

Budget sensitive

In confidence

Office of the Minister of Justice

Chair

Cabinet Social Policy Committee

REFORM OF FAMILY VIOLENCE LAW

Paper One: Context and supporting integrated responses

Proposal

1. This paper is the first of three papers prepared for Cabinet, seeking agreement to wide-ranging reform of the family violence legislative framework, with the intention of reducing family violence. The paper is presented in two parts:
 - 1.1. Part A - provides the context for the proposed reform of legislation, and a cost-benefit analysis of the total package, and
 - 1.2. Part B - seeks Cabinet agreement to a set of initiatives designed to contribute to a better coordinated and responsive family violence system, and sets out the details of the financial implications of the package of proposals (incorporating proposals made in the two companion papers).
2. Papers two and three deal with civil and criminal responses to family violence respectively.

Executive summary

The case for change

3. Family violence has a devastating impact on families and communities. The effects of violence are cumulative and have a profound impact over time and across generations.
4. New Zealand's rate of family violence is horrific. Police attend an average of 280 family violence incidents per day and this is only the tip of the iceberg - 80 per cent of incidents are unreported. We know from overseas research that some victims suffer over 50 incidents of domestic violence before getting the help they need.
5. Children are present at two-thirds of all family violence incidents attended by Police. This has far-reaching impacts. We know that, in New Zealand, young people exposed to family violence are twice as likely to be victims of sexual violence and four times more likely to commit sexual violence against a partner.

6. The impacts are broader than those felt by the children, their families or any future victims. Children subjected to family violence are at high risk of serious, potentially life-long, problems with physical and mental health, poorer educational and employment outcomes, drug and alcohol abuse and homelessness. They are three times more likely to attempt suicide, and 57 percent leave school without a qualification. Furthermore studies in the United States have found that disruptive classmates (whose behaviour is due to family violence) have significant consequences for their peers' educational achievement and earnings into adulthood.
7. Early intervention and prevention is essential if we are to break these patterns of behaviour and reduce the harm and cost inflicted on this generation and those that follow, on those who suffer the violence and wider New Zealand society.
8. We also know that family violence is cyclical with significant re-victimisation and high levels of recidivism. One percent of adults experience 61 percent of violent interpersonal offences by an intimate partner. Therefore more effective intervention in these concentrated pockets of victimisation and offending is also the best form of prevention of further violence.

The time is right for reform

9. Two years ago, in July 2014, the Prime Minister announced a package of initiatives, aimed at responding to family violence which included the reform of the family violence laws. One year ago, in August 2015, I released a discussion document on the law reform in response to which I received approximately 500 submissions. The submissions came from the full spectrum of those with an interest in family violence. The consistent theme was that our laws urgently need updating.
10. The public is calling out for change and expecting the government to lead the way. The response to the tragic death of Moko Rangitoheriri is the latest illustration that New Zealanders consider the rate of family violence here unacceptable and they want significant reform.

These reforms are comprehensive, far-reaching and designed as a package

11. This and previous governments have spent significant time, effort and money on responding to family violence and it's fair to say we have not seen the improvements we expected. The difference with the work of the Ministerial Group on Family Violence and Sexual Violence (the Ministerial Group) and the legislative reform I am proposing is that this work is about comprehensive and coordinated system change with a focus on early intervention and prevention.
12. We have learnt much about family violence over the 20 years since the Domestic Violence Act 1995 was first passed. My proposals are informed by that knowledge. This reform and the work of the Ministerial Group is underpinned by a recognition that family violence is about patterns of behaviour rather than specific incidents and that the current system inadvertently results in victims bearing the burden of keeping themselves safe rather than focusing on the perpetrator and stopping his or her behaviour.

13. In the past changes have been made to parts of the law rather than considering the legislation and family violence system as a whole. Thus changes have tended to be piecemeal, reactive and lacking coordination. The reforms I am proposing span both the civil and criminal regime and include mechanisms that support the family violence system in general.
14. The proposed amendments are designed to work together. They build on and complement each other. In short, the sum of the whole is greater than the sum of its parts. If we are to effect real and lasting change, change that stands any chance of preventing the cycle of violence and other poor life outcomes being perpetuated from one generation to the next, then we need to do this as a coherent, coordinated package of reforms.
15. Legislation is part of but not the whole change required. These legislative reforms are designed to support and drive the change underpinning the wider work programme overseen by the Ministerial Group. They are also a combination of immediate reforms to the law and the establishment of a framework which contains mechanisms (or 'levers') that can be activated once better services are in place.

Early intervention and prevention are key

16. The whole ethos of the proposed legislative amendments is early and effective intervention and prevention. The proposed changes to the legal framework focus on identifying opportunities within the justice system to intervene as soon as possible to curtail violent behaviour by perpetrators, better identify and respond to risk, enhance victims' safety, and to minimise or prevent adverse life outcomes for children.
17. I propose changing the civil law in order to make victims safer sooner by using intervention points as mechanisms to get help for families and address violence before it escalates. I am proposing changes to Police safety orders (issued by Police on the spot at family violence incidents to provide for a five day cooling off period by getting the perpetrator out of the house) to enable Police to direct perpetrators to a risk and needs assessment and thus providing links to other services. I am proposing changes to protection orders so they are easier to apply for (although the legal threshold to obtain them will remain the same).
18. In some ways the criminal law will always be about responding to the hard edge of family violence, that is, serious offending and offenders where it is clear we have gone past the point of early intervention. However, here too, I am taking a preventative approach by introducing offences intended to stop the escalation of violence and harm. For example I am proposing an offence of assault on a family member to improve legal intervention before the violence becomes more serious, and an offence of strangulation (given this behaviour represents a significant risk factor for murder) before violence escalates to loss of life.
19. The reforms to the criminal law plug gaps in current offence types so that all family violence behaviour can be prosecuted, provide for the identification and tracking of family violence offending throughout the system so it is always recognised for what it is, and introduce aggravating factors at sentencing to appropriately punish the breach of trust inherent in this type of behaviour.

Underpinned by the investment approach

20. For too long we have invested in services and interventions without fully understanding what, if any, impact they have. This needs to change. The proposed reforms are designed to ensure that the family violence sector will be collecting and using data and information in a systematic way. The collation of data and information will in turn help to inform future investment decisions, allowing us to identify areas of need and target investment to effective service interventions.

