



Family Court Review

This submission on the review of the Family Court reflects the views of the National Collective of Independent Women's Refuges.

The National Collective of Independent Women's Refuges is New Zealand's leading non-government organisation delivering services and support to women and children who have been victims of violence.

We provide a raft of services including:

- 24 hour crisis phone lines.
- 24 hour access to emergency accommodation to women and their children.
- Home visits and community support.
- Education and support groups.
- Information on legal issues, benefits, safety options and housing.
- Policy development, advocacy and Training at a national level.

Our responses are from the perspective of domestic violence victims.

General points

- We are disheartened by the general thrust to cut costs in the Family Court area - especially the potential harm cost cutting could cause to those affected by family violence. The aim of the Review should be to make the Court more effective. This means effective and sustainable outcomes for those who use the Family Court. This would lead to cost savings across the social sector.
- We urge the Government to implement the recommendations in the 2007 report "Living at the Cutting Edge, Women's Experiences of Protection Orders". The Report made evidence based, sound recommendations about how to improve the system for women, children and families. We remain disappointed this Report has never had the recognition it deserves.

A COURT UNDER PRESSURE

Are the issues outlined in Chapter 2 the main issues facing the Family Court? If not, what other issues should we look at? Do you have any evidence that supports your view?

As an initial point related to the women and families we work with, the Family Court is not doing a good enough job at implementing the DVA. It is an excellent piece of legislation, badly let down by those who implement it.

There is too much variance in how decisions are made and the outcomes that follow.

More generally, we have a long standing concern, shared by many, that there is a culture in the Court that seems to blame mothers for the family violence and support fathers in Care of Children applications.

The implications for this are

1. that women will be reluctant to use the court again
2. that women are revictimised
3. that the safety of women and children are compromised
4. that we continue to ignore the overlap between domestic violence and child abuse
5. that the myth that women are to blame for family violence is perpetuated.
6. that the rights of the father trump the safety needs of women and children

7. That despite the Care of the Children's Act acknowledging the importance of a child's primary attachment to the primary care-giving parent and the paramountcy and welfare and best interests of the child, this primary attachment is often undermined by Family Court decisions. ,

We also are concerned about how little Maori are accessing the Court. This is light of the fact that they are exponentially impacted by domestic and family violence. We need to consider what the barriers to accessing safety and justice are for Maori and other ethnic communities in New Zealand.

We believe that the Court needs to use expert assessors to ascertain whether domestic or family violence is a factor in every application before the Court. This person could also make an immediate determination about risk and the degree of urgency needed.

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

The definition of reconciliation is

The act of reconciling meaning to re establish a close relationship between, or to settle or resolve.

The definition of conciliation is:

The process of adjusting or settling disputes in a friendly manner through extra judicial means. Conciliation means bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial

Where domestic violence is a factor, both reconciliation and conciliation are inappropriate prima facie aims of the Court.

The essential issues for the law (and the Court) to focus on are the safety of the victim, the well being of any children and the accountability of the perpetrator.

Non domestic violence cases may well warrant a different approach where an attempt to solve issues before a couple come to court is appropriate.

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

We have a long standing concern that family court staff and others involved in the legal profession do not have an adequate understanding of domestic violence. This is unacceptable given the level of risk involved.

As part of their employment contract, all court staff (including judges) should participate in a process of continuous improvement whereby they continue to meet some core competencies in the domestic and family violence area.

Community organisations such as Refuge are highly skilled in this area and should be brought in as part of this training.

We would also support calls for best practice standards for around the care of children when abuse is present/has been a factor.

CHAPTER 3: THE CHANGING FAMILY COURT

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

New Zealand does not appear to be making much head way in to dealing with the significant rates of child abuse and domestic violence in New Zealand. We believe the Family Court should show leadership around child abuse and domestic violence. Neither are acceptable and both require an approach underpinned by safety and accountability. We also believe that when violence is a factor, the child's best interests is not met by unsupervised contact with the violent party. Contact can not become a 'weapon' as it often is now.

4. Should the Family Court be an open court, what would be the risks and benefits of such a proposal?

As a general point, we support a transparent and open justice system.

However, in the case of domestic violence we do not believe it is in the best interests of the victim to have proceedings occur in a setting whereby members of the public may be present.

