

Living at the Cutting Edge

Women's Experiences of Protection Orders

Executive Summary

A report prepared by

Neville Robertson, Ruth Busch, Radha D'Souza, Fiona Lam Sheung,
Reynu Anand, Roma Balzer, Ariana Simpson and Dulcie Paina

of the University of Waikato (School of Law and the Māori and Psychology
Research Unit)

for the Ministry of Women's Affairs

August 2007



Dedication

Dedicated to the 212 women and children who have died in domestic violence homicides since the enactment of the Domestic Violence Act 1995¹.

1995

Cherie Hoyle (29 years)
Chay Grant
Robert Grant (4 years)
Stephanie Skidmore (20 years)
Leonie Newman (26 years)
Victoria Watson (8 months)
Charmaine Julian (42 years)
Veronica Takerei-Mahu (11months)
Sara Nixon (7 years)

1997

Andrea Brander (52 years)
Child, name not known
Child, name not known
Shae Hammond (17 months)
Anaru Te Wheke Donny Te Moananui Rogers (17 months)
Rosemary Roberts (27 years)
Pet Kum Kee (49 years)
Brittany Crothall (3 years)
Jamoure Chaney (10 months)
Casey Albury (17 years)
Karen Jacobs (26 years)
Moana King (34 years)
Stephanie Baker (26 years)
Andrea Torrey (28 years)
Wynell Lelievre (15 years)
Catriona Fettes (33 years)
Tishena Valentine Crosland (2 years)
Peti Taihuka Cherie Kokiri (12 years)
Marcus Te Hira Grey (2 months)
Kim Ihaka (22 years)
Deidre Williams (22 years)

1998

Alofa Fasavalu (38 years)
Liam Sullivan (3 months)
Baby boy, name not known
Angelina Edwards (25 years)

¹ This list was supplied by the Family Violence Technical Advisory Unit (PO Box 1219, Hamilton). Because it was compiled from a search of newspapers, some domestic violence deaths may have overlooked.

Nivek Dodunski (17 months)
Fiona Maulolo (31 years)
Shona Bruce (42 years)
Jaydon Perrin (10 months)
Jonelle Tarawera (19 months)
Bavinder Kaur (26 years)
Lauren Runciman (19 years)
Margaret Bennellick (44 years)
Patricia Paniani (33 years)
Kelly Rae McRoberts (6 years)
Lisa Hurrell (21 years)
Lucy Carter (7 years)
Thomas Carter (4 years)
Holly Carter (3 years)
Pirimai Simmonds (17 months)
Jennifer Federici (27 years)
Lisa Hope (8 years)

1999

Marama Tamati (19 years)
James Whakaruru (4 years)
Simon Tokona (18 months)
Winiata Tokona (3 years)
Roimata Wehi (25 years)
Mereana Edmonds (6 years)
Angela Han
Nicholas Han (4 years)
Christina Han (2 years)
Joanne Van Duyvenbooden (32 years)
River Michael Manawatu-Wright (9 months)
Israel Aporo (3 years)
Jillian Thomas (45 years)
Elizabeth Douglas (51 years)
Keziah Te Huia Smith (11 months)

2000

Annette Boucher (47 years)
Tangaroa Matiu (3 years)
Alice Perkins (8 years)
Maria Perkins (6 years)
Kamphet Vong Phak Dy (50 years)
Jian Huang (35 years)
Jiang Su
Alison Aris (32 years)
Te Miringa Tipene

Lilybing Hinewaoriki Karaitiana-Matiaha (23 months)

Natasha Tana-Bind (24 years)

Cherie Perkin (23 months)

Baby boy, name unknown (11 months)

Matekino Taylor (25 years)

Christine Lundy (38 years)

Amber Grace Lundy (7 years)

Florence Simpson (82 years)

Liotta Leuta (5 years)

Eliza May Te Hiko (45 years)

Margaret Waterhouse (42 years)

2001

Tracey Patmore (34 years)

Daniel Marshall Loveridge (13 months)

Lauren Shepherd (21 years)

Thomas Lance Darshay Schuman (2 years)

Levi Wright (10 months)

Caleb Moorhead (6 months)

Dominique Hingston (6 years)

Nikita Hingston (5 years)

Ryco Lance Mauri (10 months)

Patricia Burton (49 years)

Helen Wickliffe (22 years)

Te Pare (Polly) Te Kahu (39 years)

Chanel Lambert (21 years)

Karen Nant (16 years)

Janice Kenrick (40 years)

Pamela Hesketh (64 years)

Helen Johns (43 years)

Saliel Aplin (12 years)

Olympia Jetson (11 years)

Wathanak Tea (37 years)

Jaelyn Ariki Ngatai Maxwell (6 years)

2002

Wendy Heaysman (56 years)

Langaola Ahau (23 years)

Tamati Pokaia (3 years)

Barbara Miller (17 years)

Kalin St Michael (2 years)

Brodie Gordon (9 weeks)

Shontelle Marks (4 months)

Kelly Paula Gush (12 years)

Hasnah Hamer (38 years)

Dawn Parrish (65 years)
Coral-Ellen Burrows (6 years)
Cheyanne Rongonui (18 years)
Zhi Ping Yu (22 years)
Weng Di Dai (10 years)
Edwina Graham (30 years)
Jessica Pardoe
Iris Kathleen Davidson (23 months)

2003

Jia Ye (20 years)
Girl, name not known (11 years)
Boy, name not known (6 years)
Bin Lin (Ruby)
Anahera Ross Lewis (3 years)
Randwick Aholelei (3 months)
Caleb Tribble (4 months)
Donna Hewlett (39 years)
Seau Luana Ate (51 years)
Gulshad Hussein (23 years)
Lorraine Royal (43 years)
Lisa Blackmore (27 years)
Rocky Wano (15 years)

2004

Ordette Lloyd-Rangiuiia (45 years)
Gabriel Harrison-Taylor (8 months)
Asolelei Samuelu (32 years)
Child, name not known
Child, name not known
Raidei Niania (4 months)
Wendy Mercer (34 years)
Will Mercer (6 months)
Pamela Lotze (48 years)
Baby, name not known (4 months)
Te Hau Te Horo O'Carroll (10 years)
Ngamata O'Carroll (2 years)
Molly Rose McRae (6 years)
Cheryl Pareanga (33 years)
Baby girl, name unknown (7 months)
Cameron Fielding (10 years)
Kathleen Harris (7 months)
Krystal Fielding (8 years)
Mereana Clemments-Matete (14 months)

