

In Confidence

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

Family Violence Legislation – A modern Act with a greater focus on victims

Proposal

- 1 This paper seeks approval to amend the Family and Whānau Violence Legislation Bill to provide for a greater focus on victims' needs and to improve the accessibility of the Domestic Violence Act.

Executive Summary

- 2 Between 2009-2015, 194 people were killed as a result of family violence and over half a million New Zealanders were directly affected by family violence each year. This violence has lasting impacts on victims, their families and communities, and wider society. Family violence is one of the largest drivers of violent crime. Young people who grow up in homes with family violence make up almost 80% of youth offenders¹. The trauma of family violence is intergenerational, with family violence being experienced during childhood as the largest indicator of a future perpetrator. With the right institutional and funding arrangements, we can disrupt this cycle of family violence.
- 3 The Family and Whānau Violence Legislation Bill (the Bill) is an important part of the legislative framework that supports the collective work to stop family violence. The Bill works in concert with operational initiatives, to provide for an integrated system response to family violence.
- 4 The Bill has enjoyed widespread support across the House and through its select committee stage. However, I have assessed the Bill against Government priorities, and consider that more can be done to keep victims safe and make the legislation work for the sector. I propose targeted improvements to the Bill to be made at the committee of the whole House stage. These include:
 - extending the duration limit of Police safety orders to provide victims of family violence more time to consider long-term safety arrangements;
 - modernising the Domestic Violence Act so that is accessible and easy to navigate;
 - amending and adding to the Bill's principles to target coercive and controlling behaviour, and patterns of behaviour;
 - specifying carer relationships in the definition of family relationship to signal that recipients of care are particularly vulnerable to family violence; and
 - specifying dowry abuse in the definition of family violence to raise awareness of the issue and clarifying to both victims and perpetrators that dowry abuse is a type of family violence.

¹ New Zealand Police. 2017. *Family Harm: A New Approach* at 12

Background

- 5 Family violence occurs at an alarming rate in New Zealand. Police investigated over 121,000 incidents of family violence in 2017 or about one every 4 minutes. Research shows that family violence is significantly under-reported, with only 24 per cent of family violence offences being reported to Police². Violence occurs in many forms and in many settings but affects everyone. Some groups are disproportionately affected, most notably women, people with disabilities, and Māori, Pasifika and ethnic populations.
- 6 Family violence can be physical, sexual, psychological, and emotional and often manifests as a combination of different forms of abuse. Family violence is not a series of isolated incidents that affect an individual. Rather, it is a pattern of abusive behaviours that can have multiple victims – both adults and children - and is often intergenerational.
- 7 The Bill was introduced to Parliament in March 2017 and is now awaiting second reading. The Bill sets out a legislative framework that provides tools to keep victims safe and stop perpetrators from using violence. The Bill is informed by the review of family violence legislation that was conducted by the Ministry of Justice across 2015. The review included consideration of the Law Commission’s report on strangulation, public consultation on the law and policy settings, and consideration of a growing literature and sector findings on family violence.
- 8 The Bill makes a number of key amendments:
- links Police Safety Orders (PSOs) to risk and needs assessments;
 - enables family violence offending to be flagged in court;
 - improves information sharing and introduces codes of practice to set standards for service delivery; and
 - creates three new family violence offences; strangulation, assault on a person in a family relationship, and coerced marriage or civil union.
- 9 In August 2017, the Justice and Electoral Committee reported back on the Bill with a range of changes to: better recognise people who may be vulnerable to family violence (e.g. older people and people with disabilities), provide mechanisms that are focused on children, and clarify the provisions to improve implementation of the legislation.

Comment

- 10 I have assessed the Bill against Government priorities and, in conjunction with the Parliamentary Under-Secretary to the Minister of Justice, Ms Logie, have identified several targeted improvements that can be made. I consider that more can be done to protect victims and make the legislation more usable for the wider social and justice sector. I propose a package of amendments that will build on the existing legislative framework within the Bill. I propose to make these changes to the Bill via Supplementary Order Paper (SOP) at the committee of the whole House stage.

