

Family Violence Death
Review Committee



**Family Violence Death Review Committee submission on the One Court, One Judge:
An integrated Court System for New Zealand Families Affected by Violence
Discussion paper**

1 September 2017

To:

Zoe Lawson

One Court/ One Judge Discussion Paper: An Integrated Court System for New Zealand
Families Affected by Violence

From:

Family Violence Death Review Committee

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1. Introduction

- 1.1. The Family Violence Death Review Committee (FVDRC) is a statutory committee of the Health Quality & Safety Commission (HQSC) mandated to (i) 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 (ii) develop strategic plans and methodologies that are designed to reduce family violence morbidity and mortality.
- 1.2 FVDRC members are drawn from a wide range of sectors – primarily justice, health, and academic research (kaupapa Māori and tauīwi) – 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.
- 1.3 Appendix One to this submission contains a list of the chair and current members of the FVDRC.

2. One Court, One Judge: An integrated Court System for New Zealand Families Affected by Violence

- 2.1 Work is currently undertaken to review the legislative responses to family violence in Aotearoa New Zealand. This includes the Family and Whānau Violence Legislation Bill which amends the Domestic Violence Act 1995 and other legislation (including the Crimes Act 1961) in order to *strengthen civil and criminal laws, and support agencies to work together to respond to family violence*.¹ Initiatives to address the fragmentation of information within the justice system are also currently being explored, for example, a pilot in which judges making bail decisions in some District Court jurisdictions receive an overview of the defendant's police family violence history.² The FVDRC has provided feedback on these proposed changes, which it views as important steps towards developing an integrated safety response to family violence.
- 2.2 The One Court, One Judge discussion paper provides another opportunity for Aotearoa New Zealand to consider the key elements that will begin to build a truly integrated family violence safety system.
- 2.3 The FVDRC supports many of the suggestions set out in the discussion paper, including:
 - greater and more routine sharing of information between jurisdictions. This has multiple benefits, including judges having the full history of the perpetrator's pattern of harm when making decisions in the criminal and family jurisdictions
 - ensuring judges and court staff dealing with family violence cases are highly trained and skilled, particularly in the dynamics and complexity of different forms of family violence
 - the potential for co-location of *specialist* social support services for victims and perpetrators with a focus on what is needed by, families affected by family violence
 - a reconsideration of the current standard of proof in relation to past patterns of harm that have not resulted in criminal convictions when sentencing family violence offenders.
- 2.4 The FVDRC recommends that victim safety and responsiveness are the guiding principles of any proposed changes to the judicial system.
- 2.5 The Family and Whānau Violence Legislation Bill proposes amendments to the criminal and civil law. The proposed changes to the legal framework focus on 'identifying opportunities within the justice system to intervene as soon as possible to curtail violent behavior by perpetrators, better identify and respond to risk, **enhance victim's safety**, and to minimise

¹ Ministry of Justice (2016). Safer Sooner: Strengthening family violence laws. Wellington. Ministry of Justice.

² Beehive.govt.nz (2016). Judiciary Summary bail decisions pilot expands. Retrieved from, <https://www.beehive.govt.nz/release/judiciary-summary-bail-decisions-pilot-expands>

or prevent adverse life outcomes for children.’³ The Bill proposes a set of principles to assist in achieving the purpose of the Act.⁴ It is appropriate that consideration be given to aligning the court system with these principles.

- 2.6 The FVDRRC considers these principles, and victim safety, should be the focus whether the one court, one judge system is implemented or not. In other words, even if a one court, one judge system is not adopted in New Zealand there is a need to ensure that the operation of the current court system is better aligned with these principles.
- 2.7 The FVDRRC also considers that, regardless of the outcome of the reform discussion, all ‘main’ courts should be resourced with all necessary infrastructure (i.e. safe entrances, exits and waiting rooms for victims), systems and specialist family violence workforce education and training.
- 2.8 Assuming that research will be undertaken to establish what would be the “best practice” model for New Zealand, it will be important to ensure that any cost/benefit study is not limited solely to a financial one.
- 2.9 An analysis of the operation of the “one judge one court” system as it operates in other jurisdictions, such as in New York, and particularly the Performance Measures set out in paragraphs 113 to 145 and the results set out on page 31 of the discussion paper, establishes that the introduction to New Zealand of such a system would have real benefits for victims in particular and as well as for the administration of justice.

