

Summary: Extending the Duration Limit of Police Safety Orders

Advising agencies	<i>Ministry of Justice</i>
Decision sought	<i>Agreement to the duration limit of Police safety orders for inclusion in the family violence reforms currently before Parliament.</i>
Proposing Ministers	<i>Minister of Justice</i>

Summary: Problem and Proposed Approach

<p>Problem Definition</p> <p>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</p>
<p>Police safety orders (PSOs) are a tool available to Police to address family violence. PSOs provide:</p> <ul style="list-style-type: none"> • a period of 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 • people at risk (victims) with time and space to seek support and consider any long-term safety arrangements (e.g. protection orders). <p>The time it takes for victims to put in place safety arrangements following a family violence incident can exceed the duration limit of PSOs. The lack of safety arrangements following a PSO expiring puts victims at greater risk of further harm. The risk of further harm following the incident that resulted in the PSO being issued is high as family violence is often a pattern of behaviour.</p> <p>There is an opportunity to amend legislation to extend the maximum duration limit of PSOs to provide victims with additional time to put in place safety arrangements while under the protection of a PSO. This will also provide more time to assist with addressing the bound person’s behaviour.</p>

<p>Proposed Approach</p> <p>How will Government intervention work to bring about the desired change? How is this the best option?</p>
<p>The Cabinet paper proposes the maximum duration of PSOs be extended to 10 days (the proposal). This meets the Labour Party’s public commitment to provide more protection for victims of family violence through extending the duration of PSOs from a maximum of 5 days to a maximum of 10 days. This is aimed at providing victims of family violence with up to 10 days to put in place any safety arrangements for themselves and other affected individuals (e.g. children). It will also provide time for perpetrators to address their behaviour.</p> <p>The Ministry of Justice considers that work should be undertaken to consider what operational changes could address the barriers that prevent people receiving support or legal protection within 5 days. Work could include examination of further operational support for applicants in applying for protection orders to address barriers to people receiving protection orders in a timely manner.</p>

If legislative change to extend the maximum duration of PSOs to 10 days is desired, the Ministry of Justice recommends that the ability to issue 6-10 day PSOs should be in exceptional circumstances. This would provide a legislative threshold for longer PSOs.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The main expected beneficiaries of the proposal are victims of family violence, which includes children and other family members who are affected by the violence. It will provide additional time to put in place safety arrangements that will protect them longer term. Recent engagement with the public has informed our assessment of the expected benefit of the proposal.

Where do the costs fall?

The main costs of the proposal are on bound people. This is due to the cost to individuals if they need to reside outside their usual residence while the PSO is in force. There will also likely be some costs to victims as PSOs may impact their ability to access vehicles, income and childcare. However, substantial research would need to be undertaken to understand the cost on these individuals. We are unable to quantify these costs within the timeframes.

There will be some small fiscal costs to government. Police will incur costs due to the need to change operational practices and guidance. Courts may also incur some small costs due to the likelihood of an increase in breaches of PSOs.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

The proposal will have three main risks:

- Decision making with limited information - Police can have limited information available at the scene of family violence. This can make determining the duration of a PSO difficult, particularly when it can last up to 10 days.
- Detrimental impact on victims - the removal of the bound person from the address can affect the victim's ability to access transport and reduce the victim's accessible income. It can also affect parenting responsibilities with a PSO suspending any parenting arrangements that are in place while the PSO is in force.
- Deter victims from contacting Police - victims may be hesitant to call Police in the future due to the extended duration exacerbating the impacts experienced (financial, childcare etc).

The minimisation of unintended consequences will be reliant on Police operational policies that guide practice. This will focus on the need to make good decisions when deciding on whether to issue a PSO, the length of the PSO, and carefully considering impacts such as hardship.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

The proposal can be considered incompatible with aspects of the Government’s ‘Expectations for the design of regulatory system’. The proposal will have human rights implications for individuals subject to PSOs. The proposal will affect individuals’ freedom of expression, freedom of association and freedom of movement.

The proposal will also likely result in some unpredictable outcomes. This will affect the fairness and equity of the outcomes for victims and bound people. The proposal will increase the discretion of Police to issue a PSO for a longer period. The duration of a PSO is significant as it requires individuals to find alternative accommodation for a longer period and extends the effect on other aspects of their life (e.g. alternative travel to work and other commitments), as well as on the life of the victim and children.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

The evidence to support our findings is based on the 2014 evaluation of PSOs. It is also supported by feedback from government agencies and stakeholders during recent public engagement on family violence. We use this information as a proxy for the problem definition. We do not have evidence to support the prevalence of the problem.

