



## Submission to the Review into the Family Court 2014 Reforms

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### Introduction

Please find here a written submission to the Family Court Review Panel from the Backbone Collective. We ask that the Review Panel read this submission along with notes taken from our face to face meeting with the Panel on 19 September 2018, the submissions we have collated and presented to the panel from 42 children and young people and the eight Backbone reports shared with the panel via email.

- a) All Eyes on the Family Court: A watchdog report from the Backbone Collective<sup>1</sup>
- b) Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court<sup>2</sup>
- c) Don't Tell Me Your Problems: The Family Court complaints and appeals landscape<sup>3</sup>
- d) Seen and Not Heard: Children in the Family Court. Part One. Force<sup>4</sup>

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<sup>1</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58e696a21e5b6c7877e891d2/1491506855944/Backbone+Watchdog+Report+-+Family+Court.pdf>

<sup>2</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

<sup>3</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

<sup>4</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf>

- e) Seen and Not Heard: Children in the Family Court. Part Two. Lawyer for Child?<sup>5</sup>
- f) Briefing to the incoming Government<sup>6</sup>
- g) Backbone Submission to CEDAW<sup>7</sup>
- h) Backbone report to Justice Select Committee on why we need a Royal Commission of Inquiry<sup>8</sup>

## The Backbone Collective

In July 2014 Ruth Herbert and Deborah Mackenzie (the Co Founders of The Backbone Collective) independently published a comprehensive report entitled 'The Way Forward: An Integrated System for Intimate Partner Violence and Child Abuse and Neglect in New Zealand.'<sup>9</sup> The purpose of that report was to share our ideas for a new way of working, assisting everyone to 'come to the table' with a shared understanding of why a change in approach is needed in New Zealand. We proposed the establishment of a new evidence-based model to more effectively address the epidemic of violence against women and children and provided a comprehensive business case to support that proposal.

We believe that any system is only as strong as its weakest point – if one part of the system fails then the whole system fails. Therefore, we need multiple quality control mechanisms in place across all points of the system to ensure everything possible is being done to achieve the overall objective of keeping the victims/survivors safe and supporting them to rebuild their lives and of holding abusers to account. Backbone believes women and children who have experienced violence and abuse are best placed to tell us where the system is and isn't working. New Zealand needs a safe and independent conduit through which their voices can be heard - where their views can be collected and analysed, and then used to identify where impactful and constructive improvements need to be made to improve the system response. If New Zealand had a continuous improvement mechanism operating for the entire system that responds to violence and abuse - if this was maintained in a consistent and sustained way – if continual improvements were made as soon as problems were identified – then over time the incidence of violence and abuse of women and children, the social consequences, the economic costs and the intergenerational transmission would be reduced<sup>10</sup>.

The Backbone Collective (Backbone) was established in March 2017 to enable women to safely and anonymously tell the Government, others in authority, and the public about how the 'system' responded to them when they experienced violence and abuse, and how they need it to respond for them to be safe and rebuild their lives. Backbone is an independent and largely unfunded organisation

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<sup>5</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5ae99c5588251bf787133d44/1525259361189/Seen+and+not+Heard+-+Lawyer+for+Child+3+May+2018.pdf>

<sup>6</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3c08eae2c483c2490cbfca/1513883894520/Briefing+to+incoming+government+2017.pdf>

<sup>7</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5b1f7f39f950b786cd85314c/1528790852623/The+Backbone+Collective+NGO+report+to+CEDAW+100618.pdf>

<sup>8</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf>

<sup>9</sup> [http://theimpactcollective.co.nz/thewayforward\\_210714.pdf](http://theimpactcollective.co.nz/thewayforward_210714.pdf)

<sup>10</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5be8fcad4ae23793ccac1634/1541995697759/Continuous+Improvement+paper+FINAL+1+Nov.pdf>

which is a registered not for profit trust<sup>11</sup>. Backbone currently has over 1600 women members who are all victims/survivors of violence and abuse.

Our surveys and reports only capture the experiences of women who have experienced violence and abuse, including their children. To date we have focussed our work on asking women to tell us their experiences of the New Zealand Family Court as that is the part of the system women asked us to look at first. What we have discovered is so alarming that we have felt unable to start looking at other parts of the system until somebody makes the decision to intervene and investigate and remedy the harm being done. We are hoping that the Review Panel will be that body.

Over the course of the last 19 months we have heard from hundreds of New Zealand women about their experiences with the Family Court. Very few have been reported as positive. In most cases these women have reported their situation and that of their children has been made less safe. Women commonly tell us they wish they had never gone to the Family Court for protection, they wish they had stayed with the abuser as it was safer, they can't wait until their child turns 16 because only then will they be safe, that no social service agency, nobody in Government or any of the commissions can help them once they are in the Family Court.

Something is seriously wrong!

### Issues with this Review

We believe that the Government has a duty of care to women and children who have experienced violence and abuse, and to the New Zealand public. The only way to determine conclusively whether the failures in the Family Court we have uncovered are accurate and systemic is to conduct an in-depth formal inquiry into the way the New Zealand Family Court responds to cases of violence and abuse.

### The Review is not able to fully investigate the issues in the Family Court

A comprehensive inquiry into the Family Court must have powers to subpoena witnesses, interview judges and other court officials, and review case files. It must also provide the required protection for the victims of domestic violence (primarily women and children) to give evidence of their experiences in the Family Court without fear of negative repercussions.<sup>12</sup>

Under New Zealand's Westminster system, a Ministerial Review such as this one will be constitutionally unable to fully investigate the extent to which women and children are being harmed and discriminated against in the Family Court. This is because our system of government demands complete separation of powers between parliament and the judiciary. For this reason, Backbone has always maintained that the Review into the 2014 Family Court Reforms has neither the authority nor scope to investigate the issues that Backbone has been raising for the last 19

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<sup>11</sup> Backbone has only received small private donations since its establishment which have only covered basic organisational costs (software subscription fees, insurance etc). All surveys and reports etc have been produced from voluntary hours.

