Reading guide for legislative responses to family violence

A selected bibliography

Prepared by the New Zealand Family Violence Clearinghouse, University of Auckland.

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Introduction

This selected bibliography is intended as a reading guide to assist those wishing to make submissions to the Government’s review of legislative responses to family violence. This was initiated with the discussion document, *Strengthening New Zealand’s legislative response to family violence* (Ministry of Justice, 2015a). Material has been selected from a range of sources. Official sources should be consulted with regards to legislation currently in force in any jurisdiction.

For ease of reference, full citations for reports and other material in this document are listed at the end of the document, along with a list of legislation referred to in this and other documents. Links were correct at time of publishing.

This bibliography was last updated as indicated.

History

This section is a guide to reviews of and proposals to change the Domestic Violence Act undertaken since 1995.

**History of New Zealand’s family violence law.** (Ministry of Justice, 2015b).

The Ministry of Justice prepared this brief history for this consultation.

Below are links to previous reviews:

The Domestic Violence Reform Bill was introduced by Hon Annette King on 30 Sep 2008. The Bill was discharged on 12 March 2012.


Following the discharge of the Domestic Violence Reform Bill, the **Domestic Violence Act 1995** was subsequently amended by the **Domestic Violence Amendment Act 2009**.

The Act was further amended by the **Domestic Violence Amendment Act 2011** and the **Domestic Violence Amendment Act 2013**.

**Law Commission – related reviews**

Law Commission to review non-fatal strangulation and homicide by victims. (NZFVC, 2015, 16 July).

**Alternative pre-trial and trial processes: Possible reforms.** (Law Commission, 2012).

In 2012, the Commission completed a preliminary review of the use of alternative pre-trial and trial processes for criminal offending, with a specific focus on sex offences. The Commission published Issues Paper 30 and received a large number of submissions from the public. The project was then put on hold by the Minister Responsible for the Law Commission at the time. In late 2014, the project was reactivated on request of the current Minister of Justice. The terms of reference for the project have not changed.
People’s experiences of the legal system under existing legislation

New Zealand


United Kingdom

Domestic violence law reform: The victim’s voice survey: Victim’s experience of domestic violence and the criminal justice system. (Women’s Aid and Paladin, 2014).

International context


Abstract: This article describes a global survey of legislation on violence against women (VAW). The study was conducted to determine if legislation on violence against women universally incorporates key features which enhance VAW prevention and provides integrated victim support and protection as recommended by the Pan American Health Organization (PAHO) and the United Nations (UN).

The legislation from 80 countries was scrutinised and results showed that most VAW legislation does not incorporate those elements recommended by the UN and PAHO. A graphic is provided which shows the principal sectors of society which play a part in interventions against VAW in each of the countries with VAW legislation. All of the legislation examined is listed and links to each document provided.

Handbook for legislation for violence against women. (United Nations, Department of Economic and Social Affairs, 2010).

Human rights and equity perspectives


Australia

These reports cover recent reviews and reforms of domestic violence legislation in Australia.


There is also a Summary of this report.

This report contains 187 recommendations for the reform of Australian family violence legislation.

See also the National and Commonwealth Response to this report.


This Report provides:

- an overview of all State and Territory and New Zealand domestic violence-specific laws providing for the making of protection orders;

- a comparative analysis of what behaviours constitute domestic violence for the purposes of those laws, and what relationship must exist between the persons concerned in order for the legislation to apply;

- a comparative analysis of the laws of each of the examined jurisdictions for the registration and enforcement of domestic violence protection orders made in other jurisdictions (‘portability’ of orders);

- a comparative analysis of the laws of the examined jurisdictions in relation to orders which operate to exclude a perpetrator of domestic violence from that person’s home (where the perpetrator and the victim would normally cohabit);

- a comparative analysis of the laws of the examined jurisdictions providing for counselling (both mandatory and voluntary) for perpetrators of domestic violence;

- an overview of the laws of the examined jurisdictions that make stalking an offence;

- an overview of the provisions in the Family Law Act 1975 (Cth) that have particular significance in relation to domestic violence; and

- an analysis of areas where there is overlap and potential for conflict between orders or injunctions made under the Family Law Act 1975 (Cth) and orders made under the State and Territory domestic violence protection orders legislation.