The evidence to support the impact assessment of the proposal is limited. Extensive research would be required to accurately predict the costs and benefits of the proposal. We have relied on the information we have from the sector as a proxy for wider impacts.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

The Ministry of Justice

Quality Assurance Assessment:

The RIS meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:

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 the 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.

Impact Statement: Extending the Duration Limit of Police Safety Orders

Section 1: General information

Purpose

The Ministry of Justice is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:

- key policy decisions to be taken by Cabinet, and
- final decisions to proceed with a policy change to be taken by or on behalf of Cabinet.

Key Limitations or Constraints on Analysis

The analysis of the extension of the duration of Police safety orders (PSOs) to a maximum of 10 days involves the following constraints:

- Limited time – with legislation before Parliament there is a limited window of opportunity to amend the Domestic Violence Act. The timing is driven by the need for an updated legislative framework to address family violence. As a result, we need to undertake this analysis with limited information and cannot commission further research into the problem or likely impact of the proposal.
- Limited evidence base - we rely on a limited evidence base for the problem and impact of the proposal. We have some feedback and studies that support our analysis. We use this information as a proxy for wider sector views, with caveats around the certainty and assumptions about contrary views that may be held by the public.
- Range of options - the range of options to address the problem has been constrained due to the limited information and time available to analyse the issue. If further work were commissioned on potential operational initiatives, this would aid in determining whether operational initiatives were preferable. We have focused on whether the maximum duration of PSOs should be extended to 10 days and if associated legislative mechanisms are needed. We have focused on the risk to victims and how to address this risk through an extension to the duration of PSOs.

Responsible Manager (signature and date):



Ruth Fairhall

General Manager, Courts and Justice Services Policy

Ministry of Justice

12 April 2018

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

Family violence in New Zealand

Family violence is one of the largest drivers of violent crime and makes up around 50% of all homicides. From 2009 to 2015, there were 194 family violence deaths.

Family violence consumes a considerable proportion of Police resources. In 2017, New Zealand Police (Police) investigated over 121,000 incidents of family violence. Despite this, family violence is significantly under-reported with only 24% of family violence being reported to Police¹.

Non-government organisations (NGOs) play a significant role in addressing family violence and providing support for individuals. As an example, Women's Refuges affiliated to the National Collective of Independent Women's Refuges assisted approximately 27,000 women and children in 2016/17. During the same time period, they received over 50,000 crisis calls. Data shows the individuals referred to Women's Refuge were mainly Pakeha (45%) or Māori (39%). In terms of age, most of the women referred were between 21 and 40 years old (60%) and the children were mostly 0-9 years old (70%)².

Family violence is also a feature of many court proceedings. In 2016/17, there were over 15,000 charges for breaches of protection orders, male assaults female, and common assault (domestic)³. This is a snapshot of the total number of court proceedings that involve family violence. However, the data is stark in terms of who is committing this violence. Approximately 93% of the people charged were male. 55% of the people charged were between 20 and 34 years of age.

Data shows a significant increase in reported family violence over the last 10 years. However, it is difficult to determine whether the total volume of family violence has increased. This is due to the low level of reporting to Police, resource increases and cultural change in New Zealand relating to family violence. By way of example, approximately 70,000 family violence investigations were conducted by Police in 2007. As above, in 2017, this number had increased to approximately 121,000.

Police safety orders

Police, in responding to a family violence call out, have discretion as to which tools they can use based on the circumstances. If they have enough evidence, they can arrest and charge the individual. A PSO can be issued when there is insufficient evidence or if it is deemed more appropriate than charging. Police have other tools they can use, such as referrals to services or education tools.

PSOs are an interim order issued by Police at the scene of a family violence incident. PSOs can be issued against someone who has a family relationship with the other person if the officer has reasonable grounds to believe that the order is necessary for the safety of the victim. When issuing an order Police must have regard to:

- whether family violence has occurred,
- whether family violence is likely to occur again,
- the welfare of any children, and
- the hardship the order may cause.

¹ <https://www.justice.govt.nz/assets/Documents/Publications/NZCASS-201602-Main-Findings-Report-Updated.pdf>

² <https://womensrefuge.org.nz/wp-content/uploads/2015/11/Annual-Report-2016-2017.pdf>

³ This is not an exhaustive group of family violence offences and only includes: breach of protection order, male assaults female, and common assault (domestic).

PSOs were introduced in 2010. They provide Police with a tool to address family violence by providing:

- a period of 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).

In 2017, 15,457 PSOs were served. In the same year, the ethnicity of the bound person was predominantly Māori (42%) or European (29%)⁴.

