The urgent need for a Public Inquiry into the New Zealand Family Court's treatment of cases where there has been violence and abuse.

January 2018

Proposal

That the Justice Select committee:

1. Note that there is now convincing and compelling evidence showing widespread system failures in the New Zealand Family Court's treatment of cases where there has been violence and abuse.
2. Note that the gravity of the issues, the extent to which the failures impact negatively on women and children and jeopardise the effectiveness of the whole response system, and the public importance of the Family Court
3. Note that an in-depth inquiry is required to fully investigate these claims and determine what changes need to be made.
4. Note that the required scope of the inquiry coupled with the need to ensure the separation of powers between the judiciary and Parliament means this could not be conducted by this committee or as an independent Government inquiry - it must be either a Public Inquiry or a Royal Commission.
5. Note that a Royal Commission is the only form of inquiry that would have the necessary authority and public prestige and that women would trust to keep them and their children safe as these matters are investigated.
6. Recommend to Parliament that they formally ask the Governor-General to establish a Royal Commission to urgently investigate system failures in the New Zealand Family Court in cases where there has been violence and abuse.

Executive Summary

1. The Family Court is putting women and children who have experienced violence and abuse in more danger.[1]
2. The practices and orders in the Family Court breach CEDAW and UNCROC.[2]
3. The Family Court orders and forces children into the care of abusers with a known history of violence and abuse, when the children are scared of them and have told professionals working in the court that they feel unsafe when alone in the care of their abusive father.
4. Hundreds of NZ children are suffering physical, sexual, and psychological abuse while in the care of abusers.
5. Practices and orders in the Family Court are working in contradiction to the rest of the crisis and intervention response currently set up and funded by the NZ Government for responding to cases

[1] The term 'violence against women and children' is used throughout the submission to align with international conventions. However other terms including family violence, domestic violence, intimate partner violence, child abuse and neglect etc. are often used interchangeably

[2] The Convention on the Elimination of All Forms of Discrimination Against (CEDAW) and the Convention on the Rights of the Child (UNCROC)

of violence and abuse. The result is women and children being trapped in ongoing violence and abuse for years rather than escaping it and the subsequent trauma endured.

6. There are no sufficient checks and balances in place in our current system to monitor, audit and correct the Family Court when it acts in ways that are not safe for women and children who have experienced violence and abuse.
7. The current complaints mechanisms are not suitable or effective.
8. The Family Court costs millions in tax payer dollars but it is currently making things worse for women and children who have experienced violence and abuse.
9. The core issues in the Family Court centre on the beliefs and culture of the NZ judiciary and professionals working in the Family Court who chose not to believe mothers and children who have experienced violence and abuse.
10. The problems in the Family Court have been present for at least 17 years and nothing has been done to investigate and rectify them.
11. The problems are not related to reforms of the Family Court or the funding of it. A review of the reforms will not unearth the culture of harm towards women and children Who have experienced violence and abuse.
12. A public Inquiry is necessary to investigate fully and independently the culture and practices in the New Zealand Family Court's treatment of cases where there has been violence and abuse.
13. A Royal Commission of Inquiry is the only inquiry with the scope and independence that can achieve a thorough investigation and make recommendations.
14. There is extreme urgency to conduct a Royal Commission - each week more women and children are ordered into dangerous and life-threatening situations by the New Zealand Family Court.
15. The impact of the Family Court orders, decisions and proceedings in cases where there has been violence and abuse is resulting in significant social problems for New Zealand including youth suicide, mental health issues, homelessness, poverty, bullying and more.

Introduction

On 17 August 2017 (the last sitting day of the 51st New Zealand Parliament) an advocacy group called Community in Action presented a petition to Parliament in the form of an open letter calling for a Royal Commission of Inquiry into the NZ Family Courts. [3] By the time it was presented over 2,800 parents, families, communities, and supporters of children involved in Family Court cases had signed the open letter. The petition was tabled in the house that day by Poto Williams MP and referred to the Justice select committee.[4]

On 15 December 2017, the Justice select committee of the 52nd Parliament wrote to Poto Williams inviting her to make a written submission elaborating on her petition's request.

This submission provides the committee with a summary of the context behind problems in the Family Court, summarises the systemic failures occurring in the Family Court's treatment of cases where

[3] Refer Appendix 1for the full wording of the open letter

[4] http://mailchi.mp/a03f1c4aadd3/pr-family-court-petition-tabled-before-parliament

there has been violence and abuse, considers why there needs to be an inquiry and what type of inquiry is needed.

Context

It is well known that New Zealand has an epidemic of violence against women and children and there is widespread acceptance that it is one of New Zealand's biggest social issues. On 2 August 2006, retiring Governor-General Dame Silvia Cartwright used her farewell speech to contrast New Zealand's peaceful image abroad with the 'nightmare' of violence at home. She said she hoped New Zealand's *'dark secrets'* would never become known internationally.

Successive governments have been aware of the scale of the problem and the fact that violence against women and children is a primary driver of multiple other social issues where New Zealand also ranks among the worst in the world. Twenty-seven years ago, the Report of Ministerial Committee of Inquiry into Violence[5] (the Roper Report) noted that violence in the home could account for up to 80 per cent of all violence in New Zealand society:

> Family violence is the cradle for the perpetuation of violence in the community' - children who grow up experiencing violence in their families/whānau are more likely to develop severe cognitive and behavioural problems; become violent as adolescents; and in due course continue the cycle of family violence with their own partner and children.

More recently, Cabinet papers in 2016 and 2017 have stated:

> New Zealand has unacceptably high rates of family violence and sexual violence. In the decade 2000 to 2010, New Zealand women reported the highest lifetime prevalence of physical violence and sexual violence by their intimate partner amongst 14 and 12 developed countries, respectively. Police conducted 109,328 family violence investigations and recorded around 4,000 individual victims of sexual assault in 2015; 76,041 notifications about child maltreatment were made to Child, Youth and Family in 2015.[6]
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> A recently completed investment case for family violence (unpublished) ("the investment case") found approximately 525,000 New Zealanders (adult victims, child victims and perpetrators) were directly affected by family violence. The social cost of this was at least $4 billion in 2014. Lost productivity alone was estimated at $900 million per year. In the case of sexual violence, Treasury estimated the total social cost of sexual violence crime at $1.8 billion per annum.[7]
>
> Women and children are disproportionately impacted. Women experience more repeat incidents of interpersonal violence, more serious offences by partners, and sustain more injuries than men.[8]
>
> The intergenerational effects of family violence on children are profound. Physical abuse, child sexual abuse, or exposure to intimate partner violence increases the risk of future victimisation or perpetration of intimate partner violence by between two to four fold. The rate of suicide among affected children increases three fold; youth mental health problems increase by two to three fold; and 57 percent of such children will leave school without NCEA level 2. An Australian study found that at least 30 percent of people seeking assistance for homelessness are fleeing family violence.[9]

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[5] Roper, C. (1987). Report of Ministerial Committee of Inquiry into Violence. Presented to the Minister of Justice March 1987. Wellington, N.Z. Ministry of Justice.

[6] https://www.justice.govt.nz/assets/Documents/Publications/Ministerial-group-fv-sv-work-programme.pdf

[7] https://www.justice.govt.nz/assets/Documents/Publications/Ministerial-Group-on-Family-Violence-and-Sexual-Violence-Progress-of-the-Work-Programme-redacted.pdf

[8] Ibid.

[9] Ibid.

Despite extensive efforts by successive governments to address these issues there is no evidence that the prevalence or incidence of violence against women and children has reduced at all. The number of cases reported to Police continue to climb and there is little, or nothing known about the 75-80% of abuse that Police say is not reported to them.

Domestic and international rights

New Zealand's legislation provides victims with the right to be treated appropriately and to complain if they are not. Sections 7 and 8 of The Victims' Rights Act 2002[10] covers a person who has experienced domestic violence (as defined in Section 3 of the Domestic Violence Act 1995); and a child or young person residing with a person who falls within subparagraph.[11] It says:

> S7: Any person who deals with a victim (for example, a judicial officer, lawyer, member of court staff, Police employee, probation officer, or member of the New Zealand Parole Board) should—(a) treat the victim with courtesy and compassion; and (b) respect the victim's dignity and privacy.
>
> S8: A victim or member of a victim's family who has welfare, health, counselling, medical, or legal needs arising from the offence should have access to services that are responsive to those needs.

New Zealand has signed and ratified the Convention on the Rights of the Child (UNCROC),[12] and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) [13,14] and other international treaties[15] that uphold the right to safety and the right to be heard.[16] These international treaties impose positive obligations upon New Zealand to take positive steps to ensure these undertakings are upheld.

