



**WOMEN'S  
REFUGE**

## National Collective of Independent Women's Refuges Inc

Briefing to Incoming Minister

## **Distribution List**

Hon Marama Davidson, Minister for Prevention of Family and Sexual Violence

Hon Carmel Sepuloni, Minister for Social Development and Minister for ACC

Hon Kris Faafoi, Minister of Justice

Hon Poto Williams, Minister of Police

Hon Kelvin Davis, Minister for Corrections and Minister for Children, Oranga  
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Hon Jan Tinetti, Minister for Women

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## **1. Introduction**

Family violence is pervasive in Aotearoa New Zealand, affecting a third of women and accounting for approximately half of New Zealand homicides. In 2016 (the last year for which the Family Violence Clearinghouse was contracted to provide family violence data summaries) it led to 118,910 police call-outs in 2016, accounting for 41 percent of frontline police officers' time. The cost to the nation has been calculated as between \$4.1 and \$7 billion per annum.

The National Collective of Independent Women's Refuges (NCIWR) is an umbrella organisation comprising 40 Women's Refuges nationwide and is New Zealand's largest service provider for women and children impacted by family violence. As the recognised sector leader NCIWR has a strong and respected voice and seeks to work collaboratively with other community organisations as well as with government partners.

NCIWR's purpose is to support women and children to live free from violence. It operates under a two-whare model and is governed by Te Taumata o Te Kōwhai Core Group comprising one Tangata Whenua representative and one Tauwiwi representative from each of our four regions. Our values are underpinned by our four cornerstones: parallel development (of Tangata Whenua and Tauwiwi), collectivism, feminism, and takatāpui nurturing diversity.

## **2. Summary of Priority Areas for the Incoming Government**

As we set out in greater detail for each category later in this briefing, NCIWR recognizes that family violence has been the subject of significant investment and legislative progression in the last Government term. However victims' access to safety, justice, and recovery remains hindered by aspects of the wider social and legislative contexts that frame their vulnerability to family violence, experiences of family violence, and opportunities to rebuild their lives in the aftermath of family violence. The preconditions that must be met for victims to build lives free from violence include:

- A nationally consistent law enforcement approach to family violence that acknowledges all manifestations of intimate partner violence (discrete and/or cumulative) perpetrated against them and prioritises both victims' safety and accountability for perpetrators
- A criminal justice system that applies fit-for-purpose legislation and appropriate penalties to every instance of violence, while avoiding the potential for misconceptions about family violence to prejudice outcomes
- The Ministries of Health and Social Development to revitalize and strengthen their respective FVIP programmes and consider a merging of VIP case management/documentation systems to enable purposeful gathering and sharing of family violence information
- A responsive social welfare system that enables victims to retain economic viability and independence and access sustainable housing
- A family court system that victims can afford to access and within which violence against them (and how this relates to their children's safety) is consistently taken seriously; and

- Access to funded, long-term therapeutic support to recover from victimisation.

### **3. Refuge services**

Hara taku toa I te toa takitahi, engari he toa takitini  
*Our strength does not come from ourselves alone, our strength derives from the many*

#### **3.1. Overview**

The bulk of our work is in the community with women and children who have been victims of family violence, accompanied by safe house accommodation and crisis support. Frontline work is supported by our other services, including transitional housing, community inter-agency work, the Whānau Protect National Home Safety service, and by national projects aimed at increasing awareness and intervention capacity in communities, such as our Responsive Workplaces programme and our research and policy programme.

#### **3.2. Crisis, Community, and Inter-Agency Work**

In the last contract year, we answered 42,510 calls to our crisis line (an average of 116 per day) and received 53,926 referrals for service. These referrals were primarily for women, with 35 percent of these aged 21-20, 29 percent aged 31-40, 17 percent aged 41-50, 13 percent aged over 51, and 6 percent aged 20 or under. Forty-one percent identified as Māori. Of all referrals, 38,521 were received through multi-agency initiatives including FVIARS (Family Violence Inter-Agency Response Service), ISR (Integrated Service Response) and Whāngaia (Whāngaia Ngā Pā Harakeke).

#### **3.3. Safe Housing, Emergency Accommodation, and Transitional Housing**

In the last year, our refuges provided 61,763 safe bed nights to women (58%) and children (42%) in high-risk situations, and an additional 3,160 bed nights in emergency accommodation. We also provided 96,108 bed nights in that year through transitional housing. Over the three-year duration of our transitional housing contract (2017-2020), we have housed 4832 clients. Almost half were children, and of these, 49 percent were under 3 years old. Just under half (46%) of transitional housing clients identified as Māori, while 23 percent identified as Pacific Peoples and 20 percent identified as Pākehā. Clients stayed in transitional housing for an average of 15 weeks before moving into sustainable housing. We now manage a total of 119 dwellings, and this is set to increase by the end of this year.

