



# Briefing to Hon. Paul Goldsmith, Incoming Minister of Justice

February 2024



## About Us: The Backbone Collective

### Victim-survivor insights to improve agency responses to violence

#### A continuous improvement approach

The Backbone Collective (est. 2017) is an independent registered charity of over 2,600 members which gathers victim-survivor insights to inform policy and practice regarding violence prevention and response.

We offer a safe way for women throughout Aotearoa New Zealand to share their experiences of how state and community agencies and the judiciary responded when they reached out for help to escape violence and abuse (for example, we conduct anonymous online surveys). Backbone then builds reports and recommendations from those insights, for the continuous, evidence-based improvement of support and services.

We are regularly asked for victim-survivor feedback by a number of government agencies including the Ministry of Justice, as listening to victim-survivors leads to fit-for-purpose, practical and effective interventions to enhance victim-survivor safety and offender accountability.

We deliver presentations to community inter agency networks, students, hospitals and Government workshops; and continually receive requests from researchers to provide specialist advisory input and help to recruit participants. We also receive regular requests from service providers for information and assistance for their clients.

We are contacted daily by many women victim-survivors urgently seeking information and support regarding poor system responses and in particular the Family Court, Oranga Tamariki and NZ Police.

Backbone relies on donations, grants and small contracts to deliver our service. We have been supported by philanthropic funders (Tindall, Foundation North, JR Mckenzie, Strathlachlan Fund and Lotteries). We received a grant from Te Puna Aonui in 2023 intended to create an effective relationship for learning, sharing and collaboration between Backbone and the government.

[www.backbone.org.nz](http://www.backbone.org.nz)

## Tēnā koe Minister Goldsmith,

### **Congratulations on your appointment as Minister for Justice.**

You have a key leadership role to play in supporting victims of family and sexual violence, by ensuring the justice system is fit-for-purpose to meet their needs.

You will be able to assist victim-survivors, including children, be better protected and to recover and rebuild their lives by improving the justice response to family and sexual violence.

### **We believe there is a real opportunity for you to make a difference for victim-survivors in a timely and [fiscally neutral manner](#).**

The focus of our briefing is on two critical aspects of system reform:

1. the Family Court
2. stand-alone stalking legislation.

We appreciate your understanding of the complexity and the serious nature of the shortcomings of the Family Court, as shown, for example, in your contributions to the Parliamentary debate re Victims of Family Violence (Strengthening Legal Protections) Legislation Bill in August 2023.

Our Family Court [recommendations](#) include: screening for family and sexual violence, specialist child advocates and risk assessments; prohibition of parental alienation concepts; review of section 72 and 73 warrants to uplift children; and working with Māori to serve the best interests of Māori victim-survivors.

In addition, we recommend you act with urgency on the National Party's pre-election stated support for the inclusion of stalking as a crime within the Crimes Act 1961.

Improvements suggested in this briefing can reduce the resources and time spent on the justice response to family and sexual violence, a response which is currently inefficient, ineffective and stands in the way of victim-survivor safety and autonomy.

### **We hope you find our recommendations useful, and are keen to meet with you to discuss them in further detail.**

Ngā mihi,

Deborah Mackenzie  
For the Backbone Collective

“I had never known how bad the family law system was until forced into it. I have a business law minor as part of my degree and have been astonished in how the family court operates so differently to that of other judicial processes.”

– Victim-survivor (2023 Backbone survey)

“The struggle I have endured to try and get safe has been the hardest fight of my life [...]It is so incredibly difficult for women who have experienced abuse to battle the system that should be protecting us but doesn’t.”

– Victim-survivor (2020)<sup>1</sup>

Family violence and sexual violence directly affect nearly half (46%) of all women over their lifetimes.<sup>2</sup> Even when women and children are able to “escape”, violence and abuse continue long after separation.<sup>3</sup>

The Ministry of Justice is responsible for key aspects of the response to adult and child victim-survivors of family and sexual violence including:

- Legislation that guides the police and courts
- Operation and oversight of criminal courts
- Operation and oversight of Family Courts (including contracting professionals such as Lawyer for Child and psychological report writers)
- Working in partnership with Te Puna Aonui agencies to realise Te Aorerekura.

Abusive ex-partners often use parenting arrangements and custody litigation after separation as an opportunity to continue abuse. Therefore, a high number of cases before the Family Courts – perhaps the majority – involve victim-survivors and their abusers.<sup>4</sup> Even then, court ordered co-parenting arrangements are often exploited by abusers to continue physical and psychological violence on their ex partner and children.<sup>5</sup>

“Every day there is another email from another lawyer, another heart lurch, another litigation, another attempt from your daddy to control us.”

– Victim-survivor’s undelivered letter to her child<sup>6</sup>

To increase public safety, decision-makers must work to prevent abusers from continuing to use violence.

