

## How our legal and justice systems are failing ethnic and migrant women victims of family violence in Aotearoa New Zealand

Family violence and sexual violence (FVSV) are significantly under-reported, under-investigated and under-prosecuted in Aotearoa New Zealand.<sup>1</sup> FVSV transcends communities, ethnicities and social classes, and has widespread intra- and inter-generational effects. Research estimates<sup>2</sup> there are 204,000 sexual assault offences yearly,<sup>3</sup> with the police receiving on average one FVSV-related call every three minutes,<sup>4</sup> and Women's Refuge receiving an average of 50,000 referrals a year.<sup>5</sup> FVSV response is estimated to cost New Zealand between \$4.1 and \$7 billion annually.<sup>6</sup>

FVSV prevention and response is notably absent from the Government's coalition agreements, its 100-day plan or any other information publicly available about current policy priorities. Nor was the writer able to find any statements from the Government acknowledging its support for *Te Aorerekura*, the National Strategy and Action Plan launched in 2021 and aimed at eliminating FVSV.<sup>7</sup> When he was in opposition, Christopher Luxon criticised Labour for failing to implement measures that have a tangible impact on FVSV statistics.<sup>8</sup> It is hoped that these issues and an impactful policy response moves quickly onto the coalition Government's agenda.

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<sup>1</sup> Family violence and sexual violence in New Zealand have been described as an epidemic and two of our nation's greatest shames: [NZ's shame: The regions where family violence is highest | Newshub](#)

<sup>2</sup> It is widely accepted that these figures are underreported. The New Zealand Violence Against Women Study found that 87% of women who had experienced physical and/or sexual violence from a partner had not reported the violence to Police. See also The New Zealand Crime and Victims Survey, Cycle 5 Report, June 2023, page 35, [Cycle-5-key-findings-report-v3.0-FIN.pdf \(justice.govt.nz\)](#)

<sup>3</sup> The New Zealand Crime and Victims Survey, Cycle 5 Report, June 2023, page 35, [Cycle-5-key-findings-report-v3.0-FIN.pdf \(justice.govt.nz\)](#).

<sup>4</sup> Hatton, E "Police responding to a family violence call every three minutes", Newsroom, 13 November 2022, [Police responding to a family violence call every three minutes \(newsroom.co.nz\)](#).

<sup>5</sup> Women's Refuge, Briefing for Incoming Ministers 2024, page 2, [20240306-BIM.pdf \(womensrefuge.org.nz\)](#).

<sup>6</sup> These estimates have been described as conservative and are taken from a 2014 study: The Glenn Inquiry, Kahui S and Snively S (2014), *Measuring the Economic Costs of Child Abuse and Intimate Partner Violence to New Zealand*, [Measuring the economic costs of child abuse and intimate partner violence to New Zealand / project commissioned by The Glenn Inquiry ; Sherilee Kahui and Suzanne Snively. \(natlib.govt.nz\)](#). See also Auditor General, *Working in new ways to address family violence and sexual violence*, June 2021, [joint-venture.pdf \(oag.parliament.nz\)](#), para 1.12

<sup>7</sup> <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>.

<sup>8</sup> Hendry-Tennent, I; Wells I, Newshub, "Christopher Luxon slams Prime Minister after revelations support scheme helping more alleged perpetrators than victims", 2 November 2022, [Christopher Luxon](#)

This article summarises some of the critical barriers ethnic and migrant women face when trying to leave a violent relationship. The article also discusses some of the specific ways in which immigration policy intersects with other jurisdictions to suppress help-seeking behaviour by victims and deter them from leaving abusive relationships. The article draws on the writer's experience working through Community Law Wellington & Hutt Valley with ethnic and migrant victim survivors of FVSV and also victims of migrant workplace exploitation where cultural-based power dynamics are also observed but in the context of employment relationships. While the focus in this article is FVSV, the writer has observed that in both contexts (FVSV and migrant exploitation):

- (a) immigration policy is failing vulnerable people in migrant and ethnic communities,
- (b) structural, bureaucratic and other barriers are furthering victims' entrapment, preventing them from accessing support, and failing to hold perpetrators to account; and
- (c) there are gaps in understanding intersectional barriers and challenges, and decisions in one domain such as employment, social welfare or criminal or family jurisdictions are often made with seemingly little awareness of either cultural factors or immigration-related consequences, and this can have devastating impacts on victim-survivors of violence.

