Family Violence Death Review Committee

He tao huata e taea te karo

FVDRC Submissions on Reviewing the Family Court: A Public Consultation Paper

To:

Review of the Family Court
Ministry of Justice
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From:

Family Violence Death Review Committee

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Family Violence Death Review Committee

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

[2] FVDRC members are drawn from a wide range of sectors – primarily, justice, health, academic research, and family violence service NGOs – and all share an expertise in family violence. The following recommendations are based on the collective personal views and professional experiences of the FVDRC members.

Introduction

[3] The Australian Domestic & Family Violence Clearinghouse[1] summarise five key points to emerge from recent research which must be translated into Family Court practice in the following terms:

- Children's wellbeing depends, among other things, on their being protected from harm, including the harm of exposure to domestic violence or exposure to triggers of trauma arising from previous abuse.
- The safety and wellbeing of a protective parent is also linked to children's recovery and healing from a history of living with domestic violence.
- Research shows that engagement with family law systems has at times undermined pathways to recovery and wellbeing for victims of domestic violence and their children.
- Family law system responses to domestic violence can be improved by focusing on three key elements from the 'Chisholm Report': disclosure, understanding and action.[2]
- Better integration of the work of domestic violence and family law system professionals will contribute to practice improvement across these three areas.

The FVDRC endorses these points.

[4] The FVDRC supports the understanding that cases involving family violence (whatever the nature of the dispute - child care arrangements or property division) are inappropriate for resolution by means of counselling or mediation, which are processes of dispute resolution based on private negotiation between the parties managed by a neutral dispute resolution professional. This is so whether the violence is entrenched or short term but current (for example, the violence has erupted around the experience of separation). Aside from issues of safety in how the process

[1] 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 at p 1.

[2] 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.

is conducted, private dispute resolution processes are generally inappropriate for resolving disputes when one party to the negotiation process is being abused by another. The party who is vulnerable may experience pressure to agree to arrangements that they are not comfortable with or that are unsafe. Attempting to equalise power imbalances in the negotiation process can also result in a dispute resolution professional appearing to lose impartiality in their role.

[5] We therefore applaud the clear acceptance in the Public Consultation Paper (page 45) that cases where family violence is present should fast track to be heard by a judge as soon as possible (the fast track process is set out in appendix 4 on page 78 of the Public Consultation Paper).

[6] There are a number of issues to be addressed in giving effect to this understanding:

- A definition of family violence needs to be adopted which will determine which cases are appropriate to fast track.
- Procedures need to be set in place to ensure that all cases involving family violence go down the appropriate track.
- Definitions, understandings and processes need to be formulated into clear rules that are applied uniformly.
- There could be some clarification of the full range of judicial discretion which is involved in the resolution of child-care and contact disputes when domestic violence is present.

What definition of domestic violence should be used to determine which cases of family violence need to be fast tracked and heard by a judge as soon as possible?

[7] There are slightly different understandings of family violence in the Care of Children Act 2004 and in the Domestic Violence Act 1995.

[8] In the Domestic Violence Act 1995, domestic violence is defined in s 3(1) as violence against a person by "any other person with whom that person is, or has been, in a domestic relationship." Violence is defined broadly in s 3(2)-(3) to mean physical, sexual, or psychological abuse (including, but not limited to intimidation, harassment, damage to property, threats of physical, sexual, or psychological abuse[3] and, in relation to a child, causing or allowing the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or putting the child, or allowing the child to be put, at real risk of this).