2005

Denise Holmes (27 years)
Baby boy, name unknown (6 days)
Sarah Rebekah Haddock-Woodcock (3 months)
Chitralekha Ramakrishnan (32 years)
Woman, name not known (36 years)
Susanna Brown (33 years)
Hannoraugh Johansen (94 years)
Nicola Hackell (36 years)
Britney Angelique Abbott (9 years)
Eileen Te Oki Puke
Aaliya Morrissey (2 years)
Nancy Peterson (Xiukun Feng) (54 years)
Rosemary Harry (33 years)
Shunlian Huang (24 years)
Christine Hindson (45 years)
Catherine Carter (45 years)
Thelma Thompson (26 years)
Woman, name not known (20 years)
Deborah Rerekura (39 years)
Moana Kapua (29 years)
Samantha Mahara-Rangiawha (34 years)
Teresa Kohu (27 years)
Karen Oakes (28 years)

2006

Ruth Peoples (35 years)
Ngatikaura Ngati (3 years)
Staranise Waru (7 months)
Woman, name not known (34 years)
Arwen Fletcher (2 years)
Suzanne McSweeney (50 years)
Baby girl, name not known (14 months)
Boy, name not known (3 years)
Woman, name not known (22 years)
Mairina Dunn (17 years)
Ariana Burgess (24 years)
Veralyn Koia (41 years)
Lesa Pakau (33 years)
Denise Brame (41 years)
Chris Kahui (3 months)
Cru Kahui (3 months)
Maureen Matete-Walker (36 years)

Alyssa Patricia Little-Murphy (7 months)

Aiden Whitfield (15 years)

Alex McRae (2 years)

Baby girl, name not known (newborn)

Woman, name not known (46 years)

Reipai Joanne Dobson (19 years)

2007

Charlene Makaza (10 years)

Shirley Anne Keith (62 years)

Denise Simeon (52 years)

Angela Teresa Dean (55 years)

Misook Kim (42 years)

Baby girl, name not known (18 months)

Baby girl, name not known (newborn)

Woman, name not known (35 years)

Rosslene White (35 years)

Judge Ellis, in *Fielder v Hubbard*, the very first case that was decided under section 16B(4) of the Guardianship Act, stated:

It may be that this [is] the first such defended case in the Family Court requiring consideration of the provisions of this amendment, and if that is so, it would be appropriate, since it was in this Court that orders were made affecting the children of the Bristol family whose tragic fate subsequently gave rise to the Commission of Inquiry whose recommendation led to this significant legislative change. It might have been expected that the significance of the event, and of the legislative change, would have made more impression on counsel in this case, some of whom were involved in that other." [1996] NZFLR 769

LEST WE FORGET

Acknowledgements

This research was commissioned by the Ministry of Women's Affairs. It was completed only with the help of many people whose assistance we acknowledge.

- The women who generously and bravely gave of their time and energy to tell their stories.
- The key informants who took time to share their wisdom with us.
- Margaret Young and Rowena Phair of the Ministry of Women's Affairs for their patience, support and meticulous work in checking our report.
- Ged Byers, Rob Veale, Jodine Lee and Ari Pfeiffenberger of the Office of the Commissioner of Police for facilitating access to police documents.
- Elizabeth Barrett and Patricia Knaggs of the Ministry of Justice for supplying statistical and other information.
- Karen Whiteman who did much of the administrative work during the early part of the project.
- The Family Violence Technical Advisory Unit for providing office space, ideas and lunches.
- Our respective whanau who have supported us through the past two years.

About this report

This report was commissioned by the Ministry of Women's Affairs. The views expressed in it are those of the authors and not necessarily those of the Ministry.

The full report is published in two volumes:

Volume 1: The Women's Stories (Chapters 1 – 6)

Volume 2: What's To Be Done? A Critical Analysis of Statutory and Practice Approaches to Domestic Violence (Chapters 7 – 15 and Appendices)

which can be downloaded at <http://research.waikato.ac.nz/CuttingEdge/>

Executive Summary

Background

This study was commissioned by the Ministry of Women's Affairs, some ten years after the implementation of the Domestic Violence Act. Our objectives were to:

- (a) identify and describe the experiences of a sample of women in obtaining protection orders, the impact of protection orders and the response to breaches of protection orders
- (b) identify those aspects that are working well (i.e. positive experiences of protection orders)
- (c) identify areas for improvement including barriers that prevent women from applying for and obtaining protection orders.

Our approach

At the heart of our research are 43 case studies of women and their experiences of domestic violence and seeking safety. The case studies are presented in four streams: Māori women, Pakeha women, Pasifika women and other ethnic minority women. In addition to this cultural diversity, women were recruited to ensure that a diversity of experiences were included in our sample (including women who did not apply for protection orders).

We have drawn on four other main sources of information.

- (a) Interviews with key informants. That is, family law practitioners, women's advocates, stopping violence workers, Ministry of Justice personnel, social workers and community workers.
- (b) Decisions of the Family Court and criminal courts relating to domestic violence, including applications for protection orders and prosecutions for breaching such orders – as well as relevant decisions of the Residence Review Board.
- (c) Statistical information relating to applications for protection orders.
- (d) Social science and legal research on domestic violence.

Key Findings

The stated object of the Domestic Violence Act 1995, as spelt out in section 5(1), is:

... to reduce and prevent violence in domestic relationships by—

- (a) Recognising that domestic violence, in all its forms, is unacceptable behaviour;
and
- (b) Ensuring that, where domestic violence occurs, there is effective legal protection for its victims.

Significantly, Parliament underlined the importance of the object of the Act in section 5(3).

- (3) Any Court which, or any person who, exercises any power conferred by or under this Act must be guided in the exercise of that power by the object specified in subsection (1) of this section.

Our key informants were almost unanimous that the Domestic Violence Act 1995, and the concurrent amendments made to the Guardianship Act 1968, were – and are – sound legislation. However, repeatedly, in our conversations with them, key informants expressed frustration at various aspects of the implementation of the legislation. Their comments were borne out in the case studies, in our analysis of decided cases, and in our analysis of the limited statistical information available.

Applying for Protection Orders

While many women were aware of protection orders, some groups of women, particularly new migrants, seemed to know little about them. Often, women learned about orders when they called the police, either from the police officers who attended the scene or from women's advocates who were called or visited following the police attendance. Referral protocols – whereby Women's Refuges or other advocacy organisations provide follow-up support to women who call the police – seem to be widely implemented. Such follow-up was appreciated by the women in our case studies.

Besides a lack of information, other barriers to making an application for a protection order included those factors which tend to mitigate against battered women leaving abusive relationships: fear of the abuser's payback, poverty, shame and, in some cases, community condemnation. For women ineligible for legal aid, cost was a significant barrier. For non-resident women whose abusers were also the sponsors of their applications for residence, applying for a protection order was generally not an option; the threat of removal and the possibility of permanent separation from their children made calling the police or obtaining a protection order virtually impossible. Some women did not apply for orders, or applied reluctantly, because they believed that protection orders were ineffective. On the other hand, encouragement to apply came from refuge workers, Victim Support workers, the Citizens Advice Bureau and, for some women, friends and family.

