest to disposal. During 2005-2006 nearly 60% of analysed guilty pleas involved judicial monitoring. Less than 2% of monitored cases were disposed of in less than three months with nearly 80% disposed within 12 months (Coombes, et al., 2007).

The conflict between the more generalised system regulating District Courts which is premised on same day sentencing for guilty pleas and the specialised system of the WFVC protocols could be resolved if the time-lags associated with judicial monitoring were accommodated by the Ministry of Justice as a specific exception that represents the WFVC's commitment to engaging offenders in therapeutic processes intended to reduce re-offending.

### 6.1.3. Judicial monitoring and court resources

In Study One, court participants were clear that despite their understanding of judicial monitoring as successful in terms of coercing treatment, it was a demanding and resource intensive process that the WFVC was attempting to manage without additional resources.

*The practice is not same day sentencing and one of the reasons that it's not is that we've got into this routine of monitoring attendance at anger management and CADS and any other counselling that people are doing....This is the tension between resources and an effective therapeutic approach. The resource that we have to use in monitoring these cases, people going through their courses are huge. They take up a large amount of time in any list, just the monitoring phase (MB, 294).*

*...what we need if we are going to monitor it (and if we are going to monitor it, good on us)...we are going to do it properly. None of us like to do things inefficiently here, but we are pushed into being inefficient because we do not have the resources to deal with it (BG, 563).*

Lack of resources for managing the WFVC's specific practices and intentions as a problem solving court have been an issue since *fast-track* was first established in the early 1990s. Court employees who aim for efficiency in the services they offer are hampered by ongoing problems created by inadequate resources.

The recent statistical analysis of data provided by Viviana also involved examining not guilty cases to see if patterns of delay were systematically related to the volume of cases in the WFVC. The study does report a significant positive relationship between volume and time lapse to disposal that suggests judicial monitoring is not the only influence on delays for not guilty pleas (Coombes et al., 2007). Adequate resources for dealing with the volume of cases through the WFVC, regardless of effects of monitoring remain an issue for court staff.

None the less, because of their first-hand understanding of the increasing pressures on their capacity for efficient case management, some participants questioned the court's responsibility for monitoring.

*Because the stretches we have in the courts already it's probably not the best area to use as a monitoring tool. Because of the huge backlogs of work that come through - huge numbers of work that every court gets - and it's increasing all the time. And unfortunately our capacities are not increasing along with it (CB, 379).*

*I guess the issue is who is responsible for monitoring it? Is it the individual families and the individual himself or herself in some cases? Is it a community responsibility to do the monitoring?...Is it the court's responsibility to do that? (CA, 398).*

While judicial monitoring is resource intensive its success in terms of coercing treatment is consistent with the goals of a therapeutic court. If the problem of inadequate resourcing is

addressed by deferring responsibility for monitoring to other change agents, whether community based or government organisations, then defendants are not given the same clear message that the Judiciary have a vested interest in the offender's accountability, concern for the families' ongoing safety, and a responsible role in facilitating change. This is a crucial message in the psycho-social context of the WFVC. Through the Domestic Violence Act (1995) and through both Te Rito Family Violence policy and the Ministerial Family Violence Taskforce initiatives, the government has undertaken a commitment to ensure that citizens of Aotearoa/New Zealand understand that family violence is unacceptable and that offenders are held accountable for violent offences. Community agencies are actively involved in campaigns to increase victim safety and demythologise family violence. Throughout Aotearoa/New Zealand, community, government and professional agents are actively involved in interventions to change the ways in which family violence is socially sustained. Monitoring enables the Judiciary of the WFVC to contribute to this broader movement by being directly involved in holding offenders accountable for their compliance with recommended treatments. As far as possible, they are able to participate responsibly in addressing the needs of the family within the criminal justice system. Deferring responsibility elsewhere risks sending a message that the court is the domain of procedural justice and has no specific interest in or responsibility for psycho-social change that reduces offending.

Some practices introduced into the WFVC have partially, and inadvertently, addressed the resource implications of judicial monitoring without compromising its therapeutic intent. One of the most frequently used community-based treatment referrals is to Man Alive's anger management programme. Prior to 2006, Man Alive did not have a representative in court and some offenders appeared for monitoring on multiple occasions before engaging with the programme.

*...so what would happen is the guy would say "Yeah, I'll go along to anger management and stuff". It would be put off for maybe six/eight weeks for a monitoring date to just check that they have engaged. And then quite often we would go back that six to eight weeks after and he still hadn't engaged. He still hadn't and it was a delay (SW, 153).*

During 2006, a Man Alive representative was deployed in WFVC and the difference in time lag between the recommendation of the programme and the offender's engagement in the programmes was noticeable in some cases.

*Since [a representative] has been there from Man Alive [the delay] has actually stopped because he is getting an opportunity to talk to these guys, get their resistance down straight away and get appointments quickly organised. So by now, the monitoring date for all of those who are really going to go has been sorted...So that's kind of like made huge difference in process (SW, 159).*

In addition to reducing the time-lag associated with offenders' engagement in treatment programmes by having a Man Alive representative available on the day, the WFVC has introduced a policy aimed at reducing the number of times that an offender who is making good progress with a treatment programme needs to appear in court.

*We have now adopted this policy that if they are working and the lawyer can prove that they are still on board with their courses, then we will excuse their attendance. And also if they are really motivated then we will put it off for longer and have less monitoring. We tend to monitor more frequently when we have doubts about their follow through (RRH, 452).*

This policy enables the court to avoid standardising the judicial monitoring process and allows for each offender's monitoring needs to be taken into account. As such it is consistent with the understanding of family violence underlying the WFVC protocols where the specific context of the individual's offence and the needs of their family are prioritised. This policy may also provide some relief for the overburdened resources of the court, although that is not its central intent and it does not provide adequate redress of resourcing problems.

*Even though the attendance might be excused, it's still a lot of paper work that you've shuffled and you still read the file because you have to be careful about what you are doing (MB, 308).*

To maintain the integrity of the WFVC's therapeutic approach within the broader psycho-social context the solution to resource inadequacies needs to be directly addressed so that court employees are able to efficiently and effectively support the Judiciary's problem solving approach.

#### 6.1.4. Judicial monitoring, delay and victim safety

In Study Two, the sample of women victim participants included women whose partners had been monitored by the WFVC. We anticipated that the effect of these 'delays' would be incorporated into the women's accounts of their experiences of court proceedings yet questions related to the length of time their partners' case took to disposal were passed over quickly. For example,

*I think he went to court like five times or something over a long period (WP1, 106-107).*

*...his court cases have been quite close together lately, and he got some new [charges not involving me] (WP2, 69).*

*I don't even know what happened with that because he went to the [referred offender programme] but I don't really recall him going back to court...I mean he is so, he was so secretive. He probably would have hidden it from me (WP3, 605-606, 614).*

*I think it took, well, round about 10 months (WP4, 353).*

In each of these examples, the participants continued our conversation by turning to another subject or concern to them at the time. This suggests that the monitoring process engaged by the WFVC is not creating delays that directly affected the participants' safety, and that the processes involved in prosecuting their partner for offences against them served to create situations in which issues related to the violence in their relationships needed to be addressed.

In those few cases where the participant elaborated more fully, or returned to talk about the length of time that the WFVC proceedings had taken later in our conversation, they did not comment on the delay involved in judicial monitoring as an issue for their safety. For example,

*The last time we went to court I think was [month] of the following year and he had to, my understanding is, he had to keep his nose clean and not have any contact because [both] courts had issued protection and non association orders. I had the bases as covered as well as I could (WP5, 360-362).*

## Responding Together

In one case, however, a participant commented that they found the delay 'annoying',

*I didn't go to court, yeah, but umm, it was really annoying, the process of it. I just almost couldn't be bothered because it took so long, you know (WP1, 74-75).*

Otherwise, it was evident that the women's experiences of their partners' re-offending were their most serious concerns. One participant connected delay with re-offending by telling us how the proceedings were affected each time her partner was arrested,

*He'd go to court and then it would be put off for a couple of months because then he'd have new charges come up, so then they put it off again (WP2, 37-38).*

Delays that result from repeat re-offending and consequent arrests are not systemic delays in court procedures. The judicial monitoring process practiced in the WFVC was not experienced by these women participants as a delay that damaged their family or put their safety at further risk. None-the-less, the delays that were consequences of their partner's re-offending clearly were related to risks to the women's safety and point to the difficulty of holding men accountable for their offending through procedures that *enhance* safety and minimise damage to families.

### 6.1.5. Same day sentencing, sentencing indications and safety concerns

The practice of same day sentencing is relatively rare at the WFVC because of the court's intent on addressing underlying issues related to violent offences. Although in principle the protocol stipulates that same day sentencing processes are followed, the exceptions that are specified in the document mean that in the majority of cases, sentences will not be passed on the day that a guilty plea is entered.

*There have been a few occasions where judges have made decisions, you know, it's appeared to be a simple case and umm, for some reason the judge just decides to sentence them then and there (KI3, 531-532).*

In Study Two, advocates affirmed the importance of taking time after a guilty plea is entered for the sake of victim safety. From their point of view, same day sentencing is inappropriate because it does not enable adequate time for advocates to engage with victims and complete safety assessments to present to the WFVC. When victims have not had contact with advocates because their partner is sentenced immediately, advocates are not able to provide follow up services or ongoing safety assessments.

*Just the fact that they haven't had any kind of contact or support or anything like that, those groups of women. I mean I suppose, I mean to a certain extent the monitoring you're doing [in the research] is kind of asking the specific questions about how they found us and things. I mean if no, like I kind of think we do monitoring in a different way after they've been sentenced because we are continually checking on how its going for them and you know what's working and what's not working and what's happening (KI3, 537-543).*

The women participants in this Study Two specifically mentioned the Community Victim advocates follow up services are valuable and important to them for enhancing their safety long term. If same day sentencing inhibits contact between advocates and victims then these services cannot be provided. Sentencing decisions that are too hasty cannot take account of

safety assessments based on a reliable level of engagement of the victim with an independent advocate.

When a defendant pleads guilty and agrees to undertake community treatment or an intervention programme before being sentenced, it is common practice for a sentence indication to be sought so that the defendant and their counsel are aware of the incentive that is being offered for compliance with treatment. Since the WFVC protocols endorse same day sentencing in principle, sentence indications are expected at the time that the guilty plea is entered so as to ensure the most time efficient resolution of the matter. While this may facilitate speedy compliance with recommended treatment, some participants in Study One raised concerns about the emphasis on acting quickly in the specific case of an indication that the offender may be discharged without conviction.

*We know that very often by the time the police come, or are called in, there's been a history of violence and this is the first time she's been persuaded or has decided to go through with the prosecution...if the outcome of that is a discharge without conviction, because he's jumped through the hoops without authentically engaging or really wanting to change, then she's at even more risk of further violence, and he's going to continue looking like a first offender if he gets a discharge without conviction. So I can't say that right across the board there should be no discharges without convictions, but I believe that judges need to do that with an incredible amount of detail and understanding of what's going on (WO, 382).*

*...we had a problem where the judge was just sort of giving that indication [106 discharge] without having a chance to look at the person's background and their family situation, and if there have been police call outs to the address before. And the police were being forced on the spot to stand up and say whether [they'd] agree to a 106 or not on the day. That's improving, [they're] not in that position as much anymore but every now and then it does happen. And that's not ideal (WW, 109).*

Providing the Judiciary the background information needed to make sentence indications that take seriously an account of the victim's ongoing safety does not always fit well with the imperative to act quickly. While the CVS advocates are often able to provide memoranda with relevant information, the prosecution also needs to have appropriate background information available to ensure that they can either agree with or object to the sentence indication appropriately.

*[Prosecutors] need time, and by time I mean more than just standing it down until later in the day, it would have to go off for perhaps another week or...a week would be a good time frame. That would give enough time to do the checks and talk to the officer in charge and stuff like that (WW, 118).*

Ensuring the safety of victims who are in ongoing relationships with offenders is not always easily compatible with mechanisms used to meet the aim of overcoming systemic delays in court processes. The first two aims of the WFVC protocol - to overcome such delays and to minimise damage to families caused by such delay - need to be understood in the context of the dynamics of family violence to ensure that harm prevention is prioritised. If victims are put at risk of harm as a consequence of attempting to reduce delay for its own sake then the overall intent of these two aims will not be met.

## 6.2. Concentrating specialisation and a holistic approach to family violence

*To concentrate specialist services within the court process and promote a holistic approach in the court response to family violence.*

The third and fifth aims of the WFVC protocol provide interlinked goals that are based on the recognition that family violence offences occur within intimate relationships that are embedded in specific cultural and social contexts. In as much as these offences differ in character and in consequences from offences against strangers, specialised knowledge of the dynamics of intimate violence is necessary to enable criminal justice interventions that address the particularities of violence within families. A holistic approach to problem solving interventions is advocated so that the complexity of interpersonal, social and culturally specific relationships may be taken into account in addressing the offending in the best interests of victim safety and family relationships.

From the point of view of some participants in Study One, specialisation and a holistic approach are linked in a focus on healing families.

*There's a real aim towards healing families and getting them back together so it is quite different from the normal court prosecution (WW, 11).*

*Essentially this whole court is based on the philosophy of healing the family (MB, 25).*

*I mean the whole role is the philosophy of healing the families and you know that's more, that's quite an altruistic you know, for me its about the acknowledgement that a lot of these women want to stay with their relationships, and the fact the previous way of dealing with it by sending these guys off with a fine or something like that just wasn't helping anyone in particular. And so, therefore, the idea of actually putting some therapeutic interventions was really going to serve much greater purpose (SW, 53).*

The adversarial system that underlies the practice of jurisprudence in the District Court is more generally orientated towards ensuring that defendants' rights are protected, and that the facts before the court pertain only to the alleged offence. Victims are accorded a voice in the District Court through Victim Impact Statements. While appropriate for offences which occur when there is no ongoing relationship between defendants and victims, or no underlying psycho-social problems that the court aims to address, the isolation of the alleged offence from the context in which it is committed and the assumption that the court is dealing only with a criminal justice matter stand in contrast to the assumptions underlying therapeutic jurisprudence. In the practices of the WFVC, the aim of promoting a holistic approach is consistent with the court's problem-solving orientation to the extent that holism refers to an understanding of the offence as embedded within a specific relational and social context.

*It's trying to minimise family violence to prevent re-offending in the current clients, and prevent offending in future clients by ensuring that families become more peaceful and non violent so that the cycle isn't repeated. Strengthening women or strengthening victims: they can be women or men. Strengthen victims to do the right thing, whether it be continue with the relationship or not, but to have the strength and the knowledge and the information so that they can make an informed choice about that (RH, 208).*

A holistic approach commits the WFVC to taking account of the ways in which domestic violence offences involve ongoing relationships and costly damage to families and communities if patterns of violent behaviour do not change.

*At any event, and I understand this philosophy, it's recognised by the people who have developed these protocols in the Waitakere Court, that domestic violence presents its own special problems. It often involves continuing relationships, it may often involve as interested parties if nothing else - children. It involves the ongoing close proximity, usually or very often, between the people and it's recognised that whatever issues there are in the relationship that have devolved into some kind of violence they really need to be resolved rather smartly so that people can get on, rather than can often be the case in the criminal justice system where they can drag out. So part of the reason for protocols...is to see if there's a mechanism so that the issues, a bit more broadly than criminal issues, get addressed within the domestic relationship (HD, 6).*

In the case of intimate partner violence it is widely recognised that the relationship involves a pattern of economic, psychological and physical control over the victim by the perpetrator, in which acts of physical violence are embedded (Dutton & Goodman, 2005; Herman, 2005; Lewis, Dobash, Dobash & Cavanagh, 2001; Pence & Paymar, 1990). All of the women victim participants in Study Two reported an ongoing history of physical, emotional and social abuse in their relationships with their partner. The events that led to them becoming involved in the processes of the WFVC were not necessarily unusual. They were not 'one-off' events that were 'out of character' for their partner.

*My partner had assaulted me on many occasions (WP1, 11).*

*...it was probably about a [number of years long] relationship. Umm, and he probably hit me about five or six times through that time (WP2, 446-447).*

*...over the years there was a bit of violence, the odd punch or the slap, that sort of thing (WP3, 3-4).*

*I've been married for [a very long time] and this marriage – I think a month after, that is just when everything started, like things were very nice and then, things all of a sudden changed (WP4, 19- 21).*

*And a few times he was violent. [Soon] after I got married (WP5, 259- 260)*

The women's accounts of events that brought them to the WFVC emphasised the holistic context of their partner's violence against them by placing physical violence within the context of ongoing psychological and emotional abuse.

*...a lot of it was, is not, a lot of physical [assault], more a mental injury I suppose. And it really was every single day brainwashing, with the threat of violence (WP6, 318-320).*

*...all this emotional abuse had started – right from the first day, it had started. (WP5, 314-315)*

For some participants physical assault was not necessarily frequent in their relationship, but it did take place in a context where other forms of abuse and control were ongoing. Some women explained that their partners' violence was associated with other psychological or social issues including mental health problems and misuse of drugs, or weapons. Each of their partners was

arrested for offences that could be directly related to discrete events involving physical evidence: none were arrested for the psychological or social violence they perpetrated on an everyday basis. Some participants also disclosed their experiences of sexual abuse within the relationship although they did not want to discuss those offences further.

*I still carry [a lot], especially the sexual side of the relationship, umm. I carry a lot, and it affects my current relationship a lot. That bit, umm, that's probably the biggest thing for me...it effects me more than being hit because it's just something that's really personal, and yeah, my perception of sex and everything to do with it has changed a lot...for me it's turned into a dirty, like a yuck kind of thing, when it shouldn't be like that (WP4, 468-470, 475-478: aftermath).*

Promoting a holistic approach that responds to intimate violence in context involves understanding the issues of family violence more widely than criminal justice issues. Pivotal to achieving a holistic approach is the strategy of concentrating specialised knowledge and competencies in family violence interventions and in therapeutic jurisprudence within the WFVC. Specialist victim services are able to take account of the effects of all forms of violence on their clients' disclosure and reliably assess their safety for the information of the court. The specialist community based offender treatments and programmes are also concentrated in the WFVC so as to take account of associated psycho-social problems. In both cases the evidence from women participants in Study Two justified concentrating specialist services in the court.

Advocate key informants affirmed the women's experiences of intimate violence as a pattern of ongoing psychological and social abuses, control strategies and physical assaults perpetrated by their partners. From their point of view, victim safety depended on all those involved in responding to women's victimisation, understanding the seriousness and the dynamics of the pattern of violence against them. The WFVC's collaboration with community agencies requires an effective information flow that balances victims' rights to privacy and confidentiality, their rights to legal protection and the rights of defendants in the criminal justice system. The most rapid and appropriate actions by those criminal justice and community agencies aiming to provide a holistic approach and an integrated response to intimate violence depend on effective information flow. The protocols of the WFVC provide clear guidelines to ensure that reliable information is passed as efficiently as possible among all parties involved in the court's responses. However, the WFVC itself is but one component of a multidisciplinary co-ordinated response that operates within a criminal justice system at the same time as collaborating with the community. Given the crucial importance of specialist understandings of situations where offences that can proceed to prosecution are embedded in an ongoing pattern of violence against a particular victim, specialist training and specialised roles within the criminal justice system need to be consistent with specialisation in the community to maximise the potential effectiveness of co-ordinated responses. Advocate key informants were aware that specialisation of prosecutors and judges was supported by international literature on victim safety.

*...the literature from overseas, particularly the specialist family violence courts in the States, show if you have a dedicated prosecutor who has really good understanding of family violence dynamics, if you have got...judges in court who are really trained in that area and understand the dynamics that are going on, and if you have got good advocacy for the victim you get a higher rate of success with every single case (KI1, 327-331).*

The aim of concentrating specialist services within the WFVC is also consistent with the Te Rito Family Violence Prevention Strategy (MSD, 2002) that recognises the need for specialised knowledge and competencies so that responses to family violence are effective. Te Rito acknowledges that there are shortfalls in the availability of specialised human resources for appropriate intervention and that:

[e]nsuring appropriate and specialised training programmes, workforce development and support are available is key to enhancing the quality of family violence prevention/intervention services and the ability of key personnel working with children and families/ whānau to identify and respond to situations of family violence (p.35).

