

CHiLD POVERTY ACTION GROUP



Submission to the Family Violence Law Review

To the **Ministry of Justice**

This submission is from:

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Introduction

This submission is made on behalf of the Child Poverty Action Group (CPAG). CPAG is an independent charity working to eliminate child poverty in New Zealand through research, education and advocacy.

CPAG requests the opportunity to make an oral submission to the Review should oral submissions be sought.

In preparing this submission CPAG whole-heartedly endorses the extensive and well argued submission of the Silent Injustice group. Child Poverty Action Group also support the submission from CCS Disability in consultation with People First and the Auckland Domestic Violence and Disability working group (DVD).

In this submission, CPAG specifically emphasises the wide impact on children of the failure to deal with Domestic Violence in all its manifestations in New Zealand.

Submission

Legislative framework: Overview

What changes to legal tools and powers would ensure the law keeps pace with advances in understanding of family violence and how to address it?

Child Poverty Action Group is concerned that domestic violence and concepts of relationship are not well understood by many of the judges, police and lawyers in the criminal justice system. Much more training and education is required for personnel in the criminal justice system and the Family Court for **all cases** where domestic violence is an issue, including cases where relationship fraud is alleged for example.

We focus here on the experiences of women and children because they are both more prevalent and more serious than men's experiences of violence. However, we would also note that the needs of children who experience violence either directly or through observing violence being perpetrated on their carer should be prioritized, irrespective of the gender of the perpetrator or victim.

Old fashioned and gendered views of relationships can distort what happens in the court for women. Professionals need to be more aware of the inconsistencies and inequities in the way relationships are categorized in society and in different parts of the welfare and legal system. For a detailed discussion see **Child Poverty Action Group Background Paper: The complexities of 'relationship' in the welfare system and the consequences for children**¹.

Judges need to be more aware of the gendered nature of domestic violence that puts women at a serious disadvantage especially when they are economically dependent on their controlling male partner. They may also be affected by a welfare system that also traumatizes and abuses them and by a legal system that rewards guilty pleas and remorse with lower sentences while providing little access to legal assistance:

As Frances Joychild QC (2015 recently said in, **Continuing the conversation ... the fading star of the rule of law** ²:

Over the past three years, I have wondered increasingly if I have woken in Charles Dickens' England.Clearly, beneficiaries have no money to employ a lawyer. Most of the problems they encounter are not covered by legal aid. Some are lucky enough to have access to unpaid beneficiary advocates. I suspect a very large number do not. It is extraordinary that, in an area of major legal complexity, wide government discretions and deeply disempowered citizens, the rule of law is at its weakest

¹ <http://www.cpag.org.nz/assets/141204CPAG%20Welfare%20System%20final.pdf>

² <http://www.adls.org.nz/for-the-profession/news-and-opinion/2015/2/5/continuing-the-conversation-%E2%80%A6-the-fading-star-of-the-rule-of-law/>

Judges need to be aware that a woman in a violent relationship may decide she has to access benefit money in order to feed her children and secure their future. The courts may then find her guilty of relationship fraud and she may even get a prison sentence. The tests of emotional commitment and financial interdependence can be very difficult to apply objectively. The presence of violence should always invalidate the relationship as being one 'in the nature of marriage'. CPAG urges the legal system to see more clearly how violence is perpetrated where there are few avenues of escape. Financial dependence is a big factor. For many, the sole support benefit is a short-run life line, but it is one that has become very frayed. CPAG sees the operations of the welfare system for traumatised women as increasing their pain and that of their children.

A key issue here is the effect on the children who are so often invisible. Sole parents are expected to get back to work as soon as their youngest is 3 regardless of their lived experiences. Overall the courts and Work and Income could take a much more supportive approach in understanding the trauma of family violence and the ongoing effects on her and her children's lives.

The nature and dynamics of family violence across population groups

What changes could be made to address the barriers faced by each population group?

CPAG is particularly concerned that Maori women and children are disproportionately affected not only directly by domestic violence³ but indirectly when they appear in the legal system for other matters such as relationship fraud.

CPAG believes there is a strong causal link between domestic violence and poverty. Of course, financial hardship is not the only factor, nor even a necessary one in many cases, but the significance of poverty as a critical consideration in violence cannot be ignored. Nevertheless there are structural causes from policy settings that result in many families living lives of financial desperation in which violence is more likely.

