



Seen and not Heard

Children in the New Zealand Family Court

Part One – Force



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Published December 2017

¹ The picture was drawn by a 6 year old child ordered by the Family Court into day to day care with the abuser.

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Acknowledgement

Backbone acknowledges and thanks all the mothers who participated in the Impact of the Family Court on children survey. They made this report possible. We acknowledge and admire their courage, time and energy. For some mothers participating in the survey was very triggering. Some mothers no longer have care or contact with their children as a result of the Family Court intervention and decisions. Their enduring determination to try and achieve safety for their children and/or to bring to light the dangerous practices in the Family Court is admirable. We hope that in bringing the issues in the Family Court to life in this report, those in authority will make the system safer for women and children who experience violence and abuse. Kia kaha.

Backbone has heard from hundreds of mothers about the ways the Family Court forced them, to in turn force their children, to have contact with the abuser. As more and more women share their stories publicly of the difficulty, impact and danger of the Family Court orders, more and more women feel empowered to stand up and talk more openly about what is happening as the following message from a Backbone member shows.

I want to say to the member who allowed her quote to be put on the public page about forced phone calls. This and forced visits have been my year. It very nearly DESTROYED my relationship with my child that I had to argue, yell, fight, beg, and cry for them to just take the forced phone calls. Today, I showed my child the post[on the Backbone Facebook page}. My child is 10 and said; "That lady is gonna go to jail?" I said if [that mother] doesn't do what the lawyers and judges say, she can be made to go there [to jail] for not wanting her special little person to have to talk to a bad person" My child said "That's the weakest most crappiest jail sentence ever! Is it even legal to make mums go to jail for being good?"

Email from Backbone member in response to post on our Facebook page.

Forward

When my boy was seven years old, he announced very matter of factly, “you know mama you were not a state care kid, you're a hero because how would we know what it's like for those kids if they didn't tell us.” I never saw my 14 years of being raised in state care in that light before. From the mouth of a little boy I was given permission to speak out about what it is like to grow up in care, to be disconnected from my family, my culture, my whenua, tikanga and reo.

My name is Paora Joass-Moyle and I am honored to be writing this foreword. Whilst I may have been raised in state care, it inspired my 27 year career in social work and to be the kind of parent where there was no chance of the state taking my child.

I have spent the last few years researching (PhD) the impact of institutional racism on mokopuna Māori and their resulting intergenerational (or whakapapa) trauma. It sometimes feels like I have been doing this for a very long time and going largely unheard.

In 2017, I met the founders of the Backbone Collective who began listening to, collecting and recording the experiences of mothers and children going through Child Youth and Family (MVCOT) and the Family Court. These mothers and children are victims/survivors of violence and abuse, yet the Family Court is not believing or is minimising their experiences. We are also learning that children are being ordered into abuser's care and contact with terrible impacts on those mothers and children.

This critical work by the Backbone Collective supports the findings of my PhD research with Māori women. Particularly, that they are less likely to speak out about systemic abuse due to the double whammy of structural racism/cultural ignorance and misogyny. Thus, whilst wāhine Māori make up half of those going through MVCOT and the Family Court the percentage engaging in the Backbone surveys is much lower.

There are also specific practice issues from the past, that directly correlate to what Māori women report they are currently experiencing in statutory child protection. The rife uplift of mokopuna Māori by the state largely results from the onus being placed upon the mother to protect the children from family violence. This is linked to the increased number of tamariki Māori (0 - 5s) being uplifted by the state and fast tracked to permanency outside of their whakapapa. Which is genocide.

If we are to learn anything about what we are not getting right for vulnerable children in Aotearoa, then we have to listen to, and cease dismissing the experiences of those most affected. It is vital that the voices of women and children as a survivor group are centralised. Especially, in a country that is internationally renowned for having the highest rates of violence to women and children. This Backbone Collective report is critical to getting prevention work right.

Finally, its important that as survivors we are supported to speak out. Our silence does not belong to the Family Court or MVCOT. We will not be silent so that they can remain comfortable. These systems have no right to keep us from protecting ourselves, our families and future generations of our people.

Paora Joass-Moyle

Executive Summary

Six months ago, Backbone released a report about how women who have experienced violence and abuse in their relationships are treated by the New Zealand Family Court. Our concluding remarks in that report were:

'With over 500 women saying that the New Zealand Family Court makes them and their children less safe, leaves them with multiple crippling health conditions and prevents them from rebuilding their lives (and those of their children) - surely those in authority will listen now?'

Since then Backbone has made repeated calls for the establishment of a Royal Commission of Inquiry into the Family Court. But sadly, those in authority haven't listened – or if they listened they took no action. We hoped that in writing and releasing the first report the Family Court would be open to the service user feedback we were providing. However, we fear that there has been backlash for some women as they have spoken out about dangerous practices happening in their own cases.

Backbone decided to conduct another survey on the Family Court – this time to find out how the Family Court responds to children when they and their mothers have experienced violence and abuse. Through this latest survey we have collected a rich and powerful set of data that is deeply troubling.

What we discovered is that children fare very poorly when the Family Court is involved in their lives. Many mothers go to the Family Court for protection upon leaving an abusive partner, some get taken to the Family Court by the abuser, and some are involved in CYFs/MVCOT proceedings. Regardless of their pathway into the court we can now see that the impact on their children is overwhelmingly negative. Not only are the survey results cause for grave concern, but they take the system failures that we identified in our first Family Court report to a whole new level.

All of the children in the survey have experienced violence and abuse - by seeing, hearing or knowing about the abuse of their mothers and/or by also being directly physically, sexually and/or psychologically abused.

In 95% of cases the abuser was the child/ren's father. We were told about a complex array of trauma these children had suffered from the violence and abuse prior to separation. We were told about the many fears the children had about having contact with their abusive father post separation –with good justification based on the ranges of things mothers described happening at his house.

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

Most children are ordered into unsupervised care and contact with the abuser but the range of care arrangements is vast. However, of incredible significance is that when we compared how much time the Family Court is ordering children into care and contact with abusers against how much time the children

say they WANT to spend with him – there is a big difference. Children want control over how much time they spend with the abuser and many want no contact at all.

We were told that 54% of the children are being forced into care and contact arrangements that they do not want. These ‘forced’ children are significantly more worried about what happens at the abuser’s house (sexual, physical and psychological safety issues) than children who were not forced. 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:

‘The government is committed to reducing family violence, keeping victims safe, and managing perpetrators more effectively so all New Zealanders can live free from violence. We know that identifying risk, intervening earlier and in a more coordinated way is critical to achieving this.’²

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 this 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 heartbreaking. We found that the health of children of Māori mothers is impacted worse in some areas and this definitely requires further investigation.

Backbone also found that the Family Court deems only a very small percentage of abusive men as unsafe to have contact with their children (or step children). Men who are most likely to be designated ‘unsafe’ by the Family Court are men with a Protection Order against this partner or a previous or

² New Zealand Government Family Violence Risk Assessment and Management Framework (2017) New Zealand Government. Available at <https://www.justice.govt.nz/assets/Documents/Publications/family-violence-ramf.pdf>

subsequent partner, who have been charged with assaulting their child/ren physically or sexually or where the abuser was a step-father. For most of the 63 children involved in these cases the Family Court has ordered that they have no contact at all with the abuser, although some have supervised contact. Surprisingly we found that even though the fathers/step fathers of these 63 children are clearly very dangerous and these children have been exposed to some serious violence and abuse before their parents separated, once they separated and when protected appropriately by the Family Court, these children appear to have had far fewer damaging health impacts than those children whose abusive father was deemed as being 'safe' by the Family Court.

Backbone is firmly of the view that the New Zealand Family Court is acting contrary to the legislation which should guide the way we respond to children. The Care of Children Act 2004 says that children **MUST** be protected from violence. Why then are hundreds of children being ordered by the Family Court directly into violent situations? 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.

New Zealand now has a new Government and Backbone's 1100 members hope they will see that constitutionally a Royal Commission of Inquiry is the only mechanism that can safely, effectively and fully investigate the practices of the Family Court.

There is simply too much to lose by remaining silent on the issue of child safety in New Zealand. We rank the worst in the Western World in terms of violence against women statistics and child abuse and neglect. If we don't start improving the way we respond to these social problems we will only compound the damage done.

Introduction

Backbone thinks that in cases where violence and abuse is alleged, the primary purpose of the Family Court should be to ensure the victims are made safe and supported to rebuild their lives and the perpetrators are held accountable for their behaviour.

Our latest survey aimed to highlight the impact the Family Court is having on children and was conducted during October 2017. The survey was designed to give mothers an easy, safe, and anonymous way to say how the Family Court experience was for their children. We asked them about the Court's use of orders and decisions for care and/or contact arrangements with abusive parents and the impact these orders and decisions are having on these children's lives.

Six mothers with children involved in the Family Court pre-tested the survey and their feedback was incorporated into what became the final design. Apart from a small number of qualifying questions at the beginning of the survey, all other questions were optional. The survey was open for one month before results were drawn down for analysis. The survey was advertised on Facebook and via internal communications to Backbone members. There were **291** valid responses³ from mothers who collectively have **591** children involved in Family Court proceedings. 15.4% of respondents (38 women) identified as Māori. Between them, these mothers had 88 children.

Mothers generously and bravely shared their children's experiences of the Family Court so that we can let the judiciary, other court officials, the Ministry of Justice, the Government and the public know about what it is like to be a child who has experienced violence and abuse *and* be involved in the Family Court. Mothers are desperate for their children's voices to be heard. The survey produced a wealth of insightful information, so we have decided to release the findings in a series of reports over the coming months rather than prepare one large report. By taking this approach, we hope to give exposure and weight to a range of separate but related issues. This report, called 'Force', sets the tone for the following reports to come. We have found that it is the Family Court's use of force towards women and children who have experienced violence and abuse that is central to understanding the ways in which the Family Court is putting women and children in more danger and directly contributing to an alarming number of damaging health effects.

In our first Family Court survey report we found that Māori women were more likely to experience racism and find that cultural beliefs and practices are not comprehended in the Family Court.⁴ Backbone are therefore concerned that Māori women and their children experience a double whammy in the Family Court as victims of the Family Court's response to domestic violence *and* racism. We compared the responses we received from Māori and tauwiwi mothers to each survey question in this survey. Where there were notable differences between the children of Māori mothers and tauwiwi mothers we have highlight these differences in pop out boxes.

³ Two of the survey participants identified as gender diverse the rest identified as women.

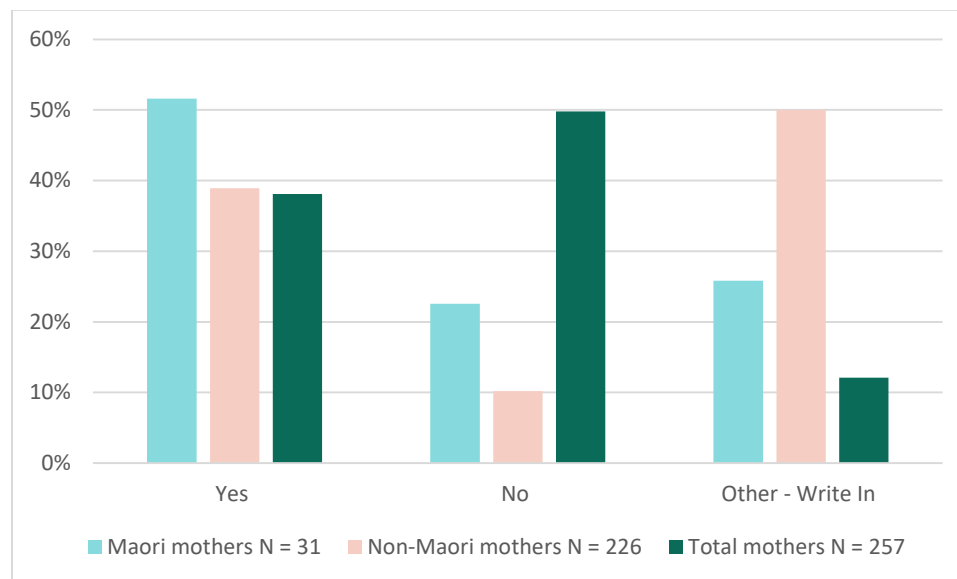
⁴

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> pg 12

While our latest survey has found that the Family Court’s response to children who have experienced violence and abuse is to force them into care and contact arrangements with the abusive parent, we also recognise that in New Zealand the Family Court acts alongside CYFs/MVCOT to forcibly take children from protective mothers/parents/whanau and place them into other state ordered care arrangements. Research shows that Māori women are 4 -5 times more likely to have their children taken into state care by CYFs/MVCOT than tauwi.⁵

As this survey was about cases in the Family Court where there had been violence and abuse we asked whether CYF (now called MVCOT/Oranga Tamariki) had been involved in the Family Court Proceedings. Figure 1 shows that of the 257 women who answered this question - 52% of Māori mothers reported MVCOT involvement in their Family Court case compared to 39% of non-Māori mothers. Many of the women (Māori and non-Māori) who selected ‘other’ told us that MVCOT had been involved but not in their Family Court case or they had reported the abuse of their children to MVCOT and tried to get them involved in keeping their child/ren safe. Some mothers in our survey had lost their children to CYF/MVCOT - 13 mothers told us their children had been made Wards of the State (under Children Young Persons and their Families Act).

Figure 1: Involvement of CYFs/MVCOT in Family Court proceedings



It is therefore essential that when considering the processes and orders of the Family Court for Māori women and children we also examine the policies, practices of CYFs/MVCOT and the way the two entities interface and the part they each play in the other’s processes and decisions. In 2018, Backbone will be releasing a report specifically about CYFs/MVCOT processes etc. as described by the mothers in

⁵ P.Crawford Moyle <https://www.academia.edu/10578356/M%C4%81ori-Lived-Experiences-of-the-Family-Group-Conference-A-selection-of-findings>

Stanley E. *The Road to Hell*: State Violence against Children in Postwar New Zealand. New Zealand. 2016

this survey. We will also be undertaking new surveys and releasing reports that focus on CYFs/MVCOT's response to women and children who have experienced violence and abuse.

Once again Backbone is providing the New Zealand Family Court in New Zealand with access to rich data about a large number of service users' (children's) experiences. Backbone hopes those in authority treat this taonga with the respect and dignity it deserves.

The Backbone Collective

Backbone has been set up 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 in order to be safe and rebuild their lives. Backbone's mission is to help facilitate the continuous improvement of the system because we believe the system needs to be accountable for how it responds to its users. To encourage accountability, Backbone:

1. conducts secure, online surveys to collect anonymous feedback from as many women who have experienced violence and abuse as we can reach and presents the voices of women in a collective way so no individual can be identified
2. acts as a watchdog of the Government, the legal system and all agencies working within the response system by shining a light on specific issues that have bubbled up from communications we have had with Backbone members
3. tracks and reports on whether any action has been taken to address the problems identified in our reports.

Background

The Backbone Collective launched in March 2017. In nine months the membership (women who have experienced violence and abuse) has swelled to over 1100. Along with extensive media and social media activity Backbone has produced three substantial reports detailing what women have been telling us about the Family Court:

1. 'All Eyes on the Family Court': A watchdog report from the Backbone Collective'⁶
2. 'Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court'⁷
3. 'Don't Tell Me Your Problems: The Family Court complaints and appeals landscape'⁸

About the Mothers

The women who completed the survey had all experienced violence and/or abuse from their ex partners and had children who were, or who had been, involved in the New Zealand Family Court. None of the

⁶<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/58e696a21e5b6c7877e891d2/1491506855944/Backbone+Watchdog+Report+-+Family+Court.pdf>

⁷<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

⁸<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/59b71d81197aea15ae01133b/1505172890050/Complaints+and+appeals+watchdog+report+12+Sept+2017+FINAL.pdf>

mothers were still in a relationship with the abuser and all were living apart from him/her.⁹ In many cases the women had been living apart for long periods of time (77% had been apart for 3+ years) and yet they were still trying to keep themselves and their children safe from the abuser.

Participant demographics

Figure 2: Age of women who participated (N= 288 mothers)

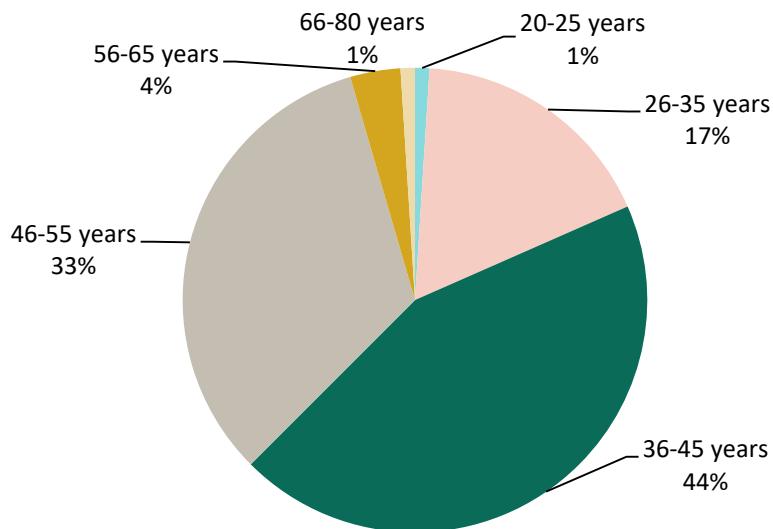
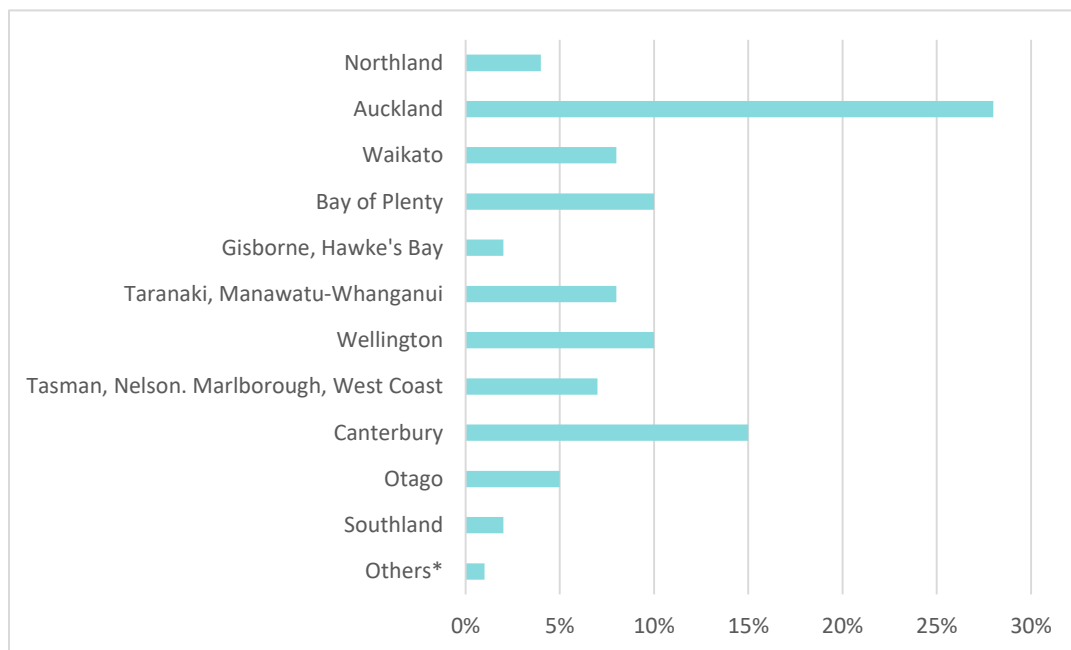
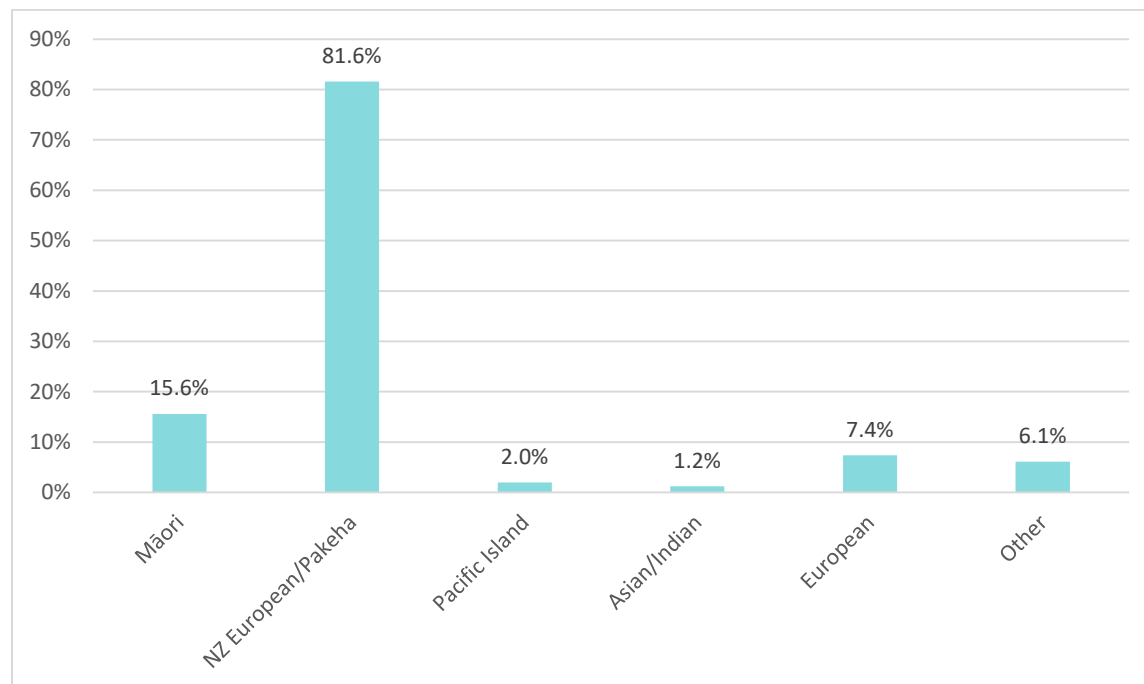


Figure 3: Regional spread of survey participants (N = 239 mothers)¹⁰



⁹ Two mothers had never been in an intimate relationship with the abuser.