² New Zealand Crime and Safety Survey: <https://www.justice.govt.nz/assets/Documents/Publications/NZCASS-201602-Main-Findings-Report-Updated.pdf>

A greater focus on victims

Police safety orders

- 11 PSOs are an interim order issued by Police at the scene of a family violence incident to diffuse the situation. The order requires the bound person to leave the premises and not to contact the people protected by the order. In 2017, over 15,400 PSOs were served. A Police officer can issue a PSO if they, on reasonable grounds, believe that the order is necessary for the safety of the victim and having regard to matters including:
 - whether family violence has occurred, and whether is it likely to occur again;
 - the welfare of any children; and
 - the hardship the order may cause.
- 12 PSOs are often used when there is not enough evidence to charge an individual. PSOs give Police a tool to address family violence by providing:
 - time to address the behaviour of the person subject to the PSO (the bound person) by removing them from the scene for up to five days; and
 - victims with time and space to seek support and consider any long-term safety arrangements (e.g. protection orders).
- 13 I propose that the maximum duration limit of a PSO is extended from five days to ten days. This will provide victims with more time under the protection of a PSO while they are determining what longer-term safety arrangements they need to put in place. Victims often have life commitments, such as their work and children, which can limit their availability to obtain the support they need during the duration of a PSO. Family violence can take a significant psychological toll on victims, which makes decisions within a short timeframe difficult. This can be compounded by the limited availability of services in rural areas or on public holidays.
- 14 There is a balance to be struck with PSOs as they limit the rights of the person subject to the order. Extending the maximum duration of PSOs will have implications for the bound person's right to freedom of movement and association. It also increases the risk of flow-on effects for the victim such as through the suspension of parenting arrangements and limited access to vehicles. However, I consider that a 10-day duration limit for PSOs is justified as it will provide more time for victims to secure support and limit the risks that victims are harmed again following a PSO expiring.
- 15 There was some unprompted support for an extension to the duration limit of PSOs among submitters on the family violence policy discussion document and the Bill. Many of these submitters referred to the 2014 evaluation of PSOs. The evaluation found that many victims of family violence and non-governmental organisation (NGO) staff consider that PSOs are not long enough for victims to access support due to their given circumstances. NGOs also highlighted that victims often do not have any contact with support services until after the PSO has expired. This places the victim at risk with no safety arrangements following the expiry of the PSO. I consider that this proposal will address these concerns by providing victims with additional time to consider long-term safety arrangements.

Victim-informed assessments and programmes

- 16 The Bill empowers the Family Court to direct a protection order respondent to an assessment of which 'prescribed services' will benefit them, and to attend the services. These services will be in addition to the existing non-violence programmes, and will be set out in regulation.
- 17 The Bill has a general principle that decision makers, such as assessors, take victims' views into consideration unless there is a good reason not to do so. In addition, the Ministry of Justice's contracts require appropriate programme providers to provide assessments that are informed by victims if it is safe to do so.
- 18 I propose the Bill be amended to explicitly require assessors and programme providers to seek the views of victims where it is safe and appropriate to do so. The inclusion of this provision will strengthen the requirement to ensure that victims' views are considered during the process where appropriate. The provision will provide flexibility for assessors and providers to apply their discretion to ensure victim safety is not compromised.

Recognising the nature of family violence in judicial and other decision-making

- 19 Patterns of behaviour and coercive and controlling behaviour are key aspects of the nature of family violence. It is important that these key aspects are taken into consideration by decision makers, such as the judiciary, when identifying and making decisions regarding family violence. Failing to take these behaviours into account can result in family violence not being properly recognised and may leave victims without adequate safety arrangements. There is evidence that the judiciary does not always take these behaviours into consideration, as was seen in the recent case where the Court of Appeal found the Family and High courts erred in recognising family violence.³
- 20 To address this, the Bill makes amendments to the definition of family violence in order to include more detail on the types of behaviours which form psychological abuse. These amendments, in conjunction with judicial education being provided as part of the reform of family violence legislation, will provide the judiciary with greater direction on what is considered family violence. However, I believe more can be done to target patterns of behaviour and coercive and controlling behaviour, and ensure that these aspects of family violence are considered during judicial decision-making.
- 21 I propose amending the principle relating to patterns of behaviour to add further detail about this aspect of family violence. The additional detail will clarify that individual behaviours may appear trivial in isolation, but have a cumulative impact. This will assist the judiciary with the identification of family violence and align with the definition of family violence in the Bill.
- 22 I also propose to include an additional principle in the Bill relating to coercion and control, to further ensure that the judiciary and others in the sector recognise this behaviour as family violence. The new principle will clarify that coercion and control is a factor in many family violence cases, especially intimate partner violence. This principle will align with the definition of family violence.