Most women were able to access legal advice, often through the sources just mentioned. Lawyers were generally perceived as being helpful, especially in explaining protection orders to women. However, our case studies do include examples of poor legal advocacy, including lawyers who recommended abandoning applications.

Thirty-two of the 43 women in our case studies applied for a protection order at least once (some applied twice or more). All of these women applied without notice to the respondent. Twenty-eight were granted a temporary protection order. Of the four applications which were put on notice, only one woman obtained a final protection order. These figures broadly match national statistics. Significantly, the Pasifika and other ethnic minority women in our case studies were much less likely to apply for, and obtain, protection orders than the Māori and Pākehā women.

Key informants told us that, over the past few years, the threshold for granting protection orders without notice to the respondent has been raised. Judicial speeches tend to reinforce this view, as does our analysis of decided cases and of published statistics. We can discern no compelling legal reasons for the barrier for obtaining temporary protection orders being raised and current judicial practice seems counter to the object of the Domestic Violence Act 1995, especially section 5(3). Certainly, the women whose applications were put on notice experienced significant hardship as a result.

It is important to understand that without notice applications for protection orders are routinely considered “on the papers”. Neither women nor their solicitors are heard in person. Moreover, the failure of some judges to give reasons for declining applications or for putting them on notice raises real concerns for the rights of women to natural justice. Unless reasons are given, the appeals process becomes a catch-22 situation. It is difficult for the appellant battered women to show that the Family Court judge has incorrectly exercised his or her discretion or misapplied the law when the judge is not required to give reasons for his or her decision.

Women in our study whose applications were opposed in a defended hearing found such experiences traumatic and re-victimising.

Breaches of Protection Orders

While getting a protection order was a psychological boost for most women, any relief was, in the majority of cases, short-lived. That is, most women experienced multiple and repetitive breaches of their orders. In some cases, respondents embarked on sustained campaigns of stalking and harassment. Some of this was by electronic means. Telephone calls, text messages and emails were all used to harass, threaten and intimidate women in breach of protection orders. Seldom were men subject to any meaningful consequences for such breaches.

Indeed, the same could be said about breaches generally. That is, the women in our case studies often experienced a quite inadequate response from the police when they reported breaches of their protection order. This was particularly the case with breaches of the non-contact provisions which did not involve physical assaults. Such breaches were often trivialised as “technical”, but to the women involved they were frightening and worrying reminders of the respondent’s ability to track them down. Often, such breaches triggered flashbacks and other symptoms of post-traumatic stress. On the other hand, some women did have some success in getting their orders enforced. Generally, this required them to be incredibly persistent in documenting events and in calling the police to ask about the progress of their complaint. Other examples of effective police action seemed to reflect the understanding and commitment of particular officers, especially police family violence coordinators. Overall, police enforcement of protection orders was inconsistent. In many respects, whether a woman received an effective response or not depended on the luck of the draw.

Inadequate enforcement of protection orders extended to the criminal courts. Few men who breached their orders were ever convicted of such offences, and even fewer received a meaningful sentence. If the accused was charged with an assault and a breach, the result was often a concurrent sentence. Indeed, in one of our cases, the sentence for a conviction of threatening to kill, male assaults female and possession of a dangerous weapon resulted in a concurrent sentence of 180 hours for the accused. In our case studies, very little emphasis appeared to be placed on enhancing the safety of the woman. Again, the experiences revealed in our case studies broadly reflect published statistics about the clearance, prosecution and sentencing of breaches of protection orders. Moreover, for women who had to give evidence in the criminal courts in relation to breaches, participation in the prosecution of the respondent was often another point of exposure to his psychological violence.

It should be noted that having a protection order granted does not mean it remains in place, as eight of the women who got orders discovered. In two cases, respondents successfully opposed the granting of a final order (and this may yet happen to a third women who is awaiting her hearing). In four cases, temporary orders were discharged after intimidation and pressure from their abuser led to the women abandoning their applications for a final order. In two cases, men successfully applied to have final orders discharged, even though in both cases there had been numerous breaches of those orders.

Children and Domestic Violence

As is clear from our case studies, children are frequently exposed to domestic violence, either as witnesses to the violence against their mother, as unintended direct victims (as can happen when children attempt to protect their mother or when their mother is carrying them when she is attacked), or as the intended direct victims. The social science literature provides convincing evidence of the deleterious effects of such exposure. The batterer parent poses significant risks to his children before and after separation. Unless it is carefully monitored – and sometimes, even if it is – contact with such a parent can seriously undermine a child’s healing from exposure to

violence. In the words of the English Court of Appeal in *Re L*,² “domestic violence represents a total failure of parenting on the part of the abuser.”

As the case studies show, women with children negotiate their own safety within the context of their fears for their children. Sometimes, concerns about their children precipitated separation. On the other hand, some women remained in the relationship, or reconciled with the abuser, because doing so meant that they were better able to protect their children.

Post-separation, the Family Court became an arena of perpetrators’ power and control tactics. That is, they engaged in protracted litigation under the Care of Children Act 2004 as they sought various orders: orders giving them the day-to-day care of the children; orders giving them unsupervised contact with the children; orders preventing the removal of the children from a specific place within New Zealand or to another country; and orders preventing women who had day-to-day care from relocating back to their families and other support systems. Such litigation was draining, frustrating, frightening and expensive for women. Often it meant that their plans for their children, new relationships or new jobs were significantly impeded. Moreover, the Family Court’s preference for mediation and conciliation processes in resolving parenting disputes meant that some of the women were bullied into accepting unsafe or unnecessarily burdensome “consent” orders regarding their children.

Overall, the experiences of the women in our case studies tended to confirm what many key informants told us: despite the provisions of the Domestic Violence Act 1995 and sections 58 to 61 of the Care of Children Act 2004, ongoing contact with an abusive father trumps safety for women and children.

Immigration Issues

Immigrant women faced particular barriers. Sometimes these involved language difficulties. The lack of interpreters and/or the lack of patience demonstrated by some officials meant that women with little or heavily accented English fared particularly badly in their interactions with police officers, judges, counsellors and other service providers. For some women, migration meant that features of their cultures which were protective of women had been lost. Instead, community condemnation and feelings of shame proved to be significant barriers to their safety and autonomy. Non-resident women whose batterer was also the sponsor of their application for residence were in a particularly vulnerable position. In the worst cases, such men rescinded their sponsorship of the residence application and, at the same time, got an order from the Family Court preventing removal of the child(ren) from the country. Under exactly these circumstances, one of our case study participants has been removed from the country, leaving her daughter in the care of the father. The same may yet happen to another of our participants.

