This is Violence

Supporting Information

Overview

This supporting document expands on the policy recommendations to provide further information for policymakers or people who already have some knowledge about family violence economic abuse.

1. **Improve the explanation of economic abuse within the legal definition of 'family violence' in the Family Violence Act 2018.**

   Clarify economic abuse as a distinct form of family violence, not a subset of psychological abuse, with a high-level, non-exhaustive list of economic abuse tactics which includes, but is not limited to: causing debt through coercion, using the victim-survivor's identity and account information to fraudulently create debt without their knowledge, reckless wastage of assets, and abuse using joint accounts or joint debt. Include reference to abuse that occurs post-separation, and amend the definition of 'family relationship' within the Act to make it clearer that this may be a relationship with a spouse or partner OR a former spouse or partner.

2. **Establish a legal principle that victim-survivors are not to be held responsible for paying debt that is coerced or otherwise caused by family violence, and when possible, responsibility for coerced debt is reassigned to the perpetrator.**

   We have left it fairly open-ended where the legal principle should sit, as there are pros and cons to inserting it in different Acts, and possibly it should be inserted into more than one. This will require policy analysis to be completed by relevant agencies, with consultation with the relevant sectors.

   To give effect to this principle we do suggest the following:

   a. **Create and implement plans specific to MSD, MOJ, IRD, Kainga Ora, the Chief Ombudsman, and the main government approved financial dispute**

resolution schemes[i] to amend legislation, regulations, policy and processes as required, and to develop inhouse family violence subject matter experts (SMEs) responsible for all assessments and decisions relating to customers who experience family violence. These SMEs receive regular specialist family violence training delivered (minimally reviewed) by external family violence specialists. SMEs responsible for decision reviews also maintain relationships with key external specialist family violence organisations.

Further detail on types of debt to government:

MSD – MSD is the key government creditor, as it is both a direct creditor and collects debts of beneficiaries to other government agencies, notably MOJ and IRD. Victim-survivors' debt to MSD may result from overpaid benefits, recoverable emergency benefits, or MSD finding that a customer was in a relationship 'in the nature of marriage' when she was paid a sole parent benefit (the focus of a separate platform point).

MOJ/Courts – Court proceedings can result in enforcement of debt by making attachment orders to a victim-survivor's salary or to their benefit (then collected by MSD). Courts will consider options to address hardship for debtors, but there is no legal guidance to treat debt any differently when it results from family violence. Courts should be able to order debt to be written-off and/or reassigned to the perpetrator where there is evidence it has been caused by family violence. Ideally, MOJ fines/tickets should have a process to apply to be written off and/or reassigned, as in Victoria, Australia[1].

IRD – Victim-survivors' debt to IRD caused by family violence most often relates to:

i. Perpetrators coercing or fraudulently establishing victim-survivors as a business partner or company director, so that they are then jointly liable for business/company tax debt, even if they have not shared business/company profits or benefitted in any way.
ii. Working for Families tax credits may be unfairly allocated to perpetrators of abuse who falsely claim they have care of children more than 1/3 of the time. Victim-survivors can also be coerced to fraudulently claim more than eligible.

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[1] See: https://online.fines.vic.gov.au/Support/Family-Violence-Scheme

Kainga Ora – Victim-survivor's debt caused by family violence commonly relates to unpaid rent and property damage. When property damage is caused by the perpetrator of abuse, victim-survivors should not be held liable for paying costs.

b. **Amend the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to address weaponisation of joint financial obligations.** Clarify that a joint borrower is not required to agree to changes to joint obligations if there is evidence these were caused by coercion or fraud, or are being weaponised against the joint borrower. This should include mortgage borrowing and decisions. In such cases, creditors may take action to protect the victim-survivor's interests, and the legal requirement to inform a joint borrower about changes to obligations may be delayed to ensure safety for the victim-survivor.

Victim-survivors commonly report an ex-partner continuing to exert control by weaponizing joint accounts or joint loans/debt to cause further debt, hardship, and ruined credit. No laws or regulations adequately explain how lenders can deal with these situations in ways that are safe and fair for victim-survivors.

The requirement that any material change to a contract must be agreed to by all contracting parties (unless the contract explicitly states otherwise) is a foundational legal principle in common law contract principles applied in NZ courts.

Under the CCCFA, all joint borrowers are jointly and severally (individually) liable. While the Act does not say 'both borrowers must approve any variation' it prevents a lender from releasing one borrower, adding or removing a borrower, or making variations that affect liability without borrower agreement.

The Responsible Lending Code, issued under the CCCFA, confirms lenders must treat all joint borrowers fairly, transparently and consistently when managing or varying loans, however, does not recognise that by treating joint borrowers transparently and consistently, it may not be possible to do so *fairly* when there is family violence.

The RLC has some provisions to prevent coerced debt by requiring lenders to recommend independent legal advice when one party may not receive a direct benefit from a loan or if one party may be under undue influence from the other party, but there is no recognition that coercion within a close relationship means a party may not feel safe to not go along with their joint borrower's wishes, and legal advice will not help.

In effect, those that make changes to joint accounts or joint loans to protect a customer experiencing family violence must bend or break rules to do so.