### **Family violence and sexual violence in ethnic and migrant communities in Aotearoa New Zealand**

Ethnic communities make up around 20% of Aotearoa's population.<sup>9</sup> The latest migration data records approximately 5850,000 migrants in Aotearoa with almost 200,000 on work visas, 325,000 who have recently been granted residency status and

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[slams Prime Minister after revelations support scheme helping more alleged perpetrators than victims | Newshub.](#)

<sup>9</sup> The Ministry for Ethnic Communities defines ethnic communities as Asian, African, Continental European, Latin American and Middle Eastern, [Ethnic Communities in New Zealand | Ministry for Ethnic Communities](#). In the 2018 census, more than 700,000 people identified their ethnicity as Asian and 100,000 as Middle Eastern, Latin American or African; [2018 Census ethnic group summaries | Stats NZ](#). There are over 200 ethnicities in Aotearoa, <https://tepunaaonui.govt.nz/assets/National-strategy/Finals-translations-alt-formats/Te-Aorerekura-National-Strategy-final.pdf>, page 20.

65,000 on student visas.<sup>10</sup> Research indicates that FVSV in ethnic and migrant communities is largely hidden and significantly under-reported.<sup>11</sup> It can take particular forms<sup>12</sup> and affect culturally and linguistically diverse (CALD) women<sup>13</sup> in specific ways due to cultural norms and beliefs about gender roles, attitudes and structural inequalities in the country of origin, control dynamics within families, the relegation of women to a marginalised status within households, and traditions that enforce patriarchal dominance and the suppression of a woman's autonomy.<sup>14</sup>

The drivers for violence and barriers to disclosure are often intersectional in CALD communities and include immigration-related stressors, social isolation and disconnection from community, integration trauma, lack of knowledge of, and access to, support systems, financial dependence, economic instability, mistrust of authorities, fear of community reprisal, language barriers, and cultural taboos and stigma around discussing family and/or sexual violence.<sup>15</sup>

Our legislative and policy framework is sometimes aware and responsive to specific forms of culture-based abuse. For example, dowry-related violence is identified as family violence in section 9(4) of the Family Violence Act 2018. However, in the writer's

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<sup>10</sup> MBIE, Migration Data Explorer, [https://mbienz.shinyapps.io/migration\\_data\\_explorer/](https://mbienz.shinyapps.io/migration_data_explorer/)

<sup>11</sup> Simon-Kumar, R (2019), *Ethnic Perspectives on family violence in Aotearoa New Zealand*, Issues Paper 14, Auckland, New Zealand: New Zealand Family Violence Clearinghouse, University of Auckland, page 8, [NZFVC-issues-paper-14-ethnic-perspectives.pdf](#). See also Ayallo, I (2021), "Intersections of Immigration Law and Family Violence: Exploring Barriers for Ethnic Migrant and Refugee Background Women," *Aotearoa New Zealand Social Work*, 33, no. 4, 55-64.

<sup>12</sup> Family violence in ethnic communities can include, among other things, intimate partner violence and abuse, forced and/or underage marriage, in-law abuse, dowry-related abuse, so called 'honour-based' violence, immigration related abuse, transnational marriage abandonment and abuse, see Te Puna Aonui, Ministry of Social Development and Shakti, *Our Culture, Our Pride* (2023), <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/family-and-sexual-violence/msd-our-culture-our-pride-no-excuse-fo-abuse-english-2023.pdf>, pages 2-3.

