



Refuge Response to the Domestic Violence Crimes and Victims Bill 07/04

Background

Refuge welcomes many of the positive measures set out in the Domestic Violence, Crimes and Victims Bill and is delighted that the Government is taking steps to address this insidious social problem. It is vital however, that alongside legal remedies, adequate services are available for victims (including children) and that strategies for prevention are also in place. Integration between these key elements can only be achieved through a strong policy framework and an appropriately resourced national strategy which works in tandem with effective co-ordination at a local level. The first step in addressing domestic violence is to agree upon an accurate definition of the problem and Refuge supports proposals of the Women's National Commission to adopt a legal definition, similar to that used in New Zealand¹.

Rights to Protection

Refuge supports proposals to strengthen protection by making common assault an arrestable offence and criminalising the breach of a non-molestation order. The inclusion of children in the latter is important. It is necessary however, to clarify whether the possession of a non-molestation order which includes a child, would preclude an order being made for contact in a family/civil court and/or whether it would result in the suspension of an existing contact order.

The current situation is that family courts and criminal courts are likely to find their orders at variance. This has the potential to create confusion for the police, the applicant and the recipient and to result in dangerous, possibly lethal consequences. In cases where contact or residence is in dispute and criminal proceedings are concurrently brought against the man, the family court (ignorant of any serious risk to the woman and her children) may well direct unsupervised contact and in the worst cases, even grant a residence order to a violent father. Refuge is aware of several instances where there have been simultaneous civil proceedings for non-molestation orders and child contact orders and or family proceedings and separate criminal proceedings for domestic violence offences. Many women, who have been granted non-molestation orders, find themselves in the untenable position of being forced to take their children to the perpetrator for contact visits or face the consequences for contempt.

Refuge recommends that

- *clear mechanisms are in place to ensure different orders of this type work together, rather than in opposition*
- *criminal and civil courts have effective systems for sharing information*

¹ New Zealand Domestic Violence Act 1996

- *courts are required to seek out immediately, existing and or prior orders against the defendant. The existence of a register of civil orders would be useful in this respect.*

Refuge also recommends that

- *breach of an occupation order (in cases where there is domestic violence) is similarly criminalised.*

Refuge is also supportive of the proposal to extend the definition (and rights to protection) of 'cohabitants' to include same-sex couples, couples and those who have never co-habited. Nevertheless, Refuge is concerned that in circumstances where cohabitants have no entitlement to occupy a property, the courts are still directed 'to have regard to the relationship and level of commitment involved in it' when considering whether to issue an occupation order and deciding upon its length. This condition works against those in same sex relationships who are unable to marry and against unmarried victims who are not 'entitled' to occupy the property.

Refuge supports proposals to extend the availability of restraining orders, so that they may be made on conviction or acquittal for any offence, where the court considers it is necessary to protect the victim. It is important that any procedure is compatible with the European convention on human rights and it is for the government and its lawyers to devise a scheme which protects women, children and the rights of the individual.

Victims Services and Victims Code of Practice

Refuge supports proposals to place the needs of victims at the centre by establishing a Commissioner for victims and creating a Victims Code of Practice

Refuge would recommend that

- *domestic violence victims are always regarded as vulnerable and intimidated witnesses and given automatic access to 'special measures'*
- *specialist domestic violence agencies such as Refuge are active participants on the victims advisory panel*
- *secure funding is made available to domestic violence services (especially those long established in the voluntary sector) to provide on-going advocacy and support to women and children². This is particularly relevant to the national freephone 24-hour domestic violence helpline operated in partnership between Refuge and Women's Aid - a service which provides a life-line to thousands of abused women each year.*
- *specialist domestic violence services should be available for adults and children across the country and operate according to a nationally agreed set of good practice minimum standards. Systems for monitoring both competence and compliance should be in place across all elements of service provision.*

Domestic Violence Homicide Reviews

Refuge supports proposals to learn lessons for prevention by establishing domestic violence homicide reviews, with the aim of identifying risk and preventing future incidents. Because of the now indisputable overlap between domestic violence and child abuse, Refuge recommends that there are both conceptual and practical links between domestic violence homicide reviews and

² specialist services for children are mainly located within Refuges and there are grave difficulties in obtaining government funding for this work. See appendix 2.

child homicide reviews – this would enable us to gain a clearer understanding of both the magnitude and the nature of this insidious crime. Refuge recommends that

