



# **Violence against Women and their Children**

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**Briefing to the Incoming Government 2017**

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## Introduction to Backbone

The Backbone Collective “Backbone” launched as an independent body in March 2017 taking action to change New Zealand’s alarming statistics for violence against women and children (domestic and sexual violence and abuse being the most prevalent forms in NZ) by examining the present response system through the eyes of its users - women who have experienced violence and abuse.

The Backbone Collective has been established as a registered trust. Its Co-Founders<sup>1</sup> Deborah Mackenzie and Ruth Herbert have extensive histories in the violence against women sector – in policy, frontline services, research and project management work. The scope of the work that Backbone does is currently limited by the fact that it has no revenue. Backbone has been advised that the Charities Commissioner would be highly unlikely to grant charitable status to Backbone due to the public advocacy work.

The Backbone is staffed full time by Ruth and Deborah,<sup>2</sup> with assistance on social media projects from Laura Brilliard Tulloch. All three have been working entirely voluntarily until Backbone can secure some grant funding and or contracted income.

The Backbone Collective currently has 1101 members – all women who have all experienced violence and abuse. The members form an integral part of Backbone and are engaged in Backbone activity, surveys, political activism and support functions. In addition, Backbone also has a group of supporters who are not registered as members but support the work of Backbone in a range of ways. Backbone is a virtual organisation which has as its founding principle the need to be transparent and share the reports written publicly – that is, the goal is to ensure that the public are able to find out what parts of the system need to be improved in order for women and children to be safe. To that end Backbone reports are shared with the members, public, with those in authority and with the media.

Backbone was born from our long standing and increasing frustration that there is no continuous improvement framework for domestic and sexual violence in New Zealand. In particular there is no mechanism for those for whom the services and the system is designed for to inform those at the top where the system is and isn’t working, no process for them to complain, no way for them to hold the system accountable and no way for them to be part of affecting change if the system is failing in any way. Furthermore, there is no way for women who have experienced violence and abuse to have input into the design and implementation of the system to ensure it best meets their needs.

New Zealand women who have experienced violence and abuse have until now been silenced – silenced by their abusers, silenced by their experience of abuse, and silenced by the system. Typically, front line workers have been used as a proxy voice for their clients – a clear conflict of interest when frontline workers are funded by Government agencies and are therefore unable to advance the needs of women who have experienced violence and abuse in most cases for fear of losing their funding.

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<sup>1</sup> Tania Domett was also a co-founder but she had to withdraw mid 2017 for personal reasons

<sup>2</sup> You can find bios of Ruth and Deborah at Appendix 1

Currently there is no review process of the response system for women and children who have experienced violence and abuse, which means there is no way to readily identify where the system is failing and to make improvements. Backbone recognised that no one else is undertaking service user consultation and so committed to ensuring this critical part of continuous improvement is no longer ignored.

In a first for New Zealand, women's feedback is gathered by Backbone through online surveys to then write reports which measure the success of the system. In using this approach, Backbone recognises women's insights into how the system works as a valuable source of service user feedback.

Backbone ran its first survey late in 2016, with the following key findings from women experiencing violence or abuse:

- The current system is not keeping women safe.
- Only 3% of women said that people who responded to them did an excellent job of understanding their experience and what they needed.
- There is a lack of information available to help women navigate the system, understand who to seek help from, understand their experience of violence and abuse.
- The Family Court is the highest ranking 'issue' that women want Backbone to focus its next survey on.
- Women want an independent complaints body.

In 2017 we responded to what women told us they wanted from Backbone and we focussed on the Family Court as our first aspect of the system response. This year we have run three surveys, written two watchdog reports and released a Family Court survey report and our next Family Court report will be released in the next month.<sup>3</sup> We have proven that our mechanism – membership and surveys – work to gather service user feedback which can inform continuous improvement of the response system.

We have a lot more to offer and Backbone would welcome any opportunities to explore ways we can bring our expertise and vision for change, and women's experiences and insight to the table and work collaboratively with Government, service providers, academic and professional bodies to make significant and sustainable change in this portfolio. We are sure that Backbone's 1000+ members would welcome having an opportunity to be heard.

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## Introduction to the previous work of Backbone co-founders

We have both worked in the domestic and sexual violence sectors for many years – from senior Government positions, to front line agency work, community coordination, academic/research activities, consultancy/contract roles and voluntary work. Jointly we have gained more experience and insight into the issues and the current system response than many others working in this area.

In 2011-12 we worked in the cross-agency Family Violence Unit within the Ministry of Social Development. During that time, we saw first-hand the shortfalls in the current centralised ‘top-down’ system. In July 2014 we independently published a comprehensive report entitled ‘The Way Forward: An integrated System for Intimate Partner Violence and Child Abuse and Neglect in New Zealand’<sup>4</sup> (see Appendix 2 for the executive summary).

The purpose of that report was to share our ideas for a new way of working, assisting everyone to ‘come to the table’ with a shared understanding of why a change in approach is needed in New Zealand. We proposed the establishment of a new evidence based model to better address the epidemic of intimate partner violence and child abuse and neglect in New Zealand and provided a comprehensive business case to support that proposal. The business case showed that investing in the development of an Integrated System could produce as much as a 15-fold diminishing return on investment. The greater the investment in a strong, effective, equitable and scalable system, the greater will be the social and economic savings. To reduce the burden on individuals, society and the economy we need to design a system that has the greatest impact on as many cases as possible, that ensures an early and more effective response, that identifies the current 80% of unreported cases – a system that wraps around those affected and does everything possible to reduce the immediate and long-term effects. In doing so we would not only reduce the incidence of domestic and sexual violence but reduce the incidence of many other linked social issues and reduce the economic costs.

The Way Forward report was widely supported and heralded by workers at all levels as showing the direction for the future. It has subsequently been frequently referenced in Government, academic and other material. Some of the initiatives developed under the previous Government’s work programme (ie the Integrated Safety Response pilot) appears to be loosely based on selected aspects of the model we proposed.

In August 2014 we met with Murray Edridge (Deputy Chief Executive, Family and Community Services, Ministry of Social Development) to discuss the report. He asked us to submit a proposal for a ‘proof of concept’ trial that could be established in such a way as to show some meaningful outcomes within the next two and a half years. Despite multiple follow up emails and a subsequent meeting with some of his staff, we never received a formal response to that proposal.

In February 2015 we met with Hon Amy Adams as Minister of Justice to discuss our proposed integrated system model. Minister Adams was adamant that while there were strong arguments for the model and the leadership, structural and implementation approach we were proposing, that ‘Government needs to get its own house in order’ before they could consider our proposals.

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<sup>4</sup> Available at [http://theimpactcollective.co.nz/thewayforward\\_210714.pdf](http://theimpactcollective.co.nz/thewayforward_210714.pdf)

## The current situation

Over the past 20 years there have been countless formal groups, meetings, conferences, strategies, reviews, and investigations into the prevalence and problems of domestic and sexual violence in New Zealand undertaken by government, non-government agencies and academics. There have been hundreds of reports identifying the problem and areas that need to be addressed. There have been action plans containing an endless stream of largely one-off initiatives or new developments.

Yet despite the plethora of documents, a strong legislative framework and the efforts of successive governments and many NGOs that have strategised and delivered services to try and 'fix' the problem, real improvements seem to remain elusive. New Zealand has not made significant traction in responding to or reducing the problem.

Over the past nine years under the National-led Government little or no change appears to have been made to reducing New Zealand's shocking statistics for domestic and sexual violence. On the contrary from our viewpoint things have become systematically worse and worse. New Zealand is now at crisis point.

An alarming number of women have told Backbone that the system that is supposed to keep them safe and help them rebuild their lives free from violence is broken and unsafe. In survey responses and in communications women talk repeatedly and at length to Backbone about how hard it is to get those working in the sector to respond safely to them when they reach out for help. In many cases the poor response is due to workers not understanding the dynamics and risk attached to domestic violence and abuse therefore interventions are grounded in poor practice and serve to put the woman and her children in more danger. In no other area has this been more apparent than in the response from crisis intervention agencies (Refuge, Shine the Police, MVCOT/CYF) recommending that women go to the Family Court and seek Protection Orders to secure safety. However, once at Family Court women and children are made much less safe as while some get Protection Orders, many don't, and these women are then forced into years of Care of Children Act proceedings which force children into contact with an abuser, prohibit women from living in safe areas, financially ruin them and cause enormous health impacts on them and their children as a result. **Women constantly tell us that they wish they had never gone to the Family Court for help to be safe.** Those that do get granted Protection Orders have told us time and time again that the New Zealand Police will not respond to breaches of the Protection Order. They also tell us that social services provide a crisis intervention only and there is no support for medium or long term safety. Women tell us their experiences in the health sector and particularly the mental health services for themselves and their children are substandard. These women are poor, they have no access to safe housing, there is little therapeutic help for their children and the abuser blocks any that is available via Family Court orders. Women are telling us that many professionals are profiting from the women's unsafe situation but they themselves are not. Overall the way information is shared is often unsafe, the understanding of domestic and sexual violence is unsafe, the practices of those working in the sector are often unsafe and there is absolutely no complaints body that can act independently to identify and expose the failing of the current response system.

It is clear from what women are telling Backbone that the current 'system' is still fragmented and inconsistent, with gaps and overlaps - there is still no infrastructure to hold all the various parts

together. Organisational practice is inconsistent. There is no standardised approach for identifying and managing high risk cases. There are no clear lines of accountability, no mechanisms to repair parts of the system when things go wrong and no evidence-based and standardised safety planning processes to ensure all those travelling the system are safe. Services are fully stretched and there is no way we can keep loading more cases into the current system. Meanwhile we focus on temporary repairs - minor adjustments and short-term initiatives, thinking that if we just did one or two more things we could fix the problem.



## The challenge for the new Government

On the night that it was announced that New Zealand would have a three-way Government involving Labour, the Greens and New Zealand First, the Prime Minister elect, Jacinda Ardern said: *'We will be a very proactive government.'* The new Government is definitely signalling change on many fronts.

