

**Submission on the
'Strengthening New Zealand's
Legislative Response to Family
Violence' public discussion document**



Submitted on behalf of
Presbyterian Support New Zealand



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Introduction

Thank you for the opportunity to contribute to this important legislative review.

Presbyterian Support New Zealand represents the federation of the seven regional Presbyterian Support organisations in New Zealand. Presbyterian Support provides a range of social services including services to vulnerable children, young people and their families and whānau, community development initiatives, support for older people in their own homes, day programmes, rest homes and retirement villages, disability support programmes and residential support, elder abuse prevention services, and programmes to support people in the community living with major mental illness.

Collectively, we have a wealth of experience of helping vulnerable people navigate their lives and improve their circumstances. We provide programmes and services specifically to address family and domestic violence related issues, and indirectly by way of wrap-around support to vulnerable people who also live with domestic and family violence (see the case study – Mia and Davin, p5 and a practitioner’s feedback p8 for examples). We provide professional counselling and social work services, group education programmes, youth services and programmes, supported housing to vulnerable groups, prisoner community reintegration, parenting through separation and mediation services, and parenting and volunteer support within Aotearoa/New Zealand communities.

The scope and level of domestic violence occurring within New Zealand suggests that a systemic response to the issues is required. In considering legislative change, we have an opportunity to construct a foundation on which an integrated response can be built: with legislation that better defines and describes domestic and family violence and provides a human rights and principles-based framework; to inform government policy and national strategy development, including planning, funding and programming.

The Peoples Report: The Peoples’ Inquiry into Addressing Child Abuse and Domestic Violence. Glenn Inquiry 2014, (p12) suggests:

“Doing things differently means recognising and understanding that child abuse frequently goes hand-in-hand with domestic violence. We were told that it involves designing a long-term national strategy that is focused on multi-level and multisystem change and development, facilitated by government. The welfare of victims and their families must be at the centre of the strategy which would involve social, community and economic development, as well as attitudinal and cultural change. An effective national strategy would:

- *adopt a zero tolerance to child abuse and domestic violence, making it everyone’s concern*
- *be child-focused and promote and strengthen family relationships*
- *protect those affected*
- *prevent abuse and violence*
- *restore relationships and families for the benefit of children, and*
- *overhaul systems and services, especially the justice and legal systems”.*



The existing NZ domestic violence legislation is designed to respond to violence that has already occurred, rather than providing a human rights and protection focus which would promote a stronger emphasis on prevention and early intervention.

According to the breakdown of government spend detailed in the portfolio analysis - Cabinet Paper: Progress on the Work Programme of the Ministerial Group on Family Violence and Sexual Violence, funding for services is heavily weighted towards follow-up responses rather than primary prevention, screening, incident response, and perpetrator rehabilitation. Our current legislative orientation may be partly responsible for this.

In contrast, the rights-based overarching principles approach of the Victoria, Australia Family Violence Protection Act 2008, and Queensland Domestic and Family Violence Protection Acts provide a legislative structure that, if replicated in New Zealand, could be used to guide development/amendment of the legislative components.

This, alongside improved descriptions of domestic violence behaviours, including features and patterns of violent behaviour, and associated risk factors, will better support implementation of the legislation.

The portfolio analysis of family violence and sexual violence highlights the value of developing a national primary prevention strategy as a way to support reducing structural barriers for victims, and provide positive messaging universally alongside targeted support.

To address issues of domestic violence at the prevention and early intervention end of the continuum, (primary prevention, screening, incident response) there needs to be a much more integrated strategy which includes training for those who might first respond to incidents, recognition of, and funding to NGOs supporting vulnerable children and adult victims and perpetrators of family violence.

Access to support for victim(s) must take account of the different pathways families take to seeking help, the onerous nature of seeking Protection Orders and the barriers to accessing legal support.

See below for a case study that illustrates the circuitous route families often take to access the support needed – applying for a Protection Order is not necessarily the first step, nor one that can always be undertaken without a level of support already in place for victims. As many victims are also isolated from natural support systems as a result of family and domestic violence, illness or disability, these realities need to be taken into consideration in legislative design.



Case Study – Mia and Davin

At 16 Mia found herself pregnant, isolated and living with an abusive partner.*

For many years Mia struggled with thoughts of suicide, only carrying on for her son Davin. But when Davin was hurt trying to protect her, she knew she had to get out. She found a flat for herself and her son, but the emotional abuse from her ex-partner and his family continued. She felt lost, alone and confused.*

Davin, now 8, was referred to Family Works because of concerns about his behaviour at school. Mia supported her son to take part in Family Works' 'Free To Be Me' group for children who have witnessed family violence. While Mia initially declined any help for herself, after seeing the difference in her son she decided to attend the 'Free To Be Me' group for women.