Study One suggested that the shortfalls recognised by Te Rito have an impact on the delivery of effective family violence intervention by the WFVC and, at the same time, the court participants continue to work towards resolving challenges to concentrating specialist services. For the WFVC to meet its aims, everyone involved needs to have commitment, knowledge and competencies appropriate to their role in the court.

*Each of the main players has got to be committed, in principle and in practice, to the philosophy of a family violence court. The police have obviously a very important role; they have to bring charges when appropriate and pursue them. Not reduce charges or withdraw them, without good reason. They have to be alert to all the risk issues around bail. The lawyers have to take a responsible approach and see that it's in the interest of their clients, as well as the complainants' and victims', for the clients to accept responsibility for their behaviour. We need good support for the victims and that's one of the primary features of this court, and we think we've got a pretty strong victim support structure - both the victim advisors who have a more neutral role, and the Community Victim Services who have the more active advocacy and support role for victims. So that's important because the record of dealing with a family violence crime without adequate support for victims, is that sooner or later, they rescind from their allegations, particularly if there are delays (YB, 145).*

Issues around specialisation have different implications for the Judiciary, counsel, VAs and Community Probation Service in terms of their responsibilities within the WFVC. Unlike community services providers, their responsibilities are not dependent on their community standing as specialists in family violence interventions.

### 6.2.1. Specialisation: The judiciary, counsel, VAs and Community Probation Service

Participants in Study One were clear that the Judiciary are crucial to the effective implementation of the WFVC protocols. Their role in ensuring that the WFVC takes a holistic, therapeutic approach to family violence cases is well recognised by participants. They provide necessary leadership and direction in the philosophy and practice of the court.

*Whereas I think the judges...it's really good how they make an effort to talk to the lawyers and ensure that they've passed all the information over to their clients and explained what the court's there to achieve. So that would be good, if that could be passed onto other courts. That would depend on the judges really feeling like that was a good thing; that it was working and believing in the process. I think it wouldn't work if there was a judge that was sort of cynical about what we were trying to achieve (WW, 205).*

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*I think it starts from the top, I think it starts from the judges, and the fact we have been really lucky that we have had the sort of judges that, that's right from the beginning apart from Judge [visiting], we have basically had judges who have really grasped the whole concept; who have put themselves out to gain an understanding of family violence dynamics and things like that; who have been open to suggestion, to being prepared to step out of the box and do things a bit differently. And who, just kind of, support the principles and being prepared, to kind of, fight for the principles of it (SW, 105).*

Leadership is a vital dimension of effective family violence specialisations because of the complexities within the field itself. Throughout the 1990s there were published analyses that demonstrated conflicts, tensions and competitiveness among academic experts engaged in specialised research (Brograd, 1992; O'Neill, 1998). Similar tensions in the field of interventions were also recognised by participants advocating for strong leadership of family violence courts.

*The other thing you need to be aware of is the territorial games that are played in the domestic violence arena, and a considerable amount of leadership and or diplomacy is required to get everyone going in the same direction (PB, 249).*

The Judiciary do not necessarily have specialised knowledge and competencies in family violence interventions and are not necessarily supportive of therapeutic jurisprudence. The judges presiding over the WFVC, at the time Study One was conducted, had made personal commitments to the aims of the court protocols and participants were aware that the court depended on this commitment for its success.

*I think by in large the judges that are present in our court, and on family violence court day, are hugely supportive of the whole process, particularly our resident judges. That is Judge Tremewan, Judge Taumaunu, Judge Recordon and Judge Mather, at times, and I think they have been absolutely solid in terms of their support for this process (WO, 133).*

*Just running it is a major thing, when you think about it, that means that all of your court staff, judges, lawyers, victim advocates are all on board with the protocols...if you stand back and think about it, that's a huge thing. That means you've got judges who are particularly willing to adopt a therapeutic approach and you'll find that not all judges are willing to do that (MB, 195).*

Support and commitment are not sufficient alone, however. Court participants were also aware that consistency was of critical importance to the effectiveness of specialised intervention.

*I think you need to have judges who are committed to the court, sitting in the court, that's really important. I also think you need to try and have a similarity in approach between the judges to some extent. So they are not only keen on the work but also basically follow the same way of approaching the work. (RPH, 233).*

There is some recognition that, at the WFVC, consistency of approach among the Judiciary has been achieved and this makes a substantial contribution to the effectiveness of the court.

*I think we achieve consistency and that's been useful, consistency of approach, because we are only using the three judges (plus David Mather, now and then). If we have visiting*

*judges we do what ever we can to make sure they don't go into the Family Violence Court (BB, 202).*

Consistency in decisions is also valued highly. Court participants understand that the Judiciary work under stressful circumstances and carry heavy workloads, and that maintaining consistency in approach and decision making is challenging on a personal level. The symbolic authority of the judges, however, requires personally demanding vigilance.

*One of the things I really appreciate about these judges is that they actually maintain their energy level right through the day, or they are not getting shitty, they don't go through moods or, they are very balanced and the same through the day. So that's one of the things I really appreciate about these three judges. You are not getting stupid decisions because they are having a bad afternoon...they are really consistent (SW, 407).*

*..it {the WFVC} will work as long as its not seen as a soft option...enabling and colluding with the abusers to carry on doing it because they walk away saying, "that was easy", and there is no encouragement for them to change their behaviour...it rests hugely on the shoulders of judges to continue to be vigilant and to convey to those offenders the seriousness of the situation (WO, 274).*

The achievement of consistency among the Judiciary at WFVC is clearly dependent on the particular individuals who are currently presiding over the court. A more systematic approach to specialisation among the Judiciary would not leave the court so vulnerable to changes in leadership. If specialisation was also required for counsel, police prosecutors, and Community Probation Service as well as community services, it would provide a better fit with the planned actions of the Ministerial Task Force for Action on Violence within Families (MSD, 2006).

*Well, I would like judges be more professional in their knowledge and their applications of the laws and sentencing provisos. I would like to see these courts sufficiently resourced so they can continue to happen in a timely fashion. I would like to see some sort of research base that practitioners in the field can draw on to devise ways and means. And I would like to see some level of specialisation in terms of both Judiciary and lawyers and prosecutors, because I think that we don't get the results we would like to, unless you have people with knowledge and commitment involved. And I would also like to see beyond the courthouse, some way of picking up the people so we don't pick them up at the bottom of the cliff and shove them out to the top of another cliff. To direct the traffic towards other community resources that can assist them. Actually all this stuff is stuff the Family Violence Ministerial Task Force has been talking about (PB, 162).*

The issue of specialised defence counsel was raised as a particular concern by participants. Currently there is no specialisation or commitment required of defence counsel representing defendants in the WFVC. Some participants drew attention to tensions and problems that emerge from the role counsel can occupy in the court. For example, in relation to the previous discussion of timeframes, some lawyers were seen to be using delays in anticipation that charges would be withdrawn based on the presumption that this will be in their client's best interest.

*You know, the real hiccup in the way that the court works is that lawyers know as well as anyone else, that if you wait long enough a complainant won't come to court to give evidence, if you drag it out long enough (MB, 83).*

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*It's still like three months down the track. So those old things still come up, because three months down the track, she's gone from hating him now back to living with him maybe. Or she has kind of moved on and doesn't want to have anything to do with him, and just doesn't even want to remember it happened (SW, 217).*

Participants in Study One understood that, in the context of the WFVC, questions about which outcomes are in the defendant's best interests are not straightforward and different lawyers will interpret 'best interests' in particular ways. There is a noticeable difference between those lawyers who see that their client's best interests are served by avoiding conviction and sentencing if possible, and those who see that best interests are served when their client takes responsibility for offences and acts to change ongoing patterns of violent behaviour against his family.

*Some lawyers are happy to go along with the protocols and some of them aren't, and there's that constant tension in court about that issue. I can see it from both lawyers' points of view, some of them think they're doing their job by complying with the protocols, and the others think they're doing their jobs by ignoring the protocols (MB, 32).*

*I think it's hard for them, probably because their role as a defence lawyer is obviously to defend their client, so I appreciate that it's...you know sometimes it might be a little bit cross purposes with what they want for their client (WW, 158).*

Defence counsel does not necessarily see any inherent conflict or tension in their role in the WFVC, although they acknowledge the possibility that the court's practices can create dilemmas for them.

*In terms of my role within it [the WFVC], I don't see it being any different to any other offence. Basically, my role is to do the best for my client and if they have a defence I should put that forward. If they are clearly guilty, or the evidence against them is strong, I would point that out to them (LA, 9).*

*I am a Barrister of the High Court of New Zealand. I have sworn an oath to act in my client's best interests...So I find myself in a bit of a bind, personally, because I take my oath rather seriously and if I have a client who is instructing me in one way and there is also pressure on me from the court to put pressure on them to perhaps act in another way...(LB, 24).*

Whether understood as a personal bind or a broader tension in the interpretation of a defendant's best interests, there is a central unresolved issue that coheres around how the alleged offence is conceptualised; in relation to the principles of procedural justice, which emphasise the relationship between fairness to the defendant and judgement of the facts of a specific offence, and the definition of family violence under the Domestic Violence Act (1995). There are a number of offences under the Crimes Act (1961) which are applicable to family violence including offences related to murder, kidnapping, assaults and injuries to a person, sexual violation, threatening violence (Butterworths, 1999; France & Pike, 1997), and some offences related to property such as intentional damage. Where these offences are identified as family violence by police and court staff at Waitakere, they are heard within the WFVC. Under the Domestic Violence Act (1995) it is understood that such offences may be part of an overall pattern of behaviour. To establish whether or not a particular offence is part of an overall pattern, it is necessary for the Judiciary to have access to information which would not normally be presented in a District Court; specifically information about the defendant's

behaviour in the family relationship, historically, and factors that may be associated with the offence and contribute to problems within the family (such as alcohol or other substance abuse). For some counsel, the presentation of this information to the WFVC potentially breaches principles of fairness and is incorrect in relation to procedural justice.

*...what we often find is this enormous narrative about the whole history of the relationship of the offending, peoples gambling, drinking, drug problem, this, that and the other. Canvassing perhaps a whole history of violence, is legally incorrect and often enough, at least in the past, un-necessarily rabid and if others read that they would be influenced by it, without the counsel knowing. That could possibly work in unfairness, at least in perception (LB, 334).*

While specialisation of knowledge and competencies would not, in itself, address the issues that arise as matters of legal interpretation in relation to procedural justice and family violence offences, it would assist in a broader understanding of how the protocols of the WFVC are linked to knowledge of the specific psycho-social context of family violence offences.

Other tensions that participants raised in relation to defence counsel included the perception that some lawyers are overly focused on money, disinterested in family violence cases or prejudiced against women victims in particular, when they do not support the protocols that guide the specialised court.

*...if they are the type of person who want to make money, or whatever they are motivated by, they could miss the point [that the WFVC protocols benefit defendants] completely. Which I think is a great disservice to their clients for a start (WW, 407).*

*...a lot of the lawyers just can't see [the benefits of the WFVC]. They see it as too much trouble, too much work. They hate having to come back for the monitoring days and frequently they won't....They shouldn't do family violence but for them it's just another rotational assignment, it's just another legal aid case. "Oh, it's a Male Assault Female, oh good, it won't be a guilty plea." And frankly some lawyers are misogynists and don't believe a word that women say: "It's all exaggerated" (RH, 179).*

These perceptions are supported by the findings of a study of women's experiences of legal interventions into domestic violence (Pond & Morgan, 2006). The study reports women's experiences with lawyers who seemed only motivated by money, did not believe the women's accounts of victimisation, or were more oriented to legal procedure than to protection of the victim. Some of the women's lawyers demonstrated poor interpersonal skills and a limited understanding of the dynamics of domestic violence or its effects on children's wellbeing and safety. Previous research on women's access to justice in situations of domestic violence also raised these issues (Nash & Read, 1992; New Zealand Law Commission, 1997). However, this previous research also suggests that where counsel are well informed in relation to the dynamics of family violence and treat threats to women's and children's safety seriously, women are more trusting of the legal intervention and more satisfied with the services they receive. Specialised knowledge of family violence is thus proposed as a means to provide a more satisfactory legal intervention from the point of view of victims.

Concentrating specialised counsel in the WFVC was proposed by some participants as a means to resolve problems seen to be associated with defence counsel's lack of knowledge, competencies and commitments in the area of family violence.

*...if we had a specialist Bar for that, it would improve things out of sight. It would actually speed things up because there wouldn't be as much need for defended hearings. The lawyers would more readily prep. their clients as to what the purpose of the court was. Judges wouldn't have to spend hours enquiring into the merits of the case, as to whether it's a valid defence before allowing it to go forward to a defended hearing. And there'd be a better rapport between all team members, not just the Judiciary, Bar, the police; the police on the street would eventually get to know the lawyers, the prosecutors certainly, and the court staff to a lesser degree, because everyone would trust everyone else's judgement (RH, 346).*

*I think if you had specialised counsel, very much like the Youth Court, then you'd probably do away with problems that we are talking about. It would be far more effective... that would be the ideal (MB, 147).*

*I would like to see accredited lawyers working in the Family Violence Court, who have a commitment to what we are trying to achieve. I would say one of the hardest challenges working in that court, if I had to name one challenge, it would be sitting in there where you have got a lawyer who comes in who is clearly against the protocols; is openly challenging what we are trying to do. That's really difficult to deal with (RRH, 215).*

Some participants in Study One disagreed with the need for specialised knowledge of family violence in the WFVC, and emphasised the importance of trial jurisdiction for all lawyers practicing in the District Court. Others could see that there were serious difficulties, including resource shortages, which stood in the way of introducing specialisation of counsel into the specialised court. In view of these concerns, concentrating specialist counsel in the court does not seem to be a viable possibility in the near future.

*No, you have got to have somebody who is experienced and trained in the criminal justice system overall because you have to remember that in almost every case, for example, at least the theoretical possibility of trial jurisdiction being elected. You have to know what you are doing, what to say in terms of any objections, unfairness that have legal consequences. So it has to be Barristers and Solicitors of the High Court of New Zealand who are dealing with the accused anyway, who know or ought to know about criminal procedure (HD, 414).*

*I don't know how easy that would be to implement. Very difficult I would say. But who knows, maybe. Maybe it requires a panel like the Youth Court, which appoints lawyers to enable them to act in the Youth Court. That's all about funding though. Of course you can't stop any lawyers from acting in the Youth Court, it's just that the funding is all organised through the court. And maybe that's the answer for the Family Violence Court but I can't see that getting off the ground without a huge change (MB, 149).*

Nonetheless it was also clear that many of the individuals practising as defence counsel within the WFVC were familiar with the aims of the court, clearly understood the intention of the protocols in relation to specialist knowledge of the dynamics of family violence and also recognised the benefits that the court offered to their clients.

*...those of us who come out regularly are probably, in any event, now especially skilled and trained in the court anyway (LA, 414).*

*...what actually shows itself out, is that the lawyers who have a personal value, belief in the system, that it's maybe not all about money or all about winning at all costs, or whatever [see the benefits] (SW, 122).*

*But gradually over time and certainly with the arrival of Lisa Tremewan and Hemi Taumaunu we have changed the whole thing around so that there is consistency of judges, consistency of counsel, consistency of police (BB, 48).*

At present the WFVC is dependent on the knowledge and commitment of individual judges and counsel to meet their goal for concentration of specialist services in these two vital areas of the court. There is no specific provision to resource specialist training. To provide such training for all judges and counsel would require motivation and resources well beyond the scope that the WFVC could provide. However, if some additional resources were available, it may be possible for WAVES or the Family Violence Focus Group to provide training on the rationale for the practices required by the protocols. This kind of 'in-house' training would also be beneficial for ensuring that all those who were involved with the court processes clearly understood the rationale for the Protocol for Family Violence Victim Services and the roles of the different providers of victim services within the WFVC.

Victim Advisors, who are employees of the District Court, are specifically regulated by their employer's policies to adhere to a principle of neutrality.

*Victim advisors will produce something in writing and because they are able to speak to both sides - take a neutral position - and I don't think that quite gives us what we need in these kinds of cases (PB, 75).*

As an adjunct to the principle of neutrality, court employees are clear that VAs are restricted in the information they can provide for victims in that they may only disclose procedural information about a specific case, and they are not empowered to advocate on behalf of victims:

*...but for victims...we can only provide the actual thing that happened and that is where I am very clear about how I see it. So it's a date of hearing and that is all you can provide through the system (CA, 823).*

*...it's not in our role to advocate because that is very clear in our manual, but I don't see us as being in court and doing that as advocating (CC, 812).*

*We are quite strict here because of policy, here because of law and policy (CA, 1287).*

Court Victim Advisors are therefore institutionally constrained to provide only limited and general advice to all victims of the District Court. They are not able to provide specialised victim services to the WFVC. Since the Protocol for Family Violence Victim Services (2005) clearly delineates the role of victim advisors in relation to the WFVC, the lack of specialisation within this group does not pose specific problems for concentrating specialist services, as it specifies that this responsibility rests with the community. Where the neutral role of VAs is most likely to be problematic in relation to the WFVC is in the situation where they are asked to provide a Victim Impact Statement and are unable to investigate the possibility of coercion, or provide any advocacy on behalf of a victim who is being intimidated in the context of an ongoing relationship.

*...if you have got someone coming in to see the Victim Advisor and saying, "I have come to...oh, my partner told me I had to come in...my partner told me I had to come in today so he can get his bail varied, and the court said they have stood the matter down while I came to talk to you, and I am here to tell you that I want the bail varied, and I want him home". There is no explanation of how she has arrived at that point, has she done of her own free will, has she been coerced into it, has she been persuaded, has she been threatened with an outcome if she doesn't do it? Has his lawyer put her under pressure, and what are the circumstances around that?...if a Victim Advisor is doing the role they are supposed to do, those questions won't be put to her. They will simply say, "well, if that's what you want, we will inform the court". The role is really clear, they convey information to and from the court, they don't engage in any other way or do any kind of social work or counselling or advocacy work, they are not there to advocate on behalf of that victim. I think that can work very well in all other areas of the court but I think when you come to family violence victims, it does create some real issues around the safety of the victims. They do simply transmit what she wants to say to the court (WO, 222).*

While the protocol that guides victim services specifies a clear procedure for referring victims to Community Victim Services, this procedure will not address the potential for problems in every situation. It is obviously the case that Victim Advisors must be enabled to fulfil their duties as required under the implementation of the Victim Rights Act (2002). However, the lack of specialisation and constraint on advocacy that is associated with their duties needs to be taken into account by both the Judiciary and defence counsel when they provide information to the court on behalf of family violence victims.

Lack of specialisation and policy related constraints sometimes also affect the role of Community Probation Services within the WFVC. Community Probation Services strive to achieve consistency through ensuring that the officers providing information to the Judiciary of the WFVC are consistent and that they are familiar with the protocols of the court. However, consistency and familiarity of individual staff do not mitigate some of the problems that can arise.

*And when the area manager changes it has an influence. The protocols of the family violence court would like us to be able to recommend intervention by way of supervision on a same day basis. And that is totally against all corrections business rules (RA, 51).*

*Our protocols don't let us do interventions. We have criminogenic programmes we refer people to but we don't refer domestic violence to our criminogenic programmes. That has to be a specialist [intervention]. That's why Man Alive (RA, 157).*

With regard to those professional and government agents employed in the WFVC, specialisation is dependent on the personal commitment and consistency of particular individuals and this often creates tension between the more generalist principles, policies and practices that regulate their profession or employment in other domains of the District Court. Specialisation is less problematically concentrated in the provision of community and professional services to the court. The WFVC's aim to concentrate specialist services in the court is achieved most consistently through collaborating with community based specialist service providers for victims and offenders.

### 6.2.2. Specialisation: Community and professional services for victims, families and offenders

The therapeutic orientation of the WFVC promotes an understanding of family violence offences as embedded in psycho-social problems involving specific patterns of behaviour within ongoing relationships. Participants in Study One understood that the holistic approach of the WFVC that aims to protect victims affected by violent offending in intimate and family relationships requires that the court's intervention goes beyond a punitive, procedural and adversarial approach towards collaboration with organisations that provide specialist services within the local community.