#### **3.4. Whānau Protect**

The National Home Safety Service – Whānau Protect, is available in most locations around New Zealand to victims of domestic violence who are at high risk of serious physical injury or death from family violence. This service is for victims who have separated from abusers, enabling them to remain living safely in their current homes while reducing the risk of revictimisation. The service involves provision of monitored safety alarms, which if triggered activate a recording while Police are dispatched; a home safety improvement assessment and safety upgrades to the home and property;

and a plan of action so women and children know exactly what to do if the abuser attempts to gain access to the home.

In the past contract year, we upgraded 395 Whānau Protect clients' homes. These clients had 586 dependent children.

#### **4. New NCIWR Initiatives**

NCIWR has several promising programmes underway. The first is the implementation of new tools to capture the ways clients' lives change in response to advocacy services.

- The 'Empowerment Star' is an intervention and outcome evaluation tool. Clients and advocates collectively use the tool to design their goals and track progress.
- The 'Homelessness Star' has also been introduced for clients at risk of homelessness and in need of emergency housing support.
- The 'My Star' for children and the 'Change Star' for male perpetrators are currently under development.

The introduction of the Empowerment Star has been supported and funded by MSD. MSD and MoJ have expressed interest in the potential of these Star tools for outcome monitoring and we expect to seek support for their further development and implementation.

Responsive Workplaces, our workplace family violence response training and accreditation programme, continues to gain momentum. Both accredited organisations and clients who have accessed support through accredited workplaces have highlighted how beneficial it is to equip workplaces to support staff impacted by family violence.

In the last year, we have also progressed a child-focused research project (Kids in the Middle) to hear from children about their experiences of Women's Refuge, and which highlights the vital importance of a dedicated Child Advocate being available in every Refuge to lead work with and for children impacted by violence. Through this, we have prioritised children's voices as per Article 12 of the Convention on the Rights of the Child (UNCROC) and interviewed children using age- and developmentally-appropriate methods to privilege their experiences and their perceptions of what support for children can be improved or built upon.

To honour their participation, we must now use the contributions they offered to develop and transform service design, which represents a significant investment of Refuge capacity.

The development phase of this work has been funded via our corporate partnership with The Warehouse, but to advance the project and expand it to comprehensively provide for children's needs in the aftermath of violence will inevitably require additional resourcing.

Finally, we undertake one substantive research project per year on aspects of family violence. Most recently, this was on intimate partner stalking and led to training on risk and impacts for community practitioners, lawyers, and judges, and the development of

a policy brief setting out policy gaps that preclude victims' access to safety, and corresponding solutions we have identified for these. We are presently undertaking research into young women's (aged 16-26) experiences of technology-facilitated intimate partner abuse in partnership with Netsafe, after our stalking research highlighted significant practice and legislative gaps that are likely to disproportionately impact young women.

We intend our research focus next year to be on substance use coercion – the ways in which family violence victims' initiation into and subsequent use of substances is utilised by their partners as an instrument of coercion.

## **5. Changes to Service Resourcing and Delivery**

### **5.1. More Sustainable Funding**

In our 2017 Briefing to Incoming Ministers, we underlined the need for Government to acknowledge NCIWR's historic and ongoing over-delivery of services and the need for adequate, purposeful, and sustainable funding models. Since then, the Ministries we work closely with have identified more sustainable funding arrangements, guaranteeing our work with women and children into the future. Budget 2020 announced the largest boost to domestic and family violence funding seen in decades and demonstrated a commitment to sustainable funding for family violence services. This additional funding, beginning in July 2020 and increasing over the next three years, enables Refuges to be better positioned to provide services to all women and children impacted by family violence. We are now more able to support and develop refuge staff and invest in services to ensure we continue to provide high quality specialist services to women, children, and whanau.

Future funding aspirations include the targeted funding of dedicated Child Advocates and further development and implementation of supplementary 'star' tools to both guide and evidence intervention efficacy.

### **5.2. COVID-19 Response**

We experienced a rise in the number of women seeking crisis support during lockdown<sup>1</sup>. Our staff rapidly mobilised to pre-emptively implement safety strategies with high-risk clients and worked tirelessly as an essential service to continue to provide 24/7 support to women in crisis situations, and to provide remote support for other clients with new and often complex needs in lockdown.

During the COVID-19 lockdowns, victims were often prevented from accessing support by the proximity and coercive behaviours of their partners. To mitigate this, we introduced a web chat feature for our Shielded Site technology so that women could access real-time help in crisis without leaving any digital footprint. The web chat function for our Shielded Site was developed in partnership with HomeCare Medical, and was a highly successful collaborative venture.