[9] Section 3(4) of the Domestic Violence Act 1995 provides that a single act may amount to abuse and that a number of acts forming part of a pattern of behaviour may amount to abuse, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

[10] Section 14 of the Domestic Violence Act 1995 gives the court the power to make a protection order if domestic violence is taking, or has taken, place and an order is "necessary for the protection of the applicant, or a child of the applicant's family or both." The court is directed under s 14(3) that "where some or all of the behaviour in respect of which the application is made appears to be minor or trivial when viewed in isolation, or appears unlikely to recur" to "nevertheless consider whether the behaviour forms part of a pattern of behaviour in respect of

[3] Section 3(5) also makes it clear that behaviour may be psychological abuse for the purposes of subsection (2)(c) which does not involve actual or threatened physical or sexual abuse.

which the applicant, or a child of the applicant's family, or both, need protection." The court is also directed under s 14(5) to have regard to "the perception of the applicant, or a child of the applicant's family, or both, of the nature and seriousness of the behaviour in respect of which the application is made; and the effect of that behaviour on the applicant, or a child of the applicant's family, or both."

[11] The definition of violence and the circumstances in which a person is considered to need protection as set out in the Domestic Violence Act 1995 reflect the contemporary understanding[4] that an abusive relationship cannot necessarily be measured in terms of the incidence and severity of the physical abuse which takes place within it. It is better understood in terms of the degree of coercive control the perpetrator seeks to exercise over the victim using a range of psychological, social and economic tactics which are specifically tailored to the circumstances and psychology of the individual victim, backed up by some degree of physical abuse, and exercising a cumulative and compounding effect on the victim over the passage of time. The American Bar Association Commission on Domestic Violence, in accordance with this understanding, has defined domestic violence as

> "a pattern of behavior that one intimate partner exerts over another as a means of control. Domestic violence may include physical violence, coercion, threats, intimidation, isolation, and emotional, sexual or economic abuse. Frequently perpetrators use the children to manipulate victims: by harming or abducting the children; by threatening to harm or abduct the children; by forcing the children to participate in abuse of the victim; by using visitation as an occasion to harass or monitor victims; or by fighting protracted custody battles to punish victims. Perpetrators often invent complex rules about what victims or the children can or cannot do and force victims to abide by these frequently changing rules."

It is important to note, as indicated in this definition, that family court processes themselves can be part of the abuse strategies employed by a domestic violence perpetrator. Within an abusive relationship the target of the abuse can also use abuse – for example, in self-defence – without pursuing a strategy of coercion over, or creating fear in, the perpetrator. It follows that the definition of domestic violence that is used in the Domestic Violence Act 1995 attempts to understand the dynamic of the relationship in which the abuse takes place rather than simply focusing on individual incidents of abuse.

[12] In the Care of Children Act 2004, on the other hand, a person is only treated as a violent party in proceedings to determine the care and contact of a child under s 58 if they either have a protection order issued against them, or an allegation has been made that they have used violence against another party to the proceedings or a child of the family or the subject of the proceedings, and this allegation is proved. However, an allegation of violence in these circumstances is confined to an allegation of physical or sexual abuse. Accordingly, in this context, unless a party has been through the process of gaining a protection order (in which process a broad definition of violence is used, the inquiry engages at a deeper level than the seriousness of any particular instances of abuse to look at patterns in the relationship and gives emphasis to the victim's subjective

[4] See, for example, Evan Stark, *Coercive Control* (New York: Oxford University Press, 2007).

appraisal of the abuse and the effect it has had on them), the court is only directed to take into account proven instances of physical or sexual abuse.[5]

[13] By way of contrast, in s 5(e) the principles to give expression to a child's best interests are articulated, and it is provided that "the child's safety must be protected and, in particular, he or she must be protected from all forms of violence as defined in section 3(2) to (5) of the Domestic Violence Act 1995." In other words, in this context the broader interpretation of family violence used in the Domestic Violence Act 1995 is employed, whether or not a protection order has been obtained in fact. This suggests the definition of domestic violence in the Care of Children Act 2004 is not consistent, and there are two potential definitions of domestic violence that could be used depending on which legislation, or even section of legislation, is employed.

[14] The definition of family violence that is to be applied to the process of deciding when cases should access the fast track process, as opposed to being required to attempt private dispute resolution processes first, needs to be decided.