In order to realise real change

21. These reforms are necessary to create real and lasting change. They will result in a more effective and functioning legal system where people have the confidence that if they tell someone about abuse or violence it will be acted on appropriately and effectively.
22. Officials have estimated that the benefits of the proposed reforms will outweigh their costs by \$40 million over 15 years (present value in 2016 dollars).
23. The benefits of the proposals are largely driven by a reduction in repeat violence, averting costs that would otherwise be borne by government and the victims of family violence. This includes an eventual reduction in cost to the justice sector. The proposals are also expected to result in reduced fear of family violence and increased confidence in the government's response.
24. The increase in protection orders alone is expected to avoid approximately 1,200 violent interpersonal offences each year while the increase in incarceration of violent offenders is expected to avoid another 1,500. Thus these reforms will result in 1000s of incidents of family violence being avoided each year. *Note: The 1500 figure was later adjusted to 1100 to reflect Cabinet's decision to proceed with one aggravating factor: "an offender being subject to a protection order at the time of offending"*
25. The offence of strangulation is expected to shift the justice sector response to strangulation towards a focus on the prevention of future serious harm. While difficult to quantify other benefits of strengthening the justice system include contributing to a fair and just society.
26. Several of the proposals will also ensure relevant legislation can support the Ministerial Group's work programme, supporting the potential for future gains through the creation of an integrated family violence system.
27. The reduction in family violence will also have many wider and longer term benefits, including reduced demand for social services (e.g. health, housing and social security), and improved social and economic outcomes for victims (e.g. employment, productivity and health). It will also reduce fear of violence. This is in addition to immeasurable intergenerational benefits of breaking the cycle of family violence.
28. Subject to Cabinet approval, the proposals in this paper will be implemented through the Family Violence Bill, [Section 9\(2\)\(f\)\(iv\)](#) and drafting instructions to be provided to the Parliamentary Counsel Office in August 2016.

Part A: Context for reform of family violence legislation

The work of the Ministerial Group on Family Violence and Sexual Violence

29. The review of family violence legislation is part of a broader programme of work reporting to the Ministerial Group. The Group's work has focused, in the first instance, on identifying government's annual spend on family violence. The results of this 'portfolio analysis' suggest that the direct costs to government of family violence and sexual violence are approximately \$1.4 billion every year. Most of these costs are for demand driven responses to the impacts of family violence, for example, health services and prisons. A large portion of costs fall to the justice sector, and include Police call-outs, court administration and prosecutions, legal aid and, in particular, prison costs.
30. But this is only part of the picture; the costs of family violence have far reaching impacts on individuals, families and communities. Recent Australian analysis of the costs of violence against women concludes that victims bear approximately one-third of the costs of violence, affecting relationships, health, and workforce participation.¹ Children are also affected, as both the direct victims of violence and as witnesses of violence against others, usually a parent. In 2013, children were present at over 63 percent of all family violence incidents attended by Police.²
31. The impacts of family violence fall disproportionately on Māori and their whānau. Māori are significantly over-represented as perpetrators and victims of family violence. Between 2010 to 2014, Māori comprised 34 to 38 percent of all protection order respondents, and over 50 percent of all people charged with, or convicted of, a breach of a protection order. Māori are also disproportionately over-represented as recipients of a Corrections' managed sentence for a family violence-related offence (51 percent of recipients of sentences begun in 2013, compared with 29 percent for European and 11 percent for Pacific Island).

Supporting a shift towards a social investment approach

32. I am committed to making better use of available data to understand what works and to support investment decisions. Under the auspices of the Ministerial Group, the Ministries of Justice and Social Development are developing an investment case for measures to deal with family violence and sexual violence. The work will draw on administrative data, and explore the Integrated Data Infrastructure, to gain a deeper understanding of the distribution of current investment and the effectiveness of current interventions, and highlight priorities for data collection. The results of this work will have long-term benefits. It will help us to better understand who the victims and perpetrators of family violence are. As a result, we will be able to better target investment and to intervene earlier to stop violence.

¹ PricewaterhouseCoopers Australia (2015), *A high price to pay: The economic case for preventing violence against women*. p.13.

² New Zealand Police (2014), *New Zealand Recorded Crime Tables: Annual Recorded Offences for the latest Calendar Years*.

33. The Ministry of Justice is also applying an investment approach to the criminal justice system, with a focus on enhanced crime prevention, a reduction in harm caused by crime and lower rates of victimisation. The use of actuarial models to identify who is at most risk of future offending and victimisation, for example, has significant potential to inform decisions about where to invest right across the social and justice sectors. I anticipate the results of this work being used to identify (amongst others) culturally appropriate and responsive processes and practices, particularly for Māori.

The review of family violence legislation

34. In July 2014, Cabinet agreed to a “review of the Domestic Violence Act 1995 to ensure the legislative foundation for a whole of government response to domestic violence is modern and fit for purpose” [CAB MIN (14) 21/17]. The review was subsequently broadened in scope, and incorporates the: Domestic Violence Act 1995 (DVA); Care of Children Act 2004 (CoCA); Crimes Act 1961; Bail Act 2000; and Sentencing Act 2002.
35. In August 2015, I released a discussion document, *Strengthening New Zealand’s legislative response to family violence*. Cabinet invited me to report back to the Social Policy Committee on the outcomes of public consultation and with policy proposals for legislative change, including financial implications.
36. Submissions on the discussion document were received from 494 groups and individuals, including victims of family violence, professional and community organisations, iwi and the judiciary. The review process has drawn on these submissions, together with research into local and international law and practice, and cross-agency discussions.
37. In March 2016, I invited the Cabinet Social Policy Committee to discuss the intended direction of travel in response to the findings of the review of family violence legislation, ahead of final proposals being presented to Cabinet later in 2016. This paper builds on the initial analysis and seeks agreement to a package of recommendations for legislative reform.

The benefits of the justice sector response to family violence

39. While more can be done to prevent violence from occurring in the first place (primary prevention), this will not work for everyone. The use of violence is deeply entrenched in some families, whānau and communities. The Family Violence Death Review Committee (FVDRC) has noted that, for these families, opportunities for primary prevention do not exist. Rather, "...prevention is about interrupting intergenerational patterns of violence and the associated transmission of trauma."³ If we can target population groups with a high concentration of violence and re-victimisation, we can make a real difference for families and whānau.
40. Evidence suggests that, to be effective, primary prevention approaches need to sit alongside interventions to respond to violence after it occurs, to protect identified victims from continued violence and to change perpetrator behaviour.⁴ In this sense, effective intervention is effective prevention.
41. The justice sector is uniquely placed to use legal tools and powers to intervene early in the offending trajectory to prevent violence from escalating. In the civil jurisdiction, I propose making better use of tools to ensure that as much as possible is done to identify the risks presented by perpetrators and to assess their service needs.
42. I also believe that the criminal regime can be used to better effect. By intervening early to accurately identify, record and respond to criminal behaviours that we know signal a likelihood of serious offending in the future, we can improve the prospect of averting harm.
43. We know, for example, that non-fatal strangulation is a significant risk factor for future fatal attacks and is commonly used by perpetrators as a form of coercive control to enforce victim's compliance.⁵ However, perpetrators of non-fatal strangulation are not always held to account for the severity of this behaviour. I propose to introduce a new offence of non-fatal strangulation, and to ensure that it is recorded as such on an offender's criminal record. These actions will provide a 'red flag' to key decision-makers in the justice sector, alerting them to the risks associated with an individual and helping to prevent ongoing serious offending.