Other Agencies

Of the other services women used, the most positively evaluated were women’s refuges and protected persons programmes. The former provided immediate physical safety for some women, and advice, support and advocacy for a much larger group of women. Protected persons programmes were highly valued by those women who attended for the information and support they provided. Above all, such programmes assured women that they were not alone and nor were they stupid, thus directly countering the isolation and emotional abuse tactics typical of domestic violence perpetrators.

Women’s experiences of other groups, agencies and organisations were more mixed. Some women found family and whānau incredibly supportive. For other women, family and whānau

² *Re L (A Child) (Contact: Domestic Violence)* [2001] Fam Law 260.

tended to collude with the abuser. Similarly, women who belonged to religious communities sometimes found themselves blamed for what had happened to them. The role of Child, Youth and Family (CYF) in the lives of some of our case study participants was deeply problematic. Fear of losing their children acted as a significant barrier to some women accessing “official” help.

Finally, women’s experiences of their partner or ex-partner attending a stopping violence programme was generally negative. Few men completed such programmes, and those who did not seemed to have escaped any consequences for such failure.

Recommendations

In the following pages we have listed our recommendations. Each is accompanied by a brief explanation. In addition, there are references to the chapter of the main report from which the recommendation is drawn. Readers who wish to understand the full rationale for the recommendation should read the chapters listed.

Amendments to Relevant Legislation

The problems summarised above suggest that the Domestic Violence Act 1995 has failed to realise its promise. Yet even the most critical of our key informants had few problems with the Act as it is written. Overwhelmingly, the problems identified in our case studies and in our analyses of judicial decisions reflect not inadequate legislation but inadequate implementation. This is particularly evident in the decisions of certain Family Court judges who have, for example, failed to carry out the risk assessment mandated by section 61 of the Care of Children Act 2004, or who have added an extra “gloss” to the criteria for granting without notice protection orders (based on a very problematic view of section 27(1) of the New Zealand Bill of Rights Act 1990) to impose a higher threshold than Parliament intended. As we have commented at several points in the following pages, such decision makers need to implement the law as it is written, not as they wish it were written. In many ways, our most important message is **enforce the law**.

On the other hand, our findings have highlighted a small number of areas in which both the Domestic Violence Act 1995 and the Care of Children Act 2004 should be amended. These are outlined below.

- 1. THAT section 13 of the Domestic Violence Act 1995 be amended to the effect that a without notice application for a protection order may not be declined or placed on notice unless the applicant and her lawyer have had an opportunity to participate in an (ex parte to the respondent) hearing, in the court in which the application was filed, to address any questions which might have led the judge to decline the application or put it on notice.**
- 2. THAT section 13 of the Domestic Violence Act 1995 be further amended to require Family Court judges to give reasons (in writing) when they either decline or put on notice a section 13 application for a temporary protection order.**

It is standard practice that without notice applications for protection orders are considered “on the papers”. That is, there is no hearing. Instead, applications are put before a duty judge who, typically, considers them during a tea break or after other business has been completed for the day. While this may be administratively efficient for dealing with the volume of section 13 applications, applicants are denied natural justice through the current practice. They are also denied natural justice when the Family Court gives no reasons for declining such applications or putting them on notice. As the “loser” in the proceedings, the applicant has a right to know why her application for a temporary protection order has not been granted. Our proposed amendments would remedy these problems. (Chapter 9.)

3. **THAT section 47 of the Domestic Violence Act 1995 be amended to prevent the court from discharging a protection order without first being satisfied that the protected person and any child of the protected person will be safe from all forms of the respondent's violence.**

As our case studies show, some women are pressured into seeking the discharge of their protection order. This has implications not only for them but also their children. Our proposed amendment would help protect applicants and their children in these circumstances. (Chapter 8.)

4. **THAT section 50(2) of the Domestic Violence Act 1995 be repealed and replaced by a provision that, unless there are special circumstances, police shall arrest where there is cause to suspect that the respondent has committed a breach of a protection order.**

As we understand it, section 50(2) was inserted in the Act to encourage police officers to arrest respondents who have breached their protection order. In fact, following *Police v Keenan*,³ it has become an impediment to making arrests. Certainly, our case studies suggest that too often police fail to make arrests when breaches of protection orders are reported. (Chapter 12.)

5. **THAT section 58 of the Care of Children Act 2004, be amended by adding "psychological violence" to the types of violence which trigger the rebuttal assumption that a violent party should not have a role in providing the day-to-day care of a child or have unsupervised contact with a child unless the court is satisfied that the child will be safe.**

As it stands, the rebuttal assumption is triggered only by violence of a physical or sexual nature. Our case studies confirm findings from the social science literature that psychological violence also has deleterious effects on children. The suggested amendment would make section 58 of the Care of Children Act 2004 consistent with the definition of domestic violence provided in section 3(3) of the Domestic Violence Act 1995 and also consistent with section 5(e) of the Care of Children Act and section 19 of the United Nations Convention on the Rights of the Child. (Chapter 11.)

6. **THAT the Care of Children Act 2004 be amended to the effect that, where allegations of domestic violence have been made in parenting order proceedings, no consent parenting orders be made unless the Family Court judge first scrutinises the proposed consent order and satisfies himself or herself that the particular parenting order is in the best interests of the child(ren). The impact and effects of the violence on the child(ren) must be evaluated and the court must be satisfied that the physical, sexual and psychological safety of the child(ren) will be ensured during any day-to-day parenting and/or contact arrangements.**

The case studies illustrate how women can be bullied into consenting to unsafe parenting and/or contact arrangements. Our proposed amendment would require that such consent orders not be accepted at face value but subjected to proper risk assessment. (Chapter 10.)

7. **THAT section 4 of the Care of Children Act 2004 be amended to the effect that, where a party has used violence against the other party or a child of the other party (as defined by section 3(2) of the Domestic Violence Act 1995), the court must, in determining what best serves the child's welfare and best interests, take into account any wish of the other party to relocate so that she or he is able to recover from the trauma of violence and to better provide an environment which will support the recovery of the child.**

³ *Police v Keenan* (Palmerston North, District Court, 25 November 1996).

As several of our case studies show, perpetrators of domestic violence sometimes seek orders preventing their ex-partners from relocating. We prefer the position taken by Justice Fisher in *M v M*⁴ to allow a parent who has been the target of domestic violence to relocate. (Chapter 11.)

8. **THAT the Care of Children Act 2004 be amended to the effect that unsupervised contact with a party who has used violence (as defined by section 3(2) of the Domestic Violence Act 1995) against the other party or a child of the other party, shall not be granted unless the court has first considered a report from a psychologist who has specialist training in domestic violence. Such a report shall evaluate the risk to the child, the impact of the prior violence on the child, the implications of the violence on each party's parenting abilities, and the meaning of the child's expressed wishes.**

Some of the key informants we interviewed were concerned that the Family Court was not always calling for specialist reports when such reports were, in their view, needed. Specialist knowledge is required in assessing children exposed to domestic violence and understanding their expressed wishes. (Chapter 11. See also Chapter 7.)