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<sup>1</sup> <https://www.rnz.co.nz/news/national/413456/women-s-refuge-sees-high-demand-during-covid-19-lockdown>

The value of our high trust nature of our partnership with MSD was evident during lockdown; when we identified the significant additional costs that would be incurred by Refuges proactively supporting victims, MSD acted immediately to provide immediate support through grant funding to make this possible. With the other family and sexual violence peak bodies, we were also able to establish a pandemic working group to share resources as we entered the unprecedented terrain of pandemic planning. This was later supported by the relevant ministries to ensure resources, data, and challenges were being effectively communicated across the sector.

## **6. Family Violence Landscape: Issues and Progress**

### **6.1. Overview**

In 2020, Police have yet again reported another steady increase in family violence call outs, family violence homicides have continued to feature with alarming regularity in news media, and referral volumes to refuge services have grown. Poverty, inadequate housing and serious mental health and methamphetamine issues continued to add pressure to the lives of the women, children and whānau accessing refuge services; all increasing the complexity of refuge work. The Chief Executive of NCIWR now meets regularly with the Police Commissioner; an integral and productive foundation for partnership between the two organisations.

Two significant legislative changes in the past governmental term signal positive changes for victims: first, the Domestic Violence (Victims' Protection) Act 2018, which enables many victims of family violence to access paid leave and protects them from discrimination; and second, the Family Violence Act 2018 and Family Violence (Amendments) Act 2018 (initially drafted as one Bill), which replace prior domestic violence legislation, introduce new criminal offences, and compel greater consideration of risks to victims at various stages of the criminal justice process. In addition, the appointment of a Minister for the Prevention of Family and Sexual Violence, along with the increasing activity of the Joint Venture Business Unit is hoped to provide robust and specialist leadership of family violence-related issues.

However, there are several key areas that preclude an effective, supportive response to victims that enables them to recover from violence and live lives free from further victimisation. These relate to leadership of family violence work programmes, criminal and civil law, law enforcement approaches, and practical barriers to victims' recovery. Each of these priority areas disproportionately impact the safety and opportunities for recovery for Maori victims of violence, who are more likely to face multiple and intersecting barriers to safety, justice, and the practical resources necessary to rebuild lives after victimisation. We offer a list of recommendations under each priority heading.

### **6.2. Leadership of family violence work programmes**

The Joint Venture Business Unit (JVBU) was intended to provide a cross-Ministry collaboration leading Government's work in gendered violence, and we applaud the principle behind its establishment and the obvious commitment to ending family violence that it represents. However, the progress of JVBU projects has appeared constrained by a lack of executive power, which marginalises its importance in



coordinating cross-Ministry work. We had suggested that the purpose of the JVB could be more effectively fulfilled if a Cabinet Minister has oversight of its work rather than an Under-Secretary. While we would of course have preferred a position of Minister within Cabinet, the decision to appoint Minister Davidson as a Minister outside Cabinet is applauded. It is our belief that the work of the Joint Venture has been markedly slowed by the lack of an agreed National Family and Sexual Violence Strategy. Accordingly, we ask that Minister Davidson considers as a matter of urgency the release of draft strategy documents and commencement of public consultation processes.

### **6.3. Partner Stalking and Harassment**

New Zealand has lagged behind the rest of the world in its stalking legislation. Intimate partner stalking typically lasts months to years, impacts victims' safety and security long after separation, and is internationally recognised as having predictive risk potential for subsequent physical violence and intimate partner homicide. While criminal law technically covers many aspects of stalking, this rarely translates to victims of partner stalking in New Zealand accessing safety or justice as the key legislative instruments (such as the Harassment Act and Harmful Digital Communications Act) are not fit for purpose for family violence. NCIWR's 2019 stalking research<sup>2</sup> identified that decisions not to report stalking are influenced by victims' anticipation of unhelpful police and justice responses. This is supported by international evidence that sets out ways in which inadequate responses deter future reporting<sup>34</sup>. The unreasonable onus on victims to articulate and present evidence of stalkers' behaviour also then precludes their access to justice.

Accordingly, we make the following recommendations for Justice, Police, and Social Development<sup>5</sup>:

- Amend existing criminal and civil legislation in conjunction with subject matter experts to ensure these laws are fit for purpose for partner stalking and traverse both physical and technology-facilitated components, OR introduce new standalone stalking legislation with criminal and civil provisions to effectively criminalise intimate partner stalking;
- Undertake an education initiative to upskill relevant actors (including Police, lawyers, judges, and social workers) to respond effectively intimate partner stalking including consistent reporting, identification of stalking behaviour, and development of their conceptual understanding of stalking;
- Designate specialist capacity within law enforcement to investigate, evidence, and prosecute partner stalking; and
- Commission and launch a public awareness campaign targeting victims, perpetrators, and bystanders to challenge stalking myths and update community conceptualisations of partner stalking.