³ *SN v MN* [2017] NZCA 289.

Signalling that recipients of care are particularly vulnerable to family violence

- 23 The definition of family relationship determines the scope for the types of relationships covered by the Bill. The definition includes relationships between:
- spouses or partners;
 - family members;
 - those who ordinarily share a household; and
 - those who have a close personal relationship with the other person.
- 24 There are caveats to the last two types of relationships to clarify that simply working together or living together is not enough for the relationship to be a family relationship. These caveats can create some confusion for those in the sector as to whether carer/recipient of care relationships are included. Some of these relationships are included when they are deemed to meet the close personal relationship test, which refers to the nature, intensity and duration of the relationship.
- 25 I propose the Bill be amended to explicitly refer to the relationship between carers and recipients of care in the definition of family relationship. This will clarify that these relationships can be considered to be a close personal relationship. Both carers and recipients of care can be particularly vulnerable and at risk of family violence when there is a relationship of dependence. Recipients of care are often isolated and can face mobility constraints, isolation, and language or communication barriers that make them vulnerable to abuse. Carers can also be vulnerable, especially informal carers who rely on the relationship for accommodation and work.
- 26 The explicit reference to violence in a carer relationship will assist with misperceptions that such behaviour is not family violence. It will also recognise that violence and abuse between a carer and recipient of care, like other forms of family violence, is often not an isolated event but a pattern of abusive behaviour.

Specifying dowry abuse as an example of family violence

- 27 Dowry abuse is considered family violence under the Bill. Dowry abuse is abuse for the purpose of procuring gifts, money, goods, property or other benefits from one party to another in connection with a marriage. The definition of family violence in the Bill covers dowry abuse as a form of family violence behaviour, irrespective of purpose or motivation. However, awareness of this issue is low and those affected by dowry abuse are unsure whether it is a form of family violence.
- 28 I propose the Bill be amended to explicitly specify dowry abuse in the definition of family violence. This would provide the sector and the general public with a clear steer that dowry abuse is a form of family violence and will be treated as such. The amendment would contribute to the Bill's aim of shifting public understanding on family violence. It will also raise awareness of dowry abuse, which is not well understood by the public.

A modern Family Violence Act for New Zealand

Title of the Act

- 29 I propose to amend the title of the Bill to the Family Violence Bill. This will also amend the title of the Domestic Violence Act to the Family Violence Act. The Bill currently amends the title of the Domestic Violence Act to the Family and Whānau Violence Act.

- 30 Most submitters who commented on this amendment at select committee did not support the change due to the negative connotations of identifying whānau in the title. The Bill provides a general framework within which operational approaches based on tikanga can be delivered. Including the word whānau in the title suggests the Bill prescribes for tikanga based approaches, which is misleading.
- 31 The title 'Family Violence Act' reflects our modern understanding that violence that can be present in a wide range of family relationships and encourages a shift away from the traditional understanding of domestic violence which is limited to intimate partner violence.

Modernised structure and presentation

- 32 I propose to repeal and replace the Domestic Violence Act 1995 with a modernised version of the Act. Modernisation will include ensuring provisions are in a logical order, removing previously repealed provisions, and making paragraph formats easier to read. The effect of the provisions will not be changed. Modernising the Act will make it easier to navigate and more accessible for people. This is particularly important for legislation like the Domestic Violence Act as it sets out the framework for the wider social and justice sector.
- 33 A repeal and replacement of the Domestic Violence Act will result in a lengthy SOP. Due to the length of the SOP, there may be a misconception that substantial policy changes were made. My office will manage this risk by communicating with other members in Parliament and include accompanying documents to explain minor changes before the SOP is tabled.

Technical changes

Jurisdiction of PSO breaches

- 34 I propose to clarify the jurisdiction in which breaches of PSOs are heard. The Domestic Violence Act is unclear as to whether breaches of PSOs are considered by the civil or criminal court. In practice, breaches of PSOs are heard in the criminal court. The District Court Judges' submission at select committee sought clarity on which court breaches should be heard in. This was changed to the civil court at select committee. However, this would impose significant cost due to ICT changes and have no demonstrable benefit for the justice system. For this reason, I propose to amend the Bill to provide that breaches of PSOs are heard in the criminal court.

