Family Violence Death Review Committee

Family Violence Death Review Committee submission on Strengthening New Zealand's legislative response to family violence: a public discussion document

September 2015

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1. Introduction

1.1 Background

The Family Violence Death Review Committee (FVDRC) is a statutory committee of the Health Quality & Safety Commission (HQSC) mandated to (1) review and report to the HQSC on family violence deaths, with a view to reducing their number, and to continuous quality improvement through the promotion of on-going quality assurance programmes, and (2) develop strategic plans and methodologies that are designed to reduce family violence morbidity and mortality.

FVDRC members are drawn from a wide range of sectors – primarily justice, health, and academic research (kaupapa Māori and tauiwi) – and all share an expertise in family violence. This submission is based on learnings from the death reviews and the collective professional experience of the FVDRC members.

1.2 FVDRC membership

The FVDRC Chair, Julia Tolmie is an Associate Professor in Law at the University of Auckland. She has researched and published for more than 20 years on family violence issues as they arise within family law and criminal law in New Zealand and other jurisdictions, particularly Australia and Canada.

FVDRC membership:

- Dawn Elder (Deputy Chair), Professor of Paediatrics and Child Health, University of Otago, Wellington
- Denise Wilson (Deputy Chair), Professor Māori Health, Auckland University of Technology
- Miranda Ritchie, National Violence Intervention Programme Manager, Health Networks Ltd
- Paul von Dadelszen, retired Family Court Judge
- Pamela Jensen, Barrister & Solicitor, Jensen Law
- Dr Fiona Cram, Director, Katoa Ltd
- Jane Koziol-McLain, Professor of Nursing, Director, Centre for Interdisciplinary Trauma Research, Auckland University of Technology

2. Executive summary

The main points of the FVDRC's submission include:

- the establishment of an independent statutory authority responsible for the oversight of the family violence system
- the development of a separate comprehensive approach to safeguarding adults at risk of abuse and neglect
- the development of a preamble and definition of family violence that address the unique features of the main forms of family violence
- the definition should frame family violence as a harmful pattern of behaviour
- the inclusion of two sets of guiding principles in the Domestic Violence Act: general statements about our position as a community on family violence and principles specific to practice within the family violence system
- creating a presumption that an arrest will occur on breach of a protection order

- extending the length of Police Safety Orders to ten working days and provide a criminal offence for any breaches
- ensuring parenting orders are consistent with protection orders, and that child safety is the paramount concern
- the development of a strategy for perpetrators that escalates consequences for continued abusive behaviour
- reviewing New Zealand Police and Crown Law prosecution guidelines to ensure victim safety is a mandatory consideration in family violence cases
- considering the creation of an offence of assault occasioning actual bodily harm
- amending the Sentencing Act 2002 to ensure that victim(s) safety is a mandatory and primary consideration when determining the appropriate sentence in family violence cases
- that remorse should be demonstrated in behaviour change in cases involving family violence before it mitigates the consequences of offending
- criminal justice reforms that facilitate timely and expeditious legal proceedings in cases of family violence
- consideration of the evidence for an Integrated Specialist Family Violence Court
- investing in specialist family violence advocacy services to enable earlier intervention in family violence cases
- prioritising the exploration of a range of flexible responses for working with abusive men and their whānau
- mandating information sharing between the Family Court and Criminal Court with respect to family violence cases
- requiring police and other justice sector agencies to consistently provide judges with relevant information held by their services
- supporting the establishment of minimum standards of workforce competence
- requiring agencies and service providers to put in place policies and systems that support the workforce to practice in a responsive, safe and competent way
- providing that the CEOs of the Department of Corrections, NZ Police, Ministry of Health, Ministry of Education, Ministry of Justice and Ministry of Social Development under the Domestic Violence Act have legislated shared accountability for family violence
- amending the law which allows a child who is a protected person on a protection order in which their father is the respondent to be left in the guardianship of their father when their mother has been killed by another abusive partner.

Strengthening New Zealand's legislative response to family violence

3. Legislative framework: overview

What changes to legal tools and powers would ensure the law keeps pace with advances in understanding of family violence and how to address it?

There is widespread appreciation that family violence is a 'wicked' problem.[1] The FVDRC death reviews suggest that this appreciation has not yet translated into front-line practice with women and children experiencing abuse. Instead the everyday practice responses in New Zealand continue to be fragmented, siloed and overly simplistic and therefore often unsafe. The development of a person-centred and whānau centred integrated response is needed in order to effectively address

[1] A problem that is both complex and resists resolution.

the complexity of people's lives and reconfigure the current complex system of service provision. The FVDRC recognises that a reconfigured system will require continuous review and evaluation of integrative developments. It recommends that consideration is given to the establishment of an independent statutory authority. One of the functions of such an authority would be to ensure the law keeps pace with advances in understanding of family violence and how to address it.

Multiple recent reports have suggested the establishment of such an independent authority responsible for the oversight of the family violence system. In November 2013, the Ministerial Expert Advisory Group on Family Violence[2] recommended to Government:

- the establishment of the National Family Violence Co-ordinator position, with a supporting secretariat, to assist integration and collaboration across agencies and to oversee the integration of Government and community provision of primary prevention programmes and response services and the implementation of a national code of practice
- a Family Violence Research Hub be established to collate data, evaluate programmes and share information.

In July 2014, *The Way Forward* report[3] recommended the development of a backbone agency. The report said the key functions of such an agency should include:

- coordinating participating organisations and agencies
- working with those involved in all parts of the system to ensure they understand and agree to uphold the common agenda and rules for interaction
- generating and transferring knowledge around the system to ensure the system is constantly learning
- disseminating knowledge and offering opportunities for ongoing professional development
- acting as a clearing house for innovative practice to allow the system as a whole to learn
- tracking data, enabling adaptation, disseminating knowledge and improving motivation and morale among all participants
- enabling a high degree of transparency among all organisations and levels involved in the work.

In June 2015, Domestic Violence Victoria[4] recommended to the Royal Commission on Family Violence in Victoria[5] the establishment of an independent statutory authority responsible for the oversight of the family violence system. It was envisioned that such a body would be protected through legislation and would set the standards and key performance indicators by which all aspects of family violence prevention and response would be measured. The body would also monitor and evaluate the operation and effectiveness of the system and advise the Government and other stakeholders accordingly. This would serve to introduce specialist and evidence-based family violence expertise into decision-making processes, and build in long-term sustainability of the family violence system.

[2] Report of the Expert Advisory Group on Family Violence, November 2013. http://www.beehive.govt.nz/sites/all/files/Report_of_the_Expert_Advisory_Group_on_Family_Violence.pdf

[3] Herbert, R. and D. Mackenzie (2014) *The Way Forward: an integrated system for intimate partner violence and child abuse and neglect in New Zealand*, Wellington: The Impact Collective, http://www.theimpactcollective.co.nz/thewayforward_210714.pdf

[4] Considerations for Governance of Family Violence in Victoria: Domestic Violence Victoria Submission to the Victorian Royal Commission into Family Violence 19 June 2015. http://www.rcfv.com.au/getattachment/91715532-603E-456E-91D0-B3235E0C62CB/Domestic-Violence-Victoria---01

[5] http://www.rcfv.com.au/About-Us

4. The nature and dynamics of family violence across population groups

Does the current legal framework for family violence address the needs of vulnerable population groups, in particular disabled and elderly people?
How could it be improved to better meet the needs of these groups?

The most vulnerable section of the population are children exposed to and affected by the violence that occurs between adults. Violence may also of course be targeted directly at children. Children should be the paramount consideration as a vulnerable population. They are completely dependent on the protection provided by their adult caregivers.

With regard to other vulnerable populations, rather than amending the law (s 4, Domestic Violence Act 1995) to provide that the disabled and elderly are in a domestic relationship with their carers (non-family members) the FVDRC supports the development of a comprehensive approach to safeguarding adults at risk of abuse and neglect.

Although adults at risk are particularly vulnerable to family violence, they have additional and different needs and issues that deserve specific attention and tailored responses. People First[6] defines an adult who needs safeguarding against abuse as an adult who has *care and support needs*, **and** is experiencing (or is at risk of) abuse and neglect **and** *as a result of those needs* is unable to protect her/himself against the abuse or neglect (or the risk of it). Many adults who need safeguarding may be abused by family members and/or paid carers and/or other people in their communities. Adults who need safeguarding may also experience additional forms of abuse, including institutional abuse.