*I think we all take time to talk to people in the court and make them realise that they, we, are all part of the same system and the court system is really only part of what is geared towards trying help the offender and the offender's family (BB, 234).*

The needs of different offenders, victims and families are taken into account in the WFVC's collaboration with the community and the diverse services provided by organisations involved in WAVES (Section 5.5.2 and 5.6). To take a holistic approach it is necessary for these organisations to collaborate with each other. Members of WAVES are specifically committed to developing best practice interventions to prevent family violence. Their collaboration was a central feature of the concentrated specialisation in the WFVC, and often praised by court participants.

*I guess one of the other things that make this day so effective is the way all the agencies work together. [It's] really crucial as to what happens out there. We're really lucky that we have the victim agencies that we do, such as Tika Maranga, Viviana (the Western Women's Refuge and also victim support). I don't know any other area that those agencies would work so closely with an agency [providing intervention programmes for men] (DM, 157).*

Community Victim Services, especially Viviana who provides services to the victims in the majority of cases of intimate partner violence before the WFVC, play a pivotal role in the community collaboration with the court. They provide specialised services to the victim, to the court, and also collaborate in relation to offender programmes.

*Also I suppose, we are sort of a watchdog for victim's rights...We obviously also prepare Victim Impact Statements and things as well, and its probably not so apparent but I think it's kind of happening - collaborative work - with Man Alive, for instance, to try and achieve the best results (SW,14).*

*And that one of the things Community Victim Services do - they have a list of approved programmes. If somebody comes up with a different programme the Judge will ask; "is this an approved programme?" (TB, 322).*

Members of the Tri Parté Community Victim Support Network provide their services to the WFVC, victims and other community organisations voluntarily and the cost is borne by the NGOs' funding bodies and volunteer workers. The strain of providing these services voluntarily was recognised in relation to work Viviana could do if more resources were available.

*It costs them money to have people here every Wednesday, and costs them people-time to get files ready and talk to victims and essentially coordinate the whole court process from one week to the next (BB, 56).*

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*I think Viviana is doing good work...They obviously need more resources and more time to really help; to do a completely thorough job (RH, 144).*

The pivotal position of Community Victim Services is warranted by the importance of victim advocacy in the specific context of family violence. The need for victim advocacy was clearly prioritised in the formation of WAVES and the initial responses of the Henderson District Court to domestic violence in 1992. Victim advocacy is still recognised as a crucial source of information for the WFVC.

*This is a point that needs to be well made, which is, we rely on Viviana to give us information about historical matters, in other words not just the number of times a person has appeared before the court and been convicted, but the number of times that a person has telephoned the police, or where the police has been involved or even where there has been no police involved. So what we are interested in is, is this the first time there has been any violence of any sort, maybe a slap or a push, or is this just the latest in a long, long, long history of offending, none of which has come to court for a variety of reasons? (BB, 354).*

Advocates are able to provide a safe environment in which victims are able to talk about their experiences of victimisation, their relationships, and the effects of violence on their wellbeing. Victims are also provided with opportunities to learn about the dynamics of family violence, and the characteristics of abuse so that they can recognise whether or not their relationship experiences fit that pattern.

*The greatest success that I feel that we can achieve is that women come out of the process feeling well supported; better educated about the dynamics of family violence and about what their role is; and wanting to continue to call the police when they're assaulted (WO, 641).*

*I think the ability for the victim to have a voice has made a huge difference; the ability to look a little bit deeper not just at what's on the caption summary...So they are not only reliant on that, 'cause they have got Community Victim Services in court, to fill in the gaps that are quite often missed out (SW, 128.)*

Specialised victim services and victim advocacy serve a protective function in the sense that victims are represented in the WFVC without having to appear in person. By having a community advocate in court, victims are not put at risk of intimidation or threat. Specialist victim services recognise the way in which intimidation or coercion may be used during the court process and how they may be associated with a victim's day-to-day responses to violence in an intimate relationship.

*There is no explanation of how she has arrived at that point, has she done of her own free will, has she been coerced into it, has she been persuaded, has she been threatened with an outcome if she doesn't do it? Has his lawyer put her under pressure, what are the circumstances around that? (WO 219)*

*...we have a relationship with these women, we have a history here, a woman can go up to a Victim Advisor and say this is the first time he has hit me. And the Victim Advisor has got to believe it. If she comes to me and says this is the first time he hits me, and I go (look up files on the computer, I can say) "but you have had four previous police*

*attendances”, so I can challenge some of that stuff that is going on. The judges are getting more honest stuff, not just what the victim is feeling on that day (SW, 491).*

To ensure that victims are protected from intimidation and coercion, and are able to have a voice in court with respect to the effect of the pattern of domestic violence on their safety and wellbeing, it is necessary for them to have advocates who will understand the dynamics of their responses to violence, support them and provide them with education and opportunities to make informed choices about their responses. Advocates also understand that victims are often not seeking retribution or wanting to end their relationship with the offender, so they can work with victims to identify their needs and the needs of the family for therapeutic intervention.

*[Victims] have seen the court kind of address their needs and protect them - they have got that out of the court. A lot of them, they didn't want it to be a punishment situation and while it still is in real terms because of the therapeutic interventions that were put into place they feel really supported by the system (SW, 73).*

The Tri Parté Victim Services Network provide specialised advocacy that serves both a protective function for victims and provides specialised information to the WFVC. The advantage of having three organisations share responsibility for all victim services is that the diversity of victims' and families' needs can be better met, and responses to the specific circumstances of a particular offence can be more flexible. By involving multiple organisations and a co-ordinated network across the community, a variety of resources are available for problem-solving and therapeutic interventions which promote collaboration among services for victims and offenders.

In Study One some participants noted that victim advocates and community services need to have professional credibility when they are working in collaboration with the criminal justice system, and it is especially important that their specialist standing and trustworthiness are recognised by the Judiciary.

*The judges need to have confidence that the people preparing and submitting these reports are professional and have some level of training and are experienced to be able to put reliable material in front of us. And the lawyers know that as well. The material provided that comes from one of the recognised agencies is going to be accepted and they need to think very carefully before they challenge it. So yes, if you are looking at setting up a family violence court and getting input on behalf of victims, establishing the credentials of the victim's services is a very important part of that process (YB, 291).*

*I don't know whether they've got any educational or other qualifications or what experience they've got. I don't know if they belong to any professional association, whether they have any rules of conduct, what sanctions are applied if they get things wrong, we're certainly not informed...I've just got no idea of what professional or other qualifications or protocols are applicable to any of these community groups (HD, 357).*

The WFVC Judiciary were very clear that Community Victim Advocates providing information to the court on behalf of the victims and services to the victims in the community were held in high regard. Their reports were praised as balanced and trustworthy and the information and services provided to victims were regarded as critical to the operation of the court.

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*I think that our community support services in the court work well, and I think they work well behind the scenes. We have good reports from Viviana and from the other support groups (BB, 238).*

*I think its good to have them work through Viviana, and I must say Viviana, all credit to them, their reports are extremely balanced. I think they are very careful in the way they word things and that's really appreciated by me because I think it's such an inflammatory area, it wouldn't take much for things to set off again, so I think it's good if we all work very carefully to try to use language that is not inflammatory and be a little bit careful about what we talk about. It's probably useful for the judges at the end of all this, and certainly in terms of the new courts that get set up to have these issues raised, so we can think them through and talk about them (RRH, 429).*

*The flow on effect of having the Community Victim Services in the court, I think is that the victims are going to be much more aware of what the court's actually doing and that's important. If we're sending people off to do courses then it's not just going to be a void of information for the victims. Because who else is going to tell them? If there's no one advocating their position, and if there's no one in court [if there's no victim in court] how are they going to find out what's going on? I think it would smooth the process a lot for them. It helps us in what we're doing too I think because a lot of what we are doing needs to be explained to everyone involved while we're doing it. And they won't necessarily pick up from us what it is we're doing and the rationale or justification for it. So it helps to have that explained by other people not just us (MB, 219).*

*There is a degree of informal trust around these documents that is observed nearly all the time but every now and again it breaks down (YB, 278).*

The respect accorded to Community Victim Advocates by the Judiciary was also recognised among other participants, including victim advocates who are critically aware of their dependence on the Judiciary's initiative, support and acceptance of their specialist knowledge and competencies.

*Well the judges have enabled it...they have made it a lot more accessible for community groups to come into the court to provide support, or even to work as reference people (BR, 201).*

*The meetings the judges hold with the community, the way they ask - "How are we doing? Anything we could be doing better? Got any ideas?" - it's unheard of from my experience. The judges haven't even considered seeking some advice. So I have a lot of faith in the judges...they bring a human face to it but they also hold the authority really well. They engage with the community, they ask for advice. One of the judges sits on the WAVES committee, so very committed to the family violence stuff (DM, 40).*

*Lately, we have had great feedback from the resident judges that say our memorandums/victim impact statements are great, and make their decision making easier (GR, 209).*

With few exceptions, the professional and government agents who are involved in the WFVC understand, respect and value the Tri Parté Victim Support Network, and the pivotal role of Viviana in concentrating specialist victim services in the court. There is also widespread

appreciation for the role of specialist services available to offenders through the system of pre-sentence judicial monitoring.

*I think urging people to do things that may help them, anger management courses, alcohol abuse counselling is a help prior to sentence so that people have quite a long period between pleading guilty and actual sentencing, that's helpful (DJ, 45).*

*I think it is the approach that we take which is not a punitive one but one where we are trying to, once someone has recognised that they have a problem, or at least pleaded guilty and said, "well I am prepared to consider I have a problem" then the way of putting [sentencing] off to allow them to complete anger management courses and address their alcohol and drug issues, I think that is probably the best thing from the court (BB, 210).*

Feedback on the services provided to offenders through Man Alive programmes was highlighted as particularly valuable because of its long term benefits for both offenders and their families.

*Definitely, the feedback I get back from the guys, it's not uncommon to hear stuff like it's maybe the best thing that's ever happened to me. It's a huge change from the attitude they had when they started. I guess, too, having a dedicated family violence day, it really drives home to the guys that this issue is being taken seriously by the system. All research says that the systems involved in a non-punitive way, the guys are more likely to gain benefits from that. So there's very strong messages there around that this is not acceptable which is very important (DM, 26).*

*I see the guys, guys I have seen stand there and be really resistant, and they have come back and they have been quite changed. I think one of the main good things is that, because we are talking about issues within the family and...the guys wouldn't normally ever think about dealing with those issues themselves or talking about it, they are directed into anger management as well as maybe one on one counselling and all of that stuff. I have seen lots of really good results from the guys (SW, 82).*

While specialist services for victims are provided to the WFVC voluntarily, some of the offender services require self-funding by the offenders. The Man Alive programmes, for example, voluntarily provide a staff member who is currently in attendance at court on Family Violence Day to facilitate offenders' engagement with the programme, however, the programmes themselves are not provided as a free service. While there are good reasons for such programmes to be self-funded in relation to offenders being accountable for their violence and taking responsibility for their offences, the resources needed to ensure attendance at a programme are not always readily available to the family. Financial support can be accessed through Work and Income New Zealand for some offenders. A few participants were cautious about the effects that financial strain might have on families, or the difficulties that some offenders experienced with obtaining WINZ support,

*So people are told to go away and do anger management classes. Now they can get funding from WINZ, but I think it's difficult, it's not made easy for people (DJ, 103).*

Some participants in Study One advocated for increased resourcing for offender interventions.

*[We could do better] with getting people into anger management quickly...making it more financially available for people or available for people who just can't afford it either way:*

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*either making it more reasonably priced for people who have got some money, or making a similar option for those who have none at all. So that it's readily available for all, which one would like to think it is at the moment, but realistically it isn't (RH, 277).*

As well as additional resources for the specialist victim and offender services provided to the court, participants recognised the need to extend service provision, particularly in relation to the culturally diverse population of the WFVC catchments area.

*And usually the judge will require the person to attend [a programme or treatment intervention] unless it's a person with real cultural differences. [There are] a lot of Asian immigrants in this area, and a lot of Pacific Islanders in this area, and a lot of East Africans, Somalians, where there are big cultural changes. We could probably do with people able to counsel in those cultures perhaps, [although] I know in the Somalian culture there is no history of counselling, it's not something that exists (TB, 329).*

*More culturally appropriate programs so that people with limited English are getting a better service. There are very few programs for them. Making it more widespread I suppose (RH, 287).*

In Study Two advocates key informants were also concerned that services for immigrant women were not as easily available as services for Māori and Pākehā women. While the advocates drew on and valued the relationship with Ethnic Social Services that enabled them to engage translators and support workers with some of their clients, they saw that community services for immigrants needed resourcing and strengthening. They were aware that in many cases immigrant women did not engage with victim services. Some of the women appreciate that Pākehā values of confidentiality and privacy are useful in situations where social support for stopping their partner's violence is not strong and they carry blame for the violence within their more personal relationships. None-the-less advocates felt that there are serious limitations to the services they can provide, especially with regards to spiritual and social safety, when they are unfamiliar with the cultural implications of their client's specific situation.

*I think we can do a job of keeping them safe in the, umm, kind of like in the mechanical sense, yeah, like we can put all the things in place and talk to them about, you know, where they go, what they do, things to watch out for, all of those sorts of safety stuff, all the things to be prepared for and all of that. I think that maybe there's an element of them still maintaining a place working within their cultural friends and that, you know, because they've all still got their weddings and their churches and things like that. Where we then think kind of, maybe we don't understand as well as we should, too, that a person from their own culture can maybe talk to them about those things and keeping themselves safe or otherwise even just the support from someone else in their culture, or it may end up being that they actually realise somehow that a group of people that are in the same position as them and think like them and kind of like that safety in numbers, it's almost like an emotional, spiritual type of safety (KI3,201-210).*

The support of participants in Study One for community service involvement with both victims and offenders was evidenced throughout the study, not only in praise for the services offered to the WFVC by community organisations, and appreciation of the value of community collaboration, but also by these proposals to extend the specialist services further, and to improve resources for community organisations.

Specialist knowledge in the field of family violence involves understanding that the facts of a particular offence with which the defendant has been charged are part of a pattern of offences that define family violence under the Domestic Violence Act (1995). This pattern is an ongoing characteristic of the relationship. Any particular offence occurs within this context. Criminal justice interventions also occur within the context of an ongoing relationship. Concentrating specialist community services within the WFVC is clearly consistent with the aim of taking a holistic, therapeutic approach to family violence offending. It is also consistent with the focus on “improving how Government and non-Government agencies can work together to effectively meet the needs of individuals and families affected by violence” that the Ministerial Task Force for Action on Family Violence (2006, p.21) advocates for improvements in justice sector responses to family violence.

Although the WFVC is dependent on service provision from community organisations, the concentration of specialist services from the community seems to be more readily available than specialist concentration of professional and government agents working in the court. The WFVC relies heavily on the commitment of individual judges, counsel, and other employees in the justice sector. The successful concentration of specialist community services is likewise dependent on these individuals. As a minimum, the resources needed to enable the court to provide ‘in house’ training on the rationale and practices of the WFVC *protocols* for professionals and justice sector employees would ensure that some consistency in specialisation was available beyond this dependence on individual commitment.

### 6.3. Safety and accountability

*To protect the victims of family violence consistent with the rights of defendants and to hold offenders accountable for their actions*

Unlike the other aims specified in the WFVC protocol these two aims do not address the processes and practices of the court (such as timeframe goals or specialisation) but refer more directly to the outcomes of victim safety and offender accountability. It must be clear at the outset that evaluating the aims of the WFVC protocols in relation to protecting victims and holding offenders accountable for their actions cannot be undertaken meaningfully if the experiences of victims and offenders who have been involved with the WFVC processes are excluded from the research process. Study One is severely limited in providing evaluative analysis of these two aims because it considers only the perspectives of the professional, government and community agents who participate in translating the court’s protocols into everyday practice. Study Two provides information on victim safety and offender accountability from the point of view of a sample of women victims who have been involved in the court’s processes that requires judicial monitoring. While this study also provides insight into victim safety more broadly from the standpoint of specialist victim advocates, there is still a need for more complete evaluations in relation to these aims. No evaluation of the Waitakere Family Violence Court offender programmes has been conducted to date.

#### 6.3.1. Questions of balance

In view of the severity of the limitations imposed by the exclusion of victims and offenders from Study One, this section focuses attention on how those who participate in the court understand the issues that are raised by attempting to balance protection of victims, rights of defendants, and accountability of offenders within the context of a holistic, therapeutic approach to intimate violence within ongoing family relationships. The importance of the need for balance is

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underlined by participants' understandings that a holistic approach means that everyone's needs must be taken into account.

*It is set out pretty well in the protocols the fact we are really a family orientated system and we are looking at not just the offender but also the victim and the victim's family and anyone else in involved (BB, 162).*

This holistic approach is directed towards a rehabilitative rather than a punitive, retributive or procedural focus on justice.

*The court is trying to achieve an end to recidivist offending; effectively that's the ultimate goal. And that goal is effectively achieved by healing the problems within the family so that's what it's about (MB, 45).*

Some participants acknowledge that one of the successes of the WFVC's protocols in practice is the achievement of balance in relation to victims' rights to protection and defendants' rights within the criminal justice system.

*[The court does well at] bringing domestic violence out into the open, sending a message very loudly and clearly to the West Auckland community that not, that it shouldn't be tolerated and that it won't be tolerated. And if women do complain they will be heard and listened to, and that it shouldn't be hidden. To balance that, the court is not being as punitive as they may otherwise...if people are not prepared to take responsibility. It's getting people to, I suppose, to own up and look at changing the way they behave (TB, 168).*

*I think what makes it work is that they seem to strike a really good balance. They seem to me, from what the guys' kind of experience is to get that message that this is a criminal offence and it's unacceptable. I think they are treated like people, as well, and as individuals. And I think the way that the judges talk to them is more inspiring, and they get acknowledged for the good that they have done. So...I think that the kind of attitude that surrounds the place makes a difference (SW, 178).*

Others raised issues related to balance, primarily around two interrelated problems: how to ensure that the rights of defendants are not violated by *encouraging* offender accountability or by the *speaking rights* of victim advocates whose primary focus is the protection of victims; and how to ensure that offender accountability is *encouraged* without putting victims at risk of further harm.

In relation to the risk of violating defendants' rights, a number of issues about the fairness of the protocols in relation to the balance between protection of victims and rights of defendants were raised by participants in the current study. These issues cohered around a notion that a presumption of guilt was associated with an historical, political agenda that the WFVC protocols serve and the perspective that the legal rights of defendants were at risk through the admission of memoranda prepared by victim advocates.

*Because these protocols are developed because of what I'm going to call political type pressure (although that's probably not quite the right word). I can understand how many years ago people were concerned that domestic or family violence wasn't taken seriously, and that was wrong and I agree with that. But on the other hand now there is a real presumption of guilt, which can work a great unfairness on some people (HD, 129).*

*And that's, I guess, one of the issues that there is a lack of communication from anybody to people who represent the accused. We just don't have a voice it seems to me, at all. I think that's wrong...I have gotten my nose out of joint when the judge has reports that he's read on their file, but I just had no idea they were there (HD, 310).*

*One of the things, and you have probably heard this, the victim advisors seem to have an inordinate amount of, not power, influence and I guess they are looking at it from one side, the complainant comes to them and says X and they believe it hook line and sinker.. So you will get a lot of statements coming from complainants alleging this and that which aren't backed up with any facts, sometimes that are, I've had cases where complainants have said, "look I didn't say that, this has been exaggerated or blown out of all proportion." The victim advisors certainly do tend to put a certain slant on things, which I think is both improper and quite unfair (DJ, 76).*

The perspective that unfairness is a consequence of the WFVC protocols serving a political agenda that was historically relevant when family violence wasn't taken seriously rests on two assumptions: that family violence is now taken seriously, and therefore the historical relevance of this agenda is no longer of any consequence, and that there is a contemporary presumption of guilt associated with family violence matters.

It would be reasonable to argue that the establishment of organisations like Women's Refuges, HAIPP, WAVES, the introduction of the Domestic Violence Act (1995) and the Victim Rights Act (2002), the publication of the Te Rito Family Violence policy and the plans of the Ministerial Taskforce for Action on Family Violence and the protocols of the WFVC constitute community and Government initiatives to address the acceptability of family violence in Aotearoa/New Zealand and provide for the protection of victims under the Law and are, therefore, serving a political agenda. However, the Ministerial Taskforce for Action on Family Violence (MSD, 2006) and the current incidence and prevalence rates of family violence provide evidence that the acceptability of family violence and the protection of victims continue to be significant social and legal problems: They are not historical issues that have been resolved.