3. Having a responsive integrated judicial system in Aotearoa New Zealand

- 3.1 Despite the pervasiveness of family violence in Aotearoa New Zealand we do not yet have a system that is designed to comprehensively and effectively address victim safety. The FVDRRC’s *Fifth Report* describes the current family violence system as ‘a system by default rather than design...a fragmented assortment of services and initiatives - islands of practice - commonly underpinned by old ways of thinking about family violence.’⁵
- 3.2 Currently the court system is modelled on the premise that its role is to hold perpetrators accountable for their past use of violence. Punishment is assumed to act as a deterrent for future violence (although the empirical support for this is not strong). A **responsive justice system**, however, has the potential to reinforce to victims that the systems and safety measures they are relying on are working and are designed with them in mind. There is a plethora of research that shows that when victims feel supported by the system they are more likely to come forward and have better outcomes. Victims that have a negative experience may not engage with the system on the next occasion.⁶
- 3.3 The FVDRRC recommends the development of an integrated justice strategy for those who perpetrate family violence. Such a strategy would be directed at supporting victim safety (including hidden and future victims) and is critical if Aotearoa New Zealand is going to develop an effective and integrated response to family violence.
- 3.4 Evaluations of integrated models show that docket systems⁷ are especially effective, with parties required to attend fewer court hearings and therefore not having to give evidence repeatedly. That will reduce re-victimisation; the victim will not have to give the same evidence more than once, namely, when the alleged perpetrator defends the criminal

³ Ministry of Justice. (2016). Safer Sooner: Strengthening family violence laws. Retrieved <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/reducing-family-and-sexual-violence/safer-sooner/>

⁴ Please see Appendix two.

⁵ Family Violence Death Review Committee (2016). *Fifth Report: January 2014 to December 2015*. Wellington: Family Violence Death Review Committee.

⁶ Centre for Innovative Justice. (2016). Pathways towards accountability: mapping the journeys of perpetrators of family violence; FVDRRC, *Fifth Report*, 2016.

⁷ That is, the one judge always dealing with all issues affecting the same family.

prosecution in the District Court (or, in the case of a youth, in the Youth Court) and opposes the making of a protection order in the Family Court. Or, in the case of child care proceedings where family violence is relevant, in hearings under the Care of Children Act 2004 and the Children, Young Persons, and Their Families Act 1989.

- 3.5 Experience establishes that more family law cases are settled and fewer filed, suggesting that more reach early resolution. Post-disposition monitoring of offenders increases and a single judge in possession of all the information about a family makes more informed and useful decisions.
- 3.6 Critical to developing an integrated system, that places victims at the centre of its responses, is the need to shift current, collectively held, understandings of family violence.
- 3.7 There is a need to understand family violence as a pattern of harm with compounding effects on multiple victims including past, current and future victims. Intimate partner violence (IPV) is best understood and responded to as 'a pattern of harm that has an overall architecture that is larger than any individual acts of physical abuse that may occur on any occasion and constitute a criminal offence.'⁸.
- 3.8 Family violence perpetrators have high levels of recidivism rates. FVDRC data evidences from 2009 to 2015 in Aotearoa New Zealand there were 91 IPV death events. With respect to the 83 IPV death events with an abuse history, of the 81 male predominant aggressors, 68 (84 percent) were known to police for abusing a partner in either their current or their previous intimate relationship(s).⁹
- 3.9 Instead IPV is often (mis)understood as 'a decision to use non-consensual physical force on a particular occasion'. This understanding does not support safe and victim centred responses.

4. Improved administration and greater information sharing across the judicial system

- 4.1 There is a need for coordination and information sharing when the same family or whānau is involved in multiple court procedures. As the discussion document has highlighted, some families have concurrent cases across multiple courts. For example, if criminal charges are laid for the use of physical violence this will be dealt with in the criminal court, whilst if a protection order is requested this will be dealt with the Family Court (if the protection order is breached, however, it will be addressed through the criminal court).
- 4.2 Without appropriate mechanisms for the collection, storage and sharing of information, well-intentioned efforts to share information between the civil and criminal jurisdictions are likely to be ineffective. Currently no centralised or coordinated management of inter-connected court proceedings exists. As is demonstrated in the discussion document, for example, information about the numbers of families with multiple proceedings and the most common combination of proceedings is difficult to obtain because of the way in which information is collected and cross referenced within and between courts.¹⁰
- 4.3 At present when defendants convicted of offences in a domestic violence context are sentenced, and the judge sees they have previous convictions for such offending, he or she asks whether the earlier convictions relate to the same victim. If the earlier convictions relate to a different victim, the judge may regard the matter as being less serious. It is unacceptable for a defendant to be repeatedly committing offences against the same partner. However, it is equally unacceptable for defendants to commit offences against a series of intimate partners – which is an all-to-common reality.

⁸ Tolmie, J. (2017). Sentencing paper. Unpublished.

⁹ Family Violence Death Review Committee (2017). *Fifth Report Data: January 2009 to December 2015*. Wellington: Family Violence Death Review Committee.

¹⁰ Lawton, Z. (2017). *One court, One Judge: An Integrated Court System for New Zealand Families Affected by Violence*. Victoria University Faculty of Law. Wellington.

