



14 March 2018

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Tēnā koe Lisa

Submission to the New Zealand Law Commission

Thank you for inviting the Family Violence Death Review Committee to comment to the New Zealand Law Commission on Dividing relationship property – time for change? Te mātatoha rawa tokorau – Kua eke te wā? We commend the Law Commission for its initiative in reviewing this legislation.

1. The Family Violence Death Review Committee formed under the New Zealand Public Health and Disability Act 2000. The Committee, which has its prime focus to reduce harm from family violence, supports option 2 at paragraph 12.38 of the Law Commission discussion paper 'Dividing relationship property – time for change?'
2. The perpetrator of family violence causes a great deal of disruption and fear in the family home. Without these dynamics being recognised in the Property Relationships Act, primary victims¹ have no basis upon which they can protect their property and financial future. Family violence undermines confidence and it is crucially important that primary victims of family violence are able to protect their property and financial future for themselves and for their children. It would be a significant gap if the legislation failed to specifically recognise family violence in the Property Relationships Act. It renders invisible the power dynamics at play that mean the primary victim starts from an inequitable position in any property negotiations.
3. In order to be able to exercise their legal rights it is essential that primary victims have access to funded, effective legal representation by lawyers who are knowledgeable about the dynamics of intimate partner violence (IPV). Women may be in a state of considerable trauma and realistic fear at the point of separation and have all of their funds tied up in the matrimonial property.
4. It is also essential that primary victims have access to an expedited process. The time of separation is one of the most dangerous points in a violent relationship and primary victims need the opportunity to exit as quickly and cleanly as possible so that they can begin the process of recovery. Being forced to continue to interact with the predominant aggressor² throughout protracted legal negotiations, whilst being unable to afford to move onto separate accommodation arrangements because their funds are tied up in the family home, does not serve these interests. A predominant aggressor who does not accept the separation and is interested in punishing and controlling his (ex)partner should not be permitted to use legal proceedings to pursue this agenda.

¹ The person who is has experienced ongoing coercive and controlling behaviours from their intimate partner. FVDRC 5th Report Data 2017.

² The person who is the principal aggressor and has exercised coercive control against their intimate partner. Ibid.

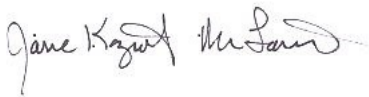
5. The Committee is of the view that the language of misconduct and extraordinary circumstances does not accurately describe the dynamics of coercive control that underpin family violence. The cumulative pattern of harm inflicted by a predominant aggressor on a primary victim erodes the liberty and autonomy of the primary victim in subtle as well as obvious ways. It cannot be assumed that primary victims have autonomy in matters of finance and property. Predominant aggressors, who are making a choice to behave in the way that they do, control their partners in a range of ways, including:

- failing to contribute to the family home
- failure to provide for the children
- damaging/destroying property (buildings and contents)
- ensuring that rental agreements are signed by the primary victim, to avoid liability for damage
- forcing the primary victim to make frequent moves
- adversely impacting primary victims' employment prospects
- pressuring the primary victim to support them financially

As cited in paragraph 12.38, violence is an injustice in its own right. However, we recognise that any exclusion for family violence will likely be used equally (or more so) by predominant aggressors, particularly if they have the financial means. We do not want the legal system to be used by perpetrators to continue their abuse tactics post separation (see Heather Douglas "Legal Systems Abuse and Coercive Control" (2018) 18(1) *Criminology and Criminal Justice*, 84-95.). We therefore reluctantly recommend no change to the current misconduct exception.

6. Family violence should be taken into account in the orders that can be made, such as occupation of the family home and vesting the family home. It is critical to ensure there is safety for the primary victim and their children when such orders are made.
7. Under the Succession (Homicide) Act 2007, a person who murders their partner does not lose their relationship property entitlement. We strongly believe that intimate partner violence predominant aggressors should not benefit from their criminal wrongdoing at the expense of the victim's family. The court should be permitted to consider whether the division of property subsequent to the death is fair, particularly for children of the victim. When considering the fairness of any property division subsequent to a homicide, the court must apply an understanding of the dynamics of IPV and its gendered nature in order to determine whether the offender is a primary victim or a predominant aggressor in the history of the relationship. This context is directly relevant to the issue of fairness.

Ngā mihi



Prof Jane Koziol-McLain
Chair
Family Violence Death Review Committee