<sup>13</sup> In this article, the writer refers to victims of family and/or sexual violence as being ethnic and migrant 'women', and perpetrators as 'men'. The writer is aware this is gendered language, but this reflects the dominant gender dynamic of the cases she has been involved with – in fact it reflects 100% of the cases the writer has personally advised on. This terminology is in no way intended to diminish the experiences of victims of other genders or others who experience marginalisation and discrimination including Aotearoa's rainbow communities.

<sup>14</sup> For a more comprehensive discussion, see Simon-Kumar, R (2019), *Ethnic Perspectives on family violence in Aotearoa New Zealand*, Issues Paper 14, Auckland, New Zealand: New Zealand Family Violence Clearinghouse, University of Auckland, page 8, [NZFVC-issues-paper-14-ethnic-perspectives.pdf](#).

<sup>15</sup> Te Puna Aonui, Ministry of Social Development and Shakti, *Our Culture, Our Pride* (2023), <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/initiatives/family-and-sexual-violence/msd-our-culture-our-pride-no-excuse-fo-abuse-english-2023.pdf>, pages 2-3.

experience, our legal and justice systems are generally blind to the barriers ethnic and migrant women FVSV victim-survivors face, particularly when immigration issues intersect with family and criminal law, employment, social welfare and other issues.

*Te Aorerekura* affirms a strong commitment to doing more to meet the safety needs of migrant women in line with New Zealand's commitments under the Convention for the Elimination of All Forms of Discrimination Against Women and other international and domestic legal and moral commitments. Our legal and justice systems, and practitioners working within these systems, need to better understand the immigration context and the barriers ethnic and migrant victim-survivors face in seeking help and leaving abusive relationships. Increased empathy and cultural sensitivity by advocates and decision-makers across jurisdictions, will in turn support the safety of women and children. There is a direct relationship: the more effective the response and support network, then the more likely it is that women will disclose violence and seek help.

### **Immigration issues and FVSV: Barriers to victims seeking help and leaving abusive relationships**

Immigration issues play a significant role in the lives of CALD women experiencing FVSV. Partnership based visas require a person to stay living in a relationship with their partner as a criterion of the visa. Typically, in CALD migrant communities, the man will be the 'principal applicant' and the holder of the visa, a label which of itself perpetuates a patriarchal paradigm. The man's partner will usually be in New Zealand on either a partnership visitor visa (which does not allow her to work)<sup>16</sup> or, if he earns at least twice the median wage (currently some \$59 an hour) or his job is on the 'Green list',<sup>17</sup> she can apply for a partnership based open work visa which will allow her to work for any employer.<sup>18</sup>

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<sup>16</sup> This immigration policy traps women in abusive relationships as being unable to work denies victims the ability to secure financial independence from their abuser.

<sup>17</sup> The Green List occupations are 'in-demand' roles and are listed in Appendix 13 of the Operational Manual.

<sup>18</sup> Immigration NZ, Operational Manual, WF3.1.5, <https://www.immigration.govt.nz/opsmanual/#45667.htm>. This work visa policy has been described as overly restrictive with the potential to perpetuate entrapment (see [Rights and needs of migrant victim-survivors of family violence within immigration policies and practices | New Zealand Family Violence Clearinghouse \(nzfvc.org.nz\)](#)). In the writer's experience, very few clients seeking advice from Community Law centres are eligible for a partnership-based open work visa. The other option available for women is

A man who is abusive can use the woman's immigration status as a tactic of power and control.<sup>19</sup> Her visa is connected to his, so if she leaves the relationship, she also loses her right to be in New Zealand. This could also mean separation from her children as the Family Court may not allow their removal from New Zealand. This fear is a frightening and overwhelming obstacle for women seeking to leave a violent relationship. Returning to her home country could mean returning to a country where she and her children are at risk of poverty, ostracism, extreme stigma, discrimination and further violence.<sup>20</sup> The fear of being forced to return home is a real and significant barrier to a woman leaving her abusive partner.

Other barriers include social stigma surrounding separation, language barriers, engrained cultural norms that prevent women from acting independently of their husbands or another male in the household, isolation from support networks, fear of losing culture and community, lack of access to welfare support<sup>21</sup>, legal advice<sup>22</sup> and accommodation, dependence on a partner for income and lack of job opportunities and work rights. These factors compound to make leaving a violent situation incredibly difficult, so much so, that many women either remain living with, or return to, their abuser.