Objectives of reform

44. I have identified proposals for reform across civil and criminal law. As a package, the changes will contribute to a legislative framework that:
 - keeps victims of family violence safe
 - holds perpetrators of family violence to account for their behaviour and reduces further violence
 - ensures adequate responses to family violence in all its forms, and
 - promotes consistent and collaborative practices.

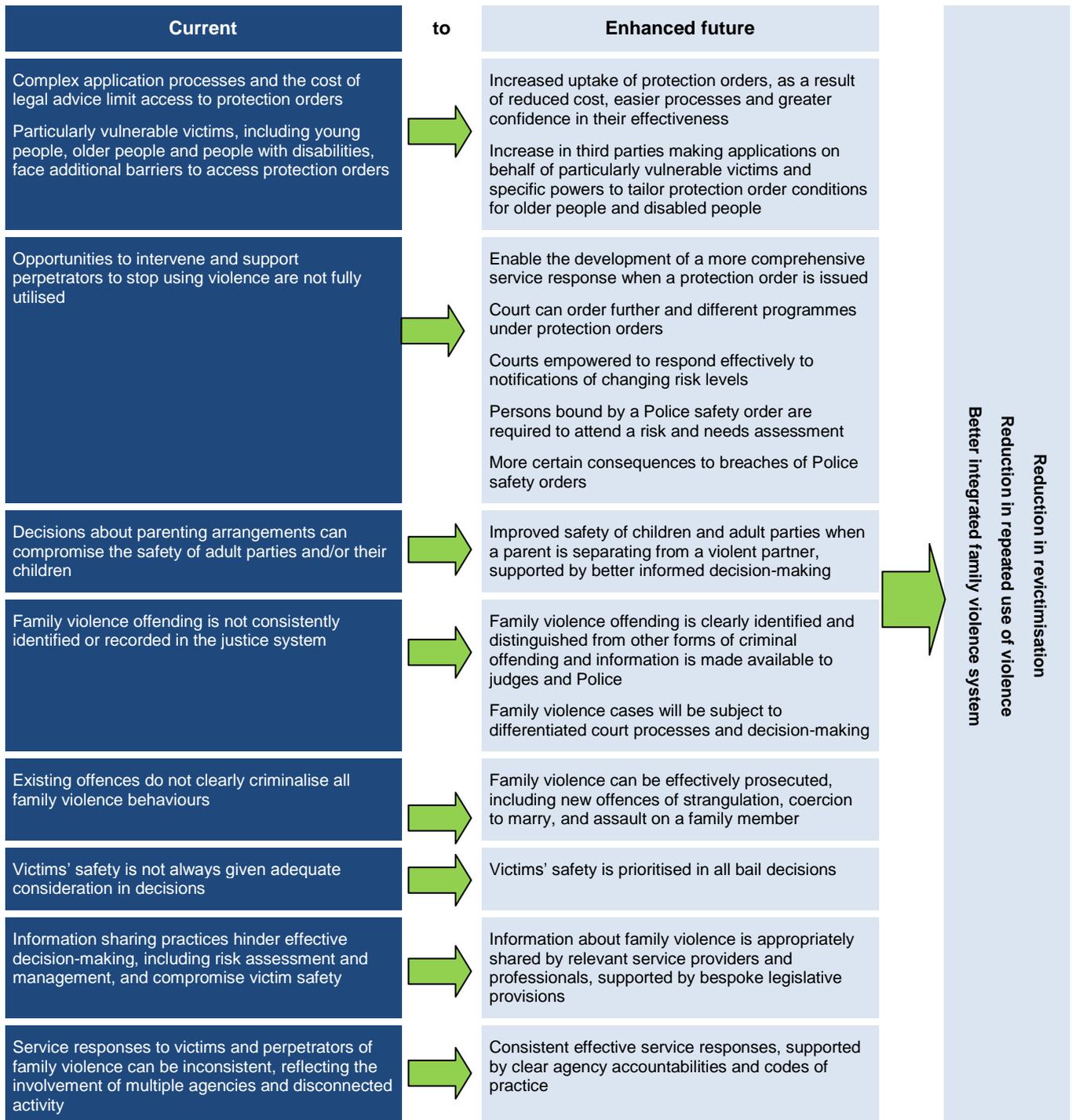
³ FVDRC (2015) *Fifth report: January 2014 to December 2015*. p.18.

⁴ Ministry of Women's Affairs (2013) *Current Thinking on Primary Prevention of Violence Against Women*. p.2.

⁵ Glass, N. et al. (2008). 'Non-fatal strangulation is an important risk factor for homicide of women'.p 35 *The Journal of Emergency Medicine*, 329.

45. The cumulative impact of the proposed package of reforms is summarised below. The ‘current’ column lists the issues identified through the review process; the ‘enhanced future’ column provides a description of the reformed legislative landscape.

High level shifts following reform



Cost-Benefit Analysis

Estimating the impact of the proposals to reform family violence laws

46. Officials have undertaken a cost-benefit analysis to estimate the impact of the proposed reforms to family violence laws. There is reasonably strong evidence that the quantifiable benefits of the proposed reforms will outweigh their costs by \$40 million over 15 years (present value in 2016 dollars). The Benefit to Cost Ratio is positive at 1.09, as is Return on Investment for government (1.09) and society (1.09).
47. The analysis focused on the marginal impact of the proposals – i.e. the additional effect the proposals are expected to have beyond what occurs under the status quo.

Quantifiable costs

48. The quantifiable cost of the proposals is significant, representing NPV \$446 million over 15 years.
49. These costs are a result of the expected impact on the criminal justice pipeline – specifically, an increase in protection orders and breaches of those protection orders, prosecuting new offences, and introducing specific aggravating factors at sentencing.
50. The costs are discussed further in the financial implications section, but are largely driven by the high cost to government and society of imprisoning additional family violence offenders - representing approximately half of the total cost of the proposed package.

Quantifiable benefits

51. However, the quantifiable benefits of the package are equally significant, representing NPV \$90 million in averted costs to victims of family violence over 15 years, and a further \$576 million in averted costs for the justice sector to respond to violence.
52. The benefits are largely driven by a reduction in violence, averting costs otherwise borne by government and victims of family violence. Key drivers of this expected reduction in family violence are as follows:
 - 52.1. increasing the number of protection orders is expected to lead to a 40 percent reduction in violence for victims of family violence (relative to the situation if the victim did not receive a protection order)⁶
 - 52.2. the offence of strangulation is expected to shift the justice sector response to strangulation towards a focus on the prevention of future serious harm. Strangulation is a unique form of violence – it carries high levels of lethality

⁶ Studies of protection order effectiveness find a reduction in violence of 20-70 percent, with a 50 percent reduction a common finding. A 40 percent reduction was considered prudent for cost benefit purposes, to account for evidence that in some cases perpetrators escalate violence when victims show resistance (whether through seeking a protection order or otherwise). See, for example, B. Russell (2012). Effectiveness, victim safety, characteristics, and enforcement of protective orders. *Partner abuse*, 3(4), 531-552.

risk and has a serious impact on the victim even in the absence of clear physical harm,⁷ and

52.3. increasing the length of time family violence offenders are imprisoned prevents them from re-offending for the duration of their incarceration.