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<sup>2</sup> Thorburn, N., & Jury, A. (2019). *Relentless not romantic: Intimate partner stalking in Aotearoa New Zealand*. Women's Refuge: New Zealand.

<sup>3</sup> Sheridan, L. *Findings from www.stalkingsurvey.com* (2005). Paper presented at the 29th International Congress on Law and Mental Health, Paris, France.

<sup>4</sup> Sheridan, L., & Roberts, K. (2011). *Key questions to consider in stalking cases*. *Behavioural Sciences and the Law*, 29, 255-270. Doi: 10.1002/bsl.966

<sup>5</sup> These recommendations and the evidenced need for them are set out in greater detail in NCIWR's policy brief on partner stalking.

#### **6.4. Gaps in evidence law**

Currently, the Sexual Violence Amendment Bill is before Parliament, and this aims to reduce the emotional burden on victims participating in sexual violence trials as complainants and to ensure they are treated fairly, with minimal potential for re-traumatisation. Despite provisions in law already prohibiting unfair or excessively intrusive questioning, analyses of sexual violence trials indicate that judges do not consistently intervene in the event of inappropriate questioning<sup>6</sup>. Decision-making on what constitutes inappropriate questioning is inherently subjective; it cannot be relied upon to be consistent in the absence of robust routine training that is well-resourced, evidence-informed, and rigorously evaluated. We understand that a training initiative is currently underway, however we do not know what has been completed, what the training involves, who has or is being trained, and how the effectiveness of this will be measured.

Therefore, we recommend:

- Passing the Sexual Violence Amendment Bill;
- Develop judicial training which is co-designed with the family violence and sexual violence specialist sectors, as previously recommended for civil matters<sup>7</sup>; and
- Extending the protections offered to victims regarding their modes of giving evidence and how proximity to abusers in managed in court to victims participating in civil matters, such as Family Court proceedings and Tenancy Tribunal hearings.

#### **6.5. Extending eligibility for counselling/therapy**

Most specialist agencies are not funded to undertake long-term therapeutic work with survivors of family violence, and there are few low-cost private alternatives for long-term quality counselling. Rarely, victims are able to access funded therapy if they have sustained a 'mental injury' that is secondary to a physical injury as a result of physical violence, but this is generally dependent on the physical injury being disclosed to a medical practitioner soon after the event and the identification of a corresponding mental injury is almost never included in a consequent ACC claim.

This contrasts with the long-term support available for sexual violence victims, many of whom may access long-term quality therapy under the Accident Corporation and Compensation (ACC) sensitive claims scheme. In many regions, there are no funded options for support and recovery from the effects of violence once safety is established, despite research indicating that mental health impacts often span many years after the end of the relationship with the abuser. In the absence of ACC coverage, victims are therefore left without the necessary therapeutic support.

Our clients who have been subjected to image-based sexual abuse (commonly referred to as 'revenge porn') as part of intimate partner violence are not entitled to coverage for therapy through the ACC sensitive claims pathway, which is only accessible to

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<sup>6</sup> Elisabeth McDonald, with research and writing contributions from Paulette Benton-Greig, Rachel Souness and Sandra Dickson (Canterbury University Press, 2020) (Forthcoming). *Rape myths as barriers to fair trial process: Comparing adult rape trials with those in the Aotearoa Sexual Violence Court Pilot*.

<sup>7</sup> Law Commission. (2015). *The justice response to victims of sexual violence: Criminal trials and alternative processes*.

people subjected to one or more of a prescribed list of sexual offences perpetrated in-person. In addition, of our clients who have been subjected to sexual violence by a partner or family member and are entitled to funded therapy through ACC if they are considered to have a consequent 'mental injury', many are excluded from also accessing weekly compensation for lost earnings if they were under 18 at the time of injury but over 18 and are not working (often as a result of the injury) at the time that they lodge a claim. This is particularly unjust given the debilitating impacts that childhood or adolescent abuse may have on future employment prospects and the evidenced delay in reporting that is typical of abuse experiences.

We therefore recommend:

- That the list of offences for sexual crimes that ACC covers therapy for mental injury for be extended to include technology-facilitated sexual or family violence, including image-based abuse;
- That entitlement to ACC coverage for therapy be extended to victims of family violence; and
- That the ACC Act be amended so that compensation for loss of potential future earnings are calculated based on the date of mental injury, rather than the date that the claim is lodged.

## **6.6. Workplace provisions for victims**

### ***Exclusion of Victims in Precarious Employment***

While the Domestic Violence – Victims' Protection Act (DVPPA) provides important protection of some victims' rights to continued participation in the workforce during and after victimisation, it has significant gaps that leave some victims vulnerable<sup>8</sup>. The DVPPA excludes those in casual, seasonal, or other forms of precarious employment. Given victims of family violence often are precluded from accessing secure work<sup>9</sup> and women are concentrated in precarious employment<sup>10</sup>, this oversight has disproportionate impacts on victims – contrary to the aims of the legislation.