### *Victims of family violence visa (VFV visa)*

A work visa is available for women in New Zealand who have experienced FVSV and their partner is a New Zealand resident or on a temporary work visa.<sup>23</sup> A residence visa is also available if a number of additional criteria are met<sup>24</sup>, including that the woman's

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to secure their own Accredited Employer Work Visa which is itself cumbersome and restrictive for many vulnerable migrant women.

<sup>19</sup> Sarah Croskery-Hewitt writes in her compelling paper *Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand* (The Michael and Suzanne Borrin Foundation, Wellington 2023) that uncertain immigration status can make women particularly vulnerable to abuse by men who exploit that uncertainty as a tactic of power and control over them.

<sup>20</sup> The impacts on many ethnic women who return to their home country following a 'failed marriage' were discussed in a recent RNZ interview: "Advocates call for family violence visa to be made easier", 7 March 2024, <https://www.rnz.co.nz/national/programmes/ninetonoon/audio/2018929083/advocates-call-for-family-violence-visa-to-be-made-easier>

<sup>21</sup> Generally, social welfare benefits are not available to women on temporary visas.

<sup>22</sup> Legal aid is generally not available for immigration matters other than refugee or protected person status claims.

<sup>23</sup> Immigration NZ, Operational Manual, <https://www.immigration.govt.nz/opsmanual/#34469.htm>

<sup>24</sup> Immigration NZ, Operational Manual, <https://www.immigration.govt.nz/opsmanual/#42635.htm>

(ex) partner is a New Zealand resident or citizen, she can prove she had intended to seek residence with her partner and she can prove that she is 'unable to return' to her country of origin due to a risk of abuse or exclusion, or a complete lack of financial means. The VFV visa criteria are strict, and this is reflected in the very low number of residence visas that have been granted. Over the past 12 months, only 54 resident visas and 93 work visas were granted under the VFV visa category.<sup>25</sup> 95% of applicants were women.<sup>26</sup>

To obtain either the work or residency visa, a woman needs to show that either her partner was convicted or provide a letter from New Zealand police stating that she experienced violence (police call out reports are not sufficient). Police are often reluctant to provide a letter where charges have not been laid. Other evidence Immigration NZ will accept is a final protection order (which could take well over a year or more to obtain if a defended hearing is held), or two statutory declarations by professionals stating that in their opinion, the woman experienced FVSV.<sup>27</sup> The immigration rules state that only certain people can provide declarations, for example counsellors who have full registration with the NZ Association of Counsellors. Family violence first responders such as paramedics cannot provide evidence, nor can social workers who are not registered with the Social Workers Board.

There are often huge wait lists to see the professionals who can provide declarations. GPs are sometimes unwilling to write declarations because they are uncertain of what effect the declaration will have (for instance, will they be required to give evidence in Court), or whether medical insurers will raise issues. Often GPs ask for a fee (\$250 seems to be a recurring figure) which the woman is frequently unable to pay.

Even where a woman is able to obtain evidence of FVSV, she faces further barriers. A perpetrator may contact Immigration NZ and say that the relationship never existed or that the victim fabricated incidents of violence to obtain the visa. This is extremely daunting and stressful for someone who may already be fearful of, and unaccustomed to dealing with, government officials. Unless she has had medicals and a chest x-ray

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<sup>25</sup> MBIE, Migration Data Explorer, [https://mbienz.shinyapps.io/migration\\_data\\_explorer/](https://mbienz.shinyapps.io/migration_data_explorer/)

<sup>26</sup> MBIE, Migration Data Explorer, [https://mbienz.shinyapps.io/migration\\_data\\_explorer/](https://mbienz.shinyapps.io/migration_data_explorer/)

<sup>27</sup> Immigration NZ Operational Manual, W17.5.

taken in the past three years, a woman will need to obtain these at a cost of around \$600 - \$700. These costs are not feasible for many women, and legal aid is not available to cover costs. She will also need a police certificate from every country she has been in for 12 months or more and these can also be costly to obtain, if they are even available. Some women have reported that their husband has 'used influence' offshore (such as bribes to officials and police) to prevent them from providing a police clearance. In this situation, a woman may be able to provide a statutory declaration in lieu of police certificate but she will need to explain why she cannot obtain one and this can be difficult to prove.

A VFV work visa, if granted, is only current for 6 months. Women have reported that it is difficult to obtain employment when a visa has such a short duration. The work visa can be extended for 6 to 9 months if the woman applies for residence under the VFV visa category. To do this, she needs to establish that she would face a risk of abuse or exclusion due to stigma if she returned to her home country, or she would be unable to support herself financially.<sup>28</sup> This 'inability to return' requirement has been criticised as a high evidential threshold, akin to establishing refugee status.<sup>29</sup> Decisions of the Immigration and Protection Tribunal have found that the visa is generally unavailable to people from European countries. Even where a woman is from a place where gender-based discrimination and social stigma from separation is well-known, a woman will usually require assistance to present evidence-based country research supporting their application. There are no accessible, culturally appropriate guides to the visa process in English, let alone in other languages.

English may be a second or third language for CALD women and yet they are asked to navigate the challenging visa application process while potentially facing homelessness, poverty and worrying about their children and pending Family Court applications filed by the perpetrator. It is common for perpetrators to argue in the Family Court that their ex-partner fabricated allegations of violence only to apply for the VFV visa. It is hoped that the woman's family lawyer and the Family Court are aware of the stringent visa criteria, evidentiary requirements and relevant cultural

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<sup>28</sup> Immigration NZ Operational Manual, S4.5.2.

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considerations<sup>30</sup>, but the writer doubts whether this information is presented to the Court. This is an example of how immigration matters are raised in a specialist jurisdiction without a clear understanding of either immigration policy or cultural context.

Immigration officials can take many, many months to process a VFV residence visa application. Even in countries such as Pakistan, where the safety risks for separated or divorced women are well-documented,<sup>31</sup> Immigration NZ has taken an inordinate amount of time to determine whether a woman would face stigma or discrimination if she had to return. It is the writer's experience that women from the Middle East, rural China, Pakistan and other countries are required to complete a National Security Clearance check.<sup>32</sup> This involves Immigration NZ liaising with counterpart officials in the woman's home country and is a process that is notoriously slow. In one example, a woman's residency application took 18 months to determine largely, it seems, because of delays with her National Security Clearance check. Over this entire time, she faced immense uncertainty about her immigration status and had to continually apply to renew her work visa application, all while trying to reassure an employer of her continuing right to work in New Zealand.

The low number of women currently on the VFV residence visa (compared to the known high rates of FVSV in ethnic communities) is a strong indication that the visa is generally inaccessible and overly difficult to obtain. The writer would add that the visa is virtually impossible to obtain for women who do not have the support of a lawyer, advocate or social services agency, such as Women's Refuge or Shama Ethnic Women's Trust,

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<sup>30</sup> As discussed earlier in the article, these include factors such as language barriers, control dynamics, patriarchal values that suppress a woman's autonomy, isolation, feelings of shame and disconnection from community post-separation, economic instability, lack of knowledge of, and access to, support systems, and immigration-related stressors.

<sup>31</sup> A 1999 decision of the UK House of Lords held that separated women in Pakistan who were victims of family violence could qualify as members of a particular social group under the Geneva Convention and therefore attain refugee status on the basis that they had a well-founded fear of being flogged or stoned to death if they returned and the State gave them no adequate protection as they perceived them as not being entitled to the same human rights as men; *Islam (AP) v Secretary of State for the Home Department, Regina v Immigration Appeal Tribunal and Another Ex Parte Shah (AP)* [1999] All ER 545.

<sup>32</sup> All visa applicants are required to meet character requirements, including establishing that they do not pose a potential security risk (A5.1, INZ Operations Manual). Information on the Immigration NZ website says that New Zealand Security Intelligence Service (NZSIS) provides assessment to help INZ make decisions and conducts national security checks in line with INZ's priorities, [National security checks for visa applicants | Immigration New Zealand](#).



supporting them. As legal aid is not available, women wanting to access the visa may seek help from a Community Law Centre. Knowing this, recently, some perpetrators have sought advice on how to prevent their partner from obtaining the visa, thereby creating a conflict situation preventing the victim from obtaining help from Community Law.

A 2020 review of the visa scheme<sup>33</sup> identified a range of policy issues and Immigration NZ operational and processing issues that present barriers to migrant victims obtaining VFV visas. Reform was on the table under the previous government. In July 2023, New Zealand's Ninth Periodic Report to the United Nations Committee on the Elimination of Discrimination against Women, said a review of the VFV visa would be scoped and consideration given to how immigration settings could be "culturally appropriate and represent international best practice".<sup>34</sup> Similarly in 2022, *Te Mahere Whai Mahi Wāhine – Women's Employment Action Plan* included a "scoping action" to review the immigration settings for migrants in New Zealand who experience FVSV to ensure that appropriate support is available.<sup>35</sup> The 2022 Education and Workforce Committee Inquiry into migrant exploitation<sup>36</sup> also recommended changes to immigration settings to better support victims of FVSV including considering the eligibility criteria for the VFV visa to enable more migrants to access it. Unfortunately, a review into the VFV visa did not progress and there are no indications so far that it is a priority for the current administration.<sup>37</sup>

Most of the deficiencies with the VFV visa policy including the short duration of the work visa, the strict 'unable to return' criteria, the narrow list of acceptable evidence and visa officers' inability to take into consideration the needs of dependent children, were

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<sup>33</sup> Croskery-Hewitt, S *Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand* (The Michael and Suzanne Borrin Foundation, Wellington 2023). See also MBIE, Recent Migrant Victims of Family Violence Project 2019: Final Report, pages 29-30, <https://www.mbie.govt.nz/dmsdocument/12138-recent-migrant-victims-of-family-violence-project-2019-final-report>.

<sup>34</sup> <https://www.women.govt.nz/sites/default/files/2023-07/FINAL%20Ninth%20Periodic%20NZ%20CEDAW%20Report.pdf>, para 411-412.

<sup>35</sup> <https://www.women.govt.nz/sites/default/files/2022-07/Te%20Mahere%20Whai%20Mahi%20W%C4%81hine%20Women%E2%80%99s%20Employment%20Action%20Plan%202022.pdf>, page 6.

<sup>36</sup> [https://www.parliament.nz/resource/en-NZ/SCR\\_125899/b38c368cb1991c41be926b576384e2467f8def4d](https://www.parliament.nz/resource/en-NZ/SCR_125899/b38c368cb1991c41be926b576384e2467f8def4d) at page 27.

<sup>37</sup> See the introductory paragraphs to this article.

remedied in Jan Logie's members' bill – the Protecting Migrant Victims of Family Violence Bill<sup>38</sup> – but this did not progress from the members' bill ballot box. Importantly, many of the changes needed can be made at the policy level, so legislative change is not in fact required, but Ms Logie's bill was an attempt (and a robust and impactful one) at expediting the changes required. The bill would provide officials advising on law reform with a useful guide to the policy changes needed.

With appropriate legal and cultural support, many victim-survivors do successfully navigate immigration processes to gain financial and immigration independence from abusive partners. But the current policy settings present significant barriers to the safety and wellbeing of women and children. Advocates, advisors and practitioners need to understand the particular vulnerabilities faced by CALD victim-survivors of FVSV and the factors that support disclosure of violence and the factors that prevent or create barriers to that. Our legal and justice system has an important role in this but can, as the examples below show, operate to prevent CALD victims of FVSV from disclosing abuse and leaving violent relationships.

#### *Access to benefits*

If a woman obtains a VFV work visa, she is entitled to a Special Programme Payment for Victims of Family Violence.<sup>39</sup> The benefit is set at the Jobseeker rate but is difficult to obtain. Little information is available about the benefit and frequently, in the writer's experience, Work and Income officers do not know about the payment. Even where a woman can access it, she is required to 'phone in' weekly to a Work and Income office, and sometimes even report in person to a branch, before the payment for the upcoming week will be processed. One woman, who was living with her child in campgrounds and in different acquaintances' homes, sometimes far away from a city, was not able to visit a Work and Income branch and the payment stopped. She had no means of financially supporting herself and her child and returned to live with her abuser. Work and Income seemed, in this situation, to have little awareness of the complex, intersectional challenges this woman faced including language barriers, her lack of familiarity

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<sup>38</sup> <https://www.parliament.nz/media/8557/protecting-migrant-victims-of-family-violence-bill.pdf>

<sup>39</sup> <https://www.workandincome.govt.nz/map/income-support/extra-help/special-needs-grant/eligibility-to-the-family-violence-programme.html>

navigating bureaucratic processes, inability to access stable housing and feelings of isolation and shame. Increased support and cultural sensitivity may have resulted in a different, victim-centred outcome.

*Safety and care and protection of children used as a bargaining tool*

Women have told the writer of how they have felt pressured by either their own family lawyer or the perpetrator's lawyer to accept an undertaking instead of pursuing a protection order application. They have not been aware that an undertaking is not enforceable and that it is not accepted as evidence for the purposes of a VFV visa (unlike a final Protection Order). If a woman agrees to the undertaking, this has been used subsequently by perpetrators to argue that her safety was never really in question, and she fabricated allegations of violence (otherwise why else would she agree to drop the Protection Order application?).

Another common example in a CALD women's context is where a woman applies for residency and includes her children in her application. The immigration rules require her to prove she has "the statutory right to *custody*"<sup>40</sup> which is generally an outdated term that is no longer used in Family Court proceedings. While Immigration NZ will accept a care and protection order from the Family Court as evidence of a mother's 'custody', they also require a signed statement from the other parent, agreeing to allow the child to live in New Zealand if the residency application is approved. This is the case even though both parents may be living here. The writer has seen perpetrators use these immigration rules as a way of continuing to exert coercive control. They have refused to give consent unless the woman or her parents pay a large sum of money, or unless she discontinues the protection order application. If a woman has no means to pay or if she refuses to bargain her safety in this way, her only option is to go through an expensive guardianship proceeding. Legal aid is available for a guardianship application, but it is increasingly difficult to find a family lawyer willing to take on these cases at the low rates offered by legal aid.<sup>41</sup> To instruct a lawyer outside of legal aid

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<sup>40</sup> R1.2.45, Immigration Instructions.

<sup>41</sup> The problems with accessing legal aid for complex family law matters are acute. Clients have repeatedly advised that very junior lawyers are assigned to their files who lack cultural sensitivity or awareness of the complexities of their case; see <https://www.rnz.co.nz/news/is-this-justice/453369/legal-aid-system-broken-and-may-collapse-chief-justice>

potentially costs around \$20,000 - \$30,000 or more and so is likely to be cost prohibitive for most women applying for a family violence visa.

This is an area fraught with injustice. It is unfair that a woman can only seek immigration security for her children if she can afford to pay a private lawyer.

#### *Problematic intersections between immigration policy and other jurisdictions*

Immigration policy can intersect with other jurisdictions in ways that further marginalise and even threaten FVSV victim survivors, preventing them disclosing violence and even leaving them with little option but to return to their abuser.

For example, perpetrators have raised immigration consequences as relevant matters in an application for a discharge without conviction of sexual or physical assault charges.<sup>42</sup> Immigration NZ and the Minister of Immigration have a broad discretion to grant character waivers and issue special directions, but dangerous consequences can ensue where the Courts make immigration-related decisions in the context of FVSV. They may have only limited information before them and yet allow a perpetrator of violence to have their conviction quashed so that they can apply for a visa to re-enter New Zealand to see their children, even where a protection order is final, and a care and protection order does not allow in-person contact. Granting a discharge without conviction for assault due to “immigration reasons” is incredibly fraught in circumstances of physical and sexual assault and where a Court may not have a complete picture before it.

Another problematic intersection between legal issues and immigration policy occurred in 2021 when the Chief Ombudsman issued a case note<sup>43</sup> concluding that Immigration NZ’s blanket policy of not providing alleged perpetrators of family violence notice of, and an opportunity to comment on, a VFV visa application by their former partner breached natural justice requirements. Where a person obtains a VFV residence visa,

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<sup>42</sup> In *Sok v R* [2021] NZCA 252 at [53] the Court of Appeal held that immigration issues can be “frequently helpful” when considering an application for a discharge without conviction.

<sup>43</sup> Ombudsman, *Unreasonable approach by INZ to the removal of the ability to support a Partnership Category visa for deemed perpetrators of family violence*, Case numbers 483973, 499243, 510042, 510292, 514753, 518775, <https://www.ombudsman.parliament.nz/resources/unreasonable-approach-inz-removal-ability-support-partnership-category-visa-deemed>

their ex-partner, the alleged perpetrator of abuse is unable to sponsor future partners on partnership-based visas. Some men who were impacted by this complained to the Ombudsmen on the basis that they were denied the opportunity to comment on their ex-partner's allegations of violence before Immigration NZ granted the visa. The complainants advised the Ombudsman that they would have disputed the allegations of family violence if the opportunity had been provided. They stated that the women's allegations were untested and 'not verified' through any court or formal process.

The Ombudsman concluded that Immigration NZ's blanket approach of not advising alleged perpetrators of violence of their ex-partner's VFV visa application did not meet natural justice requirements and a case-by-case assessment may be justified, taking into account safety and privacy risks to the visa applicant. It is unknown what type of information an immigration officer would need to have to ascertain whether a woman's safety or privacy is at risk but in the writer's view, Immigration NZ officers do not have the training or skills to be making such assessments. Officers can waive character requirements in subsequent applications and allow alleged perpetrators to sponsor future partners. This is where the case-by-case assessment should occur. The Ombudsman's decision is worrying as it potentially allows a perpetrator of violence to influence a VFV visa applicant's immigration status by allowing them to comment on allegations of family violence, even where access to the visa requires evidence of professionals or a final protection order or letter from the Police. The Ombudsman's finding, with respect, reinforces the power and control often inherent in relationships of violence and could jeopardise a woman's access to the visa and increase safety risks.

The above examples illustrate just some of the ways in which our legal and justice systems fail to be culturally responsive and support the needs of vulnerable victims of FVSV. An overhaul is needed of immigration policy to ensure the VFV visa is more accessible, women and children's needs are prioritised, and they are appropriately supported by our legal systems. Practitioners and those working within the system need to question whether structural, information or other barriers may be furthering victims' entrapment and preventing them from leaving situations of violence. There are clear gaps in understanding between jurisdictions such as family, criminal, social welfare and immigration. Empathy, sensitivity and greater understanding of the cultural

context and consequences is required before decisions in these specialist jurisdictions are made that may impact on the immigration status of FVSV victims. Failing to understand and address these gaps does not support victims' safety needs and their ability to seek help and leave abusive relationships.

The writer is undertaking a research project sponsored by Shama Ethnic Women's Trust and funded by Borrin Foundation, into the experiences of CALD women who report violence and go through a Family Court proceeding such as a protection order application or care and protection of children application. The research is interview based and will assess the insights of FVSV victim-survivors in ethnic and migrant communities as well as advocates and others working within the Family Court system to see whether our systems present safety, disclosure or other barriers to CALD women who disclose violence.

If readers of this article are interested in discussing the research, being interviewed or know of people impacted who may be interested in being interviewed, they are welcome to contact the writer at the email address below. It is hoped that the research will recommend meaningful and practical changes within the Family Court system to improve cultural sensitivity and awareness, and support disclosure of violence and the safety of vulnerable people in Aotearoa's ethnic and migrant communities.

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