<sup>12</sup> Backbone reports that most of the women they have collected information from have been threatened by the Family Court that if they talk about their case, they will lose their children, many are still involved in Family Court proceedings; some have gagging orders on them preventing them from talking to anyone about their case.

months. The only way a thorough and complete investigation into the Family Court can happen in New Zealand is as a Public Inquiry or a Royal Commission.<sup>13</sup>

Furthermore, we are strongly of the view that the systemic failures identified and reported by Backbone are not related to the 2014 reforms and hence a 'review' has neither the scope nor the mandate to go nearly deep enough into the issues we are hearing about in the Family Court. For years there has been criticism via reports and reviews of the way the Family Court responds to cases where there is violence and abuse.<sup>14</sup> There have been various reviews of the legislation, but most agree that the problems in the Family Court are related to the implementation of the legislation rather than the legislation itself.

Women who have experienced violence and abuse and NGO agencies have repeatedly pleaded with those in authority to investigate what is happening in the Family Court and yet the people appealed to have not intervened or elevated their concerns to a higher or more appropriate authority when they have been unable to get involved themselves. We believe that someone should have seen these multiple and ongoing complaints as signs of a systemic failure and investigated long ago – they have been told and done nothing. It seems that no one has been ultimately accountable or wanted to be.

The issues that Backbone has raised over the last 19 months have pointed to systemic failures of the operation and culture of the Family Court's treatment of cases where there has been violence and abuse. The Ministerial inquiry does not have the power to investigate these issues. Backbone has argued that the 2014 reforms aren't the problem – the problems women are telling Backbone about have been occurring for many years before the reforms.

In July 2018 New Zealand underwent its four-yearly review by CEDAW, United Nations regarding its response to the rights of women in our country. CEDAW's recommendations called for the New Zealand Government to hold a Royal Commission of Inquiry into the Family Court and invite the Special Rapporteur to New Zealand to further investigate the response to women who have experienced violence and abuse<sup>15</sup>. Backbone was surprised that the Minister Andrew Little chose to dismiss those recommendations and proceed with the ministerial review into the 2014 reforms instead. We have made multiple inquiries to the Minister's Office and Under Secretary Logie inquiring as to the status of the invitation to the special rapporteur. In a letter dated 25 October 2018 Minister Little advised us that the Government will not be inviting the Special Rapporteur because of this Review.

We do not believe an external review of a system we intend to rewrite merits potentially delaying that important work.

However, it seems to us that placing sole reliance on this Review, that is limited by the factors outlined above, will not result in safe, efficient or sustainable change.

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<sup>13</sup> A paper prepared by Backbone (and submitted to Parliament's Justice select committee by Ms Poto Williams MP) detailed the reasons for this. See <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf>

<sup>14</sup> <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a94cc1a9140b78a0a3a5061/1519701025135/Submission+to+Justice+Select+Committee+January+2018.pdf> (pg 9-11)

<sup>15</sup> [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en)

It appears that New Zealand is destined to make the same mistake that Australia has. In August 2017, the Australian Parliament's inquiry into the family law system came under fire after announcing it was severely restricted due to these Westminster conventions. Community groups and service users publicly called the inquiry a waste of time and have now started a concerted campaign to get a Royal Commission established in its place.<sup>16</sup>

Backbone has concerns about the safety of the Review process for women and children

Backbone has raised concerns about the structure of the Review, the limited Terms of Reference, the safety of participation for women and children who have experienced violence and abuse and been involved in the Family Court and the lack of a service user voice on the Review Panel. We have shared our concerns with The Minister and the Review Panel. Backbone sent the Review panel a list of 24 questions on 8 August in an attempt to clarify the safety of the review process for our membership. We received a reply to those questions 8 weeks later and only one month out from submissions closing<sup>17</sup>. We believe the opportunity for our members to submit was severely compromised by the length of time it took to receive clarification about the safety of the review process. Many other submitters would not have needed this information and so the Panel may have an inequitable number of submissions from particular interest groups such as professionals working in the Family Court in comparison to service users (particularly women and children who have experienced violence and abuse).

Backbone remains concerned about the safety of the actual submission process for women and children who are involved in the Family Court. We are not satisfied that the Review has been set up in such a way as to protect submitters from Contempt of Court charges or breaching provisions of the Care of Children Act or Family Court Act<sup>18</sup>. We also have some concerns about the way the face to face panel submission meetings have been advertised and set up. Backbone was only told of the face to face meetings the day before the first one had been scheduled which gave women living in this particular town no opportunity to make a submission. We were concerned about the scheduling and security of these meetings and believe the secretariat, and/or the Panel has not made the process safe enough for women and children who are victims of violence and abuse.