A PSO reduces the danger of further violence toward the victim, but does not eliminate it. The evaluation of PSOs in 2014 found that victims felt PSOs had a positive impact on the bound person's behaviour⁵. The evaluation of PSOs in 2014 found that they were generally achieving their objectives. Unintended outcomes were identified, including hardship for victims and children, a reluctance on the part of the victim to call the Police in the future, and a PSO aggravating the bound person. It was also noted that PSOs are sometimes issued in contradiction to Police policy, for example issuing a PSO where arrest would be appropriate. In 2015, Police put in place practice improvements in response to matters identified in the evaluation.

If a PSO is breached, the bound person can be arrested and brought before the District Court. If the Court finds the bound person has breached the PSO on the balance of probabilities, it can issue another PSO or issue a temporary protection order. As part of the PSO process, victims and perpetrators are connected to appropriate support services. Service providers (often NGOs) undertake risk and needs assessments to ascertain what ongoing support the parties need. This can include connecting victims with lawyers to provide legal advice about the application process for protection orders.

Maximum duration limit of PSOs

When PSOs were introduced, Crown Law vetted the legislation for compliance with the New Zealand Bill of Rights Act 1990. They considered that PSOs engaged the right to freedom of expression, freedom of movement, and natural justice. These limitations were considered justified. However, the five-day duration limit of PSOs was a factor in determining that the limitation on rights was proportionate to the objective PSOs are trying to achieve. The length of PSOs is dependent upon the circumstances before Police. When deciding on the duration of an order, Police have regard to⁶:

- previous interactions with Police,
- history of mental illness,
- presence or history of abuse of alcohol and/or drugs,
- propensity for violence,
- family violence history,
- parenting, protection and/or Police safety order previously in force,
- the welfare of any children residing with the victim, and
- hardship caused to any person, including the family, such as;
 - access to transport,
 - access to finances, and
 - access to alternative accommodation.

⁴ Other ethnicities: Asian (6%), Pacific Peoples (11%), Unknown (12%), Middle Eastern/Latin American/African (1%).

⁵ <http://www.police.govt.nz/sites/default/files/publications/pso-outcome-evaluation-report.pdf>

⁶ These are operational factors that Police consider.

The graph below shows the distribution of the duration of Police safety orders in 2017.



The graph shows a considerable proportion (34%) of PSOs served in 2017 were between 4 and 5 days duration. This suggests that Police are attending a sizeable number of family violence cases that are more likely to require longer-term safety arrangements.

The Family and Whānau Violence Legislation Bill

Reform of the family violence regulatory system is underway. The Family and Whānau Violence Legislation Bill is currently before Parliament and awaiting its second reading. The Bill seeks to establish a legislative framework that provides tools to keep victims safe and stop perpetrators using violence.

The Bill makes changes that aim to improve the accessibility of protection orders, such as making it easier for third parties to apply on behalf of victims who do not have the capacity to apply themselves. However, the changes are likely to apply to a very small number of applicants.

The Bill also includes provision for PSOs to be used as an opportunity to assess risk and needs, and connect perpetrators to services. Other reforms include new family violence offences and improving information sharing to keep people safe. The Bill also amends PSOs to allow them to be issued in circumstances where the perpetrator is arrested, and is then released without charge. This means that Police officers who make an arrest and then find they do not have sufficient evidence to charge still have a mechanism to increase victim safety. The reforms build on a discussion document that was developed and circulated for public consultation in 2015.

The government is also working on non-legislative (operational) initiatives to address family violence in concert with the legislative work discussed above. The operational initiatives do not have direct impact on the problem discussed below. Operational initiatives in place to address family violence include:

- An integrated safety response model pilot, which involves community services and government services working together more closely,
- A common Risk Assessment and Management Framework that can be used by the family violence sector to determine the level of threat posed to the victim, and
- Developing a capability framework for the family violence and sexual violence workforce, identifying key competencies.

2.2 What regulatory system, or systems, are already in place?

The regulatory system the proposal will amend is the family violence system, which is part of the wider family regulatory area. The regulatory system is focused on the response to family violence, with the key statute being the Domestic Violence Act 1995. There are a number of other pieces of civil and criminal legislation that make up the framework of the system. The objectives of the system are to:

- recognise that family violence, in all its forms, is unacceptable,
- stop and prevent perpetrators from inflicting family violence, and
- keep victims, including children, safe from family violence.

The family violence system is multi-layered and covers the justice and social sectors as well as the non-governmental sector. The stewardship function sits within the Ministry of Justice. However, most of the levers to address family violence are non-legislative and sit across the three sectors. The following table breaks down the key functions within the system (however, this is not exhaustive).