53. Benefit analysis has focused on the quantifiable costs that are averted by reducing family violence. In particular, it focused on the benefits of averting repeat violence, rather than those associated with preventing violence from occurring in the first place. Such benefits include a reduction in victims' healthcare costs, lost productivity, need for emergency support, and fear of violence, as well as justice sector costs associated with responding to family violence. A consequential reduction in demand for social services is expected. There will also be immeasurable intergenerational benefits of breaking the cycle of family violence

Wider benefits not incorporated into analysis

54. Taking into account only those benefits able to be measured, the proposals are of net benefit over the next 15 years. But there are wider and longer term benefits that are less easily quantified, which increase the value of the proposals further.

55. We know that family violence has a significant impact on victims and their children and, as a result, contributes to demand for social services. For example:

55.1. ACC claims for injuries⁸

55.2. family violence is frequently an immediate cause or precursor to homelessness and housing instability⁹ and

55.3. women who experience family violence are more likely to have lower personal incomes, a disrupted work history, often have to change jobs at short notice, and are very often employed in casual or part time work.¹⁰

56. The intergenerational effect of family violence cannot be overstated.¹¹ For every home where we can prevent or mitigate the impact of family violence, we increase the chances of breaking the intergenerational cycle of violence.

57. To the extent that the proposals avert family violence, and mitigate its ongoing impact, a consequential reduction in demand for social services would be expected.

58. Several of the proposals will ensure relevant legislation can support the Ministerial Group's work programme, supporting the potential for future gains through the creation of an integrated family violence system.

⁷ Glass, N. et al. (2008). 'Non-fatal strangulation is an important risk factor for homicide of women'. 35 *The Journal of Emergency Medicine*, 329

⁸ Ministry of Justice (2015) *New Zealand Crime and Safety Survey 2014*.

⁹ C. Baker, et. al. (2003). Domestic violence and housing problems: A contextual analysis of women's help - seeking, received informal support, and formal system response. *Violence Against Women* 9, 754-783.

¹⁰ L. McFerran (2011) *Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*.

¹¹ See, for example, David Indermaur Young 'Australians and Domestic Violence', *Trends and Issues in Crime and Criminal Justice*, No. 195, Canberra, 2001; World Health Organisation, 'World Report on Violence and Health', ed. By Krug, Etienne G., et al., Geneva, 2002.

59. In addition, strengthening the justice system supports it to meet objectives including its ability to maintain law and order, send a clear message about what is acceptable behaviour and impose punishment where appropriate. While it is difficult to quantify the value of these benefits, they contribute to a fair and just society
60. In summary, despite the significant costs of the package of proposals, even a conservative approach to estimating the benefits indicates that they outweigh the costs. However, there is further potential for the benefits of the proposals to be much greater once the averted indirect costs to the social sector and the intergenerational effect of reducing family violence are accounted for.
61. It is also important to note that the non-government benefits of the proposals largely accrue to the victims of family violence and their children, while the costs fall on perpetrators of family violence and wider society.

Part B: Supporting integrated responses to family violence

62. The review findings point to a need to improve collaboration and alignment of activities across government and non-government agencies working in the family violence sector. In particular, there is a need for: better information sharing to support decision-making; a shared approach to risk and needs assessment and management; coordinated service delivery responses; and clear pathways to services for those proactively seeking help by self-referral to services.
63. The Ministerial Group is overseeing a programme of initiatives focused on enabling a better co-ordinated family violence response system. I propose legislative change to: support agency behaviour change to achieve enhanced information sharing; improve the quality and consistency of service delivery; and support shared accountability arrangements across government agencies.

Information sharing to assess and manage risk

Review Finding:

Effective frontline risk assessment and service delivery relies on improved information sharing.

I propose amending family violence legislation to include:

- a general provision enabling the disclosure of personal information for purposes related to addressing family violence
- a provision that family violence agencies must consider sharing information in certain circumstances, and in exercising their judgement must apply the principle that victims' safety takes precedence over confidentiality and privacy, and
- a good faith immunity for anyone who shares personal information under the information sharing provisions in family violence legislation.

Existing mechanisms will continue to be used to deal with poor information sharing practice (e.g. through funding mechanisms).

64. The fragmented and diverse nature of the family violence sector means that individuals and organisations hold discrete pieces of information about victims, perpetrators and their families. This information is often not shared with other agencies working with the same family. With a limited picture, agencies cannot

effectively assess and manage risk, nor can they co-ordinate responses. This puts people's lives at risk and may limit agencies ability to intervene and support perpetrators to address violent behaviour.

65. I propose introducing bespoke family violence legislative provisions to ensure that agencies operating in the family violence sector have a clear authorisation to share personal information for the purpose of promoting victims' safety. The provisions may be supported by a code (or codes) of practice, providing more detailed guidance where necessary.
66. I recommend:
 - 66.1. a general provision enabling the disclosure of personal information for purposes related to addressing family violence
 - 66.2. a provision that family violence agencies must consider sharing information in certain circumstances, and in exercising their judgement must apply the principle that victims' safety takes precedence over confidentiality and privacy
 - 66.3. a good faith immunity for anyone who shares personal information under information sharing provisions in family violence legislation, and
 - 66.4. the use of existing mechanisms to deal with poor information sharing practice (e.g. through funding mechanisms).
67. Those working in the family violence sector will be expected to continue to exercise professional judgement when determining whether or not to share information. But these provisions will collectively ensure that agencies in the sector understand and act on the need to share information to prevent harm and ensure victim safety.
68. For the purposes of this section of the paper, I propose that the following definitions of the 'family violence sector' be applied. These definitions will capture a wide range of agencies and professional groups, including general practitioners and teachers. This is a reflection of the distributed nature of the agencies within the 'family violence sector'.

Family violence agencies - central government agencies¹², district health boards, school boards (as defined by the Vulnerable Children Act 2014), licensed early childhood education services, and government-funded NGOs that provide services to either victims or perpetrators of family violence.

Independent persons – any registered health practitioner registered under the Health Practitioners Competence Assurance Act 2003, registered social worker, or registered teacher providing health, education or other social services.

Provision enabling the disclosure of information

69. I seek agreement to the inclusion of an enabling provision that makes it clear that relevant personal information may be used by and shared with appropriate family violence providers or independent persons (as defined above) for the purposes of assessing and managing risk related to family violence.