- 4.4 The sharing of information relevant to risk across the judicial systems is critically important for victim safety.¹¹ The accurate sharing of information enables assessment of ongoing risk to victims and allows for appropriate consequences for perpetrators. Currently most judges only receive family violence information when bail is opposed. The information does not always include whether previous offences were violence related and is not always available to the judge when the matter is first called.¹²
- 4.5 An example of this is that currently the affidavit evidence that is attached to applications for a protection order is held in the Family Court. These contain the victim's account of the history of abuse that has led to her applying for a protection order, including risk indicators for IPV lethality or threats to the children. Such evidence provides the context and background to any subsequent breach of that protection order and is critical to have access to if victim safety is to be prioritized in any sentencing for breach. Because of the privacy rules which apply to the Family Court, affidavits in support of protection order applications are not made available to the criminal court, although the criminal court is generally notified of the existence of a protection order. The law needs to be changed in order that those affidavits are routinely made available to the judge presiding in the District Court.

Case example 1

Joanna and Richard were in a relationship for 15 years and have four children together. Throughout the relationship Richard was abusive towards both Joanna and their children. Richard had significant mental health and substance abuse issues and his behaviour towards Joanna and their children escalated to a point where Joanna decided it was not safe for her or her children to remain living with him.

After Joanna informed Richard she was leaving him his behaviour became even more threatening and included forcible restraining Joanna in the house and separating her from her children which she would not leave without. The police had to be called to assist her and her children to safely leave the house and go into hiding.

Through the Family Court Joanna applied for a protection order from Richard for herself and the children. As part of the application Joanna provided an affidavit detailing the significant abuse that Richard had imposed on the family and the fear that she felt in regards to his current behaviour. The affidavit included information about his coercive and controlling behaviours.

Joanna believed the protection order would provide safety for herself and her children. However, Richard continued to terrify both Joanna and the children. Richard stalked them by sitting outside her address, showed up at Joanna's place of work, as well as at other family members and friends homes, immobilised her car and used the children as a way to continue to threaten Joanna and try and force her to return to him.

Richard was charged with breaching the protection order for one of these police reported episodes of abuse. The judge was presented with evidence of the breach and also supporting documentation from professionals that Richard was in contact with. The supporting documents minimised Richards violence and made his behaviour appear as isolated frustrations. The affidavit was not provided to the judge which meant that neither Joanna or her children's experiences were contextualised within his ongoing use of coercive controlling behaviours and nor were they viewed within his wider pattern of harm which had been occurring for the past 15 years.

Richard received diversion for this breach. Three weeks later he found Joanna and killed her in front of the children.

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¹¹ The sharing of information should be automated via an appropriate computerised system.

¹² In August 2015, the Government announced a pilot in which judges making bail decisions received an overview of the defendant's police family violence history. In May 2016, the trial was extended to include district courts in the Wellington and Northland regions.

¹³ This is a composite case study from the FVDRC's death reviews.

- 4.6 Although we strongly support the better administration and sharing of information across the judicial system, the quality of the information that is being shared is also critical. I.e. if the information being collected by the police, registrars and other court staff is done without a good understanding of family violence, then the value of sharing is diminished.
- 4.7 In its submission to the Ministry of Justice's review of the Domestic Violence Act 1995, the FVDRRC suggested mandating information sharing between the Family Court and the criminal court in family violence cases and requiring New Zealand Police and other Justice sector agencies to consistently provide judges with relevant information held by their services. This remains our position on sharing of information.

5. Suitable training and support for those working across the judicial system

- 5.1 One of the suggested benefits of having a 'one court, one judge' system is that it will require staff who specialize in family violence. The FVDRRC strongly supports specialist training for all professionals including judges, registrars, victim advisors and prosecutors. Staff training is essential for both integrated and mainstream courts.
- 5.2 Unless the whole justice system changes, changes in one part will have limited effect because the interface with all other parts of the system remains unchanged. Layers of reform are required throughout the justice system and these changes need to take place simultaneously.

For example, judges may be educated about family violence, but if:

- the police and lawyers do not gather and provide judges with relevant information;
- significant information is buried in other parts of the justice system and inaccessible to decision makers;
- victims and perpetrators are not supported by skilled family violence practitioners;
- options for ongoing interventions with family violence perpetrators are limited; and
- probation officers are unskilled in how they manage the sentences of perpetrators;

then improved judicial decision making will be of limited effect because such decisions will be based on incomplete information and undercut by poor response options and sentence management.

- 5.3 There are currently different understandings of the dynamics of family violence, varying degrees of training and competence and an under resourcing of specialist family violence advocacy services. This can result in a range of unintentionally harmful responses to victims (from unhelpful to unsafe). Ensuring that the judicial system has the ability to respond to IPV as a pattern of harm by an identifiable individual is critical.
- 5.4 Both international and New Zealand literature shows that 'education, training, and accountability play a critical role in shaping the 'legal culture'- "and thus in determining how well the system operates in practice...while it is of the upmost importance to get the structures right, achieving systemic reform and maintaining high standards of performance rely on the development of a health professional culture - one that values lifelong learning and takes ethical concerns seriously."¹⁴
- 5.5 Judicial training and education is critical to ensure that victims are supported as they go through the system. It also has the potential to make a significant impact on victim's ongoing safety and recovery. Stewart¹⁵ suggests that attitudes in the courtroom from the bench, prosecutors and police can be unhelpful and inappropriate for victims. Failure to adequately educate judicial officers about family violence and its impacts may lead to poor decisions

¹⁴ Bell, Perez, Goodman & Dutton, 2011

¹⁵ Reference 2005.

that leave victims unprotected¹⁶ and, worse, at risk of further and potentially increased violence.