Role/system function	Responsibility of
Legislation and associated advice	<ul style="list-style-type: none"> • Ministry of Justice
Service design	<ul style="list-style-type: none"> • Police (enforcement approaches) • Ministry of Social Development (social assistance and services) • Oranga Tamariki (operational processes relating to children) • Ministry of Justice (programmes, services and assessment processes)
Monitoring and evaluation	<ul style="list-style-type: none"> • Ministry of Justice (court processes) • Police (enforcement) • Department of Corrections (prisons)
Advice, information and education	<ul style="list-style-type: none"> • Police (links to social services and general safety) • Ministry of Social Development (social services) • Oranga Tamariki (children centred processes) • Ministry of Justice (court processes)
Service delivery (not policing)	<ul style="list-style-type: none"> • Ministry of Justice (programmes and assessments) • Ministry of Social Development (programmes) • Department of Corrections (programmes) • NGOs (e.g. Women's Refuge)
Dispute resolution	<ul style="list-style-type: none"> • Family Court • District Court and Senior Courts (Served by Ministry of Justice)
Compliance and enforcement	<ul style="list-style-type: none"> • Police (PSOs, offences, breaches of civil orders) • Department of Corrections (breaches of sentences and conditions)

There is no single point of entry into the family violence system. However, Police are often the first point of call in situations of family violence. The other main first points of contact are NGOs such as Women's Refuge. NGOs and the Police refer individuals to one another as necessary. They also involve other government agencies, such as Oranga Tamariki, as appropriate. If a perpetrator is arrested and charged, the justice system, including courts, becomes involved. If the perpetrator is convicted, the Department of Corrections takes a stewardship role in managing offenders in prisons and in the community.

The monitoring and evaluation of the system is, generally, broken up into component parts. This means it is difficult to get system-wide information and assess the effectiveness of one component of the system with another. For example, when a PSO is issued, we are unaware whether the victim applies for and receives a protection order. Information on PSOs are collected by Police and then the protection order is applied for by the applicant to the Court.

Government regulation is necessary to achieve the objectives of the system. It is necessary to provide individuals with legal mechanisms to protect people from harm. Government regulation is also necessary to provide means to discourage family violence, and incentivise rehabilitation and support for perpetrators and victims.

The regulatory system has been subject to comprehensive review by the Ministry of Justice, which has led to the Family and Whānau Violence Legislation Bill. Aspects of the system were also reviewed by the Law Commission. The Ministry of Justice undertook public consultation on the system during the policy phase and the legislative phase at select committee. The review has determined that the system is 'developing' and needs reform.

2.3 What is the policy problem or opportunity?

The time it takes for victims to put in place safety arrangements following a family violence incident can exceed the duration limit of PSOs. The lack of safety arrangements puts victims at greater risk of further harm. The risk of further harm following the incident that resulted in the PSO being issued is high as family violence is often a pattern of behaviour.

The key components of the problem are as follows:

- A victim's availability to put in place safety arrangements can be limited by their commitments such as children and work⁷.
- Decision-making following a family violence incident can be difficult due to the victim often being traumatised or subject to coercive and controlling behaviour – this can lead to no, or delayed, engagement with support agencies like NGOs.
- The application process for a protection order is complex and time consuming – legal advice is preferable as it is a legal application.
- Legal advice is preferable for protection order applications and there is limited availability during weekends and public holidays.

The problem means that one of the objectives of the family violence system – to prevent harm to victims of family violence – is not being met to the desired level.

We do not have data on the scale of the problem. There is no longitudinal data about the outcomes for individuals. This means that we cannot link the data on PSOs served to protection orders or to outcomes for individuals assisted by NGOs. Anecdotal evidence from the sector provides the basis for the scope of the problem. The 2014 evaluation of PSOs found that the duration of PSOs was problematic for several of the victims interviewed, with reference to the difficulties of people with disabilities, and people with childcare responsibilities. The evaluation recommended further investigation into the duration issues⁸.

⁷ Research in 2001 found that a quarter of children in New Zealand have witnessed family violence.

⁸ <http://www.police.govt.nz/sites/default/files/publications/pso-outcome-evaluation-report.pdf>

Additionally, feedback from the public during the policy development stage of the Family and Whānau Violence Legislation Bill suggested that the duration of PSOs should be extended to better support victims. This is discussed further in box 2.5.

2.4 Are there any constraints on the scope for decision making?

The Labour Party has publicly committed to extend the duration of PSOs to up to 10 days. The limit of 10 days is in response to feedback on the policy discussion document and discussion with key stakeholders at the select committee stage of the Bill. Committee members and stakeholders discussed whether a 10-day time frame would be sufficient to allow victims to put in place safety arrangements. As a result, the Labour Party included the proposal in its comment in the Justice and Electoral Committee's report back to Parliament on the Bill. The Government has sought advice on whether the duration of PSOs should be extended to 10 days and, if so, whether any further safeguards are needed.

The proposal will form part of wider reform of the family violence regulatory system. This includes significant reform of the legislation, subordinate legislation, and operational processes. It is necessary that the proposal is coherent with this reform and its objectives (which are the regulatory system objectives listed in box 2.2).

2.5 What do stakeholders think?

The changes will most directly affect the following stakeholders:

- victims of family violence whose safety will be protected, and
- persons bound by the PSOs of increased duration, whose human rights will be infringed upon by the increased time frame.

More generally, the stakeholders in the family violence regulatory system are spread across the justice, social and non-governmental sectors. The number of stakeholders is substantial, and their interests vary based on their interconnecting functions within the system alongside the functioning of the system as a whole (see box 2.2 for further discussion about the types of stakeholders).

Due to time constraints, it is not possible to determine definitively what the range of stakeholders' views are of the problem and its causes. However, 50 of the 500 submissions at the policy consultation phase of the Bill suggested increasing the duration of Police safety orders. As stated earlier, these submissions were unprompted but were also reinforced in the 2014 evaluation of PSOs. We consider this to be a representative sample of the potential support for the extension of the PSO timeframes. These stakeholders appear to agree with the problem definition that putting in place immediate and long-term safety arrangements can exceed five days in some cases due to public holidays, commitments (such as work and children), and difficulties making decisions in complex situations. These stakeholders include NGOs and victims of family violence.

We do not have feedback from the sector or affected individuals/parties that does not support an extension to PSOs. We have no current proxy that we can use in our analysis. The most recent feedback we have was when PSOs were introduced in 2010. Since then, the 2014 evaluation found that PSOs have been effective in keeping victims safe and changing behaviour.

Māori are over-represented as victims and perpetrators in family violence statistics. However, we have not had the opportunity to directly test the problem definition with iwi/hapū. Some of the 50 submitters who supported an extension to PSOs were Māori support agencies.

Māori providers also had input in the evaluation of PSOs and supported such an extension. However, this is not a proxy for consultation with Māori.

Further stakeholder engagement is not planned. The affected parties in the sector are awaiting the reform of the family violence legislation and wider system. The need to put legislation in place in a timely manner will not allow for further public consultation. However, the proposal will be debated by Parliament at the committee of the whole House stage.

This amendment will be progressed by SOP at the committee of the whole House, and therefore there is limited opportunity for public input.

Section 3: Options identification

3.1 What options are available to address the problem?

The Ministry of Justice has identified the following mutually exclusive legislative options to address the problem:

- A. Extend maximum duration limit of PSOs to 10 days (from 5 days)
 - Police could issue a PSO based on the existing test in the legislation (s 124B of the Domestic Violence Act 1995) for a duration of up to 10 days.
- B. Enable an additional mechanism for Police to issue 'extended PSOs' for 6-10 days in exceptional circumstances outlined in legislation
 - Include the provision for 6-10 day duration PSOs in exceptional circumstances where Police consider the situation meets a decision-making test in legislation.
 - The exceptional circumstances would be based on the Police determining that a PSO is appropriate based on the current test in the Act, and reasonably believing that an extended PSO is appropriate and necessary to put in place safety and stability arrangements. This would be based on the potential risk to the victim and their family, and their circumstances (work, children, transport, service availability, need for long-term protection, impact on bound person).
 - No change would be made to the existing test for 0-5 day PSOs.
- C. Extend the duration limit of PSOs to 5 *working* days
 - This would increase the duration limit of PSOs when a non-working day falls during the duration of a PSO.
- D. Provide for a second 0-5 day PSO to be issued following relevant stakeholder consultation on the individual case
 - No change would be made to the existing test for the initial 0-5 day PSO.
 - A second 0-5 day PSO could be issued following consultation with relevant stakeholder consultation, which would provide Police with further information about the circumstances.
 - Relevant stakeholders would include social sector agencies and NGOs that have information about the individuals involved and the circumstances.

We have not analysed any operational options. These could possibly include examination of further operational support for applicants in applying for protection orders to address barriers to people receiving protection orders in a timely manner. Further work would need to be undertaken to determine what options would address the problem and meet the objectives of the wider reform.

The options above do not directly address the entirety of the problem. Instead, these are focused on providing more time for victims to put in place safety arrangements.

We have not addressed the accessibility of support and legal orders as the legislative barriers to these were considered by [the previous regulatory impact statement](#) on the Family and Whānau Violence Legislation Bill.

International comparators

Australia and the United Kingdom both have similar orders to PSOs but there are key differences in their systems that mean the orders play a different role. This makes comparing the timeframes less useful. New Zealand has temporary protection orders that are usually granted without notice within 24 hours. These fill the role of providing immediate and enduring safety. All states in Australia have a form of order that is similar in kind to PSOs. These orders are issued by Police and require the person subject to the order to leave the scene for a period of time. The duration limit of the Australian orders most like New Zealand PSOs are between 2-3 days. However, some of the orders are linked to court processes and can last for one month and then become permanent. Linking to court processes provides a safeguard to oversee the decision-making. The United Kingdom also has similar orders: 'domestic violence protection notices'. The notices are 2 days in duration, but they are also linked with court proceedings for a protection order.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

The Government's overarching objective is to uphold the safety of victims of family violence by providing continuous protection until long-term safety arrangements can be made. In effect, there is an inherent trade-off between victim safety and the rights of the bound person. As such, the two primary criteria are:

- Effectiveness – provides victims with more time under the protection of a PSO when they need it
- Fairness – maintains the rights of the bound person.

The two secondary criteria are based on good regulatory practices and are:

- Coherence – aligns with the wider system framework and practices
- Clarity – provides affected parties with certainty in decision making.

We have weighted the primary criteria evenly. PSOs provide a power that restricts the movement and association of an individual. This power is usually afforded to the Courts, which has in-built safeguards to protect the rights of the relevant parties. We consider that the balance between the effectiveness and fairness criteria should be maintained due to the intrusive nature of the power. However, if the criteria were weighted differently, then the analysis would produce different conclusions.

3.3 What other options have been ruled out of scope, or not considered, and why?

We consider that the risk of violence towards the victim can be effectively reduced by PSOs and protection orders. This is supported by the 2014 evaluation of PSOs. We have, therefore, not analysed the general effectiveness of the mechanisms.

The [regulatory impact statement](#) on the Family and Whānau Violence Legislation Bill considered the legislative barriers to protection orders so is not replicated here. It did not, however, consider the duration limit of PSOs.

Section 4: Impact Analysis

Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

		Option A – 0-10-day PSOs	Option B – 6-10-day PSOs in exceptional circumstances	Option C – 0-5 working day PSOs	Option D – a second 0-5-day PSO following stakeholder consultation
Primary criteria	Effectiveness (provides protection for victims)	++ There is added flexibility to address situations where a victim needs more time to put in place safety arrangements. It may not address underlying issue.	++ There is added flexibility to address situations where a victim needs more time to put in place safety arrangements. However, the legislative framework confines the extension to certain situations. It may not address underlying issue.	+ Adds some scope to address situations where victims need more time. However, this is limited to weekends and holiday periods, delaying safety arrangements. It may not address underlying issue.	++ Provides added safety for situations where stakeholders have information pertinent to decision-making. It may not address underlying issue.
	Fairness (maintains rights of bound person)	-- Further limits the rights of the bound person, without the need for justification as there is no statutory guidance for the duration of a PSO.	0 Maintains the level of impact on the rights of the bound person by requiring the situation to meet the exceptional circumstances threshold outlined in legislation.	- Provides additional impact on the rights of the bound person, but this would be limited to when a non-working day falls within the period in which the PSO is in force.	-- There is a notable impact on the rights of the bound person due to the natural justice issues with a PSO being issued twice for one incident.

		Option A – 0-10-day PSOs	Option B – 6-10-day PSOs in exceptional circumstances	Option C – 0-5 working day PSOs	Option D – a second 0-5-day PSO following stakeholder consultation
Secondary criteria	Coherence (aligns with system)	0 Would be consistent with the wider system.	0 Would be consistent with the wider system.	0 Would be consistent with the wider system.	-- Would reduce coherence with the wider system. The system change is focused on risk and needs assessment to identify what support perpetrators and victims will need. Adding another step to assess risk will conflict with the process.
	Clarity (provides certainty)	0 The legislative clarity would not be affected	- Reduced clarity caused by a second legislative threshold which only applies to some PSOs.	0 The legislative clarity would not be affected	-- Notably reduced clarity due to no decision-making framework to determine what must be identified for a second PSO to be issued.
Overall assessment		This option is a straightforward amendment that would align with the wider system. It would allow better protection for victims for up to 10 days. However, it notably impacts the rights of a bound person and has no safeguards to prevent a bound person's rights being limited for up to 10 days without due cause.	This option is a more complex amendment that would reduce clarity but is aligned with the wider system. However, the legislative threshold would maintain the rights of the bound person. Victim safety would be upheld in the cases that require extended PSOs.	This option is a straightforward amendment that would be consistent with the wider system. It would provide some added protection for victims if non-working days fall within the period in which the PSO is issued for. The limited duration extension would limit the impact on a bound person's rights. However, there are no safeguards against a bound person being issued a, potentially, 11 day PSO without due cause.	This option is a complex amendment that is focused on minimising risk of misinformation through relevant stakeholder engagement. It would be effective in upholding victim safety but would further limit the rights of the bound person and would not meet desirable regulatory practice.

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The Ministry’s view

The Ministry of Justice’s preferred option is that further work is undertaken to analyse and cost potential operational initiatives to address the problem. This approach will provide time to gather and analyse information on ways to address the underlying problem. It will also provide an opportunity to consider options that do not impinge on the rights of individuals and do not lead to detrimental outcomes for victims. This will mitigate the risk that legislative change does not address the underlying problem. We consider that no legislative change should be made to the duration limit of PSOs until further work on operational initiatives is completed.

The Labour Party has publicly committed to legislating for an extension to PSOs. The decision to be made is whether the duration limit of PSOs should be extended to 10 days and, if so, wherever other accompanying mechanisms are needed to support this extension.

Accordingly, our preferred option in relation to such a legislative amendment is to provide for extended PSOs for 6-10 days in exceptional circumstances (option B). This puts in place a legislative decision-making framework that outlines when a PSO over five days can be issued. This would reduce the likelihood of unintended consequences for victims and their families (e.g. limited access to childcare, vehicles and income). PSOs five days and under would continue to be issued in accordance with existing legislative provisions in the Bill. This option would also uphold the balance between human rights and victim safety. Due to the intrusive nature of PSOs, a power usually afforded to courts, there is a need to maintain this balance. However, we acknowledge that it adds complexity to the system, making it harder to understand, reducing clarity for the victim and bound person.

We do not have evidence that allows us to get a clear sense of the prevalence of the problem or its underlying causes. Nor are we able to measure the impact of the options. As previously discussed in box 2.3, the evidence base for this change is largely anecdotal. However, both the assumptions and the evidence are consistent across the options analysed.

The option provided in the Cabinet paper

The option provided in the Cabinet paper is to extend the duration of PSOs for up to 10 days (option A). The main reason for this is the clarity and effectiveness that this option provides. The option would enable Police to use their discretion to uphold victim safety, while minimising the complexity that a more detailed framework would provide. This option provides scope to use non-legislative mechanisms to mitigate risks of inconsistent practice, rather than have this framework in legislation.

5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact of option in Cabinet paper (high, medium or low, compared to the status quo)	Ministry's preferred option (high, medium or low)	Evidence certainty (high, medium or low)
--------------------------------	--	--	--	---

Additional costs of proposed approach, compared to taking no action				
Victims (predominantly women) and includes children	potential loss of income, additional childcare costs, transport and other arrangements for the duration of the PSO*	High	Medium	Low
	social cost of bound person not providing any assistance to the victim	Medium	Low	Medium
Bound people (predominantly men)	impact on rights of bound person	High	Low	Medium
	alternative accommodation and living costs for up to five additional days*	High	Medium	Low
	social cost of limitations on ability to see children and reside at usual address	High	Medium	Medium
New Zealand Police	Enforcement of PSOs*	Medium	Medium	Medium
Ministry of Justice	Court processes*	Low	Low	Medium

Expected benefits of proposed approach, compared to taking no action		Impact of government's preferred option <i>(high, medium or low, compared to the status quo)</i>	Ministry's preferred option <i>(high, medium or low)</i>	Evidence certainty <i>(high, medium or low)</i>
Victims (predominantly women) and includes children	Increased time (and protection during that time) to put in place safety arrangements to uphold safety in immediate and long-term	High	High	Medium
New Zealand Police	Reduction in callouts for repeat incidents within five days*	Low	Low	Medium
Government (health and associated services)	Reduction in harm to the victim due to the safety arrangement being in place	Medium	Medium	Low
New Zealand economy	Improved engagement with workforce, including increased productivity and reduced absenteeism	Low	Low	Low
New Zealand society	Reduction in harm to society	Low	Low	Low

*These costs and benefits are monetisable. However, the data available is not applicable or does not serve as a sufficient proxy for analysis.

5.3 What other impacts is this approach likely to have?

The benefit for victims is difficult to quantify as it will greatly vary. In some circumstances, it could save a victim's life. In other cases, it may provide negligible benefit. The benefit of saving a life needs no elaboration and should not be overlooked as a benefit in the analysis. The proposal will also reduce trauma to children involved. This improves their long-term life outcomes, which is also difficult to quantify. However, family violence is often inter-generational and it is notable that any impact on a child will continue to impact them in their later life. A reduction in this will lead to notable individual, family, community and societal benefits.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

Clear objectives: the proposal has clear objectives to improve the time available for victims to put in place safety options and provide further time for perpetrators to access support.

Flexibility: the proposal will also provide greater flexibility by increasing the discretion of Police to issue a PSO for a longer period (ie 10 days).

Fairness: The duration of a PSO is significant as it can require individuals to find alternative accommodation for a longer period and extends the effect on other aspects of their life (eg alternative travel to work and other commitments). The proposal does not include a framework for how long a PSO should be issued for. It will rely on Police operational practices to ensure that decisions about the duration of a PSO are consistent, reflective of the situation, and meet the needs of the victim and other affected individuals.

Limited information is available to Police at any given scene when they are deciding to issue a PSO and for how long. Police generally rely on information provided by people at the scene, held in their information management system and held by the police officers pertinent to the situation. The limited information compounds the risk of decisions being inequitable. The proposal will also likely result in some unpredictable outcomes, which affects the fairness and equity of the outcomes.

There is a risk of poor judgement by police officers in making a decision to issue a PSO, and for what duration. This risk has significant consequences because there is no judicial oversight/appeal right. This contrasts with Australia and United Kingdom where there are links to court processes.

The proposal also provides a greater risk to the wellbeing of the victim and associated people. The removal of the bound person from the address can affect the victim's ability to access transport, reduce the victim's accessible income, and require them to manage all domestic and household responsibilities. A PSO suspends any parenting arrangements that are in place while the PSO is in force, which removes the ability for the person subject to the PSO to look after children. In some cases, a victim may be required to look after their children on a fulltime basis despite having work and other commitments.

Adverse impact on individual autonomy: the proposal will have human rights implications for individuals subject to PSOs. The proposal will affect individuals' freedom of expression, freedom of association and freedom of movement. These freedoms are provided for in the New Zealand Bill of Rights Act 1990. The Crown Law Office is available to provide advice to the Attorney General as to whether any limitations can be justified and consistent with the New Zealand Bill of Rights Act 1990.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The proposal will require legislative change. The Bill currently before Parliament will be amended to this effect by Supplementary Order Paper at the committee of the whole House stage. The Bill amends the Domestic Violence Act 1995 (to be replaced with the Family Violence Act 2018).

The Ministry of Justice administers the Domestic Violence Act and will administer the Family Violence Act. The New Zealand Police will implement the provision. This will not change the stewardship approach taken by the Ministry of Justice to the family violence regulatory system.

The provisions will come into effect the day after Royal Assent. Any communications and training relating to the new provision will be built into the implementation work on the Bill being undertaken by the Ministry of Justice and the New Zealand Police.

The Ministry of Justice and the New Zealand Police have strong connections with key stakeholders as part of their implementation work. These connections will be used for any engagement around the provision if it is needed.

6.2 What are the implementation risks?

New Zealand Police will implement the provision. The risks of unintended consequences and significant variations in practice are notable. For example, a possible unintended consequence of changing the duration is that people will continue to contact NGOs for advice and support services towards the end of the timeframe, meaning the time pressure is not alleviated as intended. While this will impact upon the perceived benefit of a longer timeframe, it may better reflect the amount of time needed to assess the realities of the choices they are faced with.

Police have limited information available to them when making decisions about issuing a PSO and the duration of a PSO. The Police will update their operational manuals to assist with decision-making to address the potential for greater inconsistency.

There remains a risk that an extended timeframe will not effectively address the problem. The extended timeframe may not mean that safety arrangements are put in place while a PSO is in force. This may be because the barriers are not something that additional time can assist to overcome.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The implementation team in the Ministry of Justice is developing a series of measures to analyse the cost and benefit of the key proposals in the Bill, including PSOs. The data above, alongside qualitative information to be collected from discussions from key stakeholders (eg Judges), will help inform the effectiveness of the amendments.

The Ministry of Justice will also monitor the impacts as part of its stewardship role in the family violence regulatory system. The costs and benefits of the changes will be reported to the Minister of Justice as and when appropriate.

The Ministry of Justice collects data as part of its role in the judicial system and across the wider justice system as the lead justice sector agency. The Ministry of Justice will monitor:

- the number of breaches of PSO charged,
- the number of PSOs issued (Police held data),
- the length of PSOs (Police held data), and
- the number of protection orders issued.

The Ministry of Justice will also seek qualitative information from the New Zealand Police and non-governmental agencies about how the new provisions are working as and when appropriate.

7.2 When and how will the new arrangements be reviewed?

The Ministry of Justice has committed to evaluating the reform of family violence in the 2020/21 financial year. The analysis of the proposal in this impact analysis will be done in conjunction with a review of the rest of the system as there were a considerable number of changes during the reform of the legislation and many of them are intertwined.

We will also monitor the impact of the proposal as part of our stewardship role. The Ministry of Justice generally takes a three-year cyclical review of all its regulatory systems as part of its stewardship role. We will monitor the outcomes as part of our stewardship role and more comprehensively look at the legislation in the medium term.