With the support of Family Works and the group, Mia took out a Protection Order which she used to help protect herself and her son from her ex-partner's emotional abuse, violence and pressure to reconcile. She learnt strategies for keeping her son and herself safe. Mia's self-esteem grew, and for the first time in her life Mia knew she wasn't alone.

Today Mia is working with a counsellor and social worker to make positive changes in her life.

**Names have been changed*

Legislative Framework: overview

We propose a legislative framework that:

- **Begins with overarching principles guiding the Act.** The preambles in several Australian State Acts provide good examples of overarching principles. The Queensland Domestic and Family Violence Act links principles to relevant international rights declarations.
- **Includes objectives/purpose which reflects rights to protection and safety, prevention of abuse and the commitment to holding perpetrators accountable.** Again Victoria and Queensland have good examples of this that New Zealand could leverage off.
- **Describes how the purpose is to be achieved.** Queensland's 'Principles for Administering the Act' provides a good frame for the development of a national strategy. This example explicitly states that where possible perpetrators should be provided opportunity to change. The impact of violence and any factors increasing vulnerability are also explicitly noted in the guiding principles.
- **Includes cultural considerations for implementation of the Act.** Our commitment to principles in Te Tiriti o Waitangi should be acknowledged. An example of indigenous peoples' culture being recognised within legislation is the acknowledgement of Aboriginal and Torres Strait Islander tradition in the 'Definitions for Interpretation' of the Victoria Family Violence Protection Act. In the 'Duties of the Chief Executive' section, our CYP&F Act, there is guidance for development of policies and delivery of services (see below), however our current domestic violence legislation does not provide any such direction. We recommend that any commitment we make to our



obligations under Te Tiriti, and when responding to the cultural frame of reference and needs for people of other cultures within our country, should be made under the Principles section to guide the Objectives and Interpretation of the legislation.

CYP&F Act 'Duties of the Chief Executive' section wording: "ensure, wherever possible, that all policies adopted by the department, and all services provided by the department,—

- 1) recognise the social, economic, and cultural values of all cultural and ethnic groups; and
- 2) have particular regard for the values, culture, and beliefs of the Maori people; and
- 3) support the role of families, whānau, hapu, iwi, and family groups; and
- 4) avoid the alienation of children and young persons from their family, whānau, hapu, iwi, and family group."

- **Includes definitions of what constitutes different types of domestic and family violence—** contexts can be quite different. This could include patterns of behaviour/ history of abuse, indicators, problems that exacerbate domestic violence – eg alcohol and drug abuse, coercive control (UK legislation). Victoria, New South Wales and the UK all have some useful descriptors within their legislation. Strategies should be developed to respond to different needs across population groups. Legislation could include high level descriptions within the legislation, which could then be linked to more descriptive definitions in a related document referred to in the law, but able to be updated outside of the full legislative process.
- **Includes features of abuse:** The example below from Victoria provides support for a framework that links the personal problems of the victim to the community and societal impact. To effect change at national and community levels and ensure a national strategy has the widest focus necessary, we need to acknowledge the impact of abuse, and plan an integrated response.

Victoria Legislation's features describing wider impact: "...that children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing; (c) that family violence— (i) **affects the entire community**; and (ii) **occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion**; (d) that family violence extends beyond physical and sexual violence and may involve emotional or psychological abuse and economic abuse; (e) **that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.**

- **Includes references to a national strategy.** A national strategy could be developed and updated as needed outside of the legislation (similar to the Vulnerable Children's Plan referred to in the VCA 2014).

A local model for developing aspects of a national strategy is included in the Family Violence Clearinghouse, Issues Paper 8, May 2015: Creating change: Mobilising New Zealand communities to prevent family violence.



The nature and dynamics of family violence across population groups

The very low rates of reported domestic and family violence indicate that there are significant barriers to reporting. The Peoples' Report: Glenn Inquiry (pp35-36) suggests that as a society we normalise violence, and have a high tolerance for abuse. Our drinking and drug culture are also seen as contributors. The links between child abuse and family violence are also discussed. The nature and presentations of domestic and family violence mean that often victims are not aware of the impact until behaviours have become entrenched. Expectations of relationships may be low due to formative experiences of abuse and neglect.

As discussed in the introduction, a definition and description of each of the known domestic and family violence contexts should be outlined – including features/risk factors for each population group, with responses developed to meet specific needs. A national strategy based on the overarching principles, objectives and definitions of the Act would set expectations and guide all responses.

A human rights and protection stance will ensure that all abuse is able to be responded to regardless of immigration status.