- 5.6 The FVDRC has previously called for a nationally consistent approach to judicial family violence education, training and protocols. Both the FVDRC's *Fourth Report* and the Law Commission's report, *Understanding Family Violence. Reforming the Criminal Law Relating to Homicide*, recommended education directed at creating understandings which would result in more effective responses to cases involving family violence.¹⁷¹⁸ Education should be directed at conceptualizing the issue, comprehending the impact and responding accordingly and being better informed about different forms of violence.
- 5.7 Critical aspects for reframing our understanding of IPV and child abuse and neglect are detailed in Appendix three.
- 5.8 Training for judges, lawyers, police and other professionals who work with people perpetrating and experiencing family violence needs to include an understanding of the intersection of race, class and gender in experiences of, and responses to violence. In Canada judges have been provided with training that positions IPV in the social context in which it occurs, allowing for greater analysis of the cause and effect of violence on different victims.¹⁹

6. Co-location of social services

- 6.1 Creating an integrated approach is more than improving the coordination of individual parts of the existing service system. In an integrated system agencies operate as one system, so that when a family violence episode is reported to any agency it is effectively responded to, as appropriate, by the whole system. This includes the provision of evidence based services and supports for both victims and perpetrators which are easily accessible and proactive in reaching out to those that need them.
- 6.2 One of the benefits of having an integrated system is the ability to have all the support services and systems in one place - which means that services are easily accessed. The FVDRC supports the notion that an integrated court system would include developing holistic, person centred and whānau centred approaches, including the co-location of appropriate specialist family violence services and supports, as opposed to generic services.
- 6.3 Any discussion about services and supports, however, also needs to address the current services and supports that are commonly provided. Generic parenting programmes aimed at teaching parenting skills are a mismatch with people who have experienced abuse and/or who are perpetrating violence. The current emphasis on parenting programmes, particularly for victims of family violence, illustrates a lack of knowledge about coercive control and the

¹⁶ Czapanskiy, 1993.

¹⁷ Family Violence Death Review Committee (2014). Fourth Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee. See recommendation 7.

¹⁸ Law Commission. (2016). *Understanding Family Violence. Reforming the Criminal Law Relating to Homicide*. Pg. 12. Retrieved from

http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/R139%20Understanding%20Family%20Violence%20-%20Reforming%20the%20Criminal%20Law%20Relating%20to%20Homicide%20%28Summary%29_0.pdf

Judges should continue to receive education, including through the Institute of Judicial Legal Studies, on the dynamics of family violence. Regular and ongoing education courses on the dynamics of family violence should be made available to all criminal lawyers, including Crown prosecutors and defence counsel. Police should receive regular education on the dynamics of family violence. Education recommended above should:

- reflect contemporary social science understanding of family violence and victims' responses;

- explain the primary victim/predominant aggressor analysis in intimate partner violence; and

- identify common misconceptions of family violence that persist today and their implications in the criminal justice system.

¹⁹ Dawson, T. Brettel. (2014). Judicial education on social context and gender in Canada: Principles, process and lessons learned. *International Journal of the Legal Profession*, 21:3, 259-280.

impact of perpetrators' violence on the primary victim's ability to parent. Parenting programmes and support services that address people's own experiences of abuse and trauma over their life course and respectfully challenge perpetrators' patterns of harmful behaviour are required.

- 6.4 Co-location of services also need to include services for children who have experienced family violence. Statistics show us that 70 percent of family violence offences in New Zealand take place while there are children in the household. This means that in order to have a responsive system services that work with these children is imperative.
- 6.5 FVDRC has earlier submitted that in order to support victims of abuse adequately, practitioners need a critical understanding of the complexities of family violence which includes, the serious and damaging impact of exposure to family violence on children, that in itself constitutes harm²⁰
- 6.6 Historically specialist family violence services have focused on working with children by working with the mothers through services such as parenting programmes²¹. FVDRC contends that an integrated system provides a unique opportunity to consider what services and supports children need and are most appropriate and the opportunity to have them in one place where the family is truly on the receiving end of a wraparound service delivery model.
- 6.7 Specialist family violence advocacy services that sit alongside and provide information into court processes would also improve the safety of court decisions by improving the quality of information available to the court.
- 6.8 The co-location of services also provides opportunities to engage perpetrators in more meaningful ways.
- 6.9 The justice system should be seen as an opportunity for multiple, purposeful interactions with the perpetrator. This is particularly significant where the perpetrator has not had previous contact with - or has managed to avoid the scrutiny of - other agencies. In these circumstances, the court system represents a chance to bring the perpetrator, and to keep him under the spotlight^{22,23}
- 6.10 Research on engagement with perpetrators, such as Gondolf's US study,²⁴ suggests that early connection with men using violence and early entry into programmes is key. The longer the lapse of time between the use of violence and participation in a programme, the less likely it is that participation will reduce the perpetrator's risk of reoffending.

