

LEGISLATION NOTE

‘OKU HANGE ‘A E TANGATA, HA FALA OKU LĀLANGA¹

— *Pacific people and non-violence programmes
under the Domestic Violence (Amendment) Act 2013*

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A variety of factors place Pacific women at high risk of experiencing domestic violence in their lives. This article discusses the mandatory non-violence programmes for perpetrators under the Domestic Violence (Amendment) Act 2013 in light of the pan-Pacific value of collectivism. It argues that non-violence programmes reflect an individualistic approach that is at odds with the ethos of collectivism. These programmes ultimately fail to harness the protective and preventive potential of Pacific communities in changing violent behaviour.

I MANDATORY PROGRAMMES UNDER THE DOMESTIC VIOLENCE ACT 1995: A ‘ONE SIZE FITS ALL’ MODEL

Mandatory “stopping violence” programmes for perpetrators of domestic violence (or respondents) were introduced in New Zealand by the Domestic Violence Act 1995 (DVA).² In conjunction with protection orders, domestic

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¹ A Tongan saying: ‘humankind is a mat being woven’. The term ‘Pacific’ is used to refer to people from the Pacific islands nations who live in New Zealand. Pacific people are not a homogeneous group, with the seven largest Pacific ethnic groups in New Zealand being Samoan, Cook Islands Māori, Tongan, Niuean, Fijian, Tokelauan and Tuvaluan. While there are significant differences between the ethnic groups, common core values are identifiable, one of these being the centrality of relationships in the worldview of many Pacific cultures. As the writer is of Tongan descent, a Tongan expression of this view was chosen to ground this commentary.

² As the mandatory programmes are ordered following the court granting a protection order, this paper refers to the perpetrator of the violence as the respondent.

violence programmes for respondents and protected persons were part of the legislative toolkit for achieving the objectives of the DVA, being protecting victims of violence and reducing and preventing violence in the home.³ Conceived initially as a type of counselling, the programmes evolved through the parliamentary process to encompass a broad range of educational functions,⁴ reflected in the now revoked Domestic Violence (Programmes) Regulations 1996 (the Regulations). Mandatory programmes for respondents were required to “have the primary objective of stopping or preventing domestic violence on the part of [the respondent]”.⁵

The programmes were expected to change the behaviour of respondents by increasing understanding about: the nature and effects of domestic violence; the objects of the DVA, effect of protection orders and consequences of breaching them; the social, cultural and historic context in which violence occurs; the impact of domestic violence on victims and children; the effect of abusive behavior on victims; and by helping respondents develop skills to deal with potential conflicts in non-abusive ways.⁶

Ultimately, the programmes were intended to effect positive changes to respondents’ behaviour and to achieve the statutory objectives of stopping and preventing violence.⁷

The DVA relies heavily on the efficacy of domestic violence programmes to change respondents’ behaviour. This was reflected in the prescriptive nature of the Regulations, which stipulated the number of programme sessions a respondent had to attend, the number of hours group programmes had to run, hours allowed per session, and the maximum number of participants in a group.⁸ Programmes had to “involve the use of well-founded methodologies which have been shown to be effective in stopping or preventing domestic

3 Section 32(1) of the Domestic Violence Act 1995 states “[o]n making a protection order, the court *must* direct the respondent to attend a specified programme, unless the court considers that there is good reason for not making such a direction” (emphasis added). Section 32(1) of the DVA was repealed on 1 October 2014. The version cited is as at 31 March 2014. Section 5 of the DVA sets out the statutory objectives.