Change is most definitely required in the way New Zealand responds to domestic and sexual violence. As the saying goes *'If you always do what you have always done you will always get what you always got.'* It is time to think and act in a new way. We quite simply cannot continue the centralist top-down approach of endless committees, cloisters of self-appointed 'experts' coming up with more 'good ideas/ad hoc 'solutions.' The change that is required is much more than just funding more of what we already have. It is about doing things in new ways.

We believe New Zealand is ideally placed to go from being worst in the world for domestic and sexual violence to be a world leader in innovative and effective approaches to addressing these issues. Achieving long term sustainable outcomes will take vision, political commitment, and a concerted effort. It will require strong leadership, careful planning and meaningful engagement with service users, front line workers, tangata whenua and the wider community. That will require a new way of working – in essence, a new model for coordinating all activities, whereby local communities, Government and non-Government agencies and researchers work hand in hand towards common goals, harnessing the collective effort. It will require a continuous improvement framework to ensure that all parts of the system operate are operating as effectively and equitably as possible. And it will require those at the top listening to the voice of experience.

Based on our previous work in the sector, our Way Forward Report and our surveys and reports undertaken in the Backbone Collective we believe there are some key priority areas that the New Zealand government can focus on to immediately improve the system response to women and children who have experienced violence and abuse. We would welcome the opportunity to discuss these in detail. We have provided a list below of priority areas and also included comment about how Backbone could contribute towards these priority areas.

## Priority 1: Set up a Royal Commission of Inquiry into the Family Court

When women experience violence and abuse they may reach out to ‘the system’ to protect them and keep them safe. The Family Court is a critical part of the response system that women may rely on following separation for protection and further safety.

Backbone thinks the primary purpose of the Family Court with respect to any cases of violence and abuse should be to ensure the victims are made safe and are supported to rebuild their lives and the perpetrators are held accountable for their behaviour. Over 600 women who have experienced violence and abuse took part in the Family Court survey that Backbone conducted in April/May this year - 496 of those women have been involved in Family Court proceedings. The aim of the Family Court Survey was to give women an easy, safe, and anonymous way to say how the Family Court experience was for them and if they did not use it - why not (see Appendix 3 for the executive summary of ‘Out of the Frying Pan and into the Fire: Women’s experiences of the New Zealand Family Court’<sup>5</sup>).

Last month we surveyed women who have experienced violence and abuse and who have children, to ask them about how the Family Court processes and rulings had impacted on their children. We received 311 completed responses which cover 624 children. We are currently analysing that data, but the initial review shows that the results of this survey will be at least as alarming as our earlier Family Court survey, for example: children are routinely being forced to spend time with an abuser against their wishes - one third of children say they don’t want any contact with the abusive parent at all.

While in the abusive parent’s care:<sup>6</sup>

- 58% of children are worried about their physical safety
- 14% are worried about their sexual safety
- 81% are worried about their psychological safety
- 15% are exposed to pornography
- 18% are exposed to drug use and paraphernalia
- 24% are exposed to him abusing the new partner and children
- 23% are exposed to illegal behaviour.

### **Involvement in the Family Court involvement and the orders made are making children sick.**

We asked mothers to tell us if their child's health had suffered as a result of how they have been treated during Family Court proceedings and the subsequent care and contact orders made:

- 119 children have suffered physical injuries while in the care of the abuser
- 111 children have eating disorders
- 189 children have nightmares
- 209 children suffer anxiety and panic attacks
- 80 children have been talking or thinking about suicide.

<sup>5</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

<sup>6</sup> N= 408 children

In addition to the information collected via the surveys, Backbone has had email and Facebook communications with many hundreds of women. We have heard about their experiences in the Family Court in detail and have reviewed many court documents and communications. All this material substantiates the findings of our two surveys. We have quite literally heard one horror story about the Family Court after another.

Given the overwhelmingly negative feedback from so many women and the consistency in their experiences in the Family Court, Backbone believes it has sufficient evidence to indicate there is a major systemic problem in the New Zealand Family Court. We believe that the New Zealand Government is in effect funding state sanctioned abuse of women and children via the Family Court. The Government has a duty of care to these women and children and to the New Zealand public to urgently and comprehensively investigate the harm being done.

We note that the Labour Party policy states: *Labour will review the family court reforms that have created inequity and an inability for some to engage in safe and effective processes to resolve their family issues.* We are aware that that Otago University was contracted by the previous Government to undertake a review of the 2014 Family Court reforms. Backbone is firmly of the view that a review into 2014 Family Court reforms will come nowhere close to uncovering the dangerous practices and orders of the Family Court that have been harming women and children (who are already victims of violence and abuse) for more than ten years now. Based on the alarming information we have gathered we know that the systemic failures are not related to the 2014 reforms and hence a 'review' would have neither the scope or the mandate to go nearly deep enough into the issues we are hearing about in the Family Court. We also note that in report from the Justice and Electoral Committee on the Family and Whānau Violence Legislation Bill<sup>7</sup> said: *The Green Party supports a victim-led review of the functioning of the Family Court and in the interim we believe independent domestic and child abuse expert advisors in the courts should provide advice and monitor the application of the law.*

We are aware that New Zealand's Westminster system of government demands complete separation of powers between parliament and the judiciary. For this reason, a comprehensive inquiry into the Family Court - with powers to subpoena witnesses, interview judges and other court officials and review case files - could constitutionally only be conducted by a Royal Commission. Backbone also believes that the women we have heard from would most definitely not feel safe enough to share their information with anything less than a Royal Commission. Most of the women have been threatened by the Family Court that if they talk about their case they will lose their children, many are still involved in Family Court proceedings; some have gagging orders on them preventing them from talking to anyone about their case. The only way a thorough and complete investigation into the Family Court can happen is via a Royal Commission of Inquiry and we urge your Government to approach the Governor General to seek that outcome.

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<sup>7</sup>[https://www.parliament.nz/resource/en-NZ/SCR\\_74967/ef4c5c7356f3874a06d2c269e420df1b512ddd31](https://www.parliament.nz/resource/en-NZ/SCR_74967/ef4c5c7356f3874a06d2c269e420df1b512ddd31)

## Backbone recommends

1. That a Royal Commission of Inquiry be established to:
  - Conduct a thorough investigation into the Family Court's practices, culture, interpretation of the law and orders/decisions/directions in all cases where violence and abuse has been alleged.
  - Make recommendations for how the New Zealand family law system should operate in the future to ensure all cases where violence and abuse is alleged are managed in a way that keeps the victims safe and helps them rebuild their lives and holds the abusers to account.
2. That the Royal Commission be headed by a reputable international expert(s) to ensure the necessary independence from the New Zealand political and judicial systems.
3. That there be tangata whenua and domestic violence victims either on the Inquiry panel or as senior advisors to Royal Commission.

## How Backbone can contribute

Backbone would work with its members to have input into the establishment of the Royal Commission including the Terms of Reference.

Backbone would be ideally placed to broker the interface between women and children who are prepared to share the experiences they have had in the Family Court, and the Royal Commission.

Backbone could provide specialist information to the Royal Commission based on what we have learned in the course of our work and facilitate any consultation between the Royal Commission and Backbones 1100+ members.

## Priority 2: Urgently establish new measures to keep women and children safe in the Family Court

The Justice and Electoral Committee on the Family and Whānau Violence Legislation Bill<sup>8</sup> states:

*Prioritising the safety of children was a key consideration in our scrutiny of this bill. The bill introduces important protections for children, and we are satisfied that they, along with existing protections, will go a long way to keep children safe. We also discussed several other issues, such as the relationship between the care of children and family violence cases, and ensuring consistency between the different legislative frameworks that protect children when there is family violence.*

The Labour Party minority view included as part of that report says: ‘*The Labour Party is concerned for the safety of children who are at risk of being harmed by parents going through separation and divorce. There have been many incidents where children have been hurt or killed while a parenting and protection order is in place.*’

As outlined in the previous section, Backbone has extensive information showing widespread failures and harm being done by the Family Court. Women told us that even though initially they went to the Family Court after separating from an abuser seeking protection and safety they now wish they had never done so. For these women, the Family Court has become the new abuser and many have told us it is worse than the abuser. They have been unable to rebuild their lives as they are trapped in Family Court proceedings for years. During this time they and their children continue to be exposed to violence, abuse and associated trauma and they are unable to ‘move on’ in any way.

Two months ago, we released a watchdog report on the Family Court complaints and appeals landscape (see Appendix 4 for the executive summary of ‘Don’t Tell Me Your Problems’ The Family Court complaints and appeals landscape<sup>9</sup>). Having now examined the appeal process and the multiple complaints mechanisms available (or not), Backbone is as convinced as ever that the Family Court is a law unto itself – it is closed, secretive and unaccountable and the complaints processes available are ineffective.

Until the findings and recommendations of the Royal Commission are available, urgent interim measures need to be put in place to mitigate the harm being done by the Family Court, to ensure a domestic violence lens is put across all cases where violence and abuse are alleged, to provide mechanisms to ensure there is accountability, independent oversight and transparency of what happens in the Family Court.

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<sup>8</sup>Ibid.

<sup>9</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

## Backbone recommends

1. That independent domestic and child abuse expert advisors are set up in the Family Courts to provide analysis and risk factors and monitor the application of the law.<sup>10</sup> These advisors could also assist victims/survivors to navigate through the Family Court and serve as a liaison point between domestic violence and child abuse community agencies and the Family Court.
2. That any Family Court case where domestic and/or sexual violence is alleged and where there are children involved has a specialist Child Risk Assessment done to determine the potential risk the alleged abuser poses to the child/ren. This **must** be independent of any of the current ‘specialists’ appointed by the court.<sup>11</sup>
3. That an accreditation system be urgently established to ensure all people engaged in the Family Court understand the most up-to-date evidence on domestic and sexual violence and child abuse, and that their practice and decisions are consistent with this.
4. That an independent quality assurance process, including a dedicated and independent Family Court complaints process, be established for the Family Court (refer also subsequent section of this report).
5. That the thresholds to access to legal aid be lowered and the restrictions on obtaining legal aid in order to appeal a Family Court judgement be reviewed.<sup>12</sup>

## How Backbone can contribute

Backbone would facilitate input from women who have experienced violence and abuse to the planning and establishment of independent domestic and child abuse expert advisors in the courts.