[15] The FVDRC recommends that the broader definition of domestic violence set out in the Domestic Violence Act 1995 be used in making this decision, whether or not a protection order has been obtained in any particular instance. Targets of coercive control may be reluctant to apply for a protection order for a range of reasons – an unwillingness to aggravate the perpetrator, an unwillingness to limit the perpetrator's contact with the children to supervised contact in accordance with the provisions of the Care of Children Act 2004, the cost of applying for a protection order, not understanding the significance of applying for a protection order etc. This does not mean that their cases are suitable for private dispute resolution.

How do we determine that domestic violence cases are effectively screened into the fast track process?

[16] Currently, the Court Registry Staff, particularly the case officer and the Family Court Co-ordinator, recommend that cases involving family violence not be sent to counselling. In making this recommendation, they are dependent on the applicant disclosing family violence in order to realise that this is an issue in any particular dispute. Applicants, in turn, if they are represented by a lawyer may be dependent on their counsel to both elicit this information and document it in the papers going to court. It is dangerous to rely on self-disclosure in view of the fact that many victims will be reluctant to disclose abuse and are unlikely to readily volunteer this information.

[5] See also section 51 of the Care of Children Act 2004. This focus can also be found in 61 which provides that "In considering, for the purposes of section 60(4), whether a child will be safe if a violent party provides day-to-day care for, or has contact (other than supervised contact) with, the child, the court must, so far as is practicable, have regard to the following matters: (a) the nature and seriousness of the violence used: (b) how recently the violence occurred: (c) the frequency of the violence: (d) the likelihood of further violence occurring: (e) the physical or emotional harm caused to the child by the violence: (f) whether the other party to the proceedings—(i) considers that the child will be safe while the violent party provides day-to-day care for, or has contact with, the child; and (ii) consents to the violent party providing day-to-day care for, or having contact (other than supervised contact) with, the child: (g) any views the child expresses on the matter (as required by section 6): (h) any steps taken by the violent party to prevent further violence occurring: (i) all other matters the court considers relevant.

[17] The FVDRC would support the screening of all applications to determine their appropriate pathway (a suggestion made on page 47 of the Public Consultation Paper). 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 (see Appendix 2, page 73 of the Public Consultation Paper).

[18] The FVDRC would support the person conducting the screening process 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 considered essential qualifications for the role.

[19] The FVDRC would also support the accreditation of family lawyers. Lawyers involved in family work should have expertise in child development and attachment, and in recognising and understanding the dynamics of family violence, and an accreditation process could be used ensure that this was the case. Another argument for accreditation, of course, is the need to ensure that lawyers are not exacerbating conflict during family separation by operating in the adversarial manner that might be appropriate in other legal forums.

Facilitating disclosure

[20] The Australian Domestic & Family Violence Clearinghouse notes that "Shame, the anticipation of negative judgment, cynicism or disbelief by the practitioner and the consequences of living with abuse combine to provide real and understandable disincentives to disclose" by victims of domestic abuse.[6] It is also suggested that lawyers can be falsely confident about their ability to recognise abuse and encourage disclosure in appropriate cases.

> "The evidence base indicates that in order to support victims of abuse adequately, practitioners need a critical understanding of the complexities of domestic violence. This involves understanding:
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> - the serious damaging impact of exposure to family violence on children that *in itself* constitutes harm
> - the ways in which exposure to violence may affect the way women are perceived or understood within the family law system
> - the ways in which perpetrators attempt to engage practitioners in colluding with them
> - the complex and historical nature of abusive relationships
> - the related danger in short-cutting risk assessment through application of diagnostic typologies of abuse." [7]