Accordingly, it is suggested that there is a need to enact stand-alone vulnerable adult legislation (cf. the Vulnerable Children Act 2014). For example, in the UK the Care Act 2014 governs the social care system for adults in need of care and support and their adult carers.

5. Definition of 'family violence'

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

The FVDRC suggests that a preamble be included in the Domestic Violence Act 1995 (the Act) to acknowledge the social and historical context in which *family violence* occurs. It also recommends that the definition of domestic violence in s 3 be revised to more accurately describe how family violence is predominantly perpetrated and experienced.

The preamble could encompass the following points:

- while anyone can be a victim or perpetrator, family violence is predominantly committed by men against women, children and other vulnerable persons
- family violence is generally a long-term pattern of cumulative harm that can increase in frequency and severity
- children and young people who experience family violence are particularly vulnerable
- exposure to family violence will have a serious impact on children and young people's current and future physical, psychological and emotional wellbeing

[6] http://www.peoplefirst.org.nz/who-what-where/who-is-people-first/

- family violence affects the entire community; and occurs in all areas of society, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion
- the causes of family violence within Māori whānau are complex. Compounded disadvantage rather than individual risk factors may underlie the risks of wāhine and tamariki Māori being victims of family violence and tāne Māori being perpetrators
- the persistence of family violence against women and children is supported by structural inequities and widespread attitudes that entrap women and men
- the intergenerational nature of family violence requires a commitment from everyone to prevent the reoccurrence for future generations.

The current definition of domestic violence in the Act sets out discrete types of abuse. This framing supports the current justice response which is geared towards responding reactively to 'acts' or 'incidents' of violence. Section 3(4)(b) provides that "a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial." This is not the same as requiring domestic violence to be presumptively responded to as though it is likely to be a harmful pattern of relating that has a cumulative and compounding impact on the victim.

The current definition is therefore inappropriate for intimate partner violence (IPV) and supports a poor response to this and other forms of family violence, such as child abuse and neglect (CAN). It supports a response built on the notion that addressing an incident between the perpetrator and the known victim will be sufficient. This discourages examining the bigger context of the relationship and thinking about the need to respond preventatively in respect of the perpetrator's future harmful behaviour towards known and other victims (other current and future family members), for example, step children or future partners.

Victims of IPV seldom experience isolated 'acts' of violence but rather ongoing harm from the perpetrators' patterns of coercive and controlling behaviours, affecting them and other family members.[7] Coercive control operates through the perpetrator's use of a range of abusive strategies that are tailored to the 'unique psychology of the target' by someone who knows her intimately. [8] These strategies are designed to control the victim even when she is not in the presence of the perpetrator. Such behaviours and tactics are often not immediately discernible to others and require practitioners to identify and explore the patterns and meaning of behaviours, rather than simply focusing on 'incidents'. Coercive control is the overall architecture of the abuse, rather than a separate and additional form of abuse.[9]

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[7] Including causing them to be fearful of their and others safety and wellbeing.

[8] E. Stark, *Coercive Control: How Men Entrap Women in Personal Life,* New York, Oxford University Press, 2007.

[9] The FVDRC in the *Fourth Annual Report* defined coercive control. Coercion involves the use of force or threats to intimidate or hurt victims and instil fear. Whereas control tactics are designed to isolate and foster dependence on the abusive partner and their lifestyle.

Coercion tactics:

- Violence – assaults, severe beatings, attempted strangulation, sexual violence, use of weapons and objects to inflict injury or death.
- Intimidation – threats, jealous surveillance, stalking, shaming, degradation and destruction of property. This can include violence directed at children and pets/animals.

Control tactics:

- Isolation – from family, whanau, friends and networks of support.
- Deprivation, exploitation and micro-regulation of everyday life – limiting access to survival resources (such as food and money) or controlling how women dress.

Family Violence Death Review Committee, *Fourth Annual Report: January 2013 to December 2013,* Wellington, Health Quality & Safety Commission, 2014, p 72.

If family violence is framed as a pattern of coercive control this supports practitioners to understand that actions directed at one family member are not necessarily designed to impact only on that individual. Conversely, there may be multiple perpetrators involved in a pattern of coercive control. Research on multi-perpetrator domestic violence (MDV) evidences two groups that are particularly vulnerable to MDV, the first being girls and women partnered to members of gangs and the second being girls and women in some ethnic minority communities.[10] Forced marriage and so called 'honour'-based violence are forms of violence against women which will need to be encompassed by the definition of family violence.

Framing family violence as a harmful pattern of behaviour enables consideration of each adult's role in the intimate partnership abuse history rather than simply focussing on who did what in the reported 'incident'. Importantly, with respect to IPV, this requires practitioners to identify who is the primary victim and who is the predominant aggressor in the overall dynamics of the relationship and respond appropriately. An unintended consequence of incident based definitions is that defensive behaviour by primary victims can be misconstrued as acts of perpetration resulting in their arrest or dual arrest. Victims can use violence in resistance to ongoing abuse and still be the primary victim in the overall abuse history.

Defining "family violence" in terms of types of abuse and a "domestic relationship" in broad terms (sharing a household) means the Act extends beyond family violence to cover, for example, the abuse of flatmates. We suggest a specific focus on family violence. A definition of family violence may require specific definitions that address the unique features of the main forms of family violence: IPV; child abuse and neglect (CAN); and intra familial violence (IFV). The definition will also need to acknowledge the overlapping nature of these types of family violence (for example, that IPV and CAN are entangled forms of abuse).

The FVDRC suggests that the preamble and definition of family violence set out in the Act apply across all legislation. This would ensure consistency of understanding about family violence across all Government departments and community organisations and in different decision making contexts. The FVDRC welcomes the opportunity to participate in any working group which may be considering the development of a revised definition of family violence.

6. Guiding principles

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

The FVDRC supports the inclusion of two sets of guiding principles in the Act: general statements about our position as a community on family violence and principles specific to practice within the family violence system.

The first set of principles outlines the harm caused by family violence and its preventable nature. These principles could be included in the preamble to the Act (like the principles at the beginning of the preamble to the Victorian Family Violence Protection Act 2008).[11] They could include the following:

[10] M. Salter, 'Multi-perpetrator domestic violence', *Trauma Violence Abuse,* April 2014, doi:10.1177/1524838013511542.

[11] http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/f932b66241ecf1b7ca256e92000e23be/083D69EC540CD748CA2574CD0015E27C/$FILE/08-52a.pdf

- family violence is a fundamental violation of human rights and is unacceptable in any form[12]
- family violence is preventable
- effective protection against family violence is a prerequisite for intergenerational prevention.

The second set of principles addresses agencies' and practitioners' roles in responding to family violence. Family violence requires complex and tailored responses by practitioners. It is not possible to dictate in advance standardised professional responses that will accurately accommodate every eventuality. At the same time we require fundamental shifts in practice. The State has a role in supporting multi-agency accountability and victim safety in the systemic response to family violence, rather than leaving this to individual services and communities. In such a context, principles that inform practice and provide hierarchies of concern may have a role to play in supporting the necessary practice shifts.

These principles would outline the practice shifts required to provide an integrated response that is focussed on victim safety. Such principles could include the following.

- Children's safety is paramount. Children exposed to family violence require support.[13]
- The autonomy of the victim is respected but the protection and safety of the adult victim is paramount.
- Curtailing the perpetrator's ongoing abuse is central in achieving safety for child and adult victims.
- Practitioners are not responsible for the abuse; however they are responsible for maximising the safety and wellbeing of victims.
- Practitioners need to be able to ensure culturally responsive practice.
- Responses to Māori should recognise cultural needs and offer a whānau based delivery model grounded in tikanga.
- Practitioners must respond to family violence as an ongoing pattern of harm.
- Practitioners must work together to curtail perpetrators' abuse and maximise victims' safety.
- Practitioners must utilise evidence based risk assessments to inform their responses and risk management strategies.
- Agencies must integrate their responses to family violence and ensure their workforce is capable of responding safely and appropriately.

Practice principles should be arranged in order of priority. In this hierarchy, safety concerns should clearly trump privacy principles.

All related statutes (e.g. Care of Children Act (CoCA), Children Young Persons and Their Families Act (CYPFA), Privacy Act, and the Vulnerable Children Act) should be reviewed to ensure that safety is a priority principle across all. Currently there may be conflicting principles with respect to safety and practitioners' interpretations of what is in a child's "best interests". It should not be assumed, for example, that children's interests include contact/regular contact with parents who have been abusive to them or towards the other parent.

