



## **Strengthening New Zealand Legislative Response to Family Violence: A Discussion Document Ministry of Justice**

### **Presbyterian Church of Aotearoa New Zealand Submission 24 September 2015**

#### **Background**

The Presbyterian Church of Aotearoa New Zealand welcomes the opportunity to contribute to this important and much needed review of New Zealand's legislative response to family violence. The rising level of family violence in New Zealand is deeply troubling to our members.

The Presbyterian Church is called to be an agent of change in our communities. We participate in transformation for the good of individuals, communities and societies as a whole. We believe we are called by God to work with others in making Jesus Christ known through: teaching and nurturing people in Christian faith; loving service responding to human need; proclaiming the Gospel; seeking to transform society; and caring for God's creation.

With 380 churches the length and breadth of New Zealand, and more than 300,000 people identifying as Presbyterian in the 2013 census, our Church is a significant voice. The 30,000 people who attend a Presbyterian church every week are actively involved in serving their communities. Our members volunteer with community organisations committed to preventing and ending family violence and to supporting its victims. Our churches support anti-violence initiatives including the White Ribbon campaign.

Our churches provide a wide range of community services, such as English language classes for migrants, foodbanks, breakfast clubs at schools, budgeting advice, reading recovery volunteers, mentoring at-risk youth and music programmes for pre-schoolers. Many Presbyterian congregations run or help support op shops, and most ministers and pastoral carers deal with a range of people and problems within local communities. Some congregations provide counselling on a more formal basis.

Through these interactions we collectively have an awareness of family violence related problems and the devastating impact of family violence on our communities.

The Presbyterian Church partners with the Presbyterian Support New Zealand social service organisation in educating, resourcing and encouraging our churches to take action to prevent, recognise and end family violence. We do this regionally through joint projects and nationally through our PresCare partnership. Our most recent PresCare resource on family violence and poverty, “Justice & Action”<sup>\*</sup> was distributed in September 2015 to our 380 churches and to the seven Presbyterian Support regions throughout New Zealand.

## **Introduction**

The Presbyterian Church of Aotearoa New Zealand commends the Ministry of Justice on preparing a comprehensive and well researched discussion document that captures the complexity of different types of violence, and the safety issues experienced by victims when reporting family violence to police, and when cases are brought before the courts. Overall, the range of mechanisms to improve the safety of victims and their children [new offences, additional pathways, improving access to and effectiveness of protection orders] are positive and have potential to help keep families safe.

The Presbyterian Church agrees with Presbyterian Support New Zealand that:

- The scope and level of domestic violence occurring within New Zealand suggests that a systemic response to the issues is required. In considering legislative change, we have an opportunity to construct a foundation on which an integrated response can be built: with legislation that better defines and describes domestic and family violence and provides a human rights and principles-based framework; to inform government policy and national strategy development, including planning, funding and programming.
- The existing NZ domestic violence legislation is designed to respond to violence that has already occurred, rather than providing a human rights and protection focus which would promote a stronger emphasis on prevention and early intervention.
- Improved descriptions of domestic violence behaviours, including features and patterns of violent behaviour, and associated risk factors, will better support implementation of the legislation.
- There is value in developing a national primary prevention strategy as a way to support reducing structural barriers for victims, and provide positive messaging universally alongside targeted support.

- To address issues of domestic violence at the prevention and early intervention end of the continuum, (primary prevention, screening, incident response) there needs to be a much more integrated strategy which includes training for those who might first respond to incidents, recognition of, and funding to NGOs supporting vulnerable children and adult victims and perpetrators of family violence.
- Access to support for victim(s) must take account of the different pathways families take to seeking help, the onerous nature of seeking Protection Orders and the barriers to accessing legal support.