- *in circumstances where a child has been killed by a parent, one should routinely assess for the presence of domestic violence in the parental relationship, as well as the direction of the abuse e.g. who is abusing whom.*
- *Home office and police crime statistics should record and publish the gender of the perpetrator, not simply the relationship to the child, as is the case at present. UK Crime Statistics (based on police information) reveal that in 2001-2002 64% of child homicides were committed by a parent; the gender of that parent is not reported. (Home Office Statistical Bulletin 07/02 Crime in England and Wales 2001/2002). In Australian statistics³ males outnumber females 76%:24% as killers of children: perhaps most significantly, the largest number of children 35% (n43) died as a consequence of a family dispute, usually relating to the termination of their parents' relationship and men were the offenders in all these incidents.*

Causing or Allowing the Death of a Child or Vulnerable Adult

Refuge welcomes the government's efforts to tackle the issue of familial homicide, particularly in circumstances when a infant, child or vulnerable adult has been killed and the silence of those responsible creates a smokescreen behind which guilty parties can hide. We believe it is important to acknowledge however, that women and children are most often killed by men they know within a context of domestic violence. The silence of women in these circumstances does not generally signify collusion with the perpetrator, it generally signifies fear. In order to avoid criminalising an abused woman whose child has been killed by a violent partner, it is crucial those involved in investigating and prosecuting such cases are aware of and responsive to the impact that sustained abuse can have upon the psychology and behaviour of victims and that this is properly taken into account when deciding whether there is a case to answer.

Refuge is therefore concerned that an amendment proposed by the Lords, recommending that the court should consider experiences of and fear of domestic violence in deciding what constitutes 'reasonable steps' has been removed from the Bill, though we understand the reasons and acknowledge there are other vulnerable groups, such those with sensory impairments and or learning difficulties, who may be less able than others in the community to 'take steps' to protect vulnerable individuals within their household. We also acknowledge it is the government's intention that such factors, alongside domestic violence, will be properly considered by the courts. But without extensive training and clear guidance across the judicial system, it is likely that victims of domestic violence (both adults and children/young people under 18yrs) may be further abused by a system which 'blames' them and holds them responsible for the violence of another. At Refuge we regularly see and hear of cases in which the courts fail to understand the complex nature of domestic violence and its impact on victims, particularly when those victims are also perceived as 'guilty' in some sense. Refuge is not suggesting that victims of domestic violence (or other vulnerable groups) do not or should not have a duty of care to their children, simply that they should not be convicted of something unless there is a clear case to answer – unless there is evidence that they have actively contributed to the death or that they have deliberately ignored the risk of harm to their child.

³ Heather Strang- Children as Victims of Homicide in Trends and Issues in Crime and Criminal justice March 1996 no 53

Refuge continues to have serious concerns that 'causing or allowing the death of a child or vulnerable adult' remains applicable to children under the age of 16 years where they are also the parent of a child who has died and where there is 'otherwise no case to answer'.

It is Refuge's view that in homes where domestic violence is occurring it is unreasonable to expect children under 16yrs (and in many cases those of 16 and 17yrs) to be able to prevent the death of another person in their household, even if that person happens to be their own child. The dynamics of domestic violence are such that an abuser often has immense power and control over his victims, and in many instances this includes the victim's thoughts as well as actions.

Refuge is extremely concerned about the lack of integration between the Domestic Violence Crimes and Victims bill and the Children bill, believing that children affected by domestic violence have once more, slipped through the net. Refuge recommends:

- *That a code of practice is developed which provides clear guidance on how to integrate both bills in the best interests of adult and child victims of domestic violence. This guidance should be implemented through training and be applicable to professionals across all disciplines.*

Child Contact

Refuge is also concerned that children's needs for protection (particularly in relation to Contact) have not been fully addressed within this bill or the Children Bill.

- *The presumption that contact with a violent father is in the best interests of a child continues, despite findings to the contrary, as evidenced by the 23 children in England and Wales who were killed during unsupervised contact visits between 1994 and 2003⁴ and the large percentage of children 35% (n43) who were killed as a consequence of a family dispute, usually relating to the termination of their parents' relationship.⁵*

Refuge advocates for

- *greater protection for children. In the United States, around a 1/3rd of states do not allow domestic violence offenders to have either sole or joint custody of their children. In New Zealand, there is a presumption of no contact between a child and any parent who is also a perpetrator of domestic violence. Research shows that children's emotional and behavioural problems are associated with their relationship with their father. The more fear and anxiety, the greater the problems. The longer children are away from a violent father, the greater the improvement in adjustment⁶. This is opposite to the usual advice and the presumption of contact which exists within our own legislation.*

Although the government has issued best practice guidance for the courts and other professionals on how to deal with child contact cases where there is also domestic violence, this appears insufficient to protect women and children from the risks associated with on-going contact with the

⁴ Child homicide cases involving contact visits. Women's Aid website

⁵ Heather Strang - Children as Victims of Homicide in Trends and Issues in Crime and Criminal justice March 1996 no 53

