



Family Violence Law Review

Ministry of Justice

The Salvation Army New Zealand Fiji and Tonga Territory Submission

BACKGROUND

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
2. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power.¹
3. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand.
4. This submission has been approved by Commissioner Robert Donaldson, Territorial Commander of The Salvation Army's New Zealand, Fiji and Tonga Territory.

¹ <http://www.salvationarmy.org.nz/our-community/mission/>

THE SALVATION ARMY PERSPECTIVE

1. The Salvation Army is opposed to any form of family violence, and we are deeply concerned about the level of violence, including violence within dwellings, which occurs in our communities.
2. The Salvation Army annual *State of The Nation* reports highlight that there has been an insufficient reduction in the level of recorded violent offences in dwellings over the last five years². Of further concern is that as much as two thirds of domestic violence goes unreported³. This suggests current processes are inadequate in terms of supporting victims to seek assistance, and inadequate in terms of assisting perpetrators to understand and address their inappropriate behaviours. As an organisation that works directly with vulnerable people in society our frontline staff are all too aware that this issue is often difficult to report and resolve.
3. We submit that in order to boldly address the issue of family violence in New Zealand there needs to be significant and deliberate intervention by Government. All legislation and policy that is considered by Government and Government Departments should consider the effect that the proposed policy and legislation has on domestic relationships which could be impacted by family violence. This must be balanced against assumptions that only certain communities experience family violence as noted in *Te Puaa Te Ata Tu 1988*, a Government inquiry into racism in the child protection system.
5. We submit that the current legislative context is not an effective and brave enough intervention to ensure the reduction of domestic violence in New Zealand.
6. We submit that legislation alone will be insufficient to generate behaviour change in relation to the issue of misuse of power within relationships. We strongly support increased investment in a Campaign to create a community-level change in values, as seen in with attitudes to smoking and drink-driving. Such a campaign requires bold leadership and exceptional messaging in order to address the embedded attitudes that currently exist within our communities.

² Alan Johnson (2015) *A Mountain All Can Climb: A state of the nation report from the Salvation Army*. The Salvation Army, Wellington.

³ Ministry of Justice (2010) *The New Zealand Crime and Safety Survey 2009: Main Findings Report* Figure 4.1 p44.

SPECIFIC RESPONSES TO THE PUBLIC DISCUSSION DOCUMENT

Updating the legal definition of 'domestic violence'

7. We submit that the definition does not recognise coercive control or power imbalances

- We submit that traditional and/or cultural views of the roles of women and men are no justification for asserting authority over another person by way of violence.
- We believe that domestic violence includes an exertion of power over the victim(s), which covers most types of family violence including intimate partner violence, child abuse and neglect, elder abuse and neglect, and sibling abuse. The current definition of domestic violence in the Domestic Violence Act 1995 ("the Domestic Violence Act") refers to various types of abuse, which is the improper use of something or someone. By recognising explicitly that domestic violence is the intended improper use of one's own power, 'mana' or one's spirit in relation to another, the definition is broadened to capture the psychological control that may be exerted by a perpetrator. This means that if the criterion under the factual inquiry of abuse is not met, there may still be recognition of the need to protect the victim where a psychological element of abuse is found.
- We submit that widening the definition of domestic violence to include these concepts would allow more incidents of family violence to be identified. This aligns with the need to recognise coercive control as part of the definition, as recognised by the Ministry of Justice.
- We also believe that changing the title given to the nature of the misuse of power within relationships is less significant than ensuring the definition of the form of violence and abuse is adequate. The definition must be broad enough to incorporate all forms of physical and psychological abuse. This would also increase the general understanding of the wider application of domestic violence, as the Ministry of Justice has recognised.

Victim Safety

This part of the submission relates to Protection orders, Property orders and Police Safety orders.