The Presbyterian Church supports the The New Zealand Council of Christian Social Services (NZCCSS) view that a focus on promoting positive/respectful relationship within families/whanau plants the seed for well-being and resilience. This approach is at the heart of the work carried by the Church and Christian social service members in their communities where they see positive outcomes that derive from adults and children having both a sense of safety and of belonging within their family/whanau. They also see the negative outcomes of violence that corrodes relationships, often creating a cycle of abuse that spans generations of the same family/whanau. A frequent companion to this cycle of violence is poverty and social exclusion as families genuinely struggle to meet their basic needs on a day-to-day.

Primary prevention strategies that include community-based services to support family members to seek help (self-referrals) to stop family violence are critical, particularly given that only a fraction of cases are reported to the Police, or meet the high prosecution threshold. It is concerning that little public funding goes to prevention strategies, while the majority (88 per cent) is allocated to follow up responses once violence has occurred [*Progress on the Work Programme of the Ministerial Group on Family Violence and Sexual Violence* - Cabinet Social Policy Committee]. Significant public investment is needed to support positive/respectful relationships (non-violence programmes) in communities. Over the long run this public investment will pay dividend in reduced funding of Police time, court time and of public health expenditure. It will also support generations of families to be strong and resilient.

### ***Specific comments on legislative review of family violence legislation***

*Informed by the work of The New Zealand Council of Christian Social Services (NZCCSS)*

#### ***Guiding Principles***

The Presbyterian Church supports the inclusion of a set of overarching principles within legislation that inform decision-making in a range of situations involving family violence.

These principles should frame the whole of government work programme to reduce family violence, guide an overarching high level strategy, and all related work planning and funding decisions.

The *Family Violence Protection Act 2008* in Victoria, Australia, provides useful examples of guiding principles that could be considered.

### ***Definition of family violence***

The Presbyterian Church agrees the current legal definition of ‘domestic violence’ has limitations and supports the view that a change of legal definition to ‘family violence’ would go some way to increase understanding about other types of violence that may occur in families whilst acknowledging that intimate partner violence remains a significant issue.

The Presbyterian Church also has concern the use of ‘family violence’ could limit the recognition of violence in household settings that is not perpetrated by family members (i.e. carers of older people and of people with disabilities). Legislation could recognise the difference between family violence and domestic violence and include both in the title.

The Presbyterian Church supports the need for a clearer explanation of what is meant by ‘coercive control’ in the legal definition of family violence. Psychological abuse accounts for a significant rate of partner violence and therefore needs to be covered in the scope of any revised legislation.

### ***The nature and dynamics of family violence across population groups***

As only 20 per cent of family violence cases are reported to Police, there are clearly significant barriers to reporting and addressing family violence. The recognition of the specific needs of different population groups and communities would be a starting point for removing barriers. There has been substantive research on family violence that could be drawn on to identify specific barriers faced by different population groups.

### ***Accessibility / Effectiveness of Protection Orders***

The Presbyterian Church agrees that safety from violence is a basic human right and that the corresponding right to help should not be compromised because of cost. The reality for many victims of violence, however, is that the cost of seeking a protection order is a

barrier, particularly when not eligible for legal aid. The establishment of a 'dedicated fund' or funding community legal services to apply for a protection order would go some way to remove the cost barrier, and would also assist victims with the application process which can be a daunting process.

### ***Police Safety Orders***

The Presbyterian Church supports the consideration of breaches to Police safety orders being made an arrestable offence. This would support the overarching guiding principle that family violence is a fundamental violation of human rights and is unacceptable in any form and is not acceptable in any community or culture.

The Presbyterian Church also supports an increase to the timeframe of Police safety orders (72 hours minimum and 5 days maximum) on the basis that the maximum 5 days can be insufficient time for police/specialist services to prepare a protection order and implement safety plans for victims. On making a police safety order, Police should be required to refer victims to specialist services, and perpetrators to rehabilitation support. Both victims and perpetrators need access to specialist services if the underlying drivers of violence are to be addressed.