Figure 4: Ethnicity of survey participants (N = 244 mothers)



About the Children

We asked the mothers to complete a set of questions which covered all of the children in their care collectively and then another section of questions for each of their children individually. All questions were optional and so not all the 591 children are accounted for in all of the following figures.¹¹ Throughout the report however, we have included the number of individual children the information pertains to for each figure and where it is a general question we include the number of mothers who answered it. We did not gather specific demographic information about the children separate to that which we gathered about their mothers. We did gather data on how old the children were when they stopped living with the abuser, how old they are now, how old they were when Family Court proceedings started and how long they have been involved in Family Court proceedings.

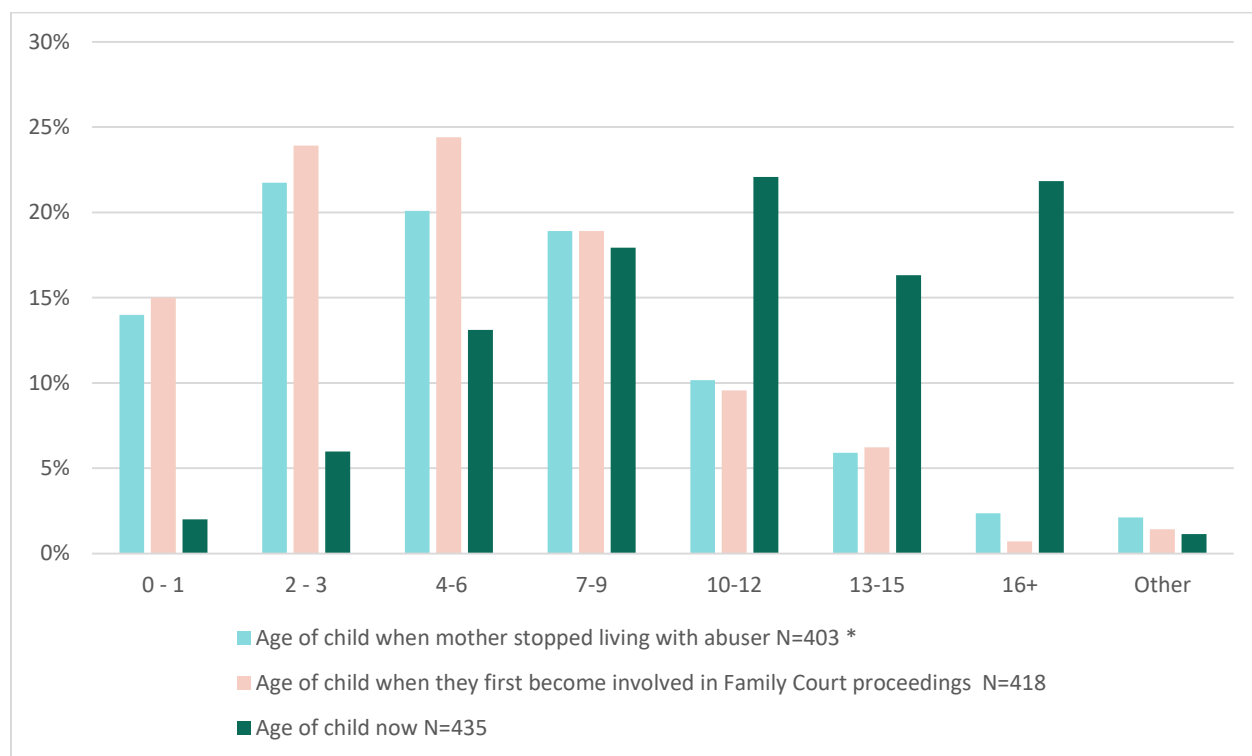
Figure 5 shows that there is a strong correlation in the age of the child when they last lived with the abuser and the age when they first became involved in Family Court proceedings. This confirms what many women have told Backbone - that they initially proactively approached the Family Court when separating from an abuser seeking protection and safety for themselves and their children. Many of the mothers in our survey had approached the Family Court for Protection Orders. Of our survey participants 39% had a Protection Order which covered their children however, only 17% of those women told us that it made their children feel safer. Sadly, many women explained that regardless of

¹⁰ Others include women no longer living in NZ and women living in hiding.

¹¹ There is a slight bias in the overall data set towards children of 1,2 or 3 child families. It appears that the task of filling in the individual section for each of their children was too onerous for some of the women who had 4 or more children as there was a drop off in the individualised data provided for these children.

having a Protection Order in place, or being in the process of applying for one, they had been subsequently forced into Care of Children Act proceedings. These types of proceedings meant that their abuser was now being offered rights to care and contact of the children, even though in many cases they were the respondent of a Protection Order, and that the proceedings were being driven and supported by those working in the Family Court.

Figure 5: Age of children



Note:

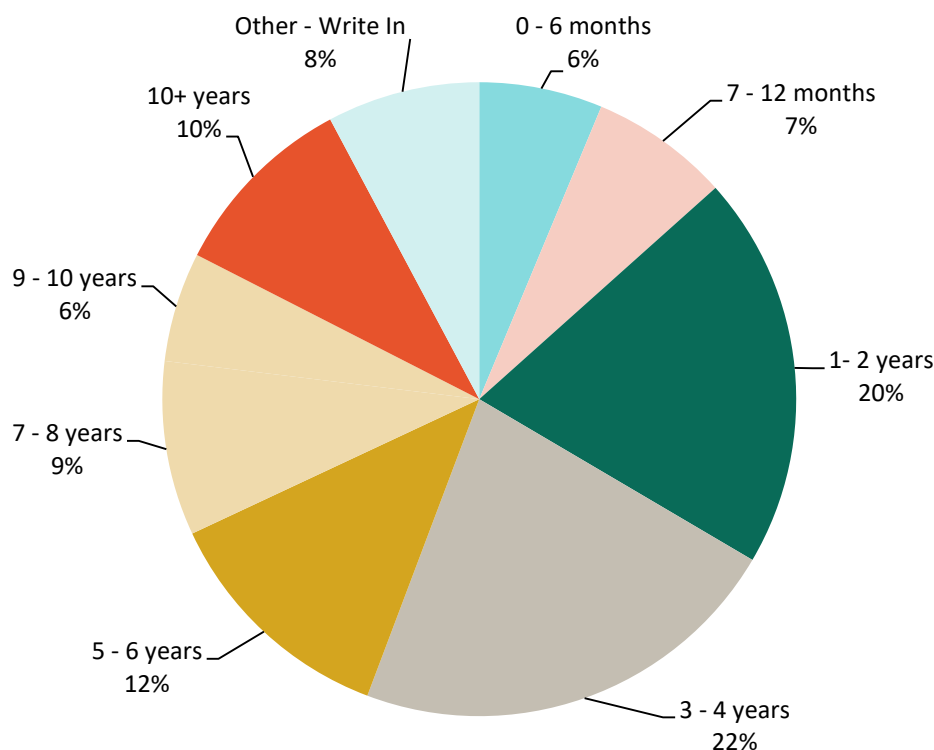
* In addition, there were 20 women who never lived with their abuser, so those children are not included

Figure 5 shows that mothers are separating from the abuser while their children are young; most of the children stopped living with the abuser under the age of 9 years. In addition, Figure 5 shows that children are more likely to be under 9 years of age when they first become involved in the Family Court strongly suggesting that their mothers approach the Family Court seeking protection when they separate. However, sadly for these children it appears that entering the Family Court begins an ongoing series of proceedings that lasts throughout the child's school years.

The data in Figure 6 is a static snapshot of where children in the survey are currently at in terms of their length of involvement in the Family Court proceedings. Children who have been in the Family Court for 1 - 2 years may well go on to spend 7+ years in the Family Court in total. Therefore, we cannot say that children in this survey have been involved in total in the Family Court for a certain length of time but we can show that this cohort of children have already spent many years involved in proceedings. For example, over a third (37%) of mothers said their children were involved in the Family Court for 5 – 10+

years. Twenty-one mothers used the 'other' option explaining that although their children were not currently in court proceedings they felt like proceedings could start again at any time so it felt like they were still involved. Many talked about the 'on and off' nature of their children's involvement in Family Court over the years. It is of concern that so many children are involved in Family Court proceedings for long periods of time, particularly when they have experienced violence and abuse and need access to safety quickly and help to rebuild their lives.

Figure 6: Length of time children involved in Family Court proceedings (N = 289 mothers)



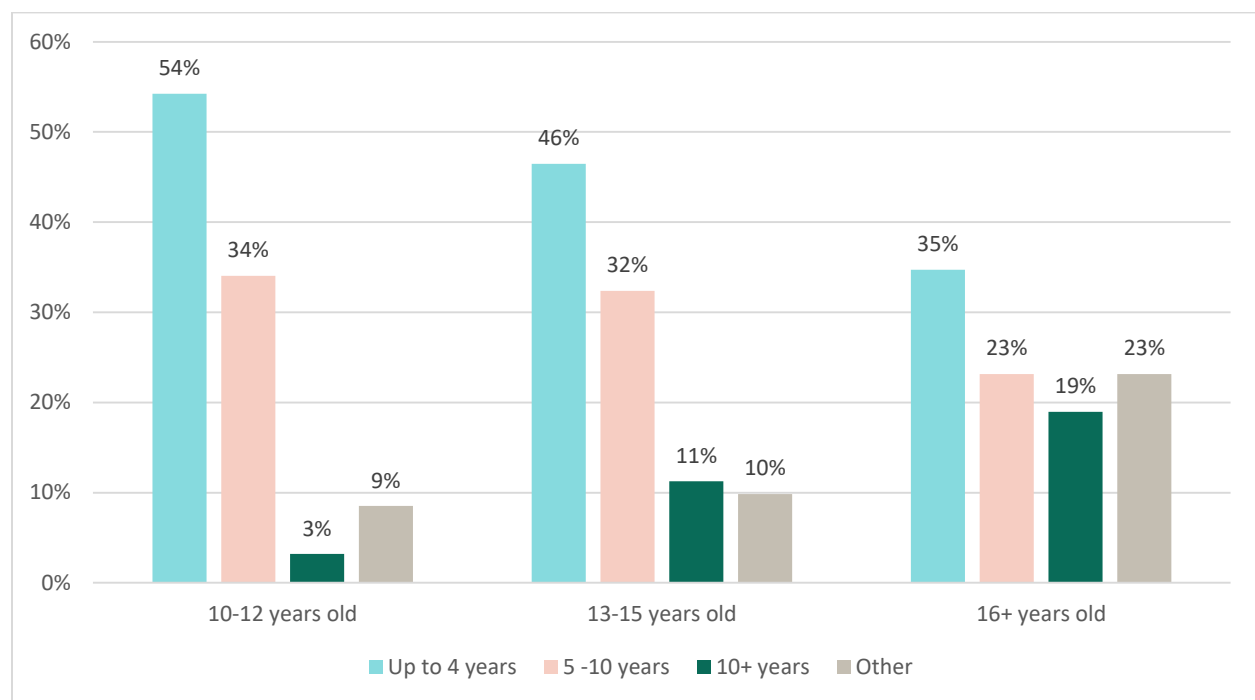
We wanted to better understand the length of time children are spending in the Family Court, particularly in view of the fact that mothers were leaving abusive partners when their children were young as explained above. Therefore, we examined the data for the children who were aged 10 years and over when the survey was conducted. We found that a significant proportion of children are spending large amounts of time in Family Court proceedings. For example, if we look at 10 -12 year olds in the survey we can see that 37% have spent 5 -10 years in the Family Court, for 13 -15 years old children the rate is 43% and for the 16+ age group its 42%. In our first Family Court report we explained that women felt trapped in the Family Court for years.¹² Sadly, children are also trapped for years in the Family Court. Later in this report we will show the negative and harmful impacts of this entrapment on children. The negative impact on these children of lengthy Family Court proceedings is not only from the

¹²

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> pg. 27

proceedings themselves (interviews, reports, court cases) but in the orders and directions which result from those proceedings that force them into care and contact orders with abusers for many years - totally undermining their mothers' efforts to make the children safer by separating from abusive partners.

Figure 7: Length of time children 10 years and over are spending in Family Court proceedings (N=260 children)

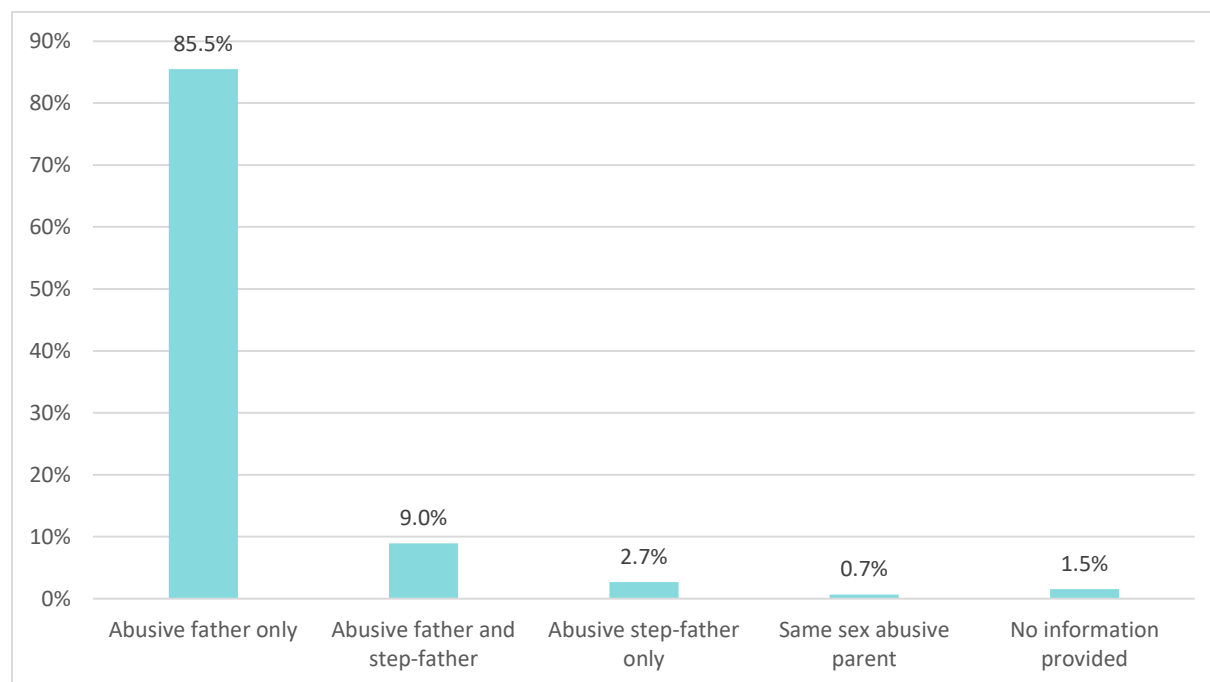


About the Abusers

Our first objective was to develop a profile of the abusers to understand the background these children have come from and therefore the context in which decisions about these children are being made in the Family Court.

In the vast majority of cases (88%) the sole abuser was the child/ren's father but 7% of children had an abusive father and an abusive step-father and 3% of children just an abusive step-father. Two children had a same sex abusive parent. The relationship between the abuser and the child was not provided for 6 children.

Figure 8: Abuser's relationship with child (N = 588 children)



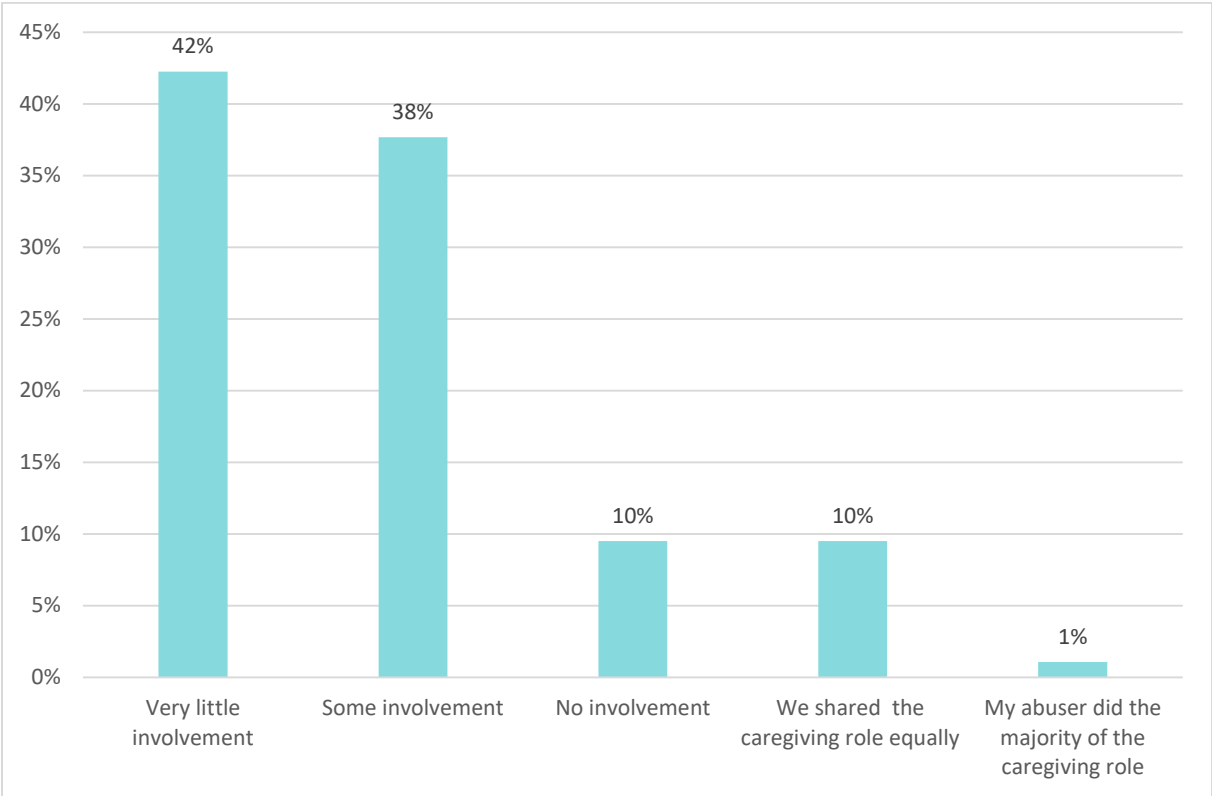
As shown in the sub sections below, the survey responses show that the abusers had been physically, sexually and psychologically dangerous to many of these children and their mothers and had demonstrated behaviour that would normally be considered high risk to the care and welfare of children. Not only had these fathers and step-fathers been dangerous, but many of them had not had any significant role in the child/ren's life prior to separation.