In the current COVID-19 context where employees are encouraged or mandated to work from home, victims of family violence are particularly at risk. When the home is the workplace, employers have additional obligations to protect their employees from violence, however there is very little guidance available for business on how to do this effectively. To make the DVPPA effective for all victims of family violence, we recommend that the Government:

- Ratify the ILO Convention 190 on Violence and Harassment in the Workplace;
- Extend the DVPPA to include workers employed on casual, seasonal, and other forms of precarious employment;

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<sup>8</sup> Weatherall, R., Gavin, M., & Thorburn, N. (Forthcoming) *Safeguarding Women at Work (?): Lessons from Aotearoa New Zealand toward Effectively Implementing Domestic Violence Policies*. Journal of Industrial Relations.

<sup>9</sup> Jury, A., Thorburn, N., & Weatherall, R. (2017). *What's his is his and what's mine is his: Financial power and economic abuse in Aotearoa*. Aotearoa New Zealand Social Work 29(2): 69-82.

<sup>10</sup> NZCTU (2013). *Under Pressure: A detailed report into insecure work in New Zealand*, New Zealand Council of Trade Unions; Te Kauae Kaimahi: 1-79.

- Establish regulatory oversight by a dedicated organisation to track and review outcomes of the DVVPA legislation;
- Amend the DVPPA to obligate workplaces to actively create a violence free environment in line with International Standards;
- Fund specialist training for workplaces on effective responses to disclosures of family violence and support their employees to live and work free from violence; and
- Develop guidance for businesses on how to effectively implement workplace domestic violence policies in the context of working from home.

### **6.7. Police approaches**

At present, there is considerable regional variance in how Police lead Safety Assessment Meeting (SAM) processes, and which of the FVIARS, ISR, or Whāngaia models they use for these. This precludes national consistency and leaves regional partnership between organisations contingent on individual relationships.

Member Refuges and participants in recent NCIWR research have also identified persistent gaps in police responses to family violence. These chiefly relate to inconsistency in enforcing protection orders and prosecuting breaches, taking no action or inappropriately issuing Police Safety Orders instead of arresting the perpetrator if the victim is unwilling to make a complaint when police arrive at a family violence call-out, minimising the importance of unseen forms of abuse such as technology-facilitated abuse, and disregarding victims' fear unless the episodes of violence precipitating this fear can be evidenced. This is concerning given that the Prosecutor-General guidelines reiterate that pursuing charges against perpetrators is not contingent on victims' willingness to participate.

We recommend that police prioritise:

- A renewed and sustained focus on training at all levels of the organisation, incorporating the feedback of the specialist sector into police training, and emphasising the significance of insidious and unseen forms of abuse and how these relate to risk to victims.
- An increased focus on consistency of SAM processes nationally.

### **6.8. Purposeful data collection and use**

At present, victims who disclose violence against them or seek help to manage the impacts of this violence may access several different support pathways. While they understand and are skilled at navigating impacts across each domain of their lives, the pattern of violence against them and the impacts of this cumulative harm can be difficult to describe, make sense of, and articulate fully when they are accessing support. Typically, this leads to piecemeal recording of violence and disclosures, as each support pathway may capture different aspects but will rarely capture enough of this pattern to gain a sense of the victim's total context. Victims are then more likely to remain at risk because of poor data quality and consequent gaps in service provision.

This is particularly evidenced in the two Violence Intervention Programmes (VIPs), administered by the Ministry of Health and by Work and Income. Both record

information and aim to use this to inform interventions but use different client management systems to do this. To the best of our knowledge, the information gathered is not shared between government agencies, or with non-governmental partners. This is an opportunity lost.

In addition, the use of multiple client management systems precludes any opportunity for client data to be purposefully shared, leaving victims to have to tell and re-tell stories of violence that they may find shameful, sensitive, or distressing to talk about. A relatively cost-efficient solution to this disjointed approach to supporting victims and capturing data is to merge the two systems and prioritise the recording of information in ways that work for the FVIP programmes and the wider government family and sexual violence work programme.

We recommend that:

- The Ministries of Health and Social Development, as a matter of urgency, revitalise and strengthen their respective FVIP programmes.
- The Ministries of Health and Social Development consider a merging of FVIP case management/documentation systems to enable purposeful collection and sharing of family violence information.

## **6.9. Family Court and Criminal Justice**

### ***Legal Aid***

Women who need legal aid are often unable to get it. Additionally, legal aid excludes those with minimal income but shared assets, and results in such debt that the system amounts to a deterrent to access the court system for safety. We welcome the reinstatement of legal representation for the early stages of care of children proceedings that was introduced through the Family Court (Supporting Families in Court) Legislation Act 2020.

