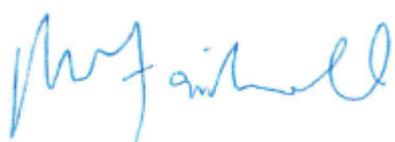


# Review of family violence legislation: Regulatory impact statement

## Agency Disclosure Statement

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1. This Regulatory impact statement (RIS) has been prepared by the Ministry of Justice. It provides an analysis of options for strengthening legislation to better respond to family violence in New Zealand. Key constraints are set out below.
2. *Focus on regulatory change:* The scope of the review is strengthening family violence legislation. Overall, this restricted the consideration of options to legislative options. However, where appropriate, non-regulatory options were also considered.
3. *Quality of the evidence base:* There is a lack of clear and convincing evidence for what works in responding to family violence. This is impacted by a range of factors including inconsistent understandings of what constitutes family violence, and low reporting of family violence to Police. The lack, and variability, of evidence has required assumptions to be made about the scale of the problems identified, and the effectiveness of options and expected impacts are uncertain. Some of the proposals under the review of family violence legislation, along with the Ministerial Group work programme, are intended to improve the quality of the data that informs the evidence base.
4. *Aligning with the Ministerial Group Work programme:* The legislative review is one part of the broader Ministerial Group work programme. The work of the Ministerial Group is ongoing and will continue after the final package of proposals resulting from the legislative review is agreed. While the review is focused on legislative change, the Ministerial Group work programme will consider non-regulatory options to reduce family violence.
5. *Increased demand for services:* The proposal to improve the effectiveness of Police safety orders is expected to lead to an increase in referrals to services. Effective implementation will require access to appropriate services that meets demand. This will impact the social sector agencies that are the primary funder of services.
6. *Improving the Court process:* The RIS does not consider options for changing Court practice or process in family violence cases. The Ministry is currently developing advice on this issue which is expected to be provided to the Minister later this year.



Ruth Fairhall, General Manager  
Court and Justice Services Policy  
**Ministry of Justice**

Date: 3/08/2016

## Executive summary

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1. Family violence is a social harm that causes pain, fear, suffering and death. New Zealand has high rates of family violence, with 781,000 family violence incidences reported by the New Zealand Crime and Safety Survey (NZCASS) in 2014 for the previous year. Family violence has high tangible and intangible costs. The total social, economic and fiscal cost is estimated at between \$4.1-7.0 billion per annum.
2. The review is part of the Ministerial Group on Family Violence and Sexual Violence cross-government work programme to reduce family violence.
3. The review seeks to strengthen the legislation to maximise opportunities within the justice system to address perpetrator behaviour and support victims of family violence. It also seeks to support a shift towards a more co-ordinated family violence response system. Options are designed to improve civil orders, the criminal justice system and the cross-government response to family violence.
4. There is variable evidence around the prevalence of family violence, and what works to reduce it. This makes it difficult to assess the impact of the options with any certainty. However, the combined impact of the package is expected to reduce family violence by:
  - a. *Improving the accessibility and effectiveness of civil orders:* Increasing the use of civil orders to reduce the perpetrator's use of violence and enable a swift Police response to violence. Civil orders will also link victims and perpetrators to services designed to address violence and increase victim's safety.
  - b. *Strengthening the criminal justice system response:* Criminalising a wider range of family violence behaviours, leading to reduced perpetrator opportunities for violence for the duration of incarceration and clear condemnation of the behaviours. Options should also support a shift from a justice response that is reactive to a greater focus on the prevention of future serious harm.
  - c. *Supporting the cross-government response:* Improving information sharing and developing codes of practice to support consistent and collaborative responses to family violence across agencies.
5. Reducing family violence will have individual, social and economic benefits. It will reduce the pain and suffering of victims, their families and their communities. The primary fiscal cost of the package is to government. However, reducing family violence will also benefit government through averted costs associated with family violence.

### What is family violence?

6. Family violence is a social harm that causes pain, fear, suffering and death. It harms the safety and wellbeing of victims, their families, whānau and communities. Without early and effective intervention, the cycle of violence continues down generations.
7. Sections 3-4 of the Domestic Violence Act 1995 (the DVA) set out the current legal definition of domestic violence.<sup>1</sup> It defines domestic violence as physical, sexual or psychological violence against someone the perpetrator is in, or has been in, a domestic relationship with. The perpetrator is in a domestic relationship if they are a partner or family member of victim or shares a household or close personal relationship with them. It most commonly occurs against an intimate partner or children.
8. Family violence is often a pattern of ongoing abuse that causes cumulative harm. In particular, coercive control is a pattern of controlling and intimidating behaviours that the perpetrator uses to undermine the autonomy of their victim and make them fear for their safety. It is predominantly perpetrated by men against female partners.<sup>2</sup>

### The Ministerial Group on Family Violence and Sexual Violence: Cross government response to family violence

9. The review of the family violence legislative framework is part of the broader work programme overseen by the Ministerial Group on Family Violence and Sexual Violence (the Ministerial Group). The Ministerial Group was established in 2014 and includes 13 Ministers with portfolio responsibilities relating to family violence. Its objective is to reduce family violence in New Zealand by promoting a co-ordinated cross-government response.
10. Family violence is a complex issue and no single government agency can adequately respond to the wide range of inter-connected and concurrent issues it raises for individuals and families. A key challenge for government is ensuring that the responses of multiple agencies are well coordinated and resources are used efficiently and effectively.
11. The Ministerial Group has found that ad-hoc decision making and investment has resulted in a disjointed and fragmented approach to service delivery, with little evidence of successful impact on reducing family violence. It has developed a cross-government programme of work designed to support a better coordinated family violence response system. It includes four priority projects that together are designed to change practice and provide information about what works for longer-term expenditure decisions. These are:
  - a. Piloting an integrated safety response model to test how to provide enhanced support to high-risk victims, better manage perpetrators, improve collaboration between agencies, and identify obstacles to effective service referral.
  - b. Creating a common risk assessment and management framework that people who work in the family violence sector can use to determine the risks victims face and the threats perpetrators pose.

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<sup>1</sup>There are many definitions of family violence that cover different relationships and behaviours. This review considered whether the current legal definition accurately reflects the purpose of (and tools available under) the Domestic Violence Act 1995.

<sup>2</sup> World Health Organization (2002) *World Report on Violence and Health*, ed by Krug, Etienne G., et al, Geneva

- c. A workforce development project, which will identify and put in place “best practice” core competencies that members of the family violence and sexual violence workforce need to effectively deliver services.
  - d. Appointing agencies to lead coordination of primary prevention and perpetrator programmes, which will help coordinate services and investment decisions in these areas.
12. To support the work programme, the Ministries of Justice and Social Development are developing an investment case for measures to deal with family violence and sexual violence. The work will draw on data to gain a deeper understanding of the distribution of current investment and the effectiveness of current interventions, and will highlight priorities for data collection. This work will also help government to better understand who the victims and perpetrators of family violence are. As a result, it will be able to better target investment and to intervene earlier to stop violence.

### **The current justice system response to family violence**

13. The legislative framework provides justice sector actors with legal tools and powers to respond to family violence. Under the legislation, Police and Courts have powers to respond to the violence and ability to impose requirements on perpetrators of violence. The justice system responds to family violence in both the civil and criminal jurisdiction.

