

Victims of Family Violence (Strengthening Legal Protections) Legislation Bill.

Introduction:

We would like to thank the Justice Select Committee for the opportunity to submit on this Bill. The National Collective of Independent Women's Refuges (NCIWR) is a non-governmental organisation that had been delivering services to women, children, and whānau affected by family violence in Aotearoa for 50 years. In 2021/22, our network of 40 affiliated refuges supported 52,000 referrals, and 59,000 safe nights in safe houses. Children made up 50% of clients who accessed safehouses across the country.

As in any submission made by NCIWR, we represent the victims of family violence, specifically wāhine and tamariki, who are the primary groups subjected to and impacted by family violence. In Aotearoa, one in three women who have ever partnered with a man report experiencing family violence,ⁱ and men are most commonly the perpetrators of family violence.ⁱⁱ The prevalence of family violence is significantly more pronounced for wāhine and tamariki Māori,ⁱⁱⁱ bisexual women, gender minorities,^{iv} and disabled people.^v

NCIWR supports the aim and intent of the Bill, and we wish to highlight the importance of bringing attention to lesser understood forms of family violence and coercion, namely – litigation abuse. However, we do not support this Bill as it stands.

Litigation abuse is a commonly occurring, serious tactic of family violence which needs to be prioritised. However, we are deeply concerned that whilst the changes proposed are intended to support victims of violence, they may easily be used against them by perpetrators. Perpetrators of litigation abuse weaponise legal systems and legislation as part of their campaign of violence against victims and their children. The issues with legal systems and current legislation that enables and condones this form of abuse are not substantively addressed by this Bill. Our concern therefore stems from the lack of an overarching mechanism with which to accurately identify and attribute litigation abuse or coercive control within the current legal system, or, alternatively, the strengthening of judicial capability in accurately identifying and responding to cases in which litigation abuse is deployed against a victim.

We support the intention behind this Bill and would welcome further iterations that can account for the complexities of litigation abuse as a purposeful part of a wider pattern of family violence.

Overall statement:

For a long time, the specialist family violence sector has expressed concern that the legislation governing family court proceedings has subordinated child safety from family violence in favour of parents' rights (perpetrating parent and protective parent) to (the presumption of) equal care of and access to their children. Yet this care of children is never equally provided by perpetrators compared to victims. Perpetrators tend to use this as an opportunity to harass and force engagement and then disregard the opportunities to spend time with or care for their children. In one example, for instance, the perpetrator tied the victim in family court litigation for nearly two years, and used his first visitation with the children to steal the victim's credit card and post degrading content about her online, rather than parenting. Litigation abuse is part of a pattern of family violence, rarely enacted in isolation. It



represents a form of coercive control that drastically undermines the safety and wellbeing of victims and their children.

While there is no doubt that more needs to be done to strengthen the courts' statutory powers to protect victims of litigation abuse, the aetiology of family violence is multifaceted and complex. It is best explained through concepts such as coercive control,^{vi} and social entrapment,^{vii} that explain perpetrators' accrual and subsequent misuse of power over victims. Because it is so complex and insidious, the current system does not routinely or reliably recognise family violence and its implications for victims and their children. When it is gratuitous or explicit, coercive control tends to be picked up and classified as family violence. However, when the tactics of coercive control are insidious, manipulative, and hidden (such as litigation abuse or other weaponizing of formal systems) it is rarely (accurately) identified.

To effectively safeguard victims and their children within the justice system, justice pathways need to be equipped to accurately identify tactics of violence and organise these into a coherent framework of family violence perpetration and implications for ongoing risk and safety. Family violence does not occur as a singular event; it is an ongoing pattern of abuse consisting of multiple tactics that span multiple domains of a victim's life. The system must then be adequately equipped not only to identify standalone tactics, but to acknowledge how these feed into one another and respond to the picture of family violence as a whole, rather than to the individual parts of it. When justice pathways are not equipped to do this, there is a greater likelihood that the powers enabled by this Bill will be misused to cause further harm to victims, based on incomplete or inaccurate perceptions of the picture of family violence. We therefore submit that in its present form, the Bill poses the potential for its provisions to be predominately utilised against victims, rather than in support of their safety.