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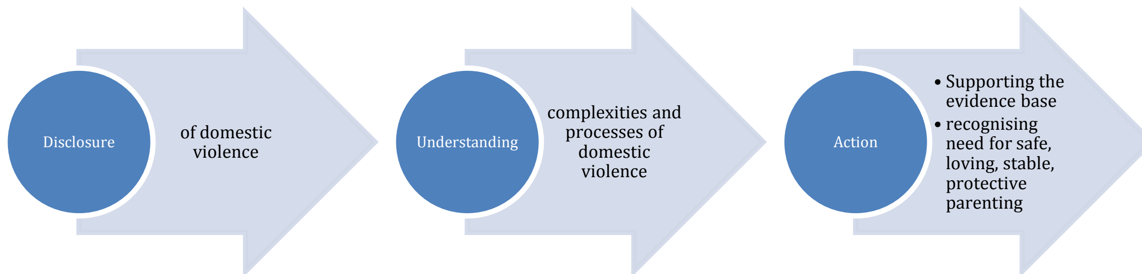
[6] Karen Wilcox (Good Practice Officer, Australian Domestic and Family Violence Clearinghouse), *Family Law and Family Practice: Research to Practice*, January 2012, Australian Domestic & Family Violence Clearinghouse at p 3.
[7] Karen Wilcox (Good Practice Officer, Australian Domestic and Family Violence Clearinghouse), *Family Law and Family Practice: Research to Practice*, January 2012, Australian Domestic & Family Violence Clearinghouse at p 3

[21] Research from Australia[8] has shown that practice enhancement across the family law sector can be developed by facilitating *disclosure* of family violence by victims; deepening professionals' *understanding* of the dynamics of domestic violence; and then enhancing the *actions* of professionals to reflect safety needs.



[22] The FVDRC recommends that this practice framework (outlined in more detail in Wilcox[9] and reproduced in Appendix 1 of this submission) is used to develop screening processes within the New Zealand Family Court and informs the response to cases identified as involving family violence.

Formalising processes and understandings

[23] As noted, there is a commendable acknowledgement throughout the Public Consultation Paper that cases involving family violence should be fast tracked to avoid dispute resolution processes that involve private negotiation and to appear before a judge as soon as possible.

[24] The FVDRC notes that it is imperative that this understanding, as well as the definition of family violence that is to be used in screening cases, the process of screening and the early intervention process itself, are all formalised into clear rules that operate consistently across all cases and in all locations.

[25] For example, if it was thought important to adopt the structure for resolving disputes set out on page 43 of the Public Consultation Paper, it would be imperative that screening for domestic violence occurred not at the point of court entry but earlier in the process before self-resolution was attempted. This might necessitate those involved in providing family dispute counselling and mediation services also being required to routinely screen for family violence. Furthermore, counsellors and mediators will also need formal training in recognising cases involving domestic violence when they are called upon to assist in resolving disputes in respect of which the screening process for domestic violence has failed. Dispute resolution professionals need to be able to quickly recognise what they are dealing with and fast track such cases onto the court.

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[8] Chisholm R, *Family courts violence review: a report by Professor Richard Chisholm*, Attorney General's Department, Canberra, 2009.

[9] *Op. cit.*

Clarification of the principles framing the resolution of child care and contact disputes when domestic violence is present.

[26] As noted above, in s 5(e) of the Care of Children Act 2004, the principles to give expression to a child's best interests are articulated, and it is provided that "the child's safety must be protected and, in particular, he or she must be protected from all forms of violence as defined in section 3(2) to (5) of the Domestic Violence Act 1995."

[27] However, this is only one principle and it co-exists with four other principles (s 5 (a)-(d)) emphasising agreement between parents and guardians on the child's care and upbringing, and continuity in arrangements and relationships between the child and their parents and extended family.

[28] As pointed out by Mel Smith in respect of similar provisions in the Children, Young Persons and Their Families Act 1989[10], there is a danger that such provisions "read as a whole" result in a "loss of focus on the interests of the child as being paramount" and instead generate a focus on preserving the child's relationship with both parents, and the parents' relationship with each other as co-parents, as though such relationships will always be in the child's best interests.