Specialist knowledge within the area of family violence recognises that the majority of incidents remain unreported to police (Dobash & Dobash 2000; Koss, 2000; Morris 1997).

*Because we might get so many POL 400s created in this city but of those POL 400s that are written up, it might only be a quarter of them that result in arrest. And out of those that are arrested the percentage that get a successful conviction is even smaller, so it's a bit like rape cases in a way. You only see the very tip of the iceberg when you sit in on family violence court day; you're seeing the very tip of the iceberg in terms of family violence in this city (WO, 426).*

Such incidents are also recognised as components of a pattern of behaviour, not as isolated events. Thus what appears as a presumption of guilt from one perspective is understood by other participants as an opportunity to encourage defendants to break a pattern of behaviour that, more likely than not, has a prior, unreported history in the relationship, is ongoing, and will escalate the risk of damage to the victim and the family if there is not effective intervention.

*In family violence I see myself as trying to encourage men - predominantly because statistically it is mainly men (although of course as we know not exclusively) - encouraging them to acknowledge something, if there is something to acknowledge, and to get credit for doing that; and get credit for doing something meaningful in terms of*

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*courses and so on; to encourage them to see the benefits for themselves in doing that, encouraging people not to see the court as a boxing ring where they can continue to play out hostilities they might have at home against the people they supposedly love or have loved the most. Encouraging people not to see the court as some sort of game where they can, for example, come along and do a knee jerk 'not guilty' plea and just hope and expect that the complainant isn't going to front up. That the process will be impotent and I think we have been impotent in the past. I think we have almost been a party to making the court process meaningless in many cases possibly even worse than that, possibly even exposing victims to risk by not engaging in the real issues (RRH, 49).*

In practice, encouraging offenders to acknowledge and take responsibility involves providing clear incentives for pleading guilty. For the most part, participants understood that "credit" for pleading guilty was beneficial to the defendants and did not constitute a presumption of guilt.

*The longer they maintain their denial and fight the system, the more serious the consequence for them. And we keep reminding them of that. They get credit for early guilty pleas (YB, 229).*

*The court tries to give credit to those who put their hand up and accept responsibility. And with that in mind [Judiciary] will stand matters down to allow further discussion if [they] think it's going to resolve, [they] will work hard to resolve an issue rather than just accept a not guilty on face value, but as I say it's the calibre of the Judiciary and their support that is making it a success (TB, 246).*

The perspective that unfairness is a consequence of defence counsel not having a voice in relation to victim advocates' memoranda, or that the memoranda present a bias (one-sidedness/a political agenda), involve exaggeration, or allegations that are not supported by facts also rests on particular assumptions, especially the notion that the memoranda are enough like evidence to be regulated by the same criteria, and therefore they should be factual, unbiased, accurate and available to counsel for response.

Despite the presence of victim advocates in court, the victim services protocol is clear that their speaking rights are restricted. They have a different status and standing from both prosecution and defence counsel. They are not permitted to present evidence to the court, and the memoranda they provide are treated as information from the community member representing the victim.

*So we receive these documents in the same way that lawyers on behalf of their clients hand out references from employers and family and all sorts of people and we take those into account and we do the same on behalf of victims (YB, 282).*

In this way the Judiciary understand the memoranda as balancing the rights of defendants and victims. Defence counsel continue to have a voice in relation to representing the defendant and are able to present evidence to the court. The status of the memoranda, understood as more like references than evidence, might also resolve concerns around privacy rights of the defendant.

*One of the issues that [the visiting judge] was concerned about [was] privacy issues. There probably are concerns...I can see an argument: The information Viviana have through being involved with the victim and being involved with the family - for them to*

*share that with a judge in a public forum might seem to be a breach of privacy, in that the information wasn't collected for that purpose (BB,401).*

If memoranda have a similar status to defendants' employer references, then it is reasonable to regard their contents as similarly confidential. Although for the most part, defendants provide references and therefore have access to their contents, the referee is still entitled to mark the reference "confidential" and deny the defendant access to its contents. Likewise, the defendant could know that the memoranda have been presented without necessarily being entitled to know their contents. It is also the case that memoranda are not shared openly in a public forum, but read silently by the judge.

Since the CVS advocates have specific responsibility for information related to the victim's perspective on the history of the relationship and the effect of the violence, it is recognised as representing one particular point of view: that of the victim. What is seen as bias from one perspective is understood by others as providing a balance that is absent when victims have no advocates in court. Advocates are also involved in other service provision to victims, including education on the dynamics of family violence. They have broader, community based relationships with the victim, access to historical information about the family, the opportunity to interview the victim at a safe location, the competencies to assess risk and develop safety plans, as well as knowledge of the psychological effects of intimidation, coercion, responsibility for protecting the family, love, fear and shame in the day-to-day response of victims to violence. From this perspective their memoranda representing the victim's perspective on the alleged offence, and its impact on her wellbeing, will often put the relevant safety issues in this broader and more specialised context. Such contextually rich and specific information assists the court to balance the rights of the defendant with the duty to protect the victim. To the extent that this information is not regarded as 'fact', it is not treated as evidence. The information is valuable to the process in that it enables the Judiciary to encourage guilty pleas, and provide sentence indications that effectively coerce treatment while taking account of the victim's needs for protection.

*...[there is a criticism that] anything goes and it's hearsay and there is no established basis {to the memoranda}. Viviana says to us that we know this guy, and victims say to us, or our records shows, that there has been seven or eight pervious calls out, or the victim says she has called the police six or seven times before, and most of the time no one worries about that because they realise we are going to be dealing with them fairly. I think if we were getting that information and donging them the attitude would be very different. The fact is that we are not donging them. If they are completing courses - if they are doing what is agreed early on - then the indication that is given...is usually a community based sentence or conviction and discharge or come up for sentencing if called upon or in some isolated cases 106 discharges. Then they realise we are doing our part of the bargain and their part of it really, is to let us have all the information, everything that is relevant to their offending currently and in the past so we can do what's best for everyone (BB, 434).*

The balance between defendants' rights to fair process and victims' rights to protection seems poised at the intersection of different interpretations of memoranda from victim advocates and incentives for defendants to demonstrate their accountability by pleading guilty and undertaking recommended treatment interventions. If too precariously balanced, though, victims' safety and their confidence in the justice system could be put at further risk through sentencing indications and outcomes that are intended to coerce treatment.

*And it's possible that sentencing outcomes can be damaging too and I don't think we have done enough work to find out what we should do. For instance, what is the impact on the future, impact of a defendant who doesn't believe the consequence of his conduct was sufficient to make him change his mind at all? Does it mean he becomes emboldened by the fact he thought he got off lightly? Does it mean the victim loses faith in the system being able to do anything for her? - Usually (PB, 141).*

*... if the outcome [of coercing treatment] is a discharge without conviction, because he's jumped through the hoops without authentically engaging or really wanting to change, then she's at even more risk of further violence and he's going to continue looking like a first offender if he gets a discharge without conviction (WO, 389).*

The judges participating in Study One understood that the use of "discharge without conviction" (106 Discharge) risked sending defendants the wrong message about the seriousness of family violence. They were also aware that concerns had been raised about the use of such sentences and victims' safety so they emphasised their caution in relation to this sentence. The use of a sentence to "come up if called upon" also provided an incentive for treatment and it was seen to involve more protection for the victim.

*There are some reasonably strict guidelines on when you should give a 106 discharge, in fact what we do in court, we don't have too many 106 discharges (BB, 248).*

*I think, and the lawyers are getting the message, that unless they finish the course, they're not going to be...they're not getting early discharges if you know what I mean. They're there to 'til they're finished. It means they do it. And they know if they don't do it that they're going to get whacked pretty much. It's one or the other (MB, 436).*

*For myself I believe really strongly that we should take real care before we give a complete discharge on a matter of family violence because I think it can be perceived that, it's like the offending never happened whereas it did happen. Of course defendants deserve credit for all those steps they have taken and all the changes they have made and that's reflected in the fact that they are not going to prison or doing community work for example. So an outcome of 'come up if called upon' gives credit, credit for steps taken. I also like the fact that it's almost like a good behaviour bond in that they know it's still there and if they commit a similar offence during the next, say, twelve months then they can come back and be re-sentenced. So I think it's a bit of a safety net. Often people who were asking for a S106 discharge have got convictions anyway so if we discharge them on a family violence matter we are arguably saying it is less serious than say the car theft they got a conviction for. I think we need to take real care with the messages we give in terms of those issues (RRH, 302).*

Court participants do recognise a fine line between protecting victims and holding offenders accountable for their actions. Issues related to victims' safety and defendants' rights are able to be raised and openly discussed with the Judiciary, and in the Family Violence Focus Group. The balance is not always reached through consensus, and different perspectives on the practices of the WFVC produce tensions that surface from time to time, as may be expected and reasonable in a collaboration across broadly divergent professional and community interests. Nonetheless, the WFVC's successes in relation to victim safety and offender accountability were regarded as most evident when information from victims and incentives for defendants led to healing the family or problem solving.

*Also we're probably helping the court to move towards a resolution about what is best for the defendant and what is best for the family and it's more to heal the family than tearing it apart...Courts are reluctant to throw the defendant in jail; they are more likely to send him off to get help or give him – him or her, it's her too, it's getting more her, - a chance to fix the problems (GR, 12).*

*It does provide for a forum where triggers to violence, alcohol, drug abuse, isolation, financial troubles and those sorts of things...can be aired and people either take themselves off to appropriate places to seek assistance and it's very, very good, quickly, which is good too in terms of the family domestic situation. It's a start to have those problems addressed; I think it does that very well. And that's good to see (HD, 193).*

*So it's really looking at the cycle of violence and what we can do to affect real and meaningful change in that area, while still holding offenders accountable but perhaps being creative in terms of the ways we do that so we get some positive outcomes (RRH, 141).*

However well the WFVC protocols balance the rights of victims and offenders, and court participants manage the fine line between interests that seem to conflict from different perspectives, the successes of the WFVC in relation to protecting victims and holding offenders accountable can only be established with reference to the experiences of victims, offenders and their families.

### 6.3.2. Victim safety: The protection provided by advocates speaking rights

The WFVC's tradition of granting speaking rights to Community Victim Services advocates was one of the earliest innovations of modified court process intended to prioritise victim safety throughout the court processes. The tradition recognises the rights of the victim to be involved in the court process, and it also respects the victim's right to protection and safety by ensuring that there is someone mediating the relationship between the court and the victim.

In the first year of the operation of the current (2005) WFVC protocols, one of the Community Victim Services organisations, Viviana, had received referrals for 1865 domestic violence occurrences in the Waitakere area and 96% of these referrals had involved a victim's partner, ex-partner, boyfriend or ex-boyfriend. In that year, Viviana recorded more than 1500 court appearances on behalf of their clients (Coombes et al., 2007).

Because of the collaboration between the WFVC and Community Victim Services, women participants in Study Two did not need to be involved in attending court proceedings to present their views. It was crucially important to them that advocates relieved them of the burden of responsibility associated with being involved with court proceedings themselves. The women reported being afraid to attend court because it provided their partners with opportunities to threaten, coerce, manipulate or intimidate them.

*I didn't want to see him. I just didn't want to look at him. I knew what he would be like if I was there. He would be staring at me and he'd try, he would try and confront me and I just wasn't up to it at that umm at that stage. I couldn't handle just being in that situation (WP4, 114-116; love and fear)*

They valued being represented by advocates in court proceedings and they appreciated it when police and prosecutors would not allow them to withdraw or change statements in the

presence of other sufficient evidence of an offence. In both cases client participants were relieved of some of the burden of responsibility they carried as victims and were also relieved of their fear of retaliation because they were not directly required to speak to the court against their partners. These strategies represent effective ways of protecting victims from some of the emotional harms to which they are vulnerable after their partner's arrest. The women's accounts also provided support for Cook et al's (2004) contention that fear of retaliation and holding victims responsible for their partner's violence reduces levels of service to victims of intimate violence and places them at risk of increased harm. Advocate key informants also provided support for the women's accounts of their fear of court proceedings because they had witnessed defended hearings where clients were at risk.

*We all know, [those of us] who work in this business, about 'the look'. Women talk about 'the look'... you could take a victim into [a legal process] with support people sitting along side of her and encourage her to say all the things she wants to say and he will sit there like a lamb and take it and he will give her 'the look', the look that says "you'll keep, I will get you later". And people will leave and be unaware about it happening (K11, 161-167).*

There were also examples from the women's and the advocate's accounts where families and associates of the defendant had been involved in threats and intimidation in support of the perpetrator's attempts to re-exert control over his victim at the courthouse.

*...his whole persona is how dare she get away, you know like how dare she get away from me, you know its like that he's got to have that control so he will organise for people to be watching, because we have that a lot, people watching on behalf of and stuff (K13, 672-674).*

The WFVC's strategy of coercing guilty pleas is therefore justified as protecting victims at least from the harm they may experience if their partner has access to them at the courthouse before, during and after defended court proceedings.

When women are more heavily involved in court proceedings because of the requirements of defended hearings then additional safety measures need to be put into place. In some courts overseas, separate facilities and security arrangements are provided for victims giving evidence before the court (Fritzler & Simon, 2000). Advocate key informants told us that there had been no additional resources provided to the WFVC for specialised facilities to protect victims of intimate violence at the courthouse. Although they were able to make use of a victim facility set up for general use and they were able to negotiate with judges when special security measures were urgently needed, they were still concerned that the level of security at the WFVC was inadequate to protect their clients. For example, while they were able to escort some women to and from the courthouse they did not think they provided adequate protection and they did not have the resources to provide this service in all cases where it might relieve a client of their immediate fears and vulnerabilities.

*I think there needs to be more security, umm you know, we have issues like walking the women back and forth from court, like for hearings and things like that (K13,633-634).*

They were hopeful that the newly introduced Evidence Act (2006) would allow their clients to testify behind a screen so that they were not visible to their partner; however this facility is not yet available. The women participants, who would have liked to attend court proceedings if it had been safe to do so, mentioned that screens which protected them from seeing their partner

or being seen by him would have been useful for them. They also expressed concern about how they would be escorted to and from the courtroom if they had needed to go to court.

*I would've loved to have sat behind a double mirror thing and been watching. I would have loved to have seen it or heard it, even if there was a recording or something. But I couldn't have been in there with him seeing me. Hell no, definitely not (WP1, 582-585; if it had been safe).*

*Who is going to escort you back out? Who is going to escort you into the court? Who is going to escort you back out of the court? (WP2, 662-663; if it had been safe).*

Bennett et al., (1999) suggest that the practical support and resources for improving victim safety during court proceedings may be related to whether or not victims are prepared to engage with processes when it is necessary for prosecutions to proceed. Evidence from this study suggests that the fears victims face in relation to attending court, and testifying when necessary, are real and substantial fears for their immediate safety and wellbeing. Practical safety measures such as security services for escorting victims to and from court; screens to protect them from seeing and being seen by their partner; entrances and exits that protect them from potential and real threats from their partner's family and associates are all important resources for victim safety at the WFVC. When these measures cannot be provided and victims' physical and emotional wellbeing is at severe risk during court proceedings then it may be necessary to introduce formal recognition of retractions or withdrawals of evidential statements that are supported by advocates' independent assessments of client safety. Records of supported retractions could be held by agencies involved in the integrated response of the community and the justice sector so that ongoing co-ordinated responses can take account of the seriousness of the danger posed to some victims. Such records would provide enhanced information within the network of organisations involved in the WFVC to maximise the potential of co-ordinated responses to meet victim needs for safety.

Women victim participants in Study Two were clear that victim advocates had provided helpful and appropriate services during their experiences of the WFVC proceedings. CVS advocates gave them the opportunity to voice their safety concerns to the court, and they valued the opportunity even if they felt too afraid of retaliation to admit that their safety was compromised. They also appreciated the care that advocates took in providing information to them from the court and to the court from them. From the women's points of view, advocates provided critically important information flow between themselves and the court to enable safety planning. Advocates explanations of the WFVC procedures and processes, as well as explanations of the likely emotional responses that the women would experience as a consequence of their partner's arrest were also valued by client participants. By anticipating the potential risks of emotionally tumultuous responses to a criminal justice intervention into their intimate relationships, advocates were able to support their clients to stay emotionally safer throughout the process.

*I put some stuff in [impact statement] and I sort of went [long pause], and they'd say you know, "that's okay, you can think about it and get back to us", and so yep, sure enough I'd go back down and take out what, what I didn't want in there. Yeah it was good yeah (WP2 336-338: helpfulness).*

*To be quite honest, [the advocates] were wonderful, they would explain things to me. I would say things like, "sorry, what does that mean?" and they were really good. They would explain, and then explain what the next process was (WP1, 310-313; helpfulness).*

Despite there being some disappointments associated with information flow involving advocates, all of the women appreciated the support advocates offered, and stayed involved with advocacy services at least while they took up the responsibilities of representing them within the court. It was crucially important to the women participants that advocates relieved them of the burden of responsibility associated with being involved with WFVC proceedings themselves.

It was also important to the women participants in Study Two that advocates understood their situations and cared enough to follow up after the court proceedings to find out if they could be of any further service (Section 5.5.2). Participants placing value on follow up services supports Goodman and Epstein's (2005) findings that advocacy and ongoing social support are highly valued by women victims, and enhance women's safety. Beyond the court proceedings, CVS share the burden of responsibility for victim protection and are also able to access other community services to provide her with support towards living more safely.

### 6.3.3. Victim safety: CVS, community and safety

It is evident from the women's accounts of their experience in Study Two that they felt the burden of responsibility for their own and their family's protection from the violence their partner perpetrated as well as the stigma of their own victimisation. They report experiencing emotional turmoil and complex psycho-social effects of victimisation and control perpetrated by their partner at the time of his arrest. Nonetheless, they take responsibility for protecting their families by providing them with a home and social stability. They felt that others expected them to give up their homes and their family stability to protect their children. They were afraid that they would lose their children if they made certain kinds of disclosures to police or advocates. They wanted to protect their wider families from the shame of their victimisation and the burden of supporting them. In short, they carried the social responsibility for stopping their partner's violence, for which they were also often blamed by the perpetrator, their families and friends.

To avoid blame for arrests, and in response to fear of their partner's retaliation, some participants relied on family, friends and neighbours to call police. In many cases though, the ongoing effects of violence, including silence, shame and their partner's control, resulted in the women having little support from family members or friends.

*You don't have friends. You lose your friends when you are living in that relationship. One day I looked around and I thought, "I don't have anybody" (WP3, 339-340: friends).*

*I didn't have many people, I didn't really tell my mum or dad what was happening...they [only] knew the conviction thing because he went there..."oh I'm really sorry", acting all remorseful, or, "oh, I've done a terrible thing and I'll never do it again." (WP1, 392-393, 397-399).*

This finding resonates with aspects of Bennett et al's (1999) discussion of systematic obstacles affecting criminal justice prosecutions of partner violence offences. Sometimes friends and family actively supported the women's partners by blaming them for his violence.

*Everybody said, "Oh, you're not the same person, you've got different". My [relative] wouldn't talk to me, my [relative] who was such a good friend of mine, just said, "stop moaning and groaning all the time, it's not him it's you." (WP4, 684- 686: family).*

The accounts provided by these participants support the urgent need for ongoing actions to change social attitudes and behaviours that support violent offending as advocated by the

Taskforce for Action on Family Violence (MSD, 2006). In circumstances where women who are isolated or embedded in social relationships where their partner's violence is supported, access to the court's specialised victim advocates enable them to plan for their safety.

The women in Study Two understood the appropriateness and helpfulness of victim services provided through the WFVC in a social context where the most common advice they are given for protecting themselves and their families is to separate from their partners and relocate if necessary, again taking the burden of responsibility for their safety. Separation and relocation are particularly difficult safety strategies for mothers to take because it means disrupting their children's social and educational stability as well as their relationships with other family members. This disruption is in addition to facing the emotional costs of losing her partner and the pragmatic difficulties of needing to parent her children without his day to day support.