CEDAW commits New Zealand to treating violence against women as a violation of women's human rights. UNCROC)[17] which sets out the rights of children, aged 0 to 18 years, and the responsibilities of governments to fulfil those rights. UNCROC requires governments to ensure that the best interests of the child come first where decisions, laws or services involve children ad includes the responsibilities of parents, governments, and children themselves to ensure the rights of children are met.

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[10] http://www.legislation.govt.nz/act/public/2002/0039/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_victims%27+rights+act+2002_resel_25_a&p=1#DLM157813

[11] This reflects the fact that section 3(3) of the Domestic Violence Act 1995[11] makes it clear that children who see or hear the abuse of someone (usually their mother) with whom the child has a domestic relationship are deemed to have been psychologically abused.

[12] Convention on the Rights of the Child, 1577 U.N.T.S. 3. The Convention was adopted on November 20, 1989, and came into force on September 2, 1990. Ratified by New Zealand on 13th March 1993

[13] Convention on the Elimination of all Forms of Discrimination Against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc.
A/34/46 (1980) [hereinafter CEDAW]. The Convention was adopted on December 18, 1979, and entered into force on September 3, 1981.

[14] In 1992, the CEDAW Committee passed General Recommendation 19, requiring States Parties to take positive measures to eliminate violence against women, including sexual violence. Refer UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation 19: Violence against Women' (1992) UN Doc A/47/38. 19.

[15] U.N. Charter. The Charter was signed on June 26, 1945, and entered into force on October 24, 1945; Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/180, at 71 (1948); International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 [hereinafter ICCPR]. The Covenant was adopted on December 19, 1966, and entered into force on March 23, 1976; International Covenant on Economic, Social and Cultural Rights, 999 U.N.T.S. 3 [hereinafter ICESCR]. The Covenant was adopted on December 19,1966, and entered into force on January 3, 1976; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85. The Convention was adopted on December 10, 1984, and entered into force on June 26, 1987.

[16] https://www.hrc.co.nz/your-rights/human-rights/international-human-rights-legislation/international-obligations/

[17] Ratified by New Zealand on 13th March 1993.

New Zealand needs an effective response system

Violence against women and children 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 and children happens, New Zealand needs a response system that has the biggest and most positive impact on as many cases as possible - 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 and abuse. If this was done, we would not only reduce the incidence of violence against women (and their children) but reduce the incidence of many other linked social issues and reduce the economic costs.

When women experience violence and abuse they need to be able to reach out to 'the system' to protect them, keep them and their children safe and support them to rebuild their lives. All parts of the system need to be individually and collectively responsible for ensuring the safety and long-term recovery of victims/survivors and for containing, challenging, and changing abusers' behaviour.[18]

Any system is only as strong as its weakest point – if one part of the system responding to violence against women and children fails then the whole system fails. To ensure the whole system works efficiently, a comprehensive range of quality management activities need to be in place across all points of the system to ensure they are taking a coherent approach and achieving the overall objective of keeping the victims/survivors safe and supporting them to rebuild their lives and are successfully holding abusers to account.

New Zealand has a track record of identifying the issues and problems with our current system response to violence against women and children - there have been endless reports showing that the current system is broken. For example:

> While many reports have been written approximating the scale of the problem, successive attempts to address it have not been sustained and we have not taken opportunities to learn from previous successes and failures.[19]
>
> The Committee has documented system failures in many of the regional reviews…. There are multiple complex factors that contribute to the system's failure. These include the organisational practice of individual agencies,[20] the collaborative practice of multiple agencies and the professional practice of individuals working within the system.[21]
>
> Most people told the Inquiry that New Zealand's current system for addressing child abuse and domestic violence is generally not working. Sometimes the things that were meant to help didn't – they just made it worse.[22]
>
> Our approach in New Zealand is broken, fragmented, and inconsistent, has gaps and overlaps in service provision and has no infrastructure to hold all the services and outcomes together…. There is overwhelming

[18] Herbert, R. and Mackenzie, D. 2014. *The way forward - an Integrated System for Intimate Partner Violence and Child Abuse and Neglect in New Zealand*. Wellington, The Impact Collective. Available at http://theimpactcollective.co.nz/thewayforward_210714.pdf

[19] http://beehive.govt.nz/sites/all/files/Report_of_the_Expert_Advisory_Group_on_Family_Violence.pdf

[20] Including the influence of policies and procedures, assessment frameworks, training and supervision provision, and the influence of performance indicators

[21] Family Violence Death Review Committee, 2014. Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee. Available at http://www.hqsc.govt.nz/assets/FVDRC/Publications/FVDRC-4th-report-June-2014.pdf

[22] http://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE21610016&dps_custom_att_1=ilsdb

disarray in our current response system.[23]

However, these problems have not been identified as part of any formalised system-wide quality management process. Because there are virtually no routine outcome monitoring, evaluation or audit activities currently undertaken in the sector, there are likewise no mechanisms for effectively addressing system failures when they are identified. Therefore, when problems in the response system are identified (such as the case of the Family Court) there is no central place they are referred to for follow up and no audited action is taken to remedy them.

The Family Court is a key part of the response system

The Family Court is one of a range of key services that need to work together in cases where there has been violence and abuse to make women and children safer and hold perpetrators to account. The justice system in New Zealand is based on the Westminster System which holds judiciary independent from the Parliament. Judges are not accountable to the government or its agencies. Legislation, decided by Parliament determines the basis for activity in the Family Court. The judiciary must implement or apply the law in a way that upholds the parties' rights to natural justice.

The New Zealand Family Court came into effect in 1980, following the recommendations of the Royal Commission on the Courts, chaired by the Honourable Mr Justice Beattie.[24] The overall purpose of the Royal Commission was to inquire into the structure and operation of the judicial system of New Zealand. The Commission reported that almost a third of the submissions made to the Commission concerned family law and all were agreed on the need for reform. '*We believe it both urgent and essential that a forum should be established which can respond adequately to the present and future needs of the family in New Zealand society.* '[25]

The Family Court in New Zealand is a closed court. The reason for the private way it operates was originally to protect the people who used the court. No-one was being charged with breaking the law – a public matter (like in the District Court) and the cases were of a 'private' nature – people's personal relationships.

The Westminster system is supposed to have built-in checks and balances to protect the system from judicial bias, corruption, and inefficiency. However, the closed nature of the Family Court allows it to operate without the usual (and legislated) checks and balances to ensure it acts fairly, safely, and lawfully.

In New Zealand the media has been used as a proxy for any formal independent checks and balances of many aspects of the public system – including the courts. However, that relies mainly on the media's ability to report on proceedings or public access to court hearings. Most of the workings of the Family Court happen behind closed doors and the closed nature of the Family Court makes it impossible for members of the public to scrutinise, unsafe for court users to speak out about and difficult for media to report on cases.[26] Information released under the Official Information Act in July 2017 shows that

[23] http://theimpactcollective.co.nz/thewayforward_210714.pdf
[24] Report of the Royal Commission on the Courts, 1978
[25] Ibid Pg 146
[26] Media are restricted in what they can report regarding Family Court cases as articulated in s11 of the Family Court Act 1980 and in section 5.4 of the Ministry of Justice's 'Media Guide for Reporting the Courts and Tribunals' - see https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/courts-with-special-media-provisions/family-court/

in 2015 and 2016 there were only 16 and 14 Family Court hearings respectively where media were recorded as attending

It is interesting to look back to the 1978 report of the Royal Commission on the Courts which commented specifically about how the new Family Court would need open consumer monitoring:

> We accept that consumer monitoring of the legal system is most desirable. The individual members of our Commission have benefited enormously from listening to and learning about the views of those who use the legal system. In our already overregulated society we hesitate, however, to suggest the introduction of a watchdog to watch the Department of Justice which should itself be carrying out the monitoring of the system…… In our opinion, what is necessary is the formation of simple boards or committees on a district basis……These boards should be charged with the presentation of an annual report to the Department of Justice and the Judicial Commission dealing with all consumer aspects of the system….. What is required is to keep up the stimulus given by this Royal Commission so that the court system is not allowed to stagnate, but continues to change and develop.[27]

One of the Commission's recommendations was that '*Boards or committees should be formed on a district basis to deal with all consumer aspects of the system.'*[28] It is unclear whether these Boards or committees were formed but there is currently no independent mechanism for dealing with consumer aspects of the system, for consumer monitoring of the legal system or for those who administer the legal system to learn from those who use the legal system. Furthermore, continuous improvement processes, that would have enabled the Family Court system to continue to 'change and develop' as envisaged by the Royal Commission, have not been built into the system.