However, victims can incur legal bills ranging from NZD10,000 to NZD60,000 simply in pursuit of a legal order enabling them to attract a rapid police and justice response to continued harassment or abuse at the hands of men who have perpetrated violence against them. The 2010 changes to legal aid<sup>11</sup> saw the introduction of restrictive criteria regarding who could access legal aid and determined that people receiving legal aid should be required to repay this in most circumstances. Given that abusers often prolong court procedures to deter victims from pursuing applications against them, victims ultimately bear the brunt of debilitating legal aid debt in a bid to access protection. Those who are ineligible (and this group comprises most working women) and cannot afford to seek legal representation privately end up representing themselves, often with poor results. This acts as a deterrent for women who are considering attempting to live separately to their abusers, and leaves them with crippling debt that, for some, is then the precipitant to their return to the relationship for comparative financial ease.

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<sup>11</sup> New Zealand Law Society. (2015). *Legal Aid and Access to Justice* <https://www.lawsociety.org.nz/lawtalk/lawtalk-archives/issue-868/legal-aid-and-access-to-justice>

Accordingly, we recommend:

- Increase the availability of legal aid in rural areas by incentivising lawyers to undertake legal aid work
- Fund legal representation for safety-related Family Court representation so that victims are not incurring financial burdens in order to ensure their own or their children's safety, OR, at a minimum, review the threshold for eligibility and repayment obligations for legal aid.

### ***Judicial consistency***

Many victims of family violence who do make applications are then faced with lawyering or judicial decision-making that is predicated on family violence myths, stereotypes, and outdated conceptualizations of risk and safety that minimise the impacts of cumulative rather than incident-based abuse.

Further examples of judicial subjectivity and inconsistency are made evident in decisions relating to the Harmful Digital Communications Act, which is applied based on judges' impressions of whether victims were 'severely emotionally distressed', rather than whether an offence against their reputations had been committed. This has led to instances of women who are depressed or in treatment as a result of nude images being circulated, yet who are managing to maintain a calm public persona, being deemed insufficiently distressed for the non-consensual distribution of their nude images to be deemed a crime.<sup>12</sup>

Care of children proceedings and protection order applications are subject to a high degree of subjectivity. Discredited concepts such as Parental Alienation are still haphazardly permitted in Family Court proceedings relating to the care of children, despite attracting criticism from the UN human rights committees. The opportunity to ascertain the impacts of the unmitigated use of discredited and sexist concepts in the 2018 Family Court review was denied by the terms of reference that restricted submissions to issues relating to the 2014 reforms, so government-led analyses of broader family court issues remain elusive. The principles set out in the Family Violence Act 2018 are not consistently applied by the Family Court in cases where there has been violence toward children's mothers. Shared care is often prioritised despite current and concerning threats to children's wellbeing or on-going family violence perpetrated in front of the child<sup>13</sup>, and as a result, fathers' access is prioritized above mothers' concerns for the safety of their children while in the care of their fathers, often demonstrating pervasive unconscious bias that is implicitly blaming toward mothers.

Although we are seeing improved police responses to victims of family violence, not all protection order breaches are investigated or prosecuted, leading to a lack of

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<sup>12</sup> Whyte, A. *'I've never hated myself more in my life' - Revenge porn law, does it really protect the victim?* Retrieved from <https://www.tvnz.co.nz/one-news/new-zealand/ive-never-hated-myself-more-in-my-life-revenge-porn-law-does-really-protect-victim>

<sup>13</sup> Ibid

accountability for protection order respondents and a loss of confidence in the reliability of reporting outcomes for protected person, leaving them unwilling to risk reporting further breaches<sup>14</sup>. In our experience, this is particularly true for breaches involving the use of digital technology or breaches that are symbolic rather than overtly threatening, such as repeatedly driving by the victim's house. This is even though such breaches often constitute part of a wider pattern of intimidation and act as a demonstration of the abuser's continued power over the victim.

In some cases, women are still directed to attend Family Dispute Resolution (FDR) despite the potential that this offers for subtle re-enactment of power and control tactics. Participation in FDR is recognised as unsafe for family violence cases and family violence is officially grounds for exemption from this, yet victims who A.) don't feel confident disclosing violence or B.) are regardless instructed by judges to participate in FDR remain at risk of being further harmed through this process.

In addition, many women who are first attempting to apply for such orders through the Family Court are encouraged to accept Undertakings<sup>15</sup> rather than pursue protection orders, and are told by Lawyers for Children or by judges that they must accept these or risk being regarded as obstructive, malicious, or as though they are alienating their children from their other parent.

We therefore recommend:

- Education for lawyers and judges on family violence myths and stereotypes, developed in conjunction with the specialist family violence sector; and
- Building in a standard evaluation mechanism to track the effectiveness of every protection order issued at pre-determined intervals and identify barriers to the effectiveness of protection orders.