An outline of policy recommendations to relieve the stress of poverty, especially child poverty can be found in the CPAG publication, **Our Children Our Choice**⁴.

³For example, in the period 2009 to 2012, Maori were 2.8 times more often deceased and 2.5 times more often offenders of IPV deaths than non-Maori, non-Pacific peoples.³ Rates of hospital admissions for assault, neglect and maltreatment were significantly higher for the most deprived two deciles of New Zealand's population. Rates of poverty for Māori and Pacific people are consistently double that of European/Pakeha people, regardless of which measure is used (Perry, 2012, p. 118), and Māori and Pacific children were 3.24 and 2.26 times respectively more likely to be admitted to hospital for intentional injuries than European children between 2000-2011 (Craig & et al, 2012, pp. 56-60). Maori children were 5.5 times more likely to die from child abuse and neglect than children of other ethnicities.

⁴<http://www.cpag.org.nz/assets/Publications/14100630%20Our%20Children%20Our%20Choice%202014.pdf>

A 2000 literature review published by the then Ministry of Social Policy on the physical abuse and neglect of children by family members noted the role of poverty and the role of individuals' and families' ability to cope with economic and other stress.⁵

The link between poverty and child abuse is further elaborated in the CPAG publication, **Child Abuse: what role does poverty play?**⁶

"Ongoing training is essential for all statutory agents responding to domestic violence and members of the Family Violence Inter Agency response teams. This includes police, lawyers, counsel for the child, psychologists and judges. This training needs to be updated regularly and reflect Te Tiriti o Waitangi obligations for all services to be culturally appropriate and for support for kaupapa Maori specific services and responses". Silent Injustice

Definition of "family violence"

Child Poverty Action Group strongly supports Silent Injustice's call for

The creation of a clear and comprehensive definition of 'coercive control' within the legal definition of 'domestic violence' under the Domestic Violence Act. Threats to family pets must also be included within the definition, as should threats to the children and/or other family members.

Threats to the children and physical or psychological punishment of the children for perceived transgressions of the mother are particularly distressing to women in this context. Child Poverty Action Group supports the inclusion of violence against animals and the link between animal abuse and abuse of women, children and others such as disabled people and older people in the legal definition of domestic violence. Abuse of a pet may deeply harm the people in the relationship/family especially children who love that pet and that action should be viewed as a tactic of control.

⁵Angus, J., & Pilott, B. (2000). Familial Caregiver's Physical Abuse and Neglect of Children: A Literature Review Wellington: Ministry of Social Policy. Available <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/2000-familialcaregiverslitreview.pdf>

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<http://www.cpag.org.nz/assets/Publications/130610%20CPAG%20Child%20Abuse%20Report%201%20June%202013.pdf>

Guiding principles

As a signatory to the United Nations Convention on the Rights of the Child (UNCROC), New Zealand has a legal obligation to protect and promote children's rights to provision, protection and participation. Article 3(2) and (3) of the UNCROC states;

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures [and] States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Children's right to freedom from all forms of violence should underpin the Act. Ascertaining the 'best interests of the child' must include acknowledgement of domestic violence, whether the child was directly or indirectly affected. The 'best interests of the child' must include freedom from past, present and future violence. Child safety and right to freedom from violence should be paramount over parental access rights; in particular rights of an abusive parent. See **Child Abuse: An analysis of Child, Youth & Family**.⁷

Child Poverty Action Group urges the systematic collection of data on the experiences of women and children with experience of any form of domestic violence and of experience within and outside the family court and district court system.

Additional Pathways

What are your views on an additional pathway for families who seek help to stop violence escalating? Is such a pathway necessary or appropriate?

The **Mellow Parenting** programme funded by Counties Manukau District Health Board in collaboration with Ohomairangi Trust has proven efficacy and success. The intervention was provided to support Māori whānau – Māori parents in particular, to reduce the harm resulting from poverty and the associated domestic violence and addictions; to improve relationships and develop resiliency; to reclaim the health and wellbeing that Māori whānau were known to enjoy before colonisation. The results from pilot and subsequent programmes have been positive and

⁷<http://www.cpag.org.nz/assets/Publications/130729%20CPAG%20Child%20Abuse%20Report%20%20July%202013.pdf>

welcomed by the communities they served. It should be better supported and able to be accessed by families experiencing domestic violence⁸.

⁸ <http://www.ohomairangi.co.nz/parenting-programmes.html>