#### *The civil law response*

14. The primary purpose of the civil law in responding to family violence is to protect victims and their families from the risk of future violence. This is achieved through civil orders that provide rights to the victim and impose obligations on the perpetrator. There are consequences for breach. Civil orders can allow for early intervention to prevent violence from escalating. They may be sought regardless of whether criminal proceedings are also progressing.
15. The Domestic Violence Act 1995 provides for protection orders, property orders and Police safety orders (PSOs). Protection orders are the key civil order, and anyone who experiences family violence can apply to the Family Court for a protection order. It is usually the victim’s decision and responsibility to apply to the Family Court for a protection order.
16. The protection order prohibits the perpetrator from using violence against the victim. It usually also prohibits the perpetrator from contacting the victim (unless the victim consents to contact) and may include special conditions tailored to individual cases. When a protection order is granted, the respondent is usually required to attend a non-violence programme. The victim is offered safety and education programmes. Breach of a protection order is an offence punishable by up to three years imprisonment. Over 5,000 applications for a protection order were made in 2015.
17. Property orders aim to enable a victim to remain safely in their home by excluding the perpetrator and setting out who can possess the furniture.
18. The Police can issue a Police safety order when they respond to a family violence incident, if they do not arrest the perpetrator but have concerns for the safety of the victim. PSOs can be issued for up to five days. They echo the non-violence conditions of a protection order, but include non-contact conditions that cannot be waived. PSOs can be issued without the consent of the victim. In 2015, approximately 14,000 PSOs

were issued and the annual figure is expected to increase until approximately 20,000 PSOs are issued each year.

19. The risk of family violence may be considered when determining parenting arrangements following separation. Parenting orders are made under the Care of Children Act 2004 (CoCA).

#### *The criminal law response*

20. The criminal law has multiple purposes: it is designed to punish offending behaviour, deter future offending and rehabilitate offenders. The current criminal law response to family violence focuses on punishing perpetrators for previous violence and communicating to the public the seriousness of family violence. For much of the twentieth century, society considered family violence to be primarily a private matter. However, family violence is now recognised as a social harm that should not be treated any less seriously than other types of violence.
21. When family violence is reported, it is the responsibility of Police to investigate the report and, where there is sufficient evidence of an offence, charge and prosecute the perpetrator. Family violence is typically prosecuted under generic offences, such as property damage, assault or murder. There is a wide spectrum of acts that can constitute family violence offending, and the use of generic offences means there are numerous offences that can be prosecuted as appropriate. The only family violence-specific offence is breach of a protection order.
22. Family violence makes up a large proportion of criminal offending. Over half of violent offences prosecuted in the criminal Court are family violence.<sup>3</sup> In 2014, Police responded to over 100,000 family violence incidents.<sup>4</sup> In 2013, approximately 20% of all sentences managed by the Department of Corrections (Corrections) included at least one family violence offence.<sup>5</sup>

#### **Reviewing the legislation response to family violence: Scope of the review**

23. The review sought to strengthen legislation to support the Ministerial Group work programme by:
  - a. maximising opportunities within the justice system to address perpetrator behaviour and support victims of family violence, and
  - b. supporting a shift towards a more co-ordinated consistent cross-government system.
24. In July 2014, Cabinet agreed to a “review of the Domestic Violence Act 1995 to ensure the legislative foundation for a whole of government response to family violence is modern and fit for purpose” [CAB MIN (14) 21/17]. Following cross-agency consultation and early engagement with key stakeholders, the review was subsequently broadened in scope, and incorporates the following Acts:
  - a. the Domestic Violence Act 1995 (the Act), the key piece of legislation focused on family violence. The DVA provides for the issue of protection orders, property orders, Police safety orders and the provision of funded programmes to parties to protection orders. A protection order is a victim’s key civil legal tool to stop a perpetrator being violent.

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<sup>3</sup> Ministry of Justice (2014)

<sup>4</sup> New Zealand Family Violence Clearinghouse, *Family Violence Statistics*

<sup>5</sup> Department of Corrections (2014) *Topic Series: Family Violence Offenders*

- b. the Care of Children Act 2004, which supports parents to make decisions about the care of their children after they have separated. A child's welfare and best interests are the first and paramount consideration in all decisions under the DVA. The DVA requires that a child's safety must be protected and, in particular, a child must be protected from all forms of violence.
  - c. the Crimes Act 1961, Bail Act 2000 and Sentencing Act 2002, which together with other criminal legislation, set out criminal offences and their consequences, including those which relate to family violence.
  - d. the Privacy Act 1993, which provides the principles applying to the collection and sharing of personal information by government and non-government agencies.
25. Cabinet invited the Minister of Justice to report back to the Social Policy Committee with policy options for legislative change, including financial implications.
26. The review primarily focuses on legislative change. Legislation alone cannot solve family violence. However, a clear and effective legislative framework can set the direction for the response, empower agencies to act and drive change in the system. The legislative review is only one part of the wider Ministerial Group work programme which considers a wider range of responses to family violence, including primary prevention and non-regulatory options for change.
27. Decisions on the legislative review should be cognisant of the wider work programme. The work of the Ministerial Group is ongoing and will continue after the final package of proposals resulting from the legislative review is agreed. The Ministerial Group may propose changes that have a stronger investment case than some proposed in the review, and are more effective at reducing family violence at a lesser cost.

*Linkages with other projects*

28. The Law Commission's recommendations on non-fatal strangulation were considered as part of the legislative review. In addition to the Ministerial Group work programme, other projects with links to this work include:
- a. Victims of family violence who commit homicide: Hon Adams, Minister of Justice, is considering the Law Commission's recommendations on whether changes should be made to the law of self-defence for victims of family violence who kill their abuser.
  - b. Trial processes for sexual violence: Hon Adams is considering the Law Commission's recommendations on improving trial processes for victims of sexual violence.
  - c. Modernising Child Youth and Family: The Ministry of Justice is working with the Ministry of Social Development to ensure that the options for reform of the civil law complement Cabinet decisions on the operating model for the new Children's Entity.

Withheld under 9(2)(f)(iv): Confidentiality of advice

## Problem Definition

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### Prevalence of family violence<sup>6</sup>

29. It is difficult to accurately estimate the prevalence of family violence in New Zealand. Family violence often goes unreported, while inconsistent definitions influence what behaviours agencies record as family violence.
30. Available data shows that family violence is a significant societal issue. New Zealand has the highest reported rates of intimate partner violence in the OECD. In 2014, Police responded to over 100,000 family violence incidents. The New Zealand Crime and Safety Survey (NZCASS) 2014 found that 781,000 incidences of violence were committed by a family member or current or former intimate partner in the previous year.
31. Family violence occurs throughout society, across gender, racial and socioeconomic divisions. However some population groups are at an increased risk of family violence, including women, children, disabled people, older people and Māori.<sup>7</sup>

### Causes of family violence

32. There is no single recognised cause of family violence. There are many societal and individual risk factors. However, evidence indicates that the single best predictor of children becoming either perpetrators or victims of family violence later in life is whether they have been exposed to family violence.<sup>8</sup>
33. Family violence is a gendered issue, with 55% of women experiencing family violence from a male perpetrator in their lifetime.<sup>9</sup> It is widely accepted that coercive control stems from the desire of the perpetrator to exercise power and control over the victim.<sup>10</sup> Coercive control is predominantly perpetrated by men against women because traditional gender roles in society place men in a position of power over their female partner.

### Cost of family violence

34. Family violence has high intangible and tangible costs. Uncertainty about the exact prevalence makes it difficult to accurately assess the fiscal, social and economic cost of family violence. However, the cost is significant. The only available New Zealand analysis puts the total social, economic and fiscal cost of intimate partner violence and child abuse at between \$4.1 billion and \$7 billion per annum.<sup>11</sup>
35. The cost of family violence has far reaching impacts on individuals, families and communities. It harms relationships, health, work productivity and participation in

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<sup>6</sup> NZ CASS <http://www.justice.govt.nz/publications/global-publications/n/new-zealand-crime-and-safety-survey-2014/index>. NZ Clearinghouse <https://nzfvc.org.nz/family-violence-statistics>.

