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1. **Para. 20: Human Rights Commission**

### **Resourcing of the Human Rights Commission to promote and protect women’s rights**

On 30 May 2019, as part of the Budget, the New Zealand government announced a funding increase to the Human Rights Commission (HRC) of $5,000,000 (NZ).[[1]](#footnote-1) This was the first budget increase the Commission had received in twelve years (since 2007).[[2]](#footnote-2) The budget increase is spread over four years, and was not specifically tied to work that promotes and protects women’s rights, or to ‘*enhance awareness-raising initiatives for women on how to utilize available legal remedies against discrimination, including with regard to the Human Rights Commission’,* as recommended by the Committee in 2016.[[3]](#footnote-3)

Recently a new Equal Employment Opportunities Commissioner was appointed. She is making progress on significant issues for women - ethnic/other women and poverty, ethic women’s representation, pay equity and pay transparency.  More resources and staff are required to enable the Commissioner to address violence and abuse and other issues of concern to women.

There are very few opportunities for women to complain about human rights abuses in NZ legislation. Sexual, physical and other forms of violence are excluded as areas of complaint unless the abuse happens in an employment context. Violence that occurs at home and in wider society (most intimate partner, family and stranger violence) are not grounds for complaint. Women can’t complain about processes that harm themselves and their children in the Family Court, nor can they complain about the lack of a particular service – for example, accessible refuges for disabled victims of violence.

### **s92 of the Immigration Act**

The Government[[4]](#footnote-4) has indicated it is not intending to repeal S92 of the Immigration Act. This Act prevents anyone making a complaint to the HRC regarding proceedings under the Immigration Act, or declarations made by the Minister of Immigration. It also prevents the HRC from taking or intervening in legal proceedings regarding the decisions made under the Immigration Act.

This specifically prevents complaints in relation to violence against immigrant women, particularly those who are have visas sponsored by the abuser. Immigration processes enable a range of abuse to be perpetrated against migrant women and these should be available to scrutiny by our national Human Rights body.

1. **Para. 26 (a): Gender-based violence against women**

**The issue of gender in relation to violence against women**

At the time of the last New Zealand Government report to CEDAW in 2018, the government’s Multi Agency Team were tasked with reducing ‘family’ violence in New Zealand. In 2018 a new entity, the Joint Venture Business Unit (JVU), was formed to deliver a whole of government response to ‘family’ violence. In job descriptions advertised in 2018, it was explicitly stated that applicants did not require knowledge of sexual or domestic/family violence, and there was no mention of gender analysis.

In September 2018 the JVU announced that work was starting on the development of a cross-government (rather than cross-party) National Strategy and Action Plan. The development of the strategy was being led by the Māori Rōpu, the JVU’s independent Māori advisory body, with limited input from wider stakeholder advisory groups. It was intended that this strategy would be released in draft form for public consultation in early 2019.

To date (August 2020) no strategy has been released. Official responses to requests about the development of the strategy have explained that the impact of Covid 19 has stalled the cabinet discussion of the strategy. However, we understand that the delay may also be due to dispute about whether ‘family’ violence is gendered.

We have been told that:

In the meantime the JVBU [Joint Venture Business Unit] will … continue to shape the engagement approach by consulting with key bodies/stakeholders to identify the best means of engaging diverse communities and those groups not effectively engaged with in the past and to make sure the voice of lived experience will be reflected in the Strategy[[5]](#footnote-5).

We are waiting to see if this will include meeting with women who experience violence and abuse as these women have not previously been invited to consultations about the strategy.

The three ‘new’ strategies the government refers to in its Interim Report are all updates of existing documents and have been developed by the Ministry of Social Development. They do not appear to have been developed in consultation with the JVU.

