



**Submission on the Ministry of Justice public discussion document:
'Strengthening New Zealand's legislative response to family violence'**

**From Shine – Safer Homes in New Zealand Everyday
August 2015**

Prepared by Holly Carrington, Communications Director

Contents

Shine	3
Overall Feedback.....	3
Submission.....	5
Legislative framework: overview.....	5
The nature and dynamics of family violence across population groups	6
Definition of ‘family violence’	8
Guiding principles.....	9
Accessibility of Protection Orders	11
Effectiveness of Protection Orders.....	12
Property orders	16
Police Safety Orders	16
Family violence and parenting arrangements.....	18
Family violence in criminal law	20
Victim safety in bail and sentencing.....	22
Judicial powers in criminal proceedings	24
Best practice.....	25
Information sharing between agencies	30
Information sharing with and between courts	31
Safe and competent workforce.....	32

Shine

Shine – Safer Homes in New Zealand Every day – is a leading New Zealand domestic abuse specialist organisation. We support adult and child victims of domestic abuse to be safe and perpetrators to change. Shine was founded in 1990 and has grown over the years to become a well-known charity. We have a team of approximately 100 people that deliver our range of services, including full and part time staff, contractors and volunteers.

Shine Services include:

- Shine’s national Helpline (0508-744-633);
- Victim advocacy and safety planning;
- two women’s refuges and two transition homes in Auckland central and North Shore;
- KIDshine, a crisis service for children who witness domestic violence;
- No Excuses men’s stopping violence programme;
- a range of professional training programmes delivered throughout NZ;
- policy consultation and research.

Shine has received referrals of family violence victims from Auckland Central Police since 1996. Most of these referrals are female, but some are male and all receive the same service. We prioritise our response to victims on their level of risk of serious injury or being killed by the perpetrator, based on a risk assessment tool that we have developed and continue to refine.

Shine’s expertise on domestic abuse is based on knowledge gleaned from our direct interaction with victims and perpetrators of domestic abuse on a daily basis, formal and informal discussions, sharing our experiences with other NZ organisations working in the field of domestic abuse, and from researching overseas models and experience.

Overall Feedback

Shine is hugely encouraged by this discussion document and the range and scope of proposals put forward within the document. It is heartening to see that the authors of the document have a solid understanding of the issue and its complexity, as seen by proposals that would impact on a number of laws, policies, guidelines, and government funding for the NGO sector. We are thrilled that the authors have included proposals put forward by the Family Violence Death Review Committee, major recommendations from the Police Safety Order Evaluation (commissioned by NZ Police), the NGO sector overall, and also a number of innovations from overseas.

It is also heartening that this discussion document is only one part of a cross-Ministerial group working to tackle the issue of family violence on a number of fronts. We commend Minister Adams and the other ministers who are part of this group for moving forward on this issue.

The overarching issue at hand is that our criminal justice system is set up to deal with crimes that

are isolated incidents in which the perpetrator and the victim do not have a domestic relationship.

Family violence is very different from other types of crime because:

- a) the parties have a pre-existing and often ongoing relationship, with complex dynamics of emotional history and connections, and complications involving shared or intertwined finances, property ownership, and children
- b) the nature of family violence is that it is an ongoing pattern of behaviour, generally involving coercive control of one person by another.

Looking at isolated incidents of family violence, without understanding the relationship between the parties and the pattern of coercive control, as the criminal justice system generally does, will often lead to unsafe and inappropriate decisions, that will also often make the victim less safe, rather than more safe.

The system currently allows an enormous amount of discretion by decisionmakers with regards to how to manage and respond to family violence cases. Without specialist knowledge and skills in the area of family violence, and without adequate background information about the history of the relationship and the violence, most practitioners are simply not equipped to make decisions that will increase victim safety and offender accountability.

The justice system needs to allow far less discretion and create better laws, policies, guidelines and rules to pave the way for decision-making by police, prosecutors, lawyers (especially lawyers for children), judges, etc. so that the justice system works to increase the safety of victims and children when there is family violence.

In the current system, victims of domestic abuse more often than not bear the burden of keeping themselves and their children safe as best they can. It is unfair and unsafe to expect that victims have the ability to do this when they are living in fear, often isolated, exhausted, without financial or other resources, and doing their best to care for their children at the same time. Our society must remove that burden from victims. Our justice system must change so that the system, and not individual victims, is responsible for keeping victims safe.

We are encouraged by proposals in this document that will help the justice system to

- focus on victim safety, and also specifically on the safety of children
- deal with family violence more effectively as a crime that involves an ongoing and complex relationship between victim and offender and one involving a pattern of behaviour rather than an isolated incident, and
- remove the responsibility from the victim for keeping herself and her children safe

Submission

Legislative framework: overview

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

Structure for monitoring/review of New Zealand's response to domestic abuse

There needs to be a structure for ongoing monitoring and review of this country's response to domestic abuse with a focus on how well we achieve safety for victims and accountability for offenders. The structure should look both at the effectiveness of national legislation and policies, and also systems and policies of key agencies, and at inter-agency communication and information sharing. This structure should also be looking at effective tools and powers developed overseas and working towards introducing successful innovations in New Zealand as speedily as possible.

Praxis Safety and Accountability Audits

Shine highly recommends Government undertaking a Praxis type of Safety and Accountability Audit in several communities of varying population density and ethnic makeup throughout New Zealand (See www.praxisinternational.org for more information.) This type of audit helps to highlight what systems are working well and where changes are needed. The Praxis audit methodology has been developed and refined over many years and undertaken in a huge range of American communities as well as in other countries. A senior Shine staff person was invited to be part of a Praxis-facilitated audit in Perth, Australia in 2005 and saw first-hand how effective this process is at identifying needed changes in systems, policies, and procedures.

Undertaking such an audit in several different communities would help to highlight where systems that are run nationally are working well or need changing and where systems specific to a community are working/not working.

Domestic Violence Ombudsman

Currently, if decisions are made in the Family Court that do not protect victims of domestic abuse or actually increase their risk, there is no recourse for victims. Similarly, if support provided for a victim by a specialist domestic abuse community service provider is inadequate or unsafe, there is no recourse. Establishing an office of a Domestic Violence Ombudsman could create a pathway for victims and victim advocates to call attention to problems and put in place solutions at any level of government or in the community.

The nature and dynamics of family violence across population groups

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

Does the current legal framework for family violence address the needs of vulnerable population groups, in particular disabled and elderly people? How could it be improved to better meet the needs of these groups?

Disabled people are particularly vulnerable to domestic abuse. Additional resources are often required for working with disabled clients. One of the most obvious examples of this is that most women's refuges are not accessible to wheelchairs. Significant funding is required to either upgrade facilities to be wheelchair accessible or to open new refuges that are suitable for residents in wheelchairs.

Many disabled people are looked after by paid caregivers, and this is one area where it is usually either unclear whether the Domestic Violence Act applies or it is clear that the Act does not apply.

The Domestic Violence Act definition of a domestic relationship includes people who 'ordinarily share a household with the other person', but should specifically include paid caregivers who live with their client(s) to make clear that this is included in the definition.

Government needs to look into the issue of abuse perpetrated by an employee of a residential facility for elderly and/or disabled people, as this is all too common and these people are very vulnerable, but it is probably best if protections for this group of people are enshrined in separate legislation that is tailored for this purpose, as the dynamics and solutions needed are fundamentally different in a number of ways to that of family violence.