While currently quality management of the Family Court is severely limited there are a range of entities that should and could collectively be undertaking aspects of quality management of practice within the Family Court, particularly in cases where there has been violence and abuse. These include:[29]

- The Judicial Conduct Commission (JCC) which was established in 2004 under the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.[30] Prior to that time New Zealand had no formal procedures by which to discipline judges or remove them from office. The stated purpose of the Act is to enhance public confidence in the judicial system and ensure it is impartial and has integrity.
- The Principal Family Court Judge who is tasked with a "responsibility under New Zealand law to ensure the 'orderly and expeditious conduct' of their courts and be the public face of the court."[31]
- The Chief Judge who is responsible for the orderly and efficient conduct of the court's business – the role is limited to making sure the courts work efficiently.
- Parliament and the Minister for Justice and Courts. Ministers may comment on the effectiveness of the law, or about policies on punishment (that is, on matters where the Executive has a proper involvement), but not where the performance of the courts is brought into question.[32] If, however

[27] Ibid. Pg 252
[28] Ibid.
[29] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf
[30] http://legislation.govt.nz/act/public/2004/0038/latest/DLM293588.html
[31] http://www.districtcourts.govt.nz/about-the-courts/the-district-court-judiciary/leadership-of-the-district-court/
[32] https://www.dpmc.govt.nz/sites/default/files/2017-06/cabinet-manual-2017.pdf (paragraph 4.16)

Judges are not implementing the law as Parliament intended, then Parliament is responsible for changing the law.

- Chief Victims Advisor is charged with identifying themes and areas for improvement for victims in the justice sector, and to promote system improvement.[33]
- New Zealand Law Society has a range of regulatory functions under Part 4 of the Lawyers and Conveyancers Act 2006. The Law Society reports to the Minister of Justice each year and so provides a further mechanism by which the Minister of Justice is aware of the issues in the Family Court.

However, two months ago, The Backbone Collective (Backbone) released a report[34] where they shone the spotlight on the appeals and complaints processes available for women and children who have experienced violence and abuse and been involved in the Family Court. They showed that these processes do not provide adequate independent quality management of the Family Court and that women and children face insurmountable barriers to appealing AND the complaints processes available to them are ineffective and. Backbone concluded that:

- There is no independent authority tasked with monitoring and overseeing the Family Court and reviewing or regulating its outcomes.
- Appeals are not available to most women as they are costly, require representation, have a time limit and rely on final orders being made.
- 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.
- There are serious repercussions for women who lodge complaints about the Family Court.

Backbone have also reported:[35]

> There is no opportunity for women to tell those in the system, government, judiciary, and the executive where the system is failing and what would make it work better. Women have told us that if they complain they are seen as being obstructive and difficult and they feel at much greater risk of being harmed by the Family Court system – it is simply not safe for them to complain.
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> Women have talked of being abused in court by Family Court judges and being terrified of making a complaint against judges whom they believe will punish them for that action. When women do complain about any matter pertaining to the Family Court their complaint is merely referred to the judge concerned.

There have been no mechanisms to routinely gather the voices of Family Court users who have experienced violence and abuse in order to be able to 'deal with all consumer aspects of the system.' Had such mechanisms been in place the system failures summarised below and detailed in related and referenced reports, would most certainly have been identified and action taken much earlier.

[33] https://chiefvictimsadvisor.justice.govt.nz/advisor-role/

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

[35] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58e696a21e5b6c7877e891d2/1491506855944/Backbone+Watchdog+Report+-+Family+Court.pdf

Systemic failures in the New Zealand Family Court

Failures in the NZ Family Court have been flagged for many years

In the 40 years since the Royal Commission on The Courts recommended that mechanisms be established for consumer monitoring, for hearing the views of those who use the legal system and for dealing with all consumer aspects of the system there has been little, or no independent monitoring or auditing of the performance of the Family Court and minimal opportunities for those who have experienced the Family Court to have their say – to speak up about failures in the system.

In 1990 the Victims Task Force commissioned the University of Waikato Domestic Protection Team to undertake a study of continuing breaches of non-violence and non-molestation orders made by the Family or the District Court, with a view to improving the protection offered to victims. In their report, released in 1992, they identified several concerning practices and attitudes around the provisions of the Domestic Protection Act 1982 and argued that the justice sector was failing to protect battered women and children.[36]

A 2004 report from the National Collective of Independent Women's Refuges Inc.[37] drew on conversations with, and letters from, domestic violence advocates and victims. This study concluded:

> The Domestic Violence Act is one of the most important tools we have available to prioritise protection, safety and societal intolerance of violence. When we fail in our efforts to provide these things, women and children are revictimised and abused, this time by a system's failure to respond quickly to their right to safety and understand their fears and concerns.
>
> The consequence of time delays, lack of awareness, prohibitive costs, and lack of action is that women and their children become less and less likely to seek legal and police protection, and so their lives are at greater risk.
>
> The concerns raised by women and advocates in this report are around the implementation of the Act. The Domestic Violence Act allows opportunities for children, women, and men to live free from violence, but some current practice is not enabling the Act to be used to the full potential. Proper implementation of the Act is critical if people are to access these opportunities.

In 2007 Waikato University, under a contract with Government, undertook 43 case studies of women and their experiences of domestic violence and seeking safety.[38] This study found:

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

In 2010, a group of survivors of Domestic Violence published a discussion paper[39] in which they made 22 recommendations for changes to the Justice response:

> We applaud the Domestic Violence Act 1995 (the Act) which is both forward thinking and representative of the caring kiwi society we live in. Unfortunately, the Act has not been fully implemented into the Government agencies where the true help and difference to victims and their families' lives can be made.

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[36] Busch, R. Robertson, N. and Lapsley, H. 1992. *Protection From Family Violence; A Study of Breaches of Protection Orders*. Victims Task Force: Wellington. p1. As reported by Hann, S. 2004. The Implementation of the Domestic Violence Act 1995. National Collective of Independent Women's Refuges Inc. Wellington.

[37] https://nzfvc.org.nz/sites/nzfvc.org.nz/files/Implementation%20of%20the%20Domestic%20Violence%20Act%201995.pdf

[38] http://research.waikato.ac.nz/CuttingEdge/

[39] https://nzfvc.org.nz/sites/nzfvc.org.nz/files/ISNO-protecting-victims-rebuilding-lives-2010.pdf

> The Act has failed to deliver on its intent meaning the victims remain victims and the power and control still sits in the hands of those deemed to have done wrong – the perpetrators.

In 2013, the Glenn Inquiry into addressing child abuse and domestic violence talked to approximately 500 people about their experiences of child abuse and/or domestic violence, what's working well, what's not working well, and how things could be improved. The Inquiry's People's report[40] found:

> '…. one of the most striking things across most people's stories is the overwhelming agreement that the court system is "dysfunctional" and "broken". A wide range of people had something to say about the court system – victims, perpetrators, those working within it, and other supporting agencies and services interacting with the courts. Those who spoke to the Inquiry about the court system generally referred to the Family, District and High Courts together, and more specifically about the Family Court. Rather than help sort out their safety and other related issues, the courts were perceived as the cause of added burdens for those living and working with child abuse and domestic violence.
>
> Many of those coming forward talked about actions arising from court processes that increased their level of risk, made worse by often slow and drawn-out processes. Not only was this stressful, but it also created massive financial and emotional burdens for victims who often had very little in the way of resources, pushing them and their children into lives of poverty. A great concern is that the courts' adversarial approach contributes to lengthy proceedings, forcing victims to have continued engagement with the perpetrator of their abuse and violence.

The Glenn Inquiry's final report 'The People's Blueprint'[41] commented extensively on the failures of the New Zealand Family Court, including:

> The Family Court, in particular, attracts harsh criticism from people who rely on it. The Court stands accused of being broken, dangerous and unprofessional.
>
> The combative nature of adversarial justice re-victimises and re-traumatises people seeking help and protection and exacerbates power and wealth imbalances.
>
> People feel judges, professionals and court staff are poorly trained and ignorant of the reality of living with family violence, and the psychological abuse and manipulative powers of those who inflict violence.
>
> Those affected by violence feel disrespected and disempowered further as they enter and progress through the court system.

Even the Minister for Justice in 2013, Judith Collins, concluded that the Family Court was not working in domestic violence cases.

> Those who practice in and around the Family Court know it is not working as well as it should for some families and has not been for some time. This is not just based on anecdotes, but on an extensive review of the Family Court undertaken by the Ministry of Justice in 2011 and 2012. The review involved family law academics, government agencies, non-government organisations, professional family justice services and private individuals, and found serious concerns with the court. It is too adversarial, it is harmful for children, not focused enough on serious domestic violence cases, too slow, too complex and spends too much time on simple private matters that are better resolved outside court.[42]

Over the years there have been various reviews by the Ministry of Justice of both the Domestic Violence Act 1995 and the Guardianship Act 1968/Care of Children Act 2004 which are the central articles of legislation which guide the Family Court's response to violence and abuse (e.g. 2000, 2007,

[40] http://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE21610016&dps_custom_att_1=ilsdb
[41] https://library.nzfvc.org.nz/cgi-bin/koha/opac-detail.pl?biblionumber=4568
[42] https://www.adls.org.nz/for-the-profession/news-and-opinion/2013/4/12/the-facts-about-family-court-reform/

2012, 2017). A common theme in public submissions on reviews of the legislation has been that the problems in the Family Court are related to the *implementation* of the legislation rather than the legislation itself. However, many in the NGO and community sector, individual women, academics and even some New Zealand Judges have argued that some of the legislative changes have made women and children less safe (e.g. the removal of the Bristol clauses in 2012/13 as part of the Family Court Reform Bill/Act).