**This is not currently the case.**

Current state and judiciary responses put victims at further risk and embolden abusers. This briefing focusses on the Family Court and, in particular, cases involving children, as well as the system response to stalking. For examples of inadequate responses elsewhere see [appendix 1](#).

<sup>1</sup> Anon (2020a). [Invisible Wounds - Psychological Abuse Cuts Deep](#). (28 Sept, 2020 blog) Backbone Collective NZ

<sup>2</sup> Ministry of Justice. (2023). [New Zealand Crime and Victims Survey: Key Findings Cycle 5](#). NZ

<sup>3</sup> The Backbone Collective (2020) [Victim-Survivor Perspectives on Longer-Term Support After Experiencing Violence and Abuse A report prepared for the Ministry of Social Development](#). NZ.

<sup>4</sup> Research in Australia found that 54% of families in court to make parenting arrangements reported physical violence, and 85% reporting emotional abuse. See Kaspiew et al., (2015) [Experiences of Separated Parents Study \(Evaluation of the 2012 Family Violence Amendments\)](#). Melbourne: Australian Institute of Family Studies.

<sup>5</sup> Backbone Collective (2017). [Out of the Frying Pan and into the Fire: Women’s experiences of the New Zealand Family Court](#). Backbone Collective NZ

<sup>6</sup> Anon (2020b). [A Mother’s Heart Breaking Letter To Her Daughter - One She Can Never Send](#). (21 May 2020 blog) Backbone Collective NZ

## Family Court issues

**As a matter of course, the Family Court operates as if family violence is irrelevant to child safety.**

Safety of children should be the primary goal of the Family Court. Yet many mothers have reported to Backbone that their own lawyers advised them the Family Court would see them as obstructive if they mentioned the violence and abuse experienced by themselves or their children either during their relationship, or since separation, in their court proceedings. That advice from lawyers is based on accurate assessment of the court's current response to family and sexual violence.

“...the perpetrators are never held accountable and the victims are forced under their continued control at every turn...”

– Victim-survivor (2023 Backbone survey)

The primary ways in which the Family Court fails victim-survivors, including children, is by omitting vital information and data sources from the evidence put before the judge (see summary table, [appendix 2](#)), and through inexpert mis-interpretation of the narrow information which is allowed before the court.

**The result is Court-ordered care arrangements for children which encourage ongoing abuse. Abusers receive the backing of the State to continue – and increase – their violence.**

Contributing issues:

1. **Family Court risk assessments for family violence are exceedingly rare**, which is extremely concerning. This is one of the ways in which the Family Court operates as if family violence is irrelevant to child safety. In the Backbone victim-survivor survey about Family Court experiences, only five of 236 mothers/victim-survivors (or 2%) reported that their children were the subject of a Family Court risk assessment for family violence.<sup>7</sup> In addition, the Family Court is not set up to admit specialist family violence reports as evidence even though there is significant information collected in multi-agency risk table meetings throughout the country on a weekly basis (see point 3 below). The failure to undertake risk assessments is of ongoing concern to international observers, such as the UN's Committee on the Elimination of Discrimination against Women (CEDAW).<sup>8</sup>
2. Contrary to common understandings, **the Lawyer for the Child role carries neither the responsibility nor mandated training for assessing and monitoring child safety**. The NZ Law Society guidance for the role explicitly advises lawyers not to assess the safety of

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<sup>7</sup> Herbert, R. and D Mackenzie (2018). [Seen and not Heard: Children in the New Zealand Family Court. Part Two - Lawyer for Child?](#) Backbone Collective NZ.

<sup>8</sup> The UN Committee on the Elimination of Discrimination against Women (CEDAW). See CEDAW (2018). [Concluding observations on the eighth periodic report of New Zealand](#). United Nations

the child,<sup>9</sup> and the role does not require training in interacting with children who have experienced violence or enabling children to speak to them without fear; neither does it require the ability to recognise and collect information to identify any pattern of abusive behaviours. Backbone has previously collected and shared children's own accounts of their negative experiences of Lawyer for Child.<sup>10</sup> These issues with the role have been exacerbated by the lack of appropriate oversight of the role: there is no independent monitoring or auditing of Lawyer for Child practice. Instead, complaints about them during active proceedings are referred to the presiding judge who appointed them.