Definition of 'Family Violence'

The term family violence may limit the recognition of all the forms of violence that occur within a domestic context but not perpetrated by 'family'. The Queensland legislation is an example worth noting. The 'Domestic and Family Violence Protection Act' recognises the differences between family and domestic violence and includes them both in the title. This legislation also describes in detail, types of relationships which may be involved - including informal care relationships.

Guiding Principles

Guiding principles provide a set of fundamental rights and expectations to guide strategies, work planning, and funding.

If principles are used to guide how agencies are expected to respond to domestic and family violence without a national strategy to frame an integrated and holistic plan, we are at risk of perpetuating the current fragmented system. Each agency will interpret the principles in a way that fits their worldview and language, and this may not translate across agencies in a way that is consistent.

A national strategy with a common language underpinning it is vital. The inclusion of definitions, detailed descriptions and features of different types of domestic and family violence will go some way towards establishing a common understanding across sectors; however this alone is insufficient to provide an integrated approach.

Accessibility of protection orders

Cost should never be a barrier to access a Protection Order. The cost and complexity of the legal system are barriers for many victims. Safety and protection from harm are fundamental human rights, and access to support should be available on that basis.



There should be multiple funded points of access for Protection Orders. In some jurisdictions the Police, or ‘an authorised person for the aggrieved’ (Queensland legislation) are able to apply on behalf of the victim. The Mia and Davin case study above illustrates that victims often don’t seek a Protection Order unless supported to do so. Police and organisations working with victims and funded to provide this, should be able to apply for Protection Orders on behalf of, or alongside victims.

A number of community organisations actively support victims to apply for Protection Orders currently. Please see below for feedback from a Presbyterian Support practitioner.

“We inform clients first off of what a PO is and what it does and the process of getting one. We discuss access to lawyers and legal aid that could support the writing of the protection order and also be present at court if it headed to a hearing. So our roles could vary depending on the client, it may be that we are the information providers and then the lawyer is the person who supports them with the writing of the protection order. It may also be that we direct the person to the family court co-ordinators who support people to write protection orders if they do not wish to get legal support.

And then there are the people who you may actually sit down and write the protection order with them. At (another NGO) it was pretty standard practice for us to support women to write their own affidavits. This would mean we would spend a good 2-3 hours with the woman with the relevant paper work and will fill it in. The affidavit had to be written in her words and sequenced from past to present. We would support woman and keep them on track with thinking about the times where the abuse had taken place and how it made them feel and the effect it had on them then and now. If there were children we would support them to write about what the children had witnessed and the effects on them as well.

We would have the power and control wheel as an exhibit in the affidavit and the woman would have highlighted in yellow what abuse she had been put through (yellow highlighter does not photocopy so the respondent would not know what she highlighted). After the process of writing the affidavit, we would sometimes accompany the woman to the family courts to submit her application if she asked for the support”.

The legislation and its implementation need to recognise the often daunting prospect of applying for a Protection Order, and the equally daunting prospect for many of interacting with the legal system. NGOs provide support to vulnerable adults and children every day, and much of the support they provide is currently unfunded, and understanding of the legal system, variable. The provision of funded community-based services in local communities – that provide skilled advice and Protection Order application assistance as part of a wrap-around support system to vulnerable families, would improve accessibility.

Effectiveness of protection orders

Three months to contest the Protection Order is too long. The victim needs to know that it will be upheld and feel safe during that time. We suggest revising the timeframe. Also, Protection Orders should not expire. There needs to be a review of the risk to the victim if a Protection Order is to cease, otherwise it should remain in place indefinitely.

Breaches of Protection Orders should result in meaningful consequences – mandatory arrest, and review of the risks before allowing perpetrators back into the community. Several jurisdictions



explicitly cover this. If we are to take a protection, community and societal impact approach, we must also consider taking opportunities to offer support to perpetrators at multiple points.

Perpetrators return to their community once released from custody, and some may continue to pose a risk to victims, themselves and other members of their community.

Property Orders

There should be follow-up support available to perpetrators as well as victims, including emergency housing and tailored anti-violence programmes. In some instances, couples may wish to remain together in the long term, and if this is the case, our systems need to be flexible enough to provide a place of safety in the short term, and to work with couples to address the issues together. There needs to be an understanding that for some, couples anti-violence programmes may be appropriate.

The stress of loss of home may increase risk to the victims and community. Wrap around support should be available within the community for both perpetrators and victims of violence. All involved, are members of community and punishment alone does not make a perpetrator a safer citizen.

Police Safety Orders

As above. We need to understand this as a community and wider society issue, not a personal issue alone. Police should be empowered to support and refer to funded community-based wrap-around services when this is needed.