Some other legislative changes appear to have been focused on an attempt to reduce public expenditure and/or to move cases more quickly through the process such as the Family Disputes Resolution (FDR) process introduced in 2013. Even these reforms have in some cases placed women in more danger when they have been forced women into mediation settings with their abusers.

Overall, however, the reviews and reforms to date have **not** altered the culture of the Family Court's treatment of cases of violence and abuse which are at the heart of the failures identified by Backbone (see below). For example, the most recent review of the Domestic Violence Act – the Family and Whanau Violence Legislation Bill – proposed changes to the Domestic Violence Act that had the potential to improve some of the responses to domestic violence such as the new strangulation law. However, these additions would only improve the response *if* the Family Court and District Court have the inherent culture and practice which determines that the response is appropriate to women and children's experiences of violence and abuse at the first step, i.e. by accepting that violence and abuse has occurred, understanding the risk and seriousness over time and holding victim safety and offender accountability as central components of the response.

Systemic failures in the Family Court identified by The Backbone Collective

Backbone was launched as an independent body in March 2017 to take action to change New Zealand's alarming violence-against-women statistics (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. Prior to launching, women who had experienced violence and abuse told Backbone they do not feel that the current system keeps them safe and said that the part of the system that needed to be looked at first was the Family Court.

In the 10 months Backbone has been in operation they have surveyed hundreds of women, received in depth case stories from hundreds of women via email and Facebook and produced four comprehensive reports all of which have reported on system failures in the Family Court:

1. All Eyes on the Family Court: A watchdog report from The Backbone Collective[43]
2. Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court (sample size = 496)[44]
3. Don't Tell *Me* Your Problems: The Family Court complaints and appeals landscape[45]

[43] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58e696a21e5b6c7877e891d2/1491506855944/Backbone+Watchdog+Report+-+Family+Court.pdf

[44] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf

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

4. Seen and not Heard: Children in the New Zealand Family Court. Part One – Force (sample size = 291 mothers of 591 children)[46]

These four reports individually and collectively reiterate what earlier studies have found and provide compelling evidence from hundreds of service users of systemic failures in the New Zealand Family Court. What is unique about the Backbone reports is that their findings are drawn from quantitative data collected via comprehensive surveys of large numbers of women have experienced violence and abuse *and* been involved in the New Zealand Family Court, coupled with in depth qualitative information collected (via email, Facebook and phone) from many Backbone members about their Family Court experiences and from reviewing many court documents and communications.

The extent and overwhelming consistency of the information provided from so many women provides compelling evidence of systemic failures occurring in the Family Court's treatment of cases where there has been violence and abuse. The following section summarises the findings of the four Backbone reports. For detailed information please refer to the full copy of the reports (referenced above).

Overall findings

All of the women who took part in Backbone surveys had experienced violence and abuse. These women reported serious negative outcomes from being involved with the New Zealand Family Court. Women told Backbone loudly and clearly that the Family Court in New Zealand is neither safe nor enables them to rebuild their lives.

Women said 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. The Family Court has in effect become their new abuser - many women said the Family Court's abuse was worse than the abuser's. Consequently, an important part of the system that is supposed to keep women and children safe when they experience violence and abuse made them **less** safe - not more so.

Many women first approached the Family Court after separating from an abuser seeking protection and safety upon leaving an abusive partner, but most said they subsequently wished they had never done so. The pathway into the Family Court for others was by defending applications made to the Family Court by the abuser or by being involved in CYFs/MVCOT proceedings. Regardless of their pathway into the court Backbone found that the impact on them and their children has been overwhelmingly negative.

Women and children 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 said 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 experiences of violence and abuse were not believed, were minimised, and not responded to, where their abuser was seen as safe and any risk to them and the risk to their children was neither assessed nor considered. Women reported being wrongly accused of a range of things that impacted negatively on decisions being made about

[46] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf

them and their children's lives. Some women talked about experiencing discrimination and Māori women reported racism.

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 youngest child turned 16 and they no longer had to be involved.

The results of the Backbone's survey on children's experiences in the Family Court [47] are cause for grave concern and they take the system failures identified in Backbone's first Family Court report to a whole new level.

All the children in the survey have experienced violence and abuse - by seeing, hearing or knowing about the abuse of their mothers and/or by also being directly physically, sexually and/or psychologically abused,[48] and they had suffered a complex array of trauma as a result of the violence and abuse prior to separation. Despite this, children are not being believed about their experiences of violence and abuse, evidence of it occurring is being disregarded in the court and mothers are being blamed for their children's fears for their safety.

Most children are ordered into unsupervised care and contact with the abuser. Despite the many fears the children had about having contact with their abusive father post separation, children were not listened to and were subsequently placed in unsafe situations.

In more than half the cases either the children or their mother told professionals working in the Family Court about the worries they had at the abuser's house but in the majority of cases those worries were not reported accurately to the Court or taken into consideration when care and contact orders were made.

However, of incredible significance is that when Backbone compared how much time the Family Court is ordering children into care and contact with abusers against how much time the children say they WANT to spend with him – there is a big difference. Fifty-four percent of the children are being forced into care and contact arrangements that they do not want. These 'forced' children are significantly more worried about what happens at the abuser's house (sexual, physical, and psychological safety issues) than children who were not forced.

It is unclear why the Family Court is ordering and forcing children into the care of abusers with a known history of violence and abuse, when the children are scared of them and have told professionals working in the court that they feel unsafe when alone in the care of their abusive father.

The evidence shows that Family Court deems only a very small percentage of abusive men as a risk to their ex-partner and children post separation. The evidence suggests that the Family Court is making care and contact orders in the absence of best practice in violence and abuse cases. For example, a risk assessment to determine the risk of dangerousness and lethality of the abuser had been undertaken in only 10% of all cases and in only 2.2% of cases where there were children involved.

[47] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf

[48] Both of which are defined as forms of domestic violence against children in the Domestic Violence Act 1995

By making care and contact orders for children who have experienced violence and abuse without any evidence-based risk assessment the Family Court is out of step with international best practice and the New Zealand Government's position on this: *'The government is committed to reducing family violence, keeping victims safe, and managing perpetrators more effectively so all New Zealanders can live free from violence. We know that identifying risk, intervening earlier and in a more coordinated way is critical to achieving this.'*[49]

The Family Court - contrary to what women and children are telling them about their experiences of ongoing violence and abuse - is wrongly viewing the abuser as *safe* and is making orders that place women and children in greater danger and hence acting contrary to the legislation which should guide the way the Court responds to children. The Care of Children Act 2004 says that children MUST be protected from violence.

In the absence of any risk assessment, the Family Court is negatively characterising mothers who raise genuine safety concerns for their children. Many mothers say that those working in the Family Court accuse them of being responsible for their child/ren not wanting to have contact with the abuser rather than seeing that the violence and abuse the children have been exposed to is the cause. When the mothers try and protect their children from ongoing harm, trauma and abuse they are punished, denigrated (put down) and accused of being 'parental alienators' - trying to alienate their children from their father.

Parental alienation as a theory has been debunked internationally[50] and The common use of this concept is not condoned by the New Zealand Psychological Society.[51] Furthermore, even the author of the debunked theory, Richard Gardiner, never intended it to be used in cases where there is domestic violence.[52] Despite the doctrine of parental alienation being internationally discredited for many years Backbone found it is still being routinely applied by psychologists, Lawyer for Child and social workers and judges in the NZ Family Court – parental alienation or similar terms have been used in nearly half of all cases where there is a history of violence and abuse.

Selected detailed findings

- The right of victims/survivors of violence and abuse to natural justice are not being upheld by the Family Court and they are experiencing bias, are not getting access to a fair hearing and are being made less safe because of their interactions with the Family Court.
- Women say they are being re-victimised and abused by the Family Court - that their experience in the Family Court mirrors the abuse they experienced from their abusive ex-partner.
- Women feel, controlled, frightened, terrorised, put down, silenced and punished for speaking out about the abuse. They have reported verbal abuse, bullying, intimidation, fear, stand over tactics, power, control, and coercion being used by individuals within the Family Court system and of feeling trapped.