**We appreciate the National Party's awareness and understanding of this issue**, and the Party's stated concerns regarding the Lawyer for the Child role, which we share, including "lack of training and lack of skills of lawyer for child when it comes to such important matters as child development and psychology or sexual violence."<sup>11</sup>

The mismatch of training and responsibilities in the Lawyer for Child role have been criticised by the Law Commission and other expert observers for more than three decades.<sup>12</sup> Law Society professional development for the Lawyer for the Child role continues to promote non-evidence based concepts (such as 'resist-refuse' and 'alienation'), undermining and contradicting Ministry-funded training of the court sector by family violence and sexual violence experts (for example, Shine's Introductory and Advanced Training pilot).<sup>13</sup> Furthermore, Backbone survey responses suggest children of Māori mothers may be four times as likely as others to experience professionals (including Lawyers for the Child) not accurately reporting to court their fears and concerns regarding an abuser.<sup>14</sup> (For expert analysis and further references regarding the serious Family Court issues facing whānau Māori specifically, see for example [Te taniwha i te ao ture-ā-whānau : whānau experience of care and protection in the Family Court.](#))<sup>15</sup>

3. Family Court judges, as a matter of course, do not read or consider personal reports, risk assessments or safety plans created by specialist social services who are already

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<sup>9</sup> Relevant sections include: "9.3 The lawyer should not accept any brief that requires an assessment of the safety of the child." and "12.3 It is the role of the Court and not of the lawyer to make findings on safety and the assessment of risk. [...]". NZ Law Society Lawyer for the Child Best Practice Guidelines. For more analysis of this point see Herbert, R. and D Mackenzie (2018). [Seen and not Heard: Children in the New Zealand Family Court. Part Two - Lawyer for Child?](#) Backbone Collective NZ

<sup>10</sup> For example, see Backbone's 2018 [short film of children's quotes regarding Lawyer for Child experiences in New Zealand](#); and also Herbert, R. and D Mackenzie (2018). [Seen and not Heard: Children in the New Zealand Family Court. Part Two - Lawyer for Child?](#) Backbone Collective NZ.

<sup>11</sup> Stated in the New Zealand National Party differing view in [Justice Committee commentary](#) (2021) regarding the Family Court (Supporting Children in Court) Legislation Bill (now law).

<sup>12</sup> For references and further detail, see [our Submission](#) on the Family Court (Supporting Children in Court) Legislation Bill. In addition, researchers in Australia reported similar issues with their Lawyer for Child model: one extensive study found many children felt that their safety was substantially minimised and their lawyer has assumed (wrongly) that there had been no abuse, or minimised what violence and abuse had occurred. Kaspiew (et al)

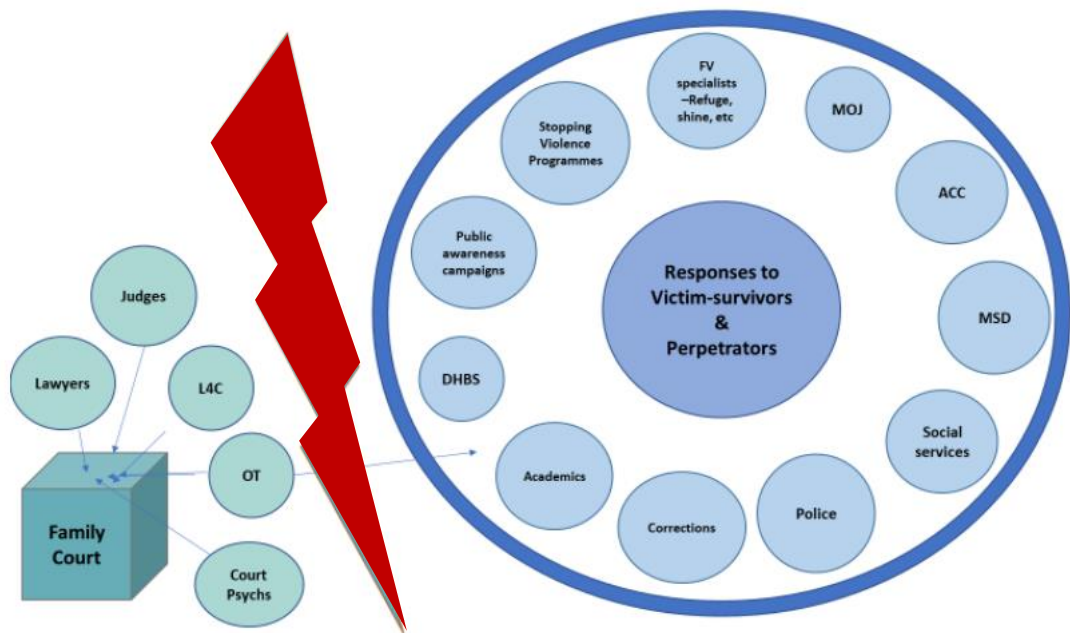
<sup>13</sup> For example see "[Advanced Lawyer for Child](#)" offered by NZLS CLE Ltd.

<sup>14</sup> Herbert, R. and D Mackenzie (2018). [Seen and not Heard: Children in the New Zealand Family Court. Part Two - Lawyer for Child?](#) Backbone Collective NZ.