¹² MSD, the New Children's Entity, Education, Health, Corrections, Justice, Police, and ACC.

70. I propose that the provision specify that any personal information held by a family violence agency or independent person that relates to a person who is, has been, or may be, a victim or perpetrator of family violence can be:
- A. *used by that agency or person* for the purposes of:
 - i. making or contributing to an assessment of risk or need;
 - ii. making or contributing to a decision or plan;
 - iii. executing any decision or plan;
 - iv. preventing a victim, or potential victim from being subject to harm.
 - B. *disclosed or supplied to another family violence agency or independent person* when the supplier of the information reasonably believes the provision of the information will assist the recipient to fulfil any of the purposes specified in (A)(i)-(iv) above.
71. The proposed provision is intentionally broad, deeming all personal information held by a family violence agency or independent person able to be used and shared for the purposes in the legislation. This may raise concerns about the breadth of its coverage. However, strict safeguards around the use and sharing of information are created by:
- the purposes specified in the legislation for using and disclosing information, which immediately limit the information of interest (e.g. a general practitioner with concerns about a patient’s safety may share information about a broken arm, but not about the patient’s influenza); and
 - the obligation placed on any supplier of information to hold a “reasonable belief” the disclosure of the information will assist the recipient to fulfil the purposes specified in the legislation – this requires the supplier to enquire about the purpose of the information disclosure and the relevance of the information they hold.

Agencies must consider information sharing

72. I seek agreement to the inclusion of a provision stating that family violence agencies and independent persons:
- 72.1. must consider sharing information whenever:
 - 72.1.1. they reasonably believe a person has been, or is likely to be, harmed by family violence; or
 - 72.1.2. they receive a request for personal information from another family violence agency or independent person that relates to a family violence purpose;
 - 72.2. and in exercising their judgement must apply the principle that the safety of victims takes precedence over client confidentiality and privacy.

73. During drafting, officials will ensure that the language of these provisions, where appropriate, aligns with similar legislative provisions being considered as part of the review of Children, Young Persons and Their Families Act 1989.
74. My intent is to shift the regime from being more than a passive enabler, to one where there is active engagement by all participants in the family violence sector. This is consistent with the recommendation of the Family Violence Death Review Committee that legislation be amended to include a presumption of responsible and safe information sharing between agencies where family violence concerns are present.
75. A key element of this provision is the establishment of a legislative principle that client safety takes precedence over confidentiality or privacy. This will send a clear message to the sector that information should be shared when this will protect people from harm. The principle will also provide clear guidance to the family violence workforce whenever they face conflicts between the expectations set in the Act and obligations in their professional codes and standards.
76. The existence of this principle in the legislation will not remove the need for the defined family violence sector to weigh and balance the merits of disclosure in any particular situation.
77. This provision would be reinforced by the proposed immunity provision for acts of good faith disclosure under this legislation.

Good faith immunity

78. The introduction of a good faith immunity provision will protect those who disclose personal information to other family violence service providers or independent persons in good faith. The protection will extend to civil, criminal or professional or other disciplinary proceedings in respect of the disclosure or supply of information, unless the information was disclosed or supplied in bad faith.
79. I note that a parallel provision exists in section 16 of the Children, Young Person's and their Families Act 1989 works well, clarifying that good faith disclosures to remedy harm to a child will not be sanctioned or punished, and an equivalent provision is proportionate and appropriate for family violence.

Existing mechanisms to address poor practice

80. I do not consider it necessary to introduce enforcement mechanisms for these legislative provisions. I consider that the existing tools available to Ministers, the State Services Commissioner and government agencies will be effective in addressing poor practice (such as Chief Executive performance agreements and contractual arrangements with NGOs). As noted, I also envisage good practice guidelines being provided in the form of a code of practice (or codes) for the family violence workforce (discussed below).

Engagement

82. I am satisfied that these mechanisms will appropriately balance victims' safety and privacy interests, provide clarity for individuals and agencies about their obligations, and manage potential risks and unintended consequences.
83. However, I consider there will be benefit in further targeted engagement with key justice and social sector agencies and relevant professional bodies about the impact on their regulatory regimes. I have therefore asked the Ministry of Justice to engage as appropriate.

Aligned approaches to service delivery

Review Finding:

Agency responsibilities and accountabilities are not clear and workforce practices are varied.

I propose:

- amending legislation to allow for codes of practice to guide coordinated and consistent service delivery to be issued by Order in Council
- using the provisions of the State Sector Act 1988 to promote collaboration amongst Chief Executives working in the family violence sector (Courts, Justice, Corrections, Police, Social Development, Health and Education) and hold Chief Executives accountable for working in the collective interests of government.

Codes of practice offering operational guidance

84. A culture of collective responsibility and commitment to safe and effective practice is an essential element of the transformational change envisaged for the family violence sector. Individuals and families seeking help should not be referred from one agency to another, with little or no action being taken to address their concerns. Professional practice needs to be consistent, based on a common approach to screening and assessing risk, sharing information and taking steps to prevent future violence. Services must recognise and respond to multiple needs, including those of children.

85. In my view, the development and promulgation of a code of practice (or several codes) may be the most useful way of supporting coordinated, consistent and effective ways of working. For example, a code (or codes) could be used to establish shared obligations on service providers and professionals working in the family violence sector, cementing a commitment to the provision of responsive and effective services, and to joined-up approaches. Workforce competencies may also be established in codes.
86. Codes of practice also provide an opportunity to support the development of evidence-based services and interventions, and to send strong signals to the sector about the need to develop and support culturally appropriate responses for a range of ethnic groups, in particular for Māori and for Pacific peoples.
87. National codes of practice will also reduce the duplication of resource and effort involved with each service type developing their own processes and practice standards. There may also be efficiency gains through monitoring performance against a universal standard.
88. I propose amending the DVA to allow for codes of practice to be issued for the purpose of guiding operational practice. A code (or codes) could apply to government agencies, New Zealand Police and contracted non-government organisations that deliver family violence services, as defined by the Act.
89. I recommend that the legislation allow for the codes of practice to be issued by Order in Council. This process will support wide consultation with core stakeholders and ensure Cabinet oversight of the financial and operational implications of proposed codes.
90. I envisage codes of practice being initiated at Chief Executive level (refer to key Chief Executives listed in paragraph 93) with the agreement of relevant Ministers. Chief Executives will be well-placed to identify the operational and practice needs of their organisations, any related devolved entities (e.g. schools and District Health Boards), and the non-government agencies that they fund.

Shared accountability arrangements

91. As a means of further embedding collaborative practice, I propose introducing non-legislative shared accountability arrangements for Chief Executives of key government agencies engaged in the family violence sector. This could take a number of forms, including joint approaches to investment in family violence related services, shared service planning, or the alignment of agency strategies.
92. I recommend that Chief Executives of key government agencies engaged in the family violence sector be explicitly responsible for ensuring that their respective sectors embed any relevant code into their operational practices. Mechanisms are likely to include the use of employment agreements and funding and contracting mechanisms with third party service providers, to encourage or require compliance with codes.