How involved was the abuser in the child's life?

We asked mothers about the abuser's involvement in their children's lives prior to separating and/or before Family Court proceedings. We asked them to consider day to day activities like making meals, helping with homework, looking after the child when they were sick, taking them to activities/sports events, dropping them at school, playing with them etc. Figure 9 shows that over half the abusers had none or very little involvement in their child/ren's day to day lives prior to separation.¹³

¹³ Two of the mothers (each with one child) said they had never been in a relationship with the abuser.

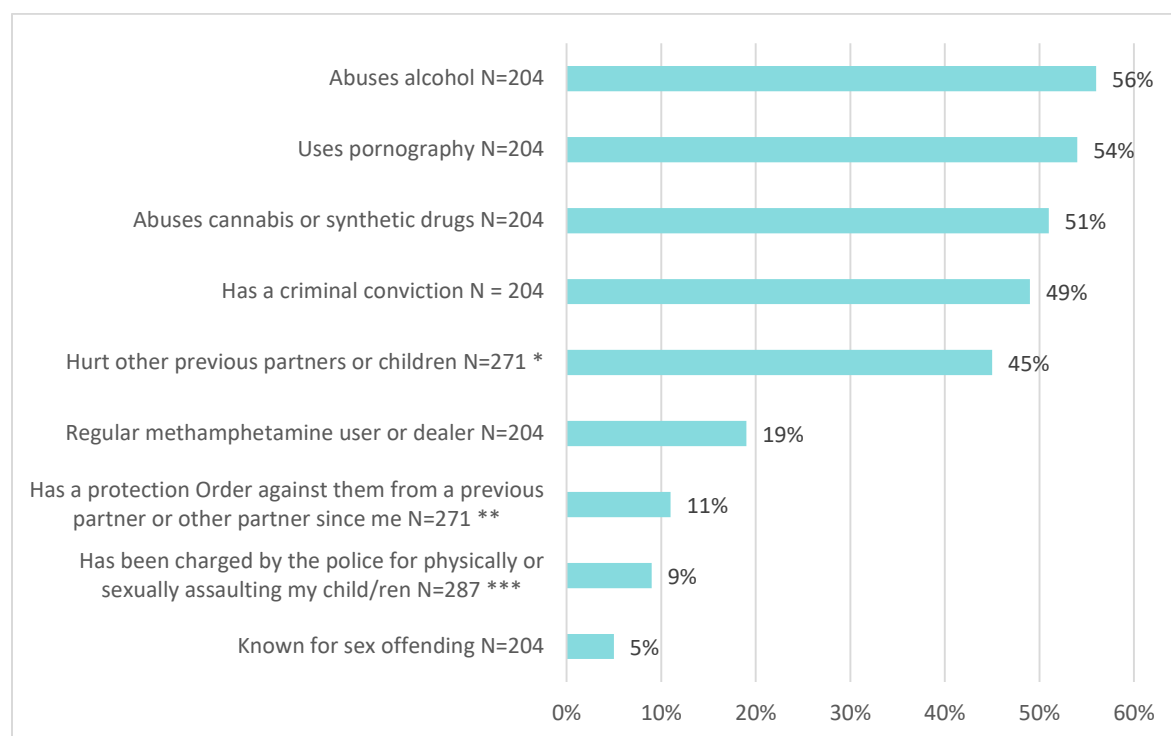
Figure 9: Abuser’s involvement in children’s day to day lives (N = 281 mothers)



Had the abuser used violence and abuse towards others?

The survey responses painted a picture of abusers who were not safe for children to be alone with. Figure 10 shows that in many cases there was previous and current violent and abusive behaviour. It is of grave concern that nearly half of all the abusers had a history of hurting previous partners or children and/or had been charged and/or convicted for breaching a Protection Order against another partner. In addition, many abusers had other behaviour that would typically be considered to be high risk to children - criminal convictions; abuse of alcohol, cannabis or synthetic drugs; being a regular methamphetamine user or dealer and/or using pornography. Four women told us their abuser has a criminal record for sex offending. Any one of these activities or behaviours should serve as a red flag for the Family Court and in the very least show that a risk assessment needs to be done on the abuser before care and contact decisions are made. As we will show later in this report care and contact decisions were routinely made in spite of these red flags and certainly not in response to them.

Figure 10: Types of abuse and risk behaviour used by abusers ¹⁴



Notes:

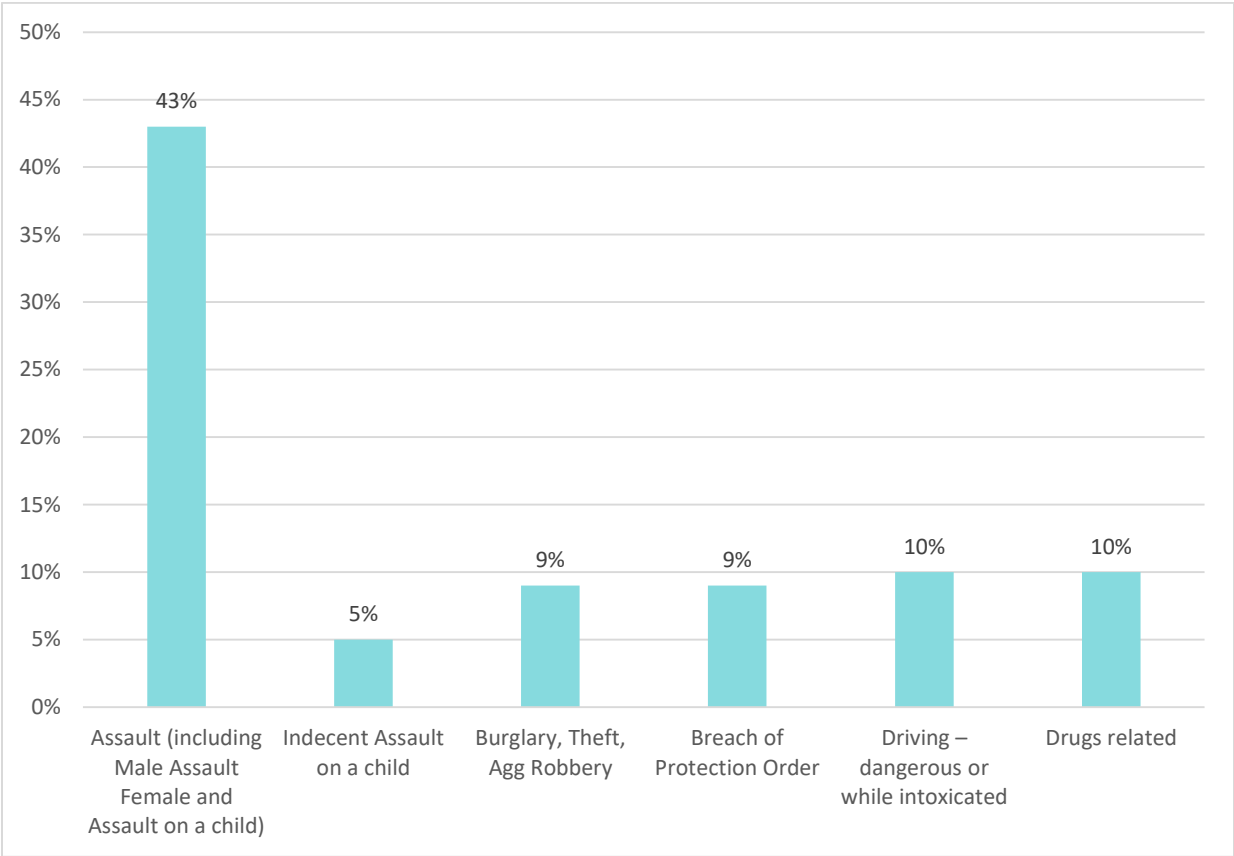
- * 16% of these mothers said their ex been convicted in the Criminal Court for hurting previous partners or other child/ren
- ** 55% of these mothers said their ex partner was convicted for breaching the Protection Order against another partner.
- *** 68% of these mothers said their ex partner was convicted on the charge.

We wanted to learn more about the 49% of children who have a father with a criminal conviction, because in these cases there will be a public record of illegal behaviour, which we would assume should have been made available to the Family Court and been considered when orders were made regarding the care and contact of children.

Of the 100 mothers who said the abuser had a conviction, 88 described that conviction(s). Many of the abusers had multiple convictions. However, we selected one conviction for each mother and if one was assault in amongst others then it was coded as assault. Therefore, the abusers had many more convictions than represented in the following table. A very small number of lesser convictions for fraud etc. are not included in the table. Figure 11 shows that the majority of convictions were for violent offences.

¹⁴ The information in this figure is gathered from a number of questions in the survey therefore beside each % the total number of respondent mothers of the question is included.

Figure 11: Types of convictions abusers have had (N = 88 abusers)

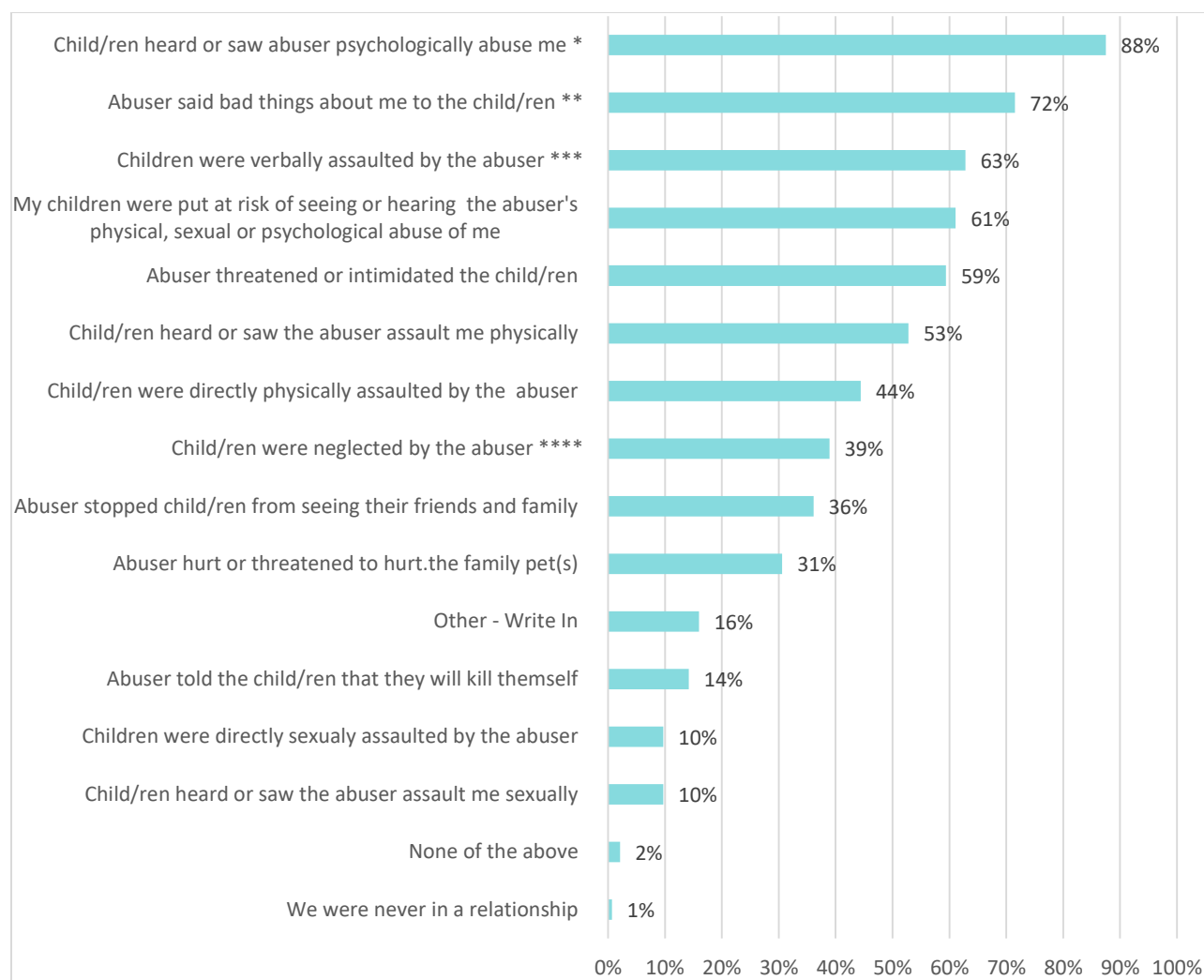


What had the abuser done to these children before separation?

Backbone wanted to learn more about the specific types of violence and abuse the children had experienced from the abuser *prior* to Family Court involvement. We asked participants to tell us about the violence and abuse the children had seen, heard, or had experienced directly. Once again, the responses paint a picture of abusers who are often dangerous and abusive to their children. These children’s daily lives were defined by the violence and abuse. Over half the mothers told us the children saw or heard the abuser physically assault her and 44% told us the abuser had physically assaulted the child/ren. Most of the children saw the abuser psychologically abuse their mother and many were victims of psychological abuse themselves.

Figure 12 shows that a highly concerning percentage of these children have been exposed to multiple forms of violence and abuse, all of which would have impacted on them psychologically, psychically and socially – all of which would have caused trauma to the child.

Figure 12: Kinds of violence and/or abuse children exposed to while mother was in a relationship with the abuser (N = 288 mothers)



Notes:

- * Verbal abuse, threatening behaviour, breaking things, control that stopped me doing what I wanted to, putting me down etc.
- ** For example, calling me a bad mother, slut, said I didn't love the children etc.
- *** Called names, put down, shouted at
- **** Denied food, school resources, healthcare

The 46 mothers who selected the 'other' option told us in detail about the violence and abuse their children had suffered including physical and sexual assaults, witnessing him smashing up property, seeing him abuse and/or kill their pets, threatening the children that he will kill their mum, threatening to kill the child, leaving pornography out so the children could see, masturbating in view of the children, and driving dangerously resulting in fear and injury for the children.¹⁵ The children were also subjected to psychological abuse including control of their social media accounts, being belittled, the abuser using

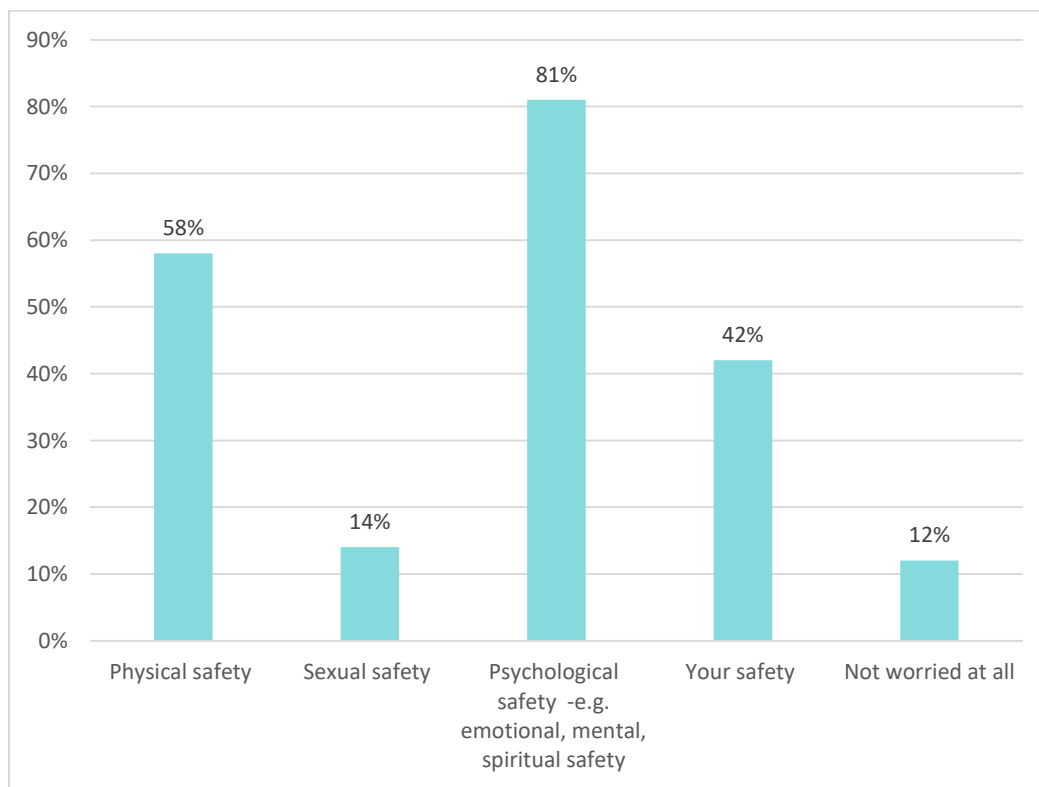
¹⁵ These mothers all referred to the abuser as male in their comments.

scare tactics on them, stopping them from seeing their friends or leaving the house, threatening to leave them and never come back, favouring one sibling over another and neglecting them by failing to be at home to care for them and have food available for them.

Many children are scared of contact or care with the abuser

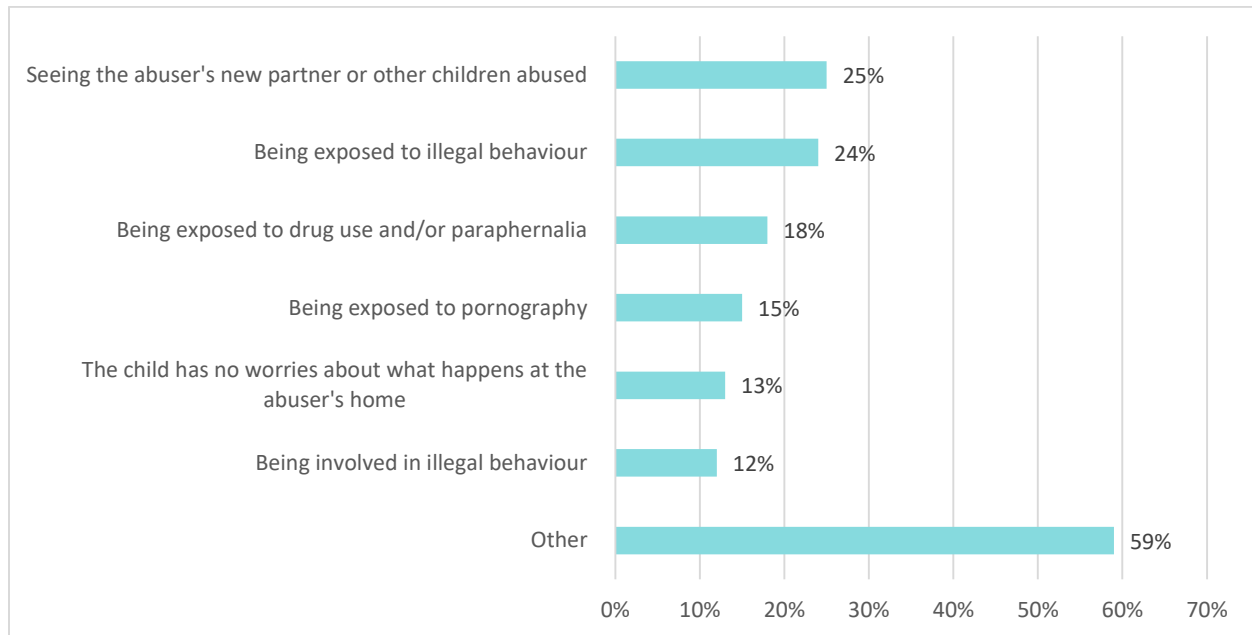
Given the history of violence and abuse towards their mothers these children were exposed to and in many cases the violence and abuse directed to them, we were not surprised to learn that many children were scared of having contact with the abuser post separation when their mother would not be present to help protect them. Unfortunately, it is at this time when these children become involved in the Family Court and under parenting orders are then often forced into care and contact. We asked mothers to tell us what their children had said they were worried about while in the abuser's care. Figure 13 shows that many of the children in the survey have worries about their physical, sexual and/or psychological safety.