<sup>15</sup> Boulton, A., Wikaira, M., Cvitanovic, L., & Blyth, T. W. (2020). [Te Taniwha i Te Ao Ture-ā-whānau: Whānau Experience of Care and Protection in the Family Court.](#) Te Kōpū Ed.

interacting with the whānau or family. In practice if not in theory, **there is very little – if any – information flow between specialist frontline violence prevention services interacting with victim-survivors and the Family Court** (with the exception of Oranga Tamariki in some cases). Once involved in Family Court proceedings, victim-survivors say specialist social service providers cannot help them.<sup>16</sup> For example, as mentioned in point 1 above, the Family Court is not currently authorised or required to request risk and safety assessments from specialist community agencies. Therefore, the expertise and analysis of family and sexual violence specialists working from an evidence-based, best practice approach is not used to help inform Family Court decision making (Figure 1).

**Figure 1: Lack of information flow between frontline agencies/violence experts and the Family Court**



Comprehensive risk and safety information held by agencies identified on the right of Figure 1 is rarely taken into account in Family Court cases. Oranga Tamariki may share information but they are not involved in most Care of Children Act proceedings.<sup>17</sup>

<sup>16</sup> For further detail, see [our Submission](#) on the Family Court (Supporting Children in Court) Legislation Bill

<sup>17</sup> In Backbone's children in the Family Court survey Māori mothers were more likely to report Oranga Tamariki involvement in their Family Court case (52%) than non-Māori mothers (39%).

See The Backbone Collective (2017). [Seen and not Heard: Children in the New Zealand Family Court. Part One - Force](#) Backbone Collective NZ. P10 7

4. **Instead of receiving support, mothers who disclose abuse risk removal of their child from their protection and/or accusations of what United Nations experts call “the discredited and unscientific pseudo-concept of parental alienation”.**<sup>18</sup>

“It is so awful watching my [child’s] decline as a result of [their] father’s abuse and to then see him charm the people who are supposed to be helping [my child]. Ifc’s [Lawyers for the Child] and court reporters should not be allowed to work in this space when they have no idea what abuse looks like. [...] They act like they know everything but they know nothing because you can’t get this knowledge from a textbook.” – Victim-survivor (2023 Backbone survey)

Those working in the court are not trained to identify patterns of violence and abuse and therefore do not believe women and children when they disclose the violence and instead perceive the abuser as being ‘safe’. Backbone research shows many professionals working in the Family Court hold unsafe views that women frequently lie or exaggerate about their experiences of violence and abuse, are mentally unwell and therefore unreliable because of the effect of ongoing abuse on their mental wellbeing, and/or are trying to get back at their ex-partner by refusing contact and custody arrangements.<sup>19</sup> So, “instead of providing the legal protection the women and children require, judges conclude that there is a mutually-difficult relationship between the parents.”<sup>20</sup> The refusal to allow reports by specialist violence intervention services exacerbates this attitude.

Yet overwhelmingly, the large international research literature on the subject shows that **false complaints of abuse and violence are extremely rare – particularly from the primary caregiver.**<sup>21</sup> For women victim survivors who are not believed, their presumptions about how the system would respond to them as victims of violence and abuse is turned on its head. The more they seek to protect their children from abuse by sharing evidence of abuse towards the children, the stronger is the case made against them that they are alienating their children.<sup>22</sup>

Even where women and children are believed, minimisation of violence can include, for example, inferences that the violence was just part of separation or happened too long ago. This is contrary to the findings of the UN Special Rapporteur on violence against women and

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<sup>18</sup> Alsalem, R. (2023.) [Custody, violence against women and violence against Children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#). United Nations.

<sup>19</sup> Backbone Collective (2017). [Out of the Frying Pan and into the Fire: Women’s experiences of the New Zealand Family Court](#). Backbone Collective NZ. For examples of advice victim-survivors have for each other about protecting themselves when dealing with the Family Court, see Backbone’s 2023 guide: [Reducing risk and harm when going to Family Court An Information Guide for Victim-Survivors](#).

<sup>20</sup> MacLennan, C (2017.) [Family Court using discredited US theory](#). 13 August 2017. Newsroom.

<sup>21</sup> Alsalem, R. (2023.) [Custody, violence against women and violence against Children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#). United Nations.

<sup>22</sup> Mackenzie, D., R. Herbert & N. Robertson (2020): “‘It’s Not OK’, but ‘It’ never happened: parental alienation accusations undermine children’s safety in the New Zealand Family Court”, *Journal of Social Welfare and Family Law*.



girls that “the best interest of the child is violated by imposing contact between a child and one or both parents and by prioritizing it, even where there is evidence of domestic violence”<sup>23</sup>

## The result

Unsurprisingly, **limited information and understanding leads to poor decisions with ongoing effects on adult and child victims.** Victim-survivors feel betrayed by a system they turned to for help.<sup>24</sup> They report the Family Court has made orders which (for example):

- contradicted safety plans made by other agencies (unseen by the Family Court)
- force children into ongoing contact with abusers
- prevent women from leading independent lives (for example, prevented them from relocating to safety by ordering shared care)
- placed children in full time care with abusers
- prevented victim-survivors from talking about the violence and abuse or accessing support and services for their children
- prevented abused children from accessing counselling or therapy.<sup>25</sup>

In sum, abusers receive the backing of the Court and state agencies to continue – and increase – their violence. With nowhere left to turn, the horror and hopelessness for victim-survivors can increase by an order of magnitude.