<sup>7</sup> NZ CASS [www.justice.govt.nz/publications/global-publications/n/new-zealand-crime-and-safety-survey-2014/index](http://www.justice.govt.nz/publications/global-publications/n/new-zealand-crime-and-safety-survey-2014/index). Recorded Crime Victims and Offenders Statistics (RCVS and RCOS) [www.police.govt.nz/about-us/publication/recorded-crime-victims-and-offenders-statistics-rcvs-and-rcos](http://www.police.govt.nz/about-us/publication/recorded-crime-victims-and-offenders-statistics-rcvs-and-rcos)

<sup>8</sup> See for example David Indermaur (2001) *Young Australians and Domestic Violence, Trends and Issues in Crime and Criminal Justice*, No 195, Canberra; World Health Organization (2002) *World Report on Violence and Health*, ed by Krug, Etienne G., et al, Geneva

<sup>9</sup> Fanslow, J. L., and Robinson, E. M. (2011). Sticks, Stones, or Words? Counting the Prevalence of Different Types of Intimate Partner Violence Reported by New Zealand Women. *Journal of Aggression, Maltreatment and Trauma*, 20 (7)

<sup>10</sup> See for example Stark, E *Rethinking Coercive Control Violence Against Women* December 2009 vol. 15 no. 12 1509-1525

<sup>11</sup> Suzanne Snively, Sherilee Kahui. Measuring the Economic Costs of Child Abuse and Intimate Partner Violence in New Zealand (2014)

society, and contributes to homelessness and mental health issues. A recent Australian report found that victims bear approximately one-third of the costs of family violence.<sup>12</sup>

36. The direct fiscal cost to government of family violence and sexual violence is estimated at \$1.4 billion per annum.<sup>13</sup> 86% of these costs are demand driven responses to the impacts of family violence, for example healthcare and prisons. A large proportion falls on the justice sector. In the civil justice system, this is driven by applications for civil orders. In the criminal justice system, this is driven by the investigation and prosecution of family violence offending. The impact on victim's and their children also contributes to demand for social services.<sup>14</sup>

### **Value of the justice system response to family violence**

37. More can be done to prevent violence from occurring in the first place. However, interventions are also necessary to respond to violence after it occurs, to protect identified victims from continued violence and change perpetrator behaviour.<sup>15</sup> In this way effective intervention is effective prevention.
38. By the time individuals and families come into contact with the justice system, they are often at high risk of exposure to further violence. Family violence is deeply entrenched in some families, whānau and communities. NZCASS data from 2013 showed that one percent of New Zealand adults experienced 62% of family violence.<sup>16</sup> Evidence indicates that the most serious cases of family violence, and repeat cases, often come to the attention of the justice system.<sup>17</sup> The justice system provides an opportunity to provide targeted interventions for these populations.
39. While an effective justice system has many benefits, an ineffective justice system can overlook or even increase the risks of the victim. It can signal to the perpetrator that they can continue to act without consequences, or even that the violence is justified. This can undermine the authority of the justice system, reducing the confidence of victims, their families, and wider society in the effectiveness of the response.

### **Findings of the review: Problems with the legislation responding to family violence**

40. Legislation alone cannot stop perpetrators using family violence. However, it can be a lever for driving and supporting change in the justice system and as part of a broader response. The continued high rates of family violence and reoffending indicate that the current justice system is not as effective as it could be at reducing family violence. Many perpetrators continue to offend despite the criminal and civil justice system response, and many victims continue to be at risk of re-victimisation.
41. The review considers three areas for possible legislative reform to change perpetrator behaviour and increase victim safety:

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<sup>12</sup> PricewaterhouseCoopers Australia (2015) A high price to pay: the economic case for preventing violence against women.

<sup>13</sup> Portfolio analysis of family violence and sexual violence, Ministerial Group on Family Violence and Sexual Violence

<sup>14</sup> For example, a significant portion of ACC claims for injuries are likely to be family violence related, while family violence is frequently a precursor to housing instability.

<sup>15</sup> Ministry of Women's Affairs (2013) *Current thinking on primary prevention of violence against women*

<sup>16</sup> NZ CASS <http://www.justice.govt.nz/publications/global-publications/n/new-zealand-crime-and-safety-survey-2014/index>.

<sup>17</sup> In 77% of family violence deaths 2009-2012, the perpetrator had a history of family violence known to the Police (Family Violence Death Review Committee Fourth Annual Report)

Also see National Institute of Justice (200) *Practical Implications of Current Domestic Violence Research: For Law Enforcement Prosecutors, and Judges*. Department of Justice, Washington D.C.

- a. civil orders: How legislation can improve the accessibility and effectiveness of civil orders issued under the DVA, and better align consideration of parenting arrangements under the DVA and CoCA
- b. criminal justice system: How legislation can strengthen the criminal justice system response to family violence
- c. supporting an integrated system: How the legislation can support a co-ordinated and effective cross-government response to family violence

#### *Civil law*

- 42. The legislative review found that the overarching family violence legislative framework for civil orders is basically sound. The intent and form of the current orders is broadly consistent with international good practice. However, it identified obstacles to the effective implementation of the legislation, along with opportunities to improve existing civil orders.
- 43. Victims can face barriers to accessing civil orders. For example, some victims find the application process for protection orders too complex or expensive. They may also be deterred from applying because they fear retaliation by the perpetrator. As a result, the victim may not make an application, or may not provide the appropriate information to enable the judge to make an informed decision.
- 44. Civil orders, in particular protection orders and PSOs are not being used to their full potential to link the victim and perpetrator to services designed to reduce violence. For example, they do not effectively link parties in to services designed to stop the violence. Property orders are not being used to their full advantage to reduce homelessness and disruption for victims of family violence. For example, there is a lack of clarity regarding when a property order can be issued, and the enforcement mechanism is complex. The law does not fully consider the safety of adult and child victims of family violence in decisions relating to parenting arrangements. This can increase the risk that the perpetrator uses parenting arrangements to perpetuate abuse.

#### *Criminal law*

- 45. The review found that the nature and form of family violence continues to create challenges to prosecution through the criminal justice system. Family violence is distinguished from other forms of offending because of the family relationship between the victim and perpetrator. This may include cohabitation and children, or a desire to have a continued relationship after the offending behaviour is dealt with. It is also distinguished by the cumulative harm caused by ongoing abuse and the breach of trust inherent in family relationships.
- 46. The review found there was no reliable system for identifying or recording family violence offending across the generic criminal offences. This prevents the collation of data to show whether a perpetrator has a history of family violence offending, and to inform investment decisions. It also prevents the effective implementation of responses that treat family violence differently from other offending.
- 47. While the criminal justice response is broadly fit for purpose, the review identified a number of areas that could be addressed so the law better recognises the nature and form of family violence. There are gaps in existing generic offences which do not clearly criminalise all family violence behaviours. In some cases, the behaviour may not be covered by any offence, while in others the available offences do not reflect the context

and severity of the harm. For example, strangulation is a high risk factor for future serious violence and lethality. Prosecuting strangulation through generic offences means the behaviour is not clearly identified.