Figure 13: Children's worries while in the abuser's care (N = 402 children)



We also asked mothers to tell us about things that children told them actually happened at the abuser's home. Figure 14 shows that many children are exposed to harmful behaviours, substances and further violence and abuse when in the care of the abuser. Of significance is the high number of children who worry about their mother's safety while they are with the abuser, as is also apparent in Figure 13 above. Perhaps this finding is not surprising given the high number of mothers (73%) who described the abuser badmouthing, threatening to kill them and making fun of them to the children while they were still in a relationship with the abuser – see Figure 12.

Figure 14: Things happening at the abuser's home that worry the children (N = 338 children)



Under the 'other' option, over half the mothers shared more detail about what their children are worried about when they are with the abuser.¹⁶ In addition, in a separate question we also asked mothers about the particular things the children had told them they were worried about while in the abuser's care.¹⁷ We have compiled the combined detail into themes in one graphic below. Some of the themes were apparent in many survey responses including, children saying they worried about how the abuser badmouthed, put down or threatened their mum and that they were abused and assaulted when they were in the abuser's care. The range of things that children worry about are alarming and heartbreaking. These children describe dangerous and traumatic things happening while in the abuser's care and they are very frightened.

¹⁶ N = 198 children

¹⁷ N = 252 children

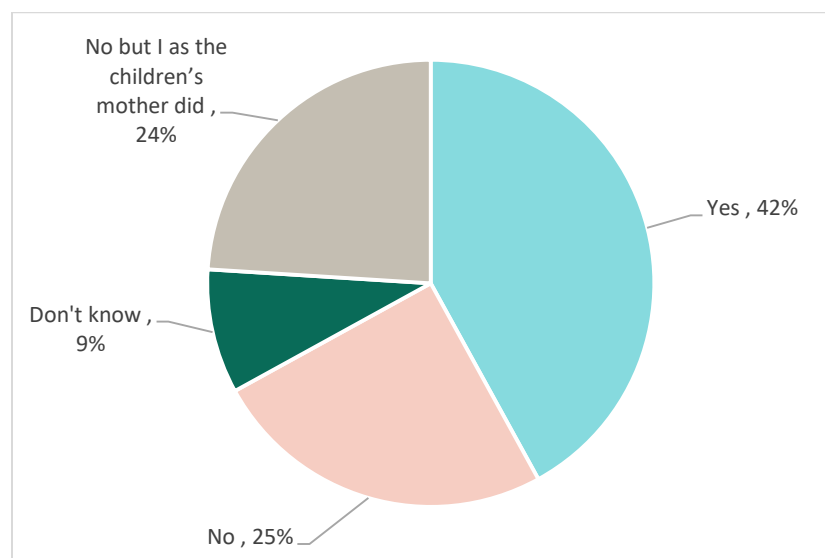
Figure 15: What types of things happen at the abuser's house that children worry about

- Mind games
- Being assaulted
- Dad ranting and raving
- Coded messages
- Alcohol abuse
- Rage
- Forces child to watch horror films
- Hurts and kills pets
- Child scared will displease dad
- Driving dangerously
- Told scary graphic stories about mothers dying
- Abused by his new partner
- Neglected
- Left home alone
- Sexual abuse
- Racism
- Sworn at
- Manipulated
- Molested by new partner's children
- Abuser watching child sleep and looks at their body
- Made to wear clothes inside out
- Forced into the water when not safe
- Being strapped
- Abuser threatening to hurt mum
- Not being able to play outside
- Scared to tell abuser problems when in his care
- He makes child feel guilty
- He has multiple partners
- Porn
- Graphic media on show
- Emotional abuse
- No booster seat in the car
- Abuses/assaults the new partner
- Not able to contact mum as given no access to phone or internet
- Parties - child given alcohol
- Child told they are not wanted/loved
- Treated like a slave
- Child is lonely and has nothing to do
- Bullied and picked on
- Locked outside
- Intimidation
- Present while he has sex with new partner
- Not allowed to go home to mum
- Smashing things
- Guns in the house
- Compulsive lying
- Seeing siblings abused
- Forced to sleep in dad's bed or other male family members' beds
- Forced to eat rotten food
- Kept in one room
- Not allowed friends
- Not allowed food
- Shown pictures of naked people
- Abuser getting drunk, not paying attention to them
- Assaulting siblings
- Forced to sign statements
- Being shaken
- Being away from mum
- Being controlled
- Locked in their room
- Being abused by abuser's friends
- Being smacked by other family members
- Scared in general the whole time they are there
- Being told mum will go to jail
- Being put down
- Dad gets angry over little things
- Feeling helpless
- Being dragged around
- Being told things don't happen when they do
- Inappropriate comments and behaviour
- Forced to be violent by abuser

What happens when children tell Family Court professionals about the violence?

Given the serious nature of the things happening at the abuser's home that the children were worried about, we asked whether the children had told their worries to any of the professionals working in the Family Court including Lawyer for Child, section 133 specialist report writer (psychologist), social worker or the Judge. It appears that many children have been actively telling those in authority about their fears for their physical, sexual and psychological safety.¹⁸ Similarly the children's mothers have been telling professionals in the Family Court about their children's fears when their children have been unable to do so.

Figure 16: Did your child tell a Family Court professional about their worries (N = 296 children)



Children are speaking up but that is **not** resulting in safer decision-making about them. Sadly, it appears that the Family Court professionals the children told have not taken action to help these children to be safer. In only 35% of these cases the professional concerned then accurately reported the child's worries to the Family Court in their report(s). We also asked mothers to tell us how their child/ren's experience of violence and/or abuse had been understood or responded to by the judge and others in the Family Court e.g. lawyers, psychologists.

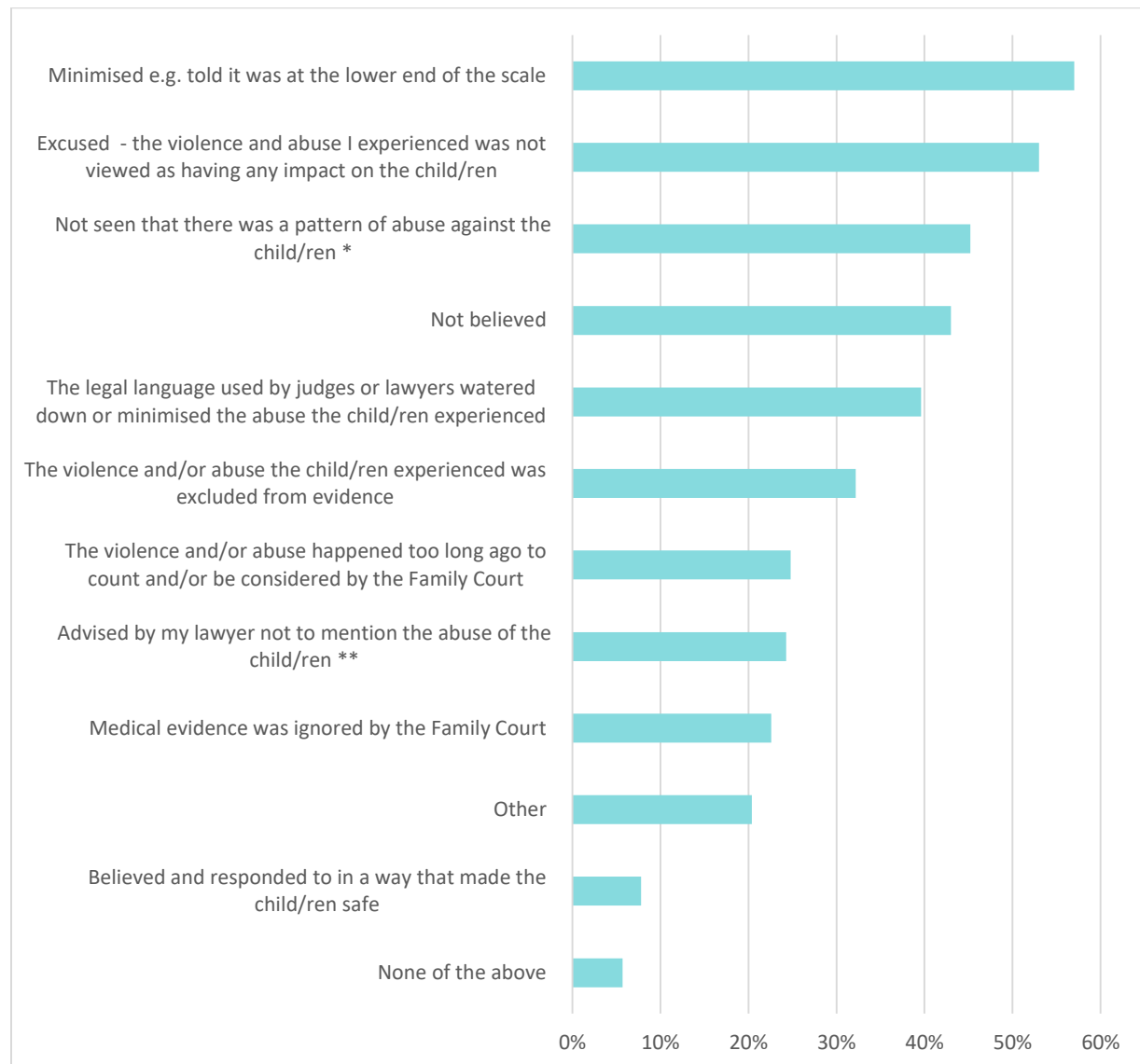
Professionals accurately reported children's concerns to the Family Court in only 8% of Maori cases compared to 34% of non-Maori cases.

Unfortunately, most of the mothers reported negative experiences of how those working in the court had responded to their children's experiences of violence and abuse. As shown below in Figure 17 only

¹⁸ In subsequent parts of the Seen and not Heard series more information will be available about the practices of professionals working in the Family Court that mothers have told us about.

a very small percentage of mothers told us that their children were believed, and the Family Court responded to make the child/ren safer. For most children their experience was not believed, was minimised, was excused or told it happened too long ago to mention.

Figure 17: How those working in the Family Court responded to children's experiences of violence and abuse (N = 231 mothers)



Notes:

- * Saying that it was only a few "minor" incidents, failing to acknowledge that these minor incidents add up to a lot of harm
- ** Saying that it would be better if I don't mention the abuse in order to make progress

In later reports in this series we will be discussing in more detail the responses of professionals working in the Family Court to children who have experienced violence and abuse. What is evident in this report is that when children talk about the violence and abuse and their fears and safety concerns, they are not responded to safely. It appears that the focus of professionals working in the Family Court is placed directly on the mother rather than the abuser. We will discuss this dynamic later in this report.

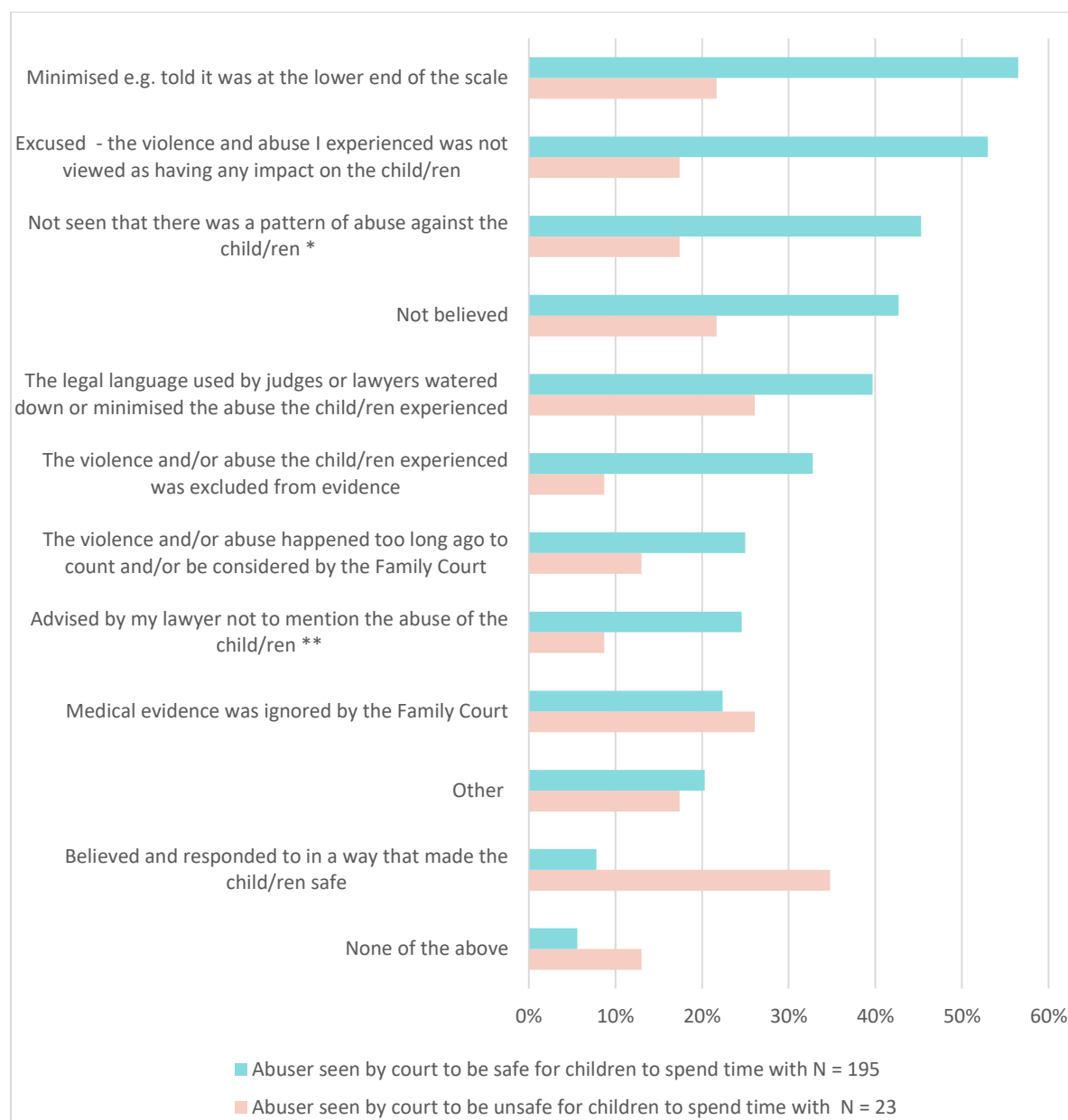
The Family Court sees the abuser as safe for the children to spend time with

Out of 271 responses, 87% of mothers said the Family Court views their abuser as being *safe* for the children to spend time with. We were horrified to learn that, despite all the information mothers told us about their abuser – about the violence and abuse these men had used against them and previous partners, their children and others, about how little involvement they had had in their children's life before separation and about the worries the children have and what they had been exposed to since separation (Figures 9 - 15) - the Family Court found that only 13% (35) were *not safe* for the children to spend time with.

Professionals were more likely to respond well to children's experiences of violence and abuse when they viewed the abuser as 'unsafe'. Figure 18 shows a marked difference between the abusers who were seen by the court as 'safe' and those seen as 'unsafe' for their children to spend time with. In cases where the court believed and responded in a way that made the children safe the abuser was more than four times as likely to be seen as 'unsafe'. Conversely where the children's experience of violence and/or abuse was minimised, excused or not seen as part of a pattern – the abuser was 2 -3 times more likely to be seen as 'safe' for the children to spend time with.

Figure 18 shows that the violence and/or abuse the child/ren experienced was excluded from evidence and/or the woman was advised by her lawyer not to mention it, in between 25% and 33% of the 'safe' cases compared to only 9% of the 'unsafe' cases. This strongly suggests that the exclusion of evidence, either under advice of the lawyer or because it was ignored by the judge, is a major contributing factor to abusers being perceived as 'safe' for their children to spend time with.

Figure 18: The Family Court response to children's experiences of violence and abuse for abusers deemed as 'unsafe' versus 'safe'¹⁹



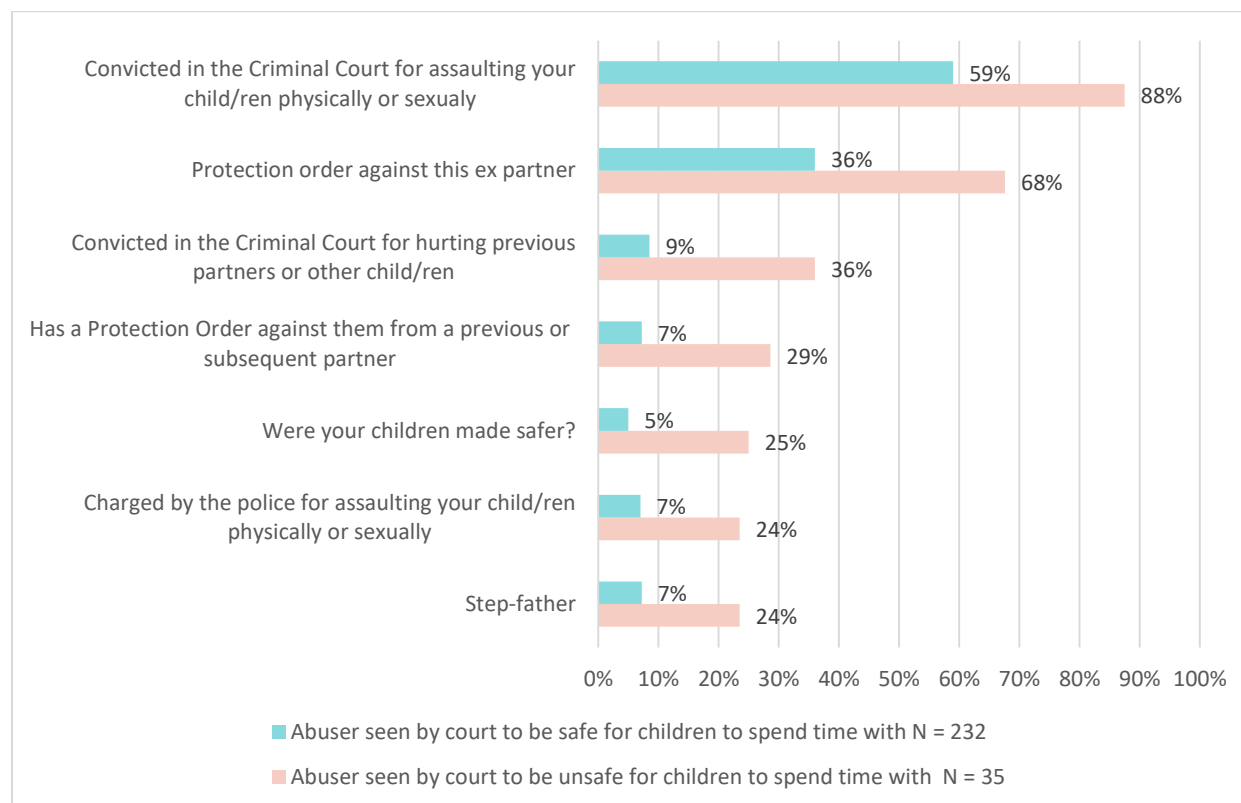
To ascertain what 'evidence' might be influencing the court's determination of how 'safe' the abuser is, we ran a comparison of the 'safe' and 'unsafe' groups across all the data we had collected about the abusers and their behaviour. Figure 19 shows an almost 2-3 fold difference where the abuser had either a Protection Order against this partner or a previous or subsequent partner, had been charged with assaulting their child/ren physically or sexually or where the abuser was a step-father. Of concern is that

¹⁹ No information provided regarding the Family Court's response to children's experience was provided in 12 'unsafe' and 39 'safe' cases

these were the **only** factors where there was a detectable difference between the 'safe' and 'unsafe' groups. For example, **the types of violence and abuse the children had been exposed to make no difference unless the abuser had been charged by Police.**

The survey did not ask any socio demographic questions about the abuser. Therefore, we have been unable to ascertain whether ethnicity, income status or occupation made a difference to whether the court viewed the abuser as 'safe' or 'unsafe'.