“I endured all three types of abuse [physical, financial and emotional], and the emotional had the biggest impact, the family court has allowed him to continue this form of abuse.” – Victim-survivor (2023 Backbone survey)

“Many people have been amazed at the strength I have needed to endure this process to keep my child safe. After escaping a DV [domestic violence] situation the court makes me helpless and alone.” – Victim-survivor (2023 Backbone survey)

...sometimes leaving can feel too overwhelming and isolating – [especially] doing it where government people and some Court and legal people and people in our society don't understand just how hard leaving violence can be. – Victim-survivor (2023 Backbone survey)

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<sup>23</sup> Alsalem, R. (2023.) [Custody, violence against women and violence against Children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#). United Nations.

<sup>24</sup> Bradshaw, J., Gutowski, E. R., & Nyenyenzi, K. (2024). Intimate Partner Violence Survivors’ Perspectives on Coping With Family Court Processes. *Violence Against Women*, 30(1), 101-125. <https://doi.org/10.1177/10778012231205586>

<sup>25</sup> Backbone Collective (2017). [Out of the Frying Pan and into the Fire: Women’s experiences of the New Zealand Family Court](#). Backbone Collective NZ.

## Recommended policy responses

Our recommendations for improving the Family Court process are designed to support and align with the Ministry of Justice aims of improving victim support, reducing delay and ensuring more timely court outcomes. In addition, they address stated National Party concerns regarding the role of Lawyer for the Child. We agree with your assessment that “everybody, for a long time, has been dissatisfied with the scope for real, huge damage to be done to families in the course of dealing with the Family Court's elongated cases.”<sup>26</sup>

We recommend six priorities. They work together to reduce delay and distress and increase safety of victim-survivors and children by:

1. Getting information to Court decision-makers in a more timely manner.
2. Reducing the cases where a psychological report is required (which can currently commonly delay cases by up to six months).
3. Enabling better Court decisions by ensuring all relevant information is considered. This will help to reduce malicious and time-wasting use of the courts by abusers to cause distress, fear, debt and further violence<sup>27</sup>; and to reduce the number of Court engagements required for a victim-survivor and her children to attempt to achieve safety.

Backbone has heard from dozens of mothers and children who have spent upwards of 5 years, 8 years and even 10 years in Family Court proceedings.<sup>28</sup> We expect the average (mean) time of Family Court cases will reduce as a result – and far fewer children will be involved in the trauma of proceedings for the majority of their schooling years.

### Priority Recommendations

1. **Screening of all cases:** Urgently mandate all Family Court cases involving children to be screened as soon as possible as a matter of course to identify those cases which are most likely to involve violence, coercive control, and abuse. This can be via an online self-reporting form; such mechanisms have been shown to be accurate and useful for overseas jurisdictions. Aotearoa NZ could, for example, use “Family Doors Triage” 15-minute parent questionnaire used in Australia.<sup>29</sup>
2. **Specialist risk assessments:** Where violence, coercive control, and abuse allegations are presented via the Recommendation 1 screening process, require cases to have a thorough risk assessment undertaken by trained independent family and sexual

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<sup>26</sup> Goldsmith, P. (2023). Quoted in [Parliamentary debate re Victims of Family Violence \(Strengthening Legal Protections\) Legislation Bill](#) August 2023. Hansard NZ Govt

<sup>27</sup> Some victim-survivors incur large debts for ongoing court proceedings which impacts on their ability to rebuild their lives after escaping abuse. Many victim-survivors told us they were threatened, intimidated and assaulted when they attend court related appointments or hearings. See Backbone (2017). [Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court](#). Backbone Collective NZ

<sup>28</sup> See Herbert, R. and D Mackenzie (2018). [Seen and not Heard: Children in the New Zealand Family Court. Part Two - Lawyer for Child?](#) Backbone Collective NZ. P14; and Backbone Collective (2017). [Out of the Frying Pan and into the Fire: Women's experiences of the New Zealand Family Court](#). Backbone Collective NZ p.27

<sup>29</sup> Federal Circuit and Family Court of Australian (n.d). Lighthouse Overview > Family DOORS Triage. [https://www.fcfcga.gov.au/fl/fv/lighthouse#\\_ftn1](https://www.fcfcga.gov.au/fl/fv/lighthouse#_ftn1)

violence specialists – ideally Independent Specialist Child Advocates as per Recommendation 3 (not lawyers, nor psychologists without such training). The consideration of these risk assessments should be mandatory in decision-making regarding cases, and the assessments can also be used to inform appropriate and safe court processes. Such risk assessments – by *specialists* – have been shown to be robust, and are used elsewhere – for example Victoria in Australia, and Edinburgh in Scotland use the “Safe and Together” model.<sup>30</sup>