Backbone would be interested in either establishing a specialist service to undertake the Child Risk Assessments for the Family Court or to work collaboratively with other agencies to do this work.

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<sup>10</sup> See Green Party minority view page 19 at the following link

<file:///C:/Users/RH/Dropbox/The%20Backbone%20Collective/The%20Backbone%20Collective/Evidence%20and%20literature/Family%20and%20Whanau%20Violence%20Bill%20-%20select%20committee%20report.pdf>

<sup>11</sup> Lawyer for Child, Psychologist or social worker

<sup>12</sup> Currently being able to appeal to the High Court is biased towards those who have independent means because legal aid refuses to fund many Family Court appeals.

### Priority 3: Establish mechanisms to support and advocate for children

The Family Court makes decisions which impact on the lives of children and their subsequent safety. Women who have experienced violence and abuse frequently seek orders from the Family Court that they hope will protect their children – either as Protection Orders or Care of Children orders. Backbone members have told us that their children’s views were not appropriately represented to the Family Court by those tasked with doing so and as a result children are being routinely forced – against their wishes – to have care and contact with the abuser. In only a minute number of cases (2%) that Backbone has heard about has any risk assessment been done to assess how safe the children will be under these care and contact orders. While children are telling lots of people about their concerns for their safety (professionals in the Court and friends, family, doctors, teachers etc.) the Court is not responding to those concerns and once it has made orders to force care and contact, very little can be done to alter those orders. In addition, no other community advocacy or specialist services who work with these children are able to present any form of assessment of risk for the children to the Family Court. The only voices that are listened to are the ones contracted by the Judge and overall these professionals lack the specialist knowledge to be able to safely recommend care and contact arrangements that fully consider the ongoing risk of further violence and abuse.

In many of the cases Backbone has heard about MVCOT being involved. In our latest survey on the impact the Family Court has on children 39% of mothers said MVCOT were involved. We have heard that the practices in MVCOT are not helping women and children to be safe when there has been violence and abuse and that MVCOT social workers engaged in Family Court work have little or no analysis of domestic violence. While we have not yet focussed primarily on investigating MVCOT as part of the system response, we know that any investigation into the Family Court needs to closely examine MVCOT’s role in Family Court orders and decisions and how those impact on children and women. For some women it is MVCOT, not the abuser, who they find they are having to fight against in the Family Court, and the way MVCOT uses the Family Court system means they become the primary abuser of the women and their children. Many women have told us MVCOT’s response has made everything so much worse and this is particularly the case for Māori women and children.

Most people would expect that the child’s parent/s would support and advocate for them through the Family Court process. On the contrary, many hundreds of women have told Backbone that in cases before the Family Court where domestic and sexual violence has been alleged the children are treated as relationship property. The abusive father often uses his rights to access to the child/ren as a new tool to abuse his ex-partner. Many of these men had little or no involvement in their child/ren’s life before the victim left the relationship, and suddenly they have an interest in having as much unsupervised care of the child/ren as possible. The father’s rights to have an ongoing relationship with his children appears, time and time again, to trump the child/ren’s rights to safety and the child/ren’s views.

The prevalent view in the Family Court appears that the child’s right to maintain direct contact with their father **must** be enforced even if international risk assessment evidence shows that direct contact would be unsafe and/or it is against the wishes of the child.

In a high proportion of cases the Court expressly prevents women from even speaking to their children about the abuse. In these cases, the Family Court is forcing women and children to pretend their trauma and experiences of violence and abuse don't exist. When women try and speak out in Court on behalf of their children – regarding safety concerns or to help ensure their children's wishes are taken into account – they are frequently silenced and accused of 'parental alienation' (refer Priority 4).

The legislation recognises that children have a right to be heard in matters being decided about them. S6 (2) of the Care of Children Act 2004 says that: *In proceedings to which subsection (1) applies,—*

*(a) a child must be given reasonable opportunities to express views on matters affecting the child; and*

*(b) any views the child expresses (either directly or through a representative) must be taken into account.*

S7 of the same Act says: *A court may appoint, or direct the Registrar of the court to appoint, a lawyer to represent a child who is the subject of, or who is a party to, proceedings (other than criminal proceedings) under this Act if the court—*

*(a) has concerns for the safety or well-being of the child; and*

*(b) considers an appointment necessary.*

In many cases where domestic violence is alleged the Family Court appoints a lawyer to represent the child/ren (referred to as 'lawyer for child'). The Court also often appoints a psychologist or CYF representative to prepare reports about the child/ren.<sup>13</sup> In our Family Court survey, we asked women to tell us how well those working in the Family Court have responded to their and their children's safety. Women identified Judges, lawyers and Lawyer for Child as responding not well or not at all well to their and their children's safety followed by Court appointed psychologists and Child Youth and Family. Women have repeatedly told Backbone that while the Lawyer for Child is supposed to represent the child's best interests, welfare and wishes, they have found that the Lawyer for Child is acting as an agent for the Judge – not for the children.

We have heard many stories about how the Lawyer for Child, psychologist and Judge either:

- don't seek the child's views
- they seek their views but not in a safe or appropriate way<sup>14</sup>
- the child clearly expresses their views, but if the child's views don't align with the Lawyer for Child, psychologist or Judge's views then the mother is blamed for planting 'anti father' ideas into child's mind and the child's views are not only ignored but indications are that the contact arrangements ordered by the court are diametrically opposed to those that the child wanted.

<sup>13</sup> Provided for under Sections 131A, 132 and 133 of the Care of Children Act 2004.

<sup>14</sup> There are no consistent best practice standards or policies about obtaining views of child – what age and how this should happen, who should represent the views of pre-verbal children and no consistent practice for how to ensure the child's views are taken into account. Often the children's views are sought when the child is with their abusive father and they child is too afraid to say what they think because they know whatever they say will be reported to the abuser.



Backbone has discovered there is no authority that is responsible for independently overseeing the safety and rights of children who are subject to Family Court proceedings, and there is no independent and safe mechanism for children to complain. Complaints made to the Children's Commissioner exclude those children involved in Family Court proceedings and the new agency VOYCE2 is only for children in state care.

The New Zealand Labour Party Manifesto 2017<sup>15</sup> says:

*Our children are impacted by the violence they experience and witness at home, even if they don't see the violence, they are acutely aware of what happens in their home, where they expect to be safe can be traumatic and damaging. Presently there is little in the way of effective, accessible support for children to help them overcome the effects of violence Labour will:*

- *Support the development and enhancement of programs that help our children resolve the issues caused by the trauma of experiencing and witnessing violence*
- *As part of an overall strategy to end violence ensure over time that resources are directed to breaking the cycle by dealing with the issues that children present, such as issues of behavior, mental health and anxiety.*

One of the conclusions of the Victoria Royal Commission into Family Violence<sup>16</sup> was: 'Current policy does not pay sufficient attention to the effects of violence on children. Supporting children and young people must be central to family violence policies.'

It is now time that the impact domestic and sexual violence has on children (directly or indirectly) is understood and reflected in policy, legislation and practice at all levels of the system that responds to violence and abuse.

## Backbone recommends

1. That a national network of independent children's advocates be established to work alongside children who are involved in Family Court to ensure their voices are heard. These advocates should have specialist knowledge of domestic and sexual violence and its impact on children and they must be completely independent of the Family Court i.e. not appointed by, or answerable to, Judges or the Registrar of the Court. This service could be expanded over time to cover other parts of the system that children who have experienced violence and abuse are involved in.
2. Fully funded trauma counselling services should be available to all children who have experienced (directly or indirectly) violence and abuse, in a similar way that sexual abuse counselling is funded via ACC. These advocates should have specialist knowledge of domestic and sexual violence and its impact on children. Access to such counselling should not be a guardianship issue and should not be able to be prevented under orders of the Family Court<sup>17</sup> either parent should be able to refer their child/ren to this counselling.<sup>18</sup>

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<sup>15</sup> [file:///C:/Users/RH/Downloads/2017%20Labour%20Family\\_Violence\\_Policy%20\(2\).pdf](file:///C:/Users/RH/Downloads/2017%20Labour%20Family_Violence_Policy%20(2).pdf)

<sup>16</sup> <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf> Pg 8

<sup>17</sup> 20% of women who responded to Backbone's Family Court survey said there were decisions, orders and directions made by the Family Court that prohibited them accessing therapeutic help/counselling for their child

<sup>18</sup> Currently many abusive parents refuse to allow their children to go for counselling

## How Backbone can contribute

Backbone would facilitate input from women whose children have experienced violence and abuse and been in the Family Court to have input into the policy, planning, implementation, and evaluation of a new children's advocacy service in the Family Court.

## Priority 4: Make legislative changes

Most New Zealand Acts and Legislative Instruments are administered by a government agency, usually a department or ministry, which is identified in the Act or Legislative Instrument. A Minister's relevant Ministry is generally responsible for the operation of the legislation and for making recommendations to the government of the day about improving it. The Care of Children Act 2004 and the Domestic Violence Act 1995 are two of the key Acts pertaining to cases before the Family Court where there has been violence and abuse. The Ministry of Justice administers both these Acts and hence both Acts are under the umbrella of responsibility of the Minister of Justice.

Hence the Minister of Justice and Courts and the New Zealand Parliament are ultimately responsible for taking action if the judiciary are not interpreting and implementing the domestic violence law as parliament intended. Government has a duty to care its citizens to ensure all legislation is working as Parliament intends as is not harming innocent people.