Figure 19: Abuser behaviour and how that impacts on the Family Court 'safety' findings

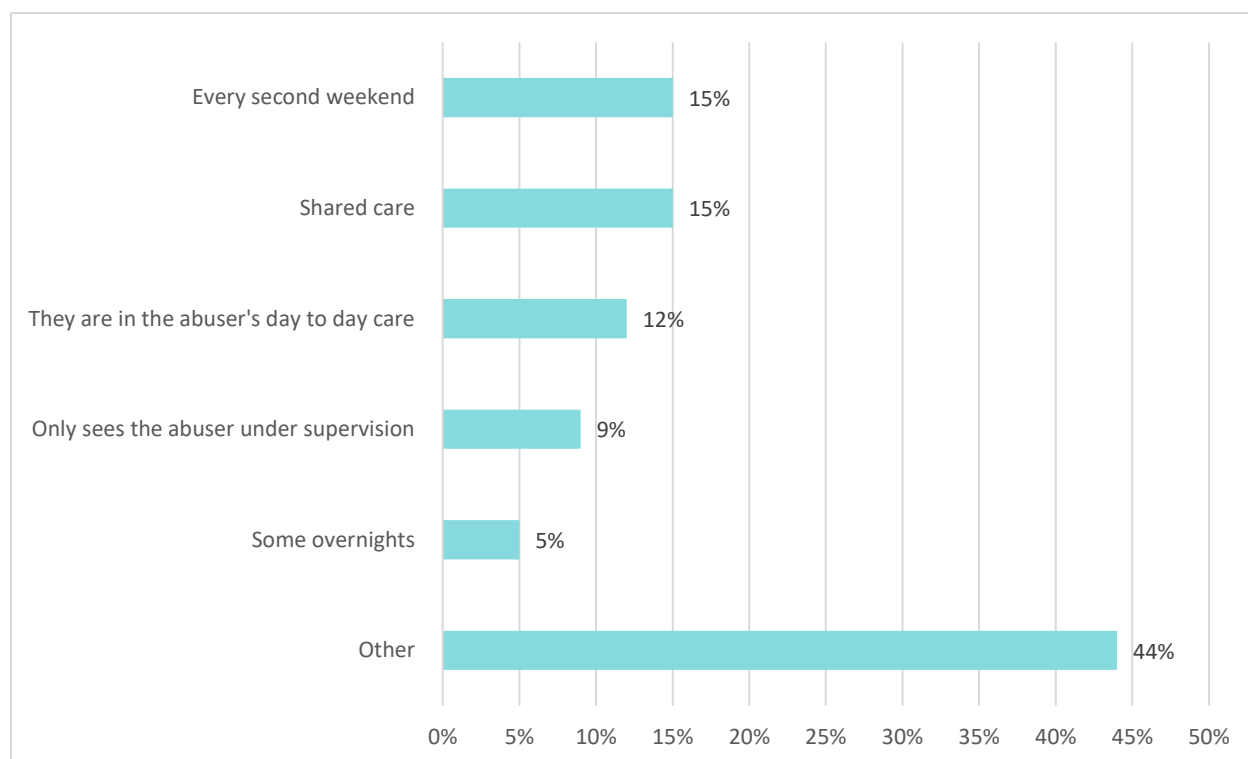


All of the children in the survey had been exposed to violence and/or abuse of their mothers (either directly or indirectly) and many of them had been directly abused themselves (physically, sexually and/or psychologically). In spite of them having safety and welfare concerns while they are in the care of the abuser, and in spite of them and their mothers telling professionals about their fears for their safety, many of these children are being ordered into care and contact arrangements with their abuser against their wishes. It seems incredible that the Family Court would award unsupervised care and/or contact of children to an abuser who has abused the children *and* in many cases, has not been involved in any significant way in the day to day care of them up until the point of separation.

Care and contact arrangements ordered by the Family Court

There was a wide range in the care and contact orders made by the Family Court including day to day care with the abuser, shared, care, some days or nights with the abuser, through to supervised contact only.

Figure 20: Amount of time children ordered by the Family Court to spend with the abuser (N = 400 children)

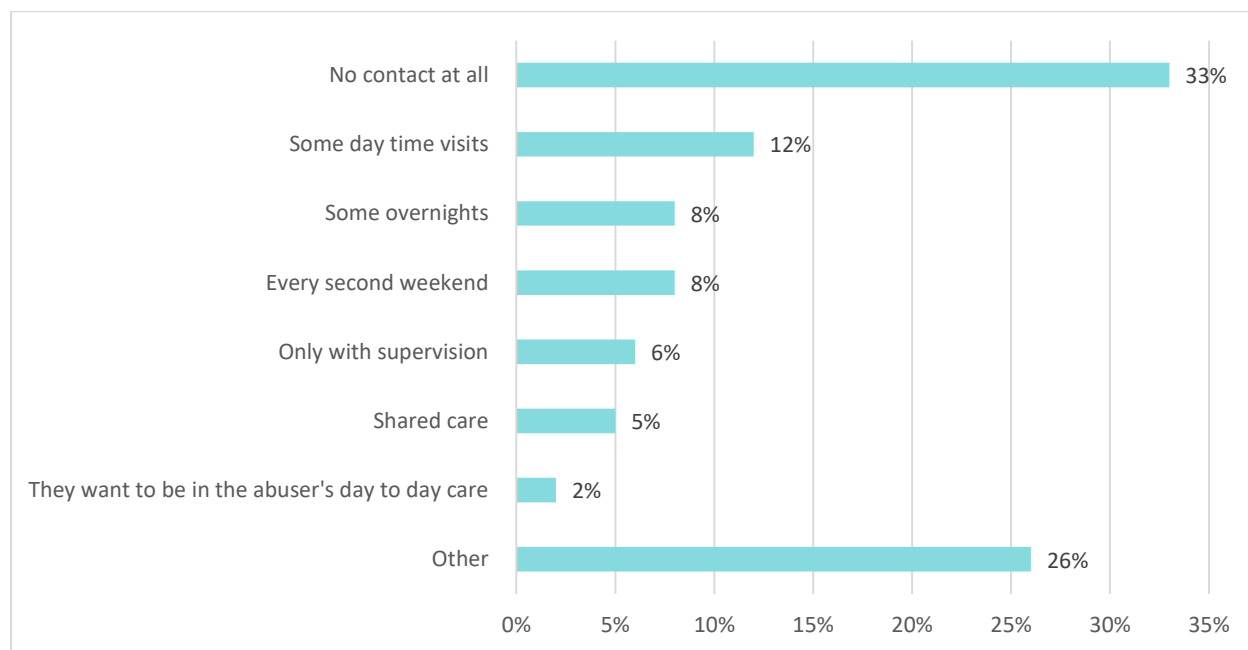


Many mothers (177) selected the 'other' option to describe the care and contact arrangements ordered by the Family Court for their child. The care arrangements ranged from no contact at all in some cases to the child being in the abuser's full-time care and every kind of scenario in between. It appears that care and contact decisions are unique in each case, but in saying that the mothers are not reporting that contact and care orders are uniquely responsive in terms of safety. In addition, mothers described shared care arrangements which came in a variety of packages and in many cases involved 50/50 care but happen in different kinds of configurations.

22% of children of Maori mothers compared to 11% of children of non-Maori mothers were ordered into the abuser's day to day care by the Family Court

In contrast to what was ordered by the Family Court, we asked mothers to tell us how much time the children had told them they actually WANT to spend with the abuser. By comparing Figure 20 above and Figure 21, one can see there is a strong disconnect between what the Family Court is ordering and what children are saying they want.

Figure 21: The amount of time children WANT to spend with the abuser (N = 398 children)



Children wanting 'no contact at all' was the highest-ranking option. One third of these children want **no contact** at all with abuser whereas nearly all of them are currently ordered into some form of care and contact.

Twenty-six % of women selected the 'other' option and told us in more detail about the care arrangements.²⁰ It is clear that the children want control in how often and for how long they see the abuser. Some mothers reported their children were too young to articulate what they wanted, and some mothers said that their child had been forced from such a young age into care and contact that the child just accepted it now. Another said the children were too scared of their father's reaction to say what they wanted. Some mothers said their children wanted no contact ever, and many said they wanted to see him only when they wanted to. Others said they wanted most of their time with their mother and some time with their dad like just in the holidays, or once every 3 weeks, once a month or one or two visits a year. Throughout the 'other' responses it was clear that the children who wanted some contact with the abuser wanted small amounts of time with him (no more than 2 nights in a row) and overall not that often. Some mothers also stated that their children wanted 'some daytime visits'. Overall the children included in the 'other' option did not want to spend overnights with the abuser.

²⁰ Three mothers stated in the 'other' option that their children had no contact with the abuser.

Some wanted contact, but they wanted it to happen at times when they felt safer. In the words of one child ‘no overnights – just like a playdate.’

The least popular option mothers selected was children wanting full time care with the abuser or shared care. The low rate of selection for these two options is a strong sign to the Family Court the children in this survey do not feel safe in the abuser’s care. It is of great concern that while the Family Court ordered the children into day to day care with the abuser in 12% of cases in only **2%** of cases did the children *want* this amount of care and contact with the abuser. Likewise, 5% of children want shared care but the court ordered it in 15% of cases.

There appears to be a significant disconnect between the care and contact orders made by the Family Court and the notion of the welfare and best interests of the child being paramount - which is central to the Care of Children Act 2004 (see section 4) - and section 5 which states that the child must be protected from violence in these Family Court orders.²¹

Children forced against their wishes to spend time with the abuser

67% of children of Maori mothers and 54% of children of non-Maori mothers are forced into contact arrangements with the abuser against their wishes

As well as finding out about the different kinds of care and contact ordered by the Family Court we also asked mothers to tell us if their individual children were being *forced* to spend time with the abuser against the child’s wishes. Overall 54% of the children were being *forced* into care and contact arrangements that were different from what they wanted.²²

There is a difference in the care and contact arrangement between the children who are forced and the children who are not forced. Figure 22 shows that the children who are forced are more likely to be ordered into the day to day care of the abuser, shared care, every second weekend and some overnights than children who are not forced. In fact these children who are forced into care and contact with the abuser are twice as likely to be in full day to day care of the abuser and are four times as likely to be in shared care with the abuser.

²¹ <http://www.legislation.govt.nz/act/public/2004/0090/67.0/DLM317240.html>

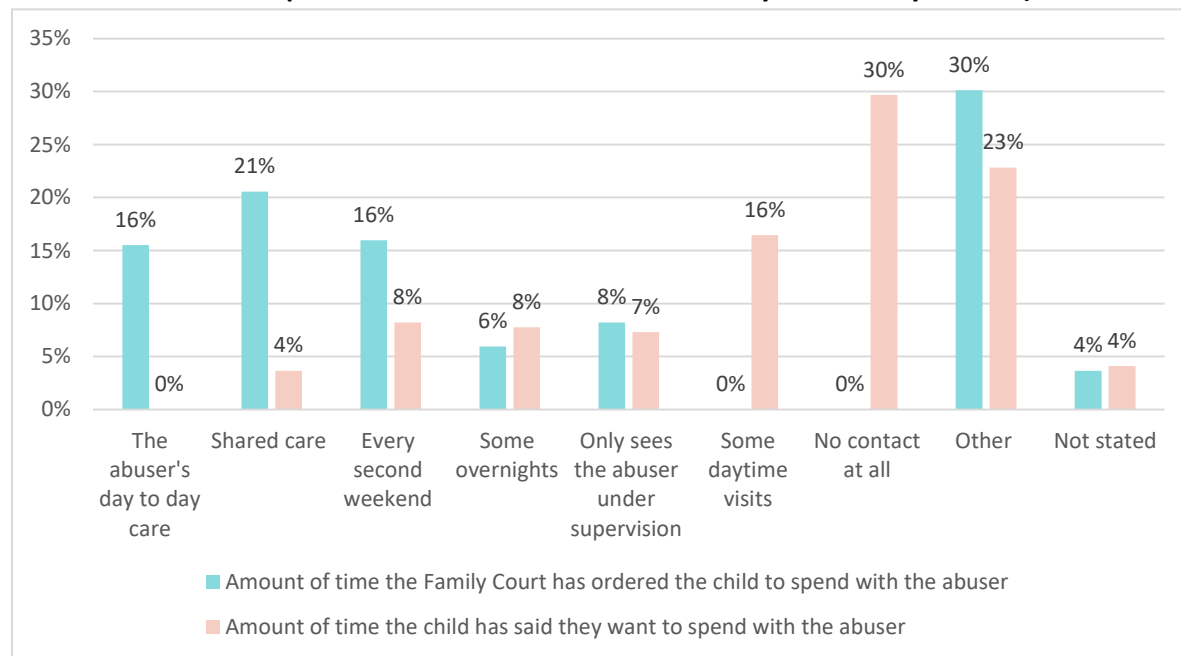
²² The question was answered for 403 children and 219 of these were forced to have contact with the abuser.

Figure 22: Care and contact orders for the children who are forced and children who are not forced to spend time with the abuser



We were therefore interested to take a closer look at the children who were forced into care and contact and see if there was a difference between what the Family Court was ordering and what the children said they wanted. Figure 23 speaks for itself but it shows very clearly that the children who are forced into care and contact in most cases do not want as much contact as they are being ordered to have. Nearly a third of the children say they want no contact at all and 16% want only day time visits. While 21% (45) of the children are forced into shared care arrangements only 4% actually want that. None of these children want to be in the abuser's day to day care and yet 16% (34) are forced into this arrangement. This is a strong sign to the Family Court the children in this survey do not feel safe in the abuser's care.

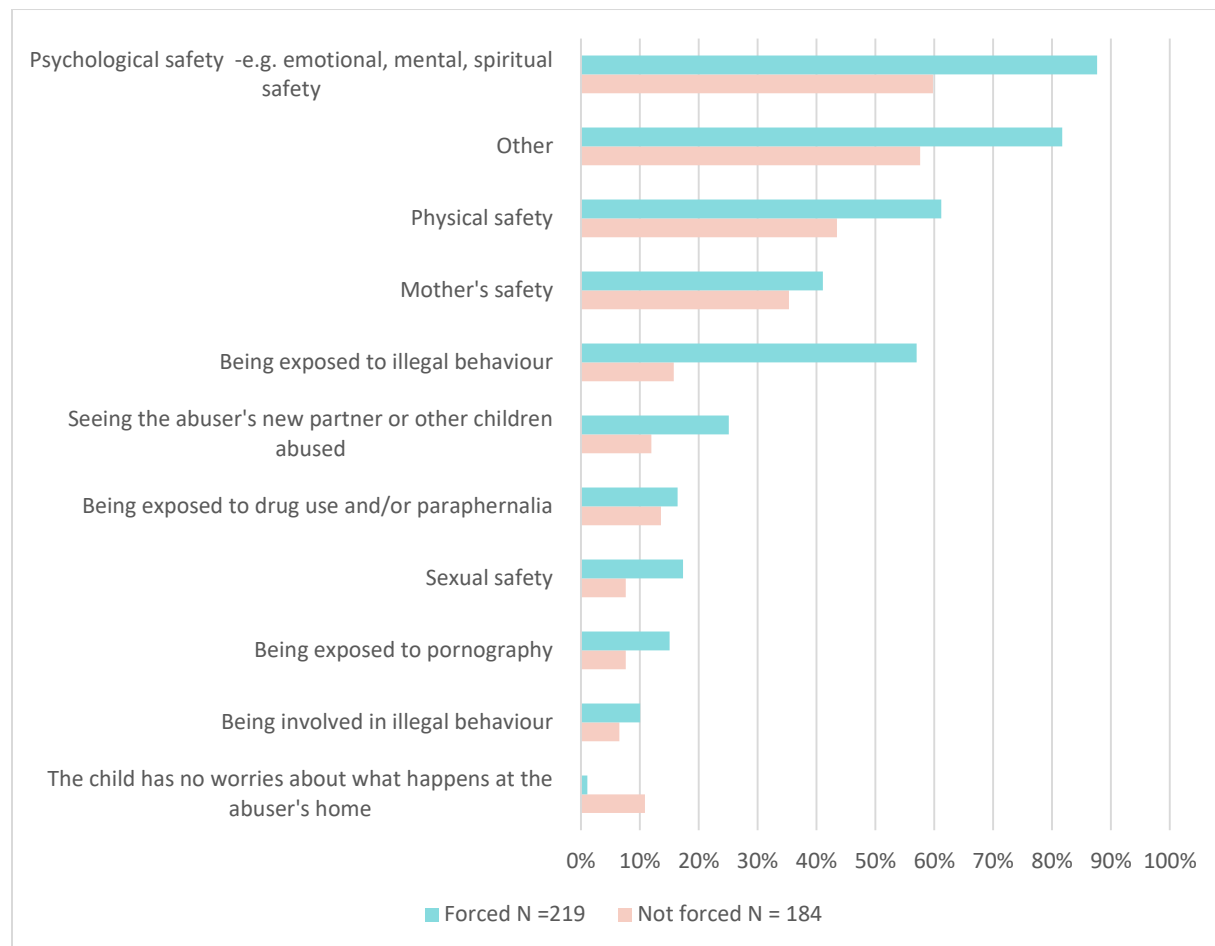
Figure 23: Amount of time children who have been forced into care arrangements WANT to spend with the abuser compared to amount of time ordered by the Family Court (N = 219 children)



We wanted to see if there were any patterns evident in the children who were forced into care and contact with an abuser and the types of worries they had about what in particular happened at the abuser's house. In other words, was there a reason these children did not want to go and what situations was the Family Court forcing them into by way of care and contact orders.

What we found was shocking. Figure 24 shows that in every type of worry or behaviour listed, the 'forced' children were more likely to have these worries than the 'not forced' children. In fact, the 'forced' children were at least twice as likely to worry about their sexual safety, being exposed to illegal activity, the abuser abusing the new partner and/ or other children and being exposed to pornography than children who were not forced into the abuser's care and contact. Ten times more 'not forced' children said they had no worries about what happened at the abuser's home than the 'forced' children. As explained in the discussion under Figure 14 the 'other' category contained descriptions of many abusive behaviours the children were worried about including being hurt, locked up, yelled at, deprived food, seen their siblings hurt etc.

Figure 24: Worries children who are forced into care arrangements have compared with those not forced



Why does the Family Court see the abuser as safe?

The Family Court is making care and contact orders that are based on the understanding that the abuser, in most cases, in spite of his previous violence and abuse, is 'safe'. It seems there are two central reasons for this. Firstly, the Family Court is not undertaking risk assessments in cases where violence and abuse is alleged and secondly, when mothers and children talk about their experiences of violence and abuse to those working in the Family Court they are not believed, and their experiences are minimised and fobbed off.

Risk assessments are not undertaken

Despite the extent to which these abusers had used violence and abuse towards others and their own children (Figures 10 - 15), and the ongoing threat they clearly posed to the mothers and their children, we were alarmed to find that a risk assessment on the abuser was only done by the Family Court in 2.2%

of cases.²³ This means that the Family Court is making decisions about the abuser's care and contact with children post separation that are not informed by safe and best practice.