²⁰ FVDRC. (2012). Submission on reviewing the family court: A public consultation paper. From <https://www.hqsc.govt.nz/assets/FVDRC/Publications/FVDRC-Submission-on-Reviewing-the-Family-Court.pdf>

²¹ Royal Commission into Family Violence (2016). Summary and Recommendations. From http://files.rcfv.com.au/Reports/RCFV_Full_Report_Interactive.pdf

²² In this submission adult victims are referred to as women because women are the primary group affected as victims. Similarly, in most cases, the person using violence is male. The Family Violence Death Review Committee recognises men can be victims from their female and male partners, and that intimate partner violence (IPV) occurs in heterosexual and LGBTQI (lesbian, gay, bisexual, transgender, queer or questioning, and intersex) partnerships. While individual men can be victims of IPV, social patterns of harm reflect the fact that structural inequity and community values and beliefs support the perpetuation of male violence against women. Also see: World Health Organization. 2010. Violence Prevention: The Evidence. Geneva: World Health Organization. pp 79–94

²³ Centre for Innovative Justice in Victoria. (2015). Opportunities for Early Intervention: Bringing perpetrators of family violence into view. RMIT University. Melbourne.

²⁴ Gondolf, E. (2012). The Future of Batterer Programs: Reassessing Evidence-Based Practice. Northeastern University Press.

7. Changes to standards of proof at sentencing

- 7.1 One of the issues raised when considering the integration of both district and family courts is the different standards of proof in the civil (family) and criminal jurisdictions. Experience suggests that the one judge will have no difficulty in applying those different standards to the separate components of the same matter. The ability for judges to do so is clearly seen in overseas examples such as the New York one court, one judge system where they retain the different rules of evidence for criminal and family proceedings, including the different burdens of proof.²⁵
- 7.2 The FVDRC sees this as an opportunity to have a wider discussion about standards of proof, particularly in developing a more victim centred approach to sentencing family violence offenders. Victim safety requires that perpetrator's pattern of behaviour be taken into account even when that pattern of harm has not resulted in criminal convictions.
- 7.3 Evaluations of both the New York and Toronto integrated courts found that judges thought that being more informed in the one court/one judge system enabled them to better evaluate victim safety concerns, conduct better risk assessments and provide more holistic, practical and effective bail conditions, sentences and family orders.²⁶
- 7.4 Introducing an integrated court system offers the opportunity to change the standard of proof for sentencing.²⁷ For example, in the integrated family violence courts developed in North America, information is free flowing between the family and criminal functions of the court, *except* for the purposes of establishing guilt under the criminal law. However, once guilt is established, information that has been generated via family law proceedings (to the lesser standard of 'beyond reasonable doubt') can inform sentencing decisions.²⁸ This supports a distinction between the establishment of guilt (involving the usual criminal standards and burdens of proof) and the subsequent sentencing process once guilt is established. Currently in New Zealand the same burdens and standards of proof apply in sentencing, if they have not resulted in convictions, must be established by the Crown beyond reasonable doubt before they can be considered by the sentencing judge.
- 7.5 By way of contrast in bail decisions, under a pilot programme judges and registrars receive a family violence summary report for every family violence bail application. It details whether police have previously received calls for services in relation to family violence incidents involving the defendant, and signals if the defendant is subject to any police safety orders, or has breached such orders²⁹. These changes allow perpetrators patterns of behaviour to be highlighted, allowing judges to make better informed decisions. Such an approach could be extended to sentencing decisions.
- 7.6 Another option is to regularise processes of gathering information about the overall pattern of harm during investigation of the offence so that this can be put before the trier of fact during the trial. This would mean, in terms of s 24 of the Sentencing Act 2002, that information about patterns of harm have been through a "truth testing" process, any

²⁵ Lawton, Z. (2017). One Court, One Judge: An Integrated Court System for New Zealand Families Affected by Violence. Wellington Victoria University.

²⁶ Lawton, Z. (2017). One Court, One Judge: An Integrated Court System for New Zealand Families Affected by Violence. Wellington Victoria University.

²⁷ Patricia Sully, "Taking It Seriously: Repairing Domestic Violence Sentencing in Washington State" [2011] 34 *Seattle University Law Review* 963. A jury trial is required constitutionally for all contested facts that authorise an aggravated exceptional sentence: *Blakely*. A history of domestic violence was an aggravating factor but not against other victims.