*That was everybody's answer; everywhere I went. Everybody just said: "oh just pack up, get in your car, and run" (WP1, 87-88; leaving my home).*

*It's up to me now to make a decision. Either I want to put up with what I put up with for [so many] years or I just push him away and don't do anything about it and just deal with my life myself and go through that pain of um, bereavement I suppose. It's just like someone's died in the family you know (WP3, 684 – 688; separating).*

Advocates view separation and relocation as potentially necessary for safety plans and understand that there are significant costs to the women's emotional and social wellbeing as well as their spiritual and physical safety. There are also likely health costs and financial disadvantages associated with separation and relocation. Women with children who participated in Study Two told us of the ways in which their concern for their children's wellbeing was often a turning point in how they managed their partner's violence. Initially, and while they were still at risk of physical assault themselves, they were primarily concerned with ensuring that their children were not also victims of physical assault. As their partner became further involved in court proceedings, the women became increasingly aware of the psychological harm their children were experiencing by witnessing violence against their mother. In some cases, protection of children was a key determinant of their decisions to separate and/or relocate despite the disruptions to their children's social and educational stability that is involved.

*I didn't want my kids to grow up, my [child] growing up to [think] that this is a relationship that [they] may get in, you know. "Put your foot down now, and say no – no more", you know... they could see how their father was treating me...mum, you know, mum at the bottom, yeah. And that's, that's how it was for a long time and I never realised (WP6, 263-267: protecting the kids).*

Advocates provided examples of the ways in which some clients were so physically threatened by their partner's violence that the women were only safe enough to realise the impact on their children's psycho-social wellbeing when their partners were imprisoned.

*Looking at children,[imprisonment] is a really good time, she's maybe not been prepared to consider it before, but looking at the impact, at what the violence and abuse has had on the children. Because quite often dad's been the disciplinarian, or you know the kids are always good when dad's around because they are petrified of him. But you know, for her, that the kids are good when dad is around and then all of a sudden they turn into these fair little hounds and she's not kind of coping, so looking at those sort of issues and getting that sort of help (KI3,273-278).*

From the point of view of some of the women participants', support from advocates for their parenting and protection of their children, and follow up services to support them towards emotional, social, spiritual and physical wellbeing provides safe ongoing community relationships.

*I've recommended [victim advocates] to a lot of women actually, dished out cards. You know women who, they don't know where to go to get help, you know. I didn't know they were there, they've probably been there for years you know...yeah and it's quite discrete. It's nice discrete, it's not a big, you know it's good (WP1, 117-123: message for other women).*

It was evident from the women's accounts that they had once believed they were to blame for their victimisation, and they carried a burden of responsibility to leave the relationship when all other strategies for preventing violence failed. At the time of the interviews, however, the women no longer felt responsible for their own victimisation. Over a period of time, usually involving at least two years, the scope and limits of their responsibilities for protecting themselves and their families had become increasingly clear to them. The women did not always feel that bearing the burden of responsibility for stopping the violence themselves was just, but they did understand that the WFVC, through providing them with CVS support, was attempting to protect them and that the burden of responsibility for stopping the violence against them belonged to their (ex)partner.

*What other things are there, that court can do...He hasn't changed in [so many] years, do you think he's going to change? (WP5, 179, 192: messages for the justice sector).*

*I think that you need to ask the males what would stop them. You know or what would make them not go to [do violence to] their umm, to their ex-partner or another person. I don't know, because you know they have their own mind set. I think it's them that need to be asked (WP6, 136-138: aftermath).*

The centre of the WFVC strategies for protecting victims is the involvement of CVS advocates in the court. From their long experience of victimisation and often failed attempts to prevent their partner's violence or resist his control and psychological and emotional abuse, the women participants in Study Two understood the helpfulness and appropriateness of CVS as multi-dimensional. The support of CVS advocates, beyond the court, assisted them to move towards living more safely within their communities and family relationships.

### 6.3.4. Victim safety: Protection and policing

The processes that specifically involved the victim participants in Study Two with the criminal justice system, were the arrest itself and their contact with the WFVC through community victim advocates that enabled them to provide statements about the impact of the offence on their lives and their experiences of safety over the time that the court was dealing with their partner's prosecution. From the time of their partner's arrest, police and CVS were involved with responsibilities for protecting women participants in this study.

Between 2005 and 2006, data from Viviana's database showed 497 arrests for the 1865 occurrences reported. Viviana had received POL400 reports for 84% of the violent occurrences they had on record: 1563 or 44% of the total number of POL400s within the Waitakere Police Area in that year. We were unable to provide a precise measure of arrest rates for intimate violence occurrences because the database recorded cases by arrest rather

than by offence and there were multiple offences related to some arrests. New Zealand Police data made available to the researchers showed that 35.4% of occurrences recorded on POL400s involved offences, but not necessarily arrest (Coombes et al., 2007).

In the history of violence that participants reported, all the women had experienced multiple physical assaults. Even so, for some this was the first incident that had been reported to police, and they were not always the person who made the call. Participants recognised a variety of dangers associated with calling the police including shame and fear of retaliation. Calling the police was often a last resort and often participants did not take the risk of doing so themselves. They had been committed to their relationships, felt responsible for managing their partners' violence, and had experienced physical, psychological and social violence as tactics of their partner's control over them.

*Foolishly...in a way because you love this person but you hate what they are doing to you, you kind of want to help them, in a way. I know that sounds stupid but you...kind of like think, "I can make it all better." And, you know, you want to see the good in the person (WP1, 78-80; love and sympathy).*

*...if umm, I looked the wrong way, [to him] that meant that I was thinking something bad, you know. That excessive control, and knowing that if I do piss him off, I could be dead. Or you know he might take it out on [members of my family] or something, you know something like all that kind of stuff (WP3, 341-343; control).*

For those women whose partners had previously been arrested, calling the police was not necessarily regarded as a safe strategy for intervention, although it was a necessity to stop an assault in progress. These participants were aware that arrest may result in escalating intimidation, coercion, threats and even further assault.

*I didn't call the cops, you know. It keeps me safe when it's not my decision (WP1, 291-292; making the decisions).*

Under Aotearoa's police Family Violence Policy (Police Commissioner, 1996), perpetrators are arrested when police have evidence sufficient to pursue prosecution so that the criminal justice system prosecution do not need to rely on victim complaints and victims are relieved of the responsibility to decide whether or not their partner is arrested. Participants reported events where police taking responsibility for the arrest relieved the women and they were able resist their partner blaming them for it. In relation to the women's experience of emotional abuse, this served to make them safer from fear of retaliation, though it did not necessarily mean that their resistance to their partners' blame successfully avoided further emotional or physical harm.

*I wanted to [change my statement]...[Location] police said "oh no you can't we still have to follow through with it", which gave me the courage to follow through with it. Just having someone say; "I'm sorry, no you can't change your mind", [that] made me think, "yeah I don't want to". But, you know, if no one had said anything I would have, probably - got it changed, pardoned away (WP4, 24-27; making the decisions).*

Inconsistent police responses, and situations where participants felt discouraged from calling the police, left them feeling unsupported and burdened with responsibility for their own safety. Participants' reported experiencing increased emotional distress when their attempts to seek protection from the criminal justice sector prove ineffective in the context of their partner's attempts to reassert control through threats, intimidation, blame and coercion. Their

experiences of being required to make decisions about whether or not their partner is warned, arrested or removed took place within histories of keeping silent for safety's sake, surrendering to coercion, living with threatened and repeated assaults as well as social and cultural expectations that they will take responsibility for stopping their partners violence. Sometimes their immediate physical safety depended on not being responsible for reporting their partner's violence to anyone.

*He was really angry about the fact that I let them take him away and you know; "you called the cops!" (WP1, 1068-1069; making the decisions).*

Participants often felt safer when others made decisions related to the legal intervention into their partner's violence: when police refused to allow them to change their statements under the coercive influence of their partners or when others called the police because it was unsafe for them to do so. When this is considered alongside participants' improved safety when CVS advocates represent them in court, this finding supports claims by Dobash and Dobash (2000) and Römken (2006) that mandatory arrest and no drop prosecution are more likely to achieve the goal of enhancing victim safety if they are embedded in co-ordinated responses within community agencies.

### 6.3.5. Victim safety: Protection and legal orders

The WFVC protocols enable an understanding of the dangers posed to victims when their partners are arrested by imposing standard bail conditions that include non-association orders. Court procedures for bail hearings involve judges receiving memoranda from CVS advocates who have discussed the woman's circumstances with her, explained the court process and her rights and choices, and made an assessment of her safety.

Despite the measures taken by the WFVC to protect the women in Study Two from psychological abuse or assault by imposing non-association orders, participants consistently reported psychological abuse such as threats, intimidation and blame after their partner had been released on bail. Their partners did not respect non-association bail conditions and this had serious consequences in relation to holding them accountable. Some women had not given consent for contact at any point. Some had not objected to contact or had asked for non-association conditions to be varied because of their affection for their partner, shared cultural expectations, and fears of retaliation if they chose to alert the police to the breach. Participants also reported occasions on which they did call the police because of non-association breaches. They were disappointed when no arrest resulted or if the charges laid by police did not include breaching bail conditions. In these circumstances the women had heard explanations of the orders granted by the court from a community victim advocate and they were expecting the orders to provide them with protection. This was not the case for these women, and in this sense the legal intervention of the criminal justice system was unable to protect women from further harm.

*...he came home... as if nothing had happened. I rang [victim support] and said "what do I do?" And they just said to ring the police and they would come over and just have a chat with him (WP4, 40-42; he came straight back).*

*...he wasn't charged with the other [breach]. He, umm, I think it was just [range 3500]. He wasn't charged. Nothing happened (WP1, 251-252; he came straight back).*

The critical importance of a co-ordinated response within the criminal justice sector and the community is evidenced by women victims' experiences of the failure of bail conditions to protect them from unwanted and unwelcome contact from their partner. The bail conditions set by the WFVC for the victim's protection, as either standard conditions or on the basis of an individual assessment of her safety and her views on her partner's bail, will not effectively protect her from harm if the perpetrator has no respect for the orders and/or their breaches cannot be effectively policed. Interagency co-ordination that is resourced to effectively provide accurate and up-to-date information on the effective policing of bail conditions is essential to improving victim safety after their partner's arrest. This finding supports Mears and Visher's (2005) suggestion that effective judicial monitoring within specialist domestic violence courts is dependent on inter-agency information systems and communication that enables offenders to be monitored more closely.

While bail conditions did not necessarily protect women participants from unwanted contact with their partner, or his re-offending against them, they did offer legal sanction for the women's right to control contact. Initially this sanction gave the women confidence to call police when their partners breached the conditions. It was only after failed attempts to have their partner's bail breaches taken seriously that the women realised they could not rely on these sanctions to enhance their everyday safety. Subsequent to their initial involvement with the WFVC some participants took out additional orders for legal protection, including Protection and Trespass Orders. They advised other women to make use of legal orders consistently: to say "no" to their partner's violence and repeatedly call the police to intervene even if they felt that they were being a 'nuisance'.

*I would probably encourage people, if you're going to go through the police, go right through all the avenues. Don't get scared half way. Do the whole Trespass Order, find out about Protection Orders, get the paper work in the courts so that next time, if there is a next time, hopefully they will be there quicker, they will sort it out how it's suppose to be, and then it will work. So I would recommend that if you're in that state of mind to be able to do it, then do it (WP3, 471-475; messages for other women).*

Despite ongoing threats and emotional abuse, women participants in Study Two believed that involvement with justice sector interventions could still be effective in achieving changes in safety especially in the long term. It is important however, that the implementation of protective orders, including bail conditions, is monitored effectively.

### 6.3.6. Victim safety: Sentencing

In the first year of the WFVC protocol operations, 73% of cases recorded guilty outcomes. Of these nearly 85% resulted in convictions. The remaining 15% represented Section 106 discharges without conviction. As mentioned previously, the most common sentence was Section 110 come up for sentence if called upon, representing 32%. The next most common sentences involved supervision (15%), community work alone (13%) or supervision and community work (6%). The most infrequently used sentences were non-association orders (1%), fines (4%) and Section 108 conviction and discharge (5%). Only 8% of sentences involved imprisonment (Coombes et al., 2007).

All the partners of the women participating in Study Two had been convicted of offences and sentenced to "come up if called upon" for re-sentencing. None of the women participants understood their partner's sentence as a strategy for enhancing their safety. For some, their partner's conviction in the WFVC was experienced as emotionally supportive of their attempts

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to protect their children. It provided them with an assurance that they would not lose custody of their children and enhanced their safety by relieving them of fears associated with losing custody.

*I wasn't really scared of [custody issues] towards the end, because I thought; "well if he went and tried to get custody of the kids, all I need to do is call his, umm his record, and nobody is going to give him my babies" (WP4, 116-117; protecting the kids).*

Key informant advocates provided us with additional information on safety issues associated with other sentences involving convictions in the WFVC. Prison sentences were regarded as inappropriate in most cases of intimate violence except in response to the most severe incidents or repeated re-offences. From advocates' points of view, prison sentences often supported the women to re-engage in their relationship with their partner through the contact that is established for visits.

*There are the women who, maybe quite often, will fall back into visiting him and hearing how much he has changed and done this prison programme or that prison programme and he's coming out a changed man, quite often they are more accepting of that. I think that just a fear based acceptance that, that they kind of think; "he's going to come out and he's just going to be worse" or "he's going to be whatever" so she's back into appeasing him and stuff (KI3, 325-329).*

While longer prison sentences sometimes provide advocates' clients with opportunities to live free of physical assault for long enough to realise the benefits of being separated from their partners, shorter sentences were more likely to result in re-engagement and compliance with his control in anticipation of his release. Shorter sentences also meant that offenders had less opportunity to reflect on their behaviour or engage with change opportunities available through correction services.

*I think [short prison sentences] are more risky because I also think they don't give the guy a chance to do anything in particular while he's in there, he's sort of in there for short enough that he can keep the frame of mind (KI3,366-368).*

Advocate key informants did not believe that home detention was an appropriate alternative to prison for intimate violence offences for the obvious reason that it exposes victims to greater risk of harm if they are co-habiting with their partner. Community work sentences were also not appropriate because of their potential to burden the women with additional responsibilities, such as sole childcare or managing weekend work commitments, so that the offender could complete the sentence. Fines were also regarded as inappropriate and carry the implication that the offence is "lower level" in terms of seriousness, as well as placing economic hardship within the family. Imprisonment, community work and fines are relatively rarely used as sentences at the WFVC and the advocates appreciate the judges' understanding of how these sentences may affect victims' safety or undermine the message that the court takes family violence offences seriously.

Advocates did express concern at the use of Section 106 discharges without conviction because these sentences do not result in any recorded conviction against the offender that could be relevant to other court matters or subsequent cases involving re-offences. They understood that sometimes these sentences were appropriate in view of the consequences of a conviction for the family as a whole in cases where the offender might lose his job if convicted and that they provided a clear incentive for defendants to plead guilty. However, they risked

sending a message that the offence was relatively insignificant and that the court did not take it seriously enough to keep it on record, effectively minimising the ongoing pattern of violence against the victim.

*Section 106's, I think that sentence indication should definitely be canvassed with the victim. At least they would have their view put across about how they felt about that. This is what we are trying to pick up on now. If we have given, if we know there is a Section 106 indication we need to be talking to the client with how she feels about that (K12, 85-88).*

Advocates support the ongoing opportunities to collaborate with judges to enable the tension between coercing guilty pleas and enhancing victim safety to be negotiated in the case of Section 106 discharges without conviction.

### 6.3.7. Accountability: Respect

Historically intimate violence offences have been trivialised in criminal justice interventions, and holding offenders accountable requires sending the message that such offences are treated seriously. Judges at the WFVC avoid sentences that carry the implication that offences of intimate violence are trivial matters, none-the-less the ability of the court to ensure that this message is received by offenders relies on offenders' respect for the criminal justice system.

For women participants in Study Two their partner's lack of respect for the court was a substantial influence on their understanding of how he was held accountable and what it meant for him to be accountable to the court for his violence. The efficacy of bail conditions and offender change interventions were both seriously affected by their partner's lack of respect for court orders and lack of commitment to changing their violent behaviour.

*People like [ex-partner] they don't care about going to jail or getting a fine, they just care about revenge and about getting someone back and it means nothing to them, not how much money they have to pay or anything (WP2, 306-308: it means nothing).*

*I know for a fact that [ex-partner] doesn't give a shit about the law. I mean I had, I had a non-violence paper. To him it meant nothing, and I think to most violent men it does mean nothing. It's a piece of paper. It means absolutely nothing to them (WP3, 114-116: it means nothing).*

In the experience of these women, their partners were not held accountable for breaching bail conditions. The women sought a form of accountability that would enable their partner to be removed when he repeatedly breached bail to relieve them of the responsibility for managing his continuing controlling, abusive and violent behaviour. Women participants suggested that more effective means of holding their partners accountable for their violence would involve closer monitoring of those men who were known to offend. From their point of view their partners were not held accountable when ongoing breaches of bail conditions did not result in a criminal justice intervention. By implication, this suggestion means that holding offenders accountable requires stricter policing and prosecution of bail breaches to effectively meet the aim.

*I think that there should be closer, more monitoring of offenders, yeah. They need to keep track of where these people are. And if, you know, if a guy is you know a drunk that beats up his family when he's drunk, okay maybe the missus rings up, "he's pissed, he's*

*trying to bash me,” you know, take him away (WP1, 588-591: messages for the justice sector).*

For some participating women, their partner's lack of respect for legal intervention meant that the conviction recorded by the WFVC had little effect in convincing them of the seriousness of their offences and the need for them to change their violent behaviour. None-the-less women participants did not suggest harsher sentences, especially if harsher sentencing involved prison. Although they did want the criminal justice system to keep their partner away from them so that they could live free of his violence and fear of his violence, they did not suggest that imprisonment was an appropriate way to hold men accountable for intimate violence.

*Just be harsher on them in the, throughout the processes, not necessarily lock them up for five years cause that's not gonna work (WP1, 606-607: messages for the justice sector).*

When women participants reported that their partner was respectful of court orders and his conviction was a meaningful message that his violence was unacceptable, then recourse to subsequent legal interventions did result in improving their everyday safety more readily.

### **6.3.8. Accountability: Community based offender treatments and programmes**

The services provided for offenders at the WFVC are similar to those provided by other specialist domestic violence courts that refer offenders to community based interventions designed to address underlying problems such as inappropriate management of anger, alcohol and other drug problems, mental health or relationship issues. At the WFVC offender progress through referred interventions is monitored by the Judiciary prior to sentencing. Sentencing leniency is used to coerce offender engagement in programmes and judicial monitoring is intended to convey the seriousness of the offence by engaging the judge's symbolic authority to oversee the offender's attempts to address his violence as a problem in the relationship. In Study Two, women participants whose partners had been through this process of monitoring reported that their partners were not enthusiastic about the opportunities the WFVC offered them for change.

*You know, when he is getting angry I'd say just go, just leave me alone, just go you know, have some space cool down. Na not a thing, he didn't learn anything from that (WP1, 466-467: it wasn't a lesson).*

In the women's experience, their partners accept the coercion to plead guilty for sentencing leniency without any intent to change and the changes they made rarely improved the women's safety. Participants reported no change in their partner's controlling behaviour, psychological abuse or repeated challenges to the women's legally sanctioned right to refuse contact. In some cases physical assault ceased and in other cases it took a different form designed to leave no evidential injuries.

*He's violent. He is violent. But he won't touch me. He won't hit me. He knows that he'll go. I said "this time, I'm not saving you, I'm not going to get you back out of the police. This time you're going to go to jail." So he's not hitting me. But he would just scream and he would do, you know, raise his voice (WP2, 280 – 283: different, and yet).*

*[The men are like:] "We are here because the courts have told us or go to jail." And they are not going to learn anything. If anything, it teaches them to be more cunning.*

*That's my firm belief. [It] teaches them to be more cunning; "think about where you are going to hit them". It's like, I got punched in the solar plexus, I was like ... thinking; "oh my god". But I was alright. It had just winded me badly but I didn't have a bruise or anything from it. Things like that (WP3, 694-698; different, and yet).*

In some cases the women's partners discontinued breaching non-association orders or protection orders after some time. Usually they resumed contact when it suited them and although there were gaps between repeat breaches or re-offences, none of the women reported that the pattern of violence in their relationship was permanently changed until they separated from their partner and consistently used legal forms of protection, or relocated. From this point of view, although the interventions to which the WFVC referred offenders did not hold offenders accountable for their violence, the women participants recognised that this lack of change was their partner's responsibility because he lacked the motivation for genuinely engaging with changes that would enhance her safety.

There were instances where women participants noticed that their partners had learnt strategies to avoid conflict or had become more supportive of her in parenting their children subsequent to their separation, although these were rare.