[29] When family violence is present a "clean break" principle after family separation may be more appropriate than the on-going interaction required to ensure everyone's continued involvement in the child's life which is apparently envisioned in s 5 (a)-(d).

[30] It may be important to minimise any interaction between the parents post-separation. Contact may also need to be greatly reduced or stopped in cases involving domestic violence if it undermines the primary carer's ability to provide a safe and healthy parenting environment or exposes the child to the risk of harm – including retaliation or revenge against the parent who is the primary target of the violence. The safety and wellbeing of a protective parent is also linked to children's recovery and healing from a history of living with domestic violence. This is a suggestion that we note is canvassed on page 28 of the Public Consultation Paper.

[31] Children's emotional wellbeing and physical safety needs to be the paramount concern in all circumstances. The evidence suggests that it is not the time spent with a contact parent that is significant to children's post-separation wellbeing so much as the quality of the parenting provided to the child during contact (in addition to other factors such as the quality of the parental alliance).[11] Extensive, or indeed any, contact with a parent who is abusive cannot be assumed to be in a child's best interests. The Australian Institute of Family Studies' evaluation of the 2006 family

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[10] Mel Smith, *Report to Hon Paula Bennett, Minister for Social Development and Employment: Following An Inquiry Into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* (2011) (pages 81-84, particularly para 10.10)

[11] Fehlberg *et al*. *Caring for children after parental separation: would legislation for shared parenting time help children?* Department of Social Policy and Intervention, University of Oxford, 2011, p.6; McIntosh *et al. Post-separation parenting arrangements and developmental outcomes for infants and children: Collected reports*, Attorney General's Department, Canberra, 2010, p 203; Paul Amato and Joach Gilbreth, "Non-resident fathers and children's wellbeing: A meta-analysis" (1999) 61 *Journal of Marriage and the Family* 557; Mary Whiteside and Betsey Jane Becker, "Parental factors and the young child's post-divorce adjustment: A meta-analysis with implications for parenting arrangements" (2000) 14 *Journal of Family Psychology* 5.

law reforms similarly shows that children in shared care-time arrangements where there had been abuse experienced worse mental outcomes and lower wellbeing, than did other children.[12]

[32] It may also be appropriate that a protected person should have sole responsibility for some guardianship matters, in particular, deciding where the child lives. It may, for example, be unsafe for the perpetrator to have information about the child's location or schooling. We note that this is a suggestion that is canvassed on page 34 of the Public Consultation Paper.

[33] It will not be possible to determine in advance those cases in which it will be appropriate to set arrangements in place that do not involve interaction between the parents, or which minimise or terminate contact, or when it is appropriate to limit or terminate the guardianship role of a violent parent. It might be useful, however, to clarify that the Family Court does have the discretion to deal with family violence cases in this manner if it considers it appropriate on the facts in order to give expression to s 5(2) of the Care of Children Act 2004.

[34] Clearly it is important that Family Court judges continue to receive ongoing training in the area of family violence, as well as being kept informed of current and relevant research. The FVDRC notes that The Lietner Centre Report[13] recommended that "given the significant role they each play in addressing violence against women, the government should establish mechanisms for mandatory training on domestic violence for both judges and lawyers". The need for the education and support of judges around issues of family violence is particularly vital if cases where family violence is present are to be primarily resolved by the Family Court as the FVDRC has recommended in this submission.

[35] The FVDRC does not support a general presumption of shared parenting post-separation when this is not something that both parents are committed to implementing themselves. As noted in the Public Consultation Paper, research suggests that such arrangements are unlikely to be positive for children when there are high levels of conflict and low levels of cooperation between the parents. Such a presumption creates unrealistic expectations which might encourage litigiousness, as well as putting tremendous pressure on a parent who does not believe the other parent is adequate or safe, other than for short periods of contact, to bargain away financial support that they may need to in order to cut down the period of contact and avoid a shared care arrangement.