3. **Establish non-recoverable, family violence flexible funding grants for victim-survivors of up to $5000, similar to such grants in Australia.** FV Visa applicants are eligible for these grants, and victim-survivors of family violence requesting MSD emergency grants are instead proactively offered these flexible funding grants.

Research by Good Shepherd NZ shows that it can cost up to $10,000 for a victim-survivor to leave an abusive relationship. Establishing flexible funding grants means victim-survivors have access to non-recoverable support to pay for essential costs such as furniture, a car, or a bond for a tenancy.

In Victoria, Australia, Family Violence Flexible Support Packages of up to $10,000 "are available to victim-survivors of family violence, including children, and provides access to a range of supports including counselling, education, housing stability, and other practical or material needs. FSPs can also be used to purchase safety and security responses as part of the Personal Safety Initiative (PSI)."

These grants have been demonstrated to be a critical pathway to victim-survivor safety and wellbeing, and these are now available nationally in Australia with grants of up to $5,000.

4. **Amend the Social Security Act 2018 to stop victim-survivors being prosecuted for benefit fraud if they claim the sole parent benefit while experiencing family violence from their intimate partner.**

MSD workers frequently decide victim-survivors are ineligible for a sole parent benefit because of how they (mis)interpret *Ruka v Department of Social Welfare*, a court decision stating a parent cannot claim the sole parent benefit if they are in a relationship 'in the nature of marriage.' MSD often requires victim-survivors to provide evidence of physical violence, police intervention, and/or a protection order, and at times have decided there's not 'enough violence' to prove a client meets this threshold. The MSD response to the Joychild Report re implementation of the Ruka Decision (2002) states:

> ***"****The decision of the Court of Appeal in Ruka did not provide that domestic violence precluded the possibility of a marriage type relationship existing.*

*Rather the Court held that in the Ruka case, the prerequisite features of **emotional commitment** and **financial interdependence** were missing and the relationship was therefore not a relationship in the nature of marriage.”*

This court decision is confusing, and there has been no further clarification in policy for MSD workers to help interpret this ruling. Any pattern of family violence that is coercive and controlling should be enough to prove that the perpetrator lacks emotional commitment and financial interdependence, thus the relationship is not ‘in the nature of marriage’.

Victim- survivors experiencing intimate partner violence are often reluctant to involve police or apply for a protection order because of legitimate fears that these actions will impact negatively on safety and/or wellbeing for them and their children. When victim-survivors are forced by partners to get a sole parent benefit, or when their partner withholds access to money and they get a sole parent benefit so they and their children can survive, it should not be seen as fraud, but rather a legitimate benefit providing support, stability and a path to safety and autonomy for the victim-survivor and their children.

5. Prevent economic weaponisation of the family justice system against adult and child victim-survivors:

a. Conflicting Child Support claims should result in IRD prioritising the victim-survivor’s claim, unless credible third party evidence contradicts it, with an escalation pathway using IRD SMEs (see 2a).

Claiming Child Support requires having a child in one’s care at least 1/3 of the time. IRD makes all decisions about child support claims, and the only way to challenge an IRD decision is to appeal to the Family Court, which is expensive and time-consuming, i.e. there is no Child Support complaint or decision review pathway within the IRD. Abusive ex-partners are often able to weaponise this system by simply making the first claim to IRD for child support and lying that the child(ren) is in their care for over a third of the time, or by lying about their income to claim they are ineligible for paying child support. Victim-survivors may find when they apply for child support that the IRD refuses their claim on the basis that their ex-partner has applied first and claimed to have the child(ren) in their care for more of the time than they really do. There is no option to have these decisions reviewed, and no option to provide evidence of family violence, coercion and outright lies in order to have decisions changes – other than by appealing to the Family Court.

b. Require the Family Court to prioritise appropriate housing for children and take into account the economic impact of family violence in decisions on property settlements; and require similar considerations when the court decides who is responsible to pay accommodation costs for applicants/children when there is a Tenancy or Occupation Order ancillary to a Protection Order.

The AU Family Law Amendment Act 2024 put in place these mandatory considerations in Family Court decisions about property settlement orders. Similar issues come up in Family Court decision making around tenancy and occupation orders ancillary to Protection Orders if the victim-survivor is reliant on the perpetrator to pay accommodation costs for her and the children and he needs to move out because he is causing harm to her and/or the children.

Beatrice Martinez's (University of Auckland) 2023 Thesis The Intersecting Nature of Family Violence and Relationship Property in New Zealand: The Need for Reform is one recent study that provides an overview of how family violence intersects with relationship property settlements and proposes that New Zealand law should better reflect this intersection.

6. Victim-survivors are eligible for non-means-tested, non-recoverable legal aid to deal with any legal issue resulting from family violence; eligibility extends to Family Violence Visa applicants.

Legal aid is government funding to pay for legal help for people who cannot afford a lawyer. There are provisions to ensure victim-survivors granted legal aid for an application for a Protection Order usually won't have to repay this. However, more complex cases, and particularly those that involves other Family Court proceedings at the same time (e.g. a Parenting Order or relationship property settlement), may require the victim-survivor to repay the Legal Aid they've were granted. These costs can quickly rise, especially if litigation abuse is also occurring by the perpetrator.