[12] The framing family violence as a human rights violation provides a powerful vehicle for acknowledging victimisation and the impact of victimisation.
[13] This may appear obvious but in the death reviews it is not taking place.

7. Accessibility of protection orders

What changes would you suggest to improve access to protection orders?

The FVDRC supports the "increase [of] funding for applications for protection orders". Victims should not have to pay to be protected from harm. The FVDRC recommends a process whereby applications for funding are accessed through specialist family violence agencies. This would enable victims to immediately benefit from a range of safety services (including proactive multi-agency risk management and safety strategies and children's services), and ensure funding is not misused by perpetrators applying for protection orders by alleging primary victim status.

The Dyn Project[14] developed a screening process to assess counter allegations as predominant aggressors are skilled at manipulating situations. Table 1 provides some general behavioural characteristics to identify the difference between a predominant aggressor presenting as a primary victim and a 'legitimate' primary victim.

Table 1: Identifying 'legitimate' primary victims

Primary victim	**Predominant aggressor presenting as a primary victim**
Minimises severity of abuse, although is likely to provide details and chronology	Minimises events, and is vague and unable to provide details
Takes responsibility, or excuses the actions of perpetrator	Blames their partner for the reported 'incident'
Empathy for partner, including difficulty circumstances or childhood experiences	Focus on their experiences, little or no empathy for their partner
Feels remorse for fighting back or defending themselves	Feels aggrieved
Can identify a very specific reason why they called, often abusive	Less likely to identify specific experiences of abuse, instead focuses on general grievances
Ashamed of victimisation	Assertively claims victim status
Fearful	Does not appear to be in any immediate risk, nor fearful
Confused	Overly confident
Has tried unsuccessfully to leave or repair relationship	Claims not to be able to understand why previous relationships ended
Feels a sense of obligation to abusive partner	May emphasise their role as a provider, or 'saviour'
Focus on own responsibilities	Stereotyped view of roles in relationships

Funding will reduce the numbers of self-represented applicants. Because there will still be those who, for whatever reason, decide to act for themselves, the current court forms should be simplified.

7.1 Provide more opportunities for others to apply for protection orders on victims' behalf.

Granting other people the ability to apply for a protection order on behalf of the victim may result in the perpetrator being mandated to engage with a non violence programme, as well as resulting in

[14] Robinson A, Rowlands, J. 2006. 'The Dyn Project: Supporting Men Experiencing Domestic Abuse', *Final Evaluation Report*, Cardiff University, P 35.

access to services for the adult and child victims, without placing the responsibility for driving that process on the victim. However, victims are still left with the responsibility of enacting the protection afforded by the order. They will bear primary responsibility, for example, for notifying the police of breaches of the order.

7.2 What other ideas do you suggest?

Protection orders offer reactive protection. The victim still has to notify the police of a breach(es) and is then reliant on the police to exercise their discretion to make an arrest.

When victims are making an application for a protection order they are help seeking because they and their children are in danger. This is a key intervention opportunity for a specialist family violence advocacy service to connect with the victim to provide advocacy support. It is an opportunity to put in place a proactive risk management plan, rather than wait until the protection order has been breached for a police/multi-agency response. Ensuring the appropriate services make contact with the victim in a timely manner is critical. The FVDRC considers that this work is best placed to be undertaken by services that:

- are specialist family violence agencies with advocates to whom IPV and CAN is their core business and the main focus of their organisational response
- are able to undertake comprehensive risk and needs assessments
- are a key advocacy partner in high risk multi-agency risk management work and have a close working relationship with the police
- can initiate multi-agency safety strategies.

The Ministry of Justice currently has a Strengthening Safety Service (SSS) which does contact victims and offer immediate safety advice – however, the immediate safety planning advice currently places the responsibility for achieving safety on the victim rather than on the multi-agency system. Furthermore, some of the SSS providers are generic victim service providers and others are specialist family violence providers. One of the issues which has emerged from the FVDRC regional reviews is the mis-match of services for women at risk of lethal violence. The regional reviews evidenced some women being referred to counselling services which were not organisationally structured or staffed to do specialist high risk family violence advocacy work.

Consideration might be given to shortening the period a perpetrator has to contest the issue of a final protection order to, say, two months. This would lessen the stress on the victim and would still give the perpetrator sufficient time after the issuing of an interim order to object to the making of a final order.

8. Effectiveness of protection orders

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

It is acknowledged that making arrest for the breach of a protection order mandatory may deter victims from reporting breaches. A “half way” measure could be to provide a presumption that arrest will occur. This would require the police to formulate reasons for not arresting on the facts of the particular case.

9. Property orders

What changes would enhance the effectiveness, use and enforcement of property orders?

The District Court currently has the jurisdiction to order the removal of a perpetrator who does not leave the home where the victim is entitled to exclusive occupation once a property order has been made. This jurisdiction should also be vested in the Family Court, with a removal order being able to be made on a without notice application.

The jurisdiction to make a temporary property order should not be restricted to cases of physical or sexual abuse. Furthermore, the accommodation needs of the victim and children should always take priority over those of the perpetrator.

10. Police safety orders

What changes might enhance the effectiveness, use and enforcement of Police safety orders?

The FVDRC supports extending the length of Police Safety Orders (PSO) to ten working days[15] and providing a criminal offence for breach. Ten days would provide time for services to contact and engage with the victim and perpetrator. This would be an opportune time for assertive outreach services to engage with the perpetrator. ReachOut[16] is a partnership between police, child protection and other agencies in the North Canterbury region of New Zealand. Operating alongside existing services and supports for women and children, ReachOut contacts men who have been named on a police report or PSO.

Currently, a PSO can only be made where an arrestable offence has not occurred (or is not suspected). If someone breaches the PSO then they can be summoned before the District Court. The District Court then has a range of options, one being an adjournment for a District Court Judge to make a temporary protection order, so long as the person at risk (the victim) does not oppose the order.

Whilst the police could support victims to apply for a protection order, the FVDRC is cautious about the need to ensure that this does not mean that a civil justice process replaces a criminal justice response. The victim, or another concerned person, has called the police and a police response is required. It is important to ensure that any civil action (for example, police support of protection order applications) is integrated into a police response – rather than functioning as another means of decriminalising criminal offending in the domestic context.

Before initiating any civil order process the police would need to determine who is the primary victim and who is the predominant aggressor so that:

- primary victims are identified and effectively supported

[15] In Austria, the Police can issue eviction and barring orders for 10 or 20 days. The Austrian Police also check on compliance with the barring order at least once within three days after eviction. If the persons affected by violence apply for a protective injunction under civil law at the Family Court, the duration of the eviction by the police is extended to 20 days. The Court shall inform the police that such an application has been filed. *Violence against women: Good practices in combating and eliminating violence against women"* Expert Group Meeting Organized by: UN Division for the Advancement of Women in collaboration with: UN Office on Drugs and Crime 17 to 20 May 2005 Vienna, Austria

[16] L. Campbell, Reachout Men's Community Outreach Service, *Connections and Conversations with a Purpose: An Evaluation of the Pilot,* April 2014, Aviva Family Violence Services.

- repeat victimisation of primary victims and their children is prevented, reducing the likelihood of further serious harm occurring
- predominant aggressors' abilities to be abusive are curtailed.

Evidence submitted to the Royal Commission on Family Violence in Victoria should be considered when proposing changes to police practice. Currently, the Victorian Police can arrest *and also* make an application for a Family Violence Safety Notice (FVSN) for five working days. In other words, the Victorian Police can proceed down the civil and criminal routes together. The FVSN is the first stage of an application for a Family Violence Intervention Order (FVIO) by a police officer. The police apply for an interim FVIO in the Magistrates' Court. The magistrate can make an interim order if they believe an affected family member, their children, or their property need protecting.

The police will give a copy of the order to the affected family member and the respondent and can also apply for a final FVIO. They may do this even if the victim does not want them to. The respondent will be told that this is a police decision. If the police apply for an FVIO, the police prosecutor will also represent the victim at the court hearing. The Victorian Police are the applicants in approximately 59 per cent of FVIO applications.