9. **THAT the Family Proceedings Act 1980 be amended to empower judges considering applications under the Care of Children Act 2004 to direct that the parties *not* be referred for counselling or to a mediation conference:**
- (a) when a party has used violence (as defined by section 3(2) of the Domestic Violence Act 1995) against the other party or a child of the marriage or civil union or de facto relationship; or
 - (b) if because of previous counselling or mediation within the past 12 months, counselling or mediation is unlikely to serve a useful purpose; or
 - (c) for any other reason.
10. **THAT the Family Proceedings Act 1980 be further amended to specifically exclude victims of domestic violence (as defined by section 3(2) of the Domestic Violence Act 1995) from being required to take part in counselling.**

There is a strong consensus in the social science literature that mediation and conciliation processes are inappropriate in cases of domestic violence. Our case studies include instances in which battered women were bullied into consenting to potentially unsafe and/or unnecessarily burdensome parenting or contact arrangements, and other cases in which the batterer used applications for parenting orders or contact to further harass his ex-partner. Section 19A of the Family Proceedings Act 1980 specifies that no one can be **required** to attend counselling at which the other party is present if that party has used domestic violence (as defined in section 3(2) of the Domestic Violence Act 1995). This provision needs to be broadened to include mediation conferences as well as counselling. It would also be useful for judges to have specific power to direct that referrals to counselling not be made in response to requests from a party who has used domestic violence and/or who is unduly litigious. (Chapter 10.)

11. **THAT sections 103 to 106 of the Evidence Act 2006 be implemented immediately so that victims of domestic violence are able to give their evidence while screened from the accused or via video.**

The case studies include various examples of the intimidation to which victim witnesses can be exposed while testifying in Court. This can be addressed by the use of screens or video

⁴ *M v M* [2002] NZFLR 743 (HC), Fisher and Priestley JJ.

technology. The Evidence Act 2006, the implementation of which awaits an Order in Council,⁵ contains excellent provisions for alternative ways of giving evidence. We think the Executive Council should exercise its powers under section 2 of the Act to set an immediate commencement date for these provisions (set out in sections 103 to 106). (Chapter 13.)

The Family and District Courts

12. **THAT specialist domestic violence victim advocacy be provided for victims of domestic violence within both the criminal and family jurisdictions. This should be a free service provided by approved community-based domestic violence services, with advocates having speaking rights in court. Advocates should be available to assist victims of domestic violence by:**
- (a) helping women file applications for protection orders;
 - (b) explaining protection orders and their enforcement;
 - (c) helping women make safety plans;
 - (d) encouraging women to attend protected persons programmes;
 - (e) preparing women for any hearings in both the criminal and family courts, as well as any mediation which may be part of proceedings under the Care of Children Act 2004, and supporting them through such hearings and mediation;
 - (f) advising non-resident women about the Victims of Domestic Violence Policy; and
 - (g) helping women access other relevant services.

The case studies include many examples of women lacking good information about protection orders or about the special residence policy for victims of domestic violence. Women sometimes did not fully understand the protection order and were unsure about how to have it enforced. Some women were intimidated at court, and felt vulnerable and silenced. The cost of legal fees for some women who were ineligible for legal aid was a barrier to applying for a protection order. All of these issues could be addressed by specialist domestic violence advocates, who, in addition to providing a service to individual women, could take part in the sort of safety audits and monitoring we recommend elsewhere. Importantly, to be effective, such advocates need to be independent of the Ministry of Justice. We think that the sort of service we are recommending here would go some way to making the courts victim friendly. (Chapter 8. See also Chapter 13.)

13. **THAT the Ministry of Justice ensure that all professionals (for example, judges, counsel for the child, specialist report writers, mediators, counsellors and supervised access providers) working in the Family Court and specialist domestic violence criminal courts be required to demonstrate a multidisciplinary understanding of domestic violence, including the principles of scientifically rigorous risk assessment, prior to their appointment, and that they be required to participate in annual “refresher” training on these matters.**

Here, we are following the call of Lord Justice Nicholas Wall for judges and other professionals working in the Family Court to be well trained – and to maintain their training at an appropriate level. Many of the problems we have identified – the raising of the threshold for granting without notice protection orders, making dangerous parenting orders, misinterpreting children’s wishes in

⁵ Section 2 of the Evidence Act 2006 states: “This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.”

the context of domestic violence, minimising the impact of psychological violence, being overly optimistic about men's commitment to change, minimising the risks a battering parent presents to his children and to their recovery from the trauma of violence, using a discredited typology of domestic violence – each of these is reflective of significant ignorance of recent research and good practice standards in the field. (Chapter 11. See also Chapters 8, 9 and 10.)

- 14. THAT the Family Court follows the practice of allowing affidavits in support of applications for temporary protection orders to be amended to omit information which might identify the applicant's whereabouts or endanger the applicant, the children of the relationship, or any other person supporting the applicant.**

The case studies include instances in which women had well-founded fears that information included in their affidavits could compromise their safety. Here, our recommendation endorses the procedure adopted by the Family Court judge in Trudy's case study. (Chapter 8.)

- 15. THAT a counsellor who receives any referral from the Family Court to conduct counselling shall screen for the occurrence of domestic or family violence between the parties. Where evidence of domestic violence exists, mediation shall occur only if:**
- (a) counselling is requested by the victim of the violence;**
 - (b) counselling is provided by a counsellor who is trained in domestic violence and able to protect the safety of the victim; and**
 - (c) at any counselling session with the perpetrator, the victim is permitted to have in attendance a support person of her choice (including a lawyer) who may advocate on her behalf.**

Recommendations 9 and 10 call for amendments to the Family Proceedings Act 1980 to give judges the power to order that referrals to counselling and mediation not be made in cases of domestic violence and to ensure that identified victims of domestic violence are not required to attend mediation. Because domestic violence is not always identified at the outset, for this general approach to be fully implemented, those amendments need to be accompanied by routine screening for domestic violence and the implementation of appropriate safety and empowerment measures when it is identified. (Chapter 10.)

- 16. THAT, in cases involving an inquiry under section 60 Care of Children Act 2004, a psychologist who has specialist training in domestic violence should be appointed to evaluate the risk to the child, the impact of the prior violence on the child, the implications of the violence on each party's parenting abilities, and the meaning of the child's expressed wishes.**

As the cases of Amira and Amy show, the risk assessment mandated in section 60 of the Care of Children Act will not be effective unless judges have good quality information on which to base their inquiry. A report from a suitably trained psychologist would have allowed the Court to conduct a proper assessment of the risk to the relevant children. However, in what we were told is an increasingly common pattern, in neither case was such a report requested. Obtaining such reports should be standard practice where there is domestic violence. (Chapter 11).