There are several reasons for this including safety concerns, the potential for intimidation, the welfare of any children involved and the fear of stigma and discrimination towards her.

CHAPTER 4: FOCUSING ON CHILDREN

5. What measures do you think could be used to manage and reduce conflict between parents following separation?

This question can not really apply to situations where the conflict is actually domestic violence. The court can not 'manage' this in any simple way in order to get a quick outcome re custody. The appropriate process needs to be followed, including a consideration of what is in the best interests of the child. Overwhelmingly, it is in the child's best interest for their mother to be safe. If she is safe, they are too.

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

We support the use of trained child advocates who have a comprehensive understanding of domestic violence and the impact that violence has on children.

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

Mediation is not appropriate where domestic violence is a feature of the relationship.

Mediation involves the use of a neutral third party to facilitate an agreement between two parties. The responsibility to reach agreement rests with the parties themselves. One of the goals of mediation is to bypass an overscheduled judicial system with a quick, low-cost alternative. However, the assumptions underlying the use of mediation do not apply when there has been domestic violence.

The goal of mediation is to reduce conflict between the parties but this can not be achieved within the context of power and control. Mediation assumes that both parties are equal, yet an abuser holds tremendous power over a victim. The imbalance of power between the parties cannot be remedied despite the skills of the mediation. During mediation, the abuser can easily control the victim through the use of signals known only to the couple. Additionally, if there is a long history of domestic violence, the victim is often afraid and reluctant to voice her concerns.

Mediation focuses on future behavior, and many mediators do not allow the victim to address past issues of violence. This furthers the victim's sense of personal responsibility for the abuse, and undermines the accountability of the abuser. Research has established that the time that when a victim leaves the abuser is statistically the most dangerous time for her. Requiring her to be in his presence during mediation increases her risk.

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

Victims of domestic violence should not have to pay to have their safety protected by the State. Having to pay will limit uptake and restrict access for women.

7. Would an obligation in legislation for parents to consult with their children about care arrangements following parental separation be helpful?

This may be appropriate in a situation where a relationship has broken down and domestic violence or child abuse has **not** been a factor.

When violence is a factor, getting the views of children can be hard and should not be compulsory. A violent parent can have undue influence over a child (playing out power and control dynamics). A child may be subjected to a punishment if they do not do what was asked of them.

When domestic violence is a factor, we do not support unsupervised access of any children. A review process can be built in which monitors the child's well being and any work being undertaken by the offender.

8. Who should be responsible for obtaining a child's views on the Court's behalf? Should children be offered a choice about how their views are obtained?

If a professional is being used then it is our view that they must be trained to a high standard in domestic violence. Adequate skills and training are essential for anyone working with children. Specialist positions need to be resourced properly.

What criteria could be used to decide whether and when to appoint lawyer for the child?

See above - adequate training. A person needs to be able to identify when domestic violence may be an issue and have an understanding of what domestic violence means in the context of child care arrangements, protection orders, safety etc.

What are your views on the provision of in-house lawyers for children?

This could allow for counsel for children becoming highly specialised and experts in child needs/best interest - which we support. At the moment, the

standard of counsel for children varies. We would support any moves to have a more consistent service.

What are your views on using other professionals to obtain the views of children?

We support people who are expert at working with children and identifying risks such as domestic violence and child abuse.

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

We would support the notion that where there has been domestic violence, the protected person should have sole responsibility for guardianship arrangements.

CHAPTER 5: SUPPORTING SELF-RESOLUTION

10. How can we improve the provision and delivery of information to those who need it, especially children?

General common sense ideas include translated documents, translation services, an updated, usable website, a help line, plain english documents and more awareness of different cultures.

Those who do the translation work etc should be trained in domestic violence.

Also immediate access to programmes will help families be able to make decisions and move on.

11. Should attendance at Parenting through Separation (PTS) be compulsory before making an application to the Court? What might be the risks and benefits of such an approach?

Not domestic violence situations. It may be appropriate in other instances.

12. To better balance lawyers' professional responsibilities with the needs and interest of children, should lawyers who specialise in family law:

- be accredited? Should accreditation be mandatory or voluntary?

Yes, lawyers should be accredited and this should be mandatory.

- be obliged to work collaboratively in the interests of children rather than their clients?