Third party applications for protection orders

- 35 The Domestic Violence Act allows third parties to make applications for protection orders on behalf of victims who are unable to do so due to physical incapacity or fear. These third parties must seek the Court's permission to apply on a case-by-case basis. The Bill allows non-government organisations to be approved by the Minister of Justice to make third party applications rather than seeking approval from the Court for each case.
- 36 I propose that the authority to approve organisations to make third party application orders be transferred to the Secretary for Justice. This would align the approval process with government procurement practices so that the Chief Executive of the relevant government department is responsible for this decision-making. This change requires a minor amendment to the Bill.

Non-legislative work to address family violence

- 37 The Bill strengthens the legislative framework to address family violence and will act as a key driver of government responsibility in this area. However, legislation alone cannot address the issue. Family violence is a complex issue with victim and perpetrator needs varying based on the given circumstances. For this reason, supporting individuals impacted by family violence requires a coordinated approach from governmental and non-governmental agencies.
- 38 On 4 April 2018, Cabinet agreed to a dedicated agent within central government, subject to Budget approval, to lead a targeted approach to family and sexual violence in New Zealand [CAB-18-MIN-0146].
- 39 This dedicated agent will use, among other levers, the framework provided by the Bill to lead non-legislative work to address family violence. Initiatives already underway include the Integrated Safety Response (ISR) pilots, development of the family and sexual violence workforce's capability, improvements in service contracts, and leadership for primary prevention.
- 40 The Parliamentary Under-Secretary to the Minister of Justice, Ms Logie, is overseeing implementation of the legislation, to ensure the full benefits of the legislation can be realised and support the work of the dedicated agency. The Ministry of Justice will also work with the dedicated agent to ensure that the Bill is understood and used effectively by the wider justice, social and non-government sectors. Ms Logie will also be considering further operational initiatives to address family violence.

Consultation

- 41 The following government agencies and organisations have been consulted on this paper: New Zealand Police, Department of Corrections, Crown Law Office, Te Puni Kōkiri, Parliamentary Counsel Office, Ministry of Health, Ministry of Education, Ministry for Pacific Peoples, Department of Internal Affairs, Oranga Tamariki, The Treasury, Ministry for Women, Ministry of Social Development, and the Office for Disability Issues. The Department of Prime Minister and Cabinet (Policy Advisory Group) were informed of this paper.
- 42 I have consulted with the New Zealand First and Green parties.

Financial Implications

- 43 Any fiscal costs resulting from proposals in this paper will be met within baselines or funding that has already been provided.

Human Rights

- 44 The change to the duration of Police Safety Orders will have implications for the rights and freedoms provided for in the New Zealand Bill of Rights Act 1990 (NZBORA). The proposal will impact upon individuals' freedom of expression (s 14), freedom of association (s 17) and freedom of movement (s 18).
- 45 Limitations on rights and freedoms may still be consistent with NZBORA if they can be considered reasonable limitations that are demonstrably justified under s 5 of that Act.

- 46 I consider that the objective of this policy – to improve victim safety by providing family violence victims with more time to consider and obtain longer term safety arrangements - constitutes a sufficiently important objective to justify some limitation on these rights and freedoms.
- 47 The human rights implications of PSOs of up to five days have previously been considered when they were introduced. At the time, it was considered a justifiable limitation, however specific reference was made to the duration of the order in the justification. Crown Law Office will consider the amendments and report to the Attorney General on its consistency with the New Zealand Bill of Rights Act 1990 once the amendment is drafted. The Attorney-General can report any issues to the House under Standing Order 372(1).

Legislative Implications

- 48 The Bill is a category 3 (to be passed if possible in the year) on the 2018 Legislation Programme.
- 49 A SOP will be drafted giving effect to the proposals in this paper. The SOP will be tabled at the committee of the whole House stage. It is likely that this will be in the third quarter of 2018.

Regulatory Impact Analysis

- 50 A regulatory impact statement has been prepared by the Ministry of Justice in relation to the extension of the duration of PSOs. Ministry of Justice RIA Panel has reviewed the Regulatory Impact Statement “Extending the Duration Limit of Police Safety Orders” and considers that it meets the Quality Assurance criteria.
- 51 The RIS sets out the options and assesses each against clearly specified criteria. The RIS clearly identifies the constraints on analysis that have limited the ability to consider non-legislative options and to consult those impacted by PSOs (victims of family violence and bound persons). This is noted as the result of limited time to prepare the assessment (legislation is already before Parliament). As these limitations are clearly identified, the Quality Assurance Panel does not consider that it significantly constrains the ability of Cabinet to rely on the RIS for decision making.
- 52 The Regulatory Quality Team at the Treasury has determined that a Regulatory Impact Analysis is not required for the other proposals in this paper as they are minor and technical changes suitable for inclusion in a Statutes Amendment Bill or have no or only minor impacts on businesses, individuals or not-for-profit entities.