Other matters the FVDRC wishes to comment on include:

a. Information sharing between the FV Criminal Court and the Family Court

[36] The Public Consultation Paper (page 26, point 77) comments that "Some stakeholders suggested more integrated court processes between the Family Violence Court in the criminal jurisdiction and the family violence matters in the Family Court." The FVDRC would strongly

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[12] Kaspiew R, Gray M, Weston R, Moloney L, Hand K and Qu L 2009, *Evaluation of the 2006 family law reforms*, Australian Institute of Family Studies (AIFS), Melbourne.
[13] Lietner Center for International Law and Justice, It's Not OK: New Zealand's Efforts to Eliminate Violence Against Women, Fordham University, New York, at p 30 and see also p 24.

support the need for more comprehensive, robust, and systematic systems of information sharing between courts and other agencies. The Family Court cannot be efficient and cost effective if it is not regularly utilizing information from the Family Violence Criminal Court in determining a range of matters. The FVDRC notes that one of the outstanding *Living at the Cutting Edge*[14] recommendations is:

> "That the Ministry of Justice (MOJ) reviews information systems to ensure that: judges in the criminal court considering sentences in DV cases can access relevant records of proceedings in the Family Court; judges in the Family Court considering applications under the Domestic Violence Act 1995 and the Care of Children Act 2004 can access records of DV offences from the criminal courts and POL400 forms from the police."

[37] The FVDRC notes that limited information sharing is legislated for in regulation 15T of the Summary Proceedings Regulations 1958 and Rules 431A, 431B and 432 of the Family Court Rules 2002. However, there is significant value in greater information exchange between jurisdictions to ensure that unsafe care and contact decisions are not made when respondents have criminal histories (for example, convictions for sex crimes); to ensure that Criminal Courts have access to information about multiple protection orders for multiple victims when making bail and sentencing decisions; and to ensure that Family Courts and Criminal Courts have access to family violence risk assessments undertaken by interagency groups, such as the Family Violence Interagency Response System (FVIARS) high risk meetings, when they are making decisions. Greater information sharing across government and the NGO sector is one of the key consultation issues within the Green Paper on Vulnerable Children. The Smith Report[15] also stresses the importance of information sharing in the context of children at risk and makes the point that the requirement to share information must extend beyond government agencies and include all those working in the field.

[38] The FVDRC recommends reforms to the Family Court Rules 2002 to mandate more extensive and routine information sharing between the courts exercising different jurisdictions, as well as between the Family Court and other agencies. Such reforms must be monitored to evaluate how they are working in practice and to ascertain what impact they are having on the safety of victims (adults and children).

b. The role of the lawyer for the child

[39] The role of the lawyer for the child contains a significant tension at this point in time. The lawyer for the child is tasked with ascertaining the wishes of the child and presenting them in court. If the expressed wishes of the child are potentially in conflict with their best interests, then there is a question as to whether the lawyer should present the child's point of view to the court or qualify it. Children may also say to the lawyer for the child what they think will appease the parent whose reactions they may particularly fear or want to manage, but may privately tell the parent

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[14] Robertson, N., R. Busch, R. D'Souza, F.L. Sheung, R. Anand, R. Balzer, et al. (2007) *Living at the Cutting Edge: Women's Experiences of Protection Orders*, A report for the Ministry of Women's Affairs, University of Waikato, Hamilton

[15] Mel Smith, *Report to Hon Paula Bennett, Minister for Social Development and Employment: Following An Inquiry Into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* (2011).

whom they are comfortable with something different. This may be a particular difficulty in cases involving family violence.