New Zealand has for many years had a legislative framework that has been the envy of many domestic violence experts internationally. However, over the years changes have been made that haven't necessarily strengthened the legislation and New Zealand has ended up out of step with the rest of the western world, rather than being a world leader as we had previously been. For example, after Alan Bristol killed his three daughters in 1994 while they were in his custody, despite him facing charges of assaulting his wife, 'the Bristol clauses' were introduced into the Care of Children Act to make it more responsive to cases where violence and abuse were present to further protect children. However, as part of the 2014 Family Court Proceedings Reform Bill these clauses were subsequently removed. Interestingly the United Kingdom has recently introduced provisions into their legislation that appear very similar to the Bristol clauses.<sup>19</sup>

Similarly, changes introduced by New Zealand Parliament as part of the 2014 Family Court Proceedings Reform Bill (more cooperative regimes of shared care of children and the promotion of mediation rather than full court trials) had already been introduced by the Australian Government in 2006. However, in Australia many stakeholders and researchers raised concerns about the negative impact these reforms were having on the wellbeing of children and the victims of domestic violence and the way families affected by 'family violence' were being treated by the Family Court system. As a result, many of these provisions were repealed in Australia in 2011 – a couple of years before New Zealand introduced them.

Backbone has heard about cases from our members where Judges seemingly use certain clauses in the legislation for purposes that may not be aligned with Parliament's intentions when the clauses were introduced. For example, s31 of the Care of Children Act, is being frequently used to make a child a ward of the court in order to forcibly remove child/ren from the protective mother and put them into the care of the abusive father. It is hard to believe that this would have been Parliament's intention. Prior to 2004 children could only be made ward of the court by the Supreme Court and hence we assume it wasn't used for the purposes, or as frequently, as it is currently being used.

Furthermore, Backbone has many examples of where decisions made in the Family Court are not based on current international evidence regarding safe responses to domestic and sexual violence.

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<sup>19</sup> <http://www.bbc.com/news/uk-41440829>

For example, 55% of women told us they had been wrongly accused of parental alienation. Despite the doctrine of parental alienation being internationally discredited for many years it is still being routinely applied by psychologists, lawyer for child and social workers and judges in the NZ Family Court. In their 2015 submission to the parliamentary select committee reviewing Family Violence Law,<sup>20</sup> the New Zealand Psychological Society said:

*'There are two particularly dangerous aspects of the current operation of the Family Court which run counter to the Domestic Violence Act and to efforts to protect women and children from domestic violence. The first of these is the continuing application of Parental Alienation Syndrome. It is a deep concern and a major threat to the safety of women and children that the New Zealand Family Court continues to apply the doctrine of Parental Alienation Syndrome, which has long been discredited in the United States, from where it originated. The guiding principles should clearly state that Parental Alienation Syndrome and Situational Violence are not research validated concepts and are not to be applied by judges, lawyers or others.'*

As we reported in 'Don't Tell Me Your Problems' The Family Court complaints and appeals landscape,<sup>21</sup> there are often insurmountable barriers to appealing decisions made in the Family Court and the complaints processes available are ineffective. We concluded that the Family Court is closed and secretive and therefore unaccountable. This has, in part, been enabled by legislation. For example, s134 of the Care of Children Act 2004 results in women being able to read the psychologists report in their lawyer's office but not to take notes or take a copy away with them. This provision appears to fly in the face of NZ's privacy laws and fundamental human rights (and those of most other westernised countries) that give citizens the right to a copy of the information that is held about them and the right to ask for this to be corrected if it is factually inaccurate.

Women are thereby prevented from responding to anything written in the s133 report or asking for factual inaccuracies to be corrected. Furthermore, women have no right to get a second opinion unless the Court approves, and the legislation says this will only be granted in 'exceptional circumstances'.<sup>22</sup> Such restrictions would be unheard of in other sectors ie obtaining a second opinion is a fundamental right in the Code of Health and Disability Services Consumers' Rights Regulation 1996.<sup>23</sup> We are told that in every state of Australia the parties both have a right to a copy of the psychologist's report and to ask the Court to correct any factual inaccuracies contained in the report.

Section 18 of the Children's Commissioner Act 2003 prohibits the Commissioner or his office from advocating for, or considering complaints from, children who are part of either Care of Children Act

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<sup>20</sup> file:///C:/Users/RH/Downloads/Psyc%20Board%20Family-Violence-Law-Review-Submission%20incl%20PAS%20and%20situational%20violence%20MUST%20be%20removed%20from%20FC%20(3).pdf

<sup>21</sup> <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

<sup>22</sup> This provision is clearly not in the legislation for fiscal reasons because the Act says if approval is given for a second opinion then the party who obtains that approval is liable for the costs of that opinion.

<sup>23</sup> [http://www.hdc.org.nz/the-act--code/the-code-of-rights/the-code-\(full\)](http://www.hdc.org.nz/the-act--code/the-code-of-rights/the-code-(full))

or Domestic Violence proceedings before the Family Court. This means the legislation has resulted in there being no independent and safe mechanism for children to complain.<sup>24</sup>

### Backbone recommends

- That the Family and Whānau Violence Legislation Bill is brought back to the Justice Select Committee for reconsideration so that amendments can be made urgently to minimise the harm being caused to women and children who have experienced violence and abuse.
- That wording as per the ‘Bristol clauses’ is reintroduced to the Care of Children Act 2004 – this could be done under the Family and Whānau Violence Legislation Bill.
- That the Care of Children Act be amended to include a requirement that specialist Child Risk Assessments be undertaken to determine the potential risk the alleged abuser poses to the child/ren in all cases where domestic violence is alleged particularly before care and contact decisions are made and in light of the protective parent no longer being able to keep the children safe.
- That Parliament review and reconfirm their intentions behind s31 of the Care of Children Act and stipulate more clearly the situations whereby they believe that protective parents should have their guardianship rights removed by the Family Court.
- That s18 of the Children’s Commissioner Act 2003 be amended to enable the Commissioner to advocate for, and consider complaints from, children who are involved in Family Court proceedings.
- That measures be introduced to screen all cases before the Family Court for possible domestic and sexual violence and that there is a separate pathway, with a specialist response, for these cases.
- That the overlap and interplay between domestic and sexual violence and child abuse are recognised and reflected in all relevant legislation.
- That the findings from Backbone’s surveys into the Family Court be used to review and possibly amend the Care of Children Act ie sections 6 and 7 regarding the role of lawyer for child, psychologists and Oranga Tamariki and s31 regarding the removal of guardianship rights from protective mothers who are victims/survivors of violence and abuse.
- That the guiding principles in the legislation should clearly state that Parental Alienation Syndrome and Situational Violence are not research validated concepts and are not to be applied by judges, lawyers or others working in the Family Court.
- That the legislation be amended so that parties to Family Court proceedings are given a copy of the s132 and/or s133 report written about them and their children, are able to ask for that to be corrected if it contains factual inaccuracies and the right to independently seek a second opinion if they are prepared to fund that themselves without seeking leave of the Court.

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<sup>24</sup> See also Priorities 2, 3 and 6.

- That all legislative changes needed to give effect to the recommendations contained in this briefing be enacted i.e. to give the necessary authority to an independent complaints body.

### How Backbone can contribute

Backbone, together with our members, would want to have input into all proposed legislative changes, in particular, to ensure that changes made do not further exacerbate the problems occurring in the Family Court.

## Priority 5: Formalise and fund mechanisms for service users to have a voice

Serious social issues often require people to speak out, call for change and improvement and get involved. Backbone believes women and children who have experienced violence and abuse are best placed to tell us where the system is and isn't working.<sup>25</sup> New Zealand needs a safe and independent conduit through which survivors can be heard - where their views can be collected and analysed, and then used to identify where impactful and constructive improvements need to be made to improve the system response.

International best practice recommends that there be a formalised, ongoing or systematic way for service users to be involved in all levels of policy, planning, implementation, service delivery and evaluation. However, this has never happened in New Zealand. It is rare for input to be sought from survivors, when politicians, policy-makers, the legal fraternity, and/or service agencies are developing new strategies or legislation, or designing new initiatives or services to address the problem.

New Zealand has also never had any formalised mechanisms for survivors to turn to with their complaints or questions, and many fear if they do complain things will only get worse for them and their children. Survivors of violence against women and their children are often isolated in their experience. Their isolation is often borne from stigma attached to their experience and also due to potential danger: it is often unsafe for them to speak about the abuse they have experienced for fear of repercussions from their abuser or from the very system that should be keeping them safe. There are few ways for survivors to link up with others who share their experiences.

A guide to involving service users to improve agencies' and the government's response to all forms of family violence, published by the Ministry of Social Development in 2012, says: *'Ensuring the voices of service users are heard while planning, implementing and evaluating services and new initiatives creates increased opportunities for you to provide higher quality, and more efficient and accessible services.'*<sup>26</sup>

More recently, in 2016, one of the conclusions of the Victoria Royal Commission into Family Violence<sup>27</sup> was: *'Policy makers and others responsible for the design, responsiveness and efficacy of the family violence system should hear directly from victims who have recent experience of the system so that improvements can be made.'* Chapter 38 of the Royal Commission's report examines the significance of victim's voices in the design and review of the family violence service system. Recommendation 210 states: *'The Victorian Government and agencies that respond to family violence identify and develop safe and constructive ways to ensure that the voices of victims are heard and inform policy development and service delivery [within two years].'*

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<sup>25</sup> Including specific input from Tangata Whenua to ensure that inequity, racism and systemic abuse is identified and rectified.

<sup>26</sup> Taskforce for Action in Family Violence. Incorporating the Voice of Experience. Family Violence Service User Involvement Guide. July 2012. Available at <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/action-familyviolence/voice-of-experience.pdf>

<sup>27</sup> <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf> Pg 8

The Backbone Collective was set up early in 2017 to enable women to safely tell the Government, the Judiciary, the media, and the public about how the ‘system’ responded to them when they experienced violence and abuse, and how they need it to respond in order to be safe and rebuild their lives.