Sustainably addressing litigation abuse will require more than this Bill is able to offer. Litigation abuse is intangible from family violence and has many forms. It requires a more complete approach to mitigation than giving powers to Judges to restrain a party from filing further steps in family proceedings if there is recognised abuse of the court or conduct intended to harass the other party.

NCIWR wish to draw attention to two unintended but devastating consequences for victims if litigation abuse is addressed in a silo, without a specialist model or the use of specialists to interpret patterns of abusive behaviour.

- The majority of litigation abuse will continue to remain unidentified; and
- Litigation abuse could be misidentified, incorrectly classified, and incorrectly attributed.

Litigation abuse consists of a range of behaviours and tactics by perpetrators of which filing multiple applications is only one aspect. Currently there are few mechanisms through which to routinely screen for or recognise this type of abuse of the court. Many of the tactics of litigation abuse will continue unseen without system actors who are attuned to the nuance of litigation abuse and coercive control.

Litigation abuse could be misidentified, incorrectly classified, and incorrectly attributed to mothers who are filing multiple applications, submissions, or steps in family proceedings that are legitimate. This could occur when responding to genuine safety concerns to themselves or their children, or due to ongoing proceedings to secure protection orders or ongoing relationship property proceedings. These are made necessary by someone else's abuse and occur due to the limited viable alternatives for safety or resolution.

So often we see legal systems, that are set up to protect victims, working against women, mothers, and children. For example, reviews of police offence classification show that of family harm callouts in which the role 'mutual participant' was assigned, more than half were incorrectly classified, obscuring the role of 'victim' and 'aggressor' that were only identifiable within information about the wider pattern of behaviour. These findings reflect international evidence trends that show that primary victims, when they are women, are extremely likely to be wrongfully assigned the blame for the family violence, and the severity and impact of the violence perpetrated against them is extremely likely to be minimised.

Perpetrators often target the parenting relationship as a tactic of litigation abuse. Much of this requires the legitimate filing of further steps within family proceedings by the victimised parent. Given the gendered distributions of both economic power and caregiving responsibilities after separation, perpetrators' time and resources typically exceed those of victims. They are therefore more able to invest in campaigns against victims by seeking constant reviews or amendments to parenting orders and manipulating proceedings to force ongoing filing by victims. They often do not file themselves, but create a need for the victim to do so – thus portraying the victim as the primary instigator of court proceedings. Without the backdrop of further information about the nuances of the perpetrator's pattern of behaviour, the most likely anticipatable outcome of this Bill for a victim in this situation is the classification of her as the instigator of litigation abuse.

Family violence perpetrators typically have more time and resources than mothers and often utilise these to curate a picture of parenting in which they are perceived as the stronger, better, or more equipped parent. In contrast, NCIWR risk assessment data demonstrates how frequently children and parenting relationships are targeted by perpetrators.^{viii} According to this data, children are frequently used by perpetrating fathers to justify and maintain their access to victims. Victim compliance with perpetrators' coercive control is then compelled through violence (or threats of violence) toward the children. Their freedom to enact these insidious tactics via their access to children represent a continued and seemingly inescapable risk to victims and their children.^{ix} The cycle of the safe parent's court application, momentary plateau of safety, the perpetrator's continued or escalating threat to the children, followed by another or an amended application therefore continues unimpeded.

Women's Refuge clients who are mothers report that their violent perpetrator has:

- Threatened to hurt or kill the children – 41.54%;
- Taken, or threatened to take the children – 50%;
- Used the children to find out information about the victim's life – 42.83%;
- Used children to try and see or have contact with the victim – 50.3%; and
- Made the children feel afraid – 79%.

If a perpetrator's use of family violence foregrounds the identification of litigation abuse relating to parenting, then both the attribution of responsibility for harm and the attribution of responsibility for safety are more accurately identified, interpreted, and responded to. Without a family violence informed interpretation of the parenting intent of both the perpetrating parent and the protective parent, children will be continually placed at risk.