Other government decisions, or inaction, reflect the lack of acknowledgment of the gendered nature of ‘family’ violence, and the increasing use of gender-neutral language to describe violence against women:

* The Family Violence Act 2018 addresses coercive control, dowry abuse and strangulation, along with other initiatives to improve legislation; however, there is no mention of gender in the legislation.
* The government has refused to invite the *United Nations Special Rapporteur on violence against women* to New Zealand.
* There is no mandate, policy or legislation from government requiring either state agencies, such as police, health services and the judiciary, or non-state agencies, such as service providers, to undertake, or understand, a gendered analysis of violence against women.
* In many circumstances – for example, Police, the Family Court and within specialised agencies that do not have a gendered analysis of coercive violence against women - women are held responsible for violence and for their own and their children’s safety. A specific example is the New Zealand Police’s freely downloadable “[Victim and Agency Responsibility poster](https://www.police.govt.nz/sites/default/files/publications/victim-and-agency-responsibility-poster-web.pdf)” (reproduced below) which does not mention perpetrator responsibility once; but instead explicitly mentions victim responsibility “for their own safety and safety of their tamariki[[6]](#footnote-6)”. This construction of fault denies women safety, removes responsibility from perpetrators, and focuses agency and Court attention on ‘good or bad’ mothers rather than examining, and responding to, the behaviours of abusive men.

**Fig 1: NZ Police “Victim and Agency Responsibility poster”**



As the Committee has noted, the language used to describe violence against women in New Zealand has been degendered – first by the euphemism ‘family violence’ and more recently, the Police use of the words ‘family harm’. We believe that ‘family harm’ reduces the agency and responsibility of the perpetrator (“violence” requires a human agent to cause it; “harm” does not). This language is now being used by police to hide the reality of male violence.

**Responses to gender-based violence against women**

As stated, the current government has indicated, via the JVU, a whole of government response to ‘family’ violence:

* The Domestic Violence – Victims' Protection Act 2018 deals with employment leave for victims of domestic violence. It addresses women’s safety and need for support in the workplace, and will enable women who are abused, or leaving abusive relationships, to remain employed.
* Significantly more money ($202 million) was made available for sexual and domestic violence services in the 2020 Budget. However, there is still severe underfunding and under-resourcing, particularly compared with services/organisations that have a primarily male focus, and funding is inequitably distributed across violence services in terms of ethnicity (mainstream services get more money than Māori/Pacific and Migrant services)[[7]](#footnote-7). There are still no refuges with the resources to house disabled women, women with complex mental health problems and substance abusing women who are unable to stop using. Very few refuges house older women.
* In the government’s response to COVID-19, women’s refuges were designated essential services, recognising that an increase in violence against women was likely – and in fact did occur. $54.95m was allocated over two years.
* However, when distributing COVID-19 grants, government gave only $2 million to other organisations supporting women and girls and received applications from nearly 500 women’s organisations for that fund, while the racing industry received $17.5 million.
* There have been no initiatives for safe, affordable housing for women when leaving violence, no changes to welfare benefits and the punitive nature of the system which currently keeps women in poverty, and no specific funding to help women gain skills and extend their education to improve their financial situation.
	+ There has been no increase to legal aid, despite advocacy for all women escaping violence to be able to access it. The income eligibility level has not been raised. This means that there are many women, who are not eligible for legal aid, who are unable to afford a lawyer, and consequently, must negotiate the system alone. This is in contrast to men who frequently come out of relationships with more resources and are able to afford legal representation.

**Data collection**

In the government’s Interim Report, they say that government is making improvement to the data collected about family and sexual violence. We believe that not only is this not true, but that data collection is becoming more difficult, dissipated, and significantly degendered.

There are no national standards, policies or procedures for data collection about domestic/family and sexual violence. There is no agreed language for violence against women and children, nor is there an agreed definition, so data is not comparable between sources. The New Zealand Family Violence Clearinghouse have not had a contract to collate the national sexual and domestic violence data since 2015. No other organisation or ministry is collating data so we have no overview of incidence, the gender of the perpetrator, numbers of children involved and harm to women.

The Family Court does not collect data pertaining to proceedings involving violence against women or children unless they fall under the Family Violence Act 2018 (Protection Order applications). However, many women and children who are victims of violence and abuse have proceedings in the Family Court under the Care of Children Act 2014 rather than the Family Violence Act. New Zealand is not recording the number of these cases where family violence is alleged or confirmed or tracking the gender of these victims in any way. Therefore, there is currently no way to accurately track the number of cases coming through the Family Court that involve family violence.