What changes could be made to better support victims who are migrants, particularly when immigration status is a factor?

It is commendable and a positive first step that Immigration NZ has in place S4.5 Residence Category for victims of domestic violence to 'enable partners of New Zealand citizens or residence class visa holders to remain in New Zealand where they:

- i. intended to seek residence class visas on the basis of their relationship which has ended because of domestic violence to either the non-resident partner or their dependent child; and
- ii. cannot return home because of the impacts of stigma, or because they would have no means of independent financial support from employment or other means'

However, there are continuing barriers to safety for migrants who are experiencing domestic abuse. It is common for Shine to work with clients who are being abused by a husband who is sponsoring their residency, and who has threatened to withdraw their sponsorship in order to force her to remain in the relationship. Women who do not have a permanent legal status in New Zealand are vulnerable. They may come from cultures that condone domestic violence. Because they are new to NZ and especially because of language barriers, they may have very limited access to legal and social services. Many of these victims believe that the penalties and protections of the New Zealand legal system do not apply to them.

Victims without New Zealand residency who attempt to flee from abusive relationships are not eligible for a Work & Income Accommodation Supplement to pay rent (e.g. for staying in a women's refuge), nor to immediate financial assistance. Some victims of abuse without New Zealand residency may prefer their abusive relationship to being deported to their home country. They may be subjected to ridicule, isolation, and abuse from their family and society because they have dishonoured their culture, beliefs and tradition. They may have children with the abusive partner and risk being separated from their children if deported. There is an expectation that a person applying for residency will undertake all of their health related costs if their sponsor does not guarantee to cover the cost. If that person does not have access to money, getting much needed help is not an option.

Shine recommends that Government consider the following solutions to this problem:

- Immigration NZ should require anyone who sponsors residency for a partner (wife or husband) to fill out the INZ1025 form. The 'Supporting your partner' section should hold sponsors responsible to paying their partner's bills that may arise from domestic violence related instances, for example, counselling, health care services etc. Hence, should a victim leave a relationship on grounds of domestic violence, the sponsor could be held responsible for any additional costs incurred, for example, women's refuge stay/ temporary accommodation and other related living costs.
- New Zealand citizens or permanent residents who are sponsoring individuals could be required to pay a bridging cost (bond) that would help provide financial support for women seeking safety from abusive relationships. The return of bond would take place upon the receipt of residency and/or possibly upon the resolution of the family violence issue.
- Information about Immigration New Zealand's Victims of Domestic Violence Policy should be made available in a simple form and in languages understood by the major immigrant groups in New Zealand and be provided to women when they arrive in New Zealand or make an application for residence;

- Orientation programmes for new immigrants should allocate time exclusively for women where they are informed about the Policy as well as other relevant New Zealand law and services.

Definition of ‘family violence’

What changes to the current definition of ‘domestic violence’ would ensure it supports understanding of family violence and improves responses? For example:

- **more clearly explain the concept of ‘coercive control’**

Shine fully supports including a clear explanation of the concept of ‘coercive control’ within the legal definition of ‘domestic violence’ under the Domestic Violence Act. The current definition explains that domestic abuse may be a pattern of behaviour, in which incidents, if looked at in isolation, may appear trivial. We agree that this explanation is not sufficient in explaining that the effect of this pattern may be to establish control over the victim, and cause ongoing fear of the perpetrator.

This would go a long way towards helping people to understand that the effects on the victim are an important consideration in determining whether the pattern of behaviour should be considered ‘domestic abuse’. It would also help people to understand who, in a relationship where both parties are committing violence, is predominantly the victim and who is predominantly the perpetrator, by looking at which party is controlling the other, causing fear, etc.

- **use the term ‘family violence’ instead of ‘domestic violence’**

There are many opinions about the best terminology for this issue. However, we believe that the terminology used is not critical, and it would be a waste of time and resources to focus too much on getting the terminology right when there are so many differing opinions, and there are so many more important issues and problems to focus on and change.

- **include the abuse of a family pet, where the abuse or threat of abuse is intended to intimidate or harass a family member.**

Shine supports including abuse of a family pet in the legal definition of domestic violence. This is a common tactic of abuse and control that many of our clients – adults and children - have experienced, and which can have a massive impact on victims. All too often we hear about perpetrators who go so far as to kill the family pet, or a pet belonging to their partner or child, in

front of their family members, as an explicit or implicit threat that the he could and might kill them too if they 'step out of line'. Including this in the definition will help more people to understand that abuse of a pet does not just harm the pet, but also harms the people in the relationship/family who love that pet and therefore it should be viewed as a tactic of control.

Guiding principles

How would guiding principles affect how the Domestic Violence Act and other legislation is implemented? What principles would you suggest?

How could the nature and dynamics of family violence in different population groups be better acknowledged in the law? For example:

- **include principles emphasising developments in the understanding of family violence**
- **include principles that guide how agencies are expected to respond to family violence, including particular population groups**

Shine strongly agrees that the Domestic Violence Act should include a set of guiding principles to help guide decision-making in a range of circumstances about cases involving domestic violence. Guidelines can and should have the effect of creating consistency and compliance with the intent of legislation, so that only desired options are available and options contrary to the intent of the law are not. In other words, decision-makers' discretion is limited to courses of action that carry out the intent of the law.

The following points would be very helpful to include as principles in the Act:

- Domestic violence is a fundamental violation of human rights and is unacceptable in any form
- Domestic violence is a major social problem that underpins an enormous proportion of crime and other social problems. As such it needs to have an ongoing commitment from all related major government departments, i.e. not just social development, justice, police, corrections, but also housing, labour, immigration, etc.
- Safety for victims, and in particular for children, must be paramount in any decision-making on cases involving domestic violence. This is more important than privacy, and more important than natural justice for perpetrators. In terms of safety for children, this means protection from seeing, hearing or otherwise being exposed to domestic abuse, as research clearly shows that the long-term effects on children of exposure to domestic abuse is equivalent to that of being physically abused.

- The onus must be on society and our justice system to keep victims safe and make perpetrators accountable. Victims are rarely in a position to keep themselves and their children safe without outside support. It is unfair and often unsafe to make decisions with an assumption that they are able to do so.
- Because victims are rarely able to keep themselves safe, various forms of negotiation, e.g. mediation, family dispute resolution, and restorative justice, should never be used in cases of domestic abuse, as legal processes which expect victims to negotiate with their abusers are unfair and unsafe for the victims.
- When an adult victim is doing her/his best to keep her/his children safe, it should be recognised that the best way to keep the children safe is to keep the adult victim safe.
- Where there is domestic violence between intimate partners or ex-partners, and both parties have used violence, it is important to identify who is the predominant aggressor, i.e. which party is using a pattern of coercive control over the other.
- All agencies need to recognise and effectively respond to domestic abuse, with a priority on victim safety and perpetrator accountability, as well as support for perpetrators to stop their abusive behaviour. The safety of the children of victims and perpetrators must always be the paramount consideration.
- Agencies need to coordinate their responses to domestic abuse and ensure their workforce is capable of responding safely and appropriately.
- Services for victims and perpetrators need to be culturally responsive – whether those services are cultural/ethno-specific or mainstream. Victims and perpetrators should always be offered referrals to cultural/ethno-specific services, but be given the option to access mainstream services if that is their preference.