²⁸ One Court, One Judge: An Integrated Court System for New Zealand Families Affected by Violence, Zoe Lawton, 2017, The NZ Law Foundation and the University of Victoria, 16.

²⁹ [Beehive.govt.nz](https://www.beehive.govt.nz/release/judiciary-summary-bail-decisions-pilot-expands) (2016). Judiciary Summary bail decisions pilot expands. Retrieved from, <https://www.beehive.govt.nz/release/judiciary-summary-bail-decisions-pilot-expands>

objections have been heard, and the information would be available to inform the sentencing response. This would require employing a “whole of story approach” to taking victim testimony and gathering other evidence – similar to that developed in relation to sexual violence in Victoria.

- 7.7 Such a radical shift in current practices would require legislative mandate. It would also require a considerable development in expertise at every level of the criminal justice system given that the patterns of harm and functions of coercive control may not be currently well understood.³⁰ There is, however, some precedent for taking such an approach. For example, in *R v R*³¹ the Crown was permitted to lead evidence of the dynamics of the accused’s family interactions in his trial for individual incident based offences and, in particular, evidence of his domination, control and abuse of his family. This was in order to provide a context or background to his offending for the trier of fact.
- 7.8 An integrated court needs to provide victims with greater safety than is currently occurring within the separate jurisdictions. This would have to occur through the prioritisation of victim safety in legislation and common law as a sentencing consideration.
- 7.9 In this same vein the FVDRC would also welcome further discussion about how expert psychiatric evidence can be presented and shared across the system. Dr Jackie Short would be happy to discuss this further with you if required.
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³⁰ Sheehy, “Expert Evidence on Coercive Control in Support of Self-Defence: The Trial of Teresa Craig”

³¹ [2015] NZCA 394.

Appendix 1

The FVDRC Chair, Dr Jacqueline Short, is a Consultant Forensic Psychiatrist and Senior Clinical Lecturer at the University of Otago.

FVDRC membership:

- Denise Wilson (Deputy Chair), Professor Māori Health, Auckland University of Technology;
- Julia Tolmie (Deputy Chair), Professor of Law at the University of Auckland and immediate past Chair;
- Paul von Dadelszen, retired District and Family Court Judge and former Board member of the Families Commission (Superu);
- 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;
- David White, Consumer representative.

Appendix 2: Family Whānau Violence Legislation Bill

The following principles are to guide the achievement of the purpose of this Act:

- (a) family violence, in all its forms, is unacceptable:
- (b) decision makers should, whenever appropriate, recognise that family violence is often a pattern of behaviour that causes cumulative harm:
- (c) decision makers should, whenever appropriate, recognise that children are particularly vulnerable to family violence, including seeing or hearing violence against others:
- (d) decision makers should, whenever appropriate, recognise that children are at particular risk of lasting harm to their current and future wellbeing:
- (e) perpetrators who inflict family violence should face effective responses to, and sanctions for, family violence:
- (f) perpetrators of family violence should have access to, and in some cases be required to engage with, services to help them stop and prevent their family violence: victims of family violence should have access to services to help secure their safety from family violence:
- (h) arrangements that support the ongoing safety and wellbeing of a victim of family violence should whenever practicable be sustained (for example, employment, education, housing, or community involvement):
- (i) responses to family violence should be culturally appropriate and, in particular, responses involving Māori should reflect tikanga:
- (j) decision makers should consider the views of victims of family violence, and respect those views unless doing so would or may compromise victims' safety:
- (k) decision makers should collaborate, whenever appropriate, to identify and respond to family violence:
- (l) access to the court should be as speedy, inexpensive, and simple as is consistent with justice.

Appendix 3

Table 1: How we have understood IPV as a social problem

	Reframing	Current understandings	Past understandings³²
Understanding IPV	<p>Patterns of cumulative harm</p> <p>There is a pattern of coercive and controlling behaviours that can encompass multiple victims (adults and children) – past, current and future. Anticipation of hidden and future victims.</p>	<p>Incidents of violence³³</p> <p>Reported incidents of physical violence affecting current victim.</p>	<p>Marital conflict³⁴</p> <p>Violence occurred due to a dysfunctional relationship.</p> <p>Violent outbursts were triggered by victim's actions.</p>
Framing of victims' responses to partners' violence	<p>Resistance³⁵</p> <p>Victims resist their partner's violence but their resistance cannot stop the violence. Their partners anticipate and sabotage their acts of resistance.</p> <p>Entrapment</p> <p>Individual and collective.</p> <p>IPV is a crime against a victim's autonomy and self-determination.³⁶ Victims are entrapped by an abusive partner's coercive and controlling behaviours.</p> <p>Victims also experience social and collective entrapment. Structural inequities affect people's experiences of abuse and the resources available to them in responding to that abuse.</p>	<p>Learned helplessness³⁷</p> <p>The victim develops a syndrome that causes her to believe she is powerless to address the abuse.</p> <p>Empowerment³⁸/ Autonomous victims</p> <p>The victim can choose to take action to stop her partner's violence.</p>	<p>Forgiveness</p> <p>Forgiveness allows the relationship to continue.</p> <p>The alternative is to leave the relationship.</p>

³² The Platform Trust and Te Pou o Te Whakaaro Nui mapped the development of the mental health and addiction sector over time from past, current and future (fourth wave). Platform Trust and Te Pou o Te Whakaaro Nui, *On Track: Knowing Where We Are Going*, Auckland, Te Pou o Te Whakaaro Nui, 2015.