Victim-survivors of economic abuse can come from any socio-economic background and may have salaries or assets above the legal aid thresholds. However, because of the economic abuse, they do not have access to these assets. Those who apply for legal aid are rejected on the grounds of being above the asset threshold. This can prevent access to justice and be a barrier to them leaving abusive relationships.

7. Give victim-survivors the 'right to repair' credit reports when these are damaged by family violence, either by the credit provider requesting the correction OR by the credit report agency directly, with flexibility to do this in the way most helpful for victim-survivors, e.g. suppress information,

remove account information. Credit providers to have a positive obligation to proactively inform victim-survivors of their right to repair their credit history.

Victim-survivors can end up with a poor credit history because of the actions of their abuser. This can block them from accessing utilities, further lending, and housing, despite the fact that their credit reports were damaged through no action of their own.

There are already options available for creditors to agree to correct a credit report by updating the credit reporting service. However, advocacy by social service providers may be needed for this to occur, especially if victim-survivors do not know this is an option. More proactive messaging and action from creditors would remove the need for social services to negotiate for their clients. Providing legislative onus to correct reports (perhaps vis CCCFA changes recommended in Policy 2) and education for creditors and reporting services would support this to occur.

AU Privacy (Credit Reporting) Code 2024 (Version 3.0) explicitly recognises domestic and family abuse as a circumstance beyond an individual's control, giving affected individuals clearer rights to correct adverse credit reporting caused by family violence or financial abuse. This includes the right to repair multiple records at the same time, and an obligation to consider reasonable burden of proof that will not retraumatise or harm victim.

8. **Requirements for victim-survivors to provide evidence of family violence align with the Residential Tenancies Act rules on proof of family violence for an early withdrawal of tenancy.**

Requiring victim-survivors to provide evidence of family violence to access justice or support, in situations other than a criminal court, should rely on a balance of probabilities and take into consideration that a) family violence that is a pattern of coercive controlling behaviours may <u>not</u> include behaviour that obviously constitutes a crime, and b) that many victim-survivors are reluctant to report family violence to police or apply for a protection order because of a realistic fears that these actions will fail to protect them and may make their situations worse. Police often dismiss economic abuse tactics as a 'civil matter', or determine that the 'serious risk of harm' required to get a protection order is not met in cases of economic abuse. Because economic abuse in particular is more invisible or misunderstood than other forms of family violence, flexible pathways for providing evidence is especially important.

Therefore, requirements for evidence should include a wide range of options for victim-survivors who have not reported to police, not applied for a protection order, and who may not have experienced physical violence or reported injuries. The recently developed Residential Tenancies Act rules on providing proof of family violence are a good example of this[ii].

9. Research on effectiveness of these changes for victim-survivors to be resourced and conducted by independent family violence researchers.

Too often government initiatives are evaluated by researchers who purport to have a good depth of understanding of family violence, but in reality do not specialise in the area or keep up with knowledge and developments in this rapidly changing, specialised knowledge base. Thus, research and evaluation is often not victim-centred, and fails to incorporate actual experiences and opinions of victim-survivors.

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[i] Banking Ombudsman, Insurance and Financial Services Ombudsman (IFSO), Financial Services Complaints Ltd (FSCL), and Financial Dispute Resolution Service (FDRS)

[ii] Tenancy Act rules for providing proof of domestic violence for an early withdrawal of tenancy allow the following as forms of proof**:**

a. Statutory declaration from the victim
b. Written statement in approved form or stat declaration from prescribed person:
    i. a medical practitioner registered with the Medical Council of New Zealand
    ii. a nurse registered with the Nursing Council of New Zealand
    iii. a midwife registered with the Midwifery Council
    iv. an osteopath registered with the Osteopathic Council
    v. a psychologist registered with the Psychologists Board
    vi. a psychotherapist registered with the Psychotherapists Board
    vii. a social worker registered with the Social Workers Registration Board
    viii. a counsellor who is a member of NZAC or NZ Christian Counsellors Assoc
    ix. a person employed or engaged to carry out work for an NGO that provides services relating to family violence and sexual violence
    x. a care and support worker who is employed or engaged to carry out work that includes going to the home or residence of another person to provide care and support services that are funded by the Crown
    xi. a person employed or engaged to carry out work for an organisation that receives funding from a Whānau Ora commissioning agency to provide services and support to whānau
    xii. a person employed or engaged to carry out work for a Māori community provider that receives Crown funding
    xiii. a Māori Warden under the Māori Community Development Act 1962
    xiv. a Police employee within the meaning of section 4 of the Policing Act 2008
    xv. a probation officer under section 24 of the Corrections Act 2004
    xvi. a barrister or solicitor
    xvii. a principal or other professional leader under the Education and Training Act 2020
    xviii. a leader of a religious community who has a status within a church or other religious community
    xix. the victim's employer

xx. the victim's landlord or landlord's agent.

c. Copy of a Police Safety Order relating to family violence
d. Copy of a Police charging document relating to a family violence related crime
e. Copy of first page of Protection Order issued