### Backbone recommends

- That Government adopts a policy requiring those who are developing policy, planning, implementing, evaluating or providing services to engage with and seek the views of women and children who have experienced violence and abuse.
- That Government identifies and develops safe and constructive ways to ensure that the voices of survivors are heard and used to inform policy development and service delivery.
- That Government formalises the work Backbone is doing by contracting us to be the primary conduit for the voices of women and children who have experienced violence and abuse and to be an integral part of a new continuous improvement system for domestic and sexual violence (refer Priority 6).<sup>28</sup>

### How Backbone can contribute

Backbone would be ideally placed to become the primary mechanism for engaging with and seeking the views from women and their children who have experienced violence and abuse.

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<sup>28</sup> To date Backbone has primarily sought the views of women who have experienced domestic violence and been in the Family Court. We have heard from many women who have been sexually abused within their relationship. It has always been our intention to also focus on women who have experienced sexual abuse and assault by someone other than their intimate partner. This is on our programme for 2018.



## Priority 6: Establish a continuous improvement framework

Violence against women is a complex social issue and single ‘bright ideas’ will have little impact on reducing the prevalence or impact. People who have written about how to tackle complex social issues have said that often information is not available that helps us know what to do to fix the problem and so a continuous improvement framework is essential – that is, the system needs to continually listen to the people who use it (or who could use it) and make any changes required to ensure that all parts of the system operate as effectively, equitably and as safely as possible.

For continuous improvement to work it needs to be part of an infrastructure by which all stages of the cycle can be co-ordinated in a continuous and ongoing manner. This should enable gathering of available evidence to inform innovation, strategy and planning, implementation at a local level, and then review and evaluation in order to build more evidence and feed that back into strategy and planning. Formal systems and processes need not stifle these activities but rather provide the framework for maximising opportunities while minimising risks. What is critical is that there are mechanisms to make changes as the learning occurs.

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The overall objectives of a continuous improvement framework would be:

- To ensure all parts of the Integrated System were operating to best practice levels and achieving optimal immediate and, intermediate outcomes
- To collect, collate and disseminate evidence so that learning can occur, and ongoing improvements made over time

The main sources of evidence feeding into the continuous improvement process would be:

- Surveys and interviews with service users<sup>29</sup>
- Monitoring data
- Evaluation and other research findings
- International examples of successful practice and legislation
- Findings from the Family Violence death reviews
- Independent complaints processes
- System quality assurance findings
- Inquiry review and recommendations

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<sup>29</sup> Including those who would use services if they were safer and more appropriate for their needs. Including specific input from Tangata Whenua to ensure that inequity, racism and systemic abuse is identified and rectified.

Backbone’s mission is to help facilitate the continuous improvement of the system that is designed to respond to women and their children when they experience violence and abuse by giving them a safe and anonymous way to share their experiences and insights. We believe the system needs to be accountable for how it responds to its users.

If continuous improvement processes were put in place from the outset and continued in a consistent and sustained way – with continual learning to improve the system – over time, the incidence of violence and abuse of women and children, the social consequences and the intergenerational transmission would be reduced.

### Backbone recommends

- That a continuous improvement framework be established for violence against women and their children in New Zealand.
- That an independent complaints body be established with powers to make recommendations for change, with jurisdiction over all parts of the system that respond to violence against women and children. As an interim measure until a Royal Commission has been established and concluded its work, this process would be responsible for considering all complaints made by women and children who have experienced violence and abuse and who are in the Family Court.
- That Government works with the Law Society, the Psychologists Board, MVCOT, and the Judicial Conduct Commission to amend their complaints processes so that all complaints regarding the Family Court are reported to, and investigated by, the the independent complaints body or professional body immediately upon receipt rather than referring these back to the Family Court Judge concerned.<sup>30</sup>

### How Backbone can contribute

Backbone is very interested in becoming an integral part of the new continuous improvement system for violence against women and children in New Zealand. We believe we are ideally placed to actively seek input from women (via surveys, interviews, focus groups or our online forum).

Backbone is also ideally placed to continue the work it has started as a watchdog of the Government, the legal system and all agencies working within the response system by conducting close-up assessments of specific issues that have bubbled up from communications we have had with Backbone members and by tracking and reporting on whether any action has been taken to address the problems already identified by the Backbone members or from other reports.

Backbone would, subject to resourcing, welcome any opportunities to work collaboratively with agencies and/or individuals providing the other sources of evidence into the continuous improvement process to assist in achieving the collective objective of safety for women and children who have experienced violence and/or abuse.

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<sup>30</sup> Refer

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

## Priority 7: Develop a national strategic framework

Governments throughout the world are grappling with ways to reform their public services so they are more able to tackle big complex social problems, deal with complexity and work more collectively. The traditional approaches Government has taken to develop policy and solve problems have not achieved significant social change or return on investment for the money spent and all the evidence suggests it is time policy and decision makers approach things differently.

In order to reduce the incidence, severity and impact of domestic and sexual violence in the short, medium and long-term, a multi-faceted strategy is needed to take account of the complex interactions between all relevant factors.<sup>31</sup>

The New Zealand Labour Party Manifesto 2017<sup>32</sup> says Labour will:

*Create a strategy to reduce rates of family violence in New Zealand in partnership with sectors and key stakeholders. This strategy will include legislation; community responses and models; statutory agency responses; public awareness and education programs and will include programs specifically for children to deal with the trauma of witnessing or experiencing violence; the harmful effects of viewing objectionable material online and in social media and consent and relationship programs as part of school curricula. It will focus on crisis intervention in the first instance, and include an increasing focus on primary and tertiary prevention over time*

*Set targets to reduce family violence rates over a specified timeframe, which is likely to be around 25 years for a Violence Free Aotearoa New Zealand.*

*Ensure over time that resources are directed to breaking the cycle by dealing with the issues that children present, such as issues of behaviour, mental health and anxiety.*

## Backbone recommends

1. That a strategic framework be developed to guide all domestic and sexual violence developments over the next 10 years based on the following foundations:
  - Recognise that the vast majority of victims of domestic violence and abuse are women and incorporate a gendered analysis into the national strategy by naming the problem 'violence against women and children as has been done in Australia, U.K and the U.S.A.
  - Place those who have experienced violence and abuse at the centre of everything and ensure the voices of service users are heard while planning, implementing and evaluating services and new initiatives and ensure the voices of Māori survivors are heard in a way that respects collective, cultural, and personal suffering.
  - Respect Māori as tangata whenua and Te Tiriti O Waitangi as the founding document that guides relationships between tangata whenua and tauwi and acknowledges the harm done to Māori through the colonisation of Aotearoa, the loss of Māori land, language and culture.

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<sup>31</sup> <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>

<sup>32</sup> [file:///C:/Users/RH/Downloads/2017%20Labour%20Family\\_Violence\\_Policy%20\(2\).pdf](file:///C:/Users/RH/Downloads/2017%20Labour%20Family_Violence_Policy%20(2).pdf)

- Develop a shared understanding so that all parties were 'looking through the same lens'.
  - Recognise the overlap between intimate partner violence, child abuse and neglect and sexual violence and reflect this understanding at all levels of policy and practice.
  - Acknowledge that domestic and sexual violence cause immediate and direct damage to individuals and whānau.
  - Recognise that violence and abuse in the home is a major contributing factor in many other social issues the Government wants to address.
  - Reflects that domestic and sexual violence are complex and wicked problems and therefore need new approaches.
  - Decentralise to enable greater integration of public service systems, and the fostering of deep relationships both among citizens and between service users and frontline professionals.
  - Integrate vertically and horizontally, at national and regional levels, so that victim/survivors, front line personnel, academics/researchers, Government and non-Government agencies can readily share information and work collectively.
  - Recognise that we know very little about the 80-90% of domestic and sexual violence cases that are not reported to Police; the demographics and the needs of these unreported cases might be very different.
  - Demonstrate strong national and regional leadership and governance.
2. That the strategic framework is informed by evidence from individuals, families and whānau who have experienced violence and abuse and front-line personnel.

Those who have experienced violence and abuse and those who work on the frontline of service provision are best placed to tell us what is and is not working with the current system and what changes would have the greatest impact on keeping them and their children safe, helping them rebuild their lives, holding the perpetrators to account and thereby reducing the intergenerational cycle of abuse.

3. That the framework builds on successful local and international examples

There are good local and international strategies or strategic frameworks for domestic and sexual violence that this Government could learn from.<sup>33</sup>

## How Backbone can contribute

Government could contract Backbone to survey women who have experienced violence and abuse and identify what needs to change in order for things to work. This would include seeking new innovative ideas not just solutions to current problems.

Backbone could work alongside an independent agency contracted to survey front line staff to ensure our questions are aligned to assist Government assimilate the findings.

<sup>33</sup> For example, E Tu Whānau, Pasefika Proud, the report of the Taskforce for Action on Sexual Violence, the Royal Commission of Inquiry into Family Violence in Victoria, the UK government strategy of ending violence against women and girls, the New South Wales strategy to better guide its system response to family and domestic violence.

## Priority 8: Over time build a national integrated system

Violence against women is everybody's issue; it goes against women and children's right to be safe and it impacts heavily on individuals, society and the economy. Therefore, when violence against women happens, New Zealand needs a response system that has the biggest and most positive impact on as many cases as possible. We need a system that holds abusers accountable for their violent/abusive behaviour and keeps victims safe by wrapping a joined-up system around them to do everything possible to reduce the immediate and long-term effects of the violence/abuse.

A fully integrated system is the missing piece of the puzzle in New Zealand's current response to domestic and sexual violence. To reduce the burden on individuals, society and the economy we need to design a system that makes the greatest impact on as many cases as possible, ensuring an early and more effective response and encouraging the unreported cases to seek and gain help. In doing so we would not only reduce the incidence of domestic and sexual violence but reduce the incidence of many other linked social issues and reduce the economic costs.