### ***Use of family violence information in care of children cases***

Currently, in care of children cases, only convictions for family violence and current protection orders are considered. This assumes homogeneity of access to (and safety from) protection orders that are mandatorily considered. This does not reflect women's realities of family violence – often, women at the most risk of lethal violence from a partner elect not to exacerbate the abuser's anger by obtaining a protection order and alerting them of her intention to seek safety. Accordingly, many women's experiences of violence (evidenced by records of police callouts and health records) are made invisible within care of children decisions, despite perpetrators' actions being pertinent to children's safety and to the security of family functioning.

Shared care is often then prioritised despite current and concerning threats to children's wellbeing or on-going family violence perpetrated in front of the child<sup>13</sup>. As a result, fathers' access is prioritized above mothers' concerns for the safety of their children while in the care of their fathers, often demonstrating pervasive unconscious bias that is implicitly blaming toward mothers.

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<sup>14</sup> Tolmie, J.E., VB; Gavey, N. (2010). *Is 50:50 Shared Care a Desirable Norm Following Family Separation? Raising Questions about Current Family Law Practices in New Zealand*. New Zealand Universities Law Review 24(1):136-166

<sup>15</sup> An Undertaking is a non-legally binding alternative to a protection order. These cannot be enforced and do not provide protection from further harassment or unwanted contact.

We therefore recommend:

- Mandating the consideration of all family violence information (such as police callouts and agency-held data released by the applicant) in care of children decisions.

### ***Combating family violence myths in criminal trials***

Myths about family violence and victim behaviour continue to pervade judicial decision-makers' perceptions of what motivates perpetration, how victims should behave in 'legitimate' family violence crimes, and what factors compel victims' continued relationships with perpetrators. As with sexual violence, these necessitate the provision of factual information (such as instructions on the consideration of counterintuitive evidence or the inclusion of expert evidence to explain common themes) to juries in trials, in order for misconceptions about family violence to be combated.

We therefore recommend:

- Introducing the default use of expert evidence or counterintuitive evidence to family violence-related trials

## **6.10. Removing Practical Barriers for Victims**

Economic and housing security are both instrumental in women's capacities to seek lives free from violence: without access to sustainable housing or guaranteed income, many have no choice but to return to their abusers so that they and their children may continue to have access to basic necessities. Women victims may be prevented from accessing rental properties because of past damage to properties caused by their abusers or by bad credit records resulting from financial abuse, excluding them from many of the usual rental options. At the same time, many are forced, either by the circumstances of the violence or by their abusers directly, to continue to access benefits that their relationships technically render them ineligible for.

To obtain benefits intended for sole parents or unemployed people under New Zealand's social security system, women must not be "in a relationship in the nature of marriage", as set out in the Social Security Act. However, this disregards the financial power imbalance in relationships where there is an abuser using economic means to perpetuate control over a victim<sup>16</sup>. The rule of "being in a relationship in the nature of marriage" is both ambiguous and harshly enforced. In the experience of many of our clients, punitive responses to the discovery of their intimate relationships have included both prosecution and the immediate cessation of payments. These measures have been applied to women who have recently met new partners and spent time in their houses; similarly, women who have allowed their abusive ex-partners to stay temporarily (often under duress or the threat of violence toward themselves or their children) are subject to prosecution, despite this hardly being "in the nature of marriage" and involving the reciprocal care-taking and joint financial responsibility that this term

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<sup>16</sup> Jury, A., Thorburn, N., & Weatherall, R. (2017). *What's his is his and what's mine is his: Financial power and economic abuse in Aotearoa*. *Aotearoa New Zealand Social Work*, 29(2), 69-82. <http://dx.doi.org/10.11157/anzswj-vol29iss2id312>



implies.

Given the housing shortage and consequent transience that many victims must navigate, staying with a romantic or sexual partner because of a lack of other options does not logically lead to that new partner assuming financial responsibility for the woman and her children. If her only income is then severed, she is forced into a precarious social position where she is entirely dependent on the new partner to meet her own and her children's essential costs, regardless of whether that is an obligation her partner is willing to take on. The assumption that a new relationship must be "in the nature of marriage" fails to recognize the temporary and changeable nature of new relationships and combined families, and this exclusion criteria must be reviewed to ensure that women receiving benefits can maintain their economic independence until a new relationship becomes characterized by joint responsibility for family needs.

We therefore recommend:

- Reviewing the eligibility criteria for sole parent and unemployment benefits with the aim of differentiating between new intimate partners and relationships that can be considered "in the nature of marriage"; and
- Targeting the availability of sustainable housing options to victims of family violence.