3. **Specialist child advocates:** Establish the role of Independent Specialist Child Advocate to i. carry out required risk assessments (as per Recommendation 2); ii. represent the welfare and best interests of children, and to ensure their voices are heard in court; and iii. provide information to the court to assist the judiciary with safe decision-making.
  - In order to capably represent the children’s own understandings and needs and to avoid re-traumatising children, these advocates must be specialists in family and sexual violence, child development, trauma and tikanga Māori.
  - They must be resourced to safely gather the views of children instead of this task falling to the Lawyer for Child (for whom it is a poor fit for skills and training). It is possible there may be tasks for the Lawyer for Child but they must no longer be responsible for gathering and presenting the views of children to the Family Court. As the National Party noted during the Children in Court select committee process: “Other professionals with skills and training relevant to children could do a better job out of court” and comparable jurisdictions “use other professionals such as psychologists or social workers more than they do lawyers with variable training and knowledge of dealing with children.”<sup>31</sup> In collaboration with a legal expert, Backbone is preparing a detailed proposal for independent child advocates – please let us know if you or your team are interested in seeing this, and we would be happy to share it. It will include the impact on current court systems and personnel.

This role should be informed by insights and guidance gleaned from the successful Women’s Refuge Kōihi ngā Rito specialist family violence child advocacy pilot for violence-affected tamariki aged 5-12 years old, and specialists should be mandated and monitored to routinely undertake regular evidence-based family violence training (such as training currently provided by Tautoko Mai on the Safe and Together model).

4. **Authorise or require specialist family violence risk assessments and admit reports as evidence** as there is significant relevant and important information collected regularly and already held by many agencies about risk for individual whānau and families.

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<sup>30</sup> The Safe and Together Institute (2022). [Model effectiveness and results](#). Webpage. For an example of the extent of contextual information that can be gathered through forensic interviews with children, see Vikander, M., & Strand, S. (2023). Enhancing domestic violence risk assessments with children's perspectives: Exploring risk, vulnerability and protective factors through forensic interviews. *Child & Family Social Work*. Advance online publication. <https://doi.org/10.1111/cfs.13068>

<sup>31</sup> Stated in the New Zealand National Party differing view in [Justice Committee commentary](#) (2021) regarding the Family Court (Supporting Children in Court) Legislation Bill (now law).

5. **Prohibition of evoking parental alienation:** Follow the United Nations Special Rapporteur’s 2023 recommendation to “legislate to prohibit the use of parental alienation or related pseudo-concepts in family law cases and the use of so-called experts in parental alienation and related pseudo-concepts”<sup>32</sup>  
This will assist to ensure professionals working in the Family Court believe children’s accounts of violence and abuse as presented by the specialist child advocate, and respond safely to the fears children express about contact with an abusive parent.
6. **Reversal of Court under-serving Māori:** Be guided by iwi, hāpū and whānau Māori to make the substantial changes needed for the Family Court to respect mana and best serve Māori victim-survivors including tamariki Māori, including (but not limited to) the attainment of a sound knowledge of tikanga and te reo Māori for professionals working in the Family Court.<sup>33</sup>

## Expected Upfront Fiscal Impact of Priority Recommendations

### Current expenditure

Currently Lawyer for the Child appointments cost ~\$47M a year.<sup>34</sup> Hourly rates for these appointments are between \$127.56 and \$166.80, so the Lawyer for the Child role employs around ~140-160 FTE (full-time equivalent) lawyers a year. It is unclear what the total cost is of section 133 reports from Court-appointed psychological report writers, but their hourly rates are even higher: \$200-\$225 plus GST.<sup>35</sup>

### Proposal:

An initial ballpark guestimate is that taken together, Recommendations 1-5 above are likely to be fiscally neutral or even reduce current expenditure – primarily because all/most lawyer time and much psychologist time would be replaced by violence prevention specialist time, and lawyers and psychologists command higher hourly rates than violence prevention experts. For example, 200 Independent Child Advocate FTEs at \$90 per hour would cost \$37.5M, which is nearly \$10M less than the current 140-160 lawyer FTEs at their current rates. So, children would have access to more court advocates than they do currently, whose training is fit-for-purpose (unlike their current advocates) and whose role includes responsibility to assess risks to child safety. And at the same time, the funding saved would be double or triple that required to cover the set-up and administration of an online screening programme (Rec 1).

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<sup>32</sup> Alsalem, R. (2023.) [Custody, violence against women and violence against Children: Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#). United Nations.

<sup>33</sup> Boulton, A., Wikaira, M., Cvitanovic, L., & Blyth, T. W. (2020). [Te Taniwha i Te Ao Ture-ā-whānau: Whānau Experience of Care and Protection in the Family Court](#). Te Kōpū Ed.