PSOs should be reviewed to understand whether victims who are supported with a PSO go on to access Protection Orders, do they remain safe or do they continue to be abused? – does this increase risk? The outcome of this review should guide whether a PSO should be in place for longer, or whether Police ability to apply for a Protection Order on behalf of a victim is a better option in some cases.

Family violence and parenting arrangements

We need to make better links within the law. A person who poses a risk to their partner also poses a risk to their children in many cases. These risks should always be assessed when making Parenting Orders. This is covered in current legislation (the Domestic Violence Act, The CYP&F Act, and the Care of Children Act). The implementation guidance (or lack of this) could be one of the issues preventing a safe and protective system being in place for children and adult victims.

Application for a Parenting Order should be a seamless process of assessing risk, and responding appropriately. The current system is too complex, resulting in extended time and cost in the legal system and in some cases an increase of risk to victims. The Peoples Report: The Peoples' Inquiry into Addressing Child Abuse and Domestic Violence. The Glenn Inquiry 2014, (pp86-88), addresses some of the issues for victims around perpetrator access and co-parenting agreements.

Family violence in criminal law

Any changes to the Family Court system or Crimes Act need to consider the cumulative harm, reoffending and specific nature of domestic and family violence. Some other types of abuse and criminal activity may indicate a heightened risk of domestic and family violence. Any legislative



change needs to be informed by perpetrator patterns of behaviour over time, linked offence types, and any escalation – with information available between criminal and family court systems.

Victim safety in bail and sentencing

A legal framework that has a human-rights, protection and safety focus, will support the assessment of risk to victims, and their protection from harm, as fundamental rights. Legislative components including bail and sentencing should be developed to align with this perspective.

Judicial Powers in Criminal Proceedings

The Criminal and Family Court systems should be aligned, and work within the same legal framework.

Queensland’s principles for administering their Domestic and Family Violence legislation includes ‘...a civil response under this Act (The Domestic and Family Violence Protection Act) should operate in conjunction with, not instead of, the criminal law’.

Best Practice

Court structures and legislation need to reflect a human rights approach to safety and protection. Structural barriers caused by complex systems and lack of understanding of the impacts on people of court processes, lengthy delays and high costs, need to be reviewed.

Any changes to the Criminal Court system need to address all the issues – including scrutiny of past offences to understand the likelihood of reoffending and escalation of violence. The Family Court and Criminal Court – and the laws they work within, need to be aligned, and connected with the community-based systems supporting victims and perpetrators.

Additional Pathway

There should be multiple entry points for support to victims and perpetrators. This means social services working within their communities need to be able to access funding to support people as they present for help – often this will not be specifically to address domestic or family violence. The impacts of living with violence – psychological, behavioural, financial etc may be the drivers for seeking support, especially where children are impacted. Many people present to community social services in a similar way to Mia in the case study.

Information sharing between agencies

The Privacy Act already provides the legal frame for this. The misuse of this over time indicates that the interpretation guidance for agencies may need further work.

Participants’ stories included in the Glenn Inquiry identified situations where personal information was misused in court, inaccurately recorded, and shared inconsistently by various health and statutory services. It is critical for agencies and court systems to share information to ensure the safety and coordinated support to victims and perpetrators of domestic and family violence; however it is equally important for this to be done by skilled people, for intentional and meaningful purposes.



Information sharing with and between courts

All relevant information should always be available to make informed decisions; otherwise courts are at risk of being responsible for making decisions that put victims at further risk of harm. As discussed, there should be no barriers between courts – all are subject to the same legislative framework. Information from non-legal supports ie community social services contracted to support victims and/or perpetrators should also be sought to help provide a holistic view where indicated.

Safe and competent workforce

Our current lack of emphasis on primary prevention, identification and initial response to domestic and family violence, means that many agencies engaging with vulnerable people have limited understanding of the issues, and available responses.

There is a need for services that are not directly responsible for addressing family and domestic violence, to be equipped to identify victims and perpetrators, and refer to appropriate services. Work and Income staff, GPs and nurses, midwives and Plunket nurses, Early Childhood Centres and schools are in key positions to provide first-line support to victims.

The community social service agencies actively working with victims and perpetrators, in the main have a good understanding of the issues. Any development of training and awareness-raising material, core competency, and best practice development should be undertaken in partnership with these providers.

The Family Violence Clearinghouse's May 2015 Issues Paper proposes a Collective Impact approach within a Coordinated Community Action model. The model "... shows what a whole-of-community approach to family violence could look like. The complexity of the problem requires diverse actions in many spaces. The model illustrates the idea that everyone can do something to help stop family violence where they live, play and work, and encourages people to think beyond just the provision of services. It requires visible and responsive services to be funded and active awareness-raising within communities".

Thank you again for the opportunity to contribute to this work.

Yours faithfully

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