Note: A useful background document although a number of jurisdictions have amended their legislation since that time.

Note: Domestic/family violence laws for all Australian jurisdictions are listed in the ‘Legislation’ section of this document.
The Western Australian state government has recently considered changes to its family violence legislation:

*Enhancing family and domestic violence laws: Final report.* (Law Reform Commission of Western Australia, 2014).

*Enhancing laws concerning family and domestic violence: Discussion paper*, Project No. 104 (Law Reform Commission of Western Australia, 2013).

**United Kingdom**

*Strengthening the law on domestic abuse – a consultation.* (Home Office, 2014c).


See also further Home Office documents in the Reference list.

**Scotland**

*Equally safe: Scotland’s strategy for preventing and eradicating violence against women and girls.* (Scottish Government, 2014).

*Initial area of focus (2015-18)*

“Justice - Contributing to priorities 3 and 4

*The justice system has a key part to play in keeping women and girls safe from violence and abuse and supporting their recovery. It’s also central to how we respond to perpetrators of violence against women and girls. So we will review a ‘whole systems’ approach within the justice system. This includes consideration of the law relating to sexual offences and domestic abuse, for example whether the current law reflects the true experience of victims of long-term abuse - coercive control included; whether additional specific criminal offences are required; the support available for victims; the time taken to complete cases and the impact of justice interventions in changing perpetrator behaviour and wider public attitudes. Police Scotland is introducing Multi-Agency Tasking and Co-ordinating Groups (MATAC) across Scotland to target serious and serial offenders of domestic abuse and is committed to developing a Performance Framework to measure outcomes, recidivism and rates of re-offending.***
Specific issues

This section covers specific topics in family violence legislation. A number of issues are raised by the Family Violence Death Review Committee:


**Definitions**


Definitions are discussed in many of the reports and papers in the ‘International context’ section (above).

**Disclosure scheme**

*Domestic Violence Disclosure Scheme (Clare’s Law) launched in Britain*. (NZFVC, 2015, 17 March).

**Specific “domestic/family violence” offence**

*Judge proposes family violence offence*. (NZFVC, 2012, 1 November).

**Specialist domestic/family violence courts**


**Coercive and controlling behaviours**

**United Kingdom**

The *Serious Crime Act 2015, s76* which was passed on 3 March 2015 creates the offence of “Controlling or coercive behaviour in an intimate or family relationship.” This section comes into force in force six months after the Act received assent.

Commentary on this section is available from *Women’s Aid*.

Background documents and media releases relating to this law change:

*Strengthening the law on domestic abuse – a consultation*. (Home Office, 2014b).

and


Includes Government’s intention to amend Serious Crime Act 2007.
Government to create new domestic abuse offence. (Home Office, 2014a).

*Domestic violence law reform: The victim’s voice survey: victim’s experience of domestic violence and the criminal justice system.* (Women’s Aid & Paladin, 2014).

**Protection orders**

**New Zealand**

*Living at the cutting edge: Women’s experiences of protection orders: Volume 1: The women’s stories.* (Robertson, et al., 2007a).

*Living at the cutting edge: Women’s experiences of protection orders: Volume 2: What’s to be done? A critical analysis of statutory and practice approaches to domestic violence.* (Robertson, et al., 2007b)


**Australia**


Abstract: In this quantitative analysis of Australian domestic violence protection order legislation, the authors assess the victim safety orientation of each jurisdiction’s legislation (in force as at June 2012) by coding particular legislative features across a range of dimensions relating to victim safety. Through this process, the authors rank each jurisdiction’s legislation in terms of its focus on victim safety and supportive processes for gaining protection from domestic violence.

The authors find that no jurisdiction receives 100 percent on the victim safety index used in their study. The Northern Territory legislation ranked highest, with a victim safety score of 74.2 percent, while the Australian Capital Territory (ACT) ranked lowest, at 38.7 percent. South Australian and Victorian legislation ranked relatively highly (67.7 and 64.5 percent respectively), while New South Wales and Tasmanian legislation both scored 50 percent, and Queensland and Western Australian legislation both scored 48.4 percent.

The authors believe the results of their study raise serious questions about inequality of treatment for victims of domestic violence across jurisdictions. They suggest revisiting the discussion about the introduction of model national domestic violence protection order legislation.