Women have told Backbone that they are too fearful of consequences to make a submission to the Review panel. It is not surprising given that women are punished for speaking out about the issues in the Family Court. Following the release of our first report in April 2017, the Principal Family Court Judge issued a media statement (see Appendix one), largely dismissing Backbone's initial findings and assuring the public that all is well in the New Zealand Family Court. Recently the NZ Law Society investigated an Auckland lawyer and researcher for speaking out in the media about an inappropriate sentencing for a domestic violence assault. She faced the possibility of losing her practising certificate and being fined.<sup>19</sup> While the case was not upheld it acted as a warning (a very public one) to others about the dangers of speaking out. Further, there is a Reform Bill currently before parliament seeking

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<sup>16</sup> <https://www.smh.com.au/politics/federal/family-violence-inquiry-written-off-as-a-waste-of-time-after-judges-excused-from-appearing-20170822-gy1d6m.html>

<sup>17</sup> <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5bb66b5f71c10b155014b525/1538681698189/Letter+to+The+Backbone+Collective+-+Final.pdf>

<sup>18</sup> For example, we have heard from a number of women who have decided it is not safe for them to make a submission, even anonymously, in case the information is leaked back to the Family Court. We heard from two women who were advised not to let their children make a submission as they would be seen as 'parentyfing' their children by doing so.

<sup>19</sup> <https://www.newsroom.co.nz/2018/05/15/109446/law-society-ends-inquiry-over-judge-criticism>

to strengthen contempt of court legislation which will make it easier to punish those who speak out in critique of the court or the judiciary with the possibility of a jail sentence.<sup>20</sup>

## Issues in the Family Court for the Review Panel to consider

### Context

Many women have told Backbone that they first approached the Family Court after separating from an abuser, seeking protection and safety, but most said they subsequently wished they had never done so. Women told Backbone the Family Court put them and their children in more danger after leaving an abusive and violent partner. The Family Court has in effect become their new abuser - many women said the Family Court's abuse was worse than the abuser's. In addition, all the crisis and support agencies are unable to intervene and support a woman to safety once she is involved in the Family Court. The Family Court, and particularly the orders made under Care of Children Act, are preventing women from getting safer (forced to have ongoing contact with their abuser, forced to live in a region or suburb close to the abuser, children forced into ongoing care and contact with the abuser even when there is a Protection Order in place, ongoing financial abuse via legal fees and vexatious litigation, ongoing impact of trauma from Family Court proceedings on their health and wellbeing).

### Main Themes from Backbone reports

After hearing from so many hundreds of women involved in Family Court proceedings Backbone has been reporting the following central themes over the last 19 months;

1. We believe the Family Court is the single greatest failure of the state funded system response to violence against women and children in New Zealand.
2. New Zealand women and children who have been victims of violence and abuse are suffering extraordinary levels of discrimination and abuse via the Family Court process.
3. New Zealand's commitments under international law obligates our government and judiciary to protect and promote the human rights of citizens who are subject to New Zealand's family law and party to proceedings in the New Zealand Family Court – whether as applicants or respondents.
4. We believe that the issues we outline in this submission constitute state funded abuse by the New Zealand Family Court resulting in serious violations of the civil, political economic, social and cultural rights of women and children who have experienced violence and abuse.
5. Children fare very poorly when the Family Court is involved in their lives. These children are suffering at the hands of a largely tax payer funded system. These children are being ordered into dangerous situations by the very agencies and institutions that have been set up and funded by the state to protect them.
6. Backbone has consistently found that Māori women (wahine Māori) and children (tamariki) are experiencing even greater human rights abuses in the Family Court.
7. It is unsafe for women to speak out about their experiences in the Family Court as they are punished for doing so.

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<sup>20</sup> <http://www.legislation.govt.nz/bill/member/2018/0039/latest/whole.html#LMS24753>

### Expansion on significant issues

We have highlighted many issues in our reports regarding the Family Court that impact negatively on women and children who have experienced violence and abuse. We do not feel it is necessary to repeat that information here. However, we would like to point to a number of significant issues raised in the reports that we ask the Review Panel to consider when making their recommendations.

#### *Women and children are not believed*

Women and children routinely tell Backbone that when they tell those working the Family Court that they have been victims of violence and abuse (physical, sexual, psychological, financial, litigation) they are not believed, their experiences are minimised (told they are normal, not that bad, it happened too long ago to count, are not true and are made up by the victim to get back at the ex partner)<sup>21</sup>. It is well documented in research that it is rare for women and children to make false allegations of violence and abuse instead they are far more likely to minimise the abuse<sup>22</sup>.

The impact on women and children of not being believed is that the responses of people working in the court, the court processes and the decisions and orders made in the Family Court all place women and children in more danger. For example, Backbone has been told by hundreds of women that when they make allegations of violence abuse against their ex partner the Family Court often makes a counter allegation that the mother is alienating her children from their father by making false allegations of violence and abuse<sup>23</sup>. When this happens, children are often forced into care and contact which they do not want and is unsafe. The harder women try and prove the violence and abuse is real, the more they are accused of being an alienator – discussed below.

#### *Children are forced against their wishes into care and contact with an abusive parent*

Backbone released a second survey late in 2017 asking mothers to tell us about their children's experience of the Family Court. We found that 54% of the children in our survey (591) were forced against their wishes into care and contact with the abusive parent. These children had very real concerns and worries about their physical, sexual and psychological safety while in the abuser's care<sup>24</sup>. These 'forced' children are significantly more worried about what happens at the abuser's house (sexual, physical and psychological safety issues) than children who were not forced. Similarly, we looked at the children who refused to attend care and contact visits with their abusive father – they had almost the same levels of worry as the 'forced' children. Therefore, the million-dollar question is why would the Family Court order/force children into the care of abusers with a known history of violence and abuse, when the children are scared of them and have told professionals working in the court that they feel unsafe when alone in the care of their abusive father? It appears that the Family Court is making care and contact orders in the absence of best practice in violence and abuse cases. For example, only 2.2% of mothers told us a risk assessment to determine the risk of dangerousness and lethality had been undertaken in their case. To be making care and contact orders for children who have experienced violence and abuse without any evidence-based risk assessment is clear evidence of system failure – the Family Court is out of step with international best practice and the New Zealand Government's position on this.