Recommendations:

Issues of litigation abuse should be considered with the assistance of family violence subject matter experts, who can contextualise it within the pattern of perpetrator tactics, victim safety responses, parenting decision making, and social and structural settings.

Consider the integration of family violence specialists, those most equipped to draw out the origin, depth, and significance of individual acts of litigation abuse, and to provide context and meaning to the overarching patterns of abuse that are inclusive of, but not limited to, the way perpetrators manipulate legal systems as part of their control of victims and children.

Further, we recommend strengthening decision-making to reduce the opportunities for litigation abuse to be weaponised by perpetrators, such as by implementing mandatory training in the Safe & Together Model.^{xi}

Accordingly, we argue that instead of strengthening the statutory powers of Judges in isolation, there is scope to explore ways to improve how the system understands, identifies, attributes, and interacts with litigation abuse, as one facet of a broader picture of family violence.

Conclusion:

NCIWR recognises the insidious and debilitating nature of litigation abuse, and strongly believes that it needs to be tackled. There is no doubt that it impacts the lives of many victims and children across Aotearoa. Our primary concern is that the Bill, as it currently reads, does not go far enough to effectively address the many tactics perpetrators deploy in court proceedings, and is therefore limited in its ability to forestall or disrupt litigation abuse, leading to unintended consequences for women, mothers, and children.

ⁱ Fanslow, J. L., & Robinson, E. (2011). Sticks, Stones, or Words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women. *Journal of Aggression, Maltreatment & Trauma*, 20(7), 741–759. <http://dx.doi.org/10.1080/10926771.2011.608221>

ⁱⁱ At 1.

ⁱⁱⁱ Family Violence Death Review Committee. (2017). *Fifth Report Data: January 2009 to December 2015*. Health Quality and Safety Commission. <https://www.hqsc.govt.nz/assets/Our-work/Mortality-review-committee/FVDR/Committee-Publications-resources/FVDR-2017-10-final-web.pdf>

^{iv} At 1.

^v Fanslow, J. L., Malihi, Z. A., Hashemi, L., & McIntosh, T. K. D. (2021). Lifetime Prevalence of Intimate Partner Violence and Disability: Results From a Population-Based Study in New Zealand. *American Journal of Preventive Medicine* 61(3), 320-328. <https://doi.org/10.1016/j.amepre.2021.02.022>

^{vi} Stark, E., Reed, L., Tolman, R., & Ward, M. (2016). *Coercive Control and Snooping and Sexting: How men entrap women in personal life*. New York: Oxford University Press.

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- ^{vii} J. Tolmie, R. Smith, J. Short, D. Wilson and J. Sach, 'Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence', *NZ Law Review*, 2018, pp. 181–218.
- Dragiewicz, M., (2019). Domestic Violence and Communication Technology: Survivor Experiences of Intrusion, Surveillance, and Identity Crime," *Australian Communications Consumer Action Network*, (2019): 17.
<https://eprints.qut.edu.au/131143/>
- ^{viii} Humphreys, C. and Thiara, R., 'Supporting the relationship between mothers and children in the aftermath of domestic violence', in Stanley, N. and Humphreys, C. (eds.), *Domestic Violence and Protecting Children: New Thinking and Approaches*, London, Jessica Kingsley, 2015.
- ^{ix} Nurius, P.S., R.J. Macy, I. Nwabuzor and V.L. Holt (2011) Intimate partner survivors' help-seeking and protection efforts: a person-oriented analysis, *Journal of Interpersonal Violence*, 26(3), pp.539-66.
<https://doi.org/10.1177/0886260510363422>
- ^x Lamers-Winkelmann, F., Willemen, A.M. and Vissera, M. (2012). Adverse childhood experiences of referred children exposed to intimate partner violence: Consequences for their wellbeing, *Child Abuse & Neglect*, 36(2), 166–79.
<https://doi.org/10.1016/j.chiabu.2011.07.006>
- ^{xi} Safe and Together Institute. <https://safeandtogetherinstitute.com/>