With regards to this final point, we are aware of some government department practices of referring to cultural-specific providers who are not approved/monitored by a government department, i.e. not held to the same safety and quality standards as approved services – this has the potential to mean less safe or less effective services which has the opposite effect than that intended.

We are also aware of some government departments referring to cultural-specific providers in contradiction to the wishes of the victim or perpetrator, which we also believe is counter-productive.

Accessibility of Protection Orders

What changes would you suggest to improve access to Protection Orders? For example:

- **increase funding for applications for Protection Orders**

It is absolutely unjust for victims to pay enormous amounts of money to keep themselves safe. This is a basic violation of human rights issue; it should be free to apply for a Protection Order. The establishment of a dedicated fund or funding community legal services to provide this service are both options that may work. However, the processes need to be carefully thought through so that, whichever option is taken up, the process to apply is not onerous for victims and no other barriers to safety replace the current financial barrier.

- **provide more opportunities for others to apply for Protection Orders on victims' behalf**

Yes, Shine agrees this is a good idea, but this needs to be *in addition* to making it easier for victims to apply on their own behalf. Many victims tell us they do not want to apply for a Protection Order because they believe they would then be at greater risk of retaliation from the perpetrator.

It should be possible for Police to apply on behalf of a victim – this would be a significant addition to the suite of Police tools which can be used to protect victims – especially those identified by Police as at high risk of serious injury or being killed. However, even if police had the ability to routinely apply for a Protection Order, this would be unlikely to occur frequently unless they had an extremely streamlined option available to them. Given the constraints on their time, anything less than a fairly succinct document and application process will not be used often.

It would be very useful for NGOs to be able to apply on victims' behalf as well for the same reason, but this would only be useful if there is no cost to NGOs to apply on behalf of victims.

What other ideas do you suggest?

Unfortunately, because it is difficult and expensive to get a Protection Order, it has become common practice for lawyers to recommend an Undertaking to victims as an alternative. However, there is basically no legal recourse if an Undertaking is breached. One way to solve this problem is by requiring a clause in all Undertakings which are made for the purpose of protecting one party from abuse by someone with whom they have a 'domestic relationship'. This clause would state an assumption that any breach of the Undertaking would result in a Protection Order being granted without notice.

Effectiveness of Protection Orders

What changes could enhance the effectiveness, use and enforcement of Protection Orders? For example:

- **require Police to arrest for all breaches of Protection Orders, where there is sufficient evidence**

Shine believes this is an EXCELLENT idea and we strongly support this requirement being put into the law. Currently, it is widely known amongst the victims and offenders that Shine works with, and their lawyers, that Protection Orders are poorly enforced unless the breach is a physical assault. And in the case of physical assault, an assault is already an arrestable offence. So, for the most part, the only way that a Protection Order is of help to most victims is by making sentences for the offender slightly more severe for assault breaches.

We know of many victims who decide not to apply for an order because they do not believe it will help keep them safe, and we also know that they are largely right in this belief, and it is exceedingly frustrating for Shine advocates, their clients, and for the many frontline police officers who feel their hands are tied because of the current Solicitor-General Prosecution Guidelines which set such a high bar on arresting and charging for Protection Order breaches. This potentially very powerful tool for achieving safety for victims is currently, to be blunt, a joke.

Victims who go through the time, expense and hassle of applying for a Protection Order want it to be meaningful and enforceable. They want to know that if they report a breach, that the Police will take it seriously and that there will be consequences for the perpetrator that act as an impediment to further abuse.

That is why it is not the severity of punishment, but rather the consistency of negative consequences that is key to the effectiveness of Protection Orders.

It seems clear to Shine advocates that one of the reasons for the very high use of Police Safety Orders is because the Protection Order system is not working. With less barriers to applying and more effective enforcement, and the option of Police applying for Protection Orders, there would be less of a need for Police Safety Orders (PSOs).

If Government is serious about decreasing domestic abuse in New Zealand and keeping victims safe, requiring offenders to be arrested and charged for each and every breach of all Protection Orders (provided there is sufficient evidence) would be a key step towards reaching that goal. It would not only greatly assist in achieving safety for victims and accountability for offenders, it would also send

a very strong message that New Zealand's justice system takes this issue seriously and will not let offenders manipulate the system to continue to get away with their abusive behaviour.

If this change were made in law, a very likely scenario would be that very little would actually change in practice, because frontline police continue to assume that there is a very high threshold for evidence required to prosecute a domestic abuse crime and hence do not arrest for Protection Order breaches or other domestic abuse crimes when they should. Hence, if this change is to be effective, frontline police would need to have much better training and ongoing annual refresher training about investigating domestic violence crimes. This training would need to emphasise the importance of gathering any evidence that may be available in addition to victims' testimony. Video evidence as discussed below would also greatly help in this respect.

What other ideas do you suggest?

Video evidence at the scene

While we have some concerns about the proposal for Police to collect video evidence at the scene, as has been trialled in the UK, on balance we support this idea. We urge government to follow up on this idea and make any legislative amendments necessary to allow this to progress. We are aware that the use of video statements in the UK has had a big impact on the ability to prosecute domestic abuse cases without requiring live testimony from the victim at the hearing.

A significant problem with judges hearing family violence cases in a courtroom setting is that the cases are 'sanitised' and it is difficult for the judge to get a feel for the impact on the victim and children and simply the 'horribleness' of the abuse. Video statements at the scene would make situations more real for judges and other court staff. Our concern is that it is conceivable that such evidence could be used against the victim. We have heard many stories from clients about how, when police arrived, they were overcome with emotion or anger or fear at the same time that the offender acted calm and reserved and told police that his partner was acting crazy again or that she was the aggressive one. Police may thus be led into arresting and prosecuting the wrong party, especially if they do not have a system to determine the predominant aggressor (discussed further below).

For these reasons, we would strongly advocate for predominant aggressor guidelines to simultaneously be introduced into police practice.

More/better use of Police 111 call recordings

We never hear about 111 recordings being used in court, yet these recordings often contain valuable evidence that can help remove doubt about what took place in a domestic abuse incident. There need to be systems and processes in place that make it easy and straightforward for police

investigators and prosecutors to access 111 call recordings for domestic abuse cases and use them in court.

Protection Orders made on notice

Shine believes that, as a rule, Protection Orders should always be made without notice. Victims do not take the significant, onerous, and currently usually very expensive step of applying for a Protection Order unless they are seriously frightened of further abuse. In situations when victims apply, but the order is put on notice, it is like a red flag to the offender and will usually significantly increase risk to the victim, rather than decrease that risk.

Shine recommends that the law be changed so that Protection Orders are only made without notice, and so that judges no longer have the ability to put a Protection Order on notice that was applied for without notice.

Minimally, for the sake of keeping victims safe who apply without notice:

- Guidelines should be established for judges to help guide better and more transparent decision-making that prioritises victim safety.
- If a Judge believes there is sufficient evidence on balance of probabilities to grant a Protection Order, but is only willing to grant the order on notice:
 - a) That judge should be required to give very clear reasons in writing within the judgment as to why the order will only be granted on notice so that case law and trends can be reviewed
 - b) Victims who have applied for an Order without notice must be given the chance to withdraw their application if the judge will only grant the order on notice.