See also Australian Law Reform Commission (2010).

**United States**

*Civil protection orders: A guide for improving practice.* (Sheeran & Meyer, 2010).
Violence against disabled people

Includes material on safeguarding vulnerable adults.

New Zealand

Two recent reports have highlighted shortcomings of the current legislation for disabled people.


> Recommendation 19: That the Ministry of Health work with the Ministry of Justice to ensure the legislation covering disabled people provides the necessary protection to keep disabled people safe from serious harm.

*The hidden abuse of disabled people residing in the community: An exploratory study.* (Roguski, 2013).

Impact of the failure to protect legislation


> Tolmie discusses the implications of the failure to protect legislation which came into force in 2012.


United Kingdom

The United Kingdom, and separately Scotland and Northern Ireland, have considered this issue and passed legislation relating to safeguarding vulnerable adults.

Discussion


**Safeguarding adults: The role of health service practitioners.** (Department of Health, 2011).

**Safeguarding and protecting vulnerable adults in Wales: A review of the arrangements in place across the Welsh National Health Service.** (Healthcare Inspectorate Wales, 2010).
Legislation

United Kingdom

Domestic Violence, Crime and Victims (Amendment) Act 2012

“An Act to amend section 5 of the Domestic Violence, Crime and Victims Act 2004 to include serious harm to a child or vulnerable adult; to make consequential amendments to the Act; and for connected purposes.”

For other legislation relevant to safeguarding adults, see list under ‘Legislation’ (below).

Scotland

Adult Support and Protection (Scotland) Act 2007

“Act of the Scottish Parliament to make provision for the purposes of protecting adults from harm; to require the establishment of committees with functions relating to the safeguarding of adults who are at risk of harm; to amend the law relating to incapable adults; to remove an individual’s liability for expenses incurred by councils in performing certain functions in relation to the individual’s spouse or child; to allow the Scottish Ministers to delegate their functions relating to councils’ duty to pay sums for the purposes of securing community care services; to make provision entitling a council to recover expenses incurred in providing social services to persons who are not ordinarily resident in the council’s area; to allow the Public Guardian to intervene in court proceedings; to amend the law relating to mentally disordered persons; and for connected purposes.”


Northern Ireland

Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003

Safeguarding Vulnerable Groups (Northern Ireland) Order 2007


This Bill reached its Second Stage in the Northern Ireland Assembly on 16 June 2015.
Inclusion of “carers” in domestic violence definitions

Two Australian jurisdictions include “carers” in domestic violence definitions:

Crimes (Domestic and Personal Violence) Act (NSW) 2007, section 5(f)

Domestic and Family Violence Act (Northern Territory) 2007, section 9(g)

Forced and underage marriage

New Zealand


For background information on New Zealand and overseas responses, see:

Collaboration to address forced marriage in New Zealand: more action urged. (NZFVC, 2013, 8 January).

United Kingdom

Anti-social Behaviour, Crime and Policing Act 2014

For background information, see:


Canada

Tackling early and forced marriage and ‘honour’ based violence in Canada. (Chin, 2015).

Care and contact with children

**New Zealand**


*Understanding connections and relationships: Child maltreatment, intimate partner violence and parenting.* (Murphy, Paton, Gulliver & Fanslow, 2013a).

*Policy and practice implications: Child maltreatment, intimate partner violence and parenting.* (Murphy, Paton, Gulliver & Fanslow, 2013b).

For background information, see:

*Report proposes way to evaluate family court reforms.* (NZFVC, 2015, 15 July).

*Silent injustice: Women’s experiences of the Family Court.* (NZFVC, 2012, 30 October).

*This news item includes references to the papers written by Nicola Gavey, Vivienne Elizabeth and Julia Tolmie based on their research into women’s experiences of the Family Court.*

See also:

*Family Court review: a selected bibliography.* (NZFVC, 2011).

**Australia**

*Family violence best practice principles.* (Family Court of Australia, 2013).

*Abstract: This document is an update of the 3rd edition of Family violence best practice principles and it incorporates recent changes to the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth), implemented in mid-2012. These guidelines are intended to offer practical assistance to legal practitioners, service providers and other relevant parties involved in parenting disputes when family violence or abuse is alleged, with the overall aim of better protecting children and families who are at risk of experiencing violence and abuse.*


*No way to live: women’s experiences of negotiating the family law system in the context of domestic violence.* (Laing, 2010).