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<sup>21</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> (pg 15)

<sup>22</sup> <https://womensagenda.com.au/latest/eds-blog/myths-about-domestic-violence-debunked/?fbclid=IwAR1FyaarYkW-gjJIUtEoMUqNFdaJFI9JYULmUV8qHo9sFHM8rayPz2MVMYk>

<sup>23</sup> 217 women told us they were wrongly accused of alienating their child in the Backbone Family Court survey. (ibid, pg 23).

<sup>24</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf> (pg 22)



In the absence of any risk assessment the Family Court is characterising mothers who raise genuine safety concerns for their children as ‘parental alienators’. Both the children in the Family Court survey and our earlier Family Court survey found that professionals in the Family Court use ‘parental alienation’ or similar terms in nearly half of all cases. Children are not being believed about their experiences of violence and abuse, evidence of it occurring is being disregarded in the court and mothers are being blamed for their children’s fears for their safety. Unfortunately, in many cases, the care and contact orders result in terrible health impacts for these children. We were told about a range of health impacts mothers attribute to Family Court proceedings and orders, including physical, psychological, social and behavioural impacts. The list of health impacts mothers detailed are heart-breaking. We found that the health of children of Māori mothers is impacted worse in some areas and this definitely requires further investigation.

#### *There is no follow up regarding children’s safety after orders are made*

We were shocked to learn that most children (89%) received no follow up interviews or reviews from anyone working in the Family Court after orders were made placing them into care and contact with the abuser. Out of 225 mothers who answered this question in our survey only 5 (2%) told us there had been any follow up on the safety of the children after orders had been made. In these 5 cases the follow up had been from Lawyer for Child, Section 133 report writer and a lawyer <sup>25</sup>.

#### *Lawyer for Child*

In May 2018 Backbone released a report on the Lawyer for Child service based on information mothers had shared with us in the Children in the Family Court Survey<sup>26</sup>. We found that the Lawyer for Child service that is supposed to represent traumatised and vulnerable children does not uphold the international rights of those children. We do not understand why a service that costs the New Zealand taxpayer \$32 million each year can be operating without checks and balances to ensure taxpayer funds are not being spent on a service that places children in greater danger. It is very common for a Lawyer for Child to be appointed in cases where there is violence and abuse (95% of survey respondents had one). However, we found that individual Lawyer for Child’s practice is in many cases resulting in them not responding to children’s safety concerns, minimising their experiences of violence and abuse, blaming mothers for the violence and abuse, accusing mothers of parental alienation and recommending unsafe care and contact for children with abusive fathers.

Backbone is clearly of the view that the role of Lawyer for Child is not adequate to ensure that when children experience violence and abuse (directly or indirectly) and become involved in Family Court proceedings they are made safer as a result. We found that while a small number of Lawyers for Child did a great job as far as engaging with children, most others did a terrible job.

Backbone has concluded that while the Lawyer for Child role in theory looks potentially very responsive in terms of child inclusiveness and participation, the practice is far from that. There appears to be a wide gap between the positive intent for the role, how the service is being operationalised and the actual outcome for children who have experienced violence and abuse and who have a Lawyer for Child appointed. We are deeply concerned that the Lawyer for Child appointments and reports are often resulting in children being placed in greater danger rather than less when there is a history of violence and abuse. Overall only 9% of children who are forced to use the Lawyer for Child mechanism as a way to have their views heard and taken into account in the Family Court get the outcome (safety)

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<sup>25</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5a3171c59140b743f5abbe36/1513189837189/Seen+and+not+Heard+Children+in+the+Family+Court+%281%29.pdf> (pg 42)

<sup>26</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5ae99c5588251bf787133d44/1525259361189/Seen+and+not+Heard+--+Lawyer+for+Child+3+May+2018.pdf>



they wanted. Surely this calls into question then the appropriateness of Lawyer for Child in cases where there is violence and abuse.

However, we believe most of the problems can be explained by failings in the model, the structure and the operational practice of the Lawyer for Child service as a whole. These all contribute directly to the failure of individual Lawyers for Child and how they undertake the role. The failings of individuals and problems with the model are inextricably linked - it is impossible to attribute responsibility for the failings at the feet of individuals when they are not working under a robust and effective system and vice versa.

#### *Court appointed psychologist*

Backbone has not yet released a report on section 133 court appointed report writers (psychologists) but we do have a lot of information from survey responses from mothers about their experience of these professionals in their Family Court proceedings. Just under half of children in the Family Court survey respondents had a psychologist appointed to write a report in their case. Mothers told us that psychologists did not respond well to their or their children's safety. Mothers and children were not believed about their experiences of abuse and psychologists were the group of professionals in the Family Court most likely to accuse a mother of being a parental alienator when she raised safety concerns for her children. Women told Backbone that psychologists have a poor understanding of the dynamics of violence and abuse and particularly the impact of trauma, from the abuse and from the court proceedings, on the way they present in an interview setting (fearful, insecure, vulnerable). Abusers on the other hand are often able to present well to professionals.

Women have told Backbone there are wildly different approaches used by psychologists engaged by the Family Court to prepare S133 reports. Some never meet the children, others meet the children with the abuser in the room, some allow the children to have a support person with them and some refuse this. Some say children are too young to be interviewed at the age that others are interviewing them – there is simply no standardization of practice. We would have expected that the evidence was clear that, for example, any child who has been exposed to violence and abuse and is then interviewed by a stranger they don't trust with the abuser present, is very unlikely to tell the truth – it is just not safe for them to do so.