48. In addition, the current law typically considers single incidents and does not easily capture the pattern of abuse present in family violence. This can result in sentences that do not take into account the full circumstances and nature of the offending. It can also prevent the criminal justice system recognising the increased risk of continued violence to the victim or adequately taking their safety into consideration in decisions.

### *Supporting an integrated system*

49. The review considered potential legislative and non-legislative levers that may be used to support a co-ordinated cross-government response to family violence. Legislation should be forward-looking and sufficiently flexible to support the co-ordinated cross government response as it develops. Particular issues that have been identified include the lack of a shared understanding of what constitutes family violence, and inadequate sharing of information to identify and manage risk.
50. Evidence of the size and impact of these issues on the perpetrators of family violence, victims and their families is uncertain. The factors that make it difficult to estimate the prevalence of family violence also make it difficult to build a clear picture of problems. Furthermore, there is a lack of monitoring and evaluation of the effectiveness of existing responses. The problems identified in the review, and options to address them, were identified based on the best available evidence. Collecting relevant data will be considered as part of the implementation plan.

## **Objectives**

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51. The legislative review seeks to reduce family violence by strengthening the legislation that underpins the justice system's response to family violence and supporting a co-ordinated cross-government response. It seeks to reduce the risk of future violence by:
  - a. Increasing victim safety: The law should respond effectively when violence occurs and reduce the risk of re-victimisation. This includes identifying victims, supporting them to seek assistance and providing access to tools and services that can protect them. Participation in the justice system should not increase risk.
  - b. Holding perpetrators to account: Punishing perpetrators without additional intervention is not effective at reducing reoffending.<sup>18</sup> The law should reduce the risk of future violence by challenging perpetrators to change their behaviour.
  - c. Promoting consistent and collaborative practices across agencies responding to family violence: The law should support agencies to work together, both within government and across the wider family violence sector. It should enable ongoing improvements over time to support a flexible and responsive system that continues to improve.
52. Options that are consistent with these objectives should contribute towards reducing family violence. In doing so, they should improve the public's confidence in the government's response to family violence and send a signal that family violence is not acceptable. They should also support the growth of resilient and safe whānau and communities.

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<sup>18</sup> World Health Organization (2002) *World Report on Violence and Health*, ed by Krug, Etienne G., et al, Geneva

## Criteria

53. Three criteria have been developed to assess the impact of options designed to address the issue. They are:
- a. Effectiveness
  - b. Fair and just
  - c. Affordability
54. The criteria are discussed in more detail in the options analysis.

## Options

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### Civil orders

#### *Improve the accessibility of protection orders (regulatory and non-regulatory changes)*

55. The complexity of the application process and the cost of legal advice can create barriers for victims seeking to access a protection order. The option intends to reduce and remove these barriers and increase the suitability of protection orders by:
- a. enabling more user-friendly application forms by empowering the Secretary for Justice to issue forms for applications under the Domestic Violence Act
  - b. trialling a funded scheme for specialist family violence NGOs to assist family violence victims to apply for protection orders
  - c. specifying that Police or CYF may apply for a protection order, without first being appointed by the Court, on behalf of people who cannot apply for themselves due to physical incapacity or fear
  - d. establishing a process for NGOs to be approved to apply for protection orders on behalf of people who cannot apply for themselves due to physical incapacity or fear, and
  - e. specifying the Court may impose special conditions to address the use of family violence against older people and people with disabilities.

#### *Improve the effectiveness of protection orders (regulatory changes)*

56. Protection orders are not always seen as effective for stopping the use of violence. The option intends to:
- a. enable parties to be linked in to a multi-agency response when a protection order is made by:
    - i. providing Police with more information about the history of violence which led to the protection order, to assist them to make informed decisions when engaging with the parties
    - ii. clarifying that Police may share information about the order with other agencies, as appropriate, subject to the Privacy Act and the proposed new bespoke privacy provision, to reduce the risk of further violence, and

- iii. enabling programme providers to share information that is relevant to assessing and managing risk with other agencies
  - b. empower the Family Court to:
    - i. respond to service providers' notifications of safety concerns, and
    - ii. in future, direct respondents to attend appropriate services from a wider range of services
  - c. improve young people's access to safety programmes
  - d. clarify the circumstances in which the protected person may consent to contact by the respondent and the consequences of that consent, and
  - e. specify the criteria the Court may consider when deciding whether to discharge a protection order (including a temporary order).
- 57. An alternative option considered by the review was a legislative presumption of arrest for breach of a protection order. This could support swift and sure responses to breach. However, a legislative presumption would reduce the discretion of Police and ability to respond appropriately to the circumstances of individual cases. In addition, improving the consistency of responses to family violence is being considered as part of the Police internal change programme.

*Improve the effectiveness of property orders (regulatory changes)*

- 58. Finding suitable alternative housing can be an impediment to leaving a violent relationship. The costs of establishing and furnishing a new home can be high. The review found property orders are not being used to their full advantage to reduce homelessness and disruption for victims of family violence. The options are intended to enhance the use of property orders by clarifying their purpose and use. In particular, options are intended to:
  - a. clarify an occupation order may be issued if necessary for the reasonable accommodation and stability needs of the applicant and any children
  - b. provide that the grounds for a without notice occupation and tenancy application include psychological violence, as well as physical and sexual abuse
  - c. treat failure to leave a property in contravention of an occupation order as a trespass offence.

*Improve the effectiveness of Police safety orders (regulatory and non-regulatory changes)*

- 59. The review found that PSOs are not always seen as effective for stopping the violence by the perpetrator (bound person). The option seeks to enhance confidence in the effectiveness of PSOs by clarifying the response to breaches and supporting the development of more proactive service responses. In particular, it is intended to:
  - a. empower Police to issue a PSO if a person is arrested but no charges are subsequently filed

- b. provide a more effective response to breach of PSO by specifying complaints of breaches of PSOs are to be proved to the civil standard, instead of the criminal standard, and
- c. link the bound person with services. This could be achieved through either:
  - i) changes to operational policy. Current Police policy is to refer the bound person to services, where available. The Ministry could work with Police to develop a process for consistently referring the bound person to a risk assessment, and appropriate services. There would be no requirement on the bound person to attend.
  - ii) legislative change requiring the bound person to attend a risk assessment. Two key issues with this option are the degree of discretion Police have to decide whether to require the bound person to attend a risk assessment, and whether failure to attend is a breach of the PSO. Given the low threshold for issuing a PSO, requiring the bound person to attend a risk assessment may be a disproportionate response.

*Improve the effectiveness of parenting arrangements (regulatory and non-regulatory changes)*

60. Intimate partner violence and child abuse are 'entangled' forms of abuse. Effective responses therefore require assessment of the risk a partner or parent's abusive behaviour poses to both adult and child victims. The review found that in parenting arrangements, the risks to adult victims of family violence are not always acknowledged. It also found that legislation does not clearly recognise the impact of violence on children. The option is intended to clarify the consideration of the safety needs of the child and the parent who is separating from a violent partner. In particular, the option is intended to:
- a. continue to enable the Court to make interim care and contact orders under the Domestic Violence Act, while ensuring substantive decisions about parenting arrangements are made under the CoCA
  - b. provide the applicant's subsequent children (e.g. children born after the protection order is made) are automatically covered by the protection order
  - c. empower judges considering applications under CoCA to make temporary protection orders
  - d. extend the matters judges must take into account when assessing a child's safety under CoCA, by requiring the judge to consider:
    - i. any protection order, temporary or final
    - ii. any convictions for breach of protection orders or other family violence offences, and
    - iii. programme providers' reports on the outcomes of any non-violence programme, if available
  - e. empower judges to impose protection conditions for handover arrangements whenever family violence has occurred

- f. trial a supervised handover service, and
- g. amend the Criminal Procedure Act 2011 to enable regulations to be made for information sharing between CoCA and criminal proceedings.