International best practice in responding to cases where there is domestic violence recommends that risk assessments be undertaken to determine the dangerousness and lethality risk of an abuser to the victims. A lethality or dangerousness assessment looks for indicators that someone is more likely to kill or attempt to kill or severely injure the victim including children. It contributes to risk assessment, safety planning, and risk management. Assessing lethality isn't solely trying to predict whether or not the victim will be killed by the perpetrator; it also requires assessing the risk of life-threatening behaviours against others or self by the perpetrator to the victim, or any children. Assessment for risk of injury or death is difficult – dangerousness assessments aren't precise, scientific tools but they do attempt to identify where a perpetrator is more likely to kill their victim(s).²⁴ It is well known and documented that risk to women and children increases upon separation.²⁵ Most risk assessments presume that the mother has care of the children and therefore provides a protective role to those children. There is no standardised lethality and dangerousness risk assessment tool in New Zealand. However, there are three frameworks available that could be utilised by the Family Court to help inform safe decision making and practices.²⁶

Mothers are being accused and blamed for children's fears of the abuser

The Family Court is refusing to believe and respond to many children's experiences of violence and abuse. It is overriding their often serious concerns about their safety while in the care of the abuser and it shuts down those concerns by refusing to believe the children, ignoring their experiences outright, i.e. medical evidence, and/or blaming the child/ren's worries on the protective parent. Backbone has heard from many mothers who have told us that those working in the Family Court accuse them of being responsible for their child/ren not wanting to have contact with the abuser rather than seeing that the violence and abuse the children have been exposed to is the cause. In their survey responses women frequently mentioned the term 'parental alienation'. Parental alienation as a theory has been debunked internationally.²⁷ Furthermore, even the author of the debunked theory, Richard Gardiner, never intended it to be used in cases where there is domestic violence.²⁸ Despite the doctrine of parental alienation being internationally discredited for many years it is still being routinely applied by psychologists, Lawyer for Child and social workers and judges in the NZ Family Court. The common use

²³ Only 5 out of 225 mothers said a risk assessment had been undertaken in their case.

²⁴ <https://www.justice.govt.nz/assets/Documents/Publications/family-violence-ramf.pdf>

²⁵ https://www.hqsc.govt.nz/assets/FVDRC/Publications/FVDRC_2017_10_final_web.pdf pg. 37

²⁶ Please see Appendix One for details of these risk assessment frameworks

²⁷ <https://www.newsroom.co.nz/2017/08/13/42453/family-court-using-discredited-us-theory>

²⁸ Rita Berg, Parental Alienation Analysis, Domestic Violence, and Gender Bias in Minnesota Courts, 29 Law & Ineq. 5 (2011). Pg. 6 Available at: <http://scholarship.law.umn.edu/lawineq/vol29/iss1/2>

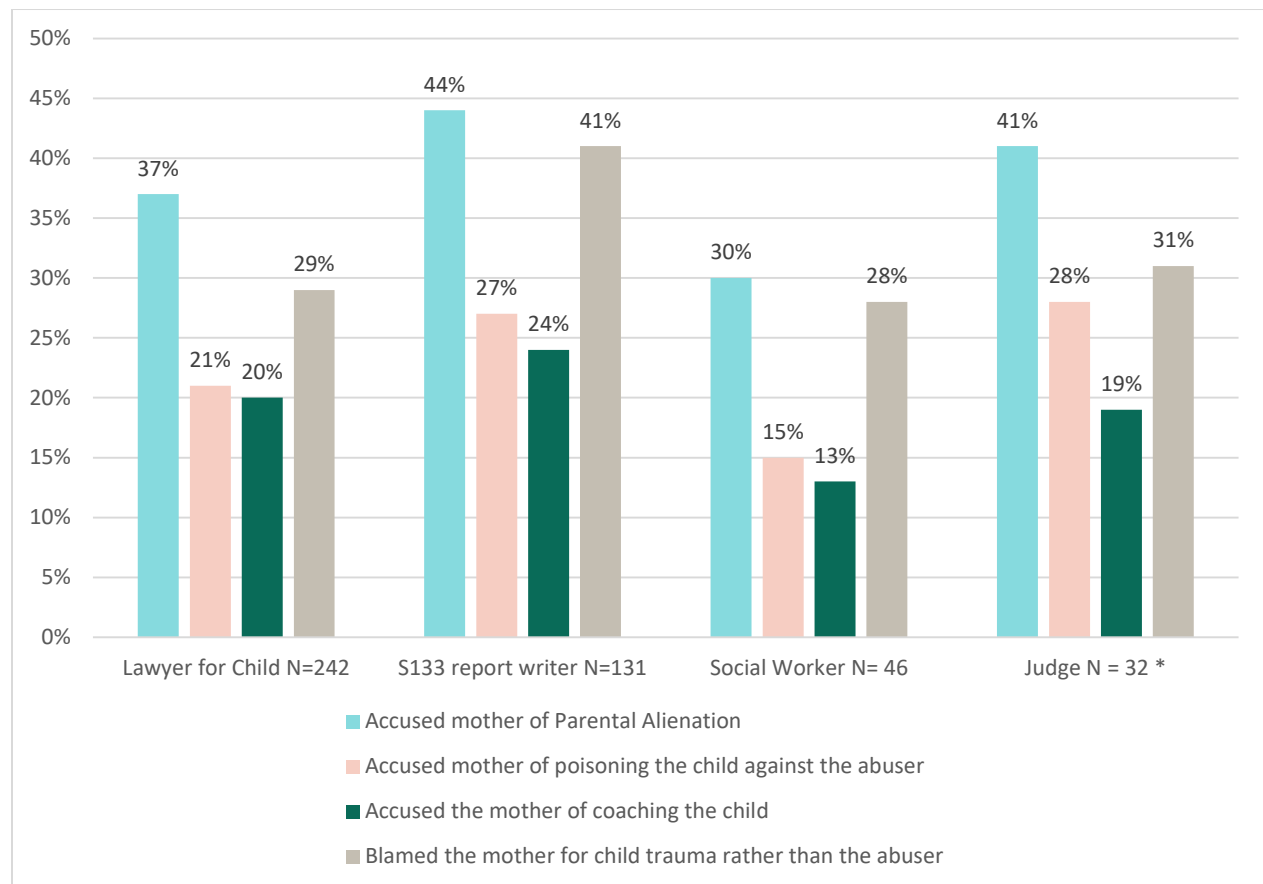
of the notion of parental alienation is not condoned by the New Zealand Psychological Society. In their 2015 submission to the parliamentary select committee reviewing Family Violence Law,²⁹ they said:

‘There are two particularly dangerous aspects of the current operation of the Family Court which run counter to the Domestic Violence Act and to efforts to protect women and children from domestic violence. The first of these is the continuing application of Parental Alienation Syndrome. It is a deep concern and a major threat to the safety of women and children that the New Zealand Family Court continues to apply the doctrine of Parental Alienation Syndrome, which has long been discredited in the United States, from where it originated. The guiding principles should clearly state that Parental Alienation Syndrome and Situational Violence are not research validated concepts and are not to be applied by judges, lawyers or others.’

In Backbone’s first Family Court survey 55% of women told us they had been wrongly accused of parental alienation by those working in the Family Court. In this Impact on Children survey we asked mothers about how the different professionals working in the Family Court had responded to their children’s accounts of violence and abuse. Figure 25 highlights the use of the concept of parental alienation – or other similar notions like poisoning the child, enmeshment, coaching, mother blaming are commonly employed by these professionals. Of particular interest is our finding that the section 133 specialist court report writers – psychologists - appear to be the professionals **most likely** to use parental alienation in their reports in response to children’s experiences of violence and abuse. This seems incongruent with the submission made by the Psychological Society, mentioned above, which clearly states parental alienation is not a validated concept and should not be used in the Family Court and most certainly not when domestic violence is an issue.

²⁹ file:///C:/Users/RH/Downloads/Psyc%20Board%20Family-Violence-Law-Review-Submission%20incl%20PAS%20and%20situational%20violence%20MUST%20be%20removed%20from%20FC%20(3).pdf

Figure 25: Mothers accused or blamed by professionals in Family Court for the child not wanting contact³⁰



Note:

* Mothers were only given the opportunity to answer these questions if their child had undergone an interview with the Judge (35 mothers answered yes to an interview the judge).

When the Family Court chooses to acknowledge the protective mother as the cause of the violence by labelling her as a parental alienator – or other such term – it then has a platform to override her and the children's fears for their physical, sexual and psychological safety while in the abuser's care. The Family Court then imposes orders which force the child/ren into care and contact arrangement with someone they do not feel safe with and entirely against their wishes in many cases. However, there are occasions when children actively refuse contact with the abuser regardless of what the Family Court has ordered.

Children are taking action to refuse and resist spending time with the abuser

In spite of the Family Court forcing children into care and contact arrangements with abusers, some children are actively resisting that force either by refusing to see the abuser or by telling someone about why they do not want to see the abuser. Most of the children covered in our survey either refused

³⁰ The question was only presented to mothers in the survey if they answered yes to these professionals being involved and yes to the Judge interviewing their child and the questions were optional.

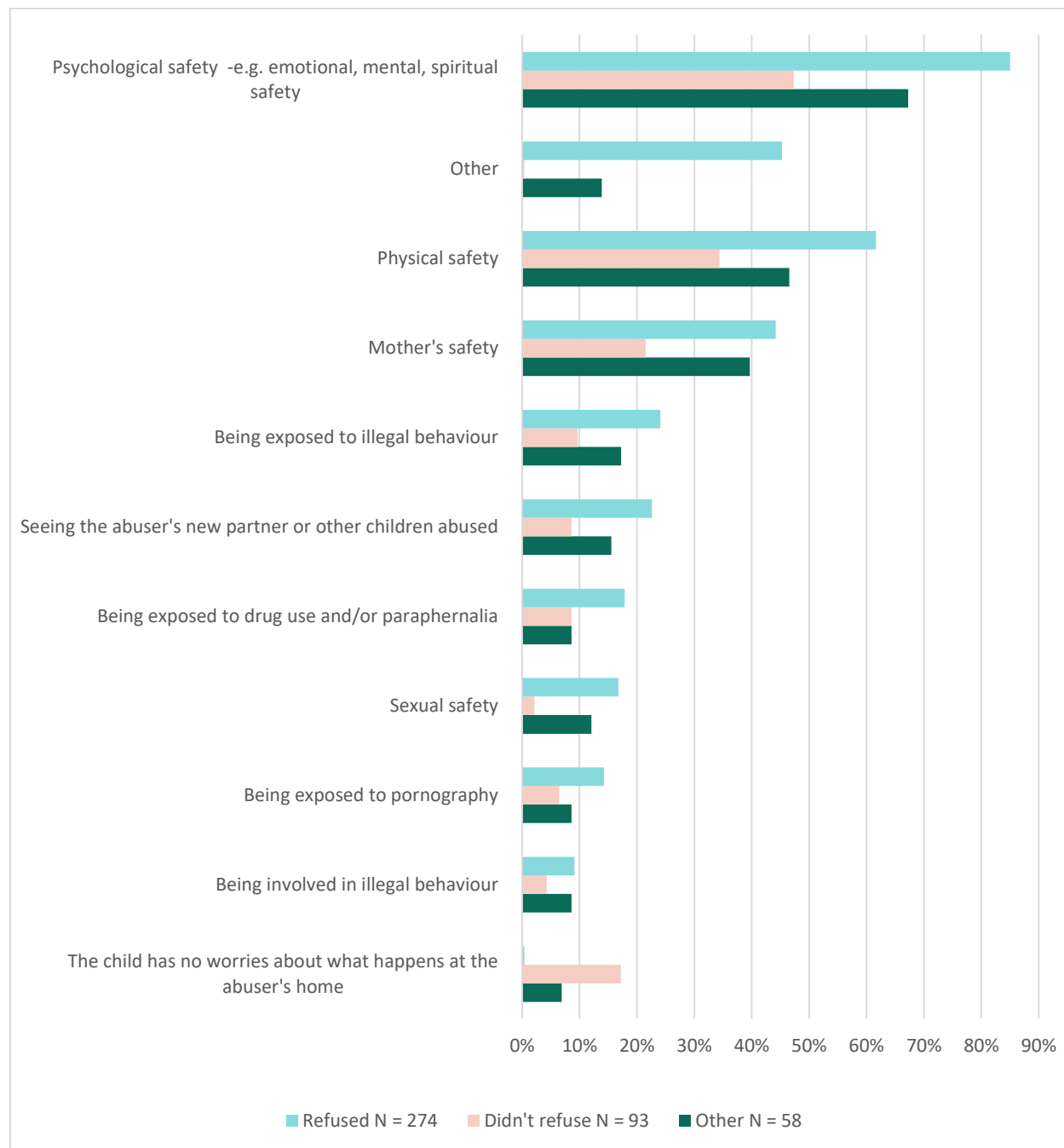
contact or would if they could. Mothers told us that 61% of their children have refused to see the abuser.³¹ A further 77 mothers (20%) selected the 'other' option to this question and they described situations where their children were pleading with them not to see the abuser, but the mother was forcing them as she had been threatened with police uplift or bad consequences in court if the parenting order was not abided. Many mothers said their children verbalized not wanting to go but also felt powerless themselves to refuse outright as they were scared of the abuser's reaction – some said physical violence was the likely outcome of refusal. Some children felt hopeless and felt there was no point in refusing and that their views would not be listened to by the court anyway. Some mothers said their children were too young to be able to outright refuse contact and a small number said the child does not say either way.

In a similar way to our analysis earlier in this report regarding forced care and contact (see Figure 24) we wanted to see if there were any patterns evident in the children who refused care and contact with the abuser in the types of worries they had about what in particular happened at the abuser's house.³² In other words, what factors may be influencing these children's refusal to attend contact and what situations was the Family Court forcing them into by way of care and contact orders. Shockingly in every type of worry or behaviour listed the children who refused to attend care and contact with the abuser were more likely to have these worries. None of the children who refused to attend care and contact had no worries at all about what happens at the abuser's house in comparison to 17% of the children who did not refuse to go. In almost all categories the children who refused to attend were twice as likely to report worries. Furthermore, the mothers of children who selected the 'other' option rather than 'refuse' or 'did not refuse' also far outnumbered the children who had not refused care and contact in all the categories except the final one of having no worries in the abuser's care. As reported above, the 'other' category contained a lengthy list of examples of cases where children were pleading not to have contact but were unable to refuse due to fear of the consequences (from the abuser and/or the court), pressure or their age. Of great importance is the difference in worries about sexual safety reported by these children with 17% of children who refused contact being worried about their sexual safety in comparison to only 2% of children who had not refused contact.

³¹ The question was answered for 420 children and 258 of these refused to see the abuser.

³² 161 children were both forced into care arrangements *and* were refusing to go

Figure 26: Differences in children's worries who are refusing to see the abuser and those not refusing



Interestingly, when we compared the particular worries while in the care or contact with the abuser for children who were forced with children who refused³³, we found very little difference in the numbers of children reporting each category of worry. In only two categories was there a significant difference. Children who were forced into care and contact were more likely to be worried about being exposed to

³³ There is some overlap between children forced and children who refused but we treated them as different groups of children for comparison

illegal behaviour (57%) than children who refused care and contact (24%). More mothers whose children who were forced selected the 'other' option (82%) than in the children who refused care and contact with the abuser (45%) and we think this may be because the notion of being 'forced' was perhaps more ambiguous for the mothers to respond to and therefore more of them choose to select 'other' and provide commentary to describe their child's particular situation.

Many of the children who refused or resisted care and contact were taking a brave stand to avoid contact and were in most cases responding to perceived threats or dangers while in the abusers' care. Mothers described having to coerce, bribe, and physically force their children to attend contact and this was enormously stressful for the children and for their mothers.

The ultimate use of force

Some mothers explained that there were times when they made a decision not to force that child into contact because they have genuine safety concerns for that child or they are not prepared and/or able to physically force the child to comply for example, drag them from their car seat, carry them to the car, force them to go to the supervision centre, make them go to school so that the changeover can take place. In these cases, mothers told us they are held responsible for contravening Parenting Orders. In some cases when mothers could no longer enact such force upon their children the Family Court stepped in using its ultimate weapons of power and force – a Police uplift, or removing the mother as a legal guardian of her child/ren.

Under section 72 and 73 of the Care of Children Act 2004³⁴ the Family Court can impose a warrant to uplift children and place them in the care of the parent who under current Family Court orders would ordinarily have the child in their care at that time or whom the court now orders should have day to day care of the child. In August 2017 Newsroom ran a heartbreaking and compelling series on how the process of uplifts was being used by the Family Court to enforce parenting orders.³⁵ Backbone asked mothers to tell us if they had experienced an uplift of their child/ren - 57 told us an uplift had happened to their children. These women described a range of scenarios in which the uplift occurred. One third said the uplift was due to a warrant ordered by the Family Court to enforce a parenting order. A further 9% described the police enforcing parenting orders without a warrant from the Family Court. Sometimes the abuser just turned up and took the children (11%) and sometimes the Lawyer for Child or another third party removed the children (7%).

Some mothers (12) told us their child/ren had been made Wards of the Family Court³⁶ (otherwise known as under the guardianship of the Family Court) and then ordered into the abuser's full-time care. Backbone will be releasing an issues paper on the Ward of the Court process in the near future.

³⁴ <http://www.legislation.govt.nz/act/public/2004/0090/latest/DLM317660.html>

³⁵ <https://www.newsroom.co.nz/2017/08/07/41459/taken-by-the-state>
<https://www.newsroom.co.nz/2017/08/07/41512/the-legislation-behind-uplifting-children>

³⁶ See Care of Children Act section 31

A further 33 mothers who selected the 'other' option to our question asking if their children had been uplifted and described situations in which their children were forced into care and contact. One third of these mothers had been threatened by the Family Court or lawyers that if they did not go along with the Parenting Orders there would be an uplift. In other cases, a warrant was granted and held in court, in some cases police took the children without a warrant from school or day care. In other situations, the abuser had the child in his care and then either refused to give the child/ren back and/or formally approached the Family Court while the children were still in his care and was granted a without notice Parenting Order giving him full day to day care. In effect this removed the necessity for an uplift, but the outcome was the same; the children were forced into the care of the abuser. In most cases Police were involved in the uplift and in some cases CYFs/MVCOT and/or Lawyer for Child were involved. In most cases the abuser was involved as the child/ren is uplifted and then placed directly in their care either at the scene or delivered to them somewhere else. Mothers described that once the children were forcibly uplifted there was usually a long period of time when they were not allowed any contact with the children.

The impact of the uplift on these children is horrendous. It is unbelievable that children who have experienced violence and abuse in their lives, are forced by the Family Court to have care and contact with the abuser, and when they try and resist that contact they are physically forced by Police to do so and then are often kept from the protective parent that they felt and were safe with.

No follow up on children's safety

Considering the children covered in our survey had all suffered and been exposed to violence and abuse, Backbone wanted to know that given the Family Court are ordering children into care and contact with abusers, is there anyone in the Family Court who follows up on the outcome of the care and contact orders once they have been made - is anyone checking on these children's safety at intervals, or at all. 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 only 5 (2%) told us there had been any follow up on the safety of the children after orders had been made. Of those 5 mothers the follow up had been from Lawyer for Child, Section 133 report writer and a lawyer.

The damage done

The purpose of the Impact of the Family Court on Children survey was to explore how the Family Court is responding to children when they and their mothers have experienced violence and abuse and what the impact of the Family Court proceedings, orders and decisions are having on these children. As we have shown in the previous section, when their mother separates from the abuser, the children are then ordered by the Family Court into care and contact arrangements with the same abusers. Sadly, the Family Court proceedings often continue for long periods of time, and as we showed at the beginning of this report often for the entire course of the child's school years.

Research is clear that children who experience violence and abuse either by association with their mothers as victims or by being directly abused themselves suffer negative impacts.³⁷ Backbone is extremely concerned that the children involved in this survey have all experienced violence and abuse and many will have been traumatised by those experiences. However, rather than responding safely to those children, the Family Court has not believed them and/or has minimised and ignored the violence and abuse they have suffered. Subsequently, we have shown throughout this report that the care and contact orders and directions made by the Family Court have placed these children in *more* danger and risk of further violence and abuse thereby compounding their trauma and associated negative impacts.

We asked mothers to tell us in what ways each of their children's health had suffered as a result of how they have been treated during Family Court proceedings (Family Court processes and orders including parenting arrangements ordered by the Family Court). What mothers reported is heartbreaking. Not only are children being physically injured in the abuser's care (30%) and being denied medical attention when it is needed (38%) they are also experiencing a range of negative physical and mental health impacts as a direct result of Family Court proceedings and the care and contact arrangements.