There were 142 mothers who told Backbone a section 133 report writer had been appointed in their proceedings. The following information pertains to the report writers' interaction with the children of these mothers;

- 50% of mothers rated s133 writer **as not responding at all well** to their children's safety and a further 20% rated the s133 writer as responding not very well.
- 75% of cases the mother was not allowed in the room during the interview
- 60% of children were not allowed to have a support person with them for the interview
- 9 mothers said the interview happened at the abuser's house
- There was a range in the number of times the report writer met with the children with 24% interviewing them once, 38% interviewing twice, 20% interviewing three or more times
- 7 mothers told us the s133 writer did not meet with any of their children and 6 said met with some and not others. We asked about the ages of the children not met with. Four of these children were aged 5 – 17+.
- 54% of mothers told us that the Section 133 report was used by the Judge to order unsafe parenting orders.

Women are only able to read the psychologists report in their lawyer's office but not to take notes or take a copy away with them. This provision appears to fly in the face of NZ's privacy laws and fundamental human rights (and those of most other westernised countries) that give citizens the right to a copy of the information that is held about them and the right to ask for this to be corrected if it is factually inaccurate.

Women are thereby prevented from responding to anything written in the s133 report or asking for factual inaccuracies to be corrected. Furthermore, women have no right to get a second opinion unless the Court approves, and the legislation says this will only be granted in 'exceptional circumstances'.<sup>27</sup> Such restrictions would be unheard of in other sectors i.e. obtaining a second opinion is a fundamental right in the Code of Health and Disability Services Consumers' Rights Regulation 1996.<sup>28</sup>

We are told that in every state of Australia the parties both have a right to a copy of the psychologist's report and to ask the Court to correct any factual inaccuracies contained in the report. We don't think it is right that New Zealand is out of step with all Australian states in this respect.

In our briefing to the incoming Government we have asked that the legislation be amended so that parties to Family Court proceedings are given a copy of the s132 and/or s133 report written about them and their children, are able to ask for that to be corrected if it contains factual inaccuracies and the right to independently seek a second opinion if they are prepared to fund that themselves without seeking leave of the Court.

Most women who complain to the Psychologist board (94%) told us they were not satisfied with the response they received – the second worst ranked agency for satisfaction, alongside the Law Society (see below).

#### *Complaints and appeals*

The traditional avenue for citizens to have a voice if they are not happy with the outcome of a court case, is to complain or appeal. Backbone's September 2017 report on the appeals and complaints processes available for women and children who have experienced violence and abuse, showed that these processes do not provide adequate independent quality management of the Family Court. Women and children face insurmountable barriers to appealing including cost, timeframes, status of orders, and legislation requirements. Complaints bodies overall will not get involved in cases before the Family Court including the Human Rights Commission and the Children's Commissioner. Women have told Backbone that even if they received a favourable outcome from an appeal in the High Court, they experienced discrimination at their next appearance in the Family Court for being viewed as vexatious or trouble makers because they had appealed to the High Court. Many women do not complain as they don't understand their rights to complain, the complaints bodies and processes available to them, or because they fear repercussions from both the abuser and the Family Court. In most cases women's complaints are sent to the presiding Judge to consider and women have told Backbone they were punished for complaining even if their complaints have been upheld and

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<sup>27</sup> This provision is clearly not in the legislation for fiscal reasons because the Act says if approval is given for a second opinion then the party who obtains that approval is liable for the costs of that opinion.

<sup>28</sup> [http://www.hdc.org.nz/the-act--code/the-code-of-rights/the-code-\(full\)](http://www.hdc.org.nz/the-act--code/the-code-of-rights/the-code-(full))

described serious repercussions that have resulted in biased and unsafe decisions being made in the court.<sup>29</sup>

#### *No monitoring framework or mechanisms*

There is virtually no performance and outcome monitoring, no system evaluation, no quality assurance or service delivery audits undertaken in the Family Court<sup>30</sup>. As we stated earlier in this submission for some years now, we have advocated for the establishment of quality management and continuous improvement mechanisms for the entire system that responds to violence and abuse – including the Family Court. Had these checks and balances been in place, the failures we and many other academics and NGOs have discovered in the Family Court would have been identified and changes made, many years ago.

#### Recommendations for possible solutions

Backbone has been sharing widely recommendations for immediate and longer term change which we believe could improve how safely the Family Court responds to women and children who have experienced violence and abuse. We are clear that simply tweaking the 2014 reforms/legislation is not going to fix the Family Court and address the significant human rights violations women and children are suffering at the hands of people working there. Backbone believes that what is needed is somethings much more robust than that, as shown in our recommendations for possible solutions below.

#### New Model established

We need a radical new approach to responding to cases where there has been violence and abuse. New Zealand simply cannot afford to continue responding in a way that puts women and children in greater danger and undermines every other system effort to improve safety and wellbeing. The Family Court it out of step with the rest of New Zealand response efforts. Backbone recommends that planning commences immediately to establish a new justice response for domestic and sexual violence cases that is less adversarial and more inquisitorial, staffed by specialist domestic and sexual violence personnel (a panel) who understand the immediate and intergenerational impact on children and whanau.

Immediately commence planning for a new justice response for domestic and sexual violence cases that is less adversarial and more inquisitorial, staffed by specialist domestic and sexual violence personnel (a panel) who understand the immediate and intergenerational impact on children and whanau.