4 Domestic Violence (Programmes) Regulations 1996, reg 32(1).

5 Regulation 32(1).

6 Sub-regulations 2(a)–(f).

7 Regulations 32(2)(a)–(f).

8 Regulation 33(b).

violence”.⁹ To this end, elements of two mainstream violence intervention frameworks — the Duluth feminist psycho-educational model and cognitive behavioural therapy (CBT) — informed many of the programmes.¹⁰

The Regulations made express provision for Māori programmes.¹¹ There was also room for culturally sensitive programmes for other ethnic groups to be approved, with the programme approval panel required to take into account relevant values and beliefs “of any other cultural or ethnic group”.¹² Pacific programmes, though few, were available for Pacific respondents, and were based on generic Pacific format and content. In a review of the Family Court during 2011 and 2012, the stopping violence programmes were criticised for providing a ‘one size fits all’ model.¹³ The review suggested that programme results could be improved if they were delivered with more flexibility, and were better tailored to the needs of individual respondents.¹⁴

II THE DOMESTIC VIOLENCE (AMENDMENT) ACT 2013: BEYOND THE ‘ONE SIZE FITS ALL’ MODEL

The Domestic Violence Amendment Act 2013 (DVAA) was enacted with a focus on improving safety for protected persons and children, holding respondents accountable for their actions, and providing more flexible, evidence-based and responsive services.¹⁵ In addition to sweeping changes made to the programme provider approval process, the programmes were renamed “non-violence programmes”, and several other key measures were implemented. Respondent accountability was increased through mandatory reporting requirements for respondents who do not attend the non-violence programmes, with failure

9 Regulation 33(e).

10 Department of Corrections *Community-based Domestic Violence Interventions: A Literature Review* (2012) at [5].

11 Regulation 27.

12 Regulations 21–25. Under reg 47(2)(d), the approval panel was also required to have at least two members who have expertise in Pacific culture, and knowledge and understanding of the impact of domestic violence on Pacific communities.

13 Ministry of Justice *Family Court Review: Regulatory Impact Statement* (August 2012) at [11].

14 Department of Corrections *Community-based Domestic Violence Interventions: A Literature Review* (2012) at [67]. See also [5], “Assessments of Duluth-type and cognitive behavioural programmes” or programmes that combine the two approaches “show few significant ... differences in effectiveness between programme types. At best programmes appear to have a weak positive impact on recidivism rates.”

15 Ministry of Justice *Changes to Domestic Violence Programmes* (2014) at [1.2.2].

to comply with court directions to attend a programme punishable by imprisonment.¹⁶

Under the DVAA, the programmes retain the primary objective of stopping or preventing domestic violence.¹⁷ On making a protection order, the court must now direct respondents to undertake an assessment with a service provider and subsequently attend a mandatory non-violence programme.¹⁸ The purpose of the assessment is to ascertain the respondent’s motivation level and risk profile, and to determine the appropriate duration, content, delivery and style for the non-violence programme.¹⁹ The terms of attendance will be agreed upon and documented.²⁰ During the assessment, the views of the protected person can be taken into account in assessing risk and as an important source of information on the offending.²¹ The reforms mean that based on the assessment of risk and need, respondents can attend a mixture of individual and group module sessions, with family sessions scheduled if deemed safe and appropriate.²²

In terms of ascertaining and catering for the treatment needs of individuals, the changes signal a welcome improvement on the ‘one size fits all’ approach under the DVA and Regulations. The assessment, flexible nature of programmes and ability to tailor them has the potential to reflect movements in the health, mental health and education fields towards developing specific conceptual frameworks for each Pacific culture, rather than relying on generic Pacific frameworks and modes of delivery.²³ However, despite the reforms, at a fundamental level the non-violence programmes remain an inadequate measure to effectively address violence in Pacific communities.

16 DVAA, s 51Q(2). See generally DVAA, ss 51N–51Q.

17 DVA, s 5(1); DVAA, s 51A.

18 DVAA, ss 51D(1) and 51H.

19 Section 51A.

20 Section 51L.

21 Ministry of Justice *Changes*, above n 15, at [2.3.3(c)].

22 At [2.3.5].

23 The framework is intended to guide policymakers and assist with training providers who work with Pacific communities. For a cultural framework for addressing family violence in seven Pacific communities in New Zealand, see Pacific Advisory Group *Nga vaka o kāiga tapu: A Pacific Conceptual Framework to address family violence in New Zealand* (Ministry of Social Development, March 2012) at 2.