93. I seek Cabinet agreement to use of the provisions of the State Sector Act 1988 to promote collaboration amongst Chief Executives working in the family violence sector (Justice, Corrections, Police, Social Development, Health and Education) and hold Chief Executives accountable for working in the collective interests of government.

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The proposal will include a description of the collective interests of government in relation to family violence; proposed expectations on family violence sector Chief Executives collectively; and how these may be given effect through non-legislative mechanisms.

Financial implications of overall package of proposals

94. The proposals presented in this package have been subject to a thorough and comprehensive costings exercise. If anything, the costings presented are on the high side.

95. The financial implications of my recommended overall package of proposals are summarised in Table one. Over the upcoming four year plan period (2017/18-2020/21) the cost is estimated to be \$168 million. Tables three to six in Appendix one summarise estimated impacts on individual Votes.

Note: The figure of \$168m was revised. The package Cabinet agreed has a cost estimated to be \$132 million over the four year plan period (2017/18 – 2020/21)

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97. While my recommended package is as set out above, we do have some other options which would reduce the cost. We could attach a five year penalty to the offence of strangulation, instead of seven, or we could remove the aggravated sentencing factors from the package. The costs of these options are summarised in Table two below.

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99. Police advise they will need 66 additional sworn staff to provide the required policing services to operationalise the proposed changes to the FV legislation. Factors considered include the need for each region to provide services 24 hours/7 days; and current resourcing and offending rates in each region.
100. Police advise this number of officers cannot vary if any of the initiatives are scaled or not included. Police cannot apply parts of FTEs to shift patterns. Police advise this means that six sworn staff for each area will be required immediately from when the legislation comes into force to meet forecast increases in demand.

Consultation

101. The following departments were consulted on this paper: Ministry of Social Development (including Child, Youth and Family, Office for Senior Citizens, Children's Action Plan, and Office of Disability Issues); New Zealand Police; Department of Corrections; State Services Commission; Te Puni Kōkiri; Ministry for Women; Department of Internal Affairs; Ministry of Education; Ministry of Health; Accident Compensation Corporation; Ministry of Pacific Peoples; Superu; Health Quality and Safety Commission (Family Violence Death Review Committee); Statistics New Zealand; Crown Law, Office of the Privacy Commissioner and the Treasury. The Department of the Prime Minister and Cabinet, and the Parliamentary Counsel Office were informed.

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Office of the Privacy Commissioner comment

104. I support the proposed legislative provisions outlined in recommendation 13 of this paper to allow independent persons and family violence agencies to share information to reduce the harm from family violence. The proposed legislative framework would allow disclosure by and to appropriate people, for clearly defined purposes. My view is that this legislative provision should be supported by codes of practice as described in paragraphs 84 to 90.
105. I also support the proposal to create a good faith immunity provision as described in recommendation 15. Codes of practice under the proposed new legislation could also be used to support the operation of this provision, for example by setting out what may be done with the information. This would align this provision with the Children Young Persons and their Families Act 1989, which sets out further operational processes to support the operation of the immunity provision in section 16 of that Act.
106. Recommendation 14 proposes that a legislative provision be introduced stating that family violence agencies and independent agencies “must consider sharing information”. I am concerned that such a proposal might have the effect of putting off some at risk victims from seeking the help they need, or of disengaging from agencies, to their or their families’ detriment. I support the proposal in recommendation 16 to consult with a range of agencies providing family violence services (including professional associations and NGOs). If those agencies support such a “must consider sharing” provision, and consider that the potential benefits of the proposal outweigh the potential risks to the victims, I would not object to the proposal.
107. I do not support the inclusion in recommendation 14 of a principle that the safety of victims takes precedence over privacy. Such a principle would create a false opposition between safety and privacy. Maintaining victims’ rights to privacy is an important part of keeping people safe and in respecting people’s autonomy when receiving support services. Privacy values are aligned with, and underpin, the person-centred model of service delivery that this package of reforms is designed to achieve. I would expect that, to the greatest extent possible, family violence services should be able to be provided in ways which support victim autonomy and privacy.

Risks

108. The benefits sought through the package of reforms are reliant on changes in behaviour by justice and social sector agencies, judges, lawyers, and perpetrators. Many actors in the family violence system operate with high levels of professional discretion (e.g. Police and judges) and/or at arm's-length from government (e.g. non-government organisations). The successful implementation of the proposals will therefore require appropriate measures to influence behaviours.
109. I intend to take a proactive approach to communicating the nature of the changes, the rationale for them, and good practice guidance. This is likely to take various forms, including, (potentially) working with the judiciary to develop guidance for courts, and the use of codes of practice to guide the wider family violence sector. Changing the behaviour of perpetrators will be achieved primarily through the more effective use of protection orders and requiring perpetrators to attend services and programmes on the basis of identified risk and need.
110. The current lack of service capacity and capability presents challenges, particularly to proposals to make more effective use of protection orders. The Ministerial Group will oversee work to identify the right mix and model of effective social services, and a business case for investment. While I acknowledge that it will take some time for these services to develop, it is important that we establish the legislative levers now, so that we can capitalise on service improvements as they occur.
111. Some sections of the population may consider that the proposals do not go far enough to address the seriousness of family violence. The discussion document attracted a high-level of public interest and many submitters had strongly held views on the dynamics of family violence and the responses required. I am confident that the package represents a balanced mix of interventions designed to improve victims' safety and hold perpetrators accountable for their behaviour, while putting measures in place to support behavioural change.
112. Conversely, others have expressed concern that individuals may make false allegations of domestic violence, for example as a result of an acrimonious relationship break-up, or to secure custody of children. Changes to strengthen responses to family violence may therefore be viewed as inherently risky. False allegations of domestic violence can be very damaging and must be taken seriously when they occur. However, research shows that they are relatively rare (comprising less than 0.1 percent of prosecutions) and occur in very complex cases that tend to involve young and vulnerable people, and people with mental illnesses. In some cases, the person alleged to have made the false report had undoubtedly been the victim of some kind of offence, even if not the one that he or she had reported.
113. Procedural safeguards are in place to prevent false allegations from resulting in miscarriages of justice. People making false allegations or fabricating evidence can be prosecuted. Judges receive education and training to raise their awareness of the dynamics and patterns of behaviour that may accompany family violence proceedings.

Legislative implications

114. A Bill is required to implement these proposals. The Family Violence Bill is on the 2016 Legislation Programme and has a priority 5 (to be introduced in 2016). The legislative changes are likely to require consequential changes to rules and regulations.