[49] New Zealand Government Family Violence Risk Assessment and Management Framework (2017) New Zealand Government. Available at https://www.justice.govt.nz/assets/Documents/Publications/family-violence-ramf.pdf
[50] https://www.newsroom.co.nz/2017/08/13/42453/family-court-using-discredited-us-theory
[51] http://www.psychology.org.nz/wp-content/uploads/Family-Violence-Law-Review-Submission.pdf
[52] Rita Berg, Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts, 29 Law & Ineq. 5 (2011). Pg. 6 Available at: http://scholarship.law.umn.edu/lawineq/vol29/iss1/2

- Women feel re-victimised because they are forced to have ongoing contact with the person that abused them and are directly abused by the court as well. The trauma has a detrimental impact on their lives and on their children.
- The Family Court treated the abuser as 'safe' in 83% of cases, even when the woman's experience of his treatment to her or the children showed that he was not safe. The main reasons given by women were:
    - Psychological abuse is minimised by the Court
    - Abuser manipulated Court officials e.g. judges, psychologists, Lawyer for Child
    - The Court thinks that the abuser seeing the child is more important than the risk they pose
    - The abuser presents well in Court
    - The Court does not see that the abuse of me (the woman) impacts on the children
    - Those working in the Court do not understand violence and abuse
    - Has influence e.g. is a professional, has money
- Those working in the Court – particularly Judges, lawyers and Lawyer for Child, followed by Court appointed psychologists and Child Youth and Family – are not responding appropriately to women and children's safety.
- Family Court practices are resulting in women and children feeling unsafe, unsupported, traumatised, silenced and discriminated against. Women report suffering negative and serious health issues - from physical issues through to mental disorders. Many women experienced multiple different impacts - as a **direct result** of proceedings in the Family Court. This has impacted on their ability to earn an income, mix with others, participate in daily activities, and have hope for the future.
- For many women who are trying to escape the violence and abuse through separation, the Family Court becomes the abuser's new weapon of abuse and control. Many women report that their ex-partner (particularly if he is wealthy with unlimited financial resources, or connections) file relentless applications with the Family Court relating to Care of Children as a way of punishing her and the children and keeping them under his control. Unfortunately, this strategy is not seen as vexatious litigation and therefore the Family Court allows this behaviour to continue – often for many years – 19% of women said they had been involved in the Family Court for over 7 years.
- Women told Backbone they are trapped in a cycle of numerous Family Court cases spanning many years – some for as long as 22 years. Women are financially ruined through the cost of legal representation. Indications are from what women told Backbone that many of those working in the Family Court actively create further conflict or 'feed' existing conflict with their actions and judgements.
- Many women are unable to get legal aid and are financially ruined by the proceedings. Women have sold property or belongings, have borrowed from new partners or extended family and many have to pay off legal fees in instalments. Some women are forced to attend court hearings unrepresented as they can't borrow any more money to pay for a lawyer and, yet they are forced to defend applications made by their abuser. This is having serious impact on their and their children's livelihood.
- Women may have little control over the period of time they spend in the Family Court because the litigation is often forced on them by the abuser - that is they were responding to the abuser's

application to the Family Court, Child Youth and Family applications and reviews or prolonged Family Court proceedings. Conversely, women felt forced to apply to the Family Court (often multiple times) because their abuser was not adhering to the parenting, protection or other orders made by the court.

- Sixty-eight percent of women had applications, decisions, orders and directions placed upon them prohibit them from rebuilding their lives - by moving somewhere safe, talking about their abuse, getting support to deal with the trauma, get therapeutic help for their children, being involved in their children's daily lives (school, sporting activities, social engagements, seeing friends and family), living in an affordable home, making medical decisions for their child and taking up jobs and furthering their education.
- 58% of women told Backbone that attending Family Court-related appointments, fixtures, or hearings have been threatened, intimidated, or physically assaulted by their abuser.
- Women said that untrue allegations were often made about them in court which altered the way the Family Court responded to them and resulted in unsafe decision making. Backbone are particularly concerned about the large numbers of women saying they were wrongly accused of lying and/or exaggerating the abuse, of being crazy or deliberately destroying a child's relationship with the abusive parent and doing this as revenge.
- Many women reported being forced/coerced by the Family Court into participating in joint activities with the abuser without any regard to their safety or support needs. This happened even if they had a Protection Order in place which prohibits the abusive person from having contact with them for safety reasons. These activities made them feel less safe and traumatised.
- Women are saying that Protection Orders are not keeping them or their children safe.
- Protection Orders are not being granted at all or are being put on notice (the abuser gets served with her application and affidavit before a hearing is scheduled to determine the application). In addition, many women have told Backbone that when a Protection Order is granted, the children are not protected under it as the parenting orders are taken to supersede the Protection Order.

Specific findings regarding children

- 87% of mothers said the Family Court views their abuser as being safe for the children to spend time with.
- 86% of mothers say the Family Court as a whole has not responded appropriately to their child/ren's wishes/views/experiences and safety.
- 83% of mothers said the Family Court had not made their children safer after they left the violence and abuse
- Many children are exposed to harmful behaviours, substances and further violence and abuse when in the care of the abuser. While in the abusive parent's care:[53]
    - 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

[53] N= 408 children

- 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.

- Children are speaking up, but professionals accurately reported children's concerns to the Family Court in only 8% of Maori cases compared to 34% of non-Maori cases.
- For most children their experience of violence and abuse was not believed, was minimised, was excused or told it happened too long ago to mention.
- 54% of the children were being forced into care and contact arrangements that were different from what they wanted.
- One third of children want no contact at all with abuser whereas nearly all of them are currently ordered into some form of care and contact.
- 61% of children have refused to see the abuser89% of children received no follow up interviews or reviews from anyone working in the Family Court after orders were made placing them into care and contact with the abuser.
- Backbone have been told about 57 children where a forced uplift has occurred
- 22% of children of Maori mothers compared to 11% of children of non-Maori mothers were ordered into the abuser's day to day care by the Family Court.

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

Backbone asked mothers 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

The damage done to children is markedly worse in cases where:

- The Family Court has forced children into care and contact.
- Children have refused to attend care and contact.
- Children are ordered by the Family Court to be with the abuser in day to day care or shared care.

Why there needs to be an inquiry

The overwhelmingly negative findings - reported by Backbone (summarised above and detailed in four comprehensive reports during 2017) and other entities and individuals - about how the Family Court responds in cases where there has been violence and abuse - should be of grave concern to all New Zealanders and in particular to Parliament.

The experiences reported by women and children are clearly not isolated examples – there is alarming consistency in what large numbers of women are saying. The cumulative evidence strongly indicates there are significant systemic failures occurring in the New Zealand Family Court and that the professional practice and culture operating in the Family Court is breaching the human rights of women and children who have experienced violence and abuse.

Women and children who have experienced violence and abuse are suffering at the hands of a largely tax payer funded system. Children are being ordered into dangerous situations by the very agencies and institutions that have been set up and funded by the state to protect them and Backbone has concluded that the New Zealand Government is in effect funding state sanctioned abuse of women and children via the Family Court.

The Family Court appears to be acting contrary to New Zealand's domestic legislation which should guide the way the Court responds to victims/survivors of violence and abuse – particularly children - and it is out of step with international best practice and the New Zealand Government's own practice guidelines.

Further, the evidence summarised in this paper shows that New Zealand is failing to meet its international treaty obligations. Although in instances of violence against women and children the abusers are typically non-state actors – spouses, partners, parents or step-parents – under international human rights law, the state may also be accountable for human rights abuses by private actors if it fails to take positive steps to promote and protect rights.

> States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. The standard of due diligence is one of reasonableness, it requires a state to act with the existing means at its disposal to address both individual acts of violence against women [and children] and the structural causes so as to prevent future violence.[54]

The United Nations test to determine whether states parties have fulfilled their obligations is referred to as the 'due diligence test'. The test asks whether a state reasonably ought to have taken a more active and efficient approach to eliminate these issues and takes into account:

- the degree of protection required under the particular circumstances
- the practical factors required to render such protection possible or impossible
- the frequency of a State's failure to assist victims/survivors.

Government is wasting public funds by continuing to fund a failing system. As described earlier in this paper, the system that responds to women and children who experience violence and abuse, is only as strong as its weakest point - if one part of the system responding fails then the whole system fails.

[54] In-depth study on all forms of violence against women, Report of the Secretary General, U.N. Doc. A/61/122/Add.1 (2006), at para. 257. This paragraph refers specifically to domestic violence/violence against women, but the same situation is expected to apply to violence toward and abuse of children

Therefore, for Government to continue to invest taxpayer's money in any part of the system (eg NZ Police, NGOs, medical services and child protection services) is inefficient and wasteful if the crisis intervention involves referring women and children to the Family Court at which point they are made less safe through a range of practices, orders and financial and health impacts.