A lawyer should represent the best interests and needs of their client but not in a way that undermines the best interest of the child.

- be encouraged to assist their clients to resolve their issues without using the court system?

This may be appropriate in some instances but not where domestic violence is an issue.

If this question is suggesting 'undertakings' then we strongly object to their use.

- be required to demonstrate that they tried to get the parties to reach an agreement as a pre-requisite to filing non-urgent applications in court?

See above comment. The dynamics of domestic violence do not allow for this to happen safely.

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

CHAPTER 6: FOCUSING ON ALTERNATIVE DISPUTE RESOLUTION (ADR) SERVICES

What role should counselling play in a broader ADR system ahead of Court?

As a general rule, we do not believe that couple counselling is appropriate with cases where domestic violence is a factor. This is especially the case if the perpetrator has not accepted responsibility and taken any action to address his/her violence.

Is it appropriate to access counselling via the Court?

Counselling has its place in the Family Court and should be able to be accessed via the Court.

We believe that counsellors need more training in family violence as the standard is not consistent.

Should counselling focus more clearly on conciliation?

As mentioned above, conciliation may be appropriate in some instances (e.g. a dispute over a will) but as a general rule **not** when family violence has been a factor in why there are proceedings before the Court.

14. Do you agree some form of ADR should be mandatory before an application can be filed in the Family Court, in certain circumstances? What are the benefits and risks in making these processes mandatory?

Not for domestic violence cases. Other cases may be suited to ADR but appropriate screening for violence is required before its embarked upon.

Who would pay for the parties to attend ADR? What is the best way to ensure both parties engage in ADR?

If the service is free and accessible, you are more likely to get people to engage in it.

CHAPTER 7: ENTERING THE COURT

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

In terms of the women and children we work with the ability to access the Family Court is often the only way their safety can be ensured.

We do not wish to make comment on whether other individuals or parties should have their access limited (it is our prima facie view that people should not be limited in their access) except in the cases where the applications appears vexatious.

17. Should all Family Court applications be screened to determine their appropriate pathway?

Yes - especially for domestic violence and child abuse cases. Screeners would need to be experts and independent.

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

It is our view that the criteria for without notice applications are already quite clear. The issue is whether the DVA is correctly implemented.

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

It is our understanding that this is already a requirement as per the Family Court rules.

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

The risk is that with a penalty system in place victims of domestic violence may be scared or put off making urgent applications which risks their safety.

20. Should applications be focused on the issues to be determined and the outcomes sought?

All family court applications should be assessed for whether family violence is a factor. Even when the application is not specifically about family violence, we know that if family violence is a factor, power and dynamics will impact on how the parties interact and adversely impact on getting a fair and just outcome.

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

We do not believe that there should be any court fees for DVA hearings of parenting orders where they may be vulnerable parents of children.

Likewise when the application is around mental capacity and the like, fees should not be charged.

Money, or lack thereof, cannot be a barrier to accessing safety.

CHAPTER 8: PATHWAYS AND PROCESSES IN THE COURT

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

Only if the lawyer is a fully trained mediator and in no other circumstance.

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

A more holistic approach is sensible and may be appropriate in some cases - e.g. specialised mental health organisations or domestic violence organisations.

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

We believe the court should make assessments based on the evidence before them. Some predictive assessment could be valuable but only by an expert in such a science.

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

We would support sanctions for inappropriate or unsafe behaviour or conduct from a lawyer.

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

Yes, we support recommendations made in the Cutting Edge Report.

28. How might specialist information for the Court be more targeted, focused and timely? What criteria might be used to decide whether to request a specialist report? Should a broader range of people, such as social service providers provide information to the Court?

See above (rec's 12 and 16). We would also support the introduction of specialist family violence advocates.

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

We believe it is not a case of 'either or'. We need programmes for victims and perpetrators. Stopping violence programmes can work and we need to be mindful of the fact that many of the families who come before the court continue with their relationships. We need programmes in place that can break the cycle of violence.

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

Much more needs to be done to support victims of violence rebuild their lives. Part of this includes accessing social services, but also we need to more widely continue to look at the way we treat victims of violence.

If this question is about programmes for the 'whole of family' then we have strong objections to this on the grounds of safety. It may be appropriate at some time but certainly not until safety is ensured and accountability has occurred/a stopping violence programme has been completed.