## **Criminal justice system**

### *Identify and record family violence (regulatory changes)*

- 61. The option introduces a virtual family violence offence framework that can identify and record family violence offending. Under the virtual framework any offence can be identified as family violence when there is a family relationship and this categorisation can be provided to the Court. This will enable the implementation of options discussed below which seek to treat family violence differently from other offending. It will also enable the collection of family violence data that can inform future investment decisions.<sup>19</sup>
- 62. An alternative option considered by the review was the creation of a standalone framework for family violence offences that identified and distinguished family violence from other offending. The standalone framework would be a new section of the Crimes Act 1961 that would identify specific family violence offences. A standalone framework of family violence offences would create excessive duplication of existing offences and may lead to inconsistent charges. It would also exclude some forms of family violence, as family violence can take the form of nearly any offence in the Crimes Act.

### *Criminalise family violence (regulatory changes)*

- 63. The option introduces a package of new offences covering family violence behaviours that close perceived gaps in the criminal law. In particular, it introduces new offences of coercion and control, coercion to marry, assault on a family member and strangulation.
- 64. Additional options considered by the review were new offences of financial abuse and assault occasioning actual bodily harm. These offences address issues that are broader than family violence. They would be better considered as part of wider reviews of the law regulating and protecting vulnerable populations and assault law respectively.

### *Recognise the serious and repeat nature of family violence (regulatory changes)*

- 65. To better recognise the serious and repeat nature of family violence, the option seeks to enable the Court to label offending as family violence on a person's criminal record. This would have a denunciatory effect, ensuring any additional stigma associated with family violence attaches to the offender's conviction. It would also affect any subsequent bail and sentencing decisions when the perpetrator's offending history is considered. The defendant would have the opportunity to challenge the label.
- 66. An additional option considered by the review was clarifying family violence is an aggravating factor at sentencing, resulting in more severe sentences. However, the

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<sup>19</sup> Currently, data collection about family violence offending is gathered from a range of sources that do not provide a comprehensive picture of family violence offending. For example, Police flag family violence cases for operational purposes, and therefore practice can vary over time and between purposes.

evidence that more severe sentences are effective at deterring and reducing offending is limited and the cost of more incarceration is high.<sup>20</sup>

67. A further option considered by the review was creating aggravated family violence offences with increased maximum penalties. This approach could lead to inconsistent charging practice and opportunities for defence counsel to plead charges down to a non-aggravated form of the offence. This could result in inconsistent recording of family violence. It would also create anomalies because the offence has one aggravating factor resulting in a higher maximum penalty, while other aggravating factors are considered at sentencing. As above, the evidence that more severe sentences reduce offending is limited and the costs are high.

#### *Victim safety in bail decisions (regulatory changes)*

68. The option seeks to improve the consideration of victim safety in decisions during the case that affect them by:
- a. making victims' safety the primary consideration in bail decisions for family violence cases. This would ensure the heightened risk victims of family violence fact is always taken into account, while maintaining decision-makers' discretion to respond to individual circumstances
  - b. empowering the Court to impose any condition it considers reasonably necessary to protect victims in family violence bail decisions, and
  - c. empowering the Court to place non-contact conditions on offenders remanded in custody. This would remove the onus on victims to refuse contact with defendants.

### **Supporting a co-ordinated response to family violence**

#### *Information-sharing (regulatory and non-regulatory changes)*

69. The review found that effective front-line risk assessment and service delivery relies on improved information. The option seeks to provide legislative clarity regarding agencies' information sharing obligations by:
- a. establishing a legislative principle that victims' and others' safety is to be prioritised over privacy interests, and including an accompanying enabling provision that agencies must consider sharing information, and
  - b. a good faith immunity for anyone who shares relevant information with appropriate people under the legislation, and the use of existing (for example, funding or contracting) mechanisms to deal with poor information sharing practices.

#### *Aligned approaches to service delivery (regulatory and non-regulatory changes)*

70. The review found that agencies' responsibilities and accountabilities for responding to family violence are not clear, and responses are variable across the system. The option seeks to align approaches to service delivery by:

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<sup>20</sup> For example, Donald Ritche (April 2011) *Does Imprisonment Deter? A Review of the Evidence*, Victorian Sentencing Advisory Council; Doris MacKenzie and David Farrington (2015) *Preventing future offending of delinquents and offenders: what have we learned from experiments and meta-analyses?* *Journal of Experimental Criminology* 11. 565-595

- a. amending legislation to allow for codes of practice to guide co-ordinated and consistent service delivery to be issued by Order in Council, and
- b. use the provisions of the State Sector Act 1988 to promote collaboration amongst Chief Executives working in the family violence sector (Justice, Corrections, Police, Social Development, Health and Education) and hold Chief Executives accountable for working in the collective interests of government. Subject to Cabinet agreement, a detailed proposal on how this could work in practice could be reported back to Cabinet in February 2017.

*Improving guidance and clarity (regulatory and non regulatory)*

71. The review also identified options that provide guidance to decision makers and improve the clarity of the DVA to support a co-ordinated and consistent response. These options are not considered within the RIS but include:
  - a. clarifying the definition of domestic violence, and
  - b. introducing principles to provide guidance to assist with interpretation and application of the law.

## **Options analysis**

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72. The Ministry of Justice considered a wide range of options as part of the review of family violence legislation. While the review focuses on strengthening the legislative response to domestic violence, non-legislative options have also been considered where appropriate.
73. Some options, in particular those addressing the civil levers, are comprised of a small changes that alone, are unlikely to have a significant impact. However, the cumulative impact of these changes is significant. The changes are grouped according to the broader problem they seek to address.
74. Options were identified through engagement with key stakeholders (including government agencies, service providers and NGOs), public submissions on the discussion document *Strengthening New Zealand's family violence laws* and consideration of domestic and international reports and good practice.

### **Assessing the options against the status quo**

75. The table on page 18 uses a multi-criterion analysis to consider how each option compares to the status quo. It assesses options against three criteria: effectiveness, fair and just, and affordability. The criteria are not weighted, with each being of equal importance. Options preferred by the Ministry of Justice are indicated in the table. The three criteria should be read together to provide a clear overview of the impact of each option.
76. The table briefly explains the key impacts of each option and indicates whether the option is preferable to the status quo. To compare the option to the status quo, the table is colour coded in green, yellow and red.
  - a. For effectiveness, green indicates an improvement on the status quo, yellow indicates the option is comparable to the status quo and red indicates that the option is less effective than the status quo.

- b. For fair and just, green indicates that the option is comparable to the status quo. This reflects the high level of procedural safeguards that currently exist. Yellow indicates that there may be an impact on procedural safeguards while red indicates that the option is likely to reduce existing procedural safeguards.
- c. For affordability, green indicates that the option is more affordable than the status quo, yellow indicates that the cost is comparable to the status quo, and red indicates that the option is less affordable than the status quo.

### *Effectiveness*

- 77. Effectiveness considers the impact of the option, compared to the status quo, on reducing family violence, by increasing victim safety, holding perpetrators to account and supporting a co-ordinated system response.<sup>21</sup> This criterion considers the number of people that are affected by the option and the extent to which the option reduces the harm caused by family violence.
- 78. There is variable evidence of what works to address family violence. This is partly driven by inconsistent understandings of what family violence is. In considering the effectiveness of options, the Ministry of Justice relied on available information, including administrative justice system data, and comparisons with New Zealand and overseas practice and research. However, there continues to be a low level of certainty attached to the assessment of effectiveness.