*Although I know I did notice when he did that [anger management programme], umm situations, you know, where conflict was starting to come up, that he backed off, hmm. So I could see that he was using some of the tools from it, which was good (WP1, 457-459; family healing).*

*He is very supportive now. I have to tell him that we have work together to stay at the top together...and if we do our consequences and boundaries together, you know, they will learn and they like that (WP2, 271-274; family healing).*

As a result of these experiences, and their own previous attempts to change their partner's behaviour, they advised other women to recognise that they cannot change their partner, and that perpetrators are responsible for making these changes themselves.

*It's like really hard and it's really hard for a woman 'cause I think you think that you can change a person, hmm, but you can't, only they can (WP4, 447-449; messages for other women).*

They maintained hope in the possibility of change interventions by referring to others' experiences or to the potential for change that the interventions offer if offenders engage with them with genuine motivation for change.

*I think that [anger management programmes] are useful. Umm just so they can actually take a step back and look at themselves and instead of always blaming everyone else. But I don't know in this case if it was successful (WP3, 313-314; family healing).*

To ensure that women's hopes are founded on expectations for change that can be realised by community based offender treatments and intervention programmes, evaluations of those programmes are needed so that effective motivational strategies can be developed to maximise the potential for coercing change.

From the advocate key informants' point of view, change programmes are most likely to improve women's safety when both offenders and the women are consulted and supported

throughout the change process. When the women are not consulted about their partner's involvement and engagement in referred services they are less likely to have necessary opportunities to prioritise their own safety.

*...it's the individual circumstances of each situation that I see...you know, like, I mean I've sat there and seen guys, umm, just get out of a prison sentence by a, you know, a hair, a hair. It's been that close and its happened because of what they have decided to do as a couple. Umm you know, you can see the genuine, umm, you know, the genuine want and desire to actually do all the changes necessary so I think, well better that they get that chance, sort of thing (KI3,483-487).*

Advocates were particularly concerned about sentencing to change programmes under the supervision of Community Probation Services because offenders who did not want to engage with the programme could often avoid doing so by creating delays that meant their probation period was over before they finished the programme. Even when this is not the case, advocates had noticed that the partners of men who were sentenced to undertake change programmes were less likely to engage with victim services as discussed in Section 5.6.1 above. Monitoring the engagement of offenders with mandated treatments and interventions would provide the WFVC with vital information on the efficacy of sentencing to change programmes. Advocates also noticed that even when offenders complied with requirements to attend treatment or programmes, their partners were less likely to engage with victim services. Evaluations of offender change programmes should include consideration of how victims are supported throughout the process. When offenders were referred rather than sentenced to programmes, advocates were concerned about the financial strain of self-funding on some women and their families, as well as the blame that offenders sometimes attribute to their partner because they are referred to an intervention.

*...we don't have a lot of women talking about the financial strain [of the WFVC proceedings] in regards to [fines, legal or court costs] but we do in regards to them having to go to programme...like being directed to go to anger management, that costs, so that can be a financial strain (KI2, 153-156).*

*...many women will say "I paid, he went but I paid." If they don't pay financially they pay in other ways. It will be, "well you're not getting this much this week because I've had to pay for this and it's your fault I'm going." So it can lead to a further grudge being held, because of the financial cost, because it's not cheap to go to those programmes (KI1, 374-377).*

One solution to the dilemma created by the cost of programmes would be to build a closer relationship between the Family Court and the Family Violence Court at Waitakere so Protection Orders can be issued and the financial cost of programmes carried by the provisions of the Domestic Violence Act (1995). This would have the additional benefit of providing victims with orders that extend well beyond the disposal of the case in the court. Advocates warned that when their clients' partners persistently resisted change interventions their hopes that their partner would stop his violence against her remained unfulfilled, and sentencing the offender did not resolve risk to the women's safety or restore her faith in the possibility that the criminal justice system can protect her. In this sense, when offenders were not held accountable for changing their violent behaviour, victim's confidence in the criminal justice system was undermined.

Women's experiences of their partner's lack of engagement with interventions, or commitment to change, suggests that evaluations of the interventions provided by the WFVC is warranted. At the same time, it would be useful to review the function served by judicial monitoring. Since the court cannot coerce an offenders intent to change, the use of sentencing leniency to coerce engagement in programmes needs to take account of the offender's ongoing risk to his partner's safety and the safety of her family. If re-offending and bail breaches can be better monitored by all those engaged in a co-ordinated response, including CVS, police and offender service providers, then judges may have greater opportunity to lend their symbolic authority to the seriousness of the offender's ongoing pattern of violence throughout the phase of judicial monitoring (Mears & Visher, 2005). Since they rely on information provided by all those involved in the inter-agency collaboration of the court, the strategies needed to overcome the challenges of holding offenders accountable for their violence need to be developed more fully in consultation with the community and justice sector agencies involved with the WFVC.

### 6.3.9. Accountability and re-offending

All the women participating in Study Two reported re-offending in some form by their partners, most commonly in breaches of bail conditions but also in physical assault, intimidation or threat.

*...after doing anger management he got more angry. He was actually more physically violent than he had ever been with me. He used to...curse me that he has to do anger management (WP4, 867-869; still angry).*

*That was just the phone calls and everything again, and stalking me and stuff. He used to text me and say, "I'm watching you" and, "I know where you are," and, "I'm behind you in my car," and stuff like that (WP3, 190-191; more of the same).*

Incidents involving repeat offences were sometimes reported, and sometimes not. Sometimes reported occurrences resulted in arrests, more often they did not.

*It's amazingly hard to make a call to the cops when you got someone pulling out phone cords and you know smashing up the phone you know pushing you around (WP1, 1146-1147; more of the same).*

*And I think the first time after [initial arrest] that I rang the police and they took him and they asked me do you want him to come back here and I said "no". They released him on bail the next morning and dropped him off at my house (WP2, 17-19; making the decisions).*

Analysis of cases involving Viviana clients during 2005-2006 showed that in 38% of 497 arrest cases at least one other violent occurrence was recorded subsequently in the same year. In 61% of these occurrences another arrest was recorded. In 100 of the repeat occurrence cases more than one arrest or incident was recorded: 20 cases involved more than 4 incidents and 6 cases involved more than 4 arrests. Analysis of the frequency of recorded violent incidents and arrests as a function of time from the offender's initial arrest showed that repeat offending was concentrated around the time immediately after arrest and immediately before and after sentencing. Since we are aware that violent incidents after arrest are underreported it was not possible to conclude that the majority of victims involved in these cases were safe subsequent to their arrest or that arrest constitutes a precipitating factor for further harm to victims (Coombes et al., 2007). None-the-less these statistics indicate that many victims are subjected

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to repeated offences at the hands of their partners. If arrest, conviction and sentencing hold offenders accountable to the court and the criminal justice system overall, this form of accountability does not necessarily address the needs of victims and their families for safety and healing.

Results of statistical analysis of data held on Man Alive clients and matched with Viviana clients showed that those cases where programmes had been completed recorded fewer repeat violent incidents or arrests (38%) than those who were still attending programmes (45%) or those who had failed to complete programmes (65%). While there are still difficulties of under reporting to take into account, these findings suggest that programme completion is associated with fewer recorded repeat offences (Coombes et al., 2007).

From the point of view of advocate key informants, offenders before the WFVC have many opportunities to demonstrate genuine commitment to changing their violent behaviour before the court resorts to imprisonment to constrain them from continuing to re-offend against their partner.

*It's very rare for someone to be sent to prison, particularly on their first offence. In fact there is a process they go through. Let's say on each occasion the charge is male assaults female. First offence, first time someone appears, it's quite likely there will be a bit of negotiation and it may even be reduced to common assault. And he will get, for sentence, come up if called upon and directed to attend a programme. If he comes back again inside of that 12 month period with a second charge they may come down on him a little bit harder and there might be a final warning and another non-custodial sentence. If he comes back again a third time with an obvious, each time its MAF, if he comes back a third time and there is a history of previous convictions, and there is a history of not taking any notice of what the court tells him, that's when the court will start to say, "about time you went inside had a taste of what the State can do." and that's when he will get a small prison sentence (K11, 423-433).*

In providing opportunities for offenders to change their re-offending behaviour, the WFVC is simultaneously offering offenders the chance to take responsibility for their violence themselves and demonstrate to their partners and their families that they are personally accountable for their actions. When chances to change become recurrent opportunities for re-offending, the court cannot hold them accountable unless the integrated responses of the community and other sectors of the justice system are able to provide the practical support and assistance that enables re-offending to be reported and prosecutions to proceed.

## 7. Summary of Findings

There were four objectives for this research specified in Section 3 (above). They required descriptions and assessments of the WFVC processes, including the way in which community organisations were involved in the court and the services they provided. These objectives were met through reporting relevant findings in from Study One and Study Two in Sections 5 & 6 (above). We provide a summary of the research findings, through attending to the perspectives of participants in both studies. We chose an interpretivist methodology for this project in keeping with principles of Fourth Generation evaluation research (Guba & Lincoln, 1989). In any interpretivist project a summary of findings will involve taking a particular perspective on the implications of data analysis. It should also aim to represent the participants' points of view, with their interests and understandings at the forefront.

In the following sections we provide participants' perspectives on the successes and future of the WFVC in relation to New Zealand Government policy and international literature on best practice in criminal justice responses to family violence.

### 7.1. Study One: Where to now?

#### 7.1.1. Collaboration

The principles of Te Rito New Zealand Family Violence Prevention Strategy (MSD, 2002), advocate for "broad and holistic" perspectives on family violence prevention (p.14) and for taking a "multi-faceted approach" to addressing the needs of the family as a whole (p.12). Perpetrators of violence are to be held accountable and communities have "both the right and the responsibility to be involved in preventing violence in families/whānau" (p.13). An integrated, co-ordinated and collaborative response is regarded as essential to preventing intimate violence.

In this context, the evolution of fifteen years of community collaboration with the District Court into the current practices of the WFVC demonstrates the clearest success of the court. This collaboration has a long tradition of working with models that are still being used internationally as best practice in family violence responses (e.g. Specialist Domestic Violence Court, West London). It was well after this collaboration began that the Government recognised the value of collaborative responses in policy and planned action. Over the course of its evolution the WFVC has adapted its practices to various changes in legislation and policy, demonstrating the flexibility of responses that are available when there is individual commitment to the dynamic processes of collaboration. This flexibility also allows the WFVC to be continually responding as specifically as possible to protect victims and address the needs of families toward living free from violence.

The processes of consultation and adapting practices have not always been easy and there are still points of tension around some of the practices of the WFVC's protocols. Some participants were concerned about the role of the Community Victim Services in providing information to the court and advocacy for victims. Yet this too, is one of the successes of the WFVC. In principle, information sharing is essential to victims' safety and defendants' rights, so that safety and justice are both taken into account. The special character of family violence offences means that considerations of safety and justice need to include information on the culturally embedded

dynamic psycho-social implications of ongoing relationships between victims and offenders and the consequences of violence within an intimate relationship. In dealing with family violence offences, the court needs to make careful assessments of the risk of further harm to victims and families.

After three years of reviewing the operations of the SDVC in West London, Standing Together reported that the inclusion of information from community services and victim advocates was critically important to their success (STADV, 2006). In describing the importance of information sharing and trust among the participants, the SDVC Bench Book for the court says:

It's like a spider web where each strand supports the others, and the integrity of the specialist Court is made up of all these strands. This inter-relationship of partner agencies, which arises from a shared understanding and commitment, together with information flow can help ensure that the best information will be available to the district judges and magistrates (Lesser, 2006, p.11).

Like the WFVC, the SDVC is based on the Duluth model of coordinated community responses to family violence and involves Community Victim Services working within the court. This model is justified by understanding domestic violence as “no ordinary crime” and that

[m]any agencies hold parts of the information and part of the expertise that is essential to the safe and fair prosecution of a domestic violence case. The nature of the relationship between victim and defendant and defendants' access to victims require that information before the Court is current, focused on risk, and accurate. Within a SDVC, this information can be shared and expertise about domestic violence applied in a systematic, well regulated and timely way (STADV, 2006, p.1).

The value and legitimacy of the role played by Community Victims Services in providing information to the WFVC is affirmed by current government policy and international best practice models and the Judiciary are clear that they regard the information as trustworthy. The question of the precise legal status of the information provided by CVS has also been raised, as has the legal status of the protocols themselves.

*...there doesn't appear to be any legal or legislative basis for much of these protocols. I'd like to see some addressing of that by parliament in an appropriate way. I'd also like to see, with respect again to the lower level matters that there'd be some other avenue other than criminal court for these to be addressed in (HD, 235).*

As far as Study One suggests, the Judiciary do not share the view that legislative change is necessary to sanction the protocols of the WFVC. From the way in which the judges were regarded by other participants in the court it was their individual commitment to specialisation in family violence that enabled the court to work successfully. This specialisation enables the Judiciary to interpret the legal practice of the WFVC *with regard for* the special character of family violence.

A shared understanding of family violence is critically important to ensure that all participants in the community/court collaboration are working towards the same goals. The preliminary findings of this analysis provide evidence that there is a widely shared understanding of the character of family violence among court participants. Participants talked of problems with intimidation or coercion of victims, or counsel who did not share the philosophy underlying the court. To see these issues as problematic requires a perspective that includes understanding

family violence offences as, more likely than not, part of a pattern of abusive behaviour. This is consistent with the definition of domestic violence provided by the Domestic Violence Act (1995) which involves recognition that there is an ongoing relationship between the victim and offender and that a specific violent act may be connected to a pattern of abusive behaviour towards the victim.

The heart of the Domestic Violence Act (1995) is the Protection Order, granted by the Family Court. The priority that the WFVC gives to protecting victims is consistent with the Act, and justifies using specialised victim advocates within the court to provide information to the court about the victim's vulnerability to further harm. A recent review of the SDVC included the following example of the way that specialists there also valued collaboration:

...if we know enough then we can make good [risk] assessments. It's not about the tool, it's about who gives you the information, that's what I value about [violence services network organisation] (STADV, 2006, p.7).

The WFVC protocols facilitate information sharing between CVS and the court. They provide for specialised victim advocacy as well as information on victim safety at particular points in time. While the consistency between the court's attention to victim safety and the intent of the Domestic Violence Act (1995) is clear, the interpretations that sanction the WFVC protocols remain dependent on individual commitments to specialised knowledge in relation to family violence. This leaves the WFVC's collaborative response to family violence vulnerable to changes in individual personnel. One of the successful outcomes of systematic training at the SDVC in West London is that they have a number of trained judges (and magistrates) who can preside over the court, and are therefore less vulnerable to personnel changes (STADV, 2006). The WDVC in West London also shares with Waitakere one of the most stubborn challenges to a successful family violence intervention within a criminal justice system: the involvement of non-specialised personnel in the development and implementation of best practice protocols (STADV, 2006). Collaborating participants in both courts have identified particular difficulties around including non-specialised defence counsel.

In this research, training was consistently highlighted as a need within the WFVC. Training in both the dynamics of family violence, and the operations of the WFVC could produce significant advantages in terms of efficiency and consistency. Several of the collaborating groups of the WFVC are provided with specialist family violence training by their employers. While resourcing the WFVC remains an unresolved issue the provision of systematic training for all personnel involved in the court remains an unmet need. Nonetheless, participants in Study One were largely well informed about roles and responsibilities within the court. Systematic approaches to redressing contradictions between specialised and non-specialised understandings of family violence remains difficult while resources are scarce. Future discussions among participants could consider developing some form of community specific Bench Book, such as that used in the SDVC, to make specialised knowledge and practical guidance for decision-making available to all judges and legal advisors (STADV, 2006) as well as a coordinated approach to securing resources.

Evaluation of the WFVC was also highlighted as a need. In a recent design for a specialist domestic violence court in Auckland a specific role was designated within the proposed court structure for a Monitoring and Evaluation Coordinator. Personnel in this role would be responsible for six monthly or annual reviews of the protocols (McKenzie, 2006). One of the reasons that we are able to consider the way in which the SDVC implements its collaboration in

response to domestic violence is because they have resources and processes for ensuring an annual review. This review is an integral part of their collaboration and based on “high quality data monitoring, tracking and analysis [...and] a process of triangulating qualitative data” (STADV, 2006, p.3) to ensure that perspectives of all partner agencies are taken into account during reviews. The WFVC Focus Group works well to address issues and review concerns about the operation of the court in the absence of resources for a more rigorous approach to research. Without the resources for evaluation research the WFVC participants do not have the information and analysis they need to have confidence in meeting their goals.

*... Anecdotally I think there has been a drop in serious domestic violence in this area, and a drop in domestic murder in this area over the last few years. But I haven't got figures. It would be very interesting to know - for the people who have been through that court - if their violence decreases or increases. That would tell you whether it was successful or not (TB, 367).*

*So what I am particularly interested in is how effective, in terms of recidivism, the approach is and I'd be pleasantly surprised if it makes a huge difference in terms of recidivism but I wonder whether relapse is in fact part of the process (MB, 39).*

*[I would like to see] follow up for women and see how they're satisfied with the process. (I am just using women in the usual sense rather than saying only women) (RH, 243).*

The research team collaborating on this project continue to work with stakeholders in the WFVC to develop research proposals and secure funding for projects. The difficulties of securing funding for independent family violence evaluations will mean that the research may take longer to complete – and the successful community collaboration which is the foundation of the court has already waited more than six years without the information resources they need to ensure that they continue adapting flexibly to meet the needs of local families affected by violence.

### 7.1.2. Taking family violence seriously

The first goal of the Te Rito New Zealand Family Violence Prevention Strategy (MSD, 2002, p.14) is “to bring about attitudinal change by encouraging intolerance to violence in families/whānau and by ensuring members of society understand its dimensions, manifestations, and play their part in preventing it”. This goal is predicated on the recognition that nationally we have a long history of ignoring family violence as a serious social issue, minimising its damaging effects on the wellbeing of individuals, families and communities, and tolerating it by treating it as a ‘private matter’.

Along with collaboration, another clear success of the WFVC emerging from this research is the multiple ways in which the court's participants take family violence seriously and work towards encouraging its intolerance. In the first instance the establishment of the WFVC itself sends a clear message that family violence is a serious problem. Various participants raised the possibility that, if it is seen to be lenient with offenders, it could also be seen as a “soft option”, and as a way of minimising the seriousness of the offence. The Judiciary were crucial to ensuring that the message that the court sends to the community is that family violence offences are serious and that the court will hold the offender accountable. At the same time the needs of the whole family in each specific case would be prioritised. Several participants commented on how consistently the Judiciary convey the message of seriousness to defendants. The possibility that readily or routinely giving Section 106 Discharge indications

might undermine the message was acknowledged by the judges, who have become more cautious in their use recently. Similar caution in sentencing is regarded as a successful practice of the West London SDVC where the Bench Book considers it is:

...unlikely that a bench would be thinking of any sentence less than a Community Order (Lesser, 2006, p.45).

Lenience is regarded by the WFVC as an incentive for the offender to engage in treatment and severity is a consequence of not co-operating with the court's recommendations for intervention. Thus offenders are encouraged to be accountable for their actions and this encouragement is also intended to convey the message that the court is serious about addressing the problem of family violence. Encouraging accountability also serves the purpose of coercing treatment and meeting the needs of the family holistically.

As far as the participants were concerned taking family violence seriously also meant having adequate information about whether or not the court was effective in reducing offending and increasing victim safety. The future research which participants identified as necessary includes studies of offender recidivism and of the experiences of women victims involved in court processes. These two issues intertwine at the heart of the WFVC's purpose: to reduce family violence in a psycho-social context where offenders are far more likely to be men and women are more likely to be victims<sup>3</sup>. The assumption that guides the interlinking of these issues is simply that reducing recidivism will correspondingly improve victim's safety.