³³ An 'incident' refers to a distinct or definite event, implying a beginning and end. Most of our responses to family violence are incident-focused. See, for example, the FVIARS.

³⁴ The Domestic Protection Act 1982 (the Act) had a conservative view of family and only addressed domestic violence between heterosexual couples living together. Domestic violence was understood as a relationship problem. The purpose of the Act was 'to encourage victims to seek protection from the Family Court which may be able to ameliorate the violence and strengthen the family unit by counselling'. Non-molestation orders were felt to be destructive to a relationship, and so could only be used if it was certain that the relationship was ending. G. Newbold and J. Cross, 'Domestic Violence and Pro-Arrest Policy', *Social Policy Journal of New Zealand*, no. 33, pp. 1–14.

³⁵ C. Richardson and A. Wade, 'Islands of safety: Restoring dignity in violence-prevention work with indigenous families', 2010.

³⁶ E. Stark, *Coercive Control: How Men Entrap Women in Personal Life*, 2007.

³⁷ L.E. Walker, 'Battered women and learned helplessness', 1977. W.R. Miller and M.E. Seligman, 'Depression and learned helplessness in man', 1975. I. Leader-Elliot, 'Battered but not beaten: Women who kill in self-defence', 1993.

³⁸ An individualised understanding of empowerment, situated within a 'stages of change' cognitive problem-solving intervention model. J. Prochaska and C. DiClemente, 'Common processes of change in smoking, weight control, and psychological distress', in S. Shiffman and T. Wills (eds.), *Coping and Substance Use: A Conceptual Framework*, New York, Academic Press, 1985, pp. 345–63.

Impact of IPV on victims	Cumulative and compounding trauma affecting people individually and collectively 'A pile up of trauma and violence.' Victim's own experiences of abuse over her life course impact her health and social outcomes, <i>as well as</i> the transmission of trauma across generations: <ul style="list-style-type: none"> • historical trauma (violence of colonisation) • intergenerational family violence. 	Impact of violence on individual victim's multiple health and social outcomes A victim's experiences of abuse are associated with poorer long-term health and social outcomes.	Harm to the relationship Counselling can assist in repairing the underlying relationship dysfunction.
Victims' use of violence	Primary victim/Predominant aggressor Women's use of violence is understood in the wider context of men's violence against women. Women's use of violence is different in intent, meaning and impact, and is often aimed at resisting their partner's violence in order to keep themselves and their children safe. ³⁹	Violent women Women's use of violence against men is understood as the same as men's use of violence against women.	Mutual violence 'She can give as good as she gets.'
Abusive person's use of violence	Coercive control Coercion involves the use of force or threats to intimidate or hurt victims and instil fear. Control tactics are designed to isolate the victim and foster their dependence on the abusive partner. ⁴⁰ The worst harm is caused by the cumulative violations of a victim's selfhood. The cumulative effect of the abuse entraps victims and impedes their ability to be self-determining.	Power and control Abusive partners seek power over victims and control them by using different forms of abuse. Physical and sexual violence are the most controlling forms of violence. ⁴¹ The focus is on what has been done to the victim, not on what she has been prevented from doing for herself.	Loss of control Abusive partners are acting because of forces they cannot control. 'I just saw red and lost it.'
Safety focus and approach	Adult and child victims – safety is dependent on collective action Safety through connection – safety is dependent on the collective actions of agencies, communities and whānau.	Adult victim with a safety plan Transactional safety plans – the victim is provided with a safety plan (a list of actions she can take to achieve safety).	Relationship repair If the dysfunction in the relationship can be addressed, the violence will be resolved.
Responsibility for stopping the violence	Collective responsibility Agencies, practitioners, whānau and communities	Individual victim responsibility	Mutual responsibility: victim and person using violence Help from a neutral third party (eg, counsellor) can

³⁹ A small proportion of women use coercive controlling violence against their male intimate partners.

⁴⁰ E. Stark, *Coercive Control: How Men Entrap Women in Personal Life*, 2007.