[40] The FVDRC recommends that the lawyer for the child be obliged to present the child's wishes and represent the child's best interest. A lawyer representing the best interest of the child should be required to consult with experts from other sectors (such as health or education, as an example) who have worked with the child over time. This is particularly important for children who can't communicate clearly as in very young children, disabled children or conflicted children who might be too frightened to speak. In addition, lawyers representing children must have training in child development and attachment, domestic violence, and child abuse and neglect. This training needs to be ongoing.

c. Allegations of violence in parenting disputes

[41] When there is an application for a parenting order and there is an allegation of sexual or physical violence (directed towards either adult or child) which is proven, the court must not order unsupervised contact by the violent party unless it is satisfied that the child is safe (pages 59-60, section 60 of the Care of Children Act 2004). If a parent has allegedly sexually or physically abused the child, then a medical assessment must be obtained immediately. The FVDRC agrees that a review to see if these provisions designed to keep children safe are working as intended would be advisable.

[42] The FVDRC also considers that if an allegation of violence is made then it would be preferable for unsupervised contact not to be ordered until the court has determined the allegation, rather than waiting until it has determined the matter before limiting contact to supervised contact. Whilst contact with a parent is desirable, it is not a value that can be elevated over a potential risk to the safety of a child. It is imperative in such an instance that the case should be taken to a hearing as soon as possible so that the allegations can be tested, something which the Early Intervention Process is designed to address.

d. The compulsory referral of respondents to anger management programmes

[43] The FVDRC notes the proposal to abolish the compulsory referral of respondents in family violence matters to stopping violence programs (pages 63-64). It is clearly essential to work with domestic violence perpetrators, as well as supporting the safety and recovery of those who have been or are being victimised, and the key issue here is the most effective manner in which to do that. The FVDRC notes that, whilst developing effective interventions might be more costly in the short-term, such costs would be more than justified by the long- term economic efficiencies.

[44] The FVDRC considers that this is a significant area in which a major review is timely. Because many participants in the stopping violence programmes are referred through the criminal courts, it is essential that such a review addresses the whole provision of stopping violence programmes, not just those mandated through the Family Court.

[45] The FVDRC considers it imperative that stopping violence programmes are brought into line with international best practise. For example, the FVDRC notes that it is of concern that such

programs in New Zealand may potentially only work with the perpetrator – relying essentially on perpetrator self-reporting as a measure of the success of the program. By way of contrast, all domestic violence prevention programmes in England that are members of Respect[16] are committed to delivering services in accordance with the Respect Accreditation Standard. This means that they also provide proactive partner contact for current, former and new partners of programme participants via a dedicated Integrated Support Service and carry out risk assessment and case management to protect victims and children. These programmes must also be situated within "a coordinated community response to domestic violence" and provide inter agency working. The accreditation process was developed so that members of the public, funders, commissioning agencies and other professionals could be assured of a high quality, safety focused service from domestic violence prevention programmes. Interestingly, research on these kinds of programs has found that "Mandated men were more likely to participate if the court sanctions were consistently applied and were then more likely to make sustained changes than men who self-referred."[17] Because these programmes were proactive about making contact with partners and ex-partners of participants they often made contact with and provided support for victims who otherwise do not contact or receive support from any other organisation.

[46] Note that we are not recommending the establishment of services such as Community Link workers in the criminal courts (referred to on p 63 of the Public Consultation Paper), but rather a robust coordinated community response (CCR) to family violence, which involves inter-agency working (professional meetings, multi-agency safety planning etc.) between the Police, Child Youth and Family, domestic violence advocates, mental health and physical health, stopping violence programme providers, drug and alcohol services, Whanāu Ora providers and court staff etc. This work can only be effective if there are skilled workers able to undertake complex assessments and who are able to work with clients and whanāu who are dealing with multiple issues. Developing a CCR requires the establishment of protocols, information sharing guidelines etc.

[47] The review that we are suggesting needs to encompass the Ministry of Justice Programme Provider Regulations with respect to the stopping violence programmes provided to women. The regulations were written for working with abusive men, but working with women and violence requires a different type of intervention. For example, many of the women who are mandated to attend these programmes through the Family Court, Criminal Court, and Probation are actually victims of domestic violence. The Regulations need to address the complexity of working with victims and offenders in the same group.