8. We submit that self-reporting of domestic violence does not support the victim

- Currently a protection order under the Domestic Violence Act requires the perpetrator to stop being violent towards the victim. The order also includes non-contact provisions that the victim can suspend if they choose.
- A significant barrier to protection orders is that victims must apply for a protection order if they think it is necessary. This requirement to self-report is the first barrier. Relationship abuse by its very nature includes psychological abuse by instilling a power imbalance and fear into the opposite party. The cost of the process is a further barrier, whilst the nature of the paperwork can be a further barrier if one is vulnerable and is made even more challenging if poor literacy or language skills make the process challenging.

9. We submit that the legislative context does not protect children victims

- An important consideration is if the domestic relationship includes children. Even if the criterion for domestic violence has been satisfied under the Domestic Violence Act, there is no presumption against contact with a violent parent under the Care of Children Act 2004 (“Care of Children Act”). This presumption was removed after the enactment of the Care of Children Amendment Act (No 2) 2013 requiring a mandatory statement by the applicant of an order on how the applicant will provide for contact. The change was made in favour of a rights-based approach for contact for fathers as well as fulfilling the principle 5(e) of the Care of Children Act. The court must then consider contact. However, the purpose of the Domestic Violence Act is to reduce and prevent violence in domestic relationships by recognising that all forms of this are unacceptable and there should be protection for victims. This amendment in conjunction with the Family Courts Amendment Act 2013 does not promote the purpose of the Domestic Violence Act in any regard.
- In light of the increased risk to children, the Salvation Army recommends re-instatement of a lawyer for the child as the two-track method encouraging self-resolution oversimplifies the dispute which could allow for domestic violence to go unreported, particularly where children are involved. Furthermore, re-instatement of a lawyer for the child who has the interests of the child as their paramount concern ensures that the weakest party of the dispute is represented adequately in the dispute. We also recommend that the threshold for the Family Court to make interim orders is lowered, as was prior to the Family Courts Amendment Act 2013.
- We recommend that barriers to legal aid for Family disputes are removed and legal aid is made available to all parties regardless of which track they fall under in the Family Justice System.

10. We submit that legal options are not the only way of addressing family violence

- We believe that family violence should be addressed before it occurs and/or escalates. The Salvation Army recommends re-instatement of free counselling sessions as disputes most often involve destructive emotional side effects. A dispute essentially represents a relationship breakdown and it is important that the parties are given at least basic emotional management strategies to assist in making a constructive agreement to resolve the issue. Previously, counselling sessions were available either separately or jointly, which provided another avenue for identification of family violence. Was such support available it could trigger a screening process for family violence and support those involved to address it appropriately, either through non-legal intervention in low risk cases (i.e. family violence programme) or legal intervention (i.e. protection order).

Individual pathways to safety

11. We submit that gaps and loopholes in the two-track approach need to be addressed

- There is a two-track approach for Family Dispute Resolution (“FDR”) where guardians agree or disagree on care arrangements and a “without notice” track. The latter is for urgent matters where FDR is skipped and the dispute taken directly to family court where parties are unable to participate in FDR for enforcement of an existing protection

order or where there is domestic violence or abuse. Due to the nature of domestic violence, particularly physical domestic violence, it is likely that cases will go unreported or undisclosed. Furthermore, because of cuts to family law advice through legal aid, it is difficult for many clients to make their case. This is effectively an inhibition on access to justice, and a breach of the Bill of Rights Act 1990⁴. Lawyers assist in identifying which cases can be settled outside of court to encourage non-adversarial interests-based solutions as well as push extreme cases to court faster. Research highlights the layers of socio-economic disparity that increases likelihood of domestic violence⁵ on top of the emotional hardship whilst trying to rationally navigate the two-track process. The experience in Australia⁶, which also had a similar model, was that there was significantly lower reporting of domestic violence in parenting order cases with the requirement on applicants to fill out a form putting the system on notice of the issue when applying. Victims are highly unlikely to fully disclose domestic violence in the first instance.

