

## Family Violence Death Review Committee's submission to the Family Court (Family Court Associates) Legislation Bill

### *Family Violence Death Review Committee*

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 (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, 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.

### *Our submission*

We acknowledge and congratulate the government and opposition parties for supporting the introduction of the Family Court (Family Court Associates) Legislation Bill (hereafter referred to as 'the Bill').<sup>1</sup> Such cross-party support indicates an acknowledgement that the Family Court, in its current form, is not serving the needs of those for whom it was developed. However, we are equally disappointed that, once again, suggested solutions to the current Family Court system amount to tinkering, rather than the robust overhaul as recommended by advocates<sup>2</sup> and the United Nations.<sup>3</sup>

Statements from members of multiple parties identify Te Korowai Ture ā-Whānau as the source for the Bill in its current form. We note, at the outset, that the independent reviewers were not solely focused on the timeliness of court processes:

*Family justice services and the people who engage with them represent a microcosm of New Zealand. The services involve children and young people, parents and whānau at times of distress, crisis and conflict. For many, the barriers to accessing justice reflect the barriers they encounter throughout the justice sector and in New Zealand society more generally.*

*Children's participation in decisions that affect them is a fundamental right in the United Nations' Convention on the Rights of the Child (CRC) and is still not widely recognised or valued.*

*The case for recognising te ao Māori in law, policies and practices has been made repeatedly in reports on the justice sector and others dating back to the 1980s and even earlier.*

<sup>1</sup> Parliamentary Debates (Hansard) for Family Court (Family Court Associates) Legislation Bill — First Reading, 2 August 2022. From [https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb\\_20220802\\_20220802\\_44](https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20220802_20220802_44) Accessed 22 August 2022

<sup>2</sup> <https://www.nzherald.co.nz/nz/family-court-unsafe-and-brutal-un-human-rights-committee-calls-for-inquiry/UQWBKZIR54J3NSINAKJO53JC2A/> Accessed 22 August 2022

<sup>3</sup> Committee on the Elimination of Discrimination against Women. Concluding observations on the eighth periodic report of New Zealand. CEDAW/C/NZL.CO/8 July 2018. (paragraph 48)

*Responding to diversity and accommodating people with disabilities are clear requirements in the international human rights standards to which New Zealand has committed.*

*Knowledge of family violence in all its forms is still not widespread and its impact on children, including on their safety, is still poorly understood.*

*Delay is endemic and impacts on almost every other issue in family justice services.<sup>4</sup>*

While we also note that the Bill is one of a series of initiatives being put in place to address issues within the Family Court, we are concerned that political expediency is taking precedence over human rights and the safety of family or whānau. To be effective, this series of reforms requires an overall understanding of what an ideal Family Court system would look like.<sup>5</sup> Without such, we are left referring back to a recommendation from our 2012 submission:

*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 ...family violence issues are dealt with in a fragmented fashion.<sup>6</sup>*

Further, by cherry-picking aspects of the work undertaken by the court and subsequently siloing them into “family violence”, “care of children” or other matters, we lose sight of the potential for each of these issues to play into a wider pattern of violence. As such, we also refer back to our submission from 2018:

*The FVDRC believes there is continued misunderstanding/minimisation of family violence that permeates the Family Court system, which acts to further victimise the women and children that are attempting to access support.<sup>7</sup>*

Pertinent issues such as the ability to use the Family Court as a tool of abuse (either by an abusive ex-partner,<sup>8</sup> or by statutory agencies<sup>9</sup>) are not addressed in the proposed reforms. Neither are prolonged relationship property litigation, or family trust and enduring power of attorney issues which may be used to abuse, isolate and increase the vulnerability specifically of disabled people,<sup>10,11</sup> but also in other communities where such tools are used to control access to resources (including rural communities).<sup>12</sup>

Amongst other authors, Boulton and colleagues have provided alternative solutions to the functioning of the Family Court.<sup>13</sup> Such solutions draw on “procedural fairness” in working towards a model where courts would become “solution finding”<sup>14</sup>, contributing to “a justice system that

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<sup>4</sup> Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms. May 2019, page 6-7.