The Victorian Police in their submission to the Royal Commission[17] are strongly advocating for police being empowered to issue intervention orders during the initial response (therefore discontinuing with the FVSN process). They state that this would better safeguard the victim and immediately hold the perpetrator to account by:

- enabling police to apply specific conditions that are tailored to the behaviours of the perpetrator and the circumstances of the victim (e.g. ranging from determining an appropriate exclusion zone that takes immediate effect, to referring parties to attend assessment for relevant interventions)
- enabling swift action on the behaviours of concern
- enabling immediate service of the order if the perpetrator is present
- providing instant and lasting protection to the victim (and reducing high risk, unnecessary contacts prior to, and at, court)
- enabling police to act immediately on any breach of the order
- sparing victims further impacts such as time, travel and contact with the perpetrator or the need to attend court where neither party contests the terms of the order.

Under this proposal the victim and the perpetrator could reserve the right to apply to the Court to set aside the order; otherwise, neither party would need to attend a court. For perpetrators, this means they could accept a police-issued intervention order without this being an admission of guilt in any legal proceedings. For victims this would overcome the difficulties many have in attending suburban or regional courts due to public transport, employment and child care issues and the constraints each court has in terms of security and support service space.

From a systemic point of view, such a proposal would free police time spent preparing matters for court and attending court (sometimes on multiple occasions) when there is no objection to the order. It also frees time spent locating the perpetrator in order to serve the application or interim or final order. This would enable the police to focus their resources more intensely on at-risk and high-risk families. It would also free the court from the volume of administrative applications and uncontested

[17] http://www.rcfv.com.au/getattachment/440B6C34-0343-48CB-B109-67787D44972D/Victoria-Police

orders in order to focus on hearings, family violence charges and overseeing compliance with conditions. Jurisdictions such as Tasmania allow police-issued intervention orders.

11. Family violence and parenting arrangements

How should risks to children and to adult victims be reflected in parenting arrangements under the Care of Children Act 2004?
How could parenting orders and protection orders be better aligned?

Parenting orders should be consistent with protection orders, with child safety a priority. The Family Court should be given specific jurisdiction to decline to endorse any agreed parenting arrangement that is inconsistent with the need of the victim and children to be safe. The Family Court should be given the power to initiate its own inquiries in order to determine whether or not such arrangement is safe and to put protective conditions in place where there is psychological, as well as physical or sexual, abuse.

The Government has recently announced the pilot of the Police Family Violence Summary Form to assist judges in making safer bail decisions in family violence cases and to address the fragmentation of information that currently exists in the system. This form would also be important information to be shared with the Family Court judge presiding over a parenting order application.

The Australian Domestic & Family Violence Clearinghouse (ADFVC)[18] has identified the following two key issues which must be translated into Family Court practice:

- children's wellbeing depends, among other things, on being protected from harm, including the harm resulting from exposure to family violence or exposure to events that trigger trauma arising from previous abuse
- the safety and wellbeing of a protective parent is also linked to the children's recovery and healing from a history of living with family violence.

Engagement with family law systems has, at times, undermined pathways to recovery and wellbeing for victims of IPV and their children. The ADFVC research has evidenced that the family law system responses to IPV can be improved by focusing on three key elements from the 'Chisholm Report': disclosure, understanding and action.[19] The FVDRC supports a focus on these three elements. Better integration of the work of family violence and family law system professionals will contribute to practice improvement across these three areas.

Better systems need to be in place to monitor children who are expected to resume contact visits with parents who have been violent to them. When determining who should supervise contact visits the intergenerational nature of family violence needs to be considered in respect of family members. Children who have experienced trauma due to family violence and are expected to have contact visits or supervised contact sessions with an estranged parent should have a support person with them that they feel safe with.

[18] See Karen Wilcox (Good Practice Officer, Australian Domestic and Family Violence Clearinghouse), *Family Law and Family Practice: Research to Practice*, January 2012, Australian Domestic & Family Violence Clearinghouse, P 1.
[19] Chisholm R, *Family courts violence review: a report by Professor Richard Chisholm*, Attorney General's Department, Canberra, 2009. These three key elements are translated into Practice Recommendations in Karen Wilcox (Good Practice Officer, Australian Domestic and Family Violence Clearinghouse), *Family Law and Family Practice: Research to Practice*, January 2012, Australian Domestic & Family Violence Clearinghouse at p 9. Page 9 is attached to this submission in Appendix 1.

11.1 What other ideas do you suggest?

11.1.1 A family violence screening process for cases entering the Family Court

The Family Court currently refers all incoming cases to a contracted Family Dispute Resolution (FDR) provider, unless the court is aware that the case involves family violence (making such a process unsuitable). However, the Family Court does not screen for family violence before referral. Contracted providers are expected to screen for family violence and refer cases that screen positive back to the Family Court. This creates a conflict of interest for providers who lose business when they refer cases back to the court.

The FVDRC supports the initial screening of all incoming cases to determine their appropriate pathway. This would ensure that cases involving family violence were consistently responded to, rather than being responded to in an ad hoc fashion depending on the quality of the documentation provided to the court. This issue becomes of particular importance if there is an increase in self-represented litigants.

The person conducting the screening process should be suitably qualified and experienced in assessment, with an understanding of the legal system. Further training in areas such as child development and the dynamics of family violence are essential qualifications for such a role.

11.1.2 Accreditation of family lawyers

Where there is family violence in a Family Court case to determine day-to-day care for children, a lawyer for child should always be appointed. The FVDRC would support accreditation for family lawyers to ensure that they have a basic working knowledge of family violence and are practicing safely.

A similar process for the appointment of those who are wishing to act as Lawyers for the Child in the Family Court and Youth Advocates in the Youth Court could be adopted/adapted for "family violence lawyers". An interview panel at each main court (chaired by a judge and including no less than two senior lawyers, a psychologist and the Family Court Co-ordinator, all with expertise in family violence and child development and attachment) could consider applications from counsel wanting to be appointed as a "family violence lawyer", interview the applicants and make the decisions whether to appoint or not.

12. Family violence in criminal law

What changes, if any, could be made to the criminal law to better respond to family violence, including the cumulative harm caused by patterns of family violence?

In considering the criminal law response to family violence the significant issue is whether and how any proposed changes will enhance victim safety. There is a greater rate of recidivism for crimes of violence against intimate partners than against strangers. Family violence criminal charges presented to a judge are unlikely to represent a one-time phenomenon. In family violence cases there are also likely to be multiple victims, including children. The Police Family Violence Summary Form being trialled at bail hearings at two pilot sites is evidence of the significant police reported history of family violence which precedes some charge(s).

Currently the FVDRC notes quite serious offending being prosecuted and/or convicted as low level offending. For example, repeated punches in the head being prosecuted/convicted as an assault

(an unwanted touching). The FVDRC also notes the widespread use of plea bargaining in family violence cases. The defendant pleads guilty to a lesser offence than the facts might otherwise merit (incentivised to do so by a reduction in the offence for which he is convicted) and the case then proceeds to sentencing on that lesser offence. The FVDRC regional reviews have evidenced, for example, Male Assaults Female charges being downgraded to a Common Assault.

12.1 Non-violence programmes

Although non-violence programmes are not being considered as part of this review, the FVDRC is concerned about the over-reliance in the current criminal justice system on non-violence programmes to change perpetrator behaviour.

There are a number of problematic aspects to how these programmes operate in New Zealand. Non-violence programmes in New Zealand are not required to operate in accordance with international standards of safe practice. Accreditation processes like the UK Respect standards are needed for specialist family violence services, such as providers working with abusive men and specialist advocacy services. These standards provide assurance that an accredited organisation is operating safely.

A victim safety focus would require non-violence programmes to work closely with parallel services for victims. They also need to have processes in place that ensure that victim's views can be safely sought as part of the ongoing assessment process.

Non-violence programmes in New Zealand are currently siloed. If such programmes are to be effective, the Act needs to stipulate non-violence programmes to be part of a multi-agency response.This includes participation within case management processes and with agencies (such as the Police, Corrections, Child, Youth and Family (CYF) etc.) in the provision of feedback, assessments of risk, and monitoring of men's behaviour change. Non-violence programmes which are part of a multi-agency response can be used to keep perpetrators "connected and in sight" – so that we know where they are and what they are thinking.

Non-violence programmes that require attendance one night a week over a short-term period are unlikely to be sufficient for men who have entrenched patterns of using violence spanning decades, histories of child-hood trauma and a raft of serious concurrent issues, such as drug and alcohol abuse. More sustained and holistic interventions are needed for these men.