⁶ Jaffe, Zerwer and Poisson. Access Denied. The Barriers of Violence and Poverty for Abused Women and their Children After Separation. 2003)

perpetrator. If we are to offer women and children the protection they need we must consider further action including:

- *A rebuttable presumption of no contact with the perpetrator in cases where there is domestic violence.*
- *A review of the use of child contact centres with the aim of producing best practice guidelines to ensure that safety measures protect both the woman and the child*
- *Mandatory specialist domestic violence training for all CAFCAS officers and those working in the family court system.⁷*

Information Sharing and Assessment (Children Bill Clause 8)

Whilst it is clear that sharing information between professionals is valuable for the majority, in order to promote effective multi-agency working, to promote the welfare of children and to avoid unnecessary duplication, there are concerns that establishing a database which contains personal details, including address (especially a confidential refuge address) school etc, is likely to place those escaping from domestic violence at risk. In the past, violent partners have been able to trace (and sometimes abduct, harm or even kill) children using educational, health or social service paper trails. At present there is no requirement for local authorities to put in place safeguards for children (such as those escaping domestic violence) for whom, name, address and school is 'sensitive' and not simply 'standard' information and this represents a significant risk. Refuge would recommend that safeguards are developed as a priority for these children and other vulnerable groups.

Recovery Orders

These orders exist to establish the whereabouts of children where one parent alleges the other has 'abducted' the children. In some instances, this is indeed the case and it is only right that legislation exists to safeguard children and the rights of parents. However, there is growing concern that such legislation is most often used by violent fathers to track down and 'recover' their children from mothers who have left the family home in order to escape abuse. For this reason, Refuge supports an amendment to the Family Law act 1996, put forward by Women's Aid⁸ which aims to redress this balance by granting a recovery order *only* if the applicant already has a residence order in their name. Where neither parent possesses a residence order the court may grant a recovery order, requiring both to attend court within 24 hours of the discovery of the child, or the first working day thereafter. Thorough checks must be carried out prior to returning the child to the parent who applied for the order or before sharing any information relating to the whereabouts of the child. These checks should include police records to see if either parent has committed acts of violence, if either is listed on the register of domestic violence perpetrators, and perhaps most significantly, it should include a welfare assessment of the child.

Support and protection for domestic violence victims with no recourse to public funds

Refuge also advocates that victims of insecure immigration status are able to access essential welfare and housing benefits. Currently women with no recourse to public funds are unable to access benefits and safe accommodation, even in a refuge. Even where refuges wish to support such women, it can be very difficult as most cannot make-up the short-fall in rental income.

⁷ further information provided by Refuge relating to good practice on this issue is attached as appendix 2

⁸ for detailed wording of this amendment contact Women's Aid.

- *Refuge opposes the government's decision to deny access to social security benefits for women who make applications under the immigration domestic violence rules. Refuge recommends that these women are able to obtain the same level of funding and benefits as other women escaping violence.*

General Issues

Refuge is also concerned that remedies offered by the legal system:

- *Should be accessible and affordable; it is unacceptable that those requiring protection should be expected to 'pay' for it – around £2,000 for a non-molestation order*
- *And that victims receive specialist advocacy services, including legal advice, from the first 999 call through to conclusion of the case. It is vital that this service be established using the expertise of domestic violence specialists, who have a firm understanding of the dynamics of intimate partner abuse and its essentially gendered nature.*

Finally, Refuge recommends:

- *The Integration of policy and services for adult victims with policy and services for their children, including legal intervention.*
- *Legal reform is crucial but without a clear plan for implementation (and this involves funds) including inter-departmental and agency policies, training and mechanisms to ensure competence and compliance it is difficult to see how the bill will promote effective change.*

The justice system needs to deliver a clear, consistent message to perpetrators and society that domestic violence is both unacceptable and criminal: the importance of this message should not be under-estimated. But the response of the legal system is only one part of the equation and it is important to get the balance right. The provision of specialist services to address both practical and emotional needs is equally important, as are long-term strategies for prevention, particularly those aimed at children and young people, as well as young parents.

Refuge has over 30years experience in the field of domestic violence and almost a decade of specialist experience with children. As the largest single provider of refuge accommodation and outreach services within England, Refuge is uniquely placed to offer consultation and advice to government on a number of issues, including

- homicide reviews
- training for the judiciary and other relevant agencies
- development of specialist victim support services
- public education campaigns
- preventative work with children and young people
- specialist psychological support for women and children
- the overlap between the abuse of women and the abuse of children – and how to develop an integrated service to ensure their protection.

- ENDS -