Information on recidivism is very difficult to provide reliably. Underreporting of offences and alienation from the criminal justice system experienced by some women, Māori and members of cultural minority groups confound measures of success of the WFVC if the measures are based only on reductions in the appearances of particular offenders, or reductions in overall charges, or convictions for family violence offences. In principle, lower charge and conviction rates might be related to local acceptance of family violence, victims' mistrust of the court or offenders' ability to control a victim's access to legal protection. In considering the success of the 2005 protocols, it would be preferable to base initial success criteria on increasing numbers of cases coming before the WFVC, increasing conviction rates and an increase in early guilty pleas. These increases are not likely to be indicative of increases in rates of offending, but of improvements in legal and court processes that are evidenced by successfully holding offenders accountable for their offending. Criteria for considering whether offending has reduced is needed to take account of victims' experiences of lessening harm, risk of harm and/or fear of harm rather than by the number of times a defendant appears in court, or is convicted. If holding offenders accountable for their actions and coercing treatment is effective in reducing violence and improving the wellbeing of families then it is *victims' experiences* that will provide best evidence of success. Study Two represents a partial assessment of how well the WFVC is meeting its aims from women victims' points of view, and provides some evidence of how the court is successful in protecting victims from harm during court proceedings. Based on this study it appears that the WFVC still faces a number of challenges in holding offenders accountable for their violence. However there have been no evaluations of offender programmes or studies of holding offenders accountable that are based on established baselines for specific family violence offences at the WFVC. These studies are necessary to obtain a more complete understanding of the court's successes in protecting victims and holding offenders accountable.

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<sup>3</sup> Participants' understandings of the gender asymmetry of family violence offences will be analysed in the discursive phase of this research programme due to be completed by Sarah McGray in February 2008.

Judicial monitoring is already successful from the point of view of participants who saw it as sending a strong message of the court's interest in rehabilitation and victims' safety. Its success in relation to coercing rehabilitation and improving victim's safety is intimately connected with the experiences of defendants who co-operate with treatment and experiences of safety within their families. Future studies to evaluate the services provided by Viviana and Man Alive from the perspective of victim safety and offender rehabilitation have been planned. These projects aim to broaden the perspectives from which the WFVC's commitment to taking violence seriously is assessed. This research should also meet court participants' identified need for information on the provision and success of intervention programmes for members of minority cultural groups.

Whether or not the WFVC meets the needs of local whānau, iwi and hapu for safety, how Māori protocols could be integrated into the court's practices, and whether that would be appropriate from the point of view of local whānau, iwi and hapu remain crucial questions for the court.

*I think one issue we haven't really addressed perhaps is how, in terms of Māori protocol, how we might usefully bring that into the court a little bit more. I am not necessarily saying we should do more than we are; we already have Tika Maranga and we have got the Māori program at Man Alive but that is something I have given some thought to. I know that there were some cases where lawyers were suggesting that we should adopt the Marae-based approach, we should involve Te Whānau Awhina who are a diversion programme we use for low end criminal offending. There may be some scope for this if it was properly set up (RRH, 470).*

To some extent these questions open up possible futures for the court. At present the WFVC protocols are consistent with principles of therapeutic justice. Future research may identify whether or not therapeutic jurisprudence is an effective intervention to reduce family violence. It could also identify the family circumstances for which it is most effective, and the kinds of needs for safety that it meets as a criminal justice intervention. The court is taking account of Te Tiriti o Waitangi in relation to some of the community services that provide victim and whānau support and offender interventions. The WFVC's potential for broadening its scope to include other models of jurisprudence, such as those based on principles of social harmony or communitarian justice is still to be realised. Such potential may serve to increase the scope of its partnership with the community and create a more inclusive collaboration towards preventing family violence within Waitakere communities.

## 7.2. Improving victim safety from the point of view of victims

### 7.2.1. Assessments and suggestions

In Study Two, women participants' experienced violence and legal interventions into their intimate relationships within the context of complex social relationships and they did not necessarily distinguish between different sectors of the criminal justice system when they made suggestions about how their safety could be improved. However, since the WFVC is unique in its collaboration with community service providers for victims and offenders their comments in relation to these two areas of intervention were specific to this court.

With regard to the services provided to enhance safety for women, participants suggested a closer relationship between the District Court and the Family Court so that matters of child custody and property settlement were not dealt with in isolation from matters of criminal

offending, and ongoing systematic abuse. A closer relationship between the two courts might also facilitate a more effective implementation of Protection Orders for victims. Advocate key informants suggested that this would be one way to relieve the financial pressures experienced by victims and their families when offenders are referred to self-funded intervention programmes.

Women participants also suggested that court processes needed to be modified so that they have easier access to support without the necessity for them to face their abusers in court. They wanted services for victims to be more extensive, accessible and ongoing, and for the justice sector to pay more attention to the needs of victims generally. Advocate key informants drew attention to the need for culturally appropriate victim services for immigrant women. Māori participants drew attention to the need for access to culturally specific ways of managing and healing the effects of violence on themselves and their children.

*I think the victims need a bigger support system, umm, I mean, they are the victims. It just seems like the criminals get more attention than the victims and they get more support and you know. Like the victims are the ones who are left behind and have to deal with everything and all the mental issues and everything, and if you've got no one then it's really hard to try and sort it out, through, your own self and you don't have all the tools that you need to get the result that you want (WP2, 422-426).*

All participants valued specialised understandings of the dynamics of violence within an ongoing intimate relationship. Specialised services are essential to effective interventions that enhance women's safety both within the processes of legal intervention and beyond. One critically important consequence of specialisation is that it enables the justice sector to more consistently take account of the way in which the offender's control over his victim affects their ability to cooperate with legal interventions. Women participants specifically requested that a violent partner's control over his victim be considered when agents of the justice sector interact with them. They were aware of the advantages that specialist services available through the CVS had offered them in terms of sharing the burden of responsibility for protecting themselves and their families from his violence.

*[Sexual assault is] just another method of control, getting what they want. I think if somebody's got that much control over you, then how can the court expect you to speak about it, let alone tell the whole truth and be confident in doing that when this person is controlling your every thought and movement? It doesn't make any sense. I don't think they understand the level of control that somebody can have over your mind, yeah (WP1, 805-808; messages to the justice sector).*

In relation to small, but important details, women participants told us of instances where police and victim advisors had communicated with them through letters and pamphlets. Letters require that victims take responsibility for hiding the communication from the partners to ensure that they do not provoke an angry, retaliatory response. The consequences of communicating by mail can be serious if it means that women are exposed to greater risk or are less likely to engage with services that could enhance their safety. Effective communication flow between victims and the agencies collaborating to maximise victim protection requires taking account of the specific needs of victims for safe communication.

In relation to offender services, women participants suggested that their partner's cultural needs should be taken into account and culturally appropriate alternative interventions should be provided. In some cases the lack of participation from men of their own cultural groups

meant that the offenders were more likely to regard the interventions as insignificant and unwarranted.

*For Māori I think maybe looking at what a Marae can offer the male, the offender. You know 'cause I think that there's things in their life, their past, why they're doing what they do you know, even to learn te reo to me, as a sentence, is better than putting them in prison (WP3, 596-598; messages to the justice sector).*

Women participants suggested that the WFVC and the justice sector more generally needed to be harsher with offenders in the sense that they need to be monitored more closely and the seriousness with which family violence offences were treated needed to be demonstrated consistently. While offenders remain unmotivated to change, problems in the processes of holding them accountable for change continue. Within the context of the WFVC's holistic approach to therapeutic jurisprudence the challenges of these problems intersect with issues of information flow and co-ordination of collaborative responses to intimate and family violence.

From the women participants' point of view the whole of the justice sector needs to be more supportive of victims. This support extends to supporting the services that were offered by CVS advocates and of the attempts that the WFVC was making to enhance victim safety through a coordinated interagency response to intimate violence.

*The whole system needs to change to be more supportive of the actual victims, because it isn't really, organisations like [Community Victim Services] and even the court people, they're doing everything in their power to help, if the justice system isn't going to back it all up, they are fighting a losing battle (WP6, 650-652; messages to the justice sector).*

The critical importance of community responses to intimate violence was evidenced by the women participants' advice to others to find support and encouragement from those who had taken a stand against violence in their relationships. Having taken this stand themselves they were well positioned to apprehend the vital necessity of collaborative and co-ordinated responses to ongoing patterns of violence and abuse against women in intimate relationships.

### 7.2.2. The researchers' views: How the WFVC enhances victim safety

As a consequence of our analysis of women victims' and advocates' accounts of their experiences in the WFVC, our specialisation in the research literature and the dynamics of family violence, and our involvement in collaborative research with those who work within the court we have arrived at a partial understanding of how the WFVC works to enhance victim protection during interventions by the criminal justice system. From this vantage point the WFVC is able to share some of the burdens of responsibility that women victims experience when their partners are arrested for violent offences against them. The arrest of an intimate partner for a violent offence constitutes a crisis within an ongoing pattern of controlling violence and abuse. Familial, community and social expectations leave women victims carrying burdens of responsibility for their own victimisation, their safety and the protection of their children. In this situation, the WFVC involves collaborative interagency responses that are able to share a few of the burdens of these responsibilities at times when victims are experiencing traumatic re-offending. CVS advocates play a vital role in working with women victims to provide reliable information on their safety to the court. They bring specialist knowledge of the psycho-social effects of ongoing intimate violence into the WFVC's decision making process. In meeting the goal of protecting victims CVS advocates are at the heart of the responses that enhance their safety. Building stronger, better resourced and more extensive coordinated

responses provides the best opportunities for sharing the victims' burdens more widely. The responsibility for stopping the violence remains with the perpetrators and within social relationships that continue to support violence in our homes.

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## Appendix A: Protocols Relating to Family Violence Court at Waitakere District Court.

### Waitakere District Court Family Violence Court Protocol - June 2005

#### AIMS

1. To overcome systemic delays in Court process
2. To minimise damage to families by delay
3. To concentrate specialist services within the Court Process
4. To protect the victims of family violence consistent with the rights of defendants
5. To promote a holistic approach in the Court response to family violence
6. To hold offenders accountable for their actions

#### STRUCTURE

Each week, on Wednesdays, a "Family Violence Court" (FVC) will be held, to the exclusion of any other criminal work, to deal with all charges where family violence is involved. Apart from custody arrests, all summonses and remands will be to a Wednesday. The FVC will deal with pleas, sentence indications, sentencing, and (where time allows) defended hearings. Other defended hearings will be allocated early trial dates on ordinary defended days, or hearing days rostered for the purpose.

As far as possible, sentencing process will be conducted on a same day basis.

#### PROCESS

- A. On first appearance
  1. Except when a defendant indicates an intention to plead guilty at first call, the Registrar will adjourn the matter on standard bail conditions to a FVC in the following week; or by consent in custody to the nearest FVC. Where bail is sought and opposed, the matter will go before a Judge in the usual way.
  2. Duty Solicitors are to facilitate legal aid applications, and assignments are, where possible, to be made that day.
  3. Pleas of guilty at first appearance are encouraged, and attract the maximum sentencing credit. Not guilty pleas will not be entered (to discourage the belief that not guilty pleas are necessary to get discovery or time to take instructions).

4. Police basic disclosure packs are to be available promptly for all defendants, wherever possible at first call from the prosecutor.
5. The complainant's views about bail are to be conveyed to the Court either by a Victim Impact Statement or by memorandum from Community Victim Services or the Victim Advisers (Victims Rights Act s30). For the rules as to access by defendants and counsel to Victim Impact Statements, and their use and return, see Victims Rights Act ss21-27.

B. Between first appearance and next FVC

1. Counsel and the officer in charge of the case are expected to discuss caption summary and plea.
2. Police to obtain the views of the victim (from Community Victim Services or the Victim Advisers) before the next FVC.
3. A plea is expected at the second appearance, although a further remand for in-custody offenders may be appropriate.
4. Any adjournments for plea beyond FVC only with Court approval.

Note: In this Court objection will be taken to contact between complainants and counsel, whether by counsel approaching complainants or vice versa, except through and in the presence of Community Victim Services or the Victim Advisor, who must be given reasonable notice of such intentions.

C. Family Violence Court day (FVC)

1. Sentence indications may be sought, and discussion about best process to follow for the family concerned may be entered into where appropriate. Not guilty pleas before disclosure, or before proper consideration of the charges, will be resisted. Defendants may be asked to confirm not guilty pleas entered through counsel.

*On guilty plea*

2. Stand-down reports to consider sentencing options, including the defendant undertaking an anger management, drug/alcohol or other programme, may be sought, to assist with same day sentencing.
3. The up to date views of the victim must be put to the Court, by way of Victim Impact Statement or through Community Victim Services or the Victim Advisers.

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4. Same day sentencing unless:
  - (i) further remand for full pre-sentence report
  - (ii) the defendant is to voluntarily undertake a programme before sentence is passed
  - (iii) the Court is considering a discharge without conviction after steps have been taken to address appropriately the family issues
5. Any variation to the charges laid, or amendments to police caption sheet, will be accepted only for principled reasons which are openly canvassed and recorded. Wherever possible victim input will be required, particularly where significant changes to the caption sheet are proposed.
6. Discharges without conviction will be limited to the rare circumstances envisaged by ss.106 & 107 of the Sentencing Act.

### *On a not guilty plea*

7. There will be no status hearing. The charge(s) will be adjourned to the earliest available date for hearing, having particular regard to the situation of a defendant in custody.
8. If a defendant wishes to change his/her plea before the hearing date, the defendant or counsel should arrange for the case to be called in the next FVC. This is consistent with the desirability of helping families to repair as soon as possible and to earn any sentencing concession in line with national sentencing policy for pleas of guilty.
9. Changes of plea on the defended hearing date, while more favourable for a defendant than conviction following defended hearing, will not earn the same sentencing credits given for early plea.
10. Counsel and prosecutors are expected to communicate in good time before defended hearings to resolve any issue which might upset the matter proceeding on that day.
11. Police and defence counsel are to complete the Family Violence Not Guilty Checklist (copy attached) on the day a not guilty plea is entered (that is at FVC).

### D. Available sentences

Parties should be aware that all the available sentences in the Sentencing Act may of course be applied but special consideration will be given under this pilot to the following outcomes, singularly or in combination, depending on the fact situation established, rather than necessarily the particular charge laid:

- (a) Imprisonment

- (b) Imprisonment with special release conditions to undertake a programme, extending if appropriate beyond sentence expiry date.
- (c) Community work and supervision
- (d) Community work
- (e) Supervision with special conditions involving anger management and/or drug/alcohol programmes
- (f) Section 112 Sentencing Act non-association order
- (g) Conviction and discharge
- (h) Convicted and ordered to come up for sentence if called upon
- (i) Section 106 discharge without conviction, in truly minor cases particularly where voluntary anger management is completed
- (j) In appropriate cases resolution may include the making of a protection order under the Domestic Violence Act, and if necessary final disposition delayed pending completion of the attendant programmes

E. Bail issues

Standard conditions of bail will be imposed unless other conditions are agreed following input from the police and/or Community Victim Services or Victim Advisers. Likewise conditions of any bail variation should involve input on behalf of victims.

F. Involvement of Community Victim Services

Community Victim Services is a term incorporating the various community organisations involved in victim support in family violence cases in Waitakere. Their involvement in the Family Violence Court is in accordance with the Protocol for Family Violence Victim Services at Waitakere District Court that was developed for this purpose. Their wish to speak should, when necessary, be made known to the presiding Judge by the prosecutor.

<p>This practice proceeds on the expectation that there will be common agreement between all interested groups, including counsel for defendants, with the philosophy that healing of the family is a paramount consideration and that it is damaging to proceed on a not guilty basis except in cases where there is a clear denial.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

June 2005

## Protocol for Family Violence Victim Services at Waitakere District Court - October 2004

### Principles

1. To provide the best possible level of service to victims of family violence, in accordance with the Victims Rights Act 2002.
2. To recognise the long-standing partnership between the Waitakere Court and Community Victim Services.
3. To recognise the statutory obligations of Court staff and the Police under the Victims Rights Act.
4. To avoid confusion among victims in relation to the available support and advisory services.
5. To harness the experience and commitment of Community Victim Services in Waitakere.
6. To reinstate the high level of co-operation and mutual recognition among all victim services at Waitakere.
7. To support the effective operation of the Waitakere Family Violence Court in accordance with its protocol.
8. To re-establish formal understandings, following the termination of the 1999 Service Level Agreement between the Court and WAVES.

### Resources and Realities

1. The Court must operate within the parameters of the Victims Rights Act 2002.
2. Procedures should reflect the reality of information about cases routinely being disclosed to the public in open Court.
3. The POL 400 Family Violence forms completed by the Police in every family violence case are made available routinely to the three main Community Victim Services namely Victim Support, Viviana and Tika Maranga (collectively referred to hereafter as CVS), in accordance with the Memoranda of Understanding between the Police and CVS.
4. As a result of their receiving the POL 400 forms CVS will be aware of all family violence cases and victims which result in a Court prosecution.

## Procedures

1. CVS will continue their call-out service to victims
2. The first letter sent out to victims by the Victim Advisor (VA) will outline the services available through the VA, and include a leaflet outlining the services available through CVS
3. In their first contact with victims CVS will outline their services as well as the services available through the VA.
4. All CVS groups, and the VAs, will follow up contact from victims, either by telephone or in person, as requested by victims.
5. Offenders bailed by the Deputy Registrar at first appearance will receive standard bail conditions i.e. non-association with complainant and residential condition, except at the express request of the victim conveyed through the VA or CVS.
6. A VA will not be present in the Family Violence Court (FVC), but will be available to the Court on other days. CVS will be present throughout FVC days. Both VAs and CVS will be available to appear in Court if or when a Police Prosecutor or Judge requires attendance.
7. The VAs and CVS will liaise to try and ensure there is no unnecessary duplication. A memoranda will be provided as early as possible to the Judge, Police, Defence Counsel and victims.
8. If a victim contacts a VA saying they need support the VA will refer the victim to CVS for support. The VAs will continue to provide information and advice to victims at Court when requested or approached.
9. The Police and CVS will liaise over appropriate and relevant bail conditions for Police bail hearings and first Court appearances. Where appropriate memoranda will be submitted to the Court.
10. At the time of filing an information sheet Police and Court staff will identify Family Violence cases by using a red "FV" stamp.
11. On all Court days all files stamped "FV" will be placed in a tray by the Court taker after the case is heard, to be accessed by CVS in Court during adjournments.
12. A copy of the Court list will be made available to CVS on request at the Criminal Court counter when they sign for security cards etc.
13. All VAs and CVS staff will wear identifying name badges at Court.
14. Court files are not to be removed from Court unless Criminal Manager gives permission.
15. Court files removed from the courtroom must be returned promptly to ensure data entry and security of the court record is maintained.

## Responding Together

16. In the layout of the FVC courtroom there will a place for CVS to be positioned in the area designated for Community Groups/Probation/Collections/Media. When necessary CVS can be seated beside the prosecutor to ensure the victims views are conveyed to the Court.
17. A lockable room in the Court building will be equipped with a desk and chair and be made available for CVS during business hours. CVS will, together with the VAs, also have the use of the victim suite.
18. A phone will be provided for CVS, together with a logbook for recording cellphone usage on a monthly basis. The phone will be used for victim related matters stemming from a Court appearance. The Court administration will monitor the logbook on a monthly basis to ensure costs to the business are relative.
19. Access to photocopying facilities will be made available in the Criminal Office to CVS for court business related matters only, provided that CVS nominate two designated staff and submit the names to the Criminal Caseflow Manager. In the interest of security and safety of Court staff, the Criminal team should be familiar with CVS designated staff.
20. CVS may attend Court on non-FVC days, to support family violence victims when appropriate. On those days the same arrangements as set out above will apply.
21. CVS will make their services available to all family violence victims, and the VAs will encourage victims to make use of those services during and after the Court process.
22. All those present in Court must observe standard Court protocols and procedures, and minimise movement around the body of the Court while the Court is sitting.
23. This protocol will commence in August 2005 and be reviewed in December 2005.

## **Appendix B: Information sheet and consent form – Study One (An evaluation of the WFVC protocols: Preliminary report)**

[Massey Letterhead]

### **An Evaluation of the Waitakere Family Violence Court Protocols**

#### ***Information Sheet***

##### Researcher's Introduction

My name is Sarah McGray and I would like to invite you to participate in my research project. I will be examining the effectiveness of the Waitakere Family Violence Court to facilitate legal intervention into family violence. I am conducting the research as part of my Master of Arts degree through Massey University. The contact details for me and for my research supervisor are as follows. Please feel free to contact either of us if you have any questions or concerns regarding the research.