Ten years ago the state of Victoria in Australia began to implement a series of reforms to build an integrated response to violence against women and children. The Victorian system has been seen as one of the world leading models for responding to family violence. In 2015 the Victorian Government established a Royal Commission, with the Premier declaring that family violence was *'the most urgent law and order emergency occurring in our state and the most unspeakable crime unfolding across our nation'*. The Premier also acknowledged that *'more of the same policies will only mean more of the same tragedies'*.<sup>34</sup> The Royal Commission's 2000+ page report,<sup>35</sup> with 227 recommendations, contains extensive material that New Zealand would be well advised to refer to and learn from in order to build a world leading integrated response system.

In our 2014 independent report<sup>36</sup> we proposed a new Integrated System model that would provide the infrastructure needed in order for sustained and long-term change to happen. Our model is closely aligned to the Victorian approach. It appears that the Labour Party's thinking is aligned with ours. In their 2017 manifesto<sup>37</sup> they say the Labour Party will: *'Ensure that we have an integrated system that will allow community and Government agencies to work together to reduce family and sexual violence.'*

### Backbone recommends

1. That the New Zealand Government's long-term objective is the development of an integrated system for domestic and sexual violence where all agencies and individuals who are either directly or indirectly involved at all levels operate as one system.

Other countries are already taking steps to adopt an integrated system approach. New Zealand is fortunate to be able to learn from their experiences - to draw from all possible sources and build the optimal system.

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<sup>34</sup> <http://files.rcfv.com.au/Reports/Final/RCFV-All-Volumes.pdf>

<sup>35</sup> Ibid.

<sup>36</sup> [http://theimpactcollective.co.nz/thewayforward\\_210714.pdf](http://theimpactcollective.co.nz/thewayforward_210714.pdf) and refer Appendix 2 for the executive summary

<sup>37</sup> [file:///C:/Users/RH/Downloads/2017%20Labour%20Family\\_Violence\\_Policy%20\(2\).pdf](file:///C:/Users/RH/Downloads/2017%20Labour%20Family_Violence_Policy%20(2).pdf)

2. That a national system implementation plan is developed and used to systematically transition all existing initiatives, structures, services, and processes into a national integrated system.

We need to build on what works, incorporate the existing Integrated Safety Response (ISR) pilots, regional FV networks, multi-agency processes, national service provider collectives, NGOs etc and fill the gaps and remove overlaps and inconsistencies.

3. That a national backbone agency and regional hubs be established.

The evidence is clear that to function effectively an integrated system needs an independent backbone agency responsible for creating and managing the transition of the existing system components, horizontal and vertical integration, governance mechanisms, leadership and national consistent resources including training frameworks, shared policies, practice standards, processes, risk assessment tools and referral pathways.<sup>38</sup>

4. That academic evidence and international experience be brought together with the views of women and children who have experienced violence and abuse to guide the development of the integrated system.

5. That a comprehensive range of resources be developed to guide and support integration. We envisage these would include, but not be limited to:

- Organisational service and practice standards including policies, procedures, referral pathways and required quality assurance processes
- Templates to guide regional governance structures and processes
- Risk and safety frameworks including standardised risk assessment and safety planning tools and integrated response processes
- Service accreditation standards and processes
- Written resources to support and guide local groups working together.
- Minimum service standards
- Templates to help build regional or local governance structures
- Written resources that support and guide local groups working together
- Common risk assessment tools
- Guides to assist development of referral pathways
- Shared training and workforce development
- Population needs assessment
- Service mapping
- Information management
- Community development and engagement

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<sup>38</sup> The backbone agency could perhaps start as a unit within Department of Prime Minister and Cabinet (or one of the Government Ministries) and transition over time into a dedicated independent body.

## How Backbone can contribute

As with Priority 7, Government could contract Backbone to survey women who have experienced violence and abuse to guide the development of the integrated system.

Backbone members would be particularly keen to have input into, and to comment on, any resources to be developed to guide and support integration.

## Appendix 1: About the Authors



### **Ruth Herbert**

Ruth is well known for her work in trying to improve New Zealand's system response to violence against women and children. She has given many presentations and media interviews and researched and written extensively about intimate partner violence, child abuse and neglect and sexual violence. Ruth has a Master of Public Policy (dist.) and was awarded the 2008 Holmes Prize for her evaluation of New Zealand's family violence strategies.

For the past 20 years Ruth has run her own consultancy specialising in strategy, implementation and evaluation. During this time she has managed a range of major projects including national and regional service development, change management, programme design, system and structural audits, reviews and evaluations. In recent years she has been a member of the independent Ministerial Review Panel assessing the implementation and impact of Accident Compensation Corporations' new sensitive claims clinical pathway, the Director of Family Violence at the Ministry of Social Development and the Executive Director of the Glenn Inquiry.

In August 2013 Ruth and Jessica Trask set up 'The Impact Collective', a specialist consultancy committed to working collaboratively to find lasting solutions for complex social problems.



### **Deborah Mackenzie**

Deborah is passionate about improving the experience of women survivors of IPV in New Zealand. She has extensive front line experience working in the intimate partner violence sector including roles at the Auckland Family Court and the District Court as a victim adviser, a women's advocate for an NGO and the family violence interagency network coordinator in Auckland for six years.

Her more recent roles have involved more behind the scenes work including policy analyst at a sexual abuse agency, project manager in the Family Violence Unit (Ministry of Social Development) and independent research/writer.

Deborah has a strong interest in improving the justice sector response to intimate partner violence with a particular focus on specialist domestic violence courts. Deborah has written papers on Specialist Domestic Violence Courts and female offenders in Auckland (2006, 2007 & 2009). She has extensive experience in presentation and trainings on dynamics of intimate partner violence and creating coordinated response systems. Deborah has a MA in Education.



## Appendix 2

### Executive Summary

New Zealand has an epidemic of intimate partner violence (IPV) and child abuse and neglect (CAN). This fact is well known and there is widespread acceptance that IPV and CAN are among New Zealand's biggest social issues.

Over the past 20 years there have been countless formal groups, meetings, conferences, strategies, reviews, and investigations into the prevalence and problem of IPV and CAN in New Zealand undertaken by government, non-government agencies and academics. There have been hundreds of reports identifying the problem and areas that need to be addressed. There have been action plans containing an endless stream of largely one-off initiatives or new developments.

Yet despite the plethora of documents, a strong legislative framework and the efforts of successive governments and many NGOs that have strategised and delivered services to try and 'fix' the problem, real improvements seem to remain elusive. New Zealand has not made significant traction in responding to or reducing the problem.

### **It is time to think and act in a new way**

In this document we are taking a fresh approach - we do not want to relitigate the problem or make recommendations for yet more remedial 'quick fixes'. We don't want this document to be yet one more report for the filing cabinet.

We want to talk about what needs to be done to see real long term sustained change happen. The Integrated System model proposed in this document is not a strategy or a new service initiative - it focuses on the infrastructure needed in order for sustained and long term change to happen. We do not provide options or recommendations; rather, we provide a proposal for the way forward and we believe this is New Zealand's only option if we want to successfully deal with the problem of IPV and CAN.

When we started out independently to design the Integrated System model we were not associated with the Wairarapa Violence Free Network. As part of our desire to test our ideas at the local level, we approached them, aware that they are seen as one of the most progressive regions in New Zealand with respect to IPV and CAN. They jumped on board, embraced our ideas and made a commitment to work with us to show government what needs to be done. We are now jointly engaged in showing New Zealand the way forward.

In order to present our proposal for change we firstly need to examine the issue - but we do that in order to show the scale and the complexity of the problem and why efforts to date have not made a difference.

In New Zealand the epidemic of IPV and CAN and its negative effects are spreading rapidly - from one person to another and from one generation to another like an infectious disease. However, with IPV and CAN, transmission is more complex than a typical infectious disease - it doesn't only spread

to become more abuse and violence. The trauma caused by experiencing chronic and repeated victimisation over time has a cumulative or snowballing effect that frequently manifests in many other social issues.

New Zealand ranks worst in the western world for IPV and amongst the worst for CAN. Local and international evidence shows that IPV and CAN directly contribute to many of the other complex social issues that are at epidemic levels in New Zealand. It is therefore not surprising we are also amongst the worst in the world for these connected issues including youth suicide, bullying, youth violence, teen births, sexual violence, young people not in education, employment or training to name a few. We believe it is time New Zealand started looking through a new lens at many social issues - poverty, alcohol and drug abuse, mental illness - seeing them not as the cause of IPV and CAN but the consequence. Until we do this we will be continuing to put a band-aid on the problem - spending vast amounts of money treating the symptoms that manifest themselves while leaving the underlying issues unresolved.

The collective and cumulative effect of IPV and CAN is placing a heavy burden on individuals, our society and the New Zealand economy and every day, every week, and every year things get worse as the effects continue to spread.

The full extent of the social and economic costs resulting from the high levels of IPV and CAN in New Zealand are not well understood, but the evidence we provide suggests, they are much greater than currently appreciated. We have applied various scenarios to existing but outdated economic assessments and concluded that IPV and CAN currently cost the New Zealand economy at least \$8.326 billion per annum.

### **IPV and CAN are currently costing every man, woman and child in New Zealand \$1,833 per year - every year.**

This makes IPV and CAN everyone's problem and everyone's responsibility. Until we address these issues New Zealand society will be poorer and each and every New Zealander will be less well off.

Only about 20 percent of IPV and CAN is currently reported to the New Zealand Police. It is unrealistic to expect to create significant change to the prevalence and impact of IPV and CAN if our efforts and responses are focussed only on the 20 percent of reported cases. Similarly we will never address the impact IPV and CAN is having on so many other social issues or the intergenerational transfer of the problem if we are not reaching 80 percent of cases.

To reduce the burden on individuals, society and the economy we need to design a system that makes the greatest impact on as many cases as possible, ensuring an early and more effective response and encouraging the unreported cases to seek and gain help. In doing so we would not only reduce the incidence of IPV and CAN but reduce the incidence of many other linked social issues and reduce the economic costs.