Defended and/or discharged Protection Orders

Similarly, guidelines need to be established to help guide safe decisions at hearings on defended Protection Orders or applications to discharge Protection Orders. When Protection Orders are defended, there needs to be clarity around the criteria for discharging. We often hear that judges require applicants' lawyers to show 'imminent risk' to the victim, which may be a result of case law. But the Domestic Violence Act states that

"The court may make a Protection Order if it is satisfied that—

- (a) the respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family, or both; and
- (b) the making of an order is necessary for the protection of the applicant, or a child of the applicant's family, or both."

The Act does not require that there be imminent risk to the applicant in order to make a Protection Order, and in fact, this is counter to the understanding of domestic abuse as a pattern of behaviours that establish coercive control over a victim. Guidelines should return to the spirit and intent of the

Domestic Violence Act by stipulating that Protection Orders should not be discharged unless there is *proof* of the absence of domestic violence. In the absence of such proof, the balance of probabilities should favour safety for victims.

We are also concerned that some women are pressured into seeking the discharge of their Protection Order. This has implications not only for them but also their children. The Domestic Violence Act should be amended to prevent the court from discharging a Protection Order without first being satisfied that the protected person and any child of the protected person will be safe from all forms of the respondent's violence.

In these situations, the court should routinely seek input from a domestic abuse advocate who has discussed the application with the victim. This could be done through the local FVIARS (Family Violence Interagency Response System), and if the applicant in question had not yet been part of the FVIARS system (because she had not yet been involved with Police and/or the criminal court), she could be referred to the local domestic abuse specialist advocacy organisation for an assessment to be fed back to the court.

Consistent consequences – options of short jail/prison sentences

In Duluth, Minnesota, USA, which is an independent criminal jurisdiction, there were many experiments done in terms of using less serious, but more consistent consequences for domestic abuse offences and Protection Order breaches. One thing that has worked very well is short jail sentences, e.g. a weekend. This is an especially effective consequence for an offender who is employed, and if the victim is dependent on that offender's income, then a prison sentence any longer than a weekend has the potential to harm the victim. Practitioners in Duluth also tried using jail sentences of consecutive weekends so that punishment could increase in severity for repeat offending. Again, if offenders know that every time they commit a domestic abuse offence, that there will be a consequence, they are much more likely to think twice and leave their victim alone.

Report of Law and Order Committee re Petition 2011/124 of Ann Hodgetts and others

In this report, the Law and Order Committee wrote, "We specifically encourage the ministry review to provide for more effective case management of Protection Orders. We consider that setting renewable expiry dates on Protection Orders would help address this."

Shine is adamantly opposed to setting expiry dates on Protection Orders. This would be a huge step backwards in terms of effectiveness of Protection Orders - back to the days of Non-Molestation Orders, pre 1995, which were made with a time limit. There should be no change made which means the victim will have to proactively appeal for her (or his) safety again.

The Committee also writes in this report, "We recommend that the ministry, in its review, consult with relevant agencies to develop preventative and rehabilitative strategies that would reduce the number

of breaches of Protection Orders by addressing underlying issues that might drive those breaches, such as mental health issues or drug and alcohol dependency.”

In Shine’s experience of talking to and working with thousands of victims of domestic abuse each year, offenders who repeatedly breach Protection Orders are rarely doing so because of underlying mental health, drug or alcohol issues. Those may be underlying issues in rare circumstances around Protection Order breaches, but addressing those particular issues will do very little to stem the tide of these breaches. What will have a significant impact is creating a system where breaches always have a consequence, and where consequences are consistent and predictable.

Property orders

What changes would enhance the effectiveness, use and enforcement of property orders? For example:

- **require judges to consider accommodation needs when making Protection Orders and to make property orders more proactively**

Yes, Shine agrees it would greatly aid victim safety if judges were required to consider accommodation needs when making Protection Orders and to thus make property orders more proactively. Guidelines for the Family Court should specify that the judge prioritise accommodation needs of applicants and particularly that of children over that of respondents.

Police Safety Orders

What changes might enhance the effectiveness, use and enforcement of Police Safety Orders? For example:

- **require Police to refer a perpetrator to services, such as short-term housing**
- **empower Police or a third party to support the victim to apply for a Protection Order, or apply on behalf of a victim, when a Police Safety Order is issued (if the victim consents, or does not object)**

Shine very much agrees with the three major recommendations made by the PSO Evaluation, commissioned by NZ Police and released earlier this year:

1. 'Improve frontline practise to ensure PSOs are issued in accordance with policy.'
2. 'Improve the monitoring, recording process and level of consequences of breaches'
3. 'Maximise the opportunity for support'

PSO timeframe extended

At present, Police Safety Orders are made for a maximum timeframe of 5 days, and for a minimum of 24 hours. All too often victims on Police Safety Orders are referred to Shine and by the time we are able to make contact with the victim, the Order has expired and it is no longer safe for our advocate to visit her.

Police Safety Orders could be a vastly more useful safety tool if they were made for a significantly longer timeframe, e.g. several weeks, in order to give sufficient time for the police to refer to a specialist advocacy service and for that service to contact and work with the victim long enough to put in place safety measures before the PSO has ended. Five days is simply not long enough, and 24 hours is impossible, especially when the order is made at the beginning of a weekend or during a holiday period when services may be closed or stretched with a skeleton staff. If it is the first time a victim has spoken to an Advocate, or to anyone, about the abuse, it may take some time for her to process her situation before she is even ready to think about practical safety measures for herself and her children. Current PSOs are simply not creating enough 'safe' time for this to happen.

Police should be required, when making a PSO, to refer immediately to a family violence specialist victim service like Shine to ensure that the victim has the specialist support she needs to plan for her safety, including applying for a Protection, Property and/or Parenting Order, changing locks and installing other basic home security features, etc.

Making PSO breaches an arrestable offence

It is a major weakness of Police Safety Orders that breaches are not an arrestable offence. Breaches to a Police Safety Order should not only be an arrestable offence, but discretion for police to arrest should be removed so that arrests are made for all breaches where there is sufficient evidence. Perpetrators need to get the message that the justice system takes a strong stance on domestic abuse and that it is unacceptable.

Shine is very concerned that police officers seem to be frequently issuing Police Safety Orders instead of arresting and charging for an offence when there is 'sufficient evidence.' However, much of this is likely the result of the Solicitor-General Prosecution Guidelines, and it is likely that a significant proportion of this problem would be solved by requiring police to arrest for all breaches

of Protection Orders. In general, there needs to be less discretion, and more guidance, for frontline police to take action that will best protect victims.

It would be helpful to have more accommodation options available to respondents of Protection Orders and PSOs, especially for the first one to two nights following being served the order, during which time he is most likely to retaliate against the victim. Not having the additional worry of where to stay during that time could help to alleviate some of the stress and anger and decrease risk to the victim during that critical period. This could, for example, be in the form of accommodation vouchers for a lodge.

PSO process includes referral to stopping violence programme

It would also be very helpful if police made a voluntary referral to a local stopping violence programme when serving a PSO, but only if programmes were adequately funded for voluntary referrals. Ideally, if and when a PSO is breached, the offender should then be mandated to attend a stopping violence programme.

Family violence and parenting arrangements

How should risks to children and to adult victims be reflected in parenting arrangements under the Care of Children Act 2004? How could Parenting Orders and Protection Orders be better aligned?

For example:

- **clarify that a child's safety from all forms of violence is to be given greater weight and be a primary consideration**

Shine absolutely agrees that a child's safety from all forms of violence should be given greater weight and be a primary consideration in all decisions made by the courts.