- 17. THAT the Parenting Hearings Programme Pilot deal only with cases in which both parties have freely consented to take part. Moreover, sufficient time periods and resources need to be available for specialist reports to be obtained and the mandatory approach specified in sections 60 and 61 of the Care of Children Act 2004 to be carried out.**

We think that the emphasis on speedy resolution in the Parenting Hearings Programme Pilot will not serve battered women and their children well. There is no evidence that children are adversely affected by the short- or even medium-term loss of their relationship with a violent parent, providing they have the support and security of the uninterrupted care of their non-violent parent. Speed must not compromise safety. (Chapter 11.)

- 18. THAT the Ministry of Justice reviews information systems to ensure that:**
- (a) judges in the criminal court considering sentences in domestic violence cases can access relevant records of proceedings in the Family Court (including applications for a protection order, affidavits in support, and judges' decisions and memoranda);**
 - (b) judges in the Family Court considering applications under the Domestic Violence Act 1995 and the Care of Children Act 2004 can access records of domestic violence offences from the criminal courts and POL400 forms from the police;**
 - (c) judges in one Family Court registry can access records relating to matters involving the parties in other registries; and**
 - (d) the records referred to above are retrievable under the name of each party and each child.**

At the moment, breaches of protection order being heard in the criminal court are typically dealt with without reference to the background of the case. In these circumstances, breaches of the non-contact provisions of a protection order in which there is no physical assault can, for example, be seen as relatively minor and/or of a merely "technical" nature. The case studies include examples of minimal sentences being imposed for such breaches of protection orders. The sort of information sharing we are proposing will allow breaches to be placed in context by criminal court judges, and for Family Court judges to know about relevant criminal court cases when considering applications for protection orders and/or parenting orders. They will also prevent the Family Court from effectively being put in the position of countermanding itself as can happen when a judge makes an order in one registry without knowing that an order has already been made in respect of the same case in another registry. (Chapter 13. See also Chapter 11.)

- 19. THAT no more specialist domestic violence courts be established until the present courts have been properly evaluated to identify both good and problematic practices.**

Interviews with key informants, our analysis of judicial speeches and articles, and our review of relevant literature raise serious questions about the safety of such courts for victims and their effectiveness in holding perpetrators accountable for their violence. They should not be replicated without proper evaluation. (Chapter 13.)

- 20. THAT the Ministry of Justice ensures information about the Domestic Violence Act 1995 and protection orders, including how to apply for them and how to have them enforced, is translated into the various languages common in New Zealand, makes that information available on its website and disseminates that information widely through community networks.**

- 21. THAT a plain-English order be developed.**

The Ministry of Justice has produced guides to the Care of Children Act 2004 in 14 languages (including Māori and English). A similar approach is needed in relation to protection orders. The case studies and the social science literature show that non-English-speaking women are

particularly ill-informed about their legal options. However, understanding protection orders is not simply a case of which language it is written in, but also of the style in which it is written. The section 19(2) (non-contact) provisions are particularly wordy and complex. A plain language order is needed. (Chapter 8. See also Chapter 15.)

- 22. THAT the Family Court encourages counsellors from across the wide range of linguistic and cultural communities within New Zealand to become accredited so that culturally appropriate counselling can be provided as frequently as possible, and that it ensures that interpreters are available to assist parties in court who have limited facility with English.**

The case studies reveal what seem to be racist and monocultural practices which have had serious impacts on women and their children. In what might be regarded as the worst case of its type, one of our participants has been removed from the country, leaving her daughter in the care of her violent (and probably sexually abusive) New Zealand resident father. (Chapter 8.)

- 23. THAT the Ministry of Justice commissions periodic evaluations to assess the extent to which decision making regarding applications for protection orders and parenting orders contributes to the Domestic Violence Act 1995's goal of providing effective protection to victims of domestic violence and their children.**

A perennial problem in the Family Court is that judges get feedback on their decisions only when they are appealed or when a party comes back to court with a new application. Typically, they do not learn whether the parenting orders they have put in place have helped to create an environment in which children can heal from trauma or if those children have been re-victimised. Similarly, except for the possible exception where an unsuccessful applicant has been murdered, judges do not know what further violence women have experienced when an application for a protection order has been declined or put on notice. The lack of such feedback increases the risk of dangerous decision making. (Chapter 11. See also Chapters 7 and 8.)

Family Law Practitioners

- 24. THAT family law practitioners not recommend undertakings in situations where there is a potential for future physical, sexual, or psychological violence.**

Perpetrators of domestic violence sometimes succeed in having an application for a protection order withdrawn in exchange for an undertaking to leave the applicant alone. Such undertakings are unenforceable and, because they may give the appearance of safety, may make things worse for women. (Chapter 15. See also Chapters 8 and 9.)

Legal Services Agency

- 25. THAT the eligibility criteria for legal aid be revised so that all bona fide applications for protection orders are free.**

Violence against women is a fundamental breach of women's human rights. The state has a responsibility to make effective remedies accessible. At the moment, cost is a barrier to obtaining a protection order for those women who are not eligible for legal aid. (Chapter 8.)

- 26. THAT fee ceilings for legally aided temporary protection order applications and other Domestic Violence Act 1995 proceedings be increased so that senior family law practitioners can be encouraged to accept this type of work.**

Consistently, key informants told us that Domestic Violence Act 1995 work was uneconomic for any but the most junior of legal practitioners. This needs to change. (Chapter 8.)

- 27. THAT legal aid should be available to women who wish to appeal against decisions of Immigration New Zealand under the Victims of Domestic Violence Policy.**

Additionally, or alternatively, this work could become one of the roles of the free domestic violence victim advocacy services we have recommended.

As the successful appeal cited in Chapter 14 shows, appeals against decisions of Immigration New Zealand are an important and potentially vital protection of the rights of non-resident women who are victims of domestic violence. Almost by definition, such women are unlikely to be able to afford the legal fees involved in making an appeal. Our recommendation will help protect their rights to natural justice. (Chapter 14.)

Domestic Violence Act Programmes

28. THAT the Ministry of Justice works with relevant community organisations to ensure linguistically and culturally appropriate protected persons and respondents programmes are available for diverse groups, and that these be actively promoted in appropriate ways.

Protected persons programmes are one of the unquestioned successes of the Domestic Violence Act 1995. Those women in our case studies who participated in a protected persons programmes found them to be extremely helpful. The programmes were well regarded by the key informants we spoke to. However, only about a third of those eligible attend such programmes, and there is a lack of programmes, particularly group programmes, specifically for Pasifika and other ethnic minority women. The value of respondents programmes is somewhat contested but we agree with our key informants and the dominant view of the social science literature that such programmes, properly implemented as part of a comprehensive approach to battering, can make a useful contribution. As with protected persons programmes, there are few respondents programmes which cater adequately for other than Māori and Pākehā men. (Chapter 15. See also Chapter 14.)