IPV and CAN are complex problems. One-off, 'quick fix' remedial solutions do not work for complex problems – in fact they can easily make matters worse.

An integrated system is identified in the leading New Zealand and international literature and practice experience as being the best model to meet the challenges faced in preventing and responding to IPV and CAN. Other countries are already taking steps to adopt an integrated system approach. New Zealand is fortunate to be in a position to learn from their experiences - to draw from all possible sources and build the optimal system.

### **A fully integrated system is the missing piece of the puzzle in New Zealand's current response to IPV and CAN.**

A well-recognised example of a complex but fully integrated system is the London Underground. There are multiple entry points and multiple companies operating different lines on the network but all services are connected. A traveller can enter at any point and travel, often via multiple connected routes, to the required destination. The system works because there are clear pathways, consistent safety standards, and agreements between the many different agencies providing services as part of the system. There is local autonomy; all stations (entry points) are different and serve different communities. In the London Underground no matter which station you use to enter 'the system' you can travel to any point around the vast city and to many surrounding suburbs without ever leaving the complex network of stations, platforms and lines.



The Underground provides us with a way to explain 'system thinking'. It is the process of understanding how each part within the whole system influences other parts. We can translate the idea of system thinking to an 'integrated system' response to a social problem like IPV and CAN.

An integrated system is a formal and proactive response whereby all agencies will deliver consistent and safe services. Complex problems such as IPV and CAN involve multiple agencies and individuals, each with differing responsibilities and working on different parts of the problem. An integrated system for IPV and CAN is where all agencies and individuals who are either directly or indirectly involved at all levels operate as one system.

When IPV or CAN is disclosed (to any agency), in effect, it is reported to the one system and mechanisms are in place to ensure seamless and effective service provision regardless of the entry point. There are clear referral pathways between all agencies in 'the system'; entering through any door leads into a broad system of community-wide support. This means anyone entering the system can access services via what might seem unlikely routes. It also means that when someone is being treated in the mental health system, the youth justice system (or the many other connected systems) and it is found that they are suffering from cumulative trauma of IPV or CAN, they can efficiently be 'linked up' with specialist IPV or CAN provider(s).

The New Zealand and international evidence is clear that in a high proportion of families IPV and CAN and sexual violence are all occurring. The system that responds to CAN must be integrated with the system that responds to IPV. Strategies aimed at addressing CAN are less likely to be successful unless any current or past IPV is also addressed and vice versa.

### **The current system is broken - fragmented and inconsistent, with gaps and overlaps - there is no infrastructure to hold all the various parts together.**

There have been endless reports showing that the current system is unfit to provide a 'one door – right door' response to victims/survivors or abusers seeking help for IPV and CAN. In the current IPV and CAN system, leadership, governance and coordination activities do not adequately reflect the complexity of the issue. There are multiple agencies working at multiple layers. There are over 200 - largely disconnected leadership, governance and multi-agency groups, networks and coordinators trying to address the problem nationally and regionally. There is no shared understanding of IPV and CAN. This has resulted in government departments, non government (NGO) agencies and frontline workers holding different understandings of the 'problem' and different ideas about the appropriate responses.

There are very few lines connecting the stations, there are no maps or signage to guide people around the system, many stations are overcrowded with people, some people are lost between stations trying to navigate for themselves, some stations are missing all together and only a few of the staff running the system have been fully trained. The Family Violence Interagency Response System (FVIARS) is the primary means of inter-agency case management – but it is not a system – it is a discrete series of meetings happening in an isolated way throughout New Zealand.

Organisational practice is inconsistent. There is no standardised approach for identifying and managing high risk cases. There are no clear lines of accountability, no mechanisms to repair parts of the system when things go wrong and no evidence-based and standardised safety planning

processes to ensure all those travelling the system are safe. Services are fully stretched and there is no way we can keep loading more cases into the current system. Meanwhile we focus on temporary repairs - minor adjustments and short-term initiatives, thinking that if we just did one or two more things we could fix the problem.

### **We must stop trying to fix individual parts of the existing system.**

Attempting to identify and respond to more cases more effectively with the current system would be akin to building a new story on a house that has poor foundations. It would simply not hold up; money would be wasted and in time, the cost of fixing it would be much greater than if the job had been done properly in the first place.

The Integrated System infrastructure we propose as the way forward would consist of a national backbone agency and approximately 32 regional hubs – for the purposes of this proposal we are assuming that Wairarapa would be the first regional hub – the demonstration region where the model would be established, evaluated and modified as need be before being systematically rolled out to the other 31 regions.

Establishing the Integrated System is not about replacing what already occurs, stopping and starting again, or taking random remedial actions. That would only exacerbate the situation. The approach we are proposing builds on what works, incorporates the existing networks, agencies and multi-agency processes, fills gaps and removes overlaps and inconsistencies. However the Integrated System would also provide the infrastructure and the processes to link and support all parts of the system to work together. The system would provide processes to ensure continuous improvement so that all parts of the system operate as effectively and equitably as possible.

To date most of the family violence initiatives have been top-down, designed by central government agencies with little or no input from the community, local service providers or victims/survivors. New initiatives have been implemented in a predominant single-agency culture. Moving to an Integrated System means we would need to start thinking locally, acting locally and resourcing locally to build this new system. Local service providers and service users would be engaged in ensuring the system is working effectively in their area. Local communities, government and non government agencies and researchers would work hand in hand towards common goals, harnessing the collective effort.

The Integrated System would take responsibility for keeping victims/survivors safe by wrapping a joined-up response around them, doing everything possible to reduce the immediate and long term effects of the abuse and for containing, challenging and changing the abuser's behaviour.

The Integrated System would improve the way inter-agency coordination operates; offer multiple doorways into the system and clear referral pathways around the system. The system would be continually evaluated and monitored and findings of those evaluations would inform future

development. If continuous improvement processes were put in place from the outset and continued in a consistent and sustained way – with continual learning to improve the system – over time, the incidence of IPV and CAN, the social consequences and the intergenerational transmission would be reduced.

However, there is no way that could be achieved within current service capacity. The model must be scalable so the required high quality standards are maintained at all parts of the system while expanding to accommodate more and more cases.

### **We have to start and not stop until major change has been achieved.**

There are no ways to cut corners with an ambitious initiative such as this. Achieving long term sustainable outcomes would require careful planning, widespread community engagement and staged implementation. These problems took generations to create. They will require a well managed, sustained effort over the long term to be reversed.

It is vital that the Integrated System be implemented in a considered manner that takes time to meet the challenges, builds on existing practice and the innovative work beginning to take place within New Zealand communities, aligns with government priorities and new contracting initiatives, incorporates international findings and provides the best possible response to the needs of those affected.

New Zealand will have to spend in order to save, but like any investment it will only produce good returns if we invest wisely in a high quality system that continually collects evidence and makes improvements, that becomes more and more effective over time. To continue investing our scarce public dollars in an ad hoc way with no evidence of any return would be as the saying goes, 'throwing good money after bad'.

Investing in this Integrated System will produce a 15-fold diminishing return on investment. The greater the investment in a strong, effective, equitable and scalable system, the greater will be the social and economic savings.

There is a lot of work ahead of us to achieve the change the Integrated System can bring. This proposal shows that the Integrated System is the way forward. The cost of not taking this step is too great in every sense.

### **Addressing IPV and CAN in New Zealand will take vision, political commitment and a concerted effort.**

### Executive Summary

Backbone believes one of the primary objectives of any system response for women and children who have experienced violence and abuse should be providing the opportunity and support to help them safely rebuild their lives. When women experience violence and abuse they may reach out to 'the system' to protect them and keep them safe. The Family Court is a critical part of the response system that women may rely on following separation for protection and further safety.

The women who participated in this survey reported serious negative outcomes from being involved with the New Zealand Family Court. Women told us that even though initially they went to the Family Court after separating from an abuser seeking protection and safety they now wish they had never done so. For these women, the Family Court has become the new abuser and many have told us it is worse than the abuser. They have been unable to rebuild their lives as they are trapped in Family Court proceedings for years. During this time they continue to be exposed to violence, abuse and associated trauma and they are unable to 'move on' in any way.

Women told us that the Family Court actively undermined their and their children's safety in a multitude of ways. They described the Family Court as somewhere where their experience of violence and abuse was not believed, was minimized and not responded to, where their abuser was seen as safe and any risk to them and their children was neither assessed nor considered. Some women talked about experiencing discrimination and Māori women reported racism. Women went to the Family Court often seeking protection for themselves and their children but once they found that their children were not listened to and were subsequently placed in unsafe situations. Women told us of being wrongly accused of a range of things that impacted negatively on decisions being made about them and their children's lives.

Women's harmful experience of the Family Court was made much worse because of the compounding effect of time spent in court proceedings, the increasing financial burden and the multiple health impacts. They identified that there was no logical start or end point in the proceedings; once they got involved in the Family Court they found it impossible to get out. Many said they were just 'hanging out' until their child turned 16 and they no longer had to be involved.

Women told us that it was the 'system's' response (the Family Court) that put them and their children in more danger after leaving an abusive and violent partner—not *always* the violent and abusive ex-partner or family/whanau member. Consequently, the system that is supposed to keep women and children safe when they experience violence and abuse made them **less** safe not more so.

Given this report contains overwhelmingly negative feedback from so many women and that there is such consistency in their experiences in the Family Court, we assume the information contained in this report will be of grave concern to the New Zealand public and those in authority – those who are responsible for ensuring the Family Court is safe and effective for women and children who have experienced violence and abuse.



Backbone believes the only way to determine whether the failures women are telling us about in the Family Court are accurate and systemic is to conduct a Royal Commission of Inquiry into the New Zealand Family Court. A Royal Commission of Inquiry is the only forum where the women and their families or whanau would feel sufficiently safe to tell their stories, where witnesses with specialist insights into the workings of the Family Court could share their views in confidence and where all their court documents (transcripts, reports, minutes and orders) and procedures can be independently reviewed.