Regulatory impact analysis

115. The Regulatory Impact Analysis requirements apply to the proposals in this paper, together with the companion papers dealing with civil and criminal responses to family violence. A Regulatory Impact Statement has been prepared and is attached to this paper.
116. The Regulatory Impact Analysis Team at the Treasury (RIAT) has reviewed the Regulatory Impact Statement produced by the Ministry of Justice. The reviewers consider that the information and analysis summarised in the RIS meets the QA criteria.
117. As the RIS makes clear, there is a lack of evidence base on the impacts of some policy interventions meaning the net benefits of these proposals are uncertain. In addition, there are substantial risks of unintended consequences due to family violence perpetrators or victims not responding in the way intended. This underlines the importance of close ongoing monitoring of the effect of the proposals in practice, within the context of a framework to assess the impact of the package as a whole, including its broader implications for the social sector, supported by appropriate data collection.

Impact on Māori

118. Māori are significantly over-represented both as victims and perpetrators of family violence. Māori children are overrepresented as victims of child abuse, and this has an impact on the likelihood of children becoming perpetrators and victims of family violence in adulthood. As a result, all changes to family violence legislation are likely to have a greater impact on Māori than non-Māori.
119. On the whole, the proposed changes are likely to have a positive impact on Māori. Some proposals are likely to increase Māori imprisonment, which will increase victim safety but may have negative effects on the perpetrator and any children they have. However, this is offset by the positive impacts of other proposals.
120. Clarifying that protected persons can consent to contact, and improving the effectiveness of parenting orders (refer paper two), will likely have a positive impact on whānau. These measures will ensure that victims and their children will be able to have an ongoing relationship with the perpetrator if they desire, and have some guarantee of safety.
121. Proposals to widen access to services and intervene earlier are likely to improve safety of Māori women and children and reduce escalation of offending to the point of criminal charges (refer paper two). The introduction of codes of practice which apply across the family violence sector are likely to provide an opportunity to increase the provision of tikanga-based and culturally appropriate services for whānau experiencing family violence.

122. The proposals outlined in the suite of papers are consistent with the policy intent and relevant articles in the *United Nations Declaration on the Rights of Indigenous Peoples* (2007).

Impact on Pacific peoples

123. Pacific peoples are over-represented both as victims and perpetrators of family violence. As a result, all changes to family violence legislation are likely to have a disproportionately greater impact on Pacific peoples than other ethnic groups, with the exception of Māori.
124. On the whole, the impact of proposed changes is likely to be positive for Pacific peoples and will be similar in nature to that identified for Māori. Proposals that aim reduce financial and other barriers to court orders may be particularly beneficial (e.g. trial of funded advice to access protection orders).
125. The development of culturally appropriate approaches and services for Pacific peoples experiencing family violence will also be important and, as noted above, may be facilitated through the use of codes of practice for the family violence workforce.

Gender implications

126. Family violence has a greater overall impact on women, compared to men. Men are more likely to be perpetrators of family violence, while women are more likely to be victims. Furthermore, Māori women are disproportionately represented as victims and Māori men as perpetrators of family violence.
127. Proposed changes designed to reduce barriers to access protection orders, including cost and complexity of procedure, are likely to better support women to obtain the assistance and protection they need for themselves and their children, contributing to their ability to live a life free of fear and to reach their full potential. Proposals to direct perpetrators to a wider range of services to address the underlying causes or contributors to violence will also contribute to a reduction in reoffending and re-victimisation (refer paper two).
128. The proposed changes enhance New Zealand's response to the *United Nations Convention on the Elimination of All Forms of Discrimination against Women* (1979), in particular article 3 (ensure the full development and advancement of women), article 15 (equality between women and men) and article 16(b) (women to freely choose a spouse).

Impact on children

129. The intertwined nature of intimate partner violence and child abuse and neglect is well-established. Children are present at two thirds of reported incidents of family violence in New Zealand. Children may experience abuse directly, or may witness or otherwise be exposed to family violence, which in itself can be regarded as a form of child abuse and neglect.¹³

¹³ ANROWS (2016) *Domestic and family violence and parenting: Mixed methods insights into impact and support needs: State of knowledge paper*. p.9.

130. The impacts of family violence on children are significant. New Zealand and international literature suggests that exposure to family violence in childhood is associated with depression, anxiety, trauma symptoms, aggression, lower social competence, low self-esteem, fear and loneliness. It may also contribute to poorer academic and employment outcomes, a higher likelihood of later alcohol and drug abuse, and depression and homelessness.¹⁴
131. The proposals presented in the suite of papers focus primarily on children and young people as victims of family violence, rather than as perpetrators. Children's interests are particularly strong in the civil law proposals and specific attention has been paid to the interface between the DVA and CoCA, where the safety and welfare interests of children may be 'entangled' with those of the caregiver parent. Policy proposals emphasise the importance of ensuring that decisions about the care and welfare of a child are made in the context of CoCA, the piece of legislation designed for this purpose.
132. The proposed trial of supervised hand-over arrangements seeks to address an important gap in current service provision, in a situation where children may be especially vulnerable to witnessing parental conflict (paper two on civil law). Similarly, the proposal to include psychological violence as a ground for including protective conditions in a parenting order, should assist to ensure that this type of violence is consistently and effectively addressed (paper two on civil law).
133. Other proposals raise the visibility of children in the DVA more generally, ensuring that children's interests are adequately considered in decision-making, and that children and young people have better access to protection orders and to safety programmes in their own right.
134. Cabinet has agreed to the proposals of the Expert Advisory Panel's Final Report on Investing in New Zealand's Children and Their Families. A greater focus on meeting the needs of vulnerable children and putting them at the centre of decisions made about them, offers Government real opportunities for ensuring the New Children's Entity, and the legislation governing it, responds effectively to the broader needs of children who have experienced, or are experiencing, chronic or significant family violence, including the needs of the child's protector. The agency will also be responsible for responding to offending behaviour by children and young people. Officials from the Ministries of Justice and Social Development are continuing to work on options for responding to young people who use family violence.
135. Higher levels of incarceration are one of the anticipated outcomes of proposals relating to prosecuting family violence (refer paper three). While there is evidence to suggest that incarceration of a parent has a detrimental effect on the life outcomes of a child, this needs to be balanced against the safety needs of children and other victims.
136. The proposals outlined in this paper are consistent with the policy intent and relevant articles in the *United Nations Convention on the Rights of the Child* (1989).

¹⁴ Campo, M, Kaspiw, R, Moore, S and Tayton, S. (2014) *Children affected by domestic and family violence: A review of domestic and family violence prevention, early intervention and response services*. Australian Institute of Family Studies.