29. THAT much higher priority be placed on prosecuting non-attendance at respondents programmes, that the procedure be streamlined, and that statistics for programme completion and enforcement action taken be routinely collated and published.

One of the main values of respondents programmes is the message they deliver about the unacceptability of violence. That message is seriously undermined if attendance is not enforced. According to key informants working in stopping violence programmes, men who are directed to programmes but fail to complete them rarely face any consequences for their non-completion. Unfortunately, we could find no recent published statistics to verify this, but what key informants told us was reflected in our case studies. Of the 28 women who got a protection order, only one reported that the respondent had completed his programme, although two more were still attending at the time of our interviews. As far as we can tell, none of the men faced any consequences for failing to complete a programme as directed. (Chapter 15.)

30. THAT protocols be developed so that providers of respondents programmes are routinely given names and contact details of protected persons to facilitate victim contact.

As the social science literature shows, providing stopping violence programmes for men can be dangerous. Some men use programme participation to bargain their way back into the relationship. Empirical studies show that women are more likely to remain in their relationship if their partner enters a programme. Some men make self-serving comparisons with other programme participants in an effort to portray themselves to their partners as not being so bad. Some men appropriate the language of the programme to further abuse and manipulate their partners. Such risks can be minimised if partners are provided with advocacy, support and realistic information about the effectiveness of programmes and if their safety is monitored.

Unfortunately, programme providers have told us that making contact with the partners of programme participants is becoming increasingly difficult because the Family Court will not pass on contact details. Some providers reported being told explicitly that they are not to contact partners. This is quite contrary to recognised good practice and may in fact mean that some programmes are doing more harm than good. (Chapter 15.)

The New Zealand Police

31. THAT the New Zealand Police Family Violence Policy be revised to:

- (a) incorporate a predominant aggressor test in relation to arrest;**
- (b) include a specific direction that the victim is not to be placed in the position of having to decide whether the offender is to be charged and/or arrested;**
- (c) reflect a presumption that victims will not be able to participate in prosecutions, and that prosecution without victim participation be used whenever possible;**
- (d) emphasise investigative practices which will support the more effective prosecution of offenders, including collecting and presenting evidence which demonstrates the full extent and impact of violence; and**
- (e) reflect the provisions of the Bail Act 2000 to incorporate a presumption against the granting of police bail to any domestic violence offender, and a specific direction that any offender released on police bail be subject to a non-association condition in respect of the victim.**

The current police Family Violence Policy is over ten years old and needs to be revised in the light of experience. As the literature – and our case studies show – women who use violence in self-defence are sometimes arrested. Some overseas jurisdictions have introduced a predominant aggressor test. The New Zealand Police should do the same.

On the whole, the prosecution of domestic violence offenders is far too reliant on victim testimony. This means many men escape conviction as women fail to give evidence as a result of intimidation or other factors. In a self-perpetuating cycle, this discourages police officers from making arrests in the first place. It need not be so. Effective investigation techniques should, in many cases, make it possible to successfully prosecute offenders without victim testimony. This would not only improve the accountability of offenders. It would also signal that it is the community, through the police, which is taking a stand against violence, not (just) individual women.

The case studies include instances in which men have been given police bail in contradiction to the provisions of the Bail Act 2002 – and instances in which women have been put in the invidious position of having to tell police whether or not they want the offender held in custody. The amendments we suggest should address these problems. (Chapter 12.)

32. THAT the New Zealand Police places much greater priority on following up and charging respondents who breach the non-contact provisions of their protection order but have left the scene by the time the patrol arrives, and that where there are multiple offences, each is charged.

The case studies show many instances in which a breach of a protection order has not been followed up. This seriously undermines the message inherent in the order – both to the offender, who learns that breaching the order is consequence free, and to the protected person, who often decides there is little point in calling the police. (Chapter 12.)

- 33. THAT, wherever possible, police officers completing domestic violence risk assessments do so in consultation with victims and that the results be made available to them.**

Significant advances have been made in understanding risk factors in domestic violence. The New Zealand Police is currently trialling several promising risk assessment protocols. This is to be encouraged. However, given that battered women's views are the single best predictor of further violence, it is crucial that risk assessment is carried out in consultation with them. In addition, we think women have a right to the results of such assessments, which may help those who underestimate the risks they face to make a more realistic reassessment. (Chapter 12. See also Chapter 7.)

- 34. THAT the New Zealand Police:**

- (a) accelerates efforts to increase the ethnic, cultural and linguistic diversity among police recruits; and**
- (b) ensures District Commanders identify interpreters on whom they can call to assist when dealing with non-English speakers in their districts.**

By and large, women in the Pasifika and other ethnic minority streams faced particular barriers to receiving an effective response from the police. This seemed to reflect a mix of cultural, immigration and language issues. We applaud efforts by the New Zealand Police to recruit a greater diversity of women and men into the service. This needs to be accompanied by the provision of interpreters. (Chapter 12. See also Chapters 14 and 15.)

- 35. THAT the New Zealand Police substantially increases the amount of pre-service and in-service training in domestic, and ensures that such training pays particular attention to helping police officers understand the dynamics of family violence in diverse cultural contexts.**

As mentioned in relation to the courts, some of the problems evident in policing reflect the fact that too many police officers lack a good understanding of domestic violence. This is particularly evident in the minimisation of certain breaches of protection orders as "technical", and in the way some police place women in the invidious position of making decisions about the arrest and/or bail of their abusers. In addition, few police seem to have a good understanding of the particular barriers facing women from culturally and linguistically diverse communities. (Chapter 12.)

- 36. THAT the New Zealand Police places greater priority on working in genuinely collaborative partnerships with Women's Refuges and other specialist domestic violence organisations and negotiates with them;**

- (a) protocols for the provision of support to victims of family violence;**
- (b) case-specific protocols for sharing information which will help to hold offenders accountable for their violence; and**
- (c) arrangements by which specialist domestic violence community-based organisations can participate in monitoring the response of the police and other state institutions.**

Many of the women reported that they were called or visited by Women's Refuge workers as a follow-up to police attendance at a domestic violence incident. This follow-up was often crucial to women getting information about protection orders and other remedies and support available to them. It was often the first step in providing a seamless, community-wide response to the battering of women. It also enabled the sort of data sharing needed to monitor the response of both state and community agencies. In turn, such monitoring helps to ensure consistency, to

identify gaps and to plan remedial action. However, in some centres, interagency collaboration is limited to sharing more general information about policies, practices and training opportunities and does not include the sort of case-specific information needed for effective monitoring. This needs to be addressed. (Chapter 12. See also Chapter 15.)