**With the majority of the 500 women who shared their experiences of the Family Court for this report telling us that the New Zealand Family Court makes them and their children less safe, leaves them with multiple crippling health conditions and prevents them from rebuilding their lives (and those of their children) - surely those in authority must now listen and take immediate action?**

This Family Court survey found:

- All of the women taking part in the survey had experienced forms of violence and abuse and 50% told us they experienced litigation/legal-abuse.
- Wahine Māori are more likely to experience racism and find that cultural beliefs and practices are not comprehended in the Family Court.
- 417 women said their experience of violence and abuse was not believed or responded to, was minimised, or was not accepted into evidence.
- 83% of women told us the Family Court treated their abuser as safe.
- 58% of women attending Family Court-related appointments, fixtures, or hearings have been threatened, intimidated, or physically assaulted by their abuser.
- 93% of women do not feel psychologically or physically safe when the Family Court forces or coerces them into joint activities with their abuser.
- 155 women said the Family Court had forced their child/ren to spend time with the abuser. All of these women were worried about their child's safety while in the abuser's care.
- 107 women have been denied a support person in court or mediation.
- 166 women have been abused by a Judge, a lawyer, a psychologist (or other official person) while in the Family Court.
- 233 women were wrongly accused of being mentally unwell/unstable in Family Court proceedings.
- 120 women have been ordered by the Family Court not to talk to their child about the violence and abuse - thereby forcing women and children to pretend their trauma does not exist.
- 84 women have been ordered by the Family Court not to talk to others about what is happening to them in the Family Court.
- 50% of the 'gagging orders' against women were initiated by the Judge or the Lawyer for Child.



- 300 women have been traumatised by Family Court proceedings.
- 93% of women have suffered negative health impacts because of how they have been treated during Family Court proceedings.
- 19% of women have been involved in Family Court proceedings for between 7 and 22 years.
- Women are up to \$500,000 in debt due to having to fund their Family Court proceedings.

## Executive summary

When Backbone released its first Watchdog report 'All Eyes on the Family Court' in April 2017, we outlined issues that women had told Backbone they experienced in the Family Court including that the Family Court was closed and secretive, lacked accountability and transparency and the complaints systems did not work.

Principal Family Court Judge - Laurence Ryan and Minister for Justice and Courts – Amy Adams, publicly responded stating that Backbone was incorrect to suggest the Family Court is closed, and unaccountable. They said that women had access to ways to review the Family Court proceedings via appeal and the Judicial Conduct Commissioner if they were not happy. Having now examined the appeal process and the multiple complaints mechanisms available (or not), Backbone is as convinced as ever that the Family Court is a law unto itself – it is closed, secretive and unaccountable *and* the complaints processes available are ineffective.

Our overall findings in this report show that there is no independent authority tasked with monitoring and overseeing the Family Court and reviewing/regulating its outcomes.

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### **There is no independent authority tasked with monitoring and overseeing the Family Court and reviewing or regulating its outcomes.**

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We could not find collated information anywhere that told us which the appropriate complaints bodies were, what their role was or their functions and limitations, who they were accountable to and how effective they were for women and children in the Family Court. When we asked different organisations for their information about complaints received, many replied that they either did not collect information about complaints and/or it would be too difficult to do so and they could therefore not provide us with information.

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### **Many organisations do not collect data on the number or type of complaints they have received, making it impossible to get an overall picture of dissatisfaction with the Family Court.**

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Backbone relied on the information women had shared with us in the Family Court survey to create a map of the appeals and complaints landscape. After plotting the various organisations on that map we set about finding out about them and their relationship to each other. The resulting map is one of confusion, dead ends and ring roads.

Women, children and tangata whenua in New Zealand have legitimate rights to make complaints about the Family Court under international human rights treaties that our country has signed up to and Te Tiriti O Waitangi. Many women told Backbone in the Family Court survey that they had experienced discrimination in the Family Court based on their gender, ethnicity, physical ability,

religion, and income<sup>1</sup>. These kinds of discrimination are breaches of Human Rights. However, Backbone has found that women are unable to complain to the Human Rights Commission about these breaches and in effect that means that the Family Court is able to ignore its obligations to the international treaties that New Zealand is a signatory to.

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**Appeals are not available to most women as they are costly, require representation, have a time limit and rely on final orders being made.**

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The legal appeals process is not available to all women and has significant barriers as it is costly, requires adequate representation, has a narrow time limit and is only available for final orders unless leave is granted by the very same Judge who made the interim decision that is being appealed.

Many women do not complain due to lack of information available about the complaints bodies and processes, lack of affordability, the trauma they carry as a result of the abuse they have experienced from the abuser *and* the Family Court, and fear – of both the abuser *and* the Family Court.

Many women do not understand what their rights are to begin with as they have not been explained to them nor what the roles of those working in the Family Court are, therefore making it difficult to know if they have a legitimate issue to complain about.

The Family Court makes decisions which impact on the lives of children and their subsequent safety. We have discovered there is no authority that is responsible for independently overseeing the safety and rights of children who are subject to Family Court proceedings, and there is no independent and safe mechanism for children to complain.

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**There is no authority responsible for overseeing the safety and rights of children who are subject to Family Court proceedings or an appropriate complaints body for children.**

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Backbone members have told us that their children's views were not appropriately represented to the Family Court by those tasked with doing so. The Lawyer for Child is supposed to represent the child's best interests, welfare and wishes, but women have repeatedly told us that the Lawyer for Child is acting as an agent for the Judge – not for the children. Complaints made to the Children's Commissioner exclude those children involved in Family Court proceedings and the new agency VOYCE<sup>2</sup> is only for children in state care.

In the coming months Backbone will be surveying its members specifically on how their children have been treated by the Family Court.

Women have described serious repercussions for complaining and privacy breaches of their complaints that have resulted in biased and unsafe decisions being made in the court. Women told

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<sup>1</sup> 154 reported gender bias, 46 women reported racial bias- of which most were Maori women, 79 women reported accessibility issues, 124 women reported economical bias because they were not well off or were on a benefit and 33 reported religious bias.

<sup>2</sup> Voice of the Young and Care Experienced – Whakarongo Mai

Backbone they were punished for complaining even when in the few cases their complaints have been upheld. In many cases complaints ultimately make their way back to the presiding Judge to consider even when those complaints are concerning a professional discipline of which the Judge has no authority or experience (psychology, children's developmental needs etc.), for example complaints about:

- the Lawyer for Child go to the Judge not to the Law Society
- the psychologist go to the Judge not the psychologist's board
- the social worker go to the Judge not the SWRB<sup>3</sup> or Oranga Tamariki<sup>4</sup> as the employer.

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### **There are serious repercussions for women who lodge complaints about the Family Court.**

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Backbone has discovered that many people in authority have known about the failings in the Family Court (concerning women and children who have experienced violence and abuse) for a long time and they have received many complaints and yet have not intervened or elevated their concerns to a higher or more appropriate authority when they have been unable to get involved themselves. It seems that no one has been ultimately accountable or wanted to be.

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### **Many people have known about dangerous practices in the Family Court for a long time and no one has done anything to address these failings.**

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The Minister of Justice and Courts and Parliament are ultimately responsible for taking action if the judiciary are not interpreting and implementing the law as parliament intended. They have a duty to change the legislation to ensure it works as intended (safely).

Failure to do this signals to the New Zealand public that the Minister and Parliament are content that women and children who have experienced violence and abuse are being made less safe by the Family Court and its current interpretation and implementation of both the Domestic Violence Act 1995 and the Care of Children Act 2004.

Backbone believes that someone should have seen these multiple and ongoing complaints as signs of a systemic failure and investigated long ago – they have been told and done nothing. Backbone believes that the ineffective appeals and complaints landscape concerning the Family Court provides further urgency to our call for a Royal Commission of Inquiry into the Family Court. It's time someone with independence and authority took a *much* closer look.

The following report is compressive and detailed. We encourage readers to take time to delve into it. However, Figure 1 provides, at a glance, the inadequacy of our current system to respond appropriately and safely to complaints about the Family Court.

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<sup>3</sup> Social Worker's Registration Board

<sup>4</sup> Formerly Child Youth and Family

**Figure 1: Overview of the complaints response to the Family Court**

| Complaints Body                      | Able to accept Family Court complaints | Complaint considered independently of the presiding Judge | Response is effective, clear, and acceptable | Independent and effective Family Court complaints mechanism |
|--------------------------------------|--|---|--|---|
| Judicial Conduct Commissioner        | ~                                      | ✗   | ✗  | ✗   |
| Principal FC Judge                   | ~                                      | ~   | ✗  | ✗   |
| Chief District Court Judge           | ~                                      | ~   | ✗  | ✗   |
| Ministry of Justice                  | ~                                      | ✓   | ✗  | ✗   |
| Law Society                          | ✓                                      | ~   | ✗  | ✗   |
| Lawyer for Child                     | ~                                      | ✗   | ✗  | ✗   |
| Psychologist Board                   | ~                                      | ~   | ✗  | ✗   |
| Oranga Tamariki                      | ✗                                      | ✗   | ✗  | ✗   |
| Independent Police Conduct Authority | ✗                                      | ✓   | ✗  | ✗   |
| Ombudsman                            | ✗                                      | N/A   | N/A  | ✗   |
| Human Rights Commission              | ✗                                      | N/A   | N/A  | ✗   |
| Privacy Commissioner                 | ✗                                      | N/A   | N/A  | ✗   |
| Health & Disability Commission       | ✓                                      | ✓   | ~  | ~   |
| Children's Commissioner              | ✗                                      | N/A   | N/A  | ✗   |
| Legal Aid tribunal                   | ✓                                      | ~   | ~  | ~   |
| Local MP                             | ✓                                      | ✓   | ~  | ✗   |
| Supervised Contact Centres           | ✓                                      | ✓   | ?  | ?   |