Gender Implications

- 53 Family and sexual violence are gendered in terms of victimisation, perpetration and impacts of violence. Women are nearly twice as likely as men to suffer partner abuse in their lifetime, and experience more cumulative harm from family violence. Men are more likely to perpetrate sexual violence, serious assaults on adults and children, and to be arrested for family violence.
- 54 Due to this, any policy proposals to address family violence are likely to disproportionately affect certain genders. However, the proposals in this paper will have a positive impact in addressing family violence no matter what the gender of the victim or perpetrator.

Disability Perspective

55 One quarter of New Zealanders, and one third of Māori, report having a disability. Disabled people, particularly disabled women and children, have a higher risk of experiencing family violence and sexual violence than people without a disability. Accordingly, the proposals in this paper, and in the Bill, will have a positive impact for individuals with disabilities. Changes were also made to the Bill at select committee to better recognise the vulnerability of people with disabilities.

Impact on Māori

56 Victims and perpetrators of family violence are disproportionately Māori. Any policy proposals that address family violence will likely disproportionately affect Māori. The Bill acknowledges the disproportionate impact on Māori by including the explicit provision for tikanga based services to address family violence.

Publicity

57 Publicity will be managed by my office. I intend to make public statements about these changes following the tabling of the Supplementary Order Paper. I also intend to proactively release this Cabinet paper at the time of the SOP being tabled.

Recommendations

The Minister of Justice recommends that the Committee:

1. Note that the Family and Whānau Violence Legislation Bill is awaiting second reading and is a category 3 (to be passed in the year if possible) on the 2018 Legislation Programme;
2. Agree to amend the Family and Whānau Violence Legislation Bill by:
 - 2.1. extending the maximum duration limit of Police safety orders from 5 days to 10 days;
 - 2.2. including the requirement for family violence assessors and providers to take into account victim's views when it is safe and appropriate to do so;
 - 2.3. amending the principle relating to patterns of behaviour to clarify that individual behaviours may appear trivial in isolation, but have a cumulative impact;
 - 2.4. including an additional principle in the Bill relating to coercion and control, to further ensure that the judiciary recognise this behaviour as family violence;
 - 2.5. including carer/recipient of care relationships as an example in the definition of family relationship;
 - 2.6. including dowry abuse as an example of family violence to raise awareness and shift public understanding;
 - 2.7. modernising the Domestic Violence Act by updating the structure and language in order to make the Act more accessible;
 - 2.8. amending the jurisdiction in which breaches of Police Safety Orders are heard from the civil court to the criminal court; and

- 2.9. transferring the decision-making process for approved third party organisations from the Minister of Justice to the Secretary for Justice;
3. Note that the title of the Family and Whānau Violence Legislation Bill will be amended to the Family Violence Bill, which will then amend the title of the Domestic Violence Act 1995 to the Family Violence Act;
 4. Note that this legislation alone cannot address family violence, and that the system changes required to transform responses to family violence will be developed through the wider work on family violence [CAB-18-MIN-0146];
 5. Note that Parliamentary Under-Secretary to the Minister of Justice, Ms Logie, is overseeing implementation of the legislation to ensure it drives and supports the wider system changes required;
 6. Invite the Minister of Justice to issue drafting instructions in relation to the proposals in this paper for inclusion in a Supplementary Order Paper;
 7. Authorise the Minister of Justice to table a Supplementary Order Paper for the committee of the whole House amending the Family and Whānau Violence Legislation Bill in accordance with the proposals in this paper;
 8. Authorise the Minister of Justice to make any minor or technical decisions, in consultation with other Ministers as appropriate, relating to the drafting of a Supplementary Order Paper consistent with the proposals in this paper;
 9. Agree to proactively publish this Cabinet paper on the Ministry of Justice's website following the tabling of the Supplementary Order Paper.

Authorised for lodgement

Hon Andrew Little

Minister of Justice