### ***Property Orders***

The Presbyterian Church supports consideration of housing assistance to both victims and offenders to enhance the effectiveness of property orders. Feedback from NZCCSS members advise the implementation of safety plans for 'victims' is a critical issue and finding a 'safe place' for them is fraught with difficulty if they have no access to emergency financial assistance. Financial support to find safe housing, along with practical housing assistance, also needs to be put in place to support victims to take the first step to seek help to leave violence relationships.

The provision of housing assistance to the perpetrators is also critical to ensure the safety of the victim and their family. If a perpetrator has nowhere to go, some NZCCSS members advise they are likely to hang around the family home and when seen by family, brought back into the home out of concern particularly if children are present. More housing assistance for perpetrators, along with attendance at specialist non-violence programmes, would likely go some way to help reduce family violence in the home over the long term.

### ***Family Violence and Parenting Arrangements***

Keeping children and adults safe in parenting arrangements is an important concern. The Presbyterian Church supports the view that parenting orders should be consistent with any existing protection order to ensure the safety of a child is paramount. When a parent does not feel safe around a partner, the parent and their children should not be put into a situation that enables them to be re-traumatised during visitation rights. A child's safety from violence should be given primary weight in all decisions by the Courts, and this should include safety from psychological violence. To break the cycle of inter-generational violence in the home, children must be kept safe from both witnessing and experiencing all forms of violence.

### ***Competent Workforce***

The Presbyterian Church supports the development of public awareness material and minimal standards and service delivery standards but this should be developed in partnership with relevant stakeholders and adequate additional government funding would be required to develop and implement these changes.

The identification of victims (and perpetrators) and referral to specialist services early is critical to preventing further violence in the future. To achieve this people working on the front line (Government workers, GPs, hospital workers, teachers) also need know the signs of family violence and what to do if someone is looking for help.

### ***Judicial Powers in Criminal Proceedings***

The Presbyterian Church supports the views of Presbyterian Support New Zealand and NZCCSS that the Criminal and Family Court systems should be aligned as is the case in the *Queensland Domestic and Family Violence Protection Act*, which requires that *“a civil response under the Act should operate in conjunction with, not instead of, the criminal law”*.

### ***Additional Pathway***

The Presbyterian Church view is that it is critical that community based social service providers are sufficiently funded to deliver support to victims of violence at the time they present for support, which may be in addition to accessing other services.

An effective community response to family violence also requires additional pathways for perpetrators of violence who want to stop, along with victims of violence. Currently there is no financial assistance provided to perpetrators who self-refer to services to stop violent behaviour within their family. It is only when the violence has exacerbated and reported to police that funding is made available for specialist support.

To make any dent into New Zealand's appalling family violence statistics there must be adequate public funding of both primary prevention and perpetrator rehabilitation. This funding must also be available to people who self-refer to services and not just those who have reached crisis point.

***Information sharing between agencies/information sharing with and between courts***

The Presbyterian Church supports information sharing between courts and the disclosure of all relevant information in cases involving family violence. This should include previous family violence convictions and any history of Police calls in relation to family violence. As raised in the discussion document, judges need the full picture in order to make informed decisions about the risk imposed by perpetrators.

*The Privacy Act (1993)* already provides for the disclosure of information sharing across agencies on specific grounds that include "the use is necessary to prevent or lessen a serious threat to public health or safety, or the life or health of any individual" [Principle 10].

The Presbyterian Church supports calls to include a reference to family violence as a specific ground to enable the disclosure of information. This might go some way to provide guidance and to support professionals to disclose information where there is serious threat to life. At the same time as recognising the importance of sharing relevant information, the safety of victims is paramount and any agreement to share information across agencies must be accompanied by guidelines that set out protocols to ensure 'sensitive information' about a victim cannot be received by the perpetrator or shared to them by their lawyer.



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\* <http://www.presbyterian.org.nz/for-ministers/prescare/justice-action/download-now>

\*\* General Assembly is the Presbyterian Church's top decision-making body

\*\*\* The Moderator of the General Assembly of the Presbyterian Church of Aotearoa New Zealand is the elected spiritual leader of the Presbyterian Church and the spokesperson of the Presbyterian Church.