<sup>5</sup> Te Uepū Hāpai i Te Ora Safe and Effective Justice Advisory Group. (2019). Turuki! Turuki! Move together - Transforming our criminal justice system.

<sup>6</sup> FVDRC Submission on Reviewing the Family Court: A Public Consultation Paper. 24 February 2012.

<sup>7</sup> Family Violence Death Review Committee (FVDRC) Submission on Reviewing the Family Court. 9 November 2018

<sup>8</sup> From <https://www.stuff.co.nz/national/crime/300665850/the-court-cant-stop-him-how-a-womans-abusive-exhusband-filed-100-court-claims-against-her-and-counting> Accessed 22 August 2022

<sup>9</sup> Boulton, A. Wikaira, M. Cvitanovic, L. Williams Blyth, T. (2020) Te Taniwha I Te Ao Ture-ā-Whānau Whānau Experience Of Care And Protection In The Family Court

<sup>10</sup> From <https://www.nzherald.co.nz/nz/family-court-unsafe-and-brutal-un-human-rights-committee-calls-for-inquiry/UQWBKZIR54J3NSINAKJO53JC2A/> Accessed 22 August 2022

<sup>11</sup> Family Violence Death Review Committee (2022) A duty to care, Me manaaki te tangata. Seventh Report. June 2022

<sup>12</sup> Henaghan, M. Short, J. & Gulliver, P. (2021): Family violence experts in the criminal court: the need to fill the void. Psychiatry, Psychology and Law, DOI: 10.1080/13218719.2021.1894262

<sup>13</sup> Boulton, A. Wikaira, M. Cvitanovic, L. Williams Blyth, T. (2020) Te Taniwha I Te Ao Ture-ā-Whānau Whānau Experience Of Care And Protection In The Family Court

<sup>14</sup> Doogue, J.M. (2018, October 15). Generations of Disadvantage: A View from the District Court Bench. 22nd Annual New Zealand Law Foundation Ethel Benjamin Commemorative Address, Dunedin.

‘prevents harm, addresses its causes, and promotes healing and restoration among individuals and communities’<sup>15/16</sup>. The work by Boulton and colleagues highlight that the adverse experiences of Māori in the Family Court are shared by tauwiwi, but they will have a disproportionate impact on Māori due to the high proportion of Māori children in state care. Similarly, the work of the Family Violence Death Review Committee has highlighted that while Māori are disproportionately impacted by the activities of the State (and therefore should be an active participant in designing the solutions for the future), the corollary of unchecked privilege for tauwiwi men can result in experiences such as the following:

- *because a man expected to be heard and believed, he was able to communicate clearly and confidently when reporting an incident to police*
- *a man pursued his partner through the Family Court, underscoring that his right to have access to the child was stronger than her help-seeking from family overseas*
- *a man who expected his partner to conform to his ideals of a partner did not view his behaviour as controlling or manipulative.*<sup>17</sup>

Indeed, where those in positions of power share these ideals and norms, it can be difficult to challenge them, or see them as maintaining a dominant, patriarchal world view. As such, the Family Violence Death Review Committee shares the views of Boulton and colleagues, that “Transformational change demands more than rhetoric. It demands a commitment that reflects true Tiriti partnership. It also demands courage”.<sup>18</sup>

On behalf of the Family Violence Death Review Committee.

Ngā manaakitanga



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<sup>15</sup> Te Uepū Hāpai i Te Ora Safe and Effective Justice Advisory Group. (2019). Turuki! Turuki! Move together - Transforming our criminal justice system.

<sup>16</sup> Boulton, A. Wikaira, M. Cvitanovic, L. Williams Blyth, T. (2020) Te Taniwha I Te Ao Ture-ā-Whānau Whānau Experience Of Care And Protection In The Family Court

<sup>17</sup> Family Violence Death Review Committee. 2020. Sixth report | Te Pūrongo tuaono: Men who use violence | Ngā tāne ka whakamahi i te whakarekereke. Wellington: Health Quality & Safety Commission

<sup>18</sup> Boulton, A. Wikaira, M. Cvitanovic, L. Williams Blyth, T. (2020) Te Taniwha I Te Ao Ture-ā-Whānau Whānau Experience Of Care And Protection In The Family Court (page 20)