### *Fair and just*

- 79. Fair and just considers the impact the option has, compared to the status quo, on promoting responses that are proportionate with levels of risk and harm. Family violence can occur in a wide range of forms, and the responses should be proportionate with the violence that occurs.
- 80. This criterion also considers the impact the option has on fundamental principles of law, compared to the status quo. Some of the options may have implications for fundamental principles, for example, restrictions on perpetrator rights.
- 81. This section focuses on procedural rights. Considerations such as the right of the victim to be safe are considered within the effectiveness criteria. For some of the options, particularly civil options, there will be minimal change from the status quo for fair and just.

### *Affordability*

- 82. The fiscal cost of the option to the justice sector is compared with the status quo. This includes the implementation and ongoing costs of the options, and the averted costs to the justice sector resulting from changes in current practice. The affordability of the option does not consider the averted costs to the justice sector from the reduction of family violence resulting from the options.
- 83. Some of the options are expected to result in increased incarceration. The affordability criterion identifies the number of extra prison beds that are expected to be required as

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<sup>21</sup> An option that is very effective at addressing a particular issue it is designed to address, may nevertheless not have a significant impact on the overall objectives of the review, for example if the harm caused by particular issue is relatively minor, or if the issue is rare. Conversely, an option which only partially addresses a particular problem may be more effective at addressing the objectives, if the issue is widespread.

a flow on impact of the preferred options. It does not include the cost of building new prisons, if required.

84. This section focuses on the costs to the justice sector. It does not consider potential implications for the social sector, for example through increased demand for services in the future.

Effectiveness	Fair and just	Affordability
<b>Civil law</b>		
<i>1. Improve access to protection orders</i>		
<p>More applications for protection orders (expected increase of up to 30%) due to reduced cost and complexity of process, increased support to apply and applications on behalf of victims.</p> <p>Reduced violence through increased number of orders that protect victims, impose conditions on perpetrators and link to services.</p> <p>Access to a protection order enables Police to respond more effectively to future violence by prosecuting breaches of protection orders.</p> <p>Protections available through the protection order are expected to also reduce fear of violence.</p> <p>Risks to effectiveness include:</p> <ul style="list-style-type: none"> <li>- victims do not know barriers are reduced and do not seek to apply</li> <li>- an increase in applications without a corresponding increase in orders granted, for example if: <ul style="list-style-type: none"> <li>• it encourages applications from people who do not meet the threshold for a protection order</li> <li>• NGOs or other agencies do not utilise opportunities to assist or apply on behalf, or</li> <li>• NGOs do not have the skills to assist, and NGOs, Police, CYF and other agencies do not have the skills to apply on behalf. This may also reduce the number of orders, for example if victims who would have been eligible for legal aid prefer to seek NGO assistance.</li> </ul> </li> </ul>	<p>No significant change from the status quo.</p>	<p>Cost to Police and CYF of applying on behalf of the victim.</p> <p>Increase in applications will have civil justice system costs, including:</p> <ul style="list-style-type: none"> <li>- increased applicants and respondents seeking legal aid, and</li> <li>- Court/Judicial time due to increased defended hearings.</li> </ul> <p>Increase in orders will have criminal justice system costs, including:</p> <ul style="list-style-type: none"> <li>- cost to the Police for serving and enforcing orders and investigating and prosecuting breaches</li> <li>- cost to Court/Judicial time, and legal aid for prosecutions, and</li> <li>- cost to Corrections for managing the sentences of increased respondents convicted of breach.</li> </ul> <div data-bbox="1834 625 2683 716" style="border: 1px solid black; padding: 5px; color: red;"> <p>Withheld under 9(2)(f)(iv): Confidentiality of advice</p> </div>
<i>2a. Improve the effectiveness of protection orders: Better linking orders to services and tailoring conditions (preferred option)</i>		
<p>Reduce perpetrator violence and improve victim safety by enabling orders to be linked to the multi-agency response to family violence (FV), providing Police with more information to inform decision-making around protection orders, and tailoring the conditions of orders to the needs of the victim.</p> <p>This is expected to support an ongoing response to reduce the risk of violence, and support Police to respond more effectively to breaches. Protections available through the protection order are expected to also reduce fear of violence.</p> <p>The option seeks to amend the legislation to provide guidance and improve clarity. There is a risk the legislation will create new uncertainties.</p>	<p>No significant change from the status quo.</p>	<p>Potential increase in Court/Judicial costs of considering tailored conditions.</p>
<i>2b. Improve effectiveness of protection orders: Presumption of arrest for breach</i>		
<p>Police currently has a policy of presumption of arrest and there is a high rate of arrest, prosecution and conviction for breaches of protection orders. A legislative presumption of arrest is expected to lead to a more consistent response to breaches. This may increase victim willingness to report and increase prosecutions for breach. However, a legislative presumption may create a disincentive on the victim to report the violence, if they want the violence to stop but do not want the perpetrator arrested.</p> <p>A legislative presumption could reduce police use of discretion to consider individual cases. Improving the response to breaches continues to be considered as part of the Police internal work programme, and the Ministry of Justice considers this is more appropriate.</p>	<p>Implications for the rights of the perpetrator and risk that reduced discretion will result in inappropriate arrests.</p>	<p>Implementation costs could include monitoring and compliance costs for Police. An increased number of arrests may increase prosecutions, with legal aid costs, Court/Judicial time for hearings and Police/Crown Law costs of prosecution.</p>
<i>3a. Improve the effectiveness of PSOs: Remove obstacles and link parties to risk assessment and services (preferred option)</i>		
<p>Expected increase in number of PSOs issued, by removing unintended restriction on Police issuing PSOs following arrest when no charges are made and by clarifying the threshold for laying complaints. This is expected to increase victim safety and stop the immediate violence of the perpetrator.</p> <p>Expected increase in successful complaints laid for breach of PSO by clarifying complaints are civil in nature, not criminal. This may increase the likelihood of consequences for breach, including the number of protection orders issued in response to a complaint for breach of a</p>	<p>No significant change from the status quo. Expected increase in the number of PSOs will increase number of perpetrators with rights restricted by a PSO.</p>	<p>Increased number of PSOs and ability to issue a PSO if no charges are filed may lead to a minor increase in Police time monitoring compliance with PSOs.</p> <p>Increased complaints for breach may have costs for Police in laying complaint and costs in Court/Judicial time for hearing complaint.</p>