III SAME MAT, DIFFERENT TEXTURES: THE DIVERSITY OF PACIFIC PEOPLES

As noted above, ‘Pacific people’, in the sense of a homogenous ethnic group, do not exist. ‘Pacific’ is an umbrella category used to refer to diverse Pacific ethnic groups for policy making purposes. While there are commonalities between Pacific groups in New Zealand — shared ancestry, histories and origins, core values and traditions — each ethnic group has its own distinct, unique and cherished culture.²⁴ Hierarchies and sub-groups also exist within the ethnic groups, comprising for example, people born or raised in New Zealand, people born or raised overseas, and people who identify with multiple ethnicities.²⁵ People may also align themselves at different times along ethnic, geographic, church, family, age, gender, island-born/New Zealand-born or other lines.²⁶

IV PACIFIC PEOPLES AND DOMESTIC VIOLENCE

Although domestic violence has long been identified as a significant issue for Pacific people as both perpetrators and victims of family violence,²⁷ it is difficult to ascertain whether there are significant differences in rates of offending between ethnic groups, as statistics are aggregated under the umbrella ‘Pacific’ category. Although concerning, the statistics have not always matched concerns voiced by the Pacific community about high levels of familial violence. This suggests that underreporting is an issue, and that rates of violence may be far greater than statistics reflect.²⁸ Pacific people are vulnerable in the face of factors that may increase the likelihood of violence occurring. The highest rates of partner abuse “tend to be found among young families with small children

24 Colin Tukuitonga and Sitaleki A Finau “The health of Pacific peoples in New Zealand up to the early 1990’s” (1997) 4(2) *Pacific Health Dialog* 59 at 59. See also Ronji Tanielu and Alan Johnson *More Than Churches, Rugby & Festivals: a report on the state of Pasifika people in New Zealand* (Salvation Army Social Policy and Parliamentary Unit, 2013) at 7.

25 Tukuitonga and Finau, above n 24, at 60.

26 Melani Anae and others *Pasifika Education Research Guidelines: Report to the Ministry of Education* (Auckland Uniservices, 3 December 2001) at 7.

27 *Nga vaka o kāiga tapu*, above n 24, at 13.

28 Roine Lealaiauloto and Geoff Bridgman “Pacific Island Postnatal Distress” (1997) 4(2) *Mental Health Quarterly* 20. See also *Te Rito: New Zealand Family Violence Prevention Strategy* (Ministry of Social Development, February 2002); Talia Shadwell “Domestic violence within Pasifika community drops” (23 October 2015) Stuff <www.stuff.co.nz>; and *2014 New Zealand Crime and Safety Survey: Main Findings* (Ministry of Justice, 2015).

from low socio-economic backgrounds”.²⁹ New Zealand’s Pacific population is youthful³⁰ and Pacific people have the lowest median weekly income of all ethnic groups.³¹ Pacific families face a raft of other pressures that impact negatively on their wellbeing and may contribute to rates of domestic violence, such as low educational achievement, inadequate housing, poor health and high rates of substance abuse.³² Pacific women, mothers in particular, may face unique challenges that increase the likelihood of experiencing domestic violence,³³ and have been identified as less likely than other ethnic groups to report family violence or access support services.³⁴ Cultural attitudes towards violence also play a part, with some research suggesting that compared with non-Pacific groups, Pacific communities are more likely to tolerate violence or view it as being normal.³⁵

V A CRITIQUE OF THE NON-VIOLENCE PROGRAMMES: A PACIFIC PERSPECTIVE

A The Need to Address the Collective

The focus of the DVAA’s non-violence programmes is on treating the individual respondent. However, effective domestic violence interventions require a comprehensive understanding of the broader context in which domestic violence occurs. For Pacific peoples this will involve: taking into account the collective nature of Pacific cultures and the web of relationships that surrounds Pacific peoples; developing interventions that work at both an individual and familial level; and considering the respondent’s connections (or

29 Denise Lievore and Pat Mayhew *The scale and nature of family violence in New Zealand: A review and evaluation of knowledge* (Ministry of Social Development, April 2007) at 7.

30 *2013 Census QuickStats about culture and identity* (Stats NZ). See also *The Profile of Pacific Peoples in New Zealand* (Ministry of Social Development, September 2016) at 3.