- **require Parenting Orders to be consistent with any existing Protection Order**

Again, Shine absolutely agrees with this requirement. The fact that many of our clients with Protection Orders have Parenting Orders made by the court that contradict their Protection Orders is another reason why Protection Orders are essentially useless. If the court and justice system is serious about keeping victims safe, then Parenting Orders must be part of the solution and not part of the problem.

- **courts could be given broader discretion to consider risk to the safety of the child and to an adult victim when deciding parenting arrangements**

Yes, Shine agrees that on the one hand, judges need clearer guidance that their decisions must first and foremost be based on the safety and welfare of the child, and secondly on the safety of all adults involved. And on the other hand, courts should also be given broader discretion to consider risk to the safety of the child and to an adult victim when deciding parenting arrangements.

Family court decisions regarding child care and access all too often completely ignore risk to adult victims. Not only is this patently unfair to victims who should be protected by our justice system, it is also not in the best interests of the child. If a child's primary caregiver is unsafe, the child is at risk of exposure to abuse, but also suffers from being under the care of a parent who is more likely to be anxious and fearful, sleep-deprived, etc. and thus less able to parent effectively.

Judges must be able to consider protective conditions not just when the parent of a child has been physically or sexually abused by the other parent, but also in cases of psychological violence. It is ludicrous for the court to not be able to consider protective conditions when, for example, a parent has threatened to hurt or kill the other parent or child, or threatened to kidnap the child.

We have had an overwhelming number of clients in recent years subjected to Parenting Orders that continued to put them and their children at risk of further violence and/or being exposed to further violence. This includes clients with Protection Orders and many clients where the other party had a long criminal history of family violence offences. Many judges still seem to believe that, as a rule, both parents should share care, or at least have access to their children, regardless of one parent's history of violence towards the other parent. There is overwhelming research now that has clearly established that children who are exposed to domestic abuse are at very high risk of longterm psychological damage and poor health and behavioural outcomes.

We have also been shocked at learning of numerous Family Court decisions that have prohibited a parent, who is the primary caregiver and the victim of abuse from the other parent, from relocating to another city with the child where they have better family and community support and where they will be at less risk of violence from the perpetrator, because the court has ruled that the other parent with a history of violence has the right of access to that child. This is an example of a decision that is not being made with a priority of the safety of that child and parent, and on the wellbeing of that child.

If New Zealand is to get serious about stopping the intergenerational cycle of domestic abuse, our Family Courts must get serious about keeping our children and their protective caregivers safe from further violence and abuse.

What other ideas do you suggest?

Family Violence screening by the Family Court

Shine is hugely encouraged to see that this discussion paper questions the appropriateness of recent family justice reforms for cases involving family violence and coercive control. Shine's submission on those reforms when first proposed stated that there needs to be robust and routine family violence screening for all cases entering the Family Court in the first stage of case processing, and that screening should be done by Court staff, NOT by family dispute resolution contractors who have an inherent conflict of interest in referring clients back to the court. This system desperately needs to change. There is more on this issue on page 27 of this submission.

Background information to inform judges' decisions

When making safe decisions around access to children, Judges really need to have access to background information from Police, the Criminal Court, *and* from the local FVIARS (Family Violence Interagency Response System) about any history of family violence, similar to the information being made accessible to judges when deciding on bail conditions in the current pilot.

Family violence in criminal law

What changes, if any, could be made to the criminal law to better respond to family violence, including the cumulative harm caused by patterns of family violence? For example:

- **create a standalone family violence offence or class of family violence offences**

Shine strongly agrees it could be very useful to create a class of family violence offences for all the reasons mentioned in the discussion document:

- to make the existence of a family relationship central to the offending
- contribute to building a record of the offending behaviour
- identify family violence cases for other information gathering purposes
- send a clear message that family violence is a criminal offence, AND
- to collect accurate statistical data on prevalence.

It also makes sense to require prosecutors to use the family violence offence when applicable, removing the discretion to apply the most relevant offence, so that the record of offending behaviour clearly identifies all offending that is related to family violence.

However, the range of charges that may apply in family violence situations need to all continue to be available, just with the added clarity that it is a family violence related charge, i.e. we would not want one family violence charge to replace the range of current charges.

For example, in a case today where someone is charged with 'Damage to property', under the new class of offences if a person committed this offence against someone with whom they are in a 'domestic relationship', it would be helpful if they could be charged with the related family violence charge, e.g. 'Family violence – damage to property'.

There may be a different way to achieve the same outcome that is less onerous, e.g. a system of 'tagging' offences as family violence related.

- **create a new offence of psychological violence, coercive control or repeat family violence offending**

Shine also strongly agrees with the creation of a new offense of 'coercive control' to criminalise 'sustained patterns of behaviour that stop short of serious physical violence, but amount to extreme psychological and emotional abuse', similar to what has been enacted in the UK. This potentially gives victims, the Police, and others the ability to prosecute family violence offenders that are using this type of pattern of behaviour before the abuse has escalated, as it often does, to serious physical violence, with sometimes irreparable physical and psychological damage as a result. We would strongly prefer an offense termed 'coercive control' to 'psychological violence' as it is much clearer from the wording what the effect is on the victim. It is still a widely believed myth that psychological violence – that is not accompanied by physical violence - does not have a serious impact on victims, when we very much know the opposite to be frequently true. This is according to our clients as well as the research of Dr Clare Murphy and others.

The difficulty in proving such a charge should not be a factor in deciding whether to create such a charge. The only determinant should be whether we as a society want to condemn the behaviour and that there should be legal consequences for people who use such behaviour. This is the case, for example, for the charge of rape which is certainly often difficult to prove, but very few law-abiding citizens would argue it should not be a charge.

- **make repeated and serious family violence offending an aggravating factor at sentencing.**

Shine agrees strongly that sentencing judges should be required to assess the seriousness and repetitiveness of the harm by taking into account the pattern of behaviour, so that repeated and serious family violence offending is an aggravating factor at sentencing.

What other ideas do you suggest?

There are now eight Family Violence (criminal) courts around the country that exclusively hear family violence cases, but apart from some streamlining of family violence cases that are now all heard in one court, these courts function no differently from courts that hear other cases. There is a huge opportunity to improve the way that these courts operate, by creating 'specialist' family violence courts, as exist in other countries.

One change that would increase the effectiveness of these courts would be to make clear that it is part of the role of the Lead Family Violence Court Judges, and allow time in their schedules, to liaise with local specialist services – victim and offender programmes and services – to discuss issues, concerns and ideas relating to the effectiveness of the courts in terms of promoting safety for victims and accountability for offenders.

In October 2006, Shine wrote a report about how to design a specialist domestic violence court, based on overseas developments. There is probably more up to date information from overseas since then, but this report is a good starting point. The report can be downloaded from Shine's website: <http://www.2shine.org.nz/resource-room/reports-and-articles>

Victim safety in bail and sentencing

What changes would ensure victim safety is considered in bail decisions and sentencing decisions?

For example:

- **require judges to make victim safety the paramount consideration in bail decisions in all family violence offences or for specific charges such as male assaults female**

Shine adamantly agrees that judges should be required to ALWAYS make victim safety the paramount consideration in bail decisions in ALL family violence offences. Our advocates work closely with the Court Victim Advisors who are required to communicate the views of the victim in the court, but neither the Victims Advisors nor the judges are required to make decisions that consider first and foremost the impact on the safety of victims. This is ludicrous as we know that many victims are not in a safe position to speak openly and honestly about the impact of the

offending on themselves. As stated previously in this submission, the onus to keep victims safe must, for this reason, be on society and not on the victims themselves.