A recent review of Respect accredited non-violence programmes in the UK (these are part of a multi-agency response) found "steps towards change for the vast majority of men attending" across a range of measures.[20] Whilst these results are promising, they cannot be extrapolated to programmes that do not have these features – such as those offered in New Zealand.

12.2 Developing a systemic response to family violence perpetrators

The No to Violence and Men's Referral Service in Victoria makes the point that, whilst we can restrain, punish, mandate, scaffold and hold violent men in intervention contexts, we cannot hold them accountable. They say that:

> "family violence service systems, including criminal justice system components, cannot force accountability. They can punish perpetrators, but punishment is not the same as

[20] Liz Kelly and Nicole Westmarland, Domestic Violence Perpetrator Programmes: Steps Towards Change, January 2015, P 45.

accountability. Genuine accountability requires the operationalisation of what accountability means for that specific perpetrator, based… on what those affected by his violence need to see change about his specific patterns of coercive control. Men can be invited to act more accountably, and family violence service systems can have important roles to play in mandating men's attendance and providing 'non-voluntary' interventions as a means to 'hold' men in a journey towards accountability. However, service systems cannot make men accountable, only attempt to mandate, scaffold and hold them in intervention contexts that might lead some of these men towards behaving in ways that are more accountable to what their family needs from him.

Family violence service systems can place restraints around the man's violent and controlling behaviours. They can use incarceration, monitoring, supervision and predict consequences if the man does not change his behaviour, as means to place restraints around his behaviour and tighten the web of accountability around him. These are important and legitimate actions with many perpetrators to reduce risk.

However, this is not the same as holding the man accountable. Ultimately, accountability needs to be *internalised* by the perpetrator on a journey of change – he can be scaffolded and supported on this journey but he cannot be *made to be* accountable."[21]

It is apparent to the FVDRC that non-violence programmes cannot be the only strategy for family violence perpetrators. Such programmes need to be part of a raft of interventions embedded throughout the justice response specifically designed for family violence perpetrators and directed at keeping victims safe. We cannot expect one intervention to "fix" family violence and we need strategies for managing and containing those perpetrators who are not willing or able to change. These strategies need to put restraints around controlling and violent behaviours, escalate consequences for the continued use of violence and provide support for accountability and change. We also need the capacity to engage sooner and tailor interventions to the circumstances and responses of the particular defendant.

Developing an overall plan and particular strategies for family violence perpetrators in the justice system may require conversations that involve police, prosecutors, judges, restorative justice practitioners, corrections and non-violence programme providers.

12.3 Create a standalone family violence offence or class of family violence offences

We would suggest that a standalone class of family violence offences is only required if, in the strategic response to family violence, we need a more serious class of offence for such cases. Such an offence should not be created if it simply provides another opportunity to minimise or devalue serious offences of violence in the domestic context.

This identification of past family violence offending is important because it enables a proper understanding of the dangers posed by a particular perpetrator and assists in crafting sentences that support victim safety. In the *Fourth Report,*[22] the FVDRC recommended that the Ministry of Justice, in partnership with New Zealand Police, strengthen the criminal and appellate courts' ability

[21] *Strengthening Perpetrator Accountability within the Victorian Family Violence Service*, June 2015, P 14. http://ntv.org.au/wp-content/uploads/150622-Final-Final-FVRC-Submission-NTV-MRS-2015.pdf
[22] FVDRC, *Fourth Annual Report,* 2014.

to respond effectively to family violence charges by facilitating the provision of comprehensive information to judges to aid safe and robust decision-making. This includes the provision of:

- criminal conviction histories, which clearly identify family violence offending, as well as who the victim(s) are – one intimate partner or multiple, and/or related children
- IPV risk information (regarding assault and lethality) and risk management analyses
- information for bail applications that documents family violence offending histories and identifies harmful patterns of relating, including the number of protection orders against the defendant.

However, the identification of family violence offending can be achieved without creating a class of stand-alone family violence offences. For example, flagging all family violence offending[23] on a perpetrator's criminal record.

The FVDRC recommends that the prosecution guidelines (Police and Crown) are reviewed to ensure that victim safety is a mandatory consideration in family violence cases. Charges should not be plea bargained to result in lower level interventions for serious offending in such cases. Victims' safety should be a clear priority over the efficiency concerns of the criminal justice system or the need to react consistently to particular incidents of abuse.

12.3.1 Creating an offence of assault occasioning actual bodily harm

Family violence offending that presents in the regional reviews – even if it involves high risk behaviour – often appears to be charged and/or result in convictions for minor assault offences. We have frequently noted strangulation to unconsciousness and closed fist punches to the head prosecuted and/or convicted as common assault (s 196) or male assaults female (s 194 - common assault with victim vulnerability). Part of the problem with charging and/or convicting the offender of a more serious interpersonal violence offence, even if the victim was injured, is trying to prove to the criminal burden and standard of proof that the offender intended to injure or hurt the victim.

Section 190 of the Crimes Act 1961 is designed to fill the gap between a common assault and a more serious offence that involves injury with proven intent to injure. It provides that "Everyone is liable for imprisonment for a term not exceeding 3 years who injures any other person in such circumstances that if death had been caused he would have been guilty of manslaughter." A common assault where a reasonable person in the accused's position would have realised that there was a risk of harm to someone should be able to be charged under this section. However s 190 is a complex provision and does not appear to be used in a number of cases where it might be appropriate to do so.

New South Wales (NSW) has the offence of assault occasioning actual bodily harm which carries a maximum penalty of 5 years (2 if tried in a local court): See s 59 of the Crimes Act 1900 (NSW). The advantage of such an offence is that it allows a common assault which injures the victim to be prosecuted as a more serious offence even if the offender alleges that he did not intend to injure the victim. It is also more straightforward than s 190 and is easier to understand and apply.

[23] Including; Assaults, Wilful Damage, Arson, and Burglary.

12.4 Create a new offence of psychological violence, coercive control or repeat family violence offending

Rather than there being a separate offence for repeat family violence, such should be an aggravating factor in sentencing.

12.5 Make repeated and serious family violence offending an aggravating factor at sentencing.

The FVDRC would support a strategy for perpetrators that escalates consequences for continued abusive behaviour. Criminal justice agencies need to be able to link and respond appropriately to perpetrators who have multiple protection orders/multiple breaches/multiple non-violence programme attendances and multiple family violence criminal convictions against one/multiple victims.

Serial perpetration needs to be responded to (in bail applications, sentencing decisions, direction for programme provision, and risk management via multi-agency case management processes, for example) as a cumulative pattern of harm against one/multiple victims, rather than in a siloed 'incident' and 'individual' victim manner.

13. Victim safety in bail and sentencing

What changes would ensure victim safety is considered in bail decisions and sentencing decisions?

The FVDRC recommends that victim(s) safety should be a mandatory and primary consideration when determining bail and appropriate sentences in family violence cases. Because family violence involves a known offender who often has a pattern of harmful behaviour targeting identified or identifiable victims, there is the possibility of responding to current offending in a manner that minimises the possibility of future harm. We would suggest that there is a strong public interest in doing so.

An impediment is the fact that victim's safety interests feature little in the current frameworks that guide decision makers. The legislation and guidelines for judges and prosecutors who are making decisions around prosecution, bail and sentence, tend to frame victims' interests in terms of the harm that has been done to them *as a result of past offending*. The Bail Act 2000 alone explicitly requires decision makers to prioritise victim safety in certain family violence cases.

There is a tendency, when victim safety is considered, to focus on the victim of the immediate "incident"/offence. The needs of hidden and future victims can remain unconsidered. For example, there are numerous examples in the FVDRC regional reviews where the safety needs of hidden and future victims are overlooked - a child/children living in a house to which an offender is sentenced, or a new partner who enters the offender's life during sentence. In the regional reviews sometimes these were the ones who were ultimately killed. Victim safety therefore needs to be thought of in broader terms.

13.1 Bail

Section 7(2) of the Bail 2000 gives defendants an automatic right to bail if they are charged with an offence for which the maximum punishment is less than 3 years' imprisonment. There is an

exception to this rule where the offence is against s 194 of the Crimes Act 1961 (assault on a child, or by a male on a female) or s 49 of the Domestic Violence Act 1995 (contravention of a protection order). There is no exception for common assault (s 196). As a result, if a defendant is charged with common assault rather than male assaults female, he is automatically entitled to bail.