None of this is new information. Of particular note is that Backbone have reported:

> '…. 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.'[55]

Someone should have seen these multiple complaints as signs of a systemic failure and investigated - or referred to someone who could investigate - long ago. However, they have been told and done nothing. This lack of action may have been due to the ineffective appeals and complaints landscape around the Family Court. It may have been due to many parties having select pieces of information but no-one having the whole picture. It may have been due to Ministers and MPs seeing that the separation of powers between the judiciary and Parliament meant they were unable to act, or that the situation as serious enough to ask the Governor-General to establish a Royal Commission (the only action available to them).

The Minister of the day, other MPs and government agencies have consistently responded to formal reports, media stories, individual complaints, Official Information Act requests and specific communications saying they are unable to take any action because of the separation of powers issue:

> As Minister of Justice, I am unable to intervene in, or comment on, any case before the courts. In our system, Parliament makes the laws, and judges apply those laws in the cases that come before them. It is a fundamental principle of our judicial system that judges operate completely independently. This ensures that there can be no political interference in decisions made by judicial bodies in individual cases and is a critical part of our democratic system.[56]
>
> As I am the Minister of Justice, I am unable to comment on judicial decision madding. It is a fundamental principle of our constitutional system that the judiciary operates as an independent branch of Government. Parliament makes the laws, and judges apply those laws in the cases that come before them.[57]

Parliament is ultimately responsible for acting if the judiciary are not interpreting and implementing the law as Parliament intended. The types of system failures reported do not appear to be about shortfalls in the legislation itself – women's stories strongly suggest there is an unacceptable culture underpinning professional practice, widespread unsafe practices, and failure to interpret the legislation as Parliament intended.

Failure to take action when evidence shows that what is being reported as happening in cases of violence and abuse in the Family Court are not in line with Parliament's intentions sends a strong message - that Parliament is content knowing that women and children who have experienced

[55] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf
[56] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58aa5b3786e6c0c3739f2b9a/1487559481057/Hon+Amy+Adams+response+to+open+letter+re+Que+Langdon+case.pdf
[57] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59161553bf629aeb761ea10b/1494619477256/12052017152200-0001.pdf

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.

The gravity of the situation is now such that urgent action must be taken to stop further harm occurring. If this doesn't happen, each and every individual, agency and entity who could have acted and didn't must surely be responsible for the damage being done and held to account accordingly. Never before has the phrase *'if you are not part of the solution, you must be part of the problem'* been truer.

Government's response to the problem thus far

Otago University was contracted by the previous Government to undertake a review of the 2014 Family Court reforms.

Prior to the 2017 election both the Labour and Green Parties were signalling their support for some form of review.

> The Labour Party commends the Government for reviewing domestic violence legislation; however, we are disappointed that it has missed the opportunity to make bold changes to improve our horrendous rates of family and domestic violence. We would have preferred a review of the reforms made to the Family Court.[58]
>
> The Green Party supports a victim-led review of the functioning of the Family Court.[59]

On 24 November 2017, following an interview with Andrew Little, the new Minister of Justice, Newsroom, reported:

> Labour pledged before the election to immediately review the Family Court, which has long been plagued by claims of unfairness despite reforms in 2014.
>
> Little puts the review near the top of his priority list, citing massive delays and the failure of the recent changes that aimed to have fewer people before a judge but had in fact led to the opposite.
>
> He is also highly concerned about child uplifts and the increase in urgent without notice warrants issued, which were raised in a series of articles by Newsroom earlier in the year. Graphic footage showed young children being forcibly removed by police from a parent's home, often during the night. "It shouldn't be happening, I was absolutely horrified ... I know the police officers who were sent in to do it were in a difficult position but you cannot say they were acting in the best interests of the child, it was a breach of the Care of Children Act to treat those children in that way."
>
> Little does not believe that the Act needs to be changed, but he would look into whether a reminder or clearer statutory signal needed to be given to authorities. "Picking up a child and removing them from a warm, loving home when the child is clearly in maximum distress simply is not good enough."

Coincidentally four days before this news story, on 20 November 2017, Backbone sent all relevant Government Ministers a briefing[60] in which they said they are 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 have experienced violence and abuse for many years.

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[58] https://www.parliament.nz/resource/en-NZ/SCR_74967/ef4c5c7356f3874a06d2c269e420df1b512ddd31

[59] Ibid.

[60] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3c08eae2c483c2490cbfca/1513883894520/Briefing+to+incoming+government+2017.pdf

> 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.
>
> A review of Family Court reforms will not address the systemic failures that Backbone has uncovered – the reforms aren't the problem – the problems women are telling Backbone about have been occurring for many years before the reforms.

Backbone's calls for a Royal Commission continued and grew louder when they released a report about the impact that Family Court decisions and orders are having on children.[61] In the foreword to that report, academic and social worker, Paora Joass-Moyle says:

> If we are to learn anything about what we are not getting right for vulnerable children in Aotearoa, then we have to listen to, and cease dismissing the experiences of those most affected.
>
> These systems have no right to keep us from protecting ourselves, our families and future generations of our people.

Learning from the Australian experience

Australia is grappling with almost identical systemic failures in their family law system, as evidenced in comments made in many of the submissions to the Australian Parliamentary inquiry into better family law system to support and protect those affected by family violence.[62]

> The family and children's courts have an opportunity to protect families from violence. To do this effectively the health and safety of victims of violence must be prioritised through protective legislation. The most dangerous cases are where contested cases are used to control and punish the protective parent as an extension of violence. These cases need to be managed much differently to consented proceedings if we are to efficiently protect against family violence.
>
> The family courts are in current crisis because they are regarding myths and opinions over sound research and fact. They are not endorsing standards or principles or employing practices which meaningfully identify and interpret the truth of the matter. Family violence has been grossly mismanaged through the court system as it stands, with horrific consequences.[63]

In 2015 the Victorian State Government established a Royal Commission into Family Violence. The Commission recommended that the Victorian Government take up family law reforms with the Commonwealth Government.[64] It appears these calls were heeded by the Federal Parliament because on 16 March 2017, a Committee of the Australian Parliament commenced an inquiry into how Australia's federal family law system can better support and protect people affected by family violence.[65]

However, by August 2017 it became clear that the Federal Parliamentary inquiry also had severe limitations in its scope and child protection campaigners publicly called the inquiry a 'waste of time' and the news that the inquiry would not hear testimony from within the chief justices of the Family Court of the Federal Circuit court rendered the inquiry as 'pointless'.[66] These reactions arose after

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[61] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf

[62] https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Submissions

[63] file:///C:/Users/RH/Downloads/8%20-%20Australian%20Paralegal%20Foundation.pdf

[64] Chapter 24 Pg 210

[65] https://www.aph.gov.au/fvlawreform

[66] http://www.smh.com.au/federal-politics/political-news/family-violence-inquiry-written-off-as-a-waste-of-time-after-judges-excused-from-appearing-20170822-gy1d6m.html

Attorney-General George Brandis wrote to the House of Representatives committee on social policy and legal affairs saying, 'For reasons going to the heart of the separation of powers, I am of the view that the appearance of the judges before parliamentary inquiries about contested policy areas is rarely, if ever, appropriate.'[67]

A Sydney Morning Herald article says that Hetty Johnston, executive chair of the child protection advocacy group Bravehearts and other family violence campaigners, inducing Rosie Batty, are now calling for a Royal Commission into the family law system in Australia. '*The family law system is archaic, backwards and horrendously dangerous. A Royal Commission is the only legal instrument that's capable of overcoming all the obstacles.'* Ms Johnston said.[68]

What type of Inquiry is needed?

Twelve years ago, Government asked the New Zealand Law Commission to review the law relating to public inquiries in New Zealand. This section contains several extracts from two of the reports produced as part of that review.

The Law Commission noted that governments use inquiries for a very wide range of purposes:[69]

- Establishing the facts – providing a full and fair account of what happened
- Learning from events – to prevent their recurrence
- Catharsis or therapeutic exposure – for reconciliation and resolution
- Reassurance – rebuilding public confidence after a major failure
- Accountability and blame – holding people and organisations to account
- Political considerations – demonstrating that something is being done or providing leverage for change
- Policy development – in-depth consideration of novel or wide-reaching policy

Scope required for an inquiry into the New Zealand Family Court

An inquiry into the New Zealand Family Court's treatment of cases where there has been violence and abuse must be able to:

- Instil public confidence and demonstrate full independence from the New Zealand justice system.
- Examine the operations of the court and the role the judiciary and other court officials have played individually and collectively in the problems identified by women and children who have experienced violence and abuse.
- Independently review practices, procedures and standards that have been used by the Family Court in cases of violence and abuse.