- An added barrier to justice is that a registrar may refuse to accept an application if there is insufficient evidence of the party's failure in FDR or domestic violence⁷. There is enormous discretion given to a registrar for such serious matters which are to be made based on the paperwork. Furthermore, the family court may also send a dispute back to FDR at any point during the process. There is potential for unsafe care arrangements to be agreed to if domestic violence is not identified in this process. In particular, because of the controlling, coercive nature of domestic violence, which can involve intimidation, blackmail and controlling methods of power dominance of one party by another.
- The FDR services accredited by the minister do not need to have a child-inclusive model, of which there are such FDR models available⁸. This means there is even less scope for fulfilment of the giving reasonable opportunity for the child to express their view on matters affecting them⁹.

12. We submit that financial costs towards self-resolution adds further stress and increases likelihood of further family violence incidents

- We submit that families who experience poverty face a significant and persistent amount of stress. Our frontline staff report that families face food insecurity, high housing costs, debt and other negative socioeconomic factors which increase stress on a family. Financial stress can contribute to the incidence of domestic violence and may exacerbate the power imbalance which contributes to some domestic violence situations.
- Due to the personal financial cost of going through the Family Justice System, we believe that the user-pays process discriminates against victims with limited financial resources.

⁴ Bill of Rights Act 1990, s 27.

⁵ Mavis J Duncanson, Don A R Smith and Emma Davies "Death and Serious Injury from Assault of children aged under 5 years in Aotearoa New Zealand: A review of international literature and recent findings" Office of the Children's Commissioner, 2009.

⁶ Pauline Tapp and Nicola Taylor "Protecting the Family" in Henaghan and Atkin (eds) *Family Law and Policy in New Zealand* (LexisNexis, Wellington, 2013) 99.

⁷ Care of Children Act 2004, s 46E(5).

⁸ Family Dispute Resolution Act 2013.

⁹ Care of Children Act 2004, s 6(2).

Better services for victims, perpetrators and whānau

13. We submit that there needs to be more information sharing

- We submit that there needs to be greater emphasis on information sharing across agencies to identify and screen for family violence. There have been multiple Government policies created to provide for greater information sharing, however they are not strictly enforced and are thus ineffective. Information collected by various agencies is kept within their silos despite approved information sharing agreements. We recommend that to enforce information sharing it may be necessary to draft appropriate legislation to this end.

14. We submit that a holistic approach respects Māori as the Government's Treaty partner

- We submit that a holistic approach to domestic violence, in recognising that Māori are disproportionately represented as both victims and perpetrators, appropriately addresses family violence for whānau Māori. We believe that as the Government moves the matter of family violence forward, this approach should be considered throughout. By taking a holistic approach, we mean to consider all avenues, both formal and informal with reference to the Māori health models.
- The Children, Young Persons and their Families Act 1989 govern children already under care of the Government because of risk to their welfare. Te Pua Te Ata Tu 1988 is a detailed enquiry into racism within the child protection system and includes recommendations to address this. The report was a Māori perspective published in the hopes of decreasing the undermining of the mana of families in official interventions. None of these recommendations have been addressed in any reforms to date, and it would be highly beneficial to look into this report once again due to the high number of domestic violence situations involving Māori. Cultural awareness and inclusion can assist in providing better solutions for Māori. "Whānau, hāpu and iwi" is mentioned twice in the Care of Children Act 2004 in relation to being "protected from all forms of violence"¹⁰ and in eligible culturally recognised family groups who may apply for a parenting order with leave of the court¹¹. The phrase, "it takes a village to raise a child" is true of Pacific communities and of Māori as well, and there is no scope within the act for this type of care to be recognised, particularly in relation to the operation of whāngai by other members of the family.
- We submit that future legislative, regulatory and policy direction should strongly take this approach into account at all stages of addressing family violence.

¹⁰ Care of Children Act 2004, s 5(a).

¹¹ s 47(1)(d).

CONCLUSION

- In conclusion, The Salvation Army considers family violence to be a significant and pressing issue in New Zealand. We believe the current legislative context fails to identify perpetrators and empower behavioural changes, and effectively fails to adequately support the victims. We suggest that a bold values-based campaign, supported by legislative processes offers the greatest hope for positive change in our communities.

For further information or discussion, please contact:

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