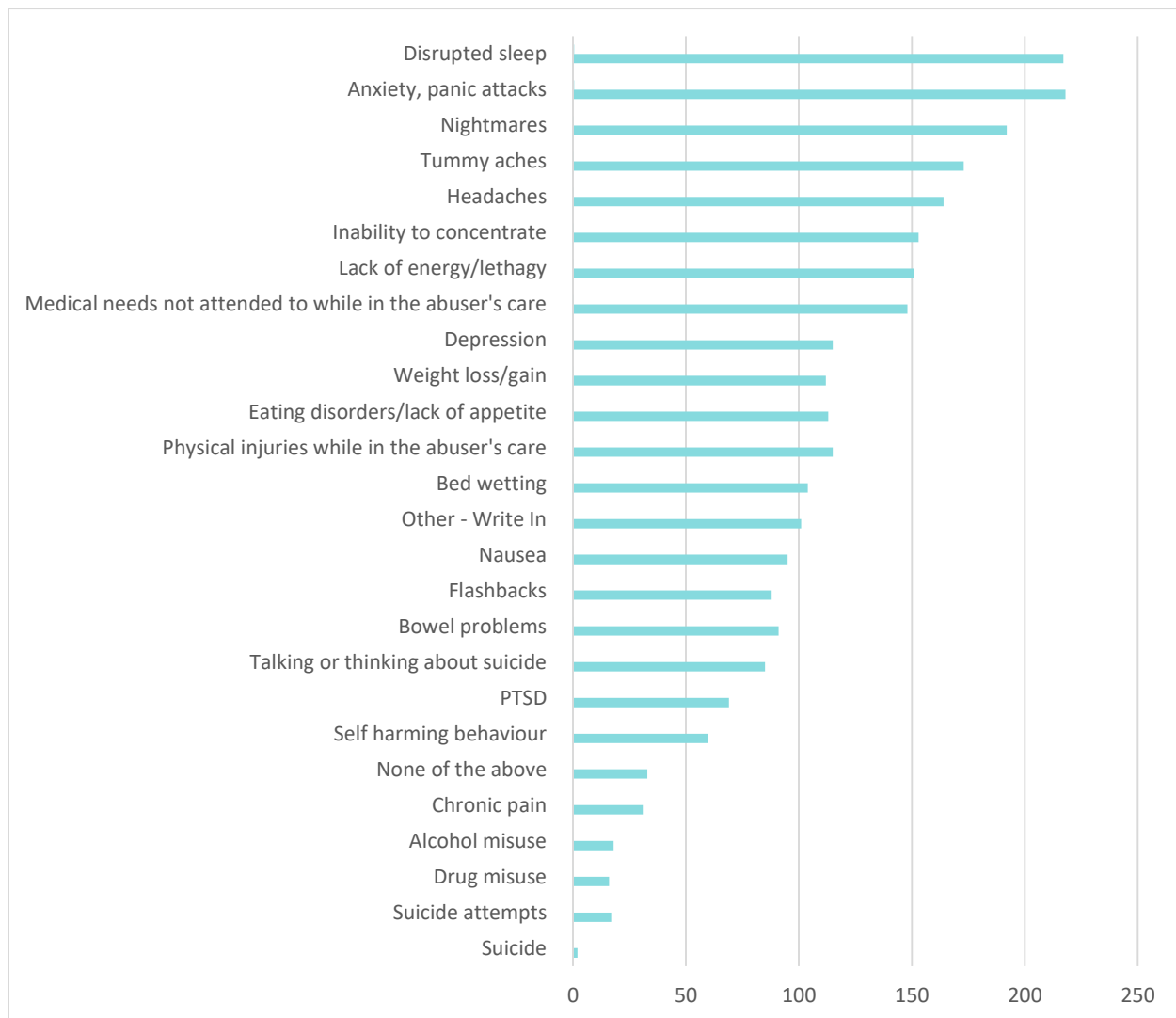
Children often report somatic symptoms in response to stress and trauma.³⁸ The survey responses show that conditions including tummy aches, headaches, nausea and bowel problems are common for the children in our survey. The children's physical health is likely to be responding to the stress and fear they are experiencing and we can see from the number of children who experience bed wetting, eating disorders and problems with sleeping, including nightmares, and inability to concentrate that they are experiencing stress which will impact on their daily activities and have physical impacts on their overall health including lowered immune responses.

We are also extremely concerned by the number of these children who experienced psychological issues as a result of the Family Court proceedings and care and contact arrangements. Figure 27 shows that over half of these children are experiencing anxiety and panic attacks; many are suffering depression and experiencing PTSD and/or flashbacks. Children are talking and thinking about suicide, are attempting it and in some tragic instances ending their lives and their mothers believe that Family Court proceedings and orders are the cause of these deaths.

³⁷ http://theimpactcollective.co.nz/thewayforward_210714.pdf pg. 30

³⁸ Murphy, C., Paton, N., Gulliver, P., Fanslow, J. (2013). *Understanding connections and relationships: Child maltreatment, intimate partner violence and parenting*. Auckland, New Zealand: New Zealand Family Violence Clearinghouse, The University of Auckland. Pg. 17

Figure 27: Health impacts on children involved in Family Court proceedings N = 389



We also received 'other' information about 91 individual children and the particular health impacts they had experienced due to Family Court proceedings. Some of these comments referred to impacts already listed in the drop-down check list provided but a further comprehensive range of health impacts were also described. Mothers detailed significant mental health issues their children were experiencing including social anxiety, fear, inability to be apart from their mothers, go on play dates, sleep overs camps or other social events and memory loss. Some children experience uncontrollable crying or inability to regulate their emotions. We were concerned to read that so many of these children experienced uncontrollable anger and violent outbursts which in many cases their mothers had been prevented by the Family Court and/or the abuser from getting help for the child about. Mothers described their children acting out in ways like the abuser – using anger – put downs and rages. Children experienced behavioural issues, trust issues and general mental health issues. Some children lived in fear and that fear resulted in hair loss for them, biting their finger nails to the quick, speech impediments, skin rashes, grinding their teeth, thumb sucking, and being hypervigilant. Some

children were so neglected at the abusers house their health suffered as a result. Children were starved, got sick due to the uncleanliness of the home, suffered general health deficiencies, were sunburnt, had untreated insect bites and nit infestations. Some mothers described social impacts on the children under this category and said their children refused to go to school, ran away, and had low self-esteem. Other mothers described underlying health conditions exacerbated by the proceedings and others talked about new health impacts including eczema, asthma, uterine infections and nosebleeds. The comments make distressing reading. These children are suffering.

The overall picture is one of dreadful health consequences for these children due to the Family Court proceedings and orders failing to keep them safe. In our first Family Court report we showed the health impacts of the Family Court involvement for women.³⁹ Many women described experiencing these same negative health impacts. – We worry that mothers and children are being hurt by the Family Court and that the damage done to mothers interrupts the protective ability of mothers to help her children recover from the violence and abuse. International evidence shows that supporting the protective parent’s relationship with the child has the best impact on good outcomes for children who have suffered violence and abuse.⁴⁰ Our surveys have shown that the Family Court ruptures the mother child relationship and inhibits the healing of both child and adult victims through care and contact orders.

Damage done to Māori children

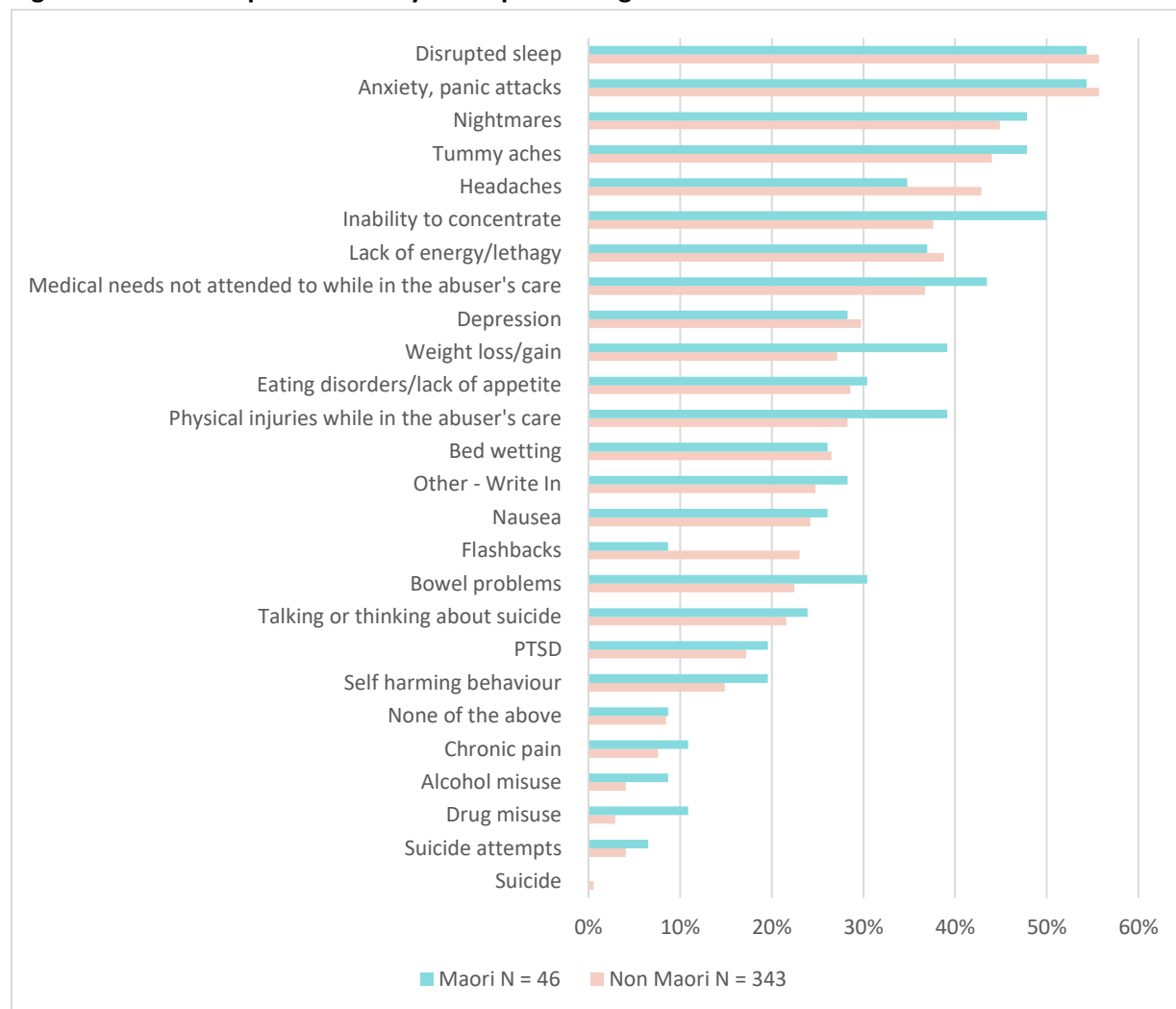
We compared results of the health impacts of children of Māori mothers with children of tauwiwi mothers to see if there were any marked differences. As we do not know the ethnicity of the fathers of these children we were unable to identify health impacts for all the possible Māori children in our sample. Children of Māori mothers and children of non-Māori mothers experienced similar rates of many of the health impacts however there were a number of stand out differences. A higher percentage of children of Māori mothers were physically injured while in the abuser’s care and did not have their medical needs met. Children of Māori mothers were more likely to experience an inability to concentrate, and experience weight loss or gain, and/or have bowel problems as a result of Family Court proceedings. These children were more likely to abuse alcohol and drugs and sadly more likely to use self-harming behaviour and make suicide attempts. These findings are of great concern as it could be related to other findings in this report that children of Māori mothers were more likely than non-Māori to be ordered into the abusers’ day to day care, more likely to be forced in care and contact arrangements with the abuser and three times **less** likely to have the children’s experiences reported accurately to the court by professionals working in the Family Court. Backbone believes that the health impacts on Māori children as a result of Family Court proceedings is an urgent area of further study which we hope will be taken up by an appropriate agency or researcher.

³⁹

<https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf> pg. 27

⁴⁰ <http://lundybancroft.com/articles/assessing-risk-to-children-from-batterers/>

Figure 28: Health impacts of Family Court proceedings on children of Māori and non Māori mothers



Mental health damage done

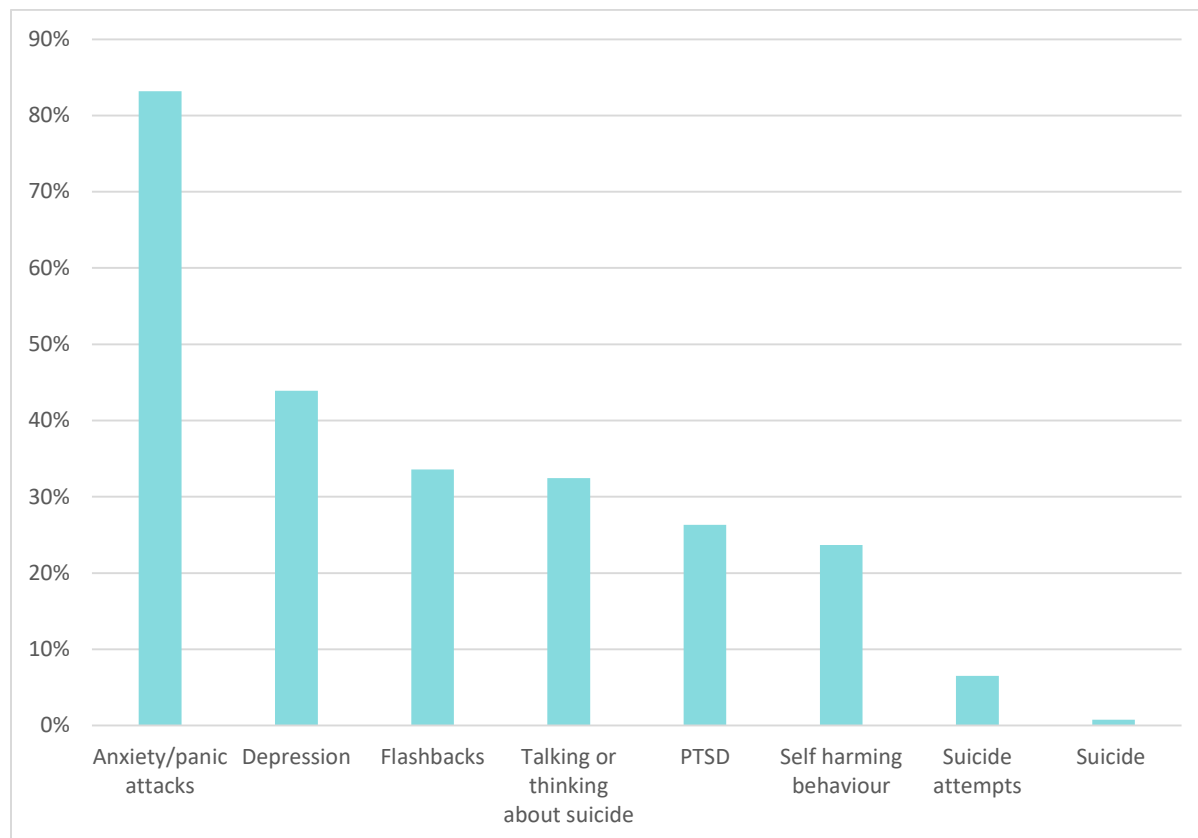
Research shows that exposure of children to intimate partner violence has negative psychosocial impacts on them. We are concerned that with that in mind the Family Court is ordering children into care and contact arrangements with abusers thereby compounding the negative psychosocial impacts already suffered prior to their mother's separation from the abuser.⁴¹ In our survey 262 individual children (67%) had at least one of the following mental health conditions and 65 (25%) of these children had four or more of these mental health conditions. The links between suicide rates and the experiences of intimate partner violence and child abuse are well founded.⁴² New Zealand has an appallingly high rate of youth suicide. We believe that the Family Court response to violence and abuse must

⁴¹ Murphy, C., Paton, N., Gulliver, P., Fanslow, J. (2013). *Understanding connections and relationships: Child maltreatment, intimate partner violence and parenting*. Auckland, New Zealand: New Zealand Family Violence Clearinghouse, The University of Auckland.

⁴² http://theimpactcollective.co.nz/thewayforward_210714.pdf pg. 33

acknowledge this connection and respond accordingly to protect children from negative health impacts of abuse and a poor system response.

Figure 29: Mental health impacts of Family Court proceedings on children (N = 262 children)



Damage done to children who are forced, who refuse and who are in day to day or shared care of abusers

The type of response from the Family Court to children's experiences of violence and abuse directly determines the health impacts for these children. Throughout this report we have shown that the children who are forced into care and contact arrangements with the abuser are more likely to experience worries about their physical, sexual and/or psychological safety when at the abuser's house. We have also shown that the children of abusers whom the Family Court views as being 'unsafe' experience lower rates of forced care and contact arrangements. The following three graphs consistently show that children suffer worse health consequences where the Family Court:

- Forces children into care and contact.
- Children refuse to attend care and contact.
- Children are ordered to be with the abuser in day to day care or shared care.