Initial improvements to our current model while planning is underway must commence. Backbone is strongly of the view that cases where violence and abuse are alleged should be processed through the Family Court on a pathway quite separate to cases where there has been no violence and abuse. One of the recommendations contained in our Briefing to the Incoming Government was that measures be introduced to screen all cases in the Family Court for possible domestic and sexual violence and that there be a separate pathway, with a specialist response, for these cases. This dedicated pathway in the Family Court must be seen as part of, and integrated with, one overall response system for

<sup>29</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

<sup>30</sup> The New Zealand health system is far more advanced in this regard. For example, the Health Quality and Safety Commission conducts a range of programmes designed to improve health and disability support services. Refer <https://www.govt.nz/organisations/health-quality-and-safety-commission-new-zealand/>

domestic and sexual violence – where all agencies and individuals who are either directly or indirectly involved at all levels operate as one system. Other countries are already taking steps to adopt an integrated system approach.

Any new model for children on this violence and abuse pathway would require changes to the legislation,<sup>31</sup> and new policy, practice and quality assurance and complaints arrangements. The new model will need to address how the lines of independence, responsibility and accountability in the model will ensure that constitutional, legislative and professional boundaries are not compromised. And most importantly the new model will need to ensure that all parts of the model uphold children's rights.

Measures be introduced to screen all cases in the Family Court for possible domestic and sexual violence and that there be a separate pathway, with a specialist response, for these cases which upholds victim/survivor's human rights and children's' rights.

A Royal Commission of Inquiry be established as recommended by CEDAW

It is preferable that a new model is investigated and implemented as the priority - we already know what the issues are in the Family Court and it would be prudent to spend the tax payer dollar on improvement if possible. However, if a new model is not planned for then Backbone recommends that the New Zealand Government asks the Governor General to urgently establish a Royal Commission of Inquiry to enable a thorough investigation into the Family Court's practices, culture, interpretation of the law and orders/decisions/directions in all cases where violence and abuse has been alleged. The Inquiry would need to make recommendations for how the New Zealand family law system should operate in the future to ensure all cases where violence and abuse is alleged are managed in a way that keeps the victims safe and helps them rebuild their lives and holds the abusers to account. The Royal Commission should be headed by a reputable international expert(s) to ensure the necessary independence from the New Zealand political and judicial systems. Tangata whenua and domestic violence victims must be either on the Inquiry panel or appointed as senior advisors to Royal Commission. The New Zealand Government should be held accountable for the failings of the Family Court.

The Special Rapporteurs on Violence Against Women and Child Protection should urgently conduct a country visit to New Zealand to investigate the way the New Zealand Family Court is treating victims of violence and abuse as recommended by CEDAW in July 2018.

The New Zealand Government asks the Governor General to urgently establish a Royal Commission of Inquiry to enable a thorough investigation into the Family Court's practices, culture, interpretation of the law and orders/decisions/directions in all cases where violence and abuse has been alleged. The Special Rapporteurs on Violence Against Women and Child Protection urgently conduct a country visit to New Zealand to investigate the way the New Zealand Family Court is treating victims of violence and abuse

A national network of independent children's advocates

Backbone recommends that a national network of independent children's advocates be established immediately to work alongside children who are involved in Family Court to ensure their voices are

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<sup>31</sup> Backbone has noted a number of areas in our reports where the legislation needs to be amended.

heard by the judge, Lawyer for Child, psychologist, social worker and any others involved in the case. These advocates must have specialist knowledge of domestic and sexual violence and its impact on children and they must be completely independent of the Family Court i.e. not appointed by, or answerable to, judges, the Registrar of the court, and any other 'specialists' appointed to have input on an individual case.

A national network of independent specialist children's advocates be established immediately to work alongside children who are involved in Family Court to ensure their voices are heard by the judge, Lawyer for Child, psychologist, social worker and any others involved in the case.

#### Risk and safety assessments to be done in all cases of violence and abuse

Backbone believes that it is critical that risk and safety assessments are a routine practice in Family Court when there are allegations of violence and abuse. In these cases, the independent child advocate should complete a specialist Child Risk Assessment to determine the potential risk the alleged abuser poses to the child/ren before any Parenting Orders are considered. We believe that the risk assessment must be independent of any of the current 'specialists' appointed by the court. There are risk assessment examples available which are being implemented in other countries which New Zealand could emulate such as described in recommendations 2 and 3 of the Australian Parliamentary Inquiry<sup>32</sup>.

Risk and safety assessments are a routine practice in Family Court when there are allegations of violence and abuse.

#### Trauma counselling for abused children

Fully funded trauma counselling services should be available to all children who have directly or indirectly experienced violence and abuse, in a similar way that sexual abuse counselling is funded via ACC. These counsellors should have specialist knowledge of domestic and sexual violence and its impact on children. Access to such counselling should not be able to be prevented under orders of the Family Court, Lawyer for Child, Psychologist or social worker or opposed by the abuser.

Fully funded trauma counselling services should be available to all children who have directly or indirectly experienced violence and abuse.

#### Domestic violence advisors introduced

Until a new model is established or the findings and recommendations of the Royal Commission are available, urgent interim measures need to be put in place to mitigate the harm being done by the Family Court, to ensure a domestic violence lens is put across all cases where violence and abuse are alleged, to provide mechanisms to ensure there is accountability, independent oversight and transparency of what happens in the Family Court. Interim measures need to be established to keep women and children safe in the Family Court until a new system is established. This would include that independent domestic and child abuse expert advisors are set up in the Family Courts to provide analysis and risk factors and monitor the application of the law. These advisors could also assist

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<sup>32</sup>[http://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024109/toc\\_pdf/Abetterfamilylawssystem\\_tosupportandprotectthoseaffectedbyfamilyviolence.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024109/toc_pdf/Abetterfamilylawssystem_tosupportandprotectthoseaffectedbyfamilyviolence.pdf;fileType=application%2Fpdf)

victims/survivors to navigate through the Family Court and serve as a liaison point between domestic violence and child abuse community agencies and the Family Court.