##### Researcher:

Sarah McGray, C/- School of Psychology, Massey University, Palmerston North  
Mobile phone: 021 801990  
e-mail: S.Mcgray@massey.ac.nz

##### Supervisor:

Dr Leigh Coombes, School of Psychology, Massey University, Palmerston North  
Phone: (06) 350 5799 ext 2058  
e-mail: L.Coombes@massey.ac.nz

Before deciding whether you wish to be involved, please read this letter carefully to ensure you fully understand the nature of the research project and your rights should you choose to participate.

##### What is this study about?

The aim of the study is to explore an aspect of how the Waitakere Family Violence Court works. The project will be part of a larger, ongoing evaluation of the Waitakere Family Violence Court. The intention is to understand the workings of the organisation and the issues that arise from the point of view of the staff of the court. To participate in this research, you need to be 18 or over and involved with the Waitakere Family Violence Court in a professional capacity.

##### What would you have to do?

If you agree to participate you would need to be available for an interview and/or focus group to share your experiences of the processes in place at the Waitakere Family Violence Court. It is anticipated that there will be three focus groups of six people each. The focus groups and

## Responding Together

interviews will use the same set of questions. These questions will be open ended and mainly concerned with your experiences of the processes of the Family Violence Court.

The interviews and focus groups will be audio- and video-taped by the researcher. Pseudonyms will be used so that no identifying information appears on the transcripts. Audio and video tapes will be destroyed after transcription. At the completion of the research each participant will be sent a summary of the research findings. Changes to transcripts of the focus groups cannot be made but additional comments can be added. Transcripts from interviews can be changed to clarify or remove comments and additional comments can be added.

How much time will be involved?

Each interview will take approximately 1 hour and focus groups will take up to 2 hours. Interviews and focus groups will be conducted privately at the Waitakere Family Court or a place convenient to the participants in the Waitakere city area. Interviews and focus groups will be at a time that is convenient and safe for the participant and researcher.

What can you expect?

If you choose to take part in the research, you have the right to:

- Withdraw from the study up until 1 month after the interview;
- Decline to answer any particular question;
- Ask for the audio tape to be turned off at any time during the interview;
- Leave the focus group at anytime without explanation;
- Ask any questions about the study at any time during participation;
- Provide information on the understanding that your name will not be used;
- Be given a summary of the findings of the study once it has been completed.

Thank you for reading this information sheet.

This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 06/04. If you have any concerns about the conduct of this research, please contact Dr Karl Pajo, Chair, Massey University Human Ethics Committee: Southern B, telephone 06 350 5799 x 2383, email [humanethicsouthb@massey.ac.nz](mailto:humanethicsouthb@massey.ac.nz)

*Yes, I would like Sarah McGray or Leigh Coombes to contact me regarding my participation in the research or to answer some questions regarding the research. I can be contacted in the following way:*

Name

Telephone

Email

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Please note: supplying the researcher with the above details does not in any way oblige you to participate in this research.

## ***An Evaluation of the Waitakere Family Violence Court Protocols***

### **PARTICIPANT CONSENT FORM – INTERVIEWS**

**This consent form will be held for a period of five (5) years**

I have read the Information Sheet for this study and have had the details of the study explained to me. My questions about the research have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I also know that I am free to refuse to answer any questions, can withdraw any information I supply at any time, and can withdraw from the study at any stage.

I agree to provide information to the researcher on the understanding that it is completely confidential and that this information I supply will not be used for any purpose other than this research. I also agree to the researchers' audio-taping the interview, and know that I have the right to ask for it to be turned off at any time during the interview. I am also aware that I may have my tape returned to me at the conclusion of the research.

I understand that the researchers may use brief direct quotations from the interview(s) in their reports of the study provided these do not identify me in any way.

I agree to participate in this study under the conditions set out in the Information Sheet.

**Signature:**

**Date:**

**Full Name - printed**

## ***An Evaluation of the Waitakere Family Violence Court Protocols***

### **PARTICIPANT CONSENT FORM – FOCUS GROUPS**

**This consent form will be held for a period of five (5) years**

I have read the Information Sheet for this study and have had the details of the study explained to me. My questions about the research have been answered to my satisfaction, and I understand that I may ask further questions at any time. I also know that I am free to refuse to answer any questions and can withdraw from the study at any stage.

I agree to provide information to the researcher on the understanding that it is completely confidential and that this information I supply will not be used for any purpose other than this research. I also agree to the researchers video-taping and audio-taping the focus group, and know that I have the right to leave the focus group at anytime without explanation.

I understand that the researchers may use brief direct quotations from the focus group(s) in their reports of the study provided these do not identify me in any way. I also agree not to disclose anything discussed in the focus group(s).

I agree to participate in this study under the conditions set out in the Information Sheet.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Full Name - printed** \_\_\_\_\_

## Appendix C: Study One - Archival Document List

Department of Courts (Personal communication to Judge Mather, 4<sup>th</sup> July 2001)

Johnson, R. (Personal communication to Court Manager, 21<sup>st</sup> February 2001)

Service Level Agreement (1999) Between: Court Manager and Staff of Waitakere District Court and WAVES.

Viviana (Personal communication, January 2006)

Waitakere Family Violence Focus Group. (2001). Family Violence Court Pilot.

Waitakere Family Violence Focus Group. (2005). Protocols Relating to Family Violence Court at Waitakere District Court.

Waitakere Domestic Violence Project. (1993). *Waitakere violence programme newsletter*.

WAVES. (1999). *An interagency approach to family violence in West Auckland*. Waitakere.

WAVES minutes 2001 – 2006

- 23 March 2001
- 27 March 2001
- 11 April 2001
- 26 April 2001
- 10 May 2001
- 18 May 2001
- 30 May 2001
- 21 August 2001
- 12 November 2001
- 16 January 2003
- 23 January 2003
- 17 December 2004
- 4 February 2005
- 28 March 2006

WAVES letter 3<sup>rd</sup> December 2004. RE: Family Violence Focus Group

WAVES Victim Advocate Job Description

WAVES Victim Advocate Information Sheet

## Appendix D: Interview Schedules for women victim participants and advocate key informant interviews

### *Interview Schedule – Women victim participants*

The following questions will be covered in the interview, but participants will be invited to tell their own stories of the events and how they have coped with them in their own way.

The interview is structured around a starter and prompt series of questions. Prompts are only used to ensure that all the issues of interest to the researchers are raised. Interviewers identify appropriate responses within the participant's story as it is told from their own point of view and prompts are not used if the relevant information has been provided spontaneously.

#### Starter

*Thank you for participating in this research. We are most interested in hearing your story of what happened to you when you were involved with the Waitakere Family Violence Court in relation to [offender's name] starting from the very beginning.*

#### Background Prompts

These background questions will invite participants to expand on the charges and talk to the researcher about the whole background to their family member's arrest and appearance in WFVC. This includes how evidence was obtained, who talked with them about the WFVC and what would happen on first appearance, who supported them and how they found out what would happen. Questions that ask about the reaction of family and friends will raise issues related to support and safety prior to the first WFVC appearance.

- What happened first?
- What was/were the charge/s laid against your [family member]?
- Did anyone explain these charges to you?
- How was evidence collected?
- Were you involved in interviews with the police? How did you feel during these interviews?
- What did you know about the WFVC and how it worked at the time? Who provided you with information? What were you told? How did you feel about this? Did you need more information?
- What was the reaction of family and friends?
- Have relationships with family/friends helped or made things more difficult?

#### Processes Prompts

These questions invite the participant to talk about the services provided to them throughout the WFVC process. In the WFVC these services are provided, differently, by Community Victim Services and Victims Advisors. These questions will also invite the participant to talk about how offender treatment programmes affected their wellbeing.

- What was it like to give your victim statement/memorandum?

## Responding Together

- How did you feel when you were giving your statement? Who was involved? Did anyone from your family or any of your friends support you during this process?
- Did your [family member] get bail?
  - What were the conditions of the bail? How did you feel about these conditions? Did they make it easier or more difficult for you? How? How did your [family member] and others in your family react to these conditions?
- Did you come to WFVC when [your family member] was appearing? How many times did your [family member] attend WFVC? How many times did you attend? What happened for you during these appearances? [If you did not attend, why not? Did someone stay in touch with you? Who told you what happened?]
- Did anyone explain your [family member's] sentence to you?
- How were things between your [family member] and you while [he/she] was attending the [name of] programme?
- Was any support offered to you to help you understand what the [name of] programme was about and how you might be affected by your [family member's] attending the programme?
  - Who was involved in supporting you?
- What was the most distressing thing that happened to you during your experience with the WFVC processes?
  - How did you feel at the time? [angry? afraid? scared? unsafe? ashamed?]
- What was the most helpful thing that happened during this time?
  - Who helped and what did they help with?
- How did you feel at the time? [safer? hopeful? taken seriously?]
- Can you think of anything that would have made the process easier?

### Outcomes Prompts

These questions invite the participants to talk to the researcher about their retrospective and global reflections on the whole process of being involved with the WFVC. They also affirm the value of the participants' contributions to providing feedback to the WFVC and the Ministry through the research process.

- What would you most like us to tell people at the WFVC?
- What would you most like us to tell the people who manage all the Courts?
- What advice would you give other women/men in a situation like yours?
- Do you think anything that's happened through the WFVC process has increased your safety?
- Has your health been affected?
- How has life changed for you?

### ***Interview Schedule – Advocate key informant interviews***

The following questions will be covered in the interview, but participants will be invited to provide their own accounts and raise issues of concern to them in their own way.

The interview is structured around a starter and prompt series of questions. Prompts are only used to ensure that all the issues of interest to the researchers are raised. Interviewers identify appropriate responses within the key informant's account as it is told from their own point of view and prompts are not used if the relevant information has been provided spontaneously.

#### **Starter**

*Thank you for participating in this research. We are most interested in hearing about your experience of working with victims involved in the Waitakere Family Violence Court.*

#### **Background**

*Can you tell me about how you came to be working with victims in the WFVC, and how long you have been involved in victim support and advocacy work?*

- How did you come to be involved with WFVC work? Have you ever been involved in providing services to victims while their family members have been before other district Courts?
- When did you start working with WFVC victims?
- In what capacity have you been involved in advocacy and support work over this time?

#### **Victim safety**

*I am most interested to hear about what you have learnt about victim safety through your involvement with WFVC victims.*

- What is the most dangerous time for victims during the WFVC process? What kinds of dangers do victims face during this time?
- Are there any aspects of the WFVC process that put victims at risk of further harm in your experience? What kinds of harms might they experience?
- Are there any aspects of the WFVC process that enhance victims' safety in your experience?
- How important is the initial police response to victims' safety during the WFVC process?
- How important is it for victims to be involved in the WFVC process? What is the safest way for them to be involved?
- How important is it for victims to attend hearings of the WFVC?
- What differences do you notice in terms of safety between defended hearings and situations where the offender pleads guilty?
- What difference do you notice in terms of safety between the different sentences that are applied in the WFVC?
- How does the involvement of community service agencies affect victims' safety?
- What are the most important aspects of community and WFVC collaboration for improving victim safety?
- Based on your experience, do you think that victim's trust the WFVC process? Are victims more likely to report repeat offences after being involved with the WFVC process? Are you aware of victims who have refused to report subsequent offences because of their previous experiences with the WFVC? With other district Court processes?

## Responding Together

- If you had the opportunity to initiate one change that would improve victim safety what would that be?

### Culturally appropriate responses to family violence

*I would like to know something about what you have learnt about culturally appropriate responses to family violence through your involvement with WFVC victims.*

- In your view how well does the WFVC take account of cultural diversity among victims?
- Are some victims more likely to have their safety compromised because of their cultural affiliations or ethnic identity? Who? Why? What kinds of compromises?
- Are there aspects of WFVC process that are more likely to result in victim's with particular cultural affiliations or ethnic identities trusting the WFVC?
- What kinds of services could the WFVC provide that might improve safety for Māori women? Pacific women? Asian women? African women? Other immigrant women?
- What kinds of issues affect the provision of culturally appropriate victim services to the WFVC?

Is there anything you would like to add that you think is important for us to take into account?

## Appendix E: Information Sheets and Consent Forms for women victim participants and advocate key informants

[Massey Letterhead]

### Accounting for Safety: Victims' experiences of the Waitakere Family Violence Court

#### Information Sheet (Women Victim Participants)

Dear

We are sending this information to you through a contact person at Viviana because we would like to invite you to take part in some research we are doing to see how well the Waitakere Family Violence Court is working.

We would like to assure you at this stage that we do not have your contact details and will not be able to contact you directly unless you give us your details. If you do give us your contact details we will not tell anyone else that you have decided to participate. If you would like your contact person from Viviana or Tika Maranga to know that you are taking part then you may choose to tell them, but we will not be giving them this information.

Before deciding whether you wish to be involved in the research, please read this letter carefully to ensure you fully understand the nature of the research project and your rights should you choose to participate

Please feel free to contact either of us if you have any questions or concerns regarding the research.

Researchers:

Mandy Morgan, School of Psychology, Massey University, Palmerston North

Phone: (06) 356 9099 ext 2063

e-mail: [c.a.morgan@massey.ac.nz](mailto:c.a.morgan@massey.ac.nz)

Leigh Coombes, School of Psychology, Massey University, Palmerston North

Phone: (06) 350 5799 ext 2058

e-mail: [L.Coombes@massey.ac.nz](mailto:L.Coombes@massey.ac.nz)

**What is this study about?**

At the Waitakere District Court a special court runs on Wednesdays that only deals with cases identified as Family Violence. The Waitakere Family Violence Court (WFVC) is unique in offering victim support through victim community agencies.

This research aims to evaluate whether the protocols of the Waitakere Family Violence Court are enhancing safety for women who have been victimised from their point of view. In particular, the focus of this research is to identify positive and negative safety outcomes for you and your families under the Court's monitoring system. We are interested whether the Court is doing its best to take your safety into account.

To participate in this research, you need to be 18 or over and for it to have been at least two months since you had any involvement with the Waitakere Family Violence Court.

**What would you have to do?**

If you agree to participate you would need to be available for an interview to share your experiences of Waitakere Family Violence Court. We are especially interested in talking to you about your safety and the degree to which you felt safer (or not) as a result of involvement with WFVC. We expect the interview will last between 1 to 2 hours. We will have some open ended questions we'd like to ask, but we are mainly concerned that you have an opportunity to tell us about your experiences of the processes of the Family Violence Court. Interviews will be conducted privately in a place that is convenient and safe for you. If you decide to take part in an interview you can discuss your needs for safety and privacy with a contact person from Viviana or Tika Maranga, or with one of us.

The interviews will be audio-taped by the interviewer if you agree. The audio tape will be transcribed word for word so that we can analyse the information that you give us. We will not use your real name or the names of any of your family in the transcripts so that it is harder for you to be identified. The transcriber will also sign a confidentiality agreement to protect your privacy. Audio-tapes will be destroyed after transcription. We will also send you a transcript of your interview so that you can check it and make any changes you would like to make. In the final report we will not use any identifying information. We will do everything we can to ensure that you can speak openly with us, in confidence. However, it is impossible for us to guarantee that no-one will find out that you took part in this research, so please take account of this before you decide whether or not you would like to participate.

At the completion of the research everyone who takes part will be sent a summary of the research findings.

**What can you expect?**

If you choose to take part in the research, you have the right to:

- Withdraw from the study up until 1 month after the interview;
- Decline to answer any particular question;
- Ask for the audio tape to be turned off at any time during the interview;
- Ask any questions about the study at any time during participation;
- Provide information on the understanding that your name will not be used;
- Be given a summary of the findings of the study once it has been completed.

Thank you for reading this information sheet.

*This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 07/18. If you have any concerns about the conduct of this research, please contact Dr Karl Pajo, Chair, Massey University Human Ethics Committee: Southern B, telephone 04 801 5799 x 6929, email [humanethicsouthb@massey.ac.nz](mailto:humanethicsouthb@massey.ac.nz).*

## Accounting for Safety: Victims' experiences of the Waitakere Family Violence Court

### Information Sheet (Advocate key informant participants)

Our names are Mandy Morgan and Leigh Coombes and we would like to invite you to participate in our research project. We have been contracted by the Ministry of Justice to evaluate the Waitakere Family Violence Court services from the point of view of victims. We will be interviewing 15 – 20 women victims who have been involved in the court. However the scope of the proposed project is not sufficient for safe sampling techniques that will produce robust findings on victims' experiences of safety across *all* Court processes, so we would like to also obtain insights into a variety of these experiences through interviews with key informants who have worked with victims over a number of years. To obtain these insights we would like to interview two or three key informants from different non-government organisations working with the Court.

#### Researchers:

Mandy Morgan, School of Psychology, Massey University, Palmerston North  
Phone: (06) 356 9099 ext 2063  
e-mail: [c.a.morgan@massey.ac.nz](mailto:c.a.morgan@massey.ac.nz)

Leigh Coombes, School of Psychology, Massey University, Palmerston North  
Phone: (06) 350 5799 ext 2058  
e-mail: [L.Coombes@massey.ac.nz](mailto:L.Coombes@massey.ac.nz)

Before deciding whether you wish to be involved in the research, please read this letter carefully to ensure you fully understand the nature of the research project and your rights should you choose to participate. Please feel free to contact either of us if you have any questions or concerns regarding the research.

#### What is this study about?

At the Waitakere District Court a special court runs on Wednesdays that only deals with cases identified as Family Violence. The Waitakere Family Violence Court (WFVC) is also unique in offering victim support through victim community agencies.

This research aims to evaluate whether the protocols of the Waitakere Family Violence Court are enhancing safety for victims from the point of view of victims. In particular, the focus of this research is to identify positive and negative safety outcomes for victims and their families under the Court's monitoring system. We are interested whether the Court is doing its best to take victim safety into account.

To participate in this research, you need to be 18 or over; be working for a non-government organisation working with the Court; and to have worked with victims for at least 5 years.

### What would you have to do?

If you agree to participate you would need to be available for an interview to share your experiences of Waitakere Family Violence Court. We are especially interested in talking to you about victim safety and the degree to which involvement with WFVC enhances or hinders victim safety. We expect the interview will last between 1 to 2 hours. We will have some open ended questions we'd like to ask, but we are mainly concerned that you have an opportunity to tell us about your experiences of the processes of the Family Violence Court. Interviews will be conducted privately in a place that is convenient and safe for you.

The interviews will be audio-taped by the interviewer if you agree. We will not use your real name or the names of any of your clients so that no identifying information appears on the transcripts. Audio-tapes will be destroyed after transcription. We will also send you a transcript of your interview so that you can check it and make any changes you would like to make. We will do everything we can to ensure that you can speak openly with us, in confidence. However, it is impossible for us to guarantee that no-one will find out that you took part in this research, so please take account of this before you decide whether or not you would like to participate.

At the completion of the research everyone who takes part will be sent a summary of the research findings.

### What can you expect?

If you choose to take part in the research, you have the right to:

- Withdraw from the study up until 1 month after the interview;
- Decline to answer any particular question;
- Ask for the audio tape to be turned off at any time during the interview;
- Ask any questions about the study at any time during participation;
- Provide information on the understanding that your name will not be used;
- Be given a summary of the findings of the study once it has been completed.

Thank you for reading this information sheet.

*This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 07/18. If you have any concerns about the conduct of this research, please contact Dr Karl Pajo, Chair, Massey University Human Ethics Committee: Southern B, telephone 04 801 5799 x 6929, email [humanethicsouthb@massey.ac.nz](mailto:humanethicsouthb@massey.ac.nz).*

## ACCOUNTING FOR SAFETY: VICTIMS' EXPERIENCES OF THE WAITAKERE FAMILY VIOLENCE COURT

### Participant Consent Form – Interviews

This consent form will be held for a period of five (5) years

I have read the Information Sheet for this study and have had the details of the study explained to me. My questions about the research have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I also know that I am free to refuse to answer any questions, can withdraw any information I supply at any time, and can withdraw from the study at any time, up to 1 month after the interview.

I agree to provide information to the researcher on the understanding that it is confidential and that this information I supply will not be used for any purpose other than this research. I understand that the researchers will do all that they can to ensure my privacy but it is impossible for them to guarantee that no-one will find out that I took part in this research. I also agree to the researchers' audio-taping the interview, and know that I have the right to ask for it to be turned off at any time during the interview. I am also aware that my tape will be destroyed after it has been transcribed.

I understand that the researchers may use brief direct quotations from the interview(s) in their reports of the study provided these do not identify me in any way.

I agree to participate in this study under the conditions set out in the Information Sheet.

Signature:

Date:

Full Name - printed