Figure 30: Damage done to children forced vs not forced

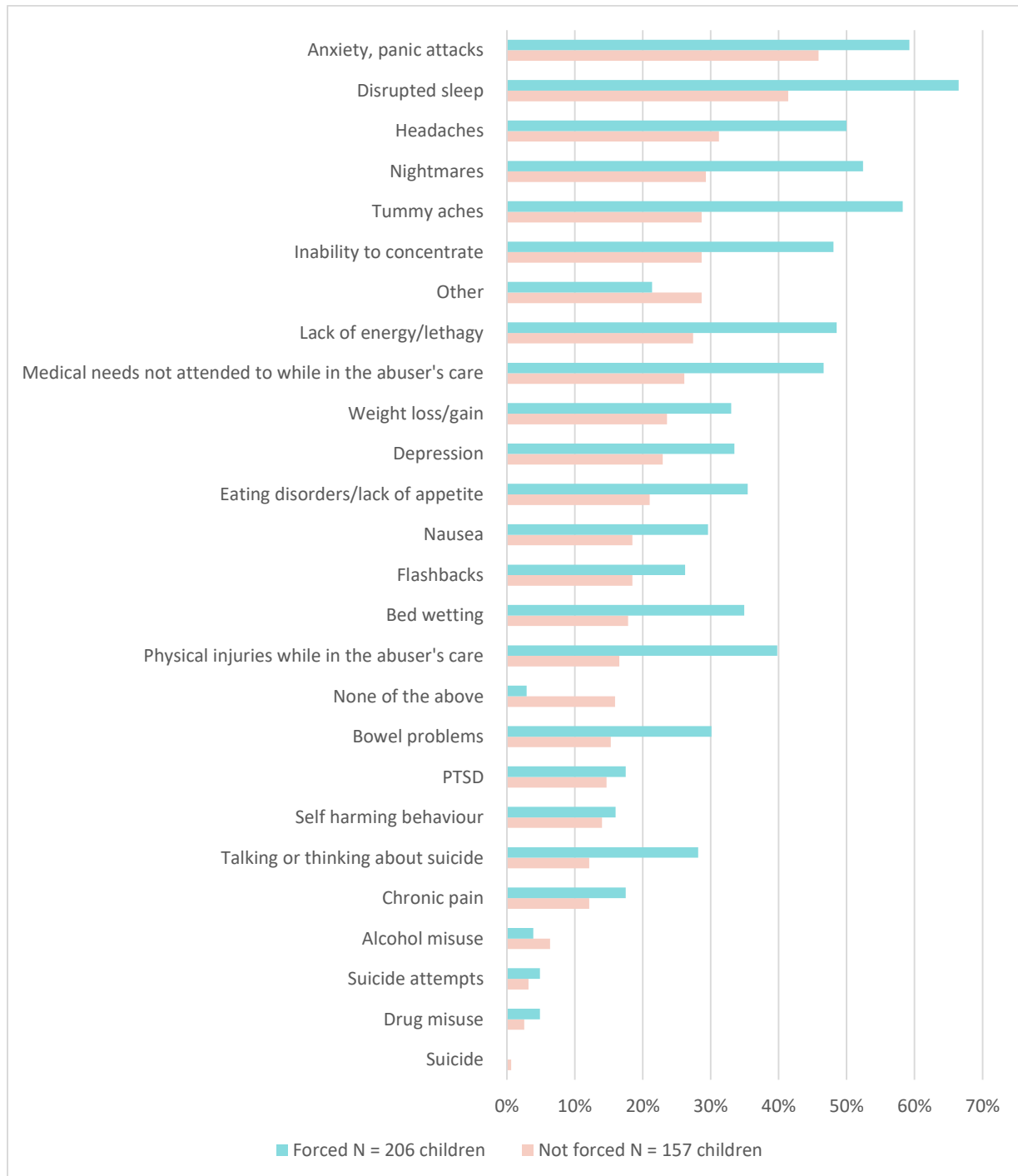


Figure 31: Damage done to children who refuse vs don't refuse

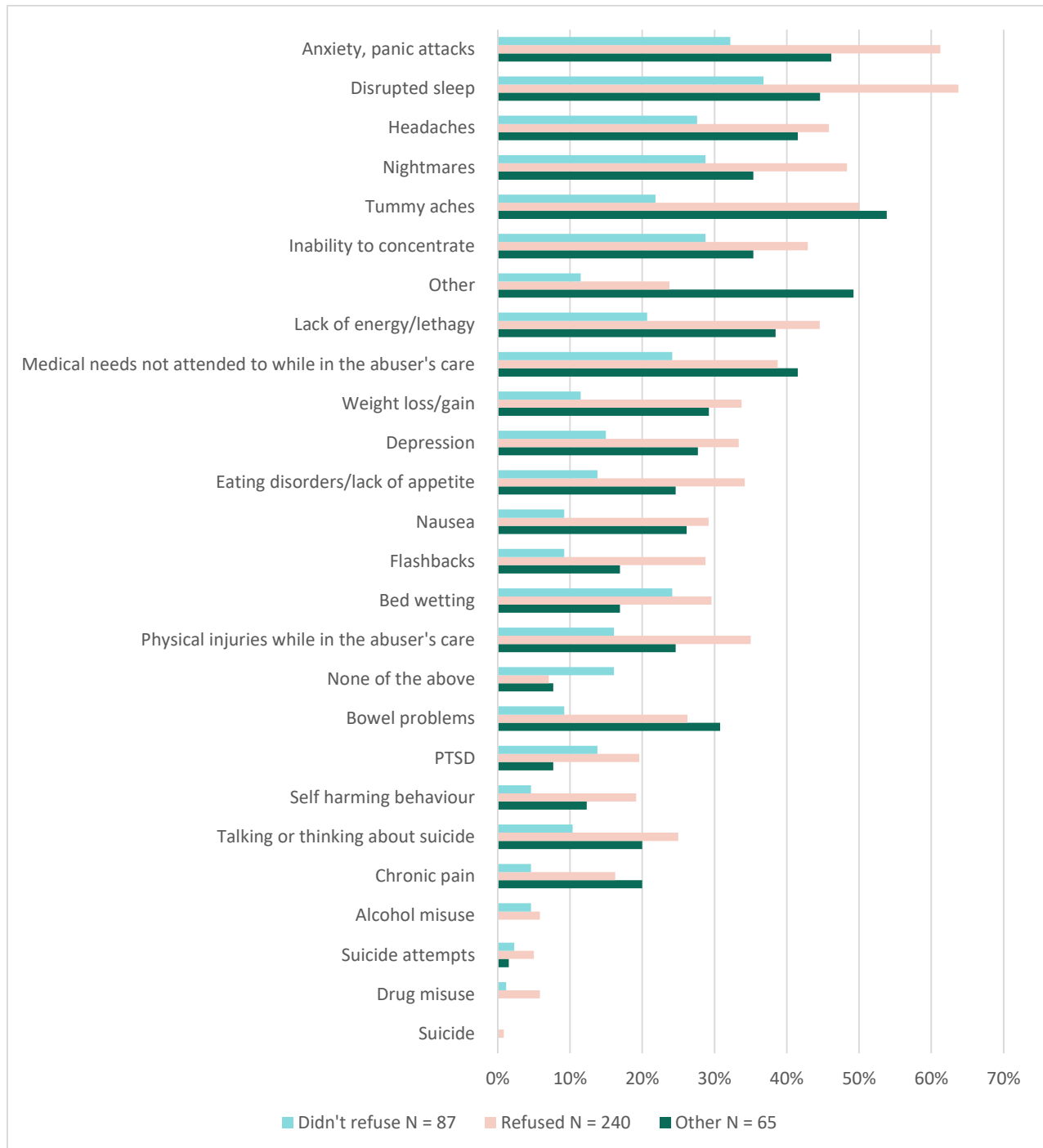
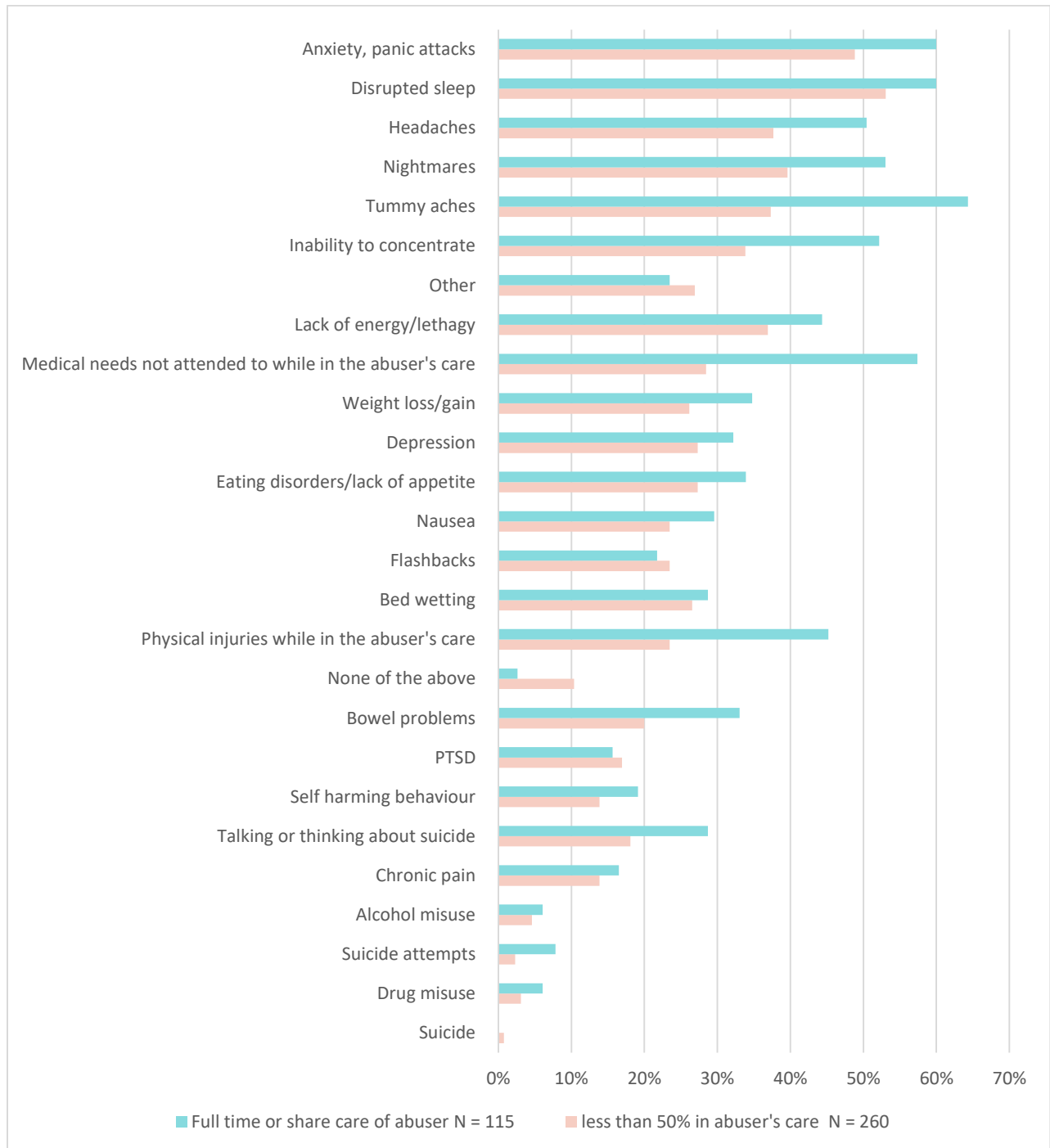


Figure 32: Damage done to children in day to day care or shared care of abuser vs others⁴³



⁴³ The 'less than 50%' group includes children who see the abuser only under supervision or not at all

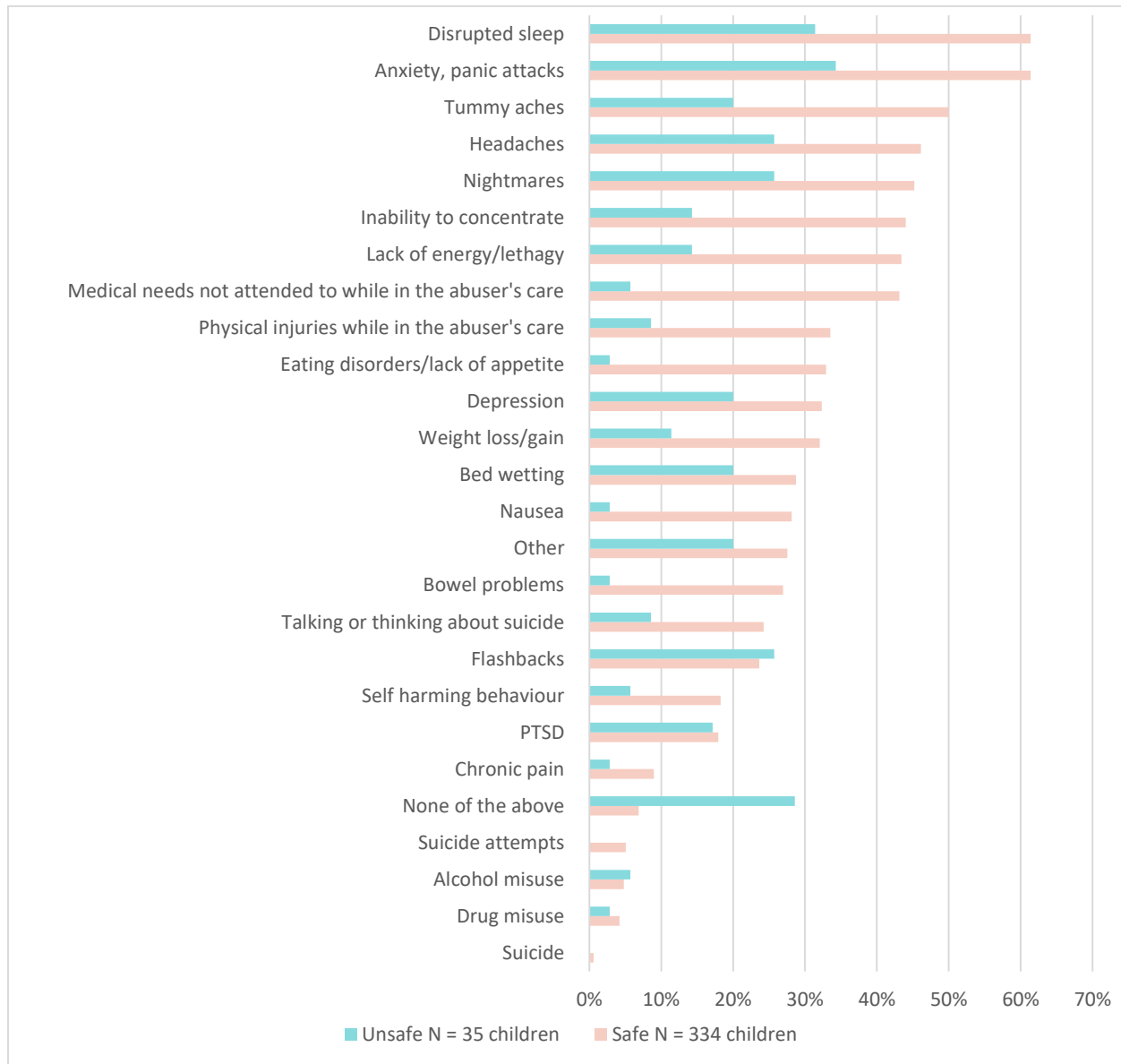
Is it the Family Court proceedings and orders causing these damaging health impacts?

As mentioned earlier in the report, New Zealand and international research is clear that violence and abuse has significant negative and long-lasting health impacts for children. Throughout this report we have provided evidence that we believe, cumulatively and collectively shows that Family Court proceedings and care and contact orders are causing damage to children in the same way as violence and abuse does and therefore creating a double whammy effect on these children's health.

We think perhaps the most compelling and surprising evidence of this can be seen by comparing the health impacts of the 63 children of abusers that the court had deemed 'unsafe' to have care and contact with the children with the health impacts on the children where the abuser is seen as 'safe' for the children to spend time with. Given these 'unsafe' abusers are the ones who are more likely to have a Protection Order against this partner or a previous or subsequent partner, had been charged with assaulting their child/ren physically or sexually, one would think the children have suffered more than other children and therefore would have worse health impacts.

Surprisingly we found completely the opposite. Figure 33 shows that in almost all of the 24 health impacts, the children of the 'unsafe' abusers fared markedly better than the children of the abusers deemed to be 'safe'. Is that because (as shown in Figure 18) these children were believed by the Family Court and responded to in a way that made them safe? Is it because the violence and abuse weren't minimised and was included in evidence? Or is it because these children weren't forced into care and contact arrangements with the abuser, but were left in the full-time care of their protective mother? In our subsequent reports in this series Backbone will examine this cohort of children further, in particular to see what role the various Family Court professionals played in their cases to ascertain what role they played in ensuring the Family Court proceedings and care and contact orders kept these children safe and minimised the health impacts on them.

Figure 33: Damage done to those children where abuser is seen as 'safe' vs 'unsafe'



Final thoughts

At the end of the survey questionnaire, we asked mothers if they thought the Family Court as a whole has responded appropriately to their child/ren's wishes/views/experiences and safety. The overwhelming majority (86%) of mothers who answered this question said 'no' and only 6% said yes.⁴⁴ We also asked mothers if the Family Court had made their children any safer **83% of mothers⁴⁵ told us that the Family Court had not made their children any safer.** Mothers are telling us that the damage done to their children's health as a result of Family Court proceedings is serious and compounding. Backbone has heard from hundreds of women now that when they and their children experience violence and abuse things are made worse for them when they become involved in the Family Court.

In subsequent reports Backbone produces as part of this Seen and not Heard series we will be exploring in detail the practices and decision-making that lies at the heart of mothers feeling as if the court is not responding safely to their children (including Lawyer for Child, Section 133 Specialist Report Writers (Psychologists) Judges and Social Workers).

In failing to undertake risk assessments of abusers and in failing to believe women's and children's experiences of violence and abuse the Family Court is failing to respond safely to children's future care and contact with the abuser. Backbone believes the Family Court is acting contrary to the two main pieces of legislation which guide the Family Court's response to cases where there is violence and abuse present. The object set out in the Domestic Violence Act 1995 clearly defines what constitutes domestic violence and how that is to be understood and responded to specifically for children as well as adults. The Care of Children Act 2004 states as an overriding principle that children *must* be protected from violence and abuse as defined by the Domestic Violence Act.⁴⁶

We remain of the firm view that there needs to be an urgent Royal Commission of Inquiry into the Family Court.

⁴⁴ We received 238 responses to this question.

⁴⁵ N = 223

⁴⁶ Please see Appendix Two for detail of the legislation

Appendix One

Risk assessment frameworks available to the New Zealand Family Court

1. **Dr Jacquelyn Campbell Danger Assessment tool.** This tool - developed over 30 years ago and used throughout the world - is the gold standard for assessing dangerousness and determining the risk of an abused woman has of being killed by her intimate (ex) partner.⁴⁷

There is often a presumption that once couples separate the woman and therefore children are no longer at risk of future violence. However, this view is not accurate and most domestic homicides occur post separation. While the Jacqui Campbell assessment focusses on the mother it also includes risk to her children by way of their close relationship and care in that:

- in many cases children are harmed when the abuser physically attacks the mother
 - the abuser may choose to hurt or kill the children to punish the mother in the most extreme way
 - the risk factors shown in the abuser in his actions and behaviour toward the mother are indicators of the likelihood that he will physically, sexually and psychologically abuse the children in his care either through direct abuse, neglect, or as punishment to his ex-partner.
2. **Lundy Bancroft's framework for assessing the post-separation risk to children from abusive men (referred to as 'batterers' in USA)** .⁴⁸ Lundy is an internationally respected author, workshop leader, and consultant on domestic abuse and child maltreatment. He has worked in USA and internationally as a custody evaluator, child abuse investigator, and expert witness in domestic violence and child abuse cases. Lundy recommends that assessors for child custody look closely at the 13 different areas to assess for dangerousness in abusive men.
 3. **New Zealand Government 'Family Violence Risk Assessment and Management Framework'**.⁴⁹ This document was released earlier in 2017. This framework doesn't contain a specific risk and danger response tool or process – these will be developed as Phase 2 of the Framework).

⁴⁷ https://www.dangerassessment.org/uploads/DA_Validation_of_a_Lethality_Risk_Assessment_Instrument-Campbell.pdf

⁴⁸ <http://lundybancroft.com/articles/assessing-risk-to-children-from-batterers/>

⁴⁹ <https://www.justice.govt.nz/assets/Documents/Publications/family-violence-ramf.pdf>

Appendix Two

Legislation relevant to Family Court proceedings where there is an abuser

Domestic Violence Act 1995

Section 5: Object

(1) The object of this Act is to reduce and prevent violence in domestic relationships by—

- (a) recognising that domestic violence, in all its forms, is unacceptable behaviour; and
- (b) ensuring that, where domestic violence occurs, there is effective legal protection for its victims.

(2) This Act aims to achieve its object by—

- (a) empowering the court to make certain orders to protect victims of domestic violence:
 - (b) ensuring that access to the court is as speedy, inexpensive, and simple as is consistent with justice:
 - (c) providing, for persons who are victims of domestic violence, appropriate safety programmes:
 - (d) requiring respondents and associated respondents to attend non-violence programmes that have the primary objective of stopping or preventing domestic violence:
 - (e) providing more effective sanctions and enforcement in the event that a protection order is breached.
- (3) Any court which, or any person who, exercises any power conferred by or under this Act must be guided in the exercise of that power by the object specified in subsection (1).

Section 3: Meaning of domestic violence

(1) In this Act, **domestic violence**, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.

(2) In this section, **violence** means—

- (a) physical abuse:
- (b) sexual abuse:
- (c) psychological abuse, including, but not limited to,—
 - (i) intimidation:
 - (ii) harassment:
 - (iii) damage to property:

(iv) threats of physical abuse, sexual abuse, or psychological abuse:

(iva) financial or economic abuse (for example, denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education):

(v) in relation to a child, abuse of the kind set out in subsection (3).

(3) Without limiting subsection (2)(c), a person psychologically abuses a child if that person—

(a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or

(b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;—

but the person who suffers that abuse is not regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(4) Without limiting subsection (2),—

(a) a single act may amount to abuse for the purposes of that subsection:

(b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

(5) Behaviour may be psychological abuse for the purposes of subsection (2)(c) which does not involve actual or threatened physical or sexual abuse.

Care of Children Act 2004 – Section 5 (a)

Section 5: Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

a child's safety **must** be protected and, in particular, a child must be protected from all forms of violence (as defined in [section 3\(2\) to \(5\)](#) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi: