

Budget sensitive

In confidence

Office of the Minister of Justice

Chair

Cabinet Social Policy Committee

REFORM OF FAMILY VIOLENCE LAW

Paper Two: Family violence civil law

Proposal

1. This paper is the second of three papers seeking Cabinet agreement to reforms to the law applying to family violence, following the review of family violence legislation. It seeks agreement to changes to the civil law relating to family violence, in particular the Domestic Violence Act 1995 (DVA) and the Care of Children Act 2004 (CoCA).

Executive summary

2. The review of family violence legislation confirmed there are barriers to the effectiveness of the tools and powers in the civil law. In particular, protection orders are considered internationally to be one of the most effective legal remedies available to victims of family violence, but in New Zealand they are not being used to their greatest effect.
3. Key findings of the review are:
 - victims can find the process of applying for a protection order costly and complex
 - Police safety orders and protection orders are not always seen as effective at stopping the perpetrator's use of violence
 - more can be done to ensure children's interests are considered and parenting arrangements are safe for adult victims and their children, and
 - opportunities for government agencies to intervene to stop perpetrators using violence are not maximised, particularly ensuring services are made available at crucial intervention points.
4. The changes proposed in this paper represent a significant shift in the civil response to family violence. They will drive improvements to the sector, build confidence in the responses to family violence and support behaviour change throughout the justice system.

5. In addition to these proposed legislative changes, I have secured funding from the Justice Sector Fund to test two new operational initiatives with a view to determining their efficacy before establishing them on a larger scale: a trial of non-government organisation (NGO) assistance with protection order applications, and a trial of a service that will supervise hand-over of children having contact with a parent.

Improving the uptake of protection orders

Review finding

The complexity of the application process and the cost of legal advice can be barriers to applying for a protection order.

I recommend reducing barriers to applying for protection orders, including cost and complexity, including on behalf of people who are particularly vulnerable by:

- enabling more user-friendly forms by empowering the Secretary for Justice to issue forms for applications under the DVA
- trialling a funded scheme for approved non-government organisations (NGOs) to assist family violence victims with protection order applications
- establishing a process for NGOs to be approved by the Minister of Justice to apply for protection orders on behalf of people who cannot apply for themselves due to physical incapacity or fear
- making it easier for a young person to apply for a protection order without a representative, if the court considers it appropriate
- improving children and young people's access to safety programmes
- specifying that the court may impose special conditions to address the use of family violence against older people and people with disabilities.

6. The following measures are designed to increase the uptake of protection orders, ultimately providing more victims with support and assisting perpetrators of family violence to address their violent behaviour.

Simplified, customer-focused application forms

7. The review identified the complexity of the application process and the cost of legal advice as potential barriers to applying for a protection order. I intend to empower the Secretary for Justice to issue user friendly forms related to applications under the DVA. This will enable changes to be made to reflect good practice and user feedback in a timely way.
8. In particular, I anticipate the forms will prompt the applicant to note if the respondent is a member of the New Zealand Defence Force (including Territorial Forces) or the New Zealand Police. Police and NZ Defence staff may have access to firearms in their daily work, without the requirement to hold a firearms licence. It is therefore important that Police is made aware of any protection order made against an employee of Police or NZ Defence Force.

Trial of funded support for applications

9. Responses to the discussion document were strongly of the view that cost should not be a barrier to a victim applying for a protection order. Protection order applicants are currently encouraged to seek legal advice to assist with the process. Legal aid is available to those who meet the income and disposable capital thresholds.
10. Cabinet approved increasing eligibility for civil legal aid as part of Budget 2016. An additional 2,700 people will be eligible to receive civil and family legal aid each year over the next four years. This change will improve access to protection orders.
11. In addition, I propose to trial a non-legal service, through which family violence victims can obtain funded support and assistance from a specialist family violence NGO to apply for a protection order. While the NGO provider would not be qualified or expected to provide legal advice, they may actively assist victims to navigate the legal process and may provide practical support in court, for example by explaining proceedings.
12. Further, a specialist family violence NGO may be well placed to assess risk and to liaise with agencies to ensure that consideration is given to the broad range of services that a victim may require. I am particularly interested in testing this aspect of the proposal, as many victims find it difficult to access the assistance that they need.
13. I have secured funding from the Justice Sector Fund of ^{Section} 9(2)(b)(ii) to trial this initiative in two locations for two years. The trial will assist approximately 1,000 people to apply for a protection order, of which approximately 220 applicants will progress to a defended hearing. The service will be optional. People may choose to pay for legal advice and representation themselves, or apply for legal aid rather than avail themselves of this initiative (if available in their location). The trial will be evaluated and, subject to its effectiveness, I will assess the potential to extend service coverage.

Simplified applications on behalf of particularly vulnerable people

14. Some victims may be particularly vulnerable and limited in their capacity to seek a protection order or other assistance. The DVA provides for an individual to apply for a protection order on behalf of a person in exceptional circumstances. However, these provisions are rarely used, with fewer than 10 applications a year. The limited use of this provision may, in part, be attributed to the process, which requires an individual to first seek the approval of the court or registrar, and the lack of clarity about who can apply.
15. I propose providing for the Minister of Justice to approve providers, such as family violence specialists or iwi organisations, to make applications on behalf of these most vulnerable people. This will encourage applications to be made in appropriate cases while ensuring oversight of the third party's expertise.
16. Provision for any other person to apply to the court for approval to apply for a protection order on behalf of another person would remain, with decisions being made on a case-by-case basis.

17. The legislation currently allows for third party applications for a protection order to be made without the consent of the victim. However, it also provides safeguards: reasonable efforts must have been made to ascertain the person's views; and the application must be made in the person's best interests. If a victim does object, the court must be satisfied that the objection is not freely made before proceeding with the application. I do not propose to change these important protections of individuals' autonomy.
18. However, I propose, in cases where a third party is applying on behalf of someone who lacks mental capacity (s 11 DVA), the third party applicant be required to make efforts to seek the protected person's views. This change will add an additional safeguard for these particularly vulnerable people.
19. My officials will work with the Parliamentary Counsel Office to ensure appropriate alignment between these protections for vulnerable people who lack capacity due to mental impairment (s 11 DVA) and people who are unable or unwilling to make an application due to physical incapacity or fear of harm (s 12 DVA). This may include alignment with relevant parts of the Family Courts Rules 2002.

Provide children and young people with better access to safety programmes

20. Children and young people covered by a protection order are currently provided with the opportunity to attend an age-appropriate safety programme to help them to deal with the trauma caused by, and the consequences of, family violence. The uptake of these programmes is poor. This may, in part, be a result of children and young people protected by a protection order not being aware of the existence of the programmes, together with their reliance on the adult applicant for a protection order requesting the programmes on their behalf.
21. I propose amending the legislation to enable children and young people protected under a protection order to request a safety programme on their own behalf. The opportunity to attend a programme will be offered directly to children and young people via the court, and information also made available on an appropriate website(s).

Improved access to protection orders for young people

22. Young people aged 16 years and over may apply for a protection order. However, young people under 16 years may only apply for a protection order through a representative. I am concerned that this requirement may compromise the safety of some young people, including those being abused by a partner. I seek to simplify access to protection orders for young people under 16 years by making the provision consistent with the Family Courts Rules 2002 for this age group. This means that a minor under the age of 16 years may make an application without a representative if the Court is satisfied he or she is capable of participating in proceedings.
23. Further work is required to clarify the interface between the justice, youth justice and care and protection systems to ensure that the interests and needs of children and young people who experience family violence are responded to appropriately. The modernisation of Child, Youth and Family provides an opportunity to develop appropriate responses for children and young people.

Section 9(2)(f)(iv)

Responding to young people who use violence against family members

25. No one under 17 years old can be a respondent to a protection order (that is, have a protection order taken out against them). This limits the opportunity to intervene early and to reduce the risk of behaviours continuing. Consequently, the criminal law is the only legal avenue available to the families of violent young people.
26. While it is difficult to estimate the number of young people who fall into this category of offenders, I consider there is merit in taking opportunities to intervene early.

Section 9(2)(f)(iv)

Special conditions to address vulnerabilities of older people and people with disabilities

27. People with disabilities and older people may be especially vulnerable to family violence, particularly if the perpetrator is also a primary caregiver. For example, a perpetrator can limit access to disability aids, threaten removal to residential accommodation, or control the victim's means of communication. Older people may face similar vulnerabilities; psychological and financial abuse are prevalent forms of abuse against older people.
28. The DVA currently allows for the court to impose special conditions on protection orders to address particular vulnerabilities and protect the person from further violence. The relevant section (s 27) makes specific reference to access to a child, and contact with victims, as two areas that may be considered. I propose to broaden these considerations to add specific reference to the vulnerabilities of older people and people with disabilities, prompting the court to consider relevant factors when issuing a protection order. Examples of conditions that might be imposed may include prohibiting access to bank accounts or other assets, and setting out terms of visits by the respondent, including the ability to prohibit visits.

Making protection orders more effective

Review finding

Protection orders are not always seen as effective for stopping the use of violence.

I recommend enhancing confidence in the effectiveness of orders through a focus on preventing breaches and the development of more proactive service responses by:

- empowering the Family Court to direct respondents to attend a wider range of services
- empowering the Family Court to respond to service providers' notifications of safety concerns or a respondent's failure to engage with the programme
- enabling a coordinated service response when a protection order is made by:
 - providing Police with more information about the violence that led to the protection order
 - clarifying Police may share information about the order with other agencies, as appropriate, subject to the Privacy Act and the proposed new bespoke privacy provision
 - enabling programme providers to share, with other agencies, information that is relevant to assessing and managing risk
- clarifying the circumstances in which the protected person may consent to contact, and the consequences of that consent
- specifying the criteria the court must consider when deciding whether to discharge a protection order (including a temporary order).

29. I am concerned that protection orders are not being used to their greatest effect. I want to ensure that every opportunity is taken to hold perpetrators to account for their violence and to change their behaviour. The following proposals focus on maximising the opportunities that we have within the justice system to facilitate the delivery of targeted service responses to perpetrators, while maximising the safety of the wider family/whānau. I also seek to clarify the circumstances surrounding the contact provisions of protection orders, which currently cause some confusion.

Empowering courts, in future, to direct respondents to a wider range of services

30. When a court makes a protection order, it must direct the respondent to undertake an assessment and attend a non-violence programme, funded by the Ministry of Justice. Currently, the court has no ability to direct the respondent to attend services other than a non-violence programme. Further, regardless of the outcome, respondents cannot be required to attend a non-violence programme more than once.
31. In the future, I would like to see protection orders linked to a wider range of services on the basis of a comprehensive risk and needs assessment, based on the findings of the Ministerial Group on Family Violence and Sexual Violence (Ministerial Group) work on perpetrator interventions (led by Corrections).
32. I seek agreement to build on the existing approach to protection orders, in which all respondents are directed by the court to participate in a face-to-face personal assessment. Following the assessment, the respondent would be required to engage with services designed to address their assessed level of need and risk, such as, welfare, support, education and justice services.

33. I propose the introduction of two categories of services:
- 33.1. standard services, which any respondent may be directed to attend without needing further court approval. These could include, for example, attendance at a non-violence programme and/or other services such as anger management programmes, parenting programmes or relationship counselling, and
 - 33.2. intensive services, which may be considered to infringe on a respondent's rights. These services could include, for example, more intensive or longer programmes. The nature of these services means that a degree of judicial oversight is recommended. Respondents assessed as requiring services in the 'intensive' category would be referred back to the court for the necessary directions to be made.
34. To ensure that legislation is not out of step with the reality of service availability, I propose that the legislation be drafted so that it:
- 34.1. preserves the current requirement to attend non-violence programmes, and
 - 34.2. enables the court to direct a respondent to additional services listed in schedules to the Act, differentiating between those that can be directed following assessment, and those that need to be referred back to court. The schedules would be updated by Order in Council, ensuring that they reflect service availability.
35. Before services are listed in the schedules, there would be consideration of costs and benefits, availability and consumer acceptability of services, and Cabinet agreement.
36. The successful implementation of this proposal is dependent on the availability of appropriate and effective services, delivered by the social sector. I am aware that there are currently significant service gaps throughout New Zealand. Work to identify an effective service mix for victims and perpetrators is being undertaken for the Ministerial Group and will report back to us later this year.
37. Whilst acknowledging that it will take some time for services to develop, I consider it imperative to ready the legislation to support an effective approach to working with perpetrators to stop violence.

Empowering the court to respond to changed circumstances and safety concerns

38. I propose clarifying the courts' powers to respond to changes in circumstances or a service provider's concerns about the safety of a protected person.
39. Providers of court-directed non-violence programmes must notify the court if a respondent to a protection order fails to attend an assessment or breaches the terms of programme attendance. The court may then call the respondent before the court and confirm, vary or discharge the direction to attend the programme, or change the terms of attendance.

40. The court's ability to intervene at other times to ensure a protected person's safety or a respondent's accountability is limited. I therefore propose extending these existing powers to also include situations when a service provider advises the court that:
 - 40.1. it is no longer appropriate or practicable for the respondent to attend a programme
 - 40.2. a respondent is not participating fully in the programme
 - 40.3. the provider has safety concerns for the protected person, or
 - 40.4. when filing a report at the conclusion of a programme the provider advises that a respondent has not achieved the objectives of the programme or that there are safety concerns for the protected person.
41. Further, I recommend providing judges with additional powers in all the above circumstances to:
 - 41.1. admonish a respondent, or
 - 41.2. direct a respondent to participate in a further, or different, assessment and programme.
42. This proposal is not intended to affect the Police power to arrest and prosecute for failure to attend a programme.
43. I also propose to amend the DVA to enable a programme provider, when notifying the court that a respondent has breached a direction to undertake an assessment or attend a programme, to also advise the court that it is no longer appropriate or practicable for the provider to continue to work with a respondent. A provider must notify the court of any breach of the court's direction to undertake an assessment or attend a programme. However, unlike s51M (failure to fully participate in the programme) a provider cannot also advise the court that he or she considers it is no longer appropriate or practicable for them to provide the programme.

Information sharing to support coordinated service responses

44. I propose to reduce legislative barriers to appropriate information sharing that will facilitate better coordinated service responses by enabling:
 - 44.1. Police and other agencies to be notified about the issue of a protection order and appropriate background information; and
 - 44.2. programme providers to share information that is relevant to assessing and managing risk.
45. These proposals are consistent with the Ministerial Group's direction to improve information sharing across the family violence sector in order to better inform effective risk assessment and management.

46. I propose that when Police are provided with a copy of a protection order, they are also given information about the risk factors related to the order. This information will give Police a better understanding of the circumstances in which the protection order is being made and enable them to adjust their response to the level of risk. The information provided to Police would focus on risk factors that relate to the order, and would not include sharing the victim's affidavit. The amendment would also clarify that Police may share information about the order with other agencies, as appropriate, to inform multi-agency risk assessment and service responses.
47. Providers delivering programmes under the DVA need the flexibility to collaborate and share information with other social service providers and government agencies. Current practice is inconsistent with the shift towards better informed decision-making and more effective responses. For example, non-violence programme providers are expressly prohibited from disclosing any information received about a respondent's risk factors, subject to a few narrow exceptions. These include where disclosure is necessary to prevent or lessen a serious threat to an individual's safety. However, this is a high threshold to meet and discourages information sharing. Sometimes small pieces of information might help form a complete picture and identify patterns of harm or escalating risk.
48. I therefore propose to encourage programme providers to adopt a more collaborative approach to sharing information that is relevant to managing and assessing risk. An amendment to the existing confidentiality provision in the DVA to enable (but not require) programme providers to share relevant information with other social service providers and government agencies in these circumstances will support this aim.

Clarification of a protected person's ability to consent to contact

49. A protection order prohibits the respondent from contacting the protected person unless the parties are living together, or the protected person consents to the respondent entering or remaining on any property that they occupy. The law intends that a protected person can consent to contact with a respondent, and may withdraw that consent at will.
50. These provisions, as currently drafted, may be difficult for parties to understand and for Police to enforce, particularly where consent is given and later withdrawn (e.g. where text contact is initiated by a protected person). It is also unclear whether a protected person may consent to the respondent entering property in which they (the protected person) have no legal interest, such as a restaurant or park.
51. I propose clarifying that the law is intended to allow the protected person:
 - 51.1. to consent to ad hoc contact, such as inviting the respondent to visit the home or attend an event, whether or not the protected person has a legal interest in the property (so long as contact is not inconsistent with an order for supervised contact in relation to a child), and
 - 51.2. at any time to expressly withdraw that consent, at which point the respondent must leave the property or cease contact.

52. To further clarify the consent provision, I also propose:
- 52.1. ensuring that harassing behaviours, such as hindering access to a workplace, loitering or accosting a protected person, are always prohibited, including when the protected person consents to live with the respondent
 - 52.2. adding attendance at a court conference or hearing as an exception to the non-contact provisions, to allow the respondent to lawfully attend a conference or hearing where the protected person is present, and
 - 52.3. requiring the Police to be provided with a copy of any interim care and contact order or any parenting order relating to the parties to the protection order, so that Police can more easily assess whether contact is consistent with those orders.

Safer discharge of protection orders

53. An applicant or a respondent may apply for a protection order to be discharged. About 650 applications to discharge a protection order are made each year, of which around 450 (70 percent) are granted.
54. The DVA does not provide criteria for considering the discharge application. However, case law provides that the court must be satisfied that the order is no longer necessary for the protection of the applicant or a child of the family. The factors to be considered include (but are not limited to):¹
- 54.1. whether the respondent has achieved the objectives of a non-violence programme, or is taking steps to change their abusive behaviour
 - 54.2. specific features of the violence eg, its nature and seriousness, its recency and/or the frequency at which the violence occurred, or the likelihood of future violence occurring, and
 - 54.3. the views of the applicant.
55. Judges are already making decisions in accordance with this case law. However, I propose enacting the criteria listed above, requiring the court to consider these factors when determining whether to discharge a protection order. This change will help to ensure greater consistency in decision-making and protect victims' and children's interests.

¹ *SPPRS v PLS* [2012] NZFC 6555, citing *Surrey v Surrey* [2010] 2 NZLR 581, [2009] 27 FRNZ 968, [2010] NZFLR 1 (CA).

Clarifying the intent and use of property orders

Review finding

Property orders are not being used to their full advantage to reduce homelessness and disruption for victims of family violence.

I recommend enhancing the use and effectiveness of property orders by:

- clarifying an occupation order may be issued if it is necessary for the reasonable accommodation and stability needs of the applicant and any children
- clarifying an occupation, tenancy or ancillary furniture order can only be made if a protection order has been, or is being, made
- clarifying a failure to leave a property in contravention of an occupation order is to be treated as breach of the protection order
- clarifying that preventing the applicant from retrieving furniture that is subject to a furniture order is a breach of the protection order.

56. Finding suitable alternative housing can be an impediment to leaving a violent relationship. Victims who do leave home to escape violence may lose employment and other supports. Children risk disruption to their education and connections with friends and extracurricular activities. The cost of establishing and furnishing a new home can be high.
57. Currently, victims of family violence can apply for a property order that may provide them with exclusive personal occupation of a property (an 'occupation order'); allow them to become the sole tenant of a property (a 'tenancy order'); and grant them possession of the household goods in the property (an 'ancillary furniture order'). Victims may also apply for a 'furniture order' which allows them to collect their belongings and furniture in order to establish a home elsewhere.
58. An occupation order may be made if necessary for the protection of the applicant, or in the best interests of a child. An order may be made without notice if the respondent has physically or sexually abused the applicant or a child, and delay might expose them to further violence.
59. Property orders are not often utilised. 574 property orders were applied for in 2014, and 184 were granted. The following proposals are designed to increase the effectiveness of property orders by clarifying their intent, ensuring they are better aligned with protection orders and Police can enforce them.
60. The current threshold for a property order (necessary for the protection of the applicant) has been interpreted as meaning necessary for protection from violence, rather than protection from the risk of homelessness and disruption. I consider this approach to be inconsistent with the policy intent. Further, the enforcement mechanism for an occupation order is complex, requiring the protected person to seek another order from the District Court when an occupation order is breached.

Purpose of a property order is to alleviate homelessness for victims

61. I propose clarifying that the purpose of a property order is to alleviate the risk of homelessness and to allow continuity in childcare, education, training and employment for protected persons and children who live with them. To achieve this, I seek to amend the legislation to make it clear that:
- 61.1. an occupation or tenancy order may be issued if necessary for the temporary accommodation and stability needs of the people protected by the protection order including, in particular, children's access to education
- 61.2. it is an offence to:
- fail to leave a property that is subject to an occupation order (breach of the protection order), and
 - prevent the applicant from retrieving furniture that is subject to a furniture order (breach of the protection order).

Property orders may only be used if a protection order is in place

62. I recommend clarifying that a property order can only be made if a protection order is made, or is already in force. This clarification will ensure that decisions about the applicant's need for protection are appropriately separated from consideration of his or her needs for accommodation and stability.
63. In making these recommendations, I am aware of the potential to contribute to demand for emergency accommodation, as respondents to protection orders may have difficulty finding alternative accommodation. I am also aware that accommodation difficulties may raise the risk of breaches of protection orders. However, I am satisfied that the interests of victims must come first. The proposals are focused on temporary requirements.
64. I am aware that the Ministry of Social Development is implementing an increase in emergency housing. Respondents to property orders may be eligible for this service.
65. I also note that this proposal will assist people with a requirement for home modifications (eg, older people and people with disabilities) to stay in the modified property. This group of people otherwise have limited access to suitable alternative accommodation.

Improving the effectiveness of parenting arrangements and child safety

Review finding

Victim safety could be improved by acknowledging the risks in parenting arrangements to adult victims of family violence and by considering children's welfare and best interests in Domestic Violence Act proceedings.

I recommend enhancing consideration of the safety needs of the child and the parent who is separating from a violent partner by:

Consideration of children and contact arrangements under the Care of Children Act

- empowering judges to impose protective conditions for hand-over arrangements whenever family violence has occurred, including psychological violence
- trialling a supervised hand-over service
- supporting better informed decision-making by:
 - amending the Criminal Procedure Act 2011 to enable regulations to be made for information sharing between CoCA and criminal proceedings
 - under CoCA, extending the matters judges must take into account when assessing a child's safety
 - empowering judges considering applications under CoCA to make temporary protection orders in exceptional circumstances.

Consideration of children and contact arrangements when making a protection order under the DVA

- continuing to enable the court to make interim care and contact orders under the DVA while ensuring substantive decisions about parenting arrangements are made under CoCA
- empowering the court to add to a protection order, any of the applicant's children who are not currently living with the applicant
- making provision for the applicant's subsequent children (eg, children born after the protection order is made) to be automatically covered by the protection order.

66. Intimate partner violence and child abuse are 'entangled' forms of abuse. Effective responses therefore require assessment of the risk a partner or parent's behaviour poses to both child and adult victims. I recommend legislative changes to improve the visibility of children's interests in the DVA and to support better informed decisions. I also propose a trial of a supervised hand-over service to test the efficacy of such arrangements.

Risk of psychological violence as a ground for protective conditions at hand-over

67. 'Hand-over' arrangements between parents may provide an opportunity for an abusive person to inflict physical and emotional harm on an ex-partner. Children may also be exposed to threatening or coercive behaviour.

68. Parenting orders made under CoCA may include conditions to protect the person with day-to-day care of a child when the other person's contact with the child takes place (particularly at hand-over). However, these conditions can only be imposed where the caregiver or the child has been physically or sexually abused by the other person; psychological abuse is not covered.

69. I seek to extend the use of protective conditions to cover protection from all forms of family violence, including psychological violence. While some judges already take psychological violence into account, an explicit reference will improve consistency of practice and more directly target a type of violence that is common at hand-over.

Trial of a supervised hand-over service

70. In the absence of funded supervised hand-over services, some victims of family violence risk continued exposure to violent and abusive behaviour as they facilitate their children's contact with an ex-partner. Such arrangements not only expose adults to violence, but may also have a significant detrimental impact on children.
71. I propose trialling a supervised hand-over service. The initiative would provide a venue and care for children so that parents do not need to meet at the point of hand-over. The service would be available to parties in cases where the court has imposed protective conditions. Child Contact Centres for supervised hand-over, where there is family violence, are used in the United Kingdom and in Western Australia.
72. I have secured funding from the Justice Sector Fund of \$704,000 to establish and run trial services in two regions. The service will be trialled for two years and assist approximately 60 families.

Better informed decisions about safe parenting arrangements

73. It is essential that judges have access to all pertinent information when making decisions about parenting arrangements. I propose the following three legislative amendments, designed to aid court decision making.

(i) Enable information sharing between CoCA and criminal proceedings

74. The Family Court does not have access to information about criminal proceedings when making decisions about parenting arrangements under CoCA. Such information may be particularly pertinent in cases involving family violence.
75. I seek to amend the Criminal Procedure Act 2011 to permit regulations to be made allowing criminal information to be shared with the Family Court in CoCA cases. Officials will consult with the judiciary to determine the precise scope of information sharing required in the delegated legislation.

(ii) Expand the family violence matters the court must consider when assessing a child's safety

76. Section 5A of CoCA provides for domestic violence to be taken into account when considering a child's safety. The court must take into account:
- whether a final protection order against one or more parties to the application is still in force
 - the circumstances in which the protection order was made, and
 - any written reasons given by the Judge who made the protection order for his or her decision.

77. The reference to final protection orders only, means that temporary protection orders may be overlooked. A temporary protection order can be in place for many months and may be relevant to the CoCA proceedings.
78. I therefore propose amending CoCA to specify that judges must consider any temporary protection orders as well as any final orders. This shift will require judges to take account of the fact the respondent may not have had an opportunity to respond to the allegations.
79. I also seek to broaden the provision to require judges to consider other matters on the court record, including any convictions for breach of protection orders or other family violence offences, and programme providers' reports on the outcomes of any non-violence programme. This provision would not preclude judges also considering any other matters raised by the applicant at the time (e.g. past use of Police safety orders (PSOs) or medical history).

(iii) Empower judges to make temporary protection orders under CoCA

80. Judges in CoCA proceedings may become aware the child and/or parent are at risk of family violence, without any protection order being in place or applied for. This may be as a result of the victim not wanting to risk exacerbating the violence by applying for a protection order, or not being able to afford to apply.
81. I recommend enabling the court, when considering a parenting order application, to make a temporary protection order on its own motion in exceptional circumstances. This power would apply where there is evidence of significant family violence and the judge is satisfied that CoCA orders alone will not provide sufficient protection for the child from direct violence, and/or from violence against the care-giving parent. While such a provision is likely to be used infrequently, it would provide an additional safeguard for children and their caregiver parent.

Improved child safety

82. I have also identified gaps in the current legislative framework, which mean that the safety needs of some children are not adequately addressed. I propose two legislative changes designed to address these:
 - (i) Ensuring children's safety interests are adequately considered in decision making under the Domestic Violence Act*
83. If an application for a protection order has been made that will affect a child of the applicant's family, the court may make decisions about arrangements for care and contact with children. These decisions are made within a short timeframe and put in place using an interim care and contact order. The policy intent is that these orders are temporary in nature (lasting a maximum of 12 months) and that more considered decisions about long-term arrangements for children will be made under CoCA, and a parenting order put in place.
84. I am concerned that children may be left exposed to risk if no application for a parenting order is made, and the interim order lapses. As a result, the interests of children may not be considered separately at any point in the DVA proceedings, and there is a risk that the temporary arrangements are not in the children's best interests in the long-term.

85. I propose to amend legislation to specify that an interim care and contact order, once made under the DVA, must be treated as if it were an interim parenting order under CoCA. This would preserve the court's ability to make an order that addresses the immediate risk to the children's safety, while ensuring any more substantive decisions are made within the structures and safeguards of CoCA (including access to CYF reports). Under this proposal, the interim order would become permanent at a date specified by the judge if neither party takes further action.

(ii) Include all applicant's children in the scope of a protection order

86. Any 'child of the applicant's family' is automatically covered by a protection order and can access children's safety programmes. This term is defined as 'a child who ordinarily or periodically resides with the applicant' regardless of the child's relationship with the applicant or respondent.

87. This definition excludes children of the applicant who, for example, are living with another person such as a grandparent or friend because of the violence. While the court has the power to add other people to the coverage of a protection order, I propose specifically empowering the court to add any of the applicant's children who are not usually living with the applicant to a protection order. I also recommend that this protection be extended to include any subsequent child that the applicant may have.

Improving the effectiveness of Police safety orders

Review finding

Police safety orders are not always seen as effective for stopping perpetrators' use of violence.

I recommend enhancing confidence in the effectiveness of Police safety orders by:

- enabling Police to direct that bound persons are required to attend a risk and needs assessment
- treating a failure to comply with this direction as a breach of the order
- empowering Police to issue a PSO if a person is arrested, but no charges are subsequently filed
- specifying complaints of breaches of PSOs are to be proved to the civil standard, instead of the criminal standard.

88. A PSO can be issued by Police attending a family violence incident if an arrest is not made, and if excluding the perpetrator (bound person) from the home is necessary for a victim's safety. The order is designed to provide temporary safety for victims of family violence by supporting the victim to stay safely at home and giving them time to consider their future options, including the possibility of applying for a protection order. PSOs also enable Police to carry out further investigations if required. The order may be issued for a maximum period of five days. If the order is breached, Police can ask a court to issue another order or, if the victim does not object, the court may issue a temporary protection order.

89. PSOs came into force in 2010, and are considered to have increased the safety of family violence victims, particularly in situations where Police did not otherwise have the power to remove the perpetrator from a property.

Linking PSOs to assessment

90. Issuing a PSO provides an opportunity to link a perpetrator to services, such as a non-violence programme, to better enhance victim safety and improve perpetrator accountability and behavioural change.

91. I therefore propose enabling Police to direct that bound persons are required to attend a risk and needs assessment. This will require the development of an efficient referral process. The enabling provision should come into force by Order in Council, with the agreement of the Ministers of Justice and Police, and Commissioner of Police, once adequate services are available.

92. The purpose of the assessment is to encourage the bound person to take whatever steps may be recommended by the assessor to accept responsibility for their violence and to change their behaviour. The bound person must arrange the assessment within 10 working days of the PSO being issued. Police would use their discretion in deciding whether to place this condition on a PSO, for example if a bound person had recently completed an assessment.

93. I propose that failure to comply with the Police direction will be treated as a breach of the PSO. The power to direct to a risk assessment will be brought into force once sufficient risk assessment services are in place.

*Note para 92:
Cabinet added to this recommendation by requiring the bound person to also “attend the assessment at the arranged time and place”.*

*Note para 93:
Cabinet added to this recommendation: “failure to comply with the requirements to arrange and attend an assessment will be treated as a breach of the Police safety order”*

Clarifying Police implementation of PSOs

94. I have identified two PSO-related issues that require clarification in the DVA:

(i) Allow for Police to issue a PSO following arrest

95. Under the current law, Police cannot issue a PSO if the perpetrator is arrested for family violence. When a perpetrator of family violence has been arrested, the Police must decide whether or not to proceed to charging the individual. The threshold for charging a perpetrator is higher than the threshold for arresting them. If charges are filed, the victim’s immediate safety can be protected through the use of bail conditions.

96. However, where an arrest is made, and a decision subsequently made not to charge, an individual may be released quite quickly and may present a risk to the victim’s immediate safety. In these situations the Police do not have any recourse to a PSO, or any other course of action to keep victims safe.

97. I propose enabling Police to issue a PSO when a perpetrator is arrested by repealing the current restriction in the Act. This proposal would fill a clear safety gap and provide Police with the confidence to arrest, if it is considered warranted, without being concerned about the consequences for a victim’s safety if no charge is filed.

(ii) Clarify that complaints of breach of a PSO must be proved to the civil standard (balance of probabilities)

98. When a PSO is breached, the Police can file a complaint in the District Court. If the breach is proved, the court may direct Police to extend the length of the current PSO, or issue a new PSO. Alternatively, the court may issue a temporary protection order, if the protected person does not object.

99. When PSOs were first introduced, Police practice was to file complaints in the civil jurisdiction. In 2013 the High Court ruled they must be heard in the criminal jurisdiction.² The breach therefore has to be proven beyond reasonable doubt.
100. I am concerned that this standard of proof may inhibit Police from filing complaints about breaches, and may contribute to a perception that breaches are not responded to consistently. I do not consider that the consequences of a proven complaint are so serious that a criminal standard of proof is required.
101. I therefore propose specifying that complaints of breach of PSOs are to be proven to the civil standard, on the balance of probabilities. This clarification will simplify the pathway to protection orders and support Police to file complaints more often.

Modern and fit-for-purpose legislation

Review finding

The consistency and safety of decision-making would be enhanced by more guidance about the nature of family violence and expectations about the response.

I recommend:

- adding principles to guide decision-making under the Act
- replacing the term 'domestic violence' with 'family violence' throughout the Act and in the title of the Act
- referring to coercive or controlling behaviour in the definition of family violence
- including abuse of pets in the definition of family violence.

102. A primary objective of the review of family violence legislation is to ensure that the DVA is 'modern and fit-for-purpose'. A key aspect of this is the framing provided by the object (purpose) of the Act and the definition of 'domestic violence'. I propose updating the object and definitions in the Act to establish principles to guide decision-making.

Introducing principles to the Domestic Violence Act

103. The object (or purpose) of an Act is intended to provide users with an understanding of what the law is seeking to achieve, and to guide the how decision-makers interpret and apply the Act. The current object (section 5(1)) of the DVA states:

The object of the Act is to reduce and prevent violence in domestic relationships by-

- (a) recognising that domestic violence, in all its forms, is unacceptable behaviour; and
- (b) ensuring that, where domestic violence occurs, there is effective legal protection for its victims.

² *Mark v Police* [2013] NZHC 1041, [2013] NZFLR 710.

104. Everyone making decisions under the Act – including judges and Police – must be guided by the object (s 5(3) DVA).
105. With our more recent understanding of the nature and impact of family violence, the object is no longer sufficient to ensure certainty and consistency of responses by decision-makers under the Act. In particular, the current object does not emphasise the need to consider the impact of family violence on children or the importance of culturally appropriate services for Māori. Greater emphasis needs to be placed on curtailing the perpetrator's use of violence, as well as taking active steps to protect victims. Also, including system-oriented provisions in the Act – the bespoke privacy provision and codes of practice – provides an opportunity to add principles which apply more broadly, across the family violence sector.
106. I therefore propose updating the object (purpose) of the Act and adding to the Act a set of principles which reflect the following themes and priorities. The precise wording and location within the Act will be decided during drafting.
107. I propose the primary objectives of the Act are to:
 - 107.1. secure victims' (including children) safety and protection from all forms of violence (including intimate partner violence, child abuse and neglect, and other intra-familial violence), and
 - 107.2. curtail perpetrators' ongoing use of violence.
108. I propose stating the Act aims to achieve these objectives by:
 - 108.1. recognising family violence is an ongoing pattern of harm that has a cumulative impact on victims, especially children
 - 108.2. empowering courts and Police to make orders to protect victims
 - 108.3. ensuring access to the court is as speedy, inexpensive, and simple as is consistent with justice
 - 108.4. ensuring the particular vulnerability and needs of children are recognised and responded to
 - 108.5. providing for access to services aimed at stopping perpetrators' use of violence and at helping victims keep themselves safe.
109. I propose stating the administration and application of the Act must be guided by the following principles:
 - 109.1. victims must be protected from all forms of violence and their welfare and best interests responded to, and recognising children are particularly affected by family violence whether directly involved as victims or as part of a household where family violence is occurring
 - 109.2. disruption to victims' (particularly children) day to day life should be minimised, and in particular, victims' access to education, employment and social support networks should be maintained to the extent possible having regard to the objective of the Act
 - 109.3. wherever practicable, perpetrators should be required to attend services which support them to stop using violence
 - 109.4. perpetrators should face consequences if they continue to use violence

- 109.5. responses should be culturally appropriate and, in particular, responses to Māori should reflect tikanga
- 109.6. practitioners must work together to maximise the safety and wellbeing of victims (including children) and curtail the perpetrator's abusive behaviour
- 109.7. the decision-making of victims is respected but the protection and safety of victims takes precedence, and
- 109.8. where practicable and consistent with their safety needs, victims should be involved in decision-making.

Replacing term 'domestic violence' with 'family violence'

- 110. The legal definition of 'domestic violence' and 'domestic relationships' guide decisions about who the DVA applies to and when it applies. The legal definition also influences the policies and practices of government agencies, NGOs and others working in the family violence sector.
- 111. I propose replacing the term 'domestic violence' with 'family violence' (including in the title of the Act). This change would:
 - encourage a shift away from the traditional understanding of domestic violence as intimate partner violence, to violence that can be present in a wide range of family relationships, and multiple relationships
 - recognise that violence can occur outside the home, or across multiple homes over time, and
 - respond to concerns raised by some Māori organisations that 'domestic violence' does not adequately acknowledge the impact of violence on the whānau and their role in responding to it.
- 112. Public submissions in response to the discussion document reflected strong interest in the legal definition of family violence. Views on the terminology 'family violence' versus 'domestic violence' were split. Many of those who favoured the term 'family violence' viewed it as appropriately broad, widening the scope of who may perpetrate or experience family violence. It is for this reason that I favour the change.
- 113. However, I am aware that other submitters considered that neither term adequately reflects the gendered nature of the violence. While acknowledging the relatively high proportion of family violence involving females as victims of intimate partner violence, I consider the proposed approach more accurately reflects the diverse nature of offending. In my view the emphasis should be placed on ensuring that responses to family violence, enabled through the legal framework, are designed to meet the needs of victims. I would therefore anticipate that family violence specialist services, in particular, are tailored to meet the needs of those most likely to require them, in this case women and their children.
- 114. Some respondents to the discussion document supported the use of the term 'whānau violence' to recognise the impact that violence has on Māori and whānau, the cultural context within which the violence occurs, and the role of whānau in addressing it. However, I consider that such a change could risk casting family violence as a predominately Māori issue. Members of a person's whānau are already explicitly recognised in the definition of 'family member', which includes

'any other person who is a member of the person's whānau or other culturally recognised family group' (s 2 DVA).

Amending definition to explicitly include coercive and controlling behaviour, and abuse of pets

115. Coercive or controlling behaviour is a purposeful pattern of behaviour, focused on exerting power and control or coercion over another.³ Behaviours may include, for example, regulating everyday activities (e.g. monitoring telephone calls, placing limitations on friendships or contact with family), humiliation, intimidation and assaults. This addition would strengthen the existing statement in the Act 'that a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial' (s 3(4)(b) DVA).
116. The current definition refers to patterns of behaviour, including those, which in isolation, may appear to be minor or trivial. I propose amending the definition to explicitly refer to coercion and controlling behaviour. This change will support a consistent approach to identifying and responding to these behaviours and may assist to raise awareness of these forms of abuse.
117. Abuse, or the threat to abuse, pets is recognised as a tactic that may be adopted as part of coercive and controlling behaviour. It may create an environment of fear and form a barrier to a victim leaving. Children may be particularly impacted by threats to, or abuse of, their pets.
118. While, arguably these behaviours are a subset of psychological abuse, which is included in the current definition, I think there is value in explicitly naming this type of abuse to raise decision-makers' awareness.

Legislative implications

119. The legislative implications of the proposals in this paper are addressed in Paper one in the *Legislative implications* section.
120. I seek Cabinet agreement to minor or technical amendments to specific provisions in the DVA (in Appendix One attached) which will improve the operation and efficiency of the DVA.

Financial implications

Financial implications of individual civil law changes

121. Table one summarises the financial implications for Votes Courts, Justice, and Corrections of the civil law changes proposed in this paper. These costs, along with the costs to Police, are incorporated in the financial implications section of Paper one (from paragraph 40).

³ Home Office (2015) *Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework*. Home Office, United Kingdom.

Section 9(2)(f)(iv)

Assumptions about increased volume of protection order applications

122. The proposals for changes to the civil law in this paper will reduce the complexity, cost and confidence barriers which the review identified as inhibiting access to protection orders. The changes to the civil law are therefore expected to have a cumulative effect of increasing the number of applications for protection orders.
123. An increase in volumes will impact on court time to process applications and hold defended hearings, and on the Ministry of Justice's funding of legal aid, and non-violence and safety programmes. The consequent rise in the volume of breaches would affect Police investigations and prosecutions, criminal court proceedings and the sentences managed by the Department of Corrections.
124. The increase in protection order applications is estimated as 30 percent over four years, resulting in an increase from the current 5,000 applications per year to around 6,500 per year. An additional 930 protection orders would be granted per year.

125. This estimate is based on the effects of comparable changes in other jurisdictions and the New Zealand Crime and Safety Survey of the prevalence of family violence in New Zealand. The key areas of sensitivity are the total increase in the number of protection order applications, the rate of the increase, and the rate of breaches.

Section 9(2)(f)(iv)

Service requirements

127. The effectiveness of the legislative framework, including the changes proposed in this paper, would be enhanced by the availability of a range of effective programmes and services. New investment will be required for their development and costs are likely to fall outside the justice sector.

128. I am not seeking funding for this work in this paper, as it falls within the remit of the Ministerial Group on Family Violence and Sexual Violence. Work is underway to look at effective interventions for victims and perpetrators and will report back to the Ministerial Group later this year. The same types of services are likely to also be needed in response to the new pilots of an Integrated Safety Response, and the Risk Assessment and Management Framework.

Recommendations

129. The Minister of Justice recommends the Committee:

1. **note** the review of family violence legislation confirmed there are complexity, cost and confidence barriers to the accessibility and effectiveness of legal tools in the civil jurisdiction, with key legal tools not being used to their greatest effect;

Improving the uptake of protection orders

2. **agree** to empower the Secretary for Justice to issue forms relating to applications under the Domestic Violence Act (DVA) 1995;
3. **note** the Minister of Justice has secured funding from the Justice Sector Fund to trial a funded scheme for approved non-government organisations to assist family violence victims with protection order applications;
4. **agree** that the Minister of Justice may approve providers, such as iwi providers, to apply for protection orders on behalf of people who cannot apply for themselves due to their individual circumstances, such as physical incapacity or fear;
5. **note** that any other person seeking to make a third party application can continue to apply to the court on a case-by-case basis;

6. **note** the proposal referred to in recommendation four is not intended to change the existing safeguards protecting individuals' autonomy;
7. **agree** to requiring a third party who is applying on behalf of a person who lacks mental capacity to seek that person's views;
8. **direct** the Ministry of Justice to work with the Parliamentary Counsel Office to ensure appropriate alignment between third party applications for vulnerable people who lack capacity due to mental impairment (s 11 DVA) and for people who are unable or unwilling to make an application due to physical incapacity or fear of harm (s 12 DVA);
9. **agree** to enable children and young people to request safety programmes on their own behalf;
10. **agree** that a young person, under the age of 16 years, may apply for a protection order without a representative, in line with the relevant requirements of the Family Courts Rules 2002 relating to participation in proceedings;
11.

Section 9(2)(f)(iv)
12.