If the defendant does not have a right to bail, there is still a presumption that he will get bail unless "there is just cause for continued detention" (s 7(5)). If a defendant is charged with an offence under s 49 of the Domestic Violence Act 1995 (breach of a protection order), when deciding if there is just cause to deny bail, "the court's paramount consideration is the need to protect the victim of the alleged offence." It is not clear why this provision does not extend to other family violence offences (such as interpersonal violence offences that are not accompanied by charges for the breach of a protection order).

If the offending involves a sexual assault, a serious assault or another kind of offence that has led to the victim "having ongoing fears, on reasonable grounds for his or her physical safety or security" then the prosecutor is required to make all reasonable efforts to ascertain the victim's views on whether bail should be granted.[24] The court is required to take these views into account[25] when deciding whether to release the defendant on bail. Unfortunately this places responsibility on the victim to express opposition to bail if she does not feel safe having the defendant in the community, something which it may not always be safe to do. It is not clear why victim safety is not a mandatory consideration in all family violence cases, with an obligation to take reasonable steps to seek the victim's views. This would give victims the opportunity to express their opinions without bearing all the responsibility for articulating safety concerns.

In all cases, when deciding if there is reason to deny bail, the court is directed to consider whether the defendant may "interfere with witnesses" or "offend" whilst on bail (s 8(1)(a)(iii)). And, when considering this, the court is entitled to take into account "the character and past conduct or behaviour, in particular proven criminal behaviour of the defendant" (s 8(2)(d)). Arguably, this entitles the court to consider the defendant's past patterns of coercive and controlling behaviour in relation to those he is in a relationship with when making a decision as to whether his abusive behaviour is likely to continue if he is permitted to remain in the community prior to trial. However, depending on the individual judge's understanding about the nature of family violence, this is not guaranteed.

Note that there are specific provisions in the Bail Act 2000 dealing with repeat criminal offending. Under s 10 if a person is charged with a serious offence and has a prior serious offence (as specified in s 10(2), including serious violence offences under ss 167, 168, 171, 173, 188, 189, 191 of the Crimes Act 1961) the defendant must establish that they will not, whilst on bail, commit any offence involving violence against another person. Furthermore, the "need to protect the safety of the public, and where appropriate, the need to protect the safety of the victim or victims of the alleged offending are primary considerations" for the judge. Section 12 applies to an offender who is charged with an offence that carries a maximum sentence of three years and was either:

- at the time of the offending remanded on bail or awaiting trial for previous such offence and had previously received a sentence of imprisonment; or
- had previously been convicted of an offence that was committed whilst they were on bail or remanded at large carrying a maximum sentence of three years and had previously received 14 or more sentences of imprisonment.

[24] Section 30, Victims Rights Act 2002.
[25] Section 29, Victims Rights Act 2002.

In such instances the defendant has the burden of satisfying the judge that they will not whilst on bail commit an offence involving violence against or danger to the safety of another person. The "need to protect the safety of the public, and where appropriate, the need to protect the safety of the victim or victims of the alleged offending are primary considerations" for the judge.

13. 2 Sentencing

Under the Sentencing Act 2002 victim safety is not a mandatory consideration in family violence cases. As a result, whilst individual judges who are knowledgeable about family violence can use aspects of the legislation to give expression to victim safety, this will not automatically occur in all cases. There is also a range of other (potentially countervailing) considerations set out in the Sentencing Act 2002.

Section 7 of the Sentencing Act 2002 describes the "purposes" for which a court *may* sentence or otherwise deal with an offender. Most of these deal with reacting to past harm.[26] Three are relevant to victim safety (although none is specifically directed at family violence or mandatory for judges to consider). The court may "provide for the interests of the victim of the offence" (s 7(c)). The interests of the victim arguably include her ongoing safety. The court may sentence to "deter the offender… from committing the same or a similar offence" (s 7(f)). Preventing the offender from continuing harmful patterns of relating in respect of current or future family members would clearly enhance victim safety. And finally, the court may "protect the community from the offender" (s 7 (g)). Current and future victims of the offender's family violence offending are presumably included within the "community" that needs protection.

Section 8 of the Sentencing Act 2002 sets out the "principles" which the court *must* consider when sentencing an offender. Most of these relate to the gravity and seriousness of the offence which has taken place (including consistency with other similar cases) (s 8 (a)-(e), (g)), matters personal to the offender (s 8 (h)-(i)) or the outcomes of any restorative justice processes that have occurred (s 8 (j)). Only one concerns victims: the court "must take into account any information provided to the court concerning the effect of the offending on the victim" (s 8(f)). This is directed at considering the impact on the victim of the offending which has already taken place - not her future safety.

Section 9 requires the court to take into account a number of aggravating factors (if they are relevant on the facts). The majority of these are concerned with aspects of the offending that has taken place (s 9 (a)-(i)). Victim vulnerability because of age (s 9(g)), or the offender's position of authority or trust (s 9(f)) or violence involved in the offending (s 9 (a)) and harm caused by the offending (s 9 (d)) can be considered. The offender's overall pattern of offending can only be considered if it consists of "previous" or concurrent "convictions" (s 9(j)). Patterns of past behaviour that have not resulted in convictions or the need to protect the victim from future harm are not aggravating factors at this point.

Mitigating factors that the court is obliged to consider "if they are relevant" include "any remorse shown by the offender." (s 9(2)(f)). The FVDRC is of the view that remorse should be demonstrated in behaviour change in cases involving family violence before it mitigates the consequences of offending. Apologies and promises to change can be part of the pattern of abuse.

[26] Holding the offender to account (s 7(a)), getting the offender to take responsibility for or acknowledge the harm that they have done (s 7(b)), providing reparation for harm done (s 7(d)) and denouncing the offending (s 7 (e)).

In the case law sentencing has increasingly become a technical exercise. The courts tend to set a "starting point" based on the act of offending. Guideline judgements (such as *R v Taueki*[27] – which sets out three "bands" of offending for assaults causing grievous bodily harm) can be used in this process, as well as other cases considered to involve a similar seriousness of offending. The starting point incorporates aggravating or mitigating factors particular to the *act of offending*. This starting point is then adjusted up or down to accommodate aggravating or mitigating factors *personal to the offender*. Clearly considering victim safety requires a departure from this structure – it is neither directly relevant to the offending on this occasion nor personal to the offender. Changes in the statute law will be required in order to "overrule" the case law.

If victim safety is to be a paramount principle then it needs to be supported and implemented at each point – at the point of information gathering, charging, sentencing, the management and conditions of that sentence and any processes set in place once that sentence is over. This means that a wide range of agencies must be involved in developing strategies to support victim safety – the police, prosecution, judges, restorative justice practitioners and corrections.

14. 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?

As judges in criminal proceedings currently have powers to make protection orders during sentencing, they should also have the power to vary protection orders in order to better address the safety needs of victims. Referring the question of varying an order from the District Court to the Family Court will only cause delay.

The danger is that a District Court judge may not have access to all of the information that the Family Court judge had available at the time of issuing the protection order. A solution would be to establish the so called "integrated court"; this is referred to in paragraph 5.16 and expanded upon in section 15.2 below. The alternative is to enable comprehensive information sharing between the courts.

15. Best practice

15.1 Fast tracking family violence cases- better outcomes for victims, perpetrators and families

The FVDRC supports criminal justice reforms facilitating timely and expeditious legal proceedings and fast-tracking of cases of family violence. Victims need swift justice responses and perpetrators need early interventions and a broader range of responses.

Gondolf[28] suggests that, while longer non-violence programmes can be beneficial, early connection with and entry into treatment have a far greater impact. Men in programmes as a result of pre-trial, rather than post-conviction mechanisms, for example, are much likely to stay in treatment. Gondolf recommends providing programmes as early as possible and increasing the focus on programme intensity. He suggests that, as soon as possible after charges, perpetrators could attend three or four times per week for the first four to six weeks.

[27] [2005] 3 NZLR 372

[28] E. Gondolf, *Batterer Intervention Systems: Issues, outcomes & recommendations*, SAGE, 2002; E. Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice,* Northeastern University Press, 2012.