Introduction of independent domestic and child abuse expert advisors in the Family Courts to provide analysis and risk factors and monitor the application of the law.

#### Lawyer for child service overhaul

Backbone thinks that the Lawyer for Child service is long overdue for an overhaul. Ultimately, we believe that responsibility for improvement and action lies at the feet of the Government. The New Zealand Government is responsible for the funding of the Lawyer for Child service. We would far rather see the money invested in the Lawyer for Child service being used to set up and run independent child advocates throughout the country. We therefore believe that if the Government decides to continue to fund the Lawyer for Child model then government must firstly decide if the relevant legislation needs strengthening and clarification to ensure that children's rights are being properly upheld in the Family Court. We have established that Lawyers for Child cost the New Zealand taxpayer over \$32 million annually and we do not think that the taxpayer is not getting value for money –the model is failing to deliver as intended. We therefore believe this money could be more efficiently spent on a different model – one that can ensure children's rights are met when they are in the Family Court and that improves children's safety, such as, the introduction of independent child advocates – as discussed above.

Backbone recommends that if Lawyer for Child role is to continue, then immediate comprehensive training be provided to all currently appointed and any subsequently appointed Lawyers for Child. The training must be delivered by a suitably competent trainer and include the impacts and dynamics of domestic violence on children with a specific focus on trauma and the ways abusers use children and the Family Court as a tool of abuse following separation. We also recommend that cultural competency be included in training modules to address the incidences of racism reported by women and children in the Family Court. We also recommend that appointment criteria include Lawyers for Child having up to date training records showing competency with regard to violence and abuse and children's experiences of trauma and a system for ongoing audit of Lawyer for Child competence and performance.

Legislation is required for strengthening and clarifying the Lawyer for Child role to ensure that children's rights are being properly upheld in the Family Court. Immediate comprehensive training be provided to all currently appointed and any subsequently appointed Lawyers for Child including dynamics of domestic and sexual violence and cultural competency. The appointment criteria include Lawyers for Child having up to date training records showing competency with regard to violence and abuse and children's experiences of trauma and a system for ongoing audit of Lawyer for Child competence and performance.

#### Specialist lawyers to support victims of violence and abuse

Protective mothers need support in the Family Court. We have heard from hundreds of women that their own legal representation is often unable or willing to represent them in a way that keeps them and therefore their children safe from further abuse. However, there are examples of legal services which attempt to provide a specialist approach to cases where there is violence and abuse. In New

South Wales, Australia, a new service has been set up to help keep parents and children safer<sup>33</sup>. Media coverage of the launch described the service in the following way:

The service appoints duty lawyers who have an understanding of trauma to some of the busiest courts that deal with family law matters in the state. The lawyers are on hand to help people navigate family law disputes and deal with their associated legal needs. Legal Aid NSW received Commonwealth funding to establish the FASS under the National Plan to Reduce Violence Against Women and Their Children.<sup>34</sup>

Furthermore, the thresholds to access legal aid be lowered and the restrictions on obtaining legal aid to appeal a Family Court judgement must be reviewed.

Provide legal services which attempt to offer a specialist approach to cases where there is violence and abuse and lower the thresholds and restrictions to access legal aid.

Ensure all practice is evidence based

Backbone is adamant that New Zealand needs an integrated response system for responding to violence and abuse against women and children. The Family Court is one of a range of key services that need to work together in cases where there has been violence and abuse to make women and children safer and hold abusers to account. In order to make the system work in the safest possible way it must be informed by evidence-based practice that has shown to be effective in working with violence and abuse cases. Backbone believes the legislation, policy and practice relating to the Family Court, particularly in all cases where domestic violence is alleged, must be informed by evidence of the safest and most effective response. Evidence needs to be drawn from multiple sources, including (but not limited to), academic research, developments occurring in other countries that are shown to be effective, what service users tell us about what works and doesn't work, effective and potentially transferrable practice models being used elsewhere in the public sector, evaluations of local pilot projects, death reviews and more. Evidence-based practice is quite a different concept than best practice that is based on the views of a select group of practitioners as in the case of the Lawyer for Child Best Practice Guidelines.

It is imperative that Ministry of Justice and the New Zealand judiciary urgently adopt evidence-based practice for all professionals working on Family Court cases where there has been or currently is violence and abuse. International best practice is clear that cases with a background of violence and abuse need to be seen very differently from cases where there has not been violence and abuse in two key respects:

1. The manner in which court proceedings unfold.
2. The dynamics and situations of risk that need to be considered in order to respond safely to women and children who are victims of violence and abuse.

A great example of an international evidence-based service that New Zealand could use to guide practice in the Family Court is a comprehensive best practice guide for working in family law cases where there is violence and abuse produced by the United States Battered Women Project in 2014.