The current court focus on victim empowerment should be shifted to one on victim safety.

- **empower judges to place additional conditions on people on bail or remanded in custody for any family violence offence**
- **improvements to Police bail**

The major improvement that is needed to Police bail is for Police to routinely monitor offenders who are released on bail to ensure that they do not return to the victim's address. Anecdotally, we believe that this is exceedingly common, i.e. the majority of family violence offenders who are bailed with a condition to stay away from the family home where the victim resides, often with children, immediately return to that home once bailed. Police occasionally do bail checks, but not nearly often enough to actually ensure that offenders who do this are caught and brought back before the court.

This is, of course, a resourcing issue. If judges were far more often making bail decisions to prioritise victim safety, there would be far more cases of offenders being remanded in custody, and far less resource required from Police to do bail checks.

What other ideas do you suggest?

Shine absolutely agrees that there should be a new principle introduced that the court MUST consider victim safety at sentencing, which would also better align the principles in the Sentencing Act 2002 with the focus on victim safety.

Role of Victim Advisers

The role of Court Victim Advisers is currently constrained by a requirement to represent the views of the victim, but this constraint does not recognise that victims rarely have the ability to speak freely about their experience of the violence. They are often fearful of repercussions from the offender, and so often what they say in court about 'what they want' is actually what they know the offender wants them to say.

In cases of family violence, Victim Advisers should be tasked with speaking with the victim to find out about the history of the relationship and the violence and abuse, then advising the court about the actions that the Adviser believes would best keep the victim safe. The offender would see that the recommendations are coming from the Adviser rather than the victim herself, so her safety would not be further endangered.

Further, Victim Advisers need to have the ability to communicate and share information with local specialist advocacy services to help inform their recommendations. Currently they are only allowed to do this with written and signed permission from the victim herself, again putting the onus on the victim to keep herself safe. This is an excellent example of restrictions on sharing of information that are detrimental to victim safety.

Monitoring offenders in prison

Over the years, many clients have told us about the abuse continuing even after their offender is in prison. Offenders have been known to ring, email and write letters to their victims from inside prison. Where there is a history of domestic abuse, there needs to be better monitoring of offenders to ensure they are not communicating with their victim from inside prison.

Judicial powers in criminal proceedings

What powers should criminal court judges have to vary or suspend orders usually made by the Family Court, or to make orders at different stages in proceedings? For example:

- **give judges in criminal proceedings greater powers to vary Protection Orders on the basis of information they hear during trials**

Yes, Shine agrees that judges in criminal proceedings should be given greater powers to vary Protection Orders on the basis of information they hear during trials, **but only if the variation is made in order to enhance victim safety and not for any other reason**. Our concern would be that judges may vary Protection Orders in ways that are detrimental to victim safety because of information they hear during trials, but without having access to all of the information that the Family Court judge had available at the time of issuing the Protection Order.

As judges in criminal proceedings currently have powers to make Protection Orders during sentencing, it is simply common sense they should also have the power to vary Protection Orders in order to better address safety needs of victims.

If a judge in a criminal proceeding wanted to vary an order in favour of the respondent, the judge should have to refer the case back to the Family Court.

- **empower judges in criminal proceedings to refer the question of varying a protection or Parenting Order directly to the Family Court.**

Yes, it would also make a lot of sense for judges in criminal proceedings to also have the option of referring the question of varying a protection or Parenting Order directly to the Family Court, but if this was the only option, we would prefer that criminal court judges have the ability to vary Protection Orders directly, in order to avoid unnecessary delays in taking steps to keep victims safe.

Best practice

What changes would you suggest to court processes and structure to enable criminal courts to respond better to family violence?

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

What are your views on the range and type of services that might be appropriate in the circumstances?

Pathways for families to seek and receive help to stop family violence, in addition to the criminal justice system pathways, are absolutely necessary and appropriate. Only a very small percentage of family violence cases ever come into the criminal courts. Yet, out of the \$1.4 billion per annum spent by Government on responding to family violence, only a miniscule percentage of that is used to fund support and advocacy for victims or programmes for offenders that are accessible before an offender is arrested and a family becomes involved in the criminal justice system.

Stopping violence programme self-referrals

It is absurd that government funding is not yet available to ensure perpetrators who would like to access a stopping violence programme voluntarily are able to do so. Shine has struggled to find the funding to accommodate growing numbers of men asking to attend our programme voluntarily. In the 12 month period ending June 30th 2014, one-third of the men who attended our programme did so voluntarily and were charged to attend the programme on a sliding scale. Not one of the men who attended voluntarily was able to pay the full cost of the programme, and many were not able to pay anything. Accepting self-referrals into our stopping violence programme has become an onerous financial burden for Shine that we are not always able to bear, hence we can no longer guarantee self-referred men immediate access to our programme.

Government would make enormous savings in terms of policing, courts, health costs, etc. if the cost were paid upfront for these men to attend a programme and get the help they need before the violence escalates, as it often does, and before police and the justice system become involved.

Victim support & advocacy services, especially in response to Police referrals

Clearly victims of domestic abuse should also have access to specialist support when they seek it proactively, but there also needs to be substantially more funding for specialist services that reach out to support victims referred by police, hospitals and health practices, and other agencies.

The service most needed by victims is the kind of practical and flexible service that Shine has delivered in response to police victim referrals since 1996.

Shine has had a Memorandum of Understanding with Auckland Central Police District since 1996 to support all victims of domestic violence referred by Police – after incidents involving arrest and where there was no arrest. We have always considered this our core service – it is a flexible, practical service with no strict time limits set on advocates' work with individual victims, and with work prioritised so advocates focus their time on working with victims at highest risk of serious injury or death. Advocates provide a form of counselling as and when needed, to help victims understand their risk and the risk to their children, and help victims make a safety plan that matches with their needs and wants and takes into consideration the needs of their children. Advocates work closely with staff from other agencies who are or should be involved with the family - police, Child Youth and Family social workers, hospital staff, Work & Income, Housing NZ, etc.

The demand for this service has only grown over the years, and yet our funding from government contracts has shrunk. What we receive is a fraction of the level of funding needed to support a service that is desperately needed by hundreds of victims and their children every week. The Police have also been constantly frustrated for years that our service is not adequately funded to consistently respond to all of their domestic abuse referrals.

The amount of funding that would allow Shine advocates to reach out to all victims referred by Police in our area would be minimal compared to the amount government spends on CYF (Child Youth & Family Services) social workers and Police. Yet this investment would most certainly result in a decreased need for statutory frontline workers, given that family violence is 41% of the police workload and such a large percentage of it is repeat offending.

Domestic abuse victim advocates based at CYF (Child Youth & Family Services) office

For nearly a decade, Shine has had advocates co-located at Child Youth and Family offices in Auckland. This model works very well to provide better and more timely support for victim of abuse with children who are referred to CYF, upskill CYF social workers in the area of domestic abuse, and promote a coordinated approach between CYF and domestic abuse specialist advocates. CYF appreciates that victims are often much more willing to talk to and work with Shine advocates, and because of that we are more likely to be able to help the victim put in place strategies to keep herself and her children safe. Providing government funding for a minimum of one fulltime domestic abuse specialist advocate from a local specialist community organisation at each CYF site office

around the country would not only directly improve the support available for victims, it would also help to develop critical working relationships between CYF and the local specialist organisation.