As a result of the introduction of the Family Violence Act in 2018 a new offence was created - ‘assault on a person in a family relationship’. Historically many of the family violence arrests were made with offenders charged under the offence ‘Male Assault Female’ – this provided some way to gather gendered data regarding the perpetration of violence against women. However, family violence assault offences are now coded as ‘assault on a person in a family relationship’ or ‘strangulation’ thereby obscuring the gendered nature of the crime.

As a result, it has become more difficult to extrapolate gendered data from police statistics. In an Official Act Request the Police data team advised that “Statistics published on [policedata.nz](http://policedata.nz) are broken down by offence categories based on the Australia and New Zealand Standard Offence Classification (ANZSOC) not by individual offences. The subgroup "Male Assault Female" was created as it was a topic of interest. However, with the enactment of new Family Violence Act there was a shift in recording offences from " Male Assault Female" to "Assault on Person in a Family Relationship" or "Strangulation" offences. Most of these new offences fall under the "Serious Assault Resulting in Injury" subgroup”[[8]](#footnote-8). This response is indicative of the ongoing political degendering of language describing violence against women that consequently masks the levels, and reportage, of men’s violence against women. Not only this, however – as this name change means that this data is not comparable with previous years.

**Violence against disabled women**

There have been no noticeable changes to the lack of action to address and respond to violence against disabled women and girls since our last report, apart from the changes to legislation described below.

The Family Violence Act 2018 includes two specific mentions of disabled women’s circumstances. One is the inclusion of ‘withholding medicine or medical equipment’ in the description of actions that constitute violence and abuse under the Act. The other is the inclusion of caregiver in the definition of ‘family relationship’. These were long-sought changes.

We have received a response to an Official Information Request (OIA) asking for details of the JVU’s progress on addressing violence against disabled women. This indicates that no progress has been made on consulting with disabled women, or on any work to make the national strategy and other work inclusive of disabled women’s needs. Three disabled people have been included on JVU reference/advisory groups. These people report that they feel unheard and see no action being taken on the issues they raise.

Since the OIA was sent the Human Rights Commission disability commissioner has taken an interest in violence against disabled people and has initiated a process of consultation with the JVU. This has not, to date (August 2020), resulted in any action from the JVU other than talking to the commissioner. The workplan, reported in the Government’s Interim Report, is an intention to begin consultation with the disability sector.

The New Zealand Family Violence Death review Committee does not investigate the deaths of disabled people in family/domestic situations.

We draw your attention to the report published by the NZ Independent Monitoring Mechanism (IMM). This is the third report on New Zealand's implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)[[9]](#footnote-9).

1. **Para. 40(a) Abortion legislation**

On 18 March 2020, the Abortion Legislation Bill was passed. This Act takes abortion out of the crimes act, and into health services legislation and improves access to abortion services.

We whole heartedly support and celebrate this new legislation.

The Bill originally contained a provision to create a 150-metre safe zone around abortion clinics and prevent people from handing out pamphlets or approaching women going inside a clinic. This provision was opposed by one MP and subsequently, because of confusion about what was being voted on, did not become law. This was disputed, but Parliament was not allowed to vote on this provision again.

This is a major, ongoing infringement of women’s human right to access abortion services without harassment and abuse and this provision must be repealed.

1. **Para. 48 (a): Family Court system**

In 2019 the New Zealand government initiated an enquiry into the processes and functions of the Family Court. Just after this the CEDAW committee recommended that the NZ Government:

Establish a Royal Commission of Inquiry with independent mandate to engage in wide-ranging evaluation of the drawbacks and obstruction of justice and safety for women inherent in the Family Court system, and to recommend necessary legislative and structural changes necessary for making the Family Court safe and just for women and children, particularly in situations of domestic violence.