⁴¹ www.theduluthmodel.org/training/wheels.html

	have the responsibility to hold abusive people in intervention contexts, as well as containing and challenging their behaviour.	The victim is responsible for taking action to stop the violence.	support both partners to address their part in the relationship dysfunction.
Framing of social problems: structural inequity family violence	Promoting equity/Social injustice Everyone has the right to dignity, safety and self-determination but these rights may have different meanings and require differential responses. There is a need to address social injustice.	Substantive equality/Group deficit or social injustice People are differently placed. Some groups require different responses in order to arrive at an equal outcome. Compatible with a group deficit or social injustice understanding. Whose standards are the norm for everyone?	Formal equality/Individual or group deficit The same response to everyone. The outcome of equal treatment is not the same because of individual or group deficit.
	Intersectionality – approaches informed by an understanding of the gendered nature of violence and multiple oppressions⁴² Intersection of men’s violence against women with multiple structural inequities.	Gender neutrality⁴³ and public health approaches Family violence is an epidemic that affects all people. ⁴⁴ Alcohol and family violence are linked. Stopping drinking will stop the violence. ⁴⁵	Apology and mediation Private disputes between individuals.

⁴² The intersection of forms of oppression – for example, sexism and racism – and structural inequities, including the legacy left behind by colonisation and poverty. Atkinson and Woods state that the ‘violence of colonisation’ is layered with the ‘violence of racism’ and ‘the violence of misogyny’. According to Atkinson this legacy has woven violence and its effects into the fabric of Aboriginal lives. J. Atkinson and G. Woods, ‘Turning dreams into nightmares and nightmares into dreams’, *Borderlands e-Journal*, vol. 7, no. 2, 2008, pp. 1–22. J. Atkinson, *Trauma Trails, Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia*, Melbourne, Spinifex Press, 2002.

⁴³ This includes gender-neutral child protection frameworks.

⁴⁴ Despite its epidemic proportions and the value of public health analogies, IPV does not sweep invisibly through communities, leaving victims inexplicably in its wake. IPV consists of coercive and controlling behaviours used by *identifiable individuals* with whom the system might intervene. Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View*, Melbourne, RMIT University, 2015, p. 5.

⁴⁵ See section 5.4 for a discussion about the co-occurrence of IPV and substance use.

Table 2: How we have understood CAN in the context of the social problem of family violence

	Reframing	Current understandings	Past understandings
Understanding CAN	<p>Cumulative harm</p> <p>Recognising the effect of cumulative patterns of harm in the child’s family on a child’s wellbeing and development. Including:</p> <ul style="list-style-type: none"> • historical trauma (violence of colonisation) • intergenerational abuse • multiple forms of CAN. 	<p>Multiple forms of abuse</p> <p>Understanding CAN as physical, sexual and emotional abuse (including exposure to IPV) and/or neglect.</p>	<p>Physical abuse</p> <p>Incidents of physical abuse.</p>
Responses to victims	<p>A holistic response to trauma, abuse and wellbeing</p> <p>An understanding of the intergenerational nature of family violence.</p> <p>Family violence is an adverse childhood experience.⁴⁶</p>	<p>Responses to multiple forms of abuse</p> <p>All forms of abuse recognised as harmful. Exposure to IPV recognised as emotional abuse.</p>	<p>Responses to incidents of physical abuse</p> <p>No screening for neglect, sexual abuse or emotional abuse (including exposure to IPV).</p>
Impact of abuse on victims	<p>Intergenerational harm impacting multiple victims – child and adult</p> <p>Child abuse is a transgression of whakapapa.</p> <p>CAN and IPV are not separate forms of abuse. They are entangled.</p> <p>Recognition of the ‘double intentionality’ of the abusive person: Abuse directed towards one victim is intended to affect another in order to keep and/or increase control over both.</p>	<p>Impact of multiple forms of abuse on the wellbeing of the individual child victim</p> <p>Full understanding of the behavioural and emotional impact on the child of exposure to all forms of violence in their environment.</p>	<p>Impact of physical harm on the individual child victim</p> <p>‘It is just a bruise. It will heal.’</p>
Responsibility for preventing the child’s exposure to IPV	<p>Child and adult safety is dependent on the collective actions taken to curtail the abusive behaviour of the partner/parent</p> <p>Wrap-around support for all victims.</p> <p>Engagement with the abusive partner/parent and whānau.</p> <p>Understanding the decision to abuse a</p>	<p>Adult victim of IPV is responsible for the protection of the child</p> <p>Mothers have ‘responsibilities’ to be protective.</p> <p>Fathers have ‘rights’ to see their children.</p>	<p>Exposure to IPV is not considered harmful</p> <p>‘Bad husbands but good enough fathers.’</p> <p>Child’s exposure to IPV not considered harmful.</p>

⁴⁶ The Adverse Childhood Experiences (ACE) Study is one of the largest investigations to assess associations between childhood maltreatment and later-life health and wellbeing. www.cdc.gov/violenceprevention/acestudy/

	<p>partner who is a parent as a parenting decision.</p> <p>Seeking to understand the impact of an abusive partner's behaviours on child and family functioning.</p>		
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