Specialist community outreach service to offenders

We are aware that, over the years, there have been a number of services in different parts of the country that have worked closely with Police to proactively engage with family violence offenders in the community. This would be a very useful enhancement to current systems for government to fund *in addition to* more basic services for victims and offender programmes as discussed above. This would be a highly specialised service, similar in workforce requirements to current stopping violence programme providers.

Engaging with offenders at critical times when they are highly likely to commit an offence and harm the victim could lead to a reduction in such incidents and a higher engagement of men entering stopping violence programmes voluntarily (which would need the funding to support this). These types of interventions should aim to happen when or after a Protection Order, Police Safety Order, and/or Parenting Order has been served; when or just before a family violence offender is released on bail; and before or at the same time that either party returns to the home where the other party lives to collect their belongings.

Unsafe pathways: mediation, family dispute resolution, restorative justice

Referring to mediation as a first required step in family court proceedings increases risk to victims of domestic abuse when the abuse is not known to the court beforehand. It is a fundamental conflict of interest to expect contracted Family Dispute Resolution Providers to screen for family violence and refer back to the court.

In 2013, the Family Court Proceedings Act established the Family Dispute Resolution process. Parties were to exempt from the FDR process when accompanied by ‘an affidavit providing reasonable grounds to believe that at least 1 of the parties to the family dispute, or a child or 1 of the parties, has suffered or is suffering domestic violence inflicted by 1 of the other parties to the dispute.’ Otherwise, parties were required to go through the FDR process before an application may be made to the Family Court.

In our submission on the Family Court Proceedings Reform Bill in February 2013, Shine argued that the Family Court needed to implement a robust family violence screening process before sending parties off to FDR. However, at the time, the Ministry argued that this was unnecessary because the contracted FDR provider would undertake that screening and refer cases involving family violence back to the court. Shine and others warned that there was an inherent conflict of interest for FDR providers to screen for family violence and refer clients back to the court.

Our fears about the FDR process were absolutely justified. We have heard numerous stories from our clients who had been involved in Family Court proceedings since the 2013 reforms, and were

either never screened for family violence by their FDR contracted provider, or even worse, were screened and disclosed family violence and were not referred back to the court, but instead were forced to continue through the FDR process.

Mediation of any form is inherently an unfair and unsafe process when there is or has been domestic violence between the parties. Negotiation-type approaches generally assume that both parties are able to assert their own interests in the presence of the other party. This is rarely the case for a victim of domestic abuse sitting in the same room as her abuser. Women who have experienced abuse are often very fearful of their partners. This fear will constrain their ability to participate freely. When a victim is brave enough to speak her mind, there is huge potential for retaliatory violence.

In processes relating to custody or care of children, if victims are reluctant to participate, they risk being seen as the obstructive or 'alienating' parent (Hoult, 2006), and punished as a result. In these situations, a victim is likely to negotiate for what she can get, rather than what she actually believes is in her best interest or that of her children. Abusive partners also often use these processes to pressure victims to reconcile with them.

For these exact same reasons, we believe that restorative justice is nearly always an unsafe and unfair process for domestic abuse victims to be involved in. Shine is aware of some models in the US that provide a form of restorative justice in cases of domestic abuse that are very carefully run to ensure safety of the victim and to put in place processes to help balance the power between victim and offender. However, these are incredibly complex and difficult situations to plan and prepare for and take an enormous amount of resource to do safely and effectively. Given what little resource the New Zealand government puts towards funding for the specialist domestic abuse victim support and advocacy services, and how far away we are from adequate funding for critical crisis response services, Shine does NOT believe that funding specialist restorative justice is an effective use of government resources in the area of family violence. More importantly, government is highly unlikely to manage such funding in a way that ensures restorative justice providers have adequate specialist skills to manage this process safely for victims of domestic violence. We know of a number of providers of restorative justice under the relatively new government funding scheme for domestic abuse (and sexual violence) who we believe do not have adequate specialist skills to undertake this potentially very dangerous process.

What are your views on clarifying in law that Police take at least one of the following steps when responding to family violence reports:

- **file a criminal charge (or issue a warning)**
- **issue a Police Safety Order**
- **make a referral to a funded service or services or an assessment?**

Yes, Shine agrees with requiring police to take at least one of these steps so that, at the very least, police are giving victims referral information for their local specialist service. Central Auckland Police had been routinely referring victims of domestic abuse to Shine since 1996, with an expectation that Shine would support these victims, but there has never been any dedicated government funding for responding to police referrals until very recent new Ministry of Justice funding, which does not come close to providing the adequate and stable income stream that is truly needed to provide this ongoing service. The capacity of specialist agencies that police refer to must be increased to provide stable and adequate funding streams for the advocacy and support needed by victims referred by police throughout New Zealand. These kinds of crisis response services are the sort of ‘ambulance’ needed by victims of domestic abuse in crisis. Funding for these services should be seen by Government as being as critical and fundamental as St John’s ambulance service.

The law should *also* clarify that police must arrest for domestic violence related crimes whenever there is evidence of a criminal charge, and NOT ask the victim whether she wishes to press charges. This has been in Police policy since 1996, but we know that it is still relatively common for police to ask victims this question. These requirements would be more prominent and powerful if they were enshrined in legislation.

What other ideas do you suggest?

The law should also clarify that:

- Police should gather as much evidence as possible at the scene of a family violence crime in order to rely as little as possible on victims’ testimony to secure a conviction – with the understanding that testifying against the offender nearly always increases a victim’s risk. E.g. evidence should include wherever possible: statements from any other witnesses, photos of injuries or property damage, doctor/hospital reports, 111 recordings, etc.
- Victims should never be forced to testify. If paramountcy of court decisions are on victim safety, then the court should not force a victim to testify, potentially putting that victim at greater risk and/or lessening her trust in the justice system and therefore potentially resulting in the victim being less likely to ring the police the next time she is in danger

Information sharing between agencies

What changes could enhance information sharing between agencies in family violence cases? For example:

- **creating a presumption of disclosing information where family violence concerns arise**
- **stating that safety concerns ‘trump’ privacy concerns.**

Shine totally agrees that there should be a presumption of disclosing information where family violence concerns arise and that there should be greater clarity that safety concerns ‘trump’ privacy concerns. Current wording of the Privacy Act that allows anyone to disclose personal information if they believe it is necessary to prevent or lessen a serious threat to someone’s life or health must be significantly strengthened to ensure that the law is not a barrier to information sharing that protects victims. It would be far more effective to state a presumption of disclosing information where family violence concerns arise.

However, alongside this presumption must be some principles or guidelines to help people understand how to share information in a way that will not have the opposite effect of further endangering victims, most importantly:

- Care must be taken that information about or from a victim that would endanger the victim cannot be accessed by the offender or by anyone who would be likely to share that information with the offender, i.e. his lawyer, his other family members, friends and associates.

We support the Family Violence Death Review Committee recommendation that AISAs (Approved Information Sharing Agreements) be established to clarify what types of information should be shared in what types of situations, and how the information should be stored and used.