31 Ronji Tanielu and Alan Johnson *This Is Home: an update on the state of Pasifika people in New Zealand* (Salvation Army Social Policy and Parliamentary Unit, May 2014) at 23.

32 Janis Paterson and others “Intimate Partner Violence Within a Cohort of Pacific Mothers Living in New Zealand” (2007) 22(6) *Journal of Interpersonal Violence* 698 at 700.

33 At 701.

34 ‘Ana Hau’alofa’ia Koloto and Sashi Sharma “The Needs of Pacific Women when they are Victims of Family Violence” (2005) 26 *Social Policy Journal of New Zealand* 84 at 90.

35 Wanzhen Gao and others “Pacific Island Families Study: Intimate Partner Violence and Postnatal Depression” (2010) 12 *J Immigrant Minority Health* 242 at 243. See also Lievore and Mayhew, above n 29, at 10 and Koloto and Sharma, above n 34, at 90.

lack thereof) with extended family, church and community.³⁶ Understanding these relationships is important because the family and community may be “directly and actively involved in dynamics of abuse” through directly or tacitly supporting it, or through intervening or providing a preventive function.³⁷

Approaches that focus on resolving problems at an individual level run counter to core Pacific values and lived experience as part of a wider collective, whether that collective is family-based, community-based, church-based or otherwise. A culturally appropriate approach that recognises the centrality of the collective would expand services and resources beyond a focus on the victim/perpetrator paradigm to include extended family, and other important groups. Being central to Pacific lives, these groups possess great power to influence behaviour and attitudes, and to reinforce the treatment and learning that may be undertaken on an individual basis in the non-violence programmes. In order to stop and prevent violence, shifts in patterns of human behaviour must occur. For Pacific people, this requires not just mandatory non-violence programmes for the respondent, but ideally, ongoing interventions and holistic reinforcement of the anti-violence messages within wider community groups.³⁸ Empowering communities to disrupt the patterns of violence on an ongoing basis could be a powerful weapon against violence, especially where victims may be reluctant to involve the Police or social services. Families and communities can protect the victim and challenge the perpetrator’s behaviour. Moreover, the centrality of the collective in Pacific cultures means that collective disapproval or sanction may carry significant weight for Pacific respondents — a deterrent factor that is not harnessed by programmes focused on the individual.

In the context of domestic violence, Pacific cultures and communities must not only be considered and understood in terms of their role in perpetrating or tolerating violence, but also in light of their potential as agents of change.³⁹

36 An example of this approach is the Ministry of Social Development funded ‘Pasefika Proud’ campaign against domestic violence in Pacific communities. The campaign is designed, delivered and led by Pacific peoples, and draws on the combined efforts of families, churches, communities and service providers to prevent and address violence.

37 Mimi Kim *Innovative Strategies to Address Domestic Violence in Asian and Pacific Islander Communities: Examining Themes, Models and Interventions* (Asian & Pacific Islander Institute On Domestic Violence, February 2010) at 4.

38 Such as in the Pasefika Proud campaign.

39 The Pasefika Proud campaign acknowledges that Pacific cultures are a strength that can be used positively to prevent violence within families. See also Kim, above n 37, at 26.

Employing an individualistic treatment framework (as is manifested in the non-violence programmes) alone will not reach Pacific respondents in the ways their communities can. Where cultural contexts, norms and values are a factor in the prevalence and patterns of abuse, they must also be part of the solution.

Developing effective interventions for Pacific peoples that draw on wider circles of connection is not without its challenges. This is especially because acculturation has an impact on domestic violence.⁴⁰ Migration and adaptation to the New Zealand way of life has brought changes to traditional Pacific family structures and relationships with loss of kinship ties and family support structures. The attenuation of these links may exacerbate women’s isolation and vulnerability to violence.⁴¹ Pacific communities now comprise recent and older migrants and several generations of New Zealand-born people. Intergenerational attitudinal differences, lack of communication and understanding, cultural differences and changes to traditional gender roles can cause tension in families and undermine traditional structures of authority and meaning.⁴² Some of these factors can be drawn out during individual assessments, with the respondent’s cultural identity and levels of connection to their communities forming a key part of the information ascertained.⁴³