Disability perspective

137. People with disabilities are at a higher risk of experiencing family violence. The reforms include proposals to keep victims safe, reduce re-offending and re-victimisation, respond to family violence in all its forms, and promote consistent and collaborative practices amongst frontline practitioners that would benefit people with disabilities.
138. Specific proposals that may have a positive impact on people with disabilities include: recognising coercive/controlling behaviour, improving access to protection orders through funded support and third party applications, improving services and responses, and improving information sharing. These proposals align with the principles contained in the *New Zealand Disability Strategy*, including honouring Government obligations by removing barriers to participation and independence, as well as promoting the empowerment of people with disabilities. The proposals relating to improving access to protection orders also align with Article 13 of the *United Nations Convention on the Rights of Persons with Disabilities (2007)*, by ensuring effective access to justice for people with disabilities.

Publicity

139. I will make decisions about publicity in due course.

Recommendations

140. The Minister of Justice recommends the Committee:

Part A: Background to the review of family violence legislation

1. **note** the justice sector is uniquely placed to use legal tools and powers to intervene in the family violence offending trajectory to prevent violence from escalating, and break the intergenerational cycle of violence;
2. **note** the family violence proposals contained in the three Cabinet papers are designed as a coherent, coordinated package of reforms in order to effect lasting change;
3. **note** that legislation is an important part of the response to family violence but, to be effective, must be supported by wider change across the family violence response system;
4. **note** the review of family violence legislation is part of a programme of work overseen by the Ministerial Group on Family Violence and Sexual Violence to support shifts towards a better coordinated family violence system, built on an evidence base and shared practice;
5. **note** in July 2014, Cabinet agreed to a review of the Domestic Violence Act 1995 to ensure the legislative foundation for a whole of government response to domestic violence is modern and fit for purpose. [CAB Min (14) 21/17];
6. **note** that the review was subsequently broadened in scope to include examining how the Domestic Violence Act works with criminal law (the Crimes Act 1961, the Bail Act 2000 and the Sentencing Act 2002) together with the relevant provisions of the Care of Children Act 2004;

7. **note** in August 2015, I released a discussion document, *Strengthening New Zealand's legislative response to family violence*, on which 494 submissions were received;
8. **note** Cabinet invited me to report back to the Social Policy Committee on the outcomes of public consultation, and with policy proposals for legislative change, including financial implications;
9. **note** that the package of proposals will contribute to a legislative framework that keeps victims of family violence safe, holds perpetrators of family violence to account, ensures adequate responses to family violence in all its forms and promotes consistent and collaborative practices;
10. **note** that a cost-benefit analysis of the package suggests there is reasonably strong evidence that the quantifiable benefits of proposed changes outweigh their costs;

Part B: Supporting integrated responses to family violence

Information sharing to assess and manage risk

11. **note** that one of the key barriers to effectively mitigating the risk of family violence is the lack of a consistent approach to information sharing in the sector;
12. **agree** to amend the family violence legislation to introduce a definition of the family violence sector, for the purposes of information sharing and codes of practice, that includes:
 - 12.1. ***family violence agencies***, which will include the Ministry of Social Development, the new Children's Entity, Ministry of Education, Ministry of Health, Department of Corrections, Ministry of Justice, New Zealand Police, the Accident Compensation Corporation, district health boards, school boards (as defined by the Vulnerable Children Act 2014), licensed early childhood education services, and government-funded NGOs that provide services to either victims or perpetrators of family violence;
 - 12.2. ***independent persons***, which will include any registered health practitioner registered under the Health Practitioners Competence Assurance Act 2003, registered social worker, or registered teacher providing health, education or other social services.
13. **agree** to amend the family violence legislation to introduce an enabling provision that specifies that any personal information held by a family violence agency or independent person that relates to a person who is, has been, or may be, a victim or perpetrator of family violence can:
 - 13.1. be used by that agency or person for the purposes of:
 - 13.1.1. making or contributing to an assessment of risk or need;
 - 13.1.2. making or contributing to a decision or plan;
 - 13.1.3. executing a decision or plan;

- 13.1.4. preventing a victim, or potential victim of family violence from being subject to harm;
 - 13.2. be disclosed or supplied to another family violence agency or independent person when the supplier of the information reasonably believes the provision of the information will assist the recipient to fulfil any of the purposes specified in recommendation 13.1.1 – 13.1.4 above;
14. **agree** to amend the family violence legislation to introduce a provision stating that family violence agencies and independent persons:
- 14.1. must consider sharing information whenever:
 - 14.1.1. they reasonably believe a person has been, or is likely to be, harmed by family violence; or
 - 14.1.2. they receive a request for personal information from another family violence agency or independent person that relates to a family violence purpose; and
 - 14.2. in exercising their judgement they must apply the principle that the safety of victims or potential victims takes precedence over client confidentiality and privacy;
15. **agree** to amend the family violence legislation to introduce a provision that provides immunity from civil, criminal, or disciplinary proceedings for anyone who discloses or supplies information for the purposes specified in the family violence legislation in good faith;
16. **note** the Ministry of Justice will carry out targeted engagement with appropriate justice and social sector agencies and professional bodies on matters relating to family violence information sharing;

Aligned approaches to service delivery

- 17. **note** that there is no national guidance to align the practices of multiple service providers (government and non-government) working in different parts of the family violence response system;
- 18. **agree** to amend legislation to allow for codes of practice to guide service delivery by the family violence sector to be issued by Order in Council;

Shared accountability arrangements

- 19. **agree** that provisions of the State Sector Act 1988 be used to promote collaboration amongst Chief Executives working in the family violence sector (Justice, Corrections, Police, Social Development, Health and Education) and hold Chief Executives accountable for working in the collective interests of government;

Financial implications of overall package of proposals

21. **note** that the financial implications of the total package of proposals is approximately \$168 million over the 2017/18-2020/21 period;
22. **note** the following changes to appropriations will be required to give effect to the policy decisions in this paper, with a corresponding impact on the operating balance:

Note: The figure of \$168m was revised. The package Cabinet agreed has a cost estimated to be \$132 million over the four year plan period (2017/18 – 2020/21)

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Legislative implications

23. **invite** the Minister of Justice to issue drafting instructions to Parliamentary Counsel Office for the purpose of preparing a Bill reflecting the policy decisions made in the three papers: *Paper one: Context and supporting integrated responses; Paper two: Civil Law, and Paper three: Prosecuting family violence;*
24. **invite** the Minister of Justice to issue drafting instructions to Parliamentary

Counsel Office for the purpose of drafting rules and regulations to support legislative change;

25. **invite** the Minister of Justice to report to Cabinet with a draft Family Violence Bill;
26. **authorise** the Minister of Justice, in consultation with other Ministers as appropriate, to resolve any outstanding policy issues arising from or associated with decisions made in the recommendations in this paper;
27. **authorise** the Minister of Justice to make decisions about minor, technical or administrative matters as required to finalise draft legislation;

Publicity

28. **note** that the Minister of Justice will make decisions about publicity in due course.

Authorised for lodgement

Hon Amy Adams
Minister of Justice

Date signed: ____/____/____

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