Less than 48 hours after the CEDAW report was released Justice Minister Andrew Little said that he didn’t think the Government needed to consider upgrading the Ministerial Review to a Royal Commission, as he already had a fair idea what the problem points were and inferred that he was confident that the Ministerial Review would address the CEDAW recommendations (Backbone Collective, 2019[[10]](#footnote-10)).

On June 16th, 2019 the government released, **Te Korowai Ture ā-Whānau**, the report of this enquiry. The review and recommendations were generally useful, but failed to address the long-standing concerns about the safety of women and children who come to the family court because of intimate partner violence and related child abuse. This was partly because the Minister of Justice had explicitly excluded an examination of how courts treat women who are in relationship with abusive ex/partners and how the court processes can be used to further abuse women.

The Minister of Justice did not include an analysis of judges’ use of parental alienation and related concepts in the terms of reference for the Family Court review. Judges and lawyers are still using these ideas to discredit women who seek help to escape violence, and they frequently prioritise abusive fathers’ rights over the safety of women and children. These actions indicate a total lack of understanding of the gendered nature of violence against women.

Other particular concerns about this report include:

* + The omission of any references to the gendered nature of violence in the report.
	+ There are still lawyers for the child, psychological reports and mediators required in the Court process. These things nearly always privilege men. The use of Lawyer for Child and of Psychologists or other professionals as assessors of family dynamics and parenting can be dangerous for women and children if these people are unaware of the research on the dynamics of domestic violence particularly post-separation violence, the overlap between domestic violence against women and child abuse, the misuse of parental alienation and the parenting practices of perpetrators of domestic violence.
	+ There should also be an investigation into the vested interests of the panel. The Review Panel did not include experts on gendered coercive domestic violence and the lack of this expertise is evident in the failure to give sufficient weight in their report to the importance of training the Family Court workforce on essential knowledge about domestic violence, post-separation violence, the misuse of parental alienation and the parenting practices of perpetrators.  Only one person with specialised knowledge about the safety of women and children was involved in the review, and she was only on a reference group, not on the panel. Many of the people on the panel had vested interests in retaining the status quo as they represented professionals who make money from the current processes.

**We strongly endorse the Shadow Midterm CEDAW Report from the Backbone Collective.**

Thanks very much for considering our views. Please do not hesitate to contact us if you have any questions.

1. ’Statement of Performance Expectations’, NZ Human Rights Commission, 2019/20, p.16. [↑](#footnote-ref-1)
2. ‘Human rights critical to delivering budget’s wellbeing promises’, Professor Paul Hunt, NZ Human Rights Commission website, 31 May 2019. <https://www.hrc.co.nz/news/human-rights-critical-delivering-budgets-wellbeing-promises/> [↑](#footnote-ref-2)
3. ‘To enhance awareness-raising initiatives for women on how to utilize available legal remedies against discrimination, including with regard to the Human Rights Commission, and to ensure that the Commission is adequately resourced’, Para 16 (c), *CEDAW/C/NZL/CO/7,*CEDAW Committee, United Nations, 2016. [↑](#footnote-ref-3)
4. New Zealand Government Interim CEDAW Report, 22 July, 2020 [↑](#footnote-ref-4)
5. Personal correspondence from the office of the Parliamentary Under-Secretary to the Minister of Justice (Domestic and Sexual Violence Issues) [↑](#footnote-ref-5)
6. Tamariki: a child [↑](#footnote-ref-6)
7. Correspondence with refuges around the country [↑](#footnote-ref-7)
8. Email correspondence from NZ Police, in response to an OIA from the Backbone Collective. [↑](#footnote-ref-8)
9. Making disability rights real. Whakatūturu ngā tika hauātanga: Third report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities Aotearoa, New Zealand. 2014–2019<https://library.nzfvc.org.nz/cgi-bin/koha/opac-detail.pl?biblionumber=6734> See particularly pages 22, 23, 27. [↑](#footnote-ref-9)
10. Backbone Collective, June 16, 2019, Open Letter to Prime Minister, Rt Hon Jacinda Ardern. [↑](#footnote-ref-10)