B Addressing the Role of Culture in Relation to Domestic Violence

The role of culture in relation to gendered family violence must also be examined, with traditional attitudes around gender roles, often reinforced by religious beliefs, leading to tolerance of violent behavior in some communities. A clear understanding of traditional perspectives on gender roles, and whether they have any bearing on people’s attitudes towards domestic violence is imperative. In developing this understanding, a pan-Pacific approach is not appropriate. Each Pacific culture must be evaluated with regard to the traditional and contemporary status of women, the influence of religion and other factors, and how these factors influence understandings of, and attitudes towards, domestic

40 Janis and others, above n 32, at 700.

41 *Addressing Family Violence within Pacific Families and Communities: Programme of Action for Pacific Peoples* (Taskforce For Action On Violence Within Families, 2009) at 1.

42 At 17.

43 Identification and levels of connection with culture have been identified as impacting upon holistic wellbeing from a Pacific perspective. See for example, Sam Manuela and Chris G Sibley “The Pacific Identity and Wellbeing Scale – Revised: (PIWBS-R)” (2015) 21(1) *Cultural Diversity and Ethnic Minority Psychology* 146.

violence. Community education with culturally tailored content, developed and delivered by Pacific people, is one way to equip communities to combat domestic violence on an ongoing basis.⁴⁴

VI TOWARDS INCORPORATING PACIFIC FRAMEWORKS IN THE NON-VIOLENCE PROGRAMMES

The 2013 amendments to the DVA enhanced the scope for non-violence programmes to be individually tailored to respondents' needs. This might be perceived as a further step in the right direction for Pacific communities — after all, ensuring that programmes address respondents' unique needs is important. However, there is a fundamental cultural dissonance between the atomised, individualistic approach of the non-violence programs under the DVA, and the collective-focused interventions and policies that are being developed and delivered by Pacific providers, communities and churches. Pacific worldviews are grounded in a collective approach, girded by a complexity of relationships between people, their families and the community, and reflecting key values and practises around collectivity and reciprocity. This differs significantly from a Western worldview, where the focus on the self as an individual, rather than on the collective, is prioritised.⁴⁵ Evaluating respondents' needs on a purely individual basis without taking into account the Pacific relational worldview leaves the preventive aspects of relationships beyond the individual and nuclear family unaddressed. On a deeper level, doing so overlooks the very foundations of Pacific cultures in favour of a Western treatment model. It is not an easy task to reconcile the differing cultural frameworks, particularly where the relevant legislation reflects one perspective, but policy directions reflect another. However, it is imperative that these fundamental cultural differences are acknowledged and addressed in future legislation, so that there is a clear steer on the focus for research and policy. This will be important for finding long-term solutions to domestic violence against women in Pacific communities.

44 See, for an example of this type of initiative, the Kainga Tu'umalie programme run by Affirming Works. Kainga Tu'umalie is a faith-based programme aligned with the conceptual framework discussed in *Fofola e fala kae talanoa e kāinga: A Tongan Conceptual Framework for the prevention of and intervention in family violence in New Zealand – Fāmili lelei* (Ministry of Social Development, March 2012) at 9.

45 *Talking Therapies for Pasifika Peoples: Best and promising practice guide for mental health and addiction services* (Te Pou o te Whakaaro Nui, Auckland, 2010) at 14.

This commentary began with a saying: “*Oku hange ‘a e tangata, ha fala ’oku lālanga*: humankind is a mat being woven”. The expression captures the essence of connectedness and the collective experience of being that is central to most Pacific cultures. By itself, a strand of pandanus leaf has no purpose. It is only as part of something greater, the *fala*/mat, that the strand fulfils its potential. As a mat is woven, each strand supports and is simultaneously supported by other strands. Every individual strand is intrinsically important, but only as a part of the greater whole. Similarly, Pacific people cannot be viewed in isolation from their families, communities, and faith-based and other networks they belong to. These connections must be recognised and reflected in domestic violence interventions for Pacific people if the interventions are to work.