[48] Whether better screening processes should be developed for attendance at such programmes (including processes that screen for the needs of the entire family), whether a wider range of programmes with different service provision strategies should be provided (for example,

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[16] Respect is the UK membership association for domestic violence perpetrator programmes and associated support services. Their vision is to end violence and abuse in intimate partner and close family relationships. Their key focus is on increasing the safety and well-being of victims by promoting, supporting, delivering and developing effective interventions with perpetrators. http://www.respect.uk.net/

[17] See EW Gondolf, *Batterer Intervention Systems: Issues, Outcomes and Recommendations*, 2002, Sage, California, as cited in Respect, *Respect Briefing paper: Evidence of effects of domestic violence perpetrator programmes on women's safety*, 2010 at p 2.

programmes tailored to meet the specific needs of particular cultural groups), and whether ongoing free access to programmes for those who need ongoing support should be provided are all issues that need careful research and thought. The FVDRC would stress that a co-ordinated response to family violence across all sectors of health and justice is essential and the proposed review would facilitate this.

e. Multi-agency case consultation, including Health and Education, in child protection cases

[49] The FVDRC supports the suggestion made by Mel Smith in the *Report to Hon Paula Bennett, Minister for Social Development and Employment: Following An Inquiry Into the Serious Abuse of a Nine Year Old Girl and Other Matters Relating to the Welfare, Safety and Protection of Children in New Zealand* (2011) (page 94) that there should be a process established for multi-agency case consultation to take place amongst professionals involved in any particular case, and that Family Court judges should be able to direct that such cases be referred to this process when appropriate and that they be able to call for a single report that is informed by all agencies.

f. Dealing with all family violence matters in the criminal courts

[50] The Public Consultation document invites opinion on whether all family violence cases should be heard in the District Court as part of its criminal jurisdiction (page 26). Presumably this refers to cases that involve protection orders, rather than other types of disputes (such as the care and contact of children, for example) in which family violence is present. The FVDRC would oppose this suggestion on the basis that many domestic violence cases arise out of matters which also involve Family Court matters such as the care, contact and protection of children. A holistic approach needs to be taken to cases involving domestic violence and this proposal does the opposite – it risks further fragmentation of these issues across multiple courts. It is also unlikely that the District Court will be able to cope with the volume of such cases.

g. Court fees

[51] The Public Consultation document seeks opinion about the circumstances in which the courts should impose court fees (application, setting down and hearing fees - page 51). The FVDRC notes that it is crucial to ensure that those who really need to access the court are not prejudiced by the need to meet court fees.

h. Responding to the cultural needs of Māori, Pacific and other communities

(52) It is important that processes and practices are culturally appropriate throughout the system at all levels when working with Māori, Pacific Island, Asian and other ethnic groups. Cultural appropriateness must be ensured at the beginning of any process in consultation with cultural advisors/supervisors if and when needed. In cases where there is language difficulty, it is also necessary to engage with appropriate interpreters/translators that would bring further understanding and better outcomes. Culturally responsive tools/approaches must be implemented to ensure safe practice.

Conclusion

[53] The FVDRC would note that the current approach to reviewing and reforming the justice system is problematic in its treatment of family violence. Because different aspects of the justice system are reviewed and reformed in isolation from each other (for example, there has recently been the Bail review; the Legal Aid review; the Family Court review and the law reform process that culminated in the Crimes Amendment Act (No 3) 2011), family violence issues are dealt with in a fragmented fashion. This approach is not the best way to achieve safety for victims of abuse. What is needed instead is an integrated and timely approach across all sectors, including justice, which prioritises the safety and provision of support to victims of domestic violence and child abuse.

Appendix 1[18]

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.

[18] 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