[67] Ibid.
[68] Ibid.
[69] This list was in CAB Min (13) 20/9 (available at https://www.dia.govt.nz/diawebsite.nsf/Files/Cab_Paper_Inquiries_Bill_Aug_2013/$file/Cab_Paper_Inquiries_Bill_Aug_2013.pdf) and had been drawn from Law Commission report (available at http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R102.pdf) which in turn had drawn these points from a summary provided by the British House of Commons Public Administration Select Committee (2005)

- Provide the required protection for the victims of domestic violence (primarily women and children) to give evidence of their experiences in the Family Court without fear of negative repercussions.[70]
- Suponea and examine documentation (including court documents, transcripts and recordings).
- Suponea and interview witnesses (Judges and other court professionals and officials, NGOs and community/voluntary groups) with specialist insights into the workings of the Family Court to share their views in confidence.

Types of Inquiries

There is a continuum of inquiries and investigations available to Government, ranging from day to day departmental or inter-departmental work at one end of the scale, through ad hoc departmental inquiries, ministerial inquiries and specialised or narrow inquiries under other statutes, to formal commissions of inquiry under the Inquiries Act 2013 and royal commissions established under the Letters Patent. (Para 4)[71]

The Law Commission suggests that if there is a need to instil public confidence and ensure independence an inquiry would need to be a statutory inquiry.

> The Commission of Inquiry into Police Conduct was an example where an internal police investigation or inquiry by the (then) Police Complaints Authority would not have met public concerns, particularly as the allegations were of such an historic, systemic and grave nature. It is this "independent" nature that appears frequently to be a deciding factor in whether a one-off body like a commission of inquiry is chosen over an alternative mechanism. (Para 2.9)[72]

In the same report the Law Commission explains that to be able to compel witnesses or require the production of information it must be a statutory inquiry.

> Non-statutory inquiries cannot compel witnesses or require the production of information. While some people, such as government employees, may have a professional incentive to cooperate with an inquiry, other witnesses may not. In those circumstances, an inquiry may find itself delayed or unable to other witnesses may not. In those circumstances, an inquiry may find itself delayed or unable to complete its task satisfactorily. This adds to cost, and is undesirable for all those involved, especially for any person being investigated, whose reputation and livelihood are at stake. (Para 2.18)[73]

Because of the need to instil public confidence, ensure independence, compel witnesses, and require the production of information, an inquiry into the Family Court's treatment of cases where there has been violence and abuse must be a statutory inquiry.

[70] Backbone reports that most of the women they have collected information from 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.
[71] http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP1.pdf
[72] http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R102.pdf
[73] Ibid.

Types of statutory inquiry

S6 of the Inquiries Act 2013 states:[74]

(1) This Act applies to the following kinds of inquiry:

(a) Royal commissions established under the authority of the Letters Patent constituting the office of the Governor-General, and this Act applies to Royal commissions as if they were public inquiries:

(b) public inquiries, which are established in accordance with subsection (2):

(c) government inquiries, which are established in accordance with subsection (3).

(2) The Governor-General may, by Order in Council, establish a public inquiry for the purpose of inquiring into, and reporting on, any matter of public importance.

(3) One or more Ministers may, by notice in the *Gazette*, establish a government inquiry for the purpose of inquiring into, and reporting on, any matter of public importance.

The Department of Internal Affairs (DIA) provides administrative assistance to Public and Government Inquiries established under the Inquiries Act 2013.[75] DIA's website says:

> These Inquiries are able to inquire into any matter of public importance or concern to the Government of the day.
>
> Public Inquiries include Royal Commissions, which are appointed by and report to the Governor-General, and the Inquiry report is tabled in Parliament.
>
> Government Inquiries are appointed by and report to a Minister and the intention is that these are simpler and quicker to establish.
>
> Both types of Inquiry have the same legal powers.

The type of inquiry is decided upon after discussions between Ministers and officials, with advice from Crown Law Office and State Services Commission as required. The Law Commission makes two general statements about inquiries that are worthy of consideration:

> Commissions of inquiry, royal commissions and ministerial inquiries have no permanent structure or status. They often arise out of unanticipated events, such as major accidents, or other events that have given rise to significant public concern. It can be difficult to predict what mix of circumstances will give rise to an inquiry. Each will have its own different motivations, blend of facts and events, and each will be directed at a different combination of outcomes. Indeed, the various motivations for inquiries are as numerous and varied as the attempts to define them. (para 2.1)[76]
>
> Despite their lack of constitutional status, inquiries can and do act as tools for holding government and public bodies to account. Inquiries are often appointed where concern has reached such a level that it is necessary to hold one to allay public unease. Furthermore, investigation and criticism of government action or public employees frequently occurs as a consequence of inquiries. Improvements in procedures almost always result. Inquiries can provide the public with assurance that the facts surrounding an alleged failure will be subjected to objective scrutiny. (Para 2.5)[77]

[74] Note: Terminology in the Inquiries Act 2013 is slightly different from that which had been used in the Commissions of Inquiry Act 1908 (which it replaced) and from the terminology used in the extracts from Law Commission reports used above.

[75] https://www.dia.govt.nz/Public-and-Government-Inquiries

[76] http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R102.pdf

[77] Ibid.

Reasons a Government inquiry would not be appropriate

The Law Commission notes that one of the key questions of whether a Government Inquiry would suffice is that of independence and seriousness of the issue.

> The "Wine-box" inquiry grew out of ongoing concerns about the administration of the Income Tax Act 1976, which called for independent investigation at arms length from government. (Para 28)
>
> However, we predict that the need for such inquiries may increasingly be confined to major disasters or significant state sector failures. (Para 29)[78]

The apparent systemic failure in how the New Zealand Family Court responds in cases where there has been violence and abuse is most definitely an example of a 'significant state sector failure'.

Family law and the Family Court have impact on the lives of many thousands of New Zealanders every year. Therefore, restoring public confidence in the Family Court's treatment of cases where there has been violence and abuse would almost certainly require a greater impression of independence than a Government Inquiry could provide.

But more this - it is not just about creating an impression of independence – as noted above, New Zealand's system of government demands that any inquiry into the court system (in this case the Family Court's treatment of cases of violence and abuse) be completely independent. The Westminster conventions require a complete separation of powers between Parliament and the judiciary. So constitutionally, an inquiry into the operation and culture of the Family Court's treatment of cases where there has been violence and abuse (of the scope outlined in this paper) could not be done as a Ministerial inquiry.

As noted earlier in this paper, Australia has recently discovered the limitations of a parliamentary level inquiry. In August 2017, the Australian Parliament's inquiry into the family law system came under fire after announcing it was severely restricted due to these Westminster conventions. Community groups and service users publicly called the inquiry a waste of time and have now started a concerted campaign to get a Royal Commission established in its place.

It would be seriously remiss for New Zealand to make the same mistake – it would merely be a waste time and money.

Public inquiry or Royal Commission?

Sitting at the apex of the inquiry pyramid[79] are 'public inquiries' and 'royal commissions'. A comprehensive inquiry into the Family Court's treatment of cases where there has been violence and abuse could constitutionally only be conducted by one of these types of inquiry.

Both these forms of inquiry are established by the Governor General. In a Westminster system, the Governor General is the only party that sits over both the judiciary and Parliament.

According to the Act, the Governor General uses Order in Council as the authority to establish a public inquiry and uses Letters Patent constituting the office of the Governor-General, as the authority to establish a Royal Commission. Both these types of inquiry are independent from Parliament and report to the Governor-General. Parliament cannot interfere in the direction taken by an inquiry or influence the findings.

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[78] http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP1.pdf

[79] A phrase used by Sir Geoffrey Palmer in his Forward to the Law Commission's 2008 report. (available at http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R102.pdf)

In his foreword to the 2008 Law Commission report,[80] President Sir Geoffrey Palmer says, *'There is no significant legal distinction between these two forms of inquiry – the distinction lies rather in issues of possible prestige.'* Palmer refers to these as 'the heavy artillery' and they, '*have coercive powers to compel the production of information and witnesses. Their findings and recommendations are not legally binding, but are usually highly influential.'*

The Canterbury Earthquakes Royal Commission website[81] goes one step further and draws a distinction between these two types of inquiry, '*A Royal Commission is the most serious response to an issue available to the New Zealand Government. It investigates matters of great importance and difficulty'*.

> A Royal Commission is engaged in fact-finding and preventing future recurrences. It investigates why the situation came about and then recommends policy or legislative changes to prevent it happening again.
>
> A Royal Commission can inquire into any matters it sees fit in order to determine the cause of the issues…it has the powers of compulsion in regard to witnesses, documentation and awarding costs. This enables the Royal Commission to uncover information which might otherwise be difficult to obtain.
>
> Evidence is gathered from a range of different places and sources, including from participants and through the Commission's own investigations. Public hearings are one important part of the inquiry process. They provide an opportunity to clarify matters, test disputed material and ensure that key evidence is discussed in public.