## Appendix One: Table of Recommendations

Area	Recommendation
All of Government	Pass the Sexual Violence Amendment Bill
All of Government	Prioritise the release of draft family and sexual violence national strategy documents and commence public consultation
All of Government	<ul style="list-style-type: none"> <li>• Ratify the ILO Convention 190 on Violence and Harassment in the Workplace.</li> <li>• Extend the DVPPA to include workers employed on casual, seasonal, and other forms of precarious employment.</li> <li>• Establish regulatory oversight by a dedicated organisation to track and review outcomes of the DVVPA legislation.</li> <li>• Amend the DVPPA to obligate workplaces to actively create a violence free environment in line with International Standards.</li> <li>• Fund specialist training for workplaces on effective responses to disclosures of family violence and support their employees to live and work free from violence; and</li> <li>• Develop guidance for businesses on how to effectively implement workplace domestic violence policies in the context of working from home.</li> </ul>
Justice	<p>Amend EITHER:</p> <ul style="list-style-type: none"> <li>• existing criminal and civil legislation in conjunction with subject matter experts to ensure these laws are fit for purpose for partner stalking and traverse both physical and technology-facilitated components,</li> <li>• OR introduce new standalone stalking legislation with criminal and civil provisions to effectively criminalise intimate partner stalking</li> <li>• Amend existing criminal and civil legislation in conjunction with subject matter experts to ensure these laws are fit for purpose for partner stalking and traverse both physical and technology-facilitated components,</li> <li>• OR introduce new standalone stalking legislation with criminal and civil provisions to effectively criminalise intimate partner stalking.</li> </ul>

## Appendix One: Table of Recommendations

Area	Recommendation
	<ul style="list-style-type: none"> <li>• Undertake an education initiative to upskill relevant actors (including Police, lawyers, judges, and social workers) to respond effectively intimate partner stalking including consistent reporting, identification of stalking behaviour, and development of their conceptual understanding of stalking.</li> <li>• Designate specialist capacity within law enforcement to investigate, evidence, and prosecute partner stalking; and</li> <li>• Commission and launch a public awareness campaign targeting victims, perpetrators, and bystanders to challenge stalking myths and update community notions of partner stalking.</li> </ul>
Justice	Extend the protections offered to victims regarding their modes of giving evidence and how proximity to abusers in managed in court to victims participating in civil matters, such as Family Court proceedings and Tenancy Tribunal hearings.
Justice	Increase the availability of legal aid in rural areas by incentivising lawyers to undertake legal aid work
Justice	Fund legal representation for safety-related Family Court representation so that victims are not incurring financial burdens in order to ensure their own or their children’s safety, OR, at a minimum, review the threshold for eligibility and repayment obligations for legal aid.
Justice	Mandate the consideration of all family violence information (such as police callouts and agency-held data released by the applicant) in care of children decisions.
Justice	Introduce the default use of expert evidence or counterintuitive evidence to family violence-related trials
Justice	Develop judicial training which is co-designed with the family violence and sexual violence specialist sectors, as previously recommended for civil matters
Justice, Police	<ul style="list-style-type: none"> <li>• Education for lawyers and judges on family violence myths and stereotypes, developed in conjunction with the specialist family violence sector; and</li> <li>• Build in a standard evaluation mechanism to track the effectiveness of every protection order issued at pre-determined intervals and identify barriers to the effectiveness of protection orders.</li> </ul>

## Appendix One: Table of Recommendations

Area	Recommendation
Police	Designate specialist capacity within law enforcement to investigate, evidence, and prosecute partner stalking
Police	Prioritise renewed focus on training, incorporating the feedback of the specialist sector into police training, and emphasising the significance of insidious and unseen forms of abuse and how these relate to risk to victims
Police	Prioritise an increased focus on consistency of SAM processes nationally.
Police, Justice, Social Development, Oranga Tamariki	Undertake an education initiative to upskill responding actors (including Police, lawyers, judges, and social workers) to respond effectively intimate partner stalking including consistent reporting, identification of stalking behaviour, and development of their conceptual understanding of stalking
Social Development	Commission and launch a public awareness campaign targeting victims, perpetrators, and bystanders to challenge stalking myths and update community conceptualisations of partner stalking.
Social Development	Review the eligibility criteria for sole parent and unemployment benefits with the aim of differentiating between new intimate partners and relationships that can be considered “in the nature of marriage”.
Social Development, Health	Revitalise and strengthen respective FVIP programmes
Health, Social Development	Initiate a merging of VIP case management/documentation systems to enable purposeful collection and sharing of family violence information.
ACC	Extend the list of offences for sexual crimes that ACC covers therapy for mental injury for to include technology-facilitated sexual or family violence, including image-based abuse.
ACC	Extend entitlement to ACC coverage for therapy to victims of family violence.
ACC	Amend the ACC Act so that compensation for loss of potential future earnings are calculated based on the date of mental injury, rather than the date that the claim is lodged.
Housing	Target the provision of sustainable housing options to victims of family violence.