<sup>33</sup> <https://www.legalaid.nsw.gov.au/what-we-do/domestic-violence/family-advocacy-and-support-service-fass>

<sup>34</sup> [https://www.lawyersweekly.com.au/wig-chamber/21133-family-lawyers-welcome-newmeasures?utm\\_source=ADLS+Bulletin&utm\\_campaign=2c11d9855dEMAIL\\_CAMPAIGN\\_2017\\_03\\_16&utm\\_medium=email&utm\\_term=0\\_8c808e4262-2c11d9855d90773773&mc\\_cid=2c11d9855d&mc\\_eid=b6d354f7e2](https://www.lawyersweekly.com.au/wig-chamber/21133-family-lawyers-welcome-newmeasures?utm_source=ADLS+Bulletin&utm_campaign=2c11d9855dEMAIL_CAMPAIGN_2017_03_16&utm_medium=email&utm_term=0_8c808e4262-2c11d9855d90773773&mc_cid=2c11d9855d&mc_eid=b6d354f7e2)



The guide is intended for use in all family law cases and to be used by all involved (including judges, lawyers and mediators). The purpose of the guidelines is to ensure Family Court responses enhance women and children's safety<sup>35</sup>. These practice guides are designed to improve decision-making by family court professionals involved in domestic abuse-related child custody matters. They provide guidance on how to identify, understand and account for the nature, context and implications of abuse at every stage of the family court proceeding by any person who is involved in the case. They promote informed decision-making that focuses upon the lived experiences of family court-involved parents and children.

Ministry of Justice and the New Zealand judiciary urgently adopt evidence-based practice for all professionals working on Family Court cases where there has been or currently is violence and abuse.

#### Establish an independent body accountable for all 'specialists' working with children in the Family Court

One of the major problems Backbone has identified in our reports is the blurred lines of responsibility and accountability between the judge and the various 'specialists' the judge wants to engage to contribute to a particular case. Under New Zealand's Westminster system, the role of the judiciary is to interpret and apply the law - judges (and court registrars/deputy registrars) must be free from influence from every person. Backbone assumes that the Westminster system also requires that other parties involved in Family Court cases must also be free from influence from the judge(s). It is important that in cases where violence and abuse are alleged, the Family Court is supported by appropriate experts. But it is essential that these experts are independent of the judge and of the respective parties and that all parties can be assured that these individuals are appropriately trained and audited and are providing independent high-quality expertise.

For example, when the judge in a Family Court case decides that a Lawyer for Child should be appointed (or a specialist engaged to write a report for the case), Backbone believes that the process of appointing/engaging, briefing, managing and considering complaints about these 'experts' needs to be transparent and independent from the judiciary. Until this happens, the professional, constitutional and legislative boundaries will be blurred and the openness, transparency and independence of the Family Court compromised. In the Australian Family Court, Independent Children's Lawyers (ICL) are not appointed by the Court but rather by the respective state or territory Legal Aid Commission<sup>36</sup>.

Backbone recommends that responsibility for appointing/engaging, briefing, quality managing and considering complaints regarding specialists the judge requests, be urgently transferred to an independent body (either existing or established specifically for this purpose). This agency would have staff fully trained in trauma and the dynamics of family and sexual violence. It would hold the register of those eligible for these roles, would receive the judge's brief, identify (based on background information about the case and with input) and contract with the most appropriate specialist, and receive and review their report prior to submitting it to the Court. The agency would be independent from both the Court/judiciary and the Law Society.

<sup>35</sup> <https://www.bwjp.org/resource-center/resource-results/practice-guides-for-family-court-decision-making-in-domestic-abuse-related-child-custody-matters.html>

<sup>36</sup> Refer paragraph 8.54 of 'A Better Family Law System to Protect Those Affected by Family Violence. Available at [http://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024109/toc\\_pdf/Abetterfamilylawssystemtosupportandprotectthoseaffectedbyfamilyviolence.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024109/toc_pdf/Abetterfamilylawssystemtosupportandprotectthoseaffectedbyfamilyviolence.pdf;fileType=application%2Fpdf)

We also recommend that an accreditation system be urgently established to ensure all people engaged in the Family Court understand the most up-to-date evidence on domestic and sexual violence and child abuse, and that their practice and decisions are consistent with this (including the judiciary).

Establish an independent agency to have the responsibility for appointing/engaging, briefing, quality managing and considering complaints regarding specialists the judge requests (either existing or established specifically for this purpose) and running an accreditation system.

#### Establish a quality management and continuous improvement mechanism

Backbone believes that the Family Court needs to be part of the wider response system to family and sexual violence, but it currently sits outside of that system. The Government is embarking on a new whole of government approach (joined up) to family and sexual violence. Backbone has recommended that a continuous framework mechanism be built into this new model from the outset largely run from an independent collaborative backbone agency.<sup>37</sup> We see the importance of the Family Court being one of the feeders into the continuous improvement mechanism that informs the entire response system. The overall objectives of a continuous improvement framework would be:

- To ensure all parts of the Integrated System were operating to best practice levels and achieving optimal immediate and, intermediate outcomes
- To collect, collate and disseminate evidence so that learning can occur, and ongoing improvements made over time Backbone recommends that a quality management and continuous improvement mechanism be established. Given the extensive problems identified by Backbone and others this could begin with a focus on the Family Court, including Lawyer for Child and other 'specialists', and expanded over time to encompass all parts of the integrated system.

The Family Court should be part of the wider response system to family and sexual violence and be connected into the continuous improvement mechanism.

#### Conclusion

Backbone's Family Court reports have that showed there are widespread systemic failures in the New Zealand Family Court and serious damage is being done to the women and children who have experienced violence and abuse and who are involved in the Family Court. It is abhorrent that with each day that passes while we wait for our government to take action, more women and children in New Zealand are abused through the system that is supposed to make them safer. If this Review Panel and the Government, choose to turn a blind eye to the full extent of the failures that survivors of violence and abuse have been articulating directly to the Review Panel and via their participation in Backbone surveys – then the Review Panel and Government are sanctioning a continuation of the state funded abuse in the Family Court.

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<sup>37</sup><https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5be8fcad4ae23793ccac1634/1541995697759/Continuous+Improvement+paper+FINAL+1+Nov.pdf>