Section 9(2)(f)(iv)
13. **agree** the court may impose special conditions on protection orders to address the use of family violence against vulnerable people, including older people and people with disabilities;

Making protection orders more effective

14. **agree** to enable the court to direct a respondent to services suitable to a respondent's risks and needs, such as welfare, support, education and justice services (set out in schedules to the Domestic Violence Act 1995) and to differentiate between the services which can be automatic on the assessment of risk and need, and the services which require a further direction from the court;
15. **agree** that regulations may be made amending the schedules to the Domestic Violence Act 1995 by adding or omitting services that a respondent may be directed to attend;
16. **note** that the successful implementation of recommendations 14 and 15 is dependent on work currently underway to identify an appropriate mix and model of services required, and advice will be given to the Ministerial Group on Family Violence and Sexual Violence in late 2016;

17. **agree** to extend the court's powers to summons a respondent to a protection order to appear before the court, to include situations where a service provider under the Domestic Violence Act advises the court that:
 - 17.1. it is no longer appropriate or practicable for the respondent to attend a programme;
 - 17.2. a respondent is not participating fully in the programme;
 - 17.3. the provider has safety concerns for the protected person; or
 - 17.4. when filing a report at the conclusion of a programme the provider advises that a respondent has not achieved the objectives of the programme or that there are safety concerns for the protected person;
18. **agree** that judges be provided with the following additional powers to respond to the circumstances listed in recommendation 17:
 - 18.1. admonish the respondent
 - 18.2. confirm, vary or discharge the direction to attend the programme, or change the terms of attendance
 - 18.3. direct the respondent to attend a further, or different, assessment and programme;
 - 18.4. make any other orders the court thinks fit;
19. **agree** to enable a coordinated service response when a protection order is made by:
 - 19.1. providing Police with more information about the circumstances that led to the protection order being applied for and made;
 - 19.2. clarifying Police may share information about the order with other agencies, as appropriate for the purpose of assessing and managing risk, and subject to the Privacy Act 1993 and proposed new bespoke privacy provisions;
20. **agree** to enable programme providers to share relevant information relating to the assessment and management of risk with other social service providers and government agencies;

21. **agree** to clarify the circumstances in which the protected person may consent to contact, and the consequences of that consent, including that the protected person may:
 - 21.1. consent to ad hoc contact, such as inviting the respondent to visit the home or attend an event, whether or not the protected person has a legal interest in the property (so long as contact is not inconsistent with an order for supervised contact in relation to a child); and
 - 21.2. at any time expressly withdraw that consent, at which point the respondent must leave the property or cease contact;
22. **agree** to simplify the consent provisions, including by:
 - 22.1. clarifying that harassing behaviours, such as hindering access to a workplace, loitering or accosting a protected person, are always prohibited, including when the protected person consents to live with the respondent;
 - 22.2. adding attendance at a court conference or hearing as an exception to the non-contact provisions, to allow the respondent to lawfully attend a conference or hearing where the protected person is present; and
 - 22.3. providing Police with a copy of any interim care and contact order or any parenting order relating to the parties to the protection order, so that Police can more easily assess whether contact is consistent with those orders;
23. **agree** that the court must not discharge a protection order unless it is satisfied that the order is no longer necessary for the protection of the applicant or a child of the applicant's family;
24. **agree** that the criteria the court must consider when deciding whether to discharge a protection order (including a temporary order) includes (but is not limited to):
 - 24.1. whether the respondent has achieved the objectives of a non-violence programme, or is taking steps to change their abusive behaviour;
 - 24.2. specific features of the violence, e.g. its nature and seriousness, its recency and/or the frequency at which the violence occurred, or the likelihood of future violence occurring; and
 - 24.3. the views of the applicant;

Clarifying the intent and use of property orders

25. **agree** to clarify that an occupation or tenancy order may be made if it is necessary for the reasonable accommodation and stability needs of the applicant and any children;
26. **agree** an occupation, tenancy or ancillary furniture order may only be made if a protection order has been or is being made;
27. **agree** to treat failure to leave a property in contravention of an occupation order as a breach of the protection order;
28. **agree** that preventing a protected person from retrieving furniture, contrary to a furniture order, is a breach of the protection order;

Improving the effectiveness of parenting arrangements and child safety

29. **agree** to extend the circumstances where the court may impose protective conditions for hand-over arrangements under the Care of Children Act 2004 to include psychological violence;
30. **note** the Minister of Justice has secured funding from the Justice Sector Fund to trial a supervised hand-over service;
31. **agree** to amend the Criminal Procedure Act 2011 to enable regulations to be made for information sharing between proceedings under the Care of Children Act 2004 and criminal proceedings;
32. **agree** to extend the matters the court must take into account when assessing a child's safety from family violence under s5(a) of the Care of Children Act 2004 to include, but not limited to:
 - 32.1. any temporary or final protection order;
 - 32.2. any convictions for breach of protection orders or other family violence offences;
 - 32.3. programme providers' reports on the outcomes of any non-violence programme, if available;
33. **agree** to enable the court to make temporary protection orders under the Domestic Violence Act 1995 when considering proceedings under the Care of Children Act 2004 when there are exceptional circumstances;
34. **agree** that an interim care and contact order made under the Domestic Violence Act 1995, be treated as if it is an interim parenting order made under the Care of Children Act 2004;
35. **agree** to enable the court to add to a protection order any of the applicant's children who not currently living with the applicant;

36. **agree** that any subsequent children of the applicant are automatically covered by the applicant's protection order;

Improving the effectiveness of Police safety orders

37. **agree** to enable Police to direct bound persons to attend a risk and needs assessment;

38. **agree** the bound person, if so directed, will be required to arrange the assessment within 10 working days of the Police safety order being issued;

Note: Cabinet added to recommendation 38 by requiring the bound person to also "attend the assessment at the arranged time and place"

39. **agree** the Police power to direct bound persons to attend a risk and needs assessment will be brought into force by Order in Council, with the agreement of the Ministers of Justice and Police, and Commissioner of Police, once sufficient risk assessment services are in place;

Note: Cabinet added to

40. **agree** a failure to comply with the requirement to arrange is to be treated as a breach of a Police safety order;

recommendation 40: "failure to comply with the requirements to arrange and attend an assessment will be treated as a breach of the Police safety order"

41. **agree** to repeal the provision in the Domestic Violence Act 1995 that prevents Police from issuing a Police safety order if a person is arrested;

42. **agree** that a complaint of a breach of a Police safety order is to be proved to the civil standard, instead of the criminal standard;

Modern and fit-for-purpose legislation

43. **note** the factors intended to guide decision-makers under the Domestic Violence Act 1995 are no longer considered sufficiently comprehensive;

44. **agree** that the Domestic Violence Act 1995 be amended to include a new object (purpose) statement, statements about how the objectives are to be achieved, and a set of principles providing guidance on the administration and application of the Act;

45. **agree** that the amendments referred to recommendation 44 reflect the following themes and priorities, with final wording and location within the Domestic Violence Act 1995 to be determined during drafting:
- 45.1. the primary objectives of the Domestic Violence Act 1995 are to:
 - 45.1.1. secure victims' (including children) safety and protection from all forms of violence (including intimate partner violence, child abuse and neglect, and other intra-familial violence), and
 - 45.1.2. curtail perpetrators' ongoing use of violence;
 - 45.2. the Domestic Violence Act 1995 aims to achieve these objectives by:
 - 45.2.1. recognising family violence is an ongoing pattern of harm that has a cumulative impact on victims, especially children;
 - 45.2.2. empowering courts and Police to make orders to protect victims;
 - 45.2.3. ensuring access to the court is as speedy, inexpensive, and simple as is consistent with justice;
 - 45.2.4. ensuring the particular vulnerability and needs of children are recognised and responded to;
 - 45.2.5. providing for access to services aimed at stopping perpetrators' use of violence and at helping victims keep themselves safe;
 - 45.3. the administration and application of the Domestic Violence Act 1995 must be guided by the following principles:
 - 45.3.1. victims must be protected from all forms of violence and their welfare and best interests responded to, and recognising children are particularly affected by family violence whether directly involved as victims or as part of a household where family violence is occurring;
 - 45.3.2. disruption to victims' (particularly children) day to day life should be minimised, and in particular, victims' access to education, employment and social support networks should be maintained to the extent possible having regard to the objective of the Act;
 - 45.3.3. wherever practicable, perpetrators should be required to attend services which support them to stop using violence;
 - 45.3.4. perpetrators should face consequences if they continue to use violence;
 - 45.3.5. responses should be culturally appropriate and, in particular, responses to Māori should reflect tikanga;
 - 45.3.6. practitioners must work together to maximise the safety and wellbeing of victims (including children) and curtail the perpetrator's abusive behaviour;
 - 45.3.7. the decision-making of victims is respected but the protection and safety of victims takes precedence; and