<sup>34</sup> OIA 107639

<sup>35</sup> An OIA request by Backbone in 2017 showed the cost of specialist report writers commissioned by the New Zealand Family Court under section 133 of the Care of Children Act cost \$4,718,450.00 in the 2016/2017 financial year. OIA 64945

The changes to authorise and require specialist risk assessments – prohibition of parental alienation and allowing family violence specialist reports – are fiscally neutral.

Recommendation 5 will depend on what is required to redress the current Family Court shortcomings vis-à-vis whānau Māori.

## Other recommendations

7. Ensure evidence-based counselling is free and accessible for all victim-survivors of family and sexual violence engaging with the Family Court, especially children.
8. Urgently independently review the use of Police uplifts ordered under sections 72 and 73 of the Care of Children Act currently used to enforce parenting orders, including seeking input from victim-survivors and family and sexual violence sector experts. Our view is that these uplifts are traumatic for children and not in their best interests.<sup>36</sup> “Without notice” uplifts should stop **immediately**. Currently, some children are physically forced by Police into the care of the abuser.<sup>37</sup> Between 2016 and 2021, 2600 warrants were granted for the uplift of one or more children. The continued use of Police uplifts is causing harm and trauma to children who need protection from the state, not more violence and abuse.
9. Implement a continuous improvement framework and mechanism with ability to receive and respond to victim-survivor experiences<sup>38</sup>.
10. Create an independent Family Court complaints avenue to ensure safety and accountability.<sup>39</sup> For example, this could be part of the Office of a Commissioner for Victims to provide independent oversight of the continuous improvement framework and victim-survivor complaints, to respond to system-wide issues including the Family Court.<sup>40</sup>
11. Adopt a mandatory process for family violence specialists to identify and track outcomes for children who have experienced violence and/or abuse across all legislative Acts (e.g. Family Violence Act, Care of Children Act, Oranga Tamariki Act) after they have been involved in the Family Court. Currently there is no monitoring

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<sup>36</sup> For a case study, see Reid, M (2017). “[Taken by the State](#)”. 7 Aug 2017 Newsroom. For more detail and statistics, see Backbone Collective (2022). [Thematic Paper on New Zealand’s Sixth Periodic report to United Nations Committee on the Rights of the Child 93rd Session](#).

<sup>37</sup> Under sections 72 and 73 of the Care of Children Act (COCA) the Court can impose a warrant to uplift the child/ren and place them in the care of the parent who under current orders would ordinarily have them in their care or whom the court now orders should have day to day care. These are separate from uplifts ordered under s39 of the Oranga Tamariki Act 1989.

<sup>38</sup> Herbert, R. and Mackenzie, D. 2014. [The way forward - an Integrated System for Intimate Partner Violence and Child Abuse and Neglect in New Zealand](#). The Impact Collective NZ

<sup>39</sup> See Backbone’s report on the [complaints and appeals](#) avenues available for Family Court litigants.

<sup>40</sup> Please see The Domestic Abuse Commissioner model in the UK for an effective example of how this role could be established and operate: <https://domesticabusecommissioner.uk/>. For work pertaining to improvement of the Family Court see the [Domestic Abuse Commissioner Family Court Report](#) (2023).

about what happens to children after Family Court orders have been made.<sup>41</sup> We envisage visits every six months for two years.

12. Ensure the input of victim-survivor voice in policy development so as to ensure victim-survivors are at the centre of the design and implementation of justice policy, and to ensure the safety and protection of children is the highest priority in all Ministry policy and activities.

## Regarding proposed legislation currently before Parliament

### **Victims of Family Violence (Strengthening Legal Protections) Legislation Bill**

As per our [submission](#), while Backbone agrees with the aims, we disagree with the provisions which make it more difficult to bring multiple proceedings to Family Court. Currently, given many women are not believed by Family Court professionals, they often have no choice but to file multiple proceedings. Instead, our recommendations 1 and 2 above – screening for family and sexual violence and mandatory risk assessments - should assist in reducing abuse via Court and malicious time-wasting.

### **Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill**

As per [our submission](#), Backbone supports this Bill.

### **Family Proceedings (Dissolution for Family Violence) Amendment Bill.**

As per [our submission](#), Backbone supports the provisions which make it easier to obtain a divorce in a relationship characterised by violence. However, we recommend that the eligibility for such an order is widened and is not solely reliant on a Protection Order.

## Stand-alone stalking legislation

The Backbone Collective is a member of the Auckland Coalition for the Safety of Women and Children, and strongly supports the Coalition's evidence-based views that a stand-alone stalking law – outlawing unwanted repetitive and persistent intrusions into a person's life - is urgently needed to enhance victim-survivor safety and support.