Immigration Issues

- 37. THAT the Victims of Domestic Violence Policy be aligned with the Domestic Violence Act 1995 by including the interests of children as one of the factors that must be considered when determining whether a woman's application for residence and/or a work permit should be granted.**

As one of our case studies graphically illustrates (Amira), non-resident women can fall into a gap between the roles and processes of the Family Court and Immigration New Zealand respectively. That is, because their abuser/sponsor withdraws support for their application for residence, women may be forced to leave the country. However, the same abuser/sponsor can get from the Family Court an order preventing the removal of the child(ren) from the country. Removing the mother from the country is not in the interests of the child(ren) because it is likely to result in further exposure to the batterer and the loss of the relationship vital to recovery from trauma. Allowing the interests of children to be taken into account when considering applications for residence under the special policies for victims of domestic violence would address this problem. (Chapter 14.)

- 38. THAT immigration officers considering applications for residence under the Victims of Domestic Violence Policy be given powers to consider a wider range of evidence in determining whether domestic violence within the meaning of section 3 of the Domestic Violence Act 1995 has occurred, but that the rules be drafted to specifically exclude consideration of information from the abuser.**

Despite the recent revision of the policy, the evidential requirements regarding domestic violence are quite restrictive, especially when police respond to Immigration New Zealand requests without fully understanding what is required and the implications of their responses. Giving immigration officers wider discretion would help. (Chapter 14.)

- 39. THAT when an application for residence under the Victims of Domestic Violence Policy is being considered, the woman's own perception of her circumstances should be the basis for the verification of evidence in support of her claim of an inability to return home, that her husband's or partner's views should not be considered, and that the burden of proving the general status of women in a society should not depend exclusively on evidence provided by the applicant.**

The current test here is quite difficult. Essentially, what is being required is independent evidence of cultural practices and of events which have not yet happened. Our analysis of certain Residence Review Board decisions suggests that New Zealand-based officials can make sweeping and ill-founded judgements about conditions in the home country and that those judgements may force women to return to dangerous and demeaning circumstances. (Chapter 14.)

- 40. THAT Immigration New Zealand works with relevant migrant communities to:**
- (a) make information about the Victims of Domestic Violence Policy available in a simple form and in languages understood by the major immigrant groups in New Zealand;**
 - (b) ensure that such information is provided to women when they arrive in New Zealand or make an application for residence;**
 - (c) distribute that information in places where immigrant women are most likely to**

go; and

- (d) **ensure that orientation programmes for new immigrants allocate time exclusively for women where they are informed about the Policy as well as other relevant New Zealand law and services.**

The special immigration policies for victims of domestic violence seemed to be used surprisingly infrequently. More promotion of them is needed. (Chapter 14.)

41. **THAT a clear statement should be included in the Immigration New Zealand *Operations manual* to the effect that the purpose of the Victims of Domestic Violence Policy is to give effect to New Zealand's international obligation to end violence against women.**

In contrast to other special policies, the special policies for victims of domestic violence do not have a statement of their objective or purpose. Such a statement would provide useful guidance to officers faced with marginal or ambiguous cases. It would also be helpful for women appealing against decisions to decline applications for residence or work permits if it could be shown that such decisions ran counter to the purposes of the policies. (Chapter 14.)

Child, Youth and Family

42. **THAT Child, Youth and Family adopts risk assessment protocols which:**
- (a) **are consistent with the definition of domestic violence in the Domestic Violence Act 1995, especially section 3(3) where the victim of the violence is not construed as having caused the children to hear or see the abuse meted out against her;**
 - (b) **require social workers to screen for domestic violence; and**
 - (c) **require social workers, where domestic violence is detected, to evaluate battered women's parenting in the context of the constraints imposed by such violence.**

Our case studies reflect a problem identified in many countries, namely inconsistencies between the approach of women's advocates and child protection workers. That is, child protection workers often fail to identify domestic violence in the lives of abused children, or, if they do identify such violence, treat the non-violent parent as part of the problem (an inadequate protector) rather than as part of the solution. Such practices can mean the battered mothers are unfairly held to account for events over which they have no control. Good practice suggests that, in general, the best hope for keeping children safe is to work with their mothers to help them to keep themselves safe – and their children. The methodology of the current Risk Estimation System is part of the problem. It needs to be modified. (Chapter 15.)

43. **THAT Child, Youth and Family places greater priority on perpetrator accountability through the use of restraining orders and the prosecution of perpetrators, and works collaboratively with the police to ensure the effective prosecution and enforcement of restraining orders.**

One aspect of the lack of coordination between child advocacy and women's advocacy is that, essentially, women are held responsible for monitoring the behaviour of the abuser. In fact, it needs to be the community which takes this responsibility. The use of a restraining order against the abuser is one mechanism by which CYF could assume more direct responsibility for keeping children safe and making abusers accountable for their violence. (Chapter 15.)

44. **THAT Child, Youth and Family places greater priority on working collaboratively with community agencies which specialise in domestic violence work. This must**

include working in partnership with such organisations to assess cases, determine priorities and allocate the follow-up of children exposed to domestic violence.

Good practice worldwide recognises that the best results arise through coordinated intervention. Here, we are suggesting that the statutory powers of CYF are best reserved for the most serious cases where urgent action is needed, not in less serious cases where those powers can be perceived by battered women as a threat. Triage arrangements in which cases are allocated to community or statutory services depending on risk and urgency can make better use of resources. Some communities are implementing such arrangements. We recommend extending them. (Chapter 15.)

45. THAT social worker training, both pre-service and in-service, pays greater attention to the dynamics of domestic violence, the co-occurrence of violence against children and women, the role of the state in holding perpetrators accountable and the importance of interagency collaboration.

As with other services, some of the problems we have uncovered seem to reflect a lack of understanding of the dynamics of domestic violence, the effects of such violence on children and the constraints under which battered women live their lives. Better training is needed. (Chapter 15.)

Community and Non-Government Organisation sector

46. THAT the New Zealand Police, the courts, Child, Youth and Family, and the Department of Corrections collaborate with specialist community-based domestic violence agencies to plan and implement regular safety audits of the state agencies' handling of domestic violence cases.

We think that the interagency approach now well recognised as best practice needs to be strengthened. It is important that this brings together state and community agencies, and does so in genuinely collaborative relationships which address imbalances of power between state and community agencies. Moreover, community-based agencies need to be recognised as key players in driving the sort of safety audits which should become a regular feature of monitoring the performance of state agencies. (Chapter 12. See also Chapter 15.)

47. THAT counselling and generic social service agencies adopt domestic violence screening and safety protocols and ensure that only counsellors with training in domestic violence work with perpetrators and victims of domestic violence.

Finally, our case studies have revealed dangerous practices of a range of social service and community organisations, practices which often colluded with the abuser and placed women and children in dangerous situations. While most of these organisations are not specialists in domestic violence work and should not undertake such work unless they have properly qualified staff, they are in a position to screen for domestic violence and make appropriate referrals. (Chapter 15.)