45.3.8. where practicable and consistent with their safety needs, victims should be involved in decision-making;

- 46. **agree** to replace the term 'domestic violence' with 'family violence' wherever it appears in the Domestic Violence Act 1995 and in the title of the Act;
- 47. **agree** to include coercive or controlling behaviour in the definition of family violence;
- 48. **agree** to include the abuse of pets in the definition of family violence;

Legislative implications

- 49. **note** the legislative implications of the proposals in this paper are addressed in Paper one: Context and supporting integrated responses;

Proposed minor and technical amendments

- 50. **agree** to the minor or technical changes to the Domestic Violence Act 1995 and the Family Courts Act 1980, listed in Appendix one to the paper;

Financial implications

- 51. **note** the financial implications of the proposals in the paper are addressed in Paper one: Context and supporting integrated responses.

Authorised for lodgement

Hon Amy Adams
Minister of Justice

Date signed: ____/____/____

Appendix one

Proposed Minor or Technical Amendments to the Domestic Violence Act 1995

The amendments in the Appendix are intended to clarify wording, ensure provisions remains modern and fit for purpose, streamline processes and correct drafting errors.

No.	Proposal and Description
1	<p><i>Proposal</i></p> <ol style="list-style-type: none">1. Amend s 51I to:<ul style="list-style-type: none">• reflect the process that is followed by providers who are concerned about an imminent or serious risk to the protected person: notify the Police and, if appropriate, Child, Youth and Family (CYF)• require Police to file a brief report on the outcome of any intervention taken on the basis of the providers' notification, and• clarify what is meant by 'safety concerns.' <p><i>Description</i></p> <ol style="list-style-type: none">2. Section 51I requires a respondent's programme provider to notify the court if they have concerns for the safety of the protected person during assessment or provision of a programme. The registrar must arrange for the protected person to be advised of the provider's concerns and a judge may make orders or directions as he or she thinks fit.3. In practice, where there is imminent or serious risk to a protected person's or children's safety, the service provider notifies Police and, where appropriate, CYF. The Police will take any necessary action including advising the protected person of the risk to their safety. Currently, there is no requirement that Police file any information about what occurred or what action they took, with the court. This information is necessary to assist the court to take any steps in response.4. I also propose to clarify what is meant by 'safety concerns' as this has caused some confusion amongst programme providers. The policy intent is that safety concerns are intended to include where there is an imminent or escalating or grave risk to the protected person's safety, which is in addition to those that led to the making of the protection order.
2	<p><i>Proposal</i></p> <ol style="list-style-type: none">1. Amend s 51K to correct a drafting error. The proposed amendment will change <i>must</i> to <i>may</i> in s 51(3). <p><i>Description</i></p> <ol style="list-style-type: none">2. Under s51K a judge <i>must</i> discharge a direction to attend a non-violence programme and make such further orders and directions as he or she thinks fit when advised by a service provider that a respondent's attendance at a non-violence programme should be delayed, or it is not appropriate for respondent to attend a programme or there isn't appropriate programme. It was not intended to fetter a judge's discretion in this way.

3	<p><i>Proposal</i></p> <ol style="list-style-type: none"> 1. Amend s 51L(1)(b) to provide more flexibility when a programme provider is fixing the date and time of programme sessions with a respondent. <p><i>Description</i></p> <ol style="list-style-type: none"> 2. Section 51L requires the programme provider to settle terms of attendance with the respondent (in writing) including the place, date and time for all sessions that the respondent must attend. However, it is not always possible to set dates and times in advance, for example, when a respondent is a shift worker. Some flexibility is necessary for a programme provider to agree these as is necessary, rather than in advance of the commencement of the programme.
4	<p><i>Proposal</i></p> <ol style="list-style-type: none"> 1. Amend s51R so that a completion report is only provided to a judge if it raises concerns about the safety of a protected person. <p><i>Description</i></p> <ol style="list-style-type: none"> 2. When a respondent completes a non-violence programme, the service provider must file a report with the court indicating whether the objectives of the programme have been met and whether the programme provider has any concerns for the safety of the protected person. 3. All reports must be given to a judge to review. This is an unnecessary and time consuming task for judges. The proposed amendment will mean that judges will only review completion reports if there are safety concerns for the protected person (including whether significant objectives of the programme have not been met). This reflects current practice (agreed to by the Principal Family Court Judge).
5	<p><i>Proposal</i></p> <ol style="list-style-type: none"> 1. Clarify the court's powers at a hearing under s80 of the DVA. <p><i>Description</i></p> <ol style="list-style-type: none"> 2. A temporary protection order becomes final automatically, three months after the date on which it is made. However, the court may, of its own motion, direct that there is a hearing before the order becomes final (s 78). 3. The powers of a judge at these hearings is unclear. My officials will work with Parliamentary Counsel Office to ensure that the provision is more accessible and consistent with the policy intent.
6	<p><i>Proposal</i></p> <ol style="list-style-type: none"> 1. Amend Part 5 (ss96-106) of the DVA to: <ul style="list-style-type: none"> • allow an overseas protection order to be sent electronically to New Zealand for the purposes of enforcement • enable electronic transmission of a New Zealand protection order when certifying the order within New Zealand or sending it to an overseas authority for registration (and enforcement if necessary)

- remove the requirement that an overseas protection order can only be registered in New Zealand (for enforcement purposes) if the protected person is present in New Zealand or coming to New Zealand
- remove the requirement that a protected person seeking to have their protection order recognised and enforced overseas must satisfy a registrar of the New Zealand Family Court that there are reasonable grounds for believing that enforcement in an overseas court is necessary for their protection.

Description

2. Part 5 of the Act refers to a reciprocal arrangement New Zealand may enter into with other countries for the mutual recognition and enforcement of each country's protection orders. Currently, these provisions only operate with Australia.
3. Part 5 was introduced in 1998 and has become outdated. In particular, the provisions do not allow for the electronic transmission of documents, adding to delay and increased risk for the protected person.
4. In addition, Australian orders can only be enforced in New Zealand if the protected person is in New Zealand, or is coming to New Zealand. This limitation fails to recognise the harmful effects of psychological violence, because a protection order cannot be enforced against a New Zealand respondent when he or she is communicating, or attempting to communicate, with the protected person by SMS or text, or any other electronic means, including Facebook.
5. If the protection order has been made, there should be no limitations placed on its subsequent enforcement where this is available. We are not aware of any similar requirements in equivalent Australian legislation.
6. The Law, Crime and Community Safety Council (LCCSC) are currently working to align the different State and Territory domestic violence legislation in Australia. We will work with the LCCSC to ensure that reciprocal provisions concerning recognition of New Zealand protection orders in Australia are consistent with the proposed changes to New Zealand's legislation.