Judges require more sentencing options including the provision of residential programmes for perpetrators. These can be alternatives to incarceration. For example, Breathing Space at Communicare in Western Australia provides a three month, residential programme for men who are perpetrators of family violence. Participants are required to attend a two hour behaviour change session twice a day in mid-morning and mid-afternoon from Monday to Friday. With a curfew of 9pm and with Centrelink and other appointments to attend, this does not leave much time for contacting partners or perpetuating violence. Case management services provide onsite help with life skills assisting participants to access treatment for contributing factors such as drug and alcohol abuse which inhibit men's ability to make safe choices. Communicare is hoping to expand this service to offer transitional accommodation for men moving back into the community.[29]

15.2 Develop integrated specialist family violence courts – integrating civil and criminal jurisdictions

A range of integrated specialist courts exists in the US and in Canada. These courts take a 'one family, one judge' approach and have the capacity to address criminal matters concurrently with family and civil matters. Integrated courts can reduce the time victims spend navigating complicated court structures. They can also connect victims to specialist advocacy services situated within the court house. This model only works if you have highly trained and skilled judges (including in the dynamics and complexity of family violence).

Evaluations of integrated models show that docket systems are especially effective: with parties required to attend fewer court hearings and therefore not having to give evidence repeatedly;[30] more family law cases being settled and fewer filed, suggesting that more reached early resolution; post-disposition monitoring of offenders increased; and a single judge in possession of all the information about a family making more informed and useful decisions.[31]

A key advantage of an integrated court is the ability to routinely share information between jurisdictions. This can enable the identification of cumulative patterns of harm and ensure that the needs of current *and* future victims can be addressed. The development of integrated specialist family violence courts need to be considered alongside the development of sexual violence jurisdictional approaches.

Paragraph 5.17 refers to a particular review of the literature on international examples of integrated courts. That review is contained in a paper prepared for The New Zealand Law Foundation by the Centre for Mental Health Research, Faculty of Medical and Health Sciences at the University of Auckland.

The review does not consider in depth the combined criminal and civil (family) court, with the one judge presiding over both. Indeed, it did not consider any of the research articles referred to in Appendix 2, all of which are relevant. Paragraph 2.1 of the review document notes that there are "four key levels of domestic violence courts":

> "1. **Multi-jurisdictional domestic violence courts** are overseen by one judge that handles criminal cases and overlapping family law and divorce cases.
> 2. **Criminal domestic violence courts** handle criminal cases with an adult defendant and an adult victim involved in an intimate relationship.

[29] Centre for Innovative Justice. *Opportunities for Early Intervention: Bringing perpetrators of family violence into view*, p 52.
[30] It will also reduce re-victimisation; the victim will not have to give the same evidence twice - when the alleged perpetrator defends the criminal prosecution in the District Court and opposes the making of a protection order in the Family Court.
[31] Centre for Innovative Justice. *Opportunities for Early Intervention: Bringing perpetrators of family violence into view*, p 61.

3. **Civil/family domestic violence courts** cover cases where a victim file a restraining/protection order against a defendant who is a current or former intimate partner, as well other cases involving the victim and the defendant.
4. **Juvenile domestic violence courts** consider cases where the defendant is a juvenile."

The review has the following limitations:

- it does not isolate and focus on the one court that is relevant for present purposes: Multi-jurisdictional domestic violence courts
- it considers the pros and cons of the four types as though they are inter-changeable
- it concentrates on the second category: the criminal domestic violence courts
- it fails to consider pertinent research on the multi-jurisdictional domestic violence courts.

The articles in the Appendix 2 suggest that there are benefits to be derived from adopting an integrated court system; these appear not to have been considered by this review. Further in-depth research is required.

There are multiple ways of measuring success and different priorities to be assigned to the advantages and disadvantages of such courts. "[S]ignificant operational challenges" to implementing an integrated court system (paragraph 5.17) should be secondary to introducing a system which will simplify process, reduce duplication and increase efficiency.

Pending any introduction of the "integrated court" or in the absence of such a court, all "main" Courts should operate a Specialist Family Violence Court with all the necessary infrastructure, systems and specialist family violence workforce education and training required.

16. 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?

Early intervention is crucial to stop violence escalating and to reduce the pile up of trauma and harm to victims, children and their families and whānau. Services need to be targeted earlier in life to ensure that all girls, boys, young men and women who have experienced significant adverse childhood circumstances have access the therapeutic input they require to heal mentally and physically and therefore realise their full potential and not perpetuate a propensity for violence and/or vulnerability to victimisation as adults.

The FVDRC does not recommend an alternative pathway but rather the development and sustainability of a wide range of skilled family violence services to work with families and whānau.

16.1 Explore, pilot and evaluate a range of flexible responses for working with abusive men and their whānau

The greatest reduction in family violence will occur when men stop using violence against their female intimate partners and children. Currently the system is reliant on siloed non- violence programmes as the main response to abusive men. Furthermore self-referring men have to fund their own attendance which can be a significant barrier. Free access to a programme should be available without any prior criminal or civil intervention.

As noted above, there needs to be the development of services able to work with abusive men as fathers, and men with co-occurring problems such as substance abuse. This could include the development of integrative family violence and substance abuse treatment programmes. There is a need to examine where opportunities exist to intervene earlier with perpetrators, such as the development of active referral and assertive outreach services for men, such as ReachOut.

Given the greater likelihood of wāhine Māori experiencing repeat victimisation and of tane Māori being convicted for assaulting female intimate partners than Pākehā men - greater investment into kaupapa Māori tane perpetrator rehabilitation and sustained behaviour change is needed.

16.2 Investing in specialist family violence advocacy services

Advocacy services which can work with all family and whānau members need to be situated at points in the system where victims seek help. This could include the possibility of having advocacy services working across multiple sites (or being co-located), such as hospitals, multi-agency police teams, primary care services, courts,[32] and in partnerships with iwi social services. It is also recommended that such services are located in easily accessible places, for example a highly visible hub of wellbeing services located in a shopping mall. Aviva[33] (a specialist family violence advocacy service) is developing an alliance with other child and family services and are co-locating within the Eastgate shopping centre (one of Christchurch's communities of highest need).

Enabling face to face contacts over referrals greatly enhances the likelihood that people will engage with services. Specialist child and youth advocacy services need to be developed as part of these family violence advocacy services.

Current government contracting models which fund multiple prescriptive victim interventions (such as Strengthening Safety Services, Safe at Home and Refuge provision) delivered by multiple services (some specialist and some generic) are not well suited for victims, their family and whānau needing a range of responses, preferably from one main service.

There is an urgent need to address the balance between generalist and specialist NGO family violence services so that a 'no wrong door' approach can be pursued, while preserving high-quality specialist family violence expertise. The issues relating to the capacity, capability and sustainability of NGOs will need to be addressed in a more systematic investment manner in order for the sector to evolve and to enable earlier intervention.

Kaupapa Māori family violence advocacy services are essential as they focus on addressing whānau violence. The use of Māori traditional knowledge and cultural practices are fundamental to addressing whānau violence and achieving whānau ora (wellbeing). These services have the capacity to work with a victim, their children and the perpetrator, together or separately depending on what the victim wants, as well as other safe whānau members.

In the short term a kaupapa Māori service such as Te Whakaruruhau will build on the safety strategies a victim is already using and provide wrap-around support to ensure that all her and her children's needs are being met (physical safety, wellbeing, material and cultural). In the longer term they can advocate for her and her children within her community and her whānau, hapū and iwi.

[32] Safelives recommend locating additional independent domestic violence advocates services in A&E and maternity units. CAADA, *A place of greater safety*, UK, CAADA, 2012.

[33] http://www.avivafamilies.org.nz/

16.3 Restorative justice pathways

The FVDRC acknowledges the importance of having alternative pathways for justice, which may be more meaningful to victims, perpetrators and their families and whānau, and involve community sanctions and support. However, such models in other jurisdictions have received mixed responses from the victims they aim to protect.[34] Any family violence restorative justice process needs to be victim centred and ensure that accredited specialist family violence organisations are involved in risk and safety planning (encompassing adults and children) before, during and after any conferencing.

Restorative justice options cannot be focused on what the perpetrator is willing to give, but rather, must be centred on what the person subjected to abuse needs or wants. Restorative justice responses should be about the victim's therapeutic needs not the timeliness of judicial processes, or the perpetrator's needs.

Whilst there might be value in carefully designed restorative justice interventions in relation to one off or historical violence offending we would want to see a stronger evidence base for improved outcomes in terms of victim safety and satisfaction and reduced recidivism before introducing restorative justice into situations that involve ongoing offending. We attach a book chapter by Professor Stubbs that explores and overviews the current literature in the field. Such interventions are a particular concern in family violence cases where remorse and apology can be part of the abuse process and where offender programmes in New Zealand do not accord with international standards of safe practice.