We commend to you the policy paper on the subject presented previously to the Ministry of Justice by the Coalition, National Collective of Independent Women's Refuges and the National Council of Women.<sup>42</sup> As it notes, "Civil orders have been found to be ineffective with stalkers, some of whom use the Civil Court and restraining order processes as further opportunities for stalking. Stalking must be recognised as a crime rather than a civil dispute and be named as a crime in the Crimes Act 1961." Care of children is often used as an opportunity for abusers to stalk their victims, and a stand-alone stalking law would act as some deterrent to this behaviour.

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<sup>41</sup> With the exception of orders made under the Oranga Tamariki Act, where a review of the plan is required under section 34,35 of the Oranga Tamariki Act.

<sup>42</sup> Towns, A., N. Thorburn and B. Williams. "[A Stalking Law For New Zealand: Why It Is Necessary And What It Should Look Like](#)" ACSWC, NCIWR and NCWNZ/TKWA

**We are pleased the National Party supports the inclusion of stalking in the Crimes Act, and urge you to make this happen as soon as possible.**

Recommendation 13: **That stalking - unwanted repetitive and persistent intrusions into a person's life - be included as a specific crime in the Crimes Act 1061 as soon as possible.**



These recommendations can make a huge difference to victim support in Aotearoa New Zealand.

We look forward to further engagement.

“ It is critical that the people working in the Family Court and the Police understand psychological abuse and the impact it has on women and children. I wish they had believed me.”

– Victim-survivor (2020)<sup>1</sup>


# Appendix 1: Unhelpful responses – system as perpetrator of abuse

The figures below shows statements which are all real things which are said to victim-survivors who are turning to agencies for protection and support as a last resort.



## System as perpetrator of abuse

	<p>You should try the Family Court instead of us</p> <p>He seems like a good dad</p> <p>We don't believe you</p>	
	<p>You can't move away to safety &amp; support because he needs to have access to the children</p> <p>He might be abusive to you but he is a good dad</p>	
	<p>You have to work full time – even if you can't because of trauma</p> <p>We can't give you money for security products</p> <p>We can't fund children's therapy</p>	
	<p>It's up to you to keep the abuser away without help – or we're taking the kids from you</p> <p>We don't believe you</p>	
	<p>There's no housing available, you'll have to stay with him</p> <p>You're responsible for fixing the window he smashed coz your name is on the contract</p>	
	<p>You are not entitled to any child support as we believe him when he says he earns under the threshold</p> <p>You must pay the abuser child support because you have Family Court ordered shared care of the children.</p>	
	<p>You don't qualify for ACC sensitive claims because it's not physical violence or sexual assault</p> <p>There is a 6 month waiting list for counselling and therapy.</p>	




### Catch-22: When victim-survivors seek protection from authorities for family violence





The figure below shows the importance of good state responses for public safety.



**Effects of system abuse**

**If authorities minimise or do not believe a victim-survivor's disclosure of abuse, the consequences include:**



**Result:** violence increases & spreads, victim-survivor lives in lifelong fear without possibility for reprieve

**The opposite**

Our vision: how victim-survivors need authorities to respond to their disclosure



**Result:** Victim-survivor (and children) can safely move on with their lives and reach their full potential; further violence is prevented.

The figure below shows how the abuser manipulates agencies and friends as well as the victim-survivor.



**The abuser's voice is loud, persistent and persuasive**



## Appendix 2:

**Table 1: The Law Society states it is the role of the Court “to make findings on safety and the assessment of risk” – but on what data?**

Potential data source	Current Family Court involvement	Backbone Collective assessment
Reports, safety plans and/or risk assessments from Whānau Ora, Health, Justice, MSD, Corrections, Police, Stopping Violence programmes, schools, Women’s Refuge & other Family Violence specialists...	Blocked. Victim-survivors are told such risk assessments and other data are not permitted to be entered into evidence.	This data should not only be allowed before the Family Court, it should, in fact, be authorised and required by the Court where it exists
Lawyer for the Child	Responsibilities confused and contradictory; advised not to assess child safety. Backbone surveys evidence hundreds of cases where disclosure of abuse is downplayed by the Lawyer for the Child. <sup>43</sup>	Given their lack of training in risk assessment, we agree the Lawyer for the Child is not an appropriate data source for risk assessments.
Court-ordered risk assessment	Extremely rare	The rarity is deeply concerning and perplexing. Risk screening should be done as a matter of course for all Family Court cases.
Oranga Tamariki reports and assessments	Allowed	It is appropriate that OT reports are considered by the Family Court, but they should not be the only data allowed, as victim-survivors have told Backbone social workers have a poor understanding of abuser tactics and dynamics, not every family has OT interactions, and many victim-survivors – especially wāhine Māori – have a well-founded fear that OT will remove their child from their protection.

<sup>43</sup> See Herbert, R. and D Mackenzie (2018). [Seen and not Heard: Children in the New Zealand Family Court. Part Two - Lawyer for Child?](#) Backbone Collective NZ.