



New Zealand Council Of  
Christian Social Services

**“Strengthening New Zealand Legislative Response to Family Violence: A Discussion Document.**

**Ministry of Justice**

**New Zealand Council of Christian Social Services Submission**

**17<sup>th</sup> September 2015**

## **Introduction**

The New Zealand Council of Christian Social Services (NZCCSS) has six foundation members: the Anglican Care Network, Baptist Union of New Zealand, Catholic Social Services, Methodist Church of New Zealand, Presbyterian Support New Zealand Inc. and the Salvation Army. NZCCSS works for a just and compassionate society in Aotearoa New Zealand. We see this as a continuation of the mission of Jesus Christ. In seeking to fulfil this mission, we are committed to giving priority to poor and vulnerable members of our society and to Te Tiriti O Waitangi.

Nationally, NZCCSS membership consists of multiple social service groups working from almost 640 separate organisational sites, which collectively provide over 1,200 social service programs throughout New Zealand. Our members deliver a wide range of services that cover such areas as child and family services, services for older people, food-bank and emergency services, housing, budgeting, disability, addiction support, community development and employment services. Further details on NZCCSS can be found on our website [www.nzccss.org.nz](http://www.nzccss.org.nz).

NZCCSS welcomes the review of New Zealand's legislative response to family violence. The entrenched level of family violence and child abuse in communities is deeply concerning to NZCCSS member.

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## **Part A**

### **General Comments**

NZCCSS welcomes the current review of New Zealand's legislative response to family violence, and acknowledges the role of the justice system and legislation in responding to family violence once it has occurred. This work comprises a large part of the police and court workload and as recently commented by Minister Amy Adams accounts for *41% of frontline police time is spent on family violence and 50% of homicides in New Zealand are family violence-related.*

NZCCSS thanks the Ministry of Justice for its preparation of a comprehensive and well researched discussion document. It captures the complexity of different types of violence, safety issues experienced by victims both when reporting family violence to police, and when cases are brought before the courts. Overall, the range of mechanisms to improve the safety of victims and their children [new offences, additional pathways, improving access to and effectiveness of protection orders] are positive and will likely go some way to keep families safe [Part 2, Part 3].

While family violence is experienced and redressed at a personal level, it also occurs within a social context that may be influenced by a range of inter-related external stressors: poverty, overcrowding, substandard housing conditions, unemployment, inadequate household income (waged and benefit-dependent) and poor health (physical and mental). An effective strategy to reduce family violence must also include consideration of structural influences, along with a focus on individual actions.

The discussion document clearly sets out "*characteristics, socioeconomic status or environment may increase the risk, incidents and severity of family violence*" [p13-15]. In this section, Māori are identified as *disproportionately represented as both victims and perpetrator, with Māori women twice as likely as other women to experience family violence.* In discussing these externalities, structural issues that have created conditions for high rates of inequality within Māori communities need to be included, [Dr Lisa Marriott and Dr Dalice Sim, 2014], along with a discussion on the impact of historical colonisation [E Tu Whanau].

NZCCSS supports a focus on promoting positive/respectful relationship within families/whanau that plants the seed for well-being and resilience. This approach is at the heart of the work carried by Christian social service members in their communities. Our member agencies see the positive outcomes that derive from adults and children having both a sense of safety and of belonging within their family/whanau. They also see the negative outcomes of violence that corrodes relationships, often creating a cycle of abuse that spans generations of the same family/whanau. A frequent companion to this cycle of violence is poverty and social exclusion as families genuinely struggle to meet their basic needs on a day-to-day.

Primary prevention strategies that include community-based services to support family members to seek help (self-referrals) to stop family violence are critical, particularly given that only a fraction of cases are reported to police, or meet the high prosecution threshold. It is concerning that little public funding goes to prevention strategies, while the majority (88%) is allocated to follow up responses once violence has occurred [*Progress on the Work Programme of the Ministerial Group on Family Violence and Sexual Violence* [Cabinet Social Policy Committee]. Significant public investment is needed to support positive/respectful relationships (non-violence programmes) in communities. Over the long run this public investment will pay dividend in reduced funding of police time, court time and of public health expenditure. It will also support generations of families to be strong and resilient.

## **Part B**

The following section provides specific comments on legislative review of family violence legislation.

### ***Guiding Principles***

*How would guiding principles affect how the Domestic Violence Act and other legislation is implemented?*

*What principles would you suggest?*

*How could including principles in the law reflect the nature and dynamics of family violence?*

*For example:*

*include principles emphasising developments in the understanding of family violence*

*include principles that guide how*

*agencies are expected to respond*

*to family violence, including*

*particular population groups.*

NZCCSS supports the inclusion of a set of overarching principles within legislation that inform decision-making in a range situations involving family violence.

These principles should frame the whole of government work programme to reduce family violence, guide an overarching high level strategy, and all related work planning and funding decisions.

The Family Violence Protection Act 2008 in Victoria, Australia, provides useful examples of guiding principles that could be considered (p17).

NZCCSS considers the following points useful to include as principles in the revised Act.

- Respectful and positive relationships within families/whanau is a fundamental social value that must be promoted at every level of society.
- Family violence is a fundamental violation of human rights and is unacceptable in any form.
- Family violence is not acceptable in any community or culture.
- Inclusion of cultural considerations for implementation of the Act (ie the need for different cultural responses). NZCCSS' mission includes a commitment to Te Tiriti O Waitangi. The Victoria Family Violence Protection Act includes an acknowledgement of Aboriginal and Torres Strait Islander cultural traditions.
- An acknowledgement of social harm that may exacerbate family violence (ie alcohol). This principle should include structural issues such as high rates of inequality among specific population groups, inadequate household income (waged and benefit dependent), inadequate housing stock for low income families, the impact of overcrowding and unsafe housing situations on family relationships.
- Inclusion of a description of the types of abuse that may occur within a family (child abuse, elder abuse, violence against people with a disability, abuse of siblings, along with violence against women) and recognition of the harm caused by coercive control and children/young people witnessing violence at home. The description should also include reference to the different nature and dynamics of family violence across population groups (European, Maori, Pacific People, Immigrant Communities, Older People and People with disabilities).
- A requirement for alignment across legislation (i.e Social Security Act 1964, Vulnerable Children Act 2014, NZ Public Health and Disability Act 2000). Both victims and perpetrators of family violence may seek support from a range of services [health sector, public housing, immigration, Work and Income]. Guidance for decision-making should extend beyond family violence legislation to support those administering other legislation that impacts on victims/perpetrators of violence. This would also support a whole-of-government approach.
- The inclusion of a reference to a national strategy to prevent family violence in the revised legislation. The strategy could be developed outside of the legislation in the same way as the Vulnerable Children's Plan is referenced in the Vulnerable Children Act 2014.

### ***Definition of family violence***

- *What changes to the current definition of 'domestic violence' would ensure it supports understanding of family violence and improves responses?*

*For example:*

- *more clearly explain the concept of 'coercive control'*
- *use the term 'family violence' instead of 'domestic violence'*

- include the abuse of a family pet, where the abuse or threat of abuse is intended to intimidate or harass a family member.
- What other ideas do you suggest?

NZCCSS agrees the current legal definition of 'domestic violence' has limitations and supports the view that a change of legal definition to 'family violence' would go some way to increase understanding about other types of violence that may occur in families [child abuse, elder abuse, sibling abuse], whilst acknowledging that intimate partner violence (IPV) remains a significant issue.

At the same time, NZCCSS has concern the use of 'family violence' could limit the recognition of violence in household setting that is not perpetrated by family members (ie carers of older people and of people with disabilities). NZCCSS has been informed that the Queensland legislation 'Domestic and Family Violence Protection Act' recognises the difference between family violence and domestic violence and includes both in the title This could provide a useful model for any revision to New Zealand's legislation on family violence. [Presbyterian Support New Zealand].

NZCCSS supports the need for a clearer explanation of what is meant by of 'coercive control' in the legal definition of family violence. Psychological abuse accounts for a significant rate of IPV partner violence and therefore needs to be covered in the scope of any revised legislation. "*Psychological abuse may be the most common form of IPV and most likely to co-occur with other forms (Semple 2001). In the Hitting Home study, men reported committing a much higher rate of psychological abuse against female partners (62%) than physical abuse (35%) (Leibrich et al 1995)*". *The scale and nature of family violence in New Zealand: A review and evaluation of knowledge. 2007.*

#### ***The nature and dynamics of family violence across population groups***

- What changes could be made to address the barriers faced by each population group?
- Does the current legal framework for family violence address the needs of vulnerable population groups, in particular disabled and elderly people?
- What changes could be made to better support victims who are migrants, particularly when immigration status is a factor?
- What other ideas do you suggest?

Given that only 20% of family violence cases are reported to Police, there are clearly significant barriers to reporting and addressing family violence. The recognition of the specific needs of different population groups and communities would be a starting point for removing barriers. There has already been substantive research on family violence that could be drawn on to identify specific barriers faced by difference population groups. The following are two examples:

#### **The People's Blueprint: transforming the way we deal with child abuse and domestic violence in New Zealand. The Glenn Inquiry [2014]**

- This research drew on first hand experiences of people who have lived with abuse and family violence (victims/perpetrators and front-line workers), and provides insight into the barriers to accessing help, the inter-relationship between victim and perpetrators, and the experience of children of family violence.

#### **E Tu Whanau: Programme of Action for Addressing Family Violence. 2013-2018. The Maori Reference Group.**

- Addressing family violence in Māori communities was the focus of the Māori Reference group for the Taskforce for Action on Violence within Families. This comprehensive document provides insights into a Māori-led programme of action to reduce family violence shaped by their own cultural meaning.

A similar taskforce could be identified for specific population groups [older people, people with disabilities, immigrant communities].

#### **Accessibility / Effectiveness of Protection Orders**

What changes could enhance the effectiveness, use and enforcement of protection orders? For example:

- Require Police to arrest for all breaches of protection orders, where there is sufficient evidence.
- What other ideas do you suggest?

NZCCSS agrees that safety from violence is a basic human right and that the corresponding right to help should not be compromised because of cost. The reality for many victims of violence, however, is that the cost of seeking a protection order is a barrier, particularly when not eligible for legal aid. The establishment of a 'dedicated fund' or funding community legal services to apply for a protection order would go some way to remove the cost barrier, and would also assist victims with the application process which can be a daunting process.

Some members advise that repeated incidences of violence only reoccur less if police use their power to arrest offenders for breaches or first time assaults. There is a view this is not consistently happening. One member commented "*There is a risk that some incidents are treated as 'infringements' which we would not tolerate if the victim was a stranger to the perpetrator*".

### **Police Safety Orders**

What changes might enhance the effectiveness, use and enforcement of Police safety orders. For example:

- require Police to refer a perpetrator to services, such as short-term housing
- empower Police or a third party to support the victim to apply for a protection order, or apply on behalf of a victim, when a
- Police safety order is issued (if the victim consents, or does not object).
- What other ideas do you suggest?

NZCCSS supports the consideration of breaches to police safety orders being made an arrestable offence. This would support the overarching guiding principle that family violence is a fundamental violation of human rights and is unacceptable in any form and is not acceptable in any community or culture.

NZCCSS also supports an increase to the timeframe of police safety orders (72 hours minimum and 5 days maximum) on the basis that the maximum 5 days can be insufficient time for police/specialist services to prepare a protection order and implement safety plans for victims. It takes time before a victim of family violence is ready to talk about their experience and take action. In addition, specialist services often have high caseloads and also require more time to effectively work with a victim.

NZCCSS also recommends that on making a police safety order, police should be required to refer victims to specialist services, and perpetrators to rehabilitation support. Both victims and perpetrators need access to specialist services if the underlying drivers of violence are to be addressed.

### **Property Orders**

What changes would enhance the effectiveness, use and enforcement of property orders? For example: require judges to consider accommodation needs when making protection orders and to make property orders more proactively simplify enforcement mechanisms.

NZCCSS supports consideration of housing assistance to both victims and offenders to enhance the effectiveness of property orders. Feedback from members advise the implementation of safety plans for 'victims' is a critical issue and finding a 'safe place' for them is fraught with difficulty if they have no access to emergency financial assistance. Financial support to find safe housing, along with practical housing assistance, also needs to be put in place to support victims to take the first step to seek help to leave violence relationships.

The provision of housing assistance to the perpetrators is also critical to ensure the safety of the victim and their family. If a perpetrator has nowhere to go, some members advise they are likely to hang around the family home (sleep in their car), and when seen by family, brought back into the home out of concern particularly if children are present. More housing assistance for perpetrators, along with attendance at specialist non-violence programmes, would likely go some way to help reduce family violence in the home over the long term.

### **Family Violence and Parenting Arrangement**

Keeping children and adults safe in parenting arrangements is an important concern for the reasons that are clearly set out on page 26-27. NZCCSS supports the view that parenting orders should be consistent with any existing protection order to ensure the safety of a child is paramount. When a parent does not feel safe around a partner, the parent and their children should not be put into a situation that enables them to be re-traumatised during visitation rights. A child's safety from violence should be given primary weight in all decisions by the Courts, and this should include safety from psychological violence. To break the cycle of inter-generational violence in the home, children must be kept safe from both witnessing and experiencing all forms of violence.

### **Competent Workforce**

In your view, what impact would setting minimum workforce and service delivery standards have on the quality of services?

What challenges do you see in implementing minimum statutory standards? For example:

- establish minimum standards for
- workforce competence
- require agencies and service providers to put in place policies and systems that support the workforce to practise in a responsive, safe and competent way.
- What other ideas do you suggest?

Overall, NZCCSS supports the development of public awareness material and minimal standards and service delivery standards but this should be developed in partnership with relevant stakeholders and adequate additional government funding would be required to develop and implement these changes.

The identification of victims (and perpetrators) and referral to specialist services early is critical to preventing further violence in the future. To achieve this people working on the front line (Government workers, GPs, hospital workers, teachers) also need know the signs of family violence and what to do if someone is looking for help. For example, Work and Income plays a critical role in providing financial support to vulnerable people (often women with children) wanting to leave violent relationships. Training staff on pathways for help and advice on financial assistance available to them would greatly support the identification of victims and referral to specialist services and would likely contribute to the reduction to family violence in communities.

### **Judicial Powers in Criminal Proceedings**

What powers should criminal court judges have to vary or suspend orders usually made by the Family Court, or to make orders at different stages in proceedings? For example:

- give judges in criminal proceedings greater powers to vary protection orders on the basis of information they hear during trials
- empower judges in criminal proceedings to refer the question of varying a protection or parenting order directly to the Family Court.
- What other ideas do you suggest?

NZCCSS supports the view that the Criminal and Family Court systems should be aligned as is the case in the Queensland Domestic and family Violence protection Act, which requires that "*a civil response under the Act should operate in conjunction with, not instead of, the criminal law*". [Presbyterian Support New Zealand Federation].

### **Additional Pathway**

- What are your views on an additional pathway for families who seek help to stop violence escalating? Is such a pathway necessary or appropriate?
- What are your views on the range and type of services that might be appropriate in the circumstances?
- What are your views on clarifying in law that Police take at least one of the following steps when responding to family violence reports: file a criminal charge (or issue a warning), issue a Police safety order, make a referral to a funded service or services or an assessment?
- What other ideas do you suggest?

Members advise that families often approach services for support for issues other than family violence, and that during the course of delivering a service and building a relationship, family violence issues are raised and wrap around supports put in place. It is critical that community based social service providers are sufficiently funded to deliver support to victims of violence at the time they present for support, which may be in addition to accessing other services.

An effective community response to family violence also requires additional pathways for perpetrators of violence who want to stop, along with victims of violence. Currently there is no financial assistance provided to perpetrators who self-refer to services to stop violent behaviour within their family. It is only when the violence has exacerbated and reported to police that funding is made available for specialist support.

To make any dent into New Zealand's appalling family violence statistics there must be adequate public funding of both primary prevention and perpetrator rehabilitation. This funding must also be available to

people who self-refer to services and not just those who have reached crisis point.

#### **Information sharing between agencies**

“What changes could enhance information sharing between agencies in family violence cases: For example: Creating a presumption of disclosing information where family violence concerns arise, stating that safety concerns trump privacy concerns.

#### **Information sharing with and between courts**

What changes could enhance information sharing between courts and between courts and other agencies, in family violence cases? For example

Require that judges are provided with information held by police and other justice sector agencies, Place a positive duty on parties to inform the criminal court of any related family court proceedings or order?

NZCCSS supports information sharing between courts and the disclosure of all relevant information in cases involving family violence. This should include previous family violence convictions and any history of police calls in relation to family violence. As raised in the discussion document, judges need the full picture in order to make informed decisions about the risk imposed by perpetrators.

The Privacy Act (1993) already provides for the disclosure of information sharing across agencies on specific grounds that include “*the use is necessary to prevent or lessen a serious threat to public health or safety, or the life or health of any individual*” [Principle 10]. NZCCSS supports calls to include a reference to family violence as a specific ground to enable the disclosure of information. This might go some way to provide guidance and to support professionals to disclose information where there is serious threat to life.

At the same time as recognising the importance of sharing relevant information, the safety of victims is paramount and any agreement to share information across agencies must be accompanied by guidelines that set out protocols to ensure ‘sensitive information’ about a victim cannot be received by the perpetrator or shared to them by their lawyer.