Animal abuse

Discussion


Killeen, Anita. (2014).

"The protection of companion animals is not expressly covered by the DVA. If the applicant is the legal owner of the companion animal that is sought to be protected by a protection order then it is likely the companion animal would be considered as the applicant’s personal property and would be protected. It should be noted, however, that the concept of companion animals as mere chattel property is no longer acceptable to a growing body of animal activists. The law already deals with animals differently from other forms of personal property. Indeed, in Priestley J’s decision in Ministry for Primary Industries v Erasmus [2013] NZHC 281, the High Court has recognised animals as special, sentient beings, because unlike other forms of property, animals feel pain, suffer and die."

Legislation – Australia

Provisions in Australian state Acts, which specifically include animals within the meaning of family violence:

Family Violence Protection Act 2008 (Vic), s 5(2)(e)

and

Domestic Violence and Protection Orders Act 2008 (ACT), s13(1)(f-g)
Other relevant legislation

New Zealand

Welfare system

*The complexities of ‘relationship’ in the welfare system and the consequences for children.* (St John, 2014).

Workplaces


Australia


There is also a *Summary* report.

In July 2010, following on from its *first inquiry into family violence*, the ALRC was asked to inquire into the treatment of family violence in Commonwealth laws (other than the Family Law Act 1975), and to identify what improvements could be made to relevant legal frameworks to protect the safety of those experiencing family violence. Specifically, the ALRC was asked to look at child support and family assistance law, immigration law, employment law, social security law and superannuation law and privacy provisions.

See also *implementation*.

Integrated system

New Zealand

Framework proposed by the Impact Collective:

*The way forward: An integrated system for intimate partner abuse and child abuse and neglect in New Zealand.* (Herbert & Mackenzie, 2014).

Recommendations from The Glenn Inquiry:

*The people’s blueprint: Transforming the way we deal with child abuse and domestic violence in New Zealand.* (Glenn Inquiry, 2014).

Kaupapa Māori framework

Legislation

Legislation referred to in this and other documents, listed by jurisdiction, then alphabetically.

Versions linked to may not necessarily be in force or changes may have occurred. Please consult relevant legislation websites for more information.

New Zealand

Bail Act 2000
Care of Children Act 2004
Children, Young Persons and Their Families Act 1989
Crimes Act 1961
Crimes Amendment Act (No. 3) 2011
Domestic Violence Act 1995
Domestic Violence Amendment Act 2009
Domestic Violence Amendment Act 2011
Domestic Violence Amendment Act 2013
Domestic Violence Reform Bill 2008
Family Courts Amendment Act 2013
Privacy Act 1993
Sentencing Act 2002

Australia

Family Law Act 1975 (Cth)
Domestic Violence and Protection Orders Act 2008 (ACT)
Family Violence Protection Act 2008 (Vic)
Crimes (Domestic and Personal Violence) Act 2007 (NSW)
Domestic and Family Violence Protection Act 2012 (Qld)
Family Violence Act 2004 (Tas)
Domestic Violence Act 1994 (SA)
Domestic and Family Violence Act 2007 (NT)
Acts Amendment (Family and Domestic Violence) Act 2004 (WA)

Note: this Act amended the WA Restraining Orders Act 1997, Criminal Code and other acts. (See Law Reform Commission of Western Australia (2013) for more detail and proposed changes to this legislation).
Canada

Domestic Violence, Crime and Victims (Amendment) Act 2012
Zero Tolerance for Barbaric Cultural Practices Act 2015

United Kingdom

Adult Support and Protection (Scotland) Act 2007
Adults with Incapacity (Scotland) Act 2000
The Anti-social Behaviour, Crime and Policing Act 2014
Domestic Violence, Crime and Victims (Amendment) Act 2012
Domestic Violence, Crime and Victims Act 2004
Equality Act 2010
Mental Capacity Act 2005
Mental Health Act 1983
National Health Service Act 2006
The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003
The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
Safeguarding Vulnerable Groups Act 2006
Serious Crime Act 2015, section 76
Vulnerable Witnesses (Scotland) Act 2004
References


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