Information sharing with and between courts

What changes could enhance information sharing between courts and between courts and other agencies, in family violence cases? For example:

- **require that judges are provided with information held by Police and other justice sector agencies**

Shine absolutely agrees that judges must be provided with information held by police and other justice sector agencies to inform their decision making, including:

- The history of police involvement
- Related Family Court matters and civil orders
- Outcomes of regular meetings of local family violence inter-agency networks. This would be similar to the MARAC (multi agency risk assessment conference) model in the UK where local interagency practitioners share information about high risk family violence cases, with one of their purposes being to share that information with the court in any criminal or family court proceedings.

Judges often make critical decisions with blinders on that affect the safety of victims, because they do not have access to information from other government and non-government organisations. This is a logical and necessary step to ensure that courts are keeping victims safe rather than putting them at greater risk.

- **place a positive duty on parties to inform the criminal court of any related Family Court proceedings or orders**

Shine agrees that there should be a positive duty on parties to inform the criminal court of any related Family Court proceedings or orders to ensure that the information provided is not reliant on administrative decisions and that the police can work proactively to keep victims safe – particularly those most at risk of injury and death.

However, Court electronic data collection and record systems should be sophisticated enough to enable quick cross referencing between the two courts and this should be carried out routinely when domestic abuse is a presenting issue.

Safe and competent workforce

In your view, what impact would setting minimum workforce and service delivery standards have on the quality of services? What challenges do you see in implementing minimum statutory standards? For example:

- **establish minimum standards for workforce competence**

Yes, Shine agrees that this needs to happen. This has been done successfully overseas, for example through SafeLives (previously known as CAADA or Co-ordinated Action Against Domestic Abuse in the UK) for domestic abuse specialist advocates. This should most definitely be done here in the New Zealand. However, there cannot be an expectation of more qualifications and training done by staff without a commensurate increase in funding. Most domestic abuse specialist NGOs in New Zealand – from very small organisations of just one or two staff to much larger ones like Shine with more than thirty staff - are doing the best we can with very limited resources and would dearly love to upskill our workforce, but lack sufficient resource to do so.

Appointments of Family Court Judges & Lawyers for Children

Judges in the Family Court constantly make decisions that impact on the safety of adult and child victims of domestic abuse, and far too often they do this with very little understanding of the dynamics of family violence and without asking the right questions to get the information they need to make fair and safe decisions. Shine hears from clients again and again about decisions made by Family Court judges that put adult victims and their children at ongoing and/or increased risk to further abuse and violence. There need to be much better appointment processes that require Family Court Judges to have in-depth knowledge and understanding of the dynamics of family violence and empathy for victims of domestic abuse and children exposed to domestic abuse *before* being appointed to this critical role. The issue of initial and ongoing training is discussed further below.

The role of Lawyer for Child within the Family Court is a role with huge potential to safeguard children, but currently there is a massive range in the skills and expertise of Lawyers for Children when dealing with cases involving family violence. Similar to Family Court Judges, Lawyers being appointed to this role should be required to demonstrate in-depth knowledge about domestic abuse and how it impacts on children, as well as an ability to communicate effectively with children, as this is a specialist area in itself.

- **require agencies and service providers to put in place policies and systems that support the workforce to practice in a responsive, safe and competent way**

Similarly, this has been done by SafeLives in the UK and does need to happen, but it will only be an improvement on the existing situation in NZ if NGOs are adequately resourced to implement the required policies and systems to support their workforce to practice in a responsive, safe and competent way.

Re Lawyers for Children, the role itself needs to be more clearly defined, and there need to be allowances and incentives for these Lawyers to spend the time needed to build rapport and trust with their clients in order to effectively represent their interests and make the best recommendations for their safety and wellbeing.

Often when there is family violence, children are fearful of being critical of the abusive parent because that parent may find out what they've said and punish them with further threats, emotional or physical abuse, or may take it out on the adult victim with the child aware that their words were the cause of the abuse.

Lawyers acting for children in these situations need to:

- a) clearly understand the why children may not speak truthfully about how they feel about their parents and their views on care and access arrangements
- b) Spend the time needed and be skilled in building rapport with children in these situations so that they will feel safe to speak freely
- c) Take great care to safeguard sensitive opinions and information given by these children so, for example, information which may increase the risk of the child or the adult victim is not accessible to the offender or the offender's lawyer
- d) Taking the time and effort required to seek additional information and insight from other family members and professionals who have been involved with particular families when situations are complex and it is not initially clear what would be the safest and best outcome for the child.
- e) Recommend to the court arrangements that are safest for the children, even when it is not what the child has said they want, with the understanding that the child may be speaking from fear or coercion

There needs to be some effort put into figuring out how to create guidelines, procedures, and incentives to encourage and guide Lawyers for Children to carry out their role in this way.

What other ideas do you suggest?

In 2007, the Ministry of Women's Affairs commissioned a report called 'Living at the **cutting edge**: Women's experiences of Protection Orders'. According to this report:

"Here, we are following the call of Lord Justice Nicholas Wall for judges and other professionals working in the Family Court to be well trained – and to maintain their training at an appropriate level.

Many of the problems we have identified – the raising of the threshold for granting without notice Protection Orders, making dangerous Parenting Orders, misinterpreting children's wishes in the context of domestic violence, minimising the impact of psychological violence, being overly optimistic about men's commitment to change, minimising the risks an abusive parent presents to his children and to their recovery from the trauma of violence, using a discredited typology of domestic violence – each of these is reflective of significant ignorance of recent research and good practice standards in the field."

Tragically, these problems in the Family Court are still pervasive, and there is still no better training available, much less required, for judges and other professionals working within the Family Court.

We echo the Cutting Edge report recommendation eight years later that **"the Ministry of Justice ensure that all professionals (for example, judges, counsel for the child, specialist report writers, mediators, counsellors and supervised access providers) working in the Family Court and specialist domestic violence criminal courts be required to demonstrate a multidisciplinary understanding of domestic violence, including the principles of scientifically rigorous risk assessment, prior to their appointment, and that they be required to participate in annual "refresher" training on these matters."**

Similarly, Police and professionals working in the Criminal Court, especially in the eight Family Violence Courts, should also have far better training on domestic abuse and should be required to maintain their training at an appropriate level.

Other countries have moved ahead with establishing domestic abuse training programmes and requirements for judges, lawyers, other court professionals, and police, while New Zealand has neglected to take action to upskill its workforce in this critical area.

In particular, other countries have instituted far more rigorous training requirements in law or statute for judges, especially Family Court and Family Violence (Criminal) Court judges, e.g. most states in the USA. (See: www.ncjfcj.org/sites/default/files/chart-mandatory-dv-training-for-judges.pdf).

The National Judicial Institute on Domestic Violence in the USA is an excellent model in the USA of a partnership formed (in 1998) to develop and deliver specialised judicial training in the USA. “The Institute is a dynamic partnership among the U.S. Department of Justice, Office on Violence Against Women, Futures Without Violence (formerly Family Violence Prevention Fund) and the National Council of Juvenile and Family Court Judges. The NJIDV has provided highly interactive, skills-based domestic violence workshops for judges and judicial officers nationwide since 1999 (www.njidv.org).”

On a study visit to learn about California’s response to domestic violence in 2006, a Shine staff member learned that all Los Angeles Police (and possibly all police in the state of California), since the aftermath of the OJ Simpson trials, are required to attend two weeks of training on domestic abuse annually.

As a very complex issue that is taking up 41% of frontline police time, New Zealand police require this level of training to respond effectively and consistently.