Backbone has said:

> 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.[82]
>
> 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.'[83]
>
> 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.[84]
>
> We see that a Royal Commission of Inquiry is needed not only to address the harm currently being done to women and children but also to ensure that future victims have appropriate access to justice and safety to mitigate the scourge of violence against women and children in New Zealand.[85]

In conclusion

The seriousness of the issues raised in this paper and related reports, signals that greater investigation is urgently needed. There is now an extensive amount of evidence to suggest there are serious systemic issues occurring in the Family Court's treatment of cases where there has been violence and abuse.

These are causing serious long-term harm to women and children. Family Court proceedings and care and contact orders are causing damage to women and children in the same way as violence and abuse does and therefore creating a double whammy effect on their health.

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[80] http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R102.pdf
[81] http://canterbury.royalcommission.govt.nz/What-is-a-Royal-Commission
[82] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3c08eae2c483c2490cbfca/1513883894520/Briefing+to+incoming+government+2017.pdf
[83] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf
[84] Ibid
[85] Letter from Backbone to the Prime Minister dated 13 November 2017

Parliament 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. The only way to determine conclusively whether the failures in the Family Court are accurate and systemic is to conduct an in-depth formal inquiry into the way the New Zealand Family Court responds to cases of violence and abuse.

This paper has shown that such an inquiry needs to be conducted as a Royal Commission and therefore recommending to the Governor-General that a Royal Commission be urgently established is the only responsible step Parliament can take.

Next steps

On 20 November 2017, Backbone wrote to members of the newly formed Justice Select Committee[86] urging the committee to consider whether a Royal Commission of Inquiry is needed to investigate the Family Court's practices, culture, interpretation of the law and orders/decisions/directions in cases where violence and abuse has been alleged. Backbone offered to meet with the committee to discuss these matters in greater detail.

If the data that Backbone and others have released is not convincing enough for this committee to make a recommendation to Parliament about the need for a Royal Commission, then the committee could either:

1. Meet with Backbone and ask them to present the committee with more in-depth information including the yet unpublished results from Family Court surveys in particular regarding behaviour and responses of different professionals working in the Court, breaches of privacy and conflicts of interest that are occurring.
2. Establish a safe and confidential mechanism to gather any additional evidence that is required. For example, this committee, a sub group of the committee or another mechanism the committee may establish, could meet with a number of the women who have had the experiences outlined in the Backbone reports and gather more information first hand.
3. Call for public submissions on the merits of having a Royal Commission and detail about the extent of Family Court failures.

[86] Refer Appendix 2

Appendix 1

Open letter to all NZ MPs and Judiciary[87]

I demand that the Members of Parliament and the NZ Judicial System undertake a Royal Commission of Inquiry into the New Zealand Family Court System, as per the call of the Backbone Collective.

I am appalled at the lack of safety, accountability and transparency in the existing Family Court system as a whole, and particularly where Domestic Violence is involved. The Human Rights of children, and of survivors of violence against women are being breached by the Family Courts system every day.

We must have an Inquiry into the Family Courts as it is failing to observe and uphold the law surrounding Care of Children and Domestic Violence. Observing and upholding the law is vital in order to save the lives and wellbeing of thousands of innocent loved ones who go through Family Court cases each year.

It is shocking that survivors of violence against women who have been involved in the Family Court system have not had their experiences of violence and abuse believed, their evidence was struck out, they were blamed for the violence and abuse, silenced, or their experiences were never responded to.

I expect that the Family Court should provide survivors of violence against women with protection and safety, for them and their children. The experiences of my community however, reveal that this is very rarely the case, and instead the Family Court is unjustly removing children from their safe parent, and handing them over or even forcing them back into the abusive environments that they were removed from in order to protect them.

I believe there is a rising voice of thousands who are currently suffering in fear, traumatised by longterm abuse that has been sanctioned by the Family Court. For many years, complaints have been made appealing Family Court decisions and telling those in authority of the harm that the Family Court is doing. They have not listened or taken action to change what is happening, however in time, history will reveal the blood on the hands of all those who participated in these harmful Family Court practices, or who stood by passively while our children suffered this state sanctioned abuse.

Not only is it your professional duty to expose and address the systemic failings of the Family Court, it is your moral and ethical duty to provide a voice to victims and to ensure a robust framework moving forward by which to protect our children. Our community is unified in our view that the harm being done by the Family Court is the result of the interpretation, implementation of the current laws.

These problems will not be fixed by legislative changes, but only by an Inquiry into the entire Family Court system. There is enough evidence before you to call for a Royal Commission of Inquiry into the Family Court immediately.

As a community, we are distressed, grieving and fearful for the safety and lives of our loved ones who have been and are being abused by the current system. We anticipate many further social issues will result as a direct consequence of the harmful operation of the current Family Court System and urge you to take action immediately in order to prevent further abuse, crime, and tragedy in the lives of our children.

[87] https://our.actionstation.org.nz/petitions/safety-within-nz-family-courts-via-a-royal-commission-of-inquiry

Appendix 2

The Backbone Collective

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20 November 2017

Members of the Justice Select Committee
Parliament Buildings
Wellington

Dear committee members,

Re: Petition calling for a Royal Commission of Inquiry into the New Zealand Family Court

On 17 August - the last sitting day of the previous Government – Labour MP Poto Williams was granted leave to table a petition calling for a Royal Commission of Inquiry into the New Zealand Family Court system.[88] The petition was the last item of business assigned to the Justice and Electoral select committee of the 51st parliament.

The petition was in the form of an open letter signed by 2800 people. It was presented by Community in Action (CIA) a group closely aligned to The Backbone Collective. Newsroom reported on the group's silent march through Wellington in the rain to deliver the petition to Parliament.[89]

We understand that as the new Justice Select committee, one of your first tasks is to decide which items of business to bring forward from the previous committee. We strongly urge you to include this petition in your schedule of business and to hold a comprehensive hearing to consider the evidence whether a Royal Commission of Inquiry is needed to investigate the Family Court's practices, culture, interpretation of the law and orders/decisions/directions in all cases where violence and abuse has been alleged.

The Backbone Collective[90] was launched eight months ago to give women who have experienced any type of violence and/or abuse a voice. Backbone now has over 1100 members. Since launching we have received hundreds of emails and Facebook messages and survey responses from women telling us about how the system has treated them and their children - in particular with regard to the Family Court. We have been horrified to hear one story after another about how the

[88] https://www.lawsociety.org.nz/news-and-communications/latest-news/news/petition-demanding-inquiry-into-family-court-system-tabled-at-the-beehive
[89] https://www.newsroom.co.nz/2017/08/17/42985/tears-as-petition-for-family-court-inquiry-handed-over
[90] www.backbone.org.nz

Family Court does not respond safely to women and their children when they reach out for help after experiencing violence and abuse in the home. We have now produced three reports detailing what women have been telling us:

1. 'All Eyes on the Family Court': A watchdog report from the Backbone Collective'[91]
2. 'Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court'[92]
3. 'Don't Tell *Me* Your Problems: The Family Court complaints and appeals landscape'[93]

If you have any reservations about the importance of the Justice Select Committee considering the calls made in this petition, we urge you to read these three reports.

During October we conducted a survey about the effect that Family Court proceedings is having on children and will be releasing these findings in a series of reports over the coming weeks/months. We would welcome an opportunity to present our findings to your committee. In addition, some of our members are prepared to meet your committee and tell you first-hand how the Family Court has treated them and their children.

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. Parliament has a duty of care to these women and children and to the New Zealand public to urgently investigate the harm being done.

We are aware that that Otago University was contracted by the previous Government to undertake a review of the 2014 Family Court reforms. Based on the alarming information we have gathered we are firmly of the view that the systemic failures are not related to the 2014 reforms and hence a 'review' would have neither the scope nor the mandate to go nearly deep enough into the issues we are hearing about in the Family Court.

We are also 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. Many women who have experienced violence and abuse have been told by the Family Court that if they talk about their case they will lose their children, and 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

[91] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58e696a21e5b6c7877e891d2/1491506855944/Backbone+Watchdog+Report+-+Family+Court.pdf
[92] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf
[93] https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf

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.

The incoming Government has committed to conducting an Inquiry into the historical claims of abuse of children in State care, with a view to learning lessons to ensure that policy is changed to minimise the risk of this happening in the future. It is important that Parliament recognises the interface between that Inquiry and the Royal Commission that Community In Action and Backbone members are calling for. The Family Court is party to all cases where children are abused in state care in that the Court has approved those care arrangements. Likewise, Oranga Tamariki/MVCOT are involved in a significant proportion of the cases where processes and orders of the Family Court are harming children – either directly or by approving care arrangements that enabled the abusive parent to harm the child.

Backbone looks forward to having an opportunity to discuss these matters in greater detail with your committee, at the earliest opportunity.

Yours sincerely

Deborah Mackenzie and Ruth Herbert
Co-founders
The Backbone Collective