A restorative justice response may address a particular incident of violence as though it is a private issue between the particular victim and the perpetrator. In cases involving ongoing family violence, there will be tremendous pressure on the victim to participate in a process that involves a mitigation of consequences for the offender. The death reviews contain multiple examples of offenders manipulating current processes and the victim in order to achieve better outcomes for themselves in respect of their use of violence, often supported by professionals in that process who are wanting the offender to change their behaviour. We would be concerned if alternative dispute resolution processes were able to be used as a means of avoiding accountability through the criminal justice system.

16.4 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?***

This is the minimum level response from the police. It should be clear police practice but it is not required in law.

[34] J. Ptacek and L. Frederick, *Restorative Justice and Intimate Partner Violence,* Harrisburg, PA, VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence, 2009. Available at www.vawnet.org

17. Information sharing between agencies

What changes could enhance information sharing between agencies in family violence cases?

In order to achieve safety for victims, the Privacy Act and the Domestic Violence Act should be amended to include a presumption of responsible and safe information sharing between agencies where child protection and family violence concerns are present. Any amendment to the Privacy Act should make it clear that no offence is committed if the sharing of information arises from an honest belief that safety concerns exist.

17.1 Stating that safety concerns 'trump' privacy concerns.

Safety concerns should explicitly trump privacy concerns.

18. Information sharing with and between courts

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

When it is appreciated that one may be working with a person who has a harmful pattern of relating, the need to think preventatively – rather than simply responding to an individual reported 'incident' of abuse, or a breach of a single protection order – becomes clear. It should be assumed that a serial IPV abuser will continue his past pattern of behaviour in the absence of sustained intervention and support to address his behaviour (attending a stopping violence programme on its own is insufficient support to enable such a change). It should also be assumed that he will take his pattern of relating into subsequent intimate relationships with new partners and their children – and, saliently, that his trajectory of violence may escalate to homicide.

In order to make safe decisions in cases involving family violence, judges need to be aware of a defendant's Family Court and Criminal Court history against current and previous partners and their children. The provision of information should be automatic – completed by a computer programme, rather than being reliant on human activity.

The FVDRC supports law reform that would require judges to be provided with information held by Police and other justice sector agencies. In 2014 the FVDRC[35] recommended that the Ministry of Justice, in partnership with New Zealand Police, strengthen the criminal and appellate courts' ability to respond effectively to family violence charges by facilitating the provision of comprehensive information to judges to aid safe and robust decision-making.

[35] FVDRC, *Fourth Annual Report*, 2014.

19. Safe and 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?

The FVDRC supports minimum standards of workforce competence. The Act should require agencies and service providers to put in place policies and systems that support the workforce to practice in a family violence responsive, safe and competent way.

Currently there are no consistent national service accreditation processes or organisational practice standards (that include organisational and practitioner competencies required for safe and quality family violence service provision) pertaining to all service providers within the multi-agency family violence system.

Cross agency minimum safe workforce practice standards would address the following: Agencies are required to:

- have family violence policies in place
- develop their staff's practice skills to ensure they can fulfill expectations of safe minimum practice
- seek and share information responsibly when there are family violence and children protection concerns and work collaboratively with other services
- undertake risk assessments (mandated as part of the family violence sector risk assessment framework) and take action with respect to the risks identified
- maximise the safety and wellbeing of victims (adults and children) and minimise perpetrators' abilities to be abusive.

To be effective, family violence workforce development strategies should be mandated within organisations. Cross government roles, responsibilities and response tiers need to be agreed. Workforce development strategies (for children and adults) should focus on ensuring that each organisational cluster of services and their practitioners are able to provide safe and culturally responsive practice as appropriate to their core tier.

The Vulnerable Children Act 2014 legislated for shared accountability for vulnerable children to the Chief Executives Officers (CEOs) from the New Zealand Police, Ministry of Health, Ministry of Education, Ministry of Justice and Ministry of Social Development. These five government departments must work together to develop, deliver and report on a cross-agency plan to improve and protect vulnerable children's wellbeing. The FVDRC recommends that the CEOs of the Department of Corrections, NZ Police, Ministry of Health, Ministry of Education, Ministry of Justice and Ministry of Social Development under the Act have legislated shared accountability for family violence.

20. Other issues

The law currently allows a child who is a protected person on a protection order in which their father is the respondent to be left in the guardianship of their father when their mother has been killed by another abusive partner.

Although CoCA is not formally a part of the review of the family violence legislation, nevertheless, there is one particular provision which should receive attention if that review is to be comprehensive. As the law stands at present, in circumstances where a child has two guardians (say, the parents) and one of those guardians is killed, the mother by another abusive partner, the guardianship duties, powers, rights and responsibilities in relation to the child (as set out in ss15 and 16 of CoCA) vest solely in the surviving guardian, namely, the father who is also a family violence perpetrator. Accordingly, that perpetrator is entitled to the day-to-day care of the child in the absence of any Court order to the contrary. The law should be amended so that this does not occur without a Court order. In the absence of a surviving guardian who is not the perpetrator, sole guardianship should vest automatically in the Chief Executive pursuant to s 110 of the Children, Young Persons, and Their Families Act 1989 until further order of the Court.

Appendix 1


Disclosure
• screen for domestic violence through repeated, ongoing opportunities for disclosure throughout the process
• recognise value systems and beliefs about family violence and how these might impede discussion with victims
• upskill in practices that validate client experience, promote trust and take disclosures seriously
• avoid inadvertent collusion with abusers - understand the ways in which their behaviours or presence can jeopardise disclosure through subtle forms of intimidation.
Understanding
• undertake specialised and ongoing training that outlines children's need for protection from trauma and fear triggers (such as the Commonwealth's AVERT family violence and family law training)
• recognise the importance of maintaining a child's secure attachment with a protective parent and supporting that parent's path to safety
• be alert to the ways in which perpetrators build allegiances with professionals
• enhance understanding of risk, particularly of risk markers
• engage domestic violence professionals in case manangement, clinical supervision or review processes in the family law.
Action
• adopt principles and practices that reflect the need for safety and protection for children's wellbeing
• use evidence-based risk assessment strategies rather than 'triaging' via violence typologies
• promote use of applications made to local/magistrate's court under the Act's 68R power, where appropriate, to enhance consistency with protection orders
• prioritise safety and healing of children and their protective parent. Where appropriate, consider no-contact or supervised contact arrangements
• promote arrangements that allow for safe handovers and minimise exposure to trauma triggers
• use legally-assisted mediation or safety-focused guidelines so that victims of violence can access alternative pathways to post-separation parenting arrangements
• work with domestic violence, criminal justice and child protection workers to develop consistency in cross-system responses to cases and facilitate information exchange
• continue to work for law reform to address remaining issues undermining children's safety.

Appendix 2

ARTICLES RELEVANT TO THE INTEGRATED COURT

Corey Shdaimah and Alicia Summers *"Baltimore City's Model Court: Professional Stakeholders' Experience with Baltimore City's One Family, One Judge Docketing"* (2013) 52 Fam. Ct. Rev. 286

Richard Peterson *"Criminal Case processing in Brooklyn's Integrated Domestic Violence court"* (2015) 7 FIPV 215

Rachel Birnbaum, Nicolas Bala and Peter Jaffe "*Establishing Canada's First Integrated Domestic Violence Court: Exploring Process, Outcomes, and Lessons Learned"* (2014) 29 Can. J. Fam. L. 119

Martha Wade Steketee, Lynn S. Levey and Susan L. Keilitz *Implementing an Integrated Domestic Violence Court: Systemic Change in the District of Columbia.* (National Center for State Courts, 2000)

Jennifer Koshan *"Investigating Integrated Domestic Violence Courts: Lessons from New York"* (2014) 51 Osgoode Hall L.J. 989

Amanda Cissner, Sarah Picard-Fritsche and Michael Rempel *"New York State's Integrated Domestic Violence Court Model: Results From Four Recent Studies"* (2014) 15 Crim. Jus. Res. Rev. 116

Liberty Aldrich, Judge Kluger and Judy Harris "*New York's One Judge-One Family Response to Family Violence*" (2010) 61 Juv.& Fam.Court.J. 77
http://www.nycourts.gov/courts/problem_solving/idv/home.shtml

Jaclyn Hovda, "*The Efficacy of Idaho's Domestic Violence Courts: An Opportunity for the Court System to Effect Social Change"* (2012) 48 Idaho L. Rev. 587