<p>PSO.</p> <p>Expected to reduce perpetrator's violence and increase victim safety by linking perpetrators and victims to services designed to reduce the likelihood the PSO is breached (for example, emergency accommodation) and address the risk of ongoing violence.</p> <p>Risk assessments may help build a picture of what services are needed to effectively respond to FV and inform future investment decisions.</p> <p>Linking perpetrators and victims to services is expected to increase the demand for services. Effectiveness will be impacted by the availability of services.</p>		
<p><i>3b. Improve the effectiveness of PSOs: Require bound persons to attend risk assessment</i></p>		
<p>Risk assessment is expected to identify appropriate services to reduce the bound person's risk of violence. There is no requirement to attend services recommended by the assessment. However, it is likely that some perpetrators would continue on to services designed to address violence and therefore reduce future violence, increasing victim safety.</p> <p>There is a risk that a mandatory requirement encourages bound persons to view the assessment as a punishment and make them less willing to attend subsequent services.</p> <p>Requiring Police to consider whether to refer, and any costs of enforcing compliance, may create a disincentive on Police to issue PSOs over other tools. It may also divert Police resources from other priorities and offending.</p> <p>Risk assessments may help build a picture of what services are needed to effectively respond to FV and inform future investment decisions.</p> <p>Requiring bound person attendance and providing access to funded services is expected to increase the demand for services. Effectiveness will be impacted by the availability of services.</p>	<p>Imposing an additional requirement on perpetrators may infringe on their rights if there are significant consequences for breach, due to low threshold for issuing PSOs and lack of judicial oversight or appeals process.</p>	<p>Cost of Police time to consider whether to refer, and referring the bound person. There may be costs to Police of monitoring and enforcing compliance.</p>
<p><i>4. Improve the effectiveness of property orders (preferred option)</i></p>		
<p>Clarifying the purpose of property orders may improve the stability of victims by increasing the number of property orders and reducing the risk that victims must leave their homes.</p> <p>Improved clarity around enforcement of property orders may increase the victim's confidence in the Police response and willingness to report breaches. This increases the likelihood that the perpetrator is held to account for their behaviour, and increases the safety of the victim.</p> <p>There is a risk that the change is viewed as a signal that breaches should be treated more seriously.</p> <p>The victim remains the primary agent for seeking a property order. The changes will be publicised to ensure victims are aware that barriers to property orders have been reduced.</p> <p>The option limits making a property order to when a protection order is made. This will limit victims from applying who only want a property order, as is possible under the existing process.</p>	<p>No significant change from the status quo.</p>	<p>Increased applications will have civil justice system costs, including increased applicants and respondents seeking legal aid, and Court/Judicial time due to increased defended hearings.</p> <p>Increase in the number of property orders issued may have criminal justice system costs for prosecution of breach (estimated 25% breach of 750 occupation orders each year), including:</p> <ul style="list-style-type: none"> <li>- costs to Police for prosecuting breaches</li> <li>- cost to Court/Judicial time, and legal aid for prosecutions, and</li> <li>- cost to Corrections for managing the sentences of respondents convicted of breach.</li> </ul>
<p><i>5. Improve the effectiveness of parenting arrangements (preferred option)</i></p>		
<p>Improving the safety of adult and child victims of FV by making parenting arrangements that are more responsive to their needs, including better recognising the impacts of violence on children and reducing the opportunities for the perpetrator to be violent. This may reduce violence by increasing victim safety. It may also improve confidence in parenting orders and increase their uptake.</p> <p>Risks to effectiveness include:</p> <ul style="list-style-type: none"> <li>- amendments to provide guidance may create new uncertainties</li> <li>- Judges take an overly cautious approach that restricts a child from having contact with a parent where there is no real risk of violence to the child</li> <li>- Judges do not have adequate information to make informed decisions. This should be mitigated by improving information-sharing between Court jurisdictions, and</li> <li>- a successful trial of supervised handover may not be rolled out nationally if there is no funding allocated.</li> </ul>	<p>No significant change from the status quo.</p>	<div data-bbox="1828 1480 2683 1583" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p style="color: red;">Withheld under 9(2)(i): Commercial activities</p> </div> <p>The expected increased uptake of parenting orders will have civil justice system costs, including:</p> <ul style="list-style-type: none"> <li>- increased number of parties seeking legal aid, and</li> <li>- Court/Judicial time due to increased hearings (changes expected to result in an additional 250 parenting orders a year).</li> </ul> <p>ICT costs to the Ministry of Justice and information sharing costs.</p>

<b>Criminal law</b>		
<b>6a. Better identify FV: Virtual framework of FV offences (preferred option)</b>		
A virtual framework will enable more accurate identification of FV offending in the criminal justice system. This will enable data collection that is important for informing future FV investment decisions. It is also necessary to implement options in this package that treat FV offending differently from other offending. There is a risk that defendants may challenge the determination of FV, leading to delays in Court proceedings.	No significant change from the status quo.	ICT costs to the Ministry of Justice of developing and implementing a virtual framework. Training costs for the Ministry of Justice and Police.
<b>6b. Better identify FV: Stand alone framework</b>		
Nearly all offences can occur in a FV context. A standalone framework would exclude certain forms of FV that were not captured within the specified offences. A standalone framework may send a public message about the unacceptability of FV. It would duplicate existing offences, leading to inconsistent charging practice, including the risk of charges being negotiated down to non-FV offences, reducing the accuracy of data collected	May infringe on natural justice rights of the perpetrators by creating arbitrary FV offences and inconsistent charging practice.	Implementation costs may include training for Police and Courts/Judiciary on how the standalone FV framework fitted with offending under generic offences. These costs would be absorbed within baseline. ICT costs to Ministry of developing and implementing a standalone framework.
<b>7a. New offences: Coercion and control, strangulation, assault on a family member and coercion to marriage (preferred option)</b>		
The new offences are expected to lead to prosecutions of FV perpetrators whose behaviour was not previously criminalised, and to better recognise the FV nature of some behaviours captured by generic offences. Having a specific offence of strangulation will identify this behaviour, which is a risk factor for future serious harm and lethality. Improved identification of these behaviours as FV may inform decision making in individual cases. It may also help build a better picture of FV that can inform future investment decisions. The offences may partially overlap with existing offences, leading to inconsistent charging practice, including the risk of charges being negotiated down to non-FV offences, reducing the accuracy of data collected. Perpetrators who are convicted and incarcerated under the new offences will have less opportunity to commit FV while in prison. This will reduce FV and increase victim safety in the short term. However, convictions do not have a significant impact on long term reduction of offending. Risks often present in any family violence prosecution may apply to a wider range of perpetrators who would not otherwise have been prosecuted. In particular: - convicted perpetrators may be at a higher risk of reoffending once released, and the victim may be at increased risk of retaliatory violence by the perpetrator, and - the victim may feel re-traumatised by the Court process. Socio-economic costs of increased sentences include the perpetrator's lost productivity, loss of future employment opportunities and consequential impacts on their families. These socio-economic costs fall disproportionately on Māori, men and young offenders as perpetrators and women as victims.	May infringe on the freedom of movement and natural justice rights of perpetrators through new criminalisation of behaviours and inconsistent charging practice.	Implementation costs may include training for Police and Courts/Judiciary on the new offences. Increase in prosecutions may have criminal justice system costs, including: - Police costs for investigating and prosecuting the offences - increased Court/Judicial time and legal aid for prosecutions, and - cost to Corrections for managing the sentences of increased number of perpetrators.  Withheld under 9(2)(f)(iv): Confidentiality of advice
<b>7b. New offences: Financial abuse and assault occasioning bodily harm</b>		
Financial abuse is generally caught by existing offences of fraud and theft, or where it forms part of a pattern of psychological abuse, the new offence of coercive control. Where financial abuse is not captured in the existing legislation, a new offence of financial abuse would better fit with a wider review of laws protecting vulnerable adults. Assault occasioning bodily harm may be a gap in general assault law that is not limited to FV and should be considered as part of a wider review of all assault law. Both the offences may partially overlap with existing offences, leading to inconsistent charging practice, including the risk of charges being negotiated down to non-FV offences, reducing the accuracy of data collected. Perpetrators who are convicted and incarcerated under the new offences will have less opportunity to commit FV while in prison. This will reduce FV and increase victim safety in the short term. However, convictions do not have a significant impact on long term reduction of	The proposed assault offence removes the need to prove intent to cause a certain level of injury. The can mean perpetrators are punished for causing an injury they did not intend.	Implementation costs may include training for Police and Courts/Judiciary on the new offences. These costs would be absorbed within baseline. Increased prosecutions may have criminal justice system costs, including: - cost to the Police for investigating and prosecuting the offences - cost of Court/Judicial time, and legal aid, for prosecutions, and - cost to Corrections for managing the sentences of increased number of perpetrators convicted of FV.

<p>offending. Other risks include:</p> <ul style="list-style-type: none"> <li>- perpetrators who are convicted of a FV offence may be at a higher risk of reoffending once released</li> <li>- the victim may be at increased risk of retaliatory violence by the perpetrator, and</li> <li>- the victim may feel re-traumatised by the Court process.</li> </ul> <p>Socio-economic costs of increased sentences include the perpetrator's lost productivity, loss of future employment opportunities and consequential impacts on their families. These socio-economic costs fall disproportionately on Māori, men and young offenders as perpetrators and women as victims.</p>		
<p><b>8a. Recognise seriousness of FV: Record FV on record (preferred option)</b></p>		
<p>Recording FV on the perpetrator's criminal record may have a denunciatory effect and help inform future Court and Police responses, to make them more effective at identifying and responding to FV. Identifying FV may also help build a better picture of FV that can inform future investment decisions. It may assist with options above to improve information sharing between criminal proceedings and CoCA proceedings. It may also affect bail and sentencing decisions for any future criminal charges where the perpetrator's offending history is considered.</p>	<p>No significant change from the status quo.</p>	<p>Implementation costs to Ministry of developing ICT systems that can record FV on criminal records.</p>
<p><b>8b. Recognise seriousness of FV: FV as an aggravating factor at sentencing</b></p>		
<p>Clarifying that FV is an aggravating factor at sentencing is expected to have a denunciatory effect. It is expected to lead to a 4% increase in the number of sentences of imprisonment, and a 4% increase in the length of sentences imposed.</p> <p>Increasing sentences will reduce the opportunity of perpetrators to offend while in custody. This will reduce FV and increase victim safety in the short term. However, it is unlikely to have a deterrent effect and longer sentences may increase the risk of reoffending.</p> <p>Socio-economic costs of increased sentences include the perpetrator's lost productivity, loss of future employment opportunities and consequential impacts on their families. These socio-economic costs fall disproportionately on Māori, men and young offenders as perpetrators and women as victims.</p>	<p>No significant change from the status quo.</p>	<p>Clarifying that FV is an aggravating factor at sentencing may have criminal justice system costs, including:</p> <ul style="list-style-type: none"> <li>- cost of Court/Judicial time as perpetrators may be less likely to plead guilty if they face a higher sentence, and</li> <li>- cost to Corrections for managing a higher number of more severe sentences.</li> </ul> <div data-bbox="1813 1024 2694 1115" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="color: red;">Withheld under 9(2)(f)(iv): Confidentiality of advice</p> </div>
<p><b>8c. Recognise seriousness of FV: Aggravated FV offences</b></p>		
<p>Creating aggravated FV offences is expected to have a denunciatory effect and increase the severity of sentences. However, it will reduce judges' discretion to impose proportionate and appropriate sentences. It will also increase the risk of inconsistent charging practice, including the risk of charges being negotiated down to non-FV offences, reducing the accuracy of data collected.</p> <p>Increasing sentences will reduce the opportunity of perpetrators to offend while in custody. This will reduce FV and increase victim safety in the short term. However, it is unlikely to have a deterrent effect and longer sentences may increase the risk of reoffending.</p> <p>Socio-economic costs of increased sentences include the perpetrator's lost productivity, loss of future employment opportunities and consequential impacts on their families. These socio-economic costs fall disproportionately on Māori, men and young offenders as perpetrators and women as victims.</p>	<p>May infringe on natural justice rights of the perpetrators by creating arbitrary FV offences and inconsistent charging practice.</p> <p>May reduce judicial discretion in decision making.</p>	<p>Creating aggravated FV offences may have criminal justice system costs including:</p> <ul style="list-style-type: none"> <li>- cost of Court/Judicial time as perpetrators may be less likely to plead guilty if they face a higher penalty, and</li> <li>- cost to Corrections for managing a higher number of more severe sentences.</li> </ul>
<p><b>9. Better consider victim safety in bail decisions (preferred option)</b></p>		
<p>Increasing consideration of victim safety may increase the consistency of judicial decision making and the conditions attached at bail. This will increase the safety of the victim for the duration of the prosecution. However, it is not expected to have a significant impact, as judges typically already consider victim safety in FV bail decisions.</p>	<p>No significant change from the status quo.</p>	<p>There may be an increase in conditions attached to bail, and perpetrators remanded without bail, with implications for Police enforcing conditions and Corrections managing defendants in custody.</p>
<p><b>Supporting a co-ordinated response</b></p>		
<p><b>10. Improve information sharing (preferred option)</b></p>		
<p>Improved information-sharing across agencies may lead to better assessment of an individual's risk of FV and enable more tailored responses. It is expected to support agencies</p>	<p>No significant change from the status quo. Potential risk that</p>	<p>Implementation costs for ICT systems and processes for sharing</p>

<p>to work together in a more coordinated and consistent manner, and create more effective responses to FV that increase victim safety and hold perpetrators to account. Improved identification of FV may also help build a better picture of FV that can inform future investment decisions.</p> <p>The key risk is that agencies continue to take a conservative approach to sharing and relevant information regarding the risk of family violence is not used to inform assessment. Other possible risks include:</p> <ul style="list-style-type: none"> <li>- excessive sharing, with relevant information buried or is not processed in a timely manner, and risks to personal privacy</li> <li>- discouraging parties from seeking assistance or revealing information. Concerns over this may also deter organisations and individuals from sharing information, and</li> <li>- the guidelines around information-sharing may be in tension with professional codes of conduct or ethics.</li> </ul> <p>This option is an enabling provision that supports the Ministerial Group work programme. The effectiveness and cost of the option will depend on how the agencies choose to apply the provisions and further decisions by the Ministerial Group.</p>	<p>increased information-sharing may infringe on the privacy rights of the victim and perpetrator.</p>	<p>information. This may fall on a number of agencies that respond to FV.</p>
<p><i>11. Aligning service delivery (preferred option)</i></p>		
<p>Enabling more consistent service delivery and clarifying agency responsibilities and accountabilities to support a more co-ordinated family violence response system. It is expected to support agencies to work together in a more coordinated and consistent manner, and create more effective responses to FV that increase victim safety and hold perpetrators to account.</p> <p>More coordinated and consistent responses to FV may also help build a better picture of FV that can inform future investment decisions.</p> <p>Risks to effectiveness include:</p> <ul style="list-style-type: none"> <li>- one-size-fits-all responses that are not tailored to the needs of the victim or perpetrator, and</li> <li>- reducing the discretion of front-line practitioners and inhibiting local innovation.</li> </ul> <p>This option is an enabling provision that supports the Ministerial Group work programme. The effectiveness and cost of the option will depend on how the agencies choose to apply the provisions and further decisions by the Ministerial Group.</p>	<p>No significant change from the status quo.</p>	<p>Implementation costs may include the cost of developing codes of practice and training for the workforce. This may fall on a number of agencies that respond to FV.</p>

## Impacts of the preferred package

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### Impacts on reducing family violence

85. The lack, and variability, of evidence around what works in responding to family violence makes it difficult to identify the impact of the package on reducing family violence with any certainty. Assumptions underlying the assessed impact may change as the work progresses, changing the expected outcomes.
86. The preferred options as a whole create a package of reforms expected to reduce revictimisation and reoffending for people who engage with the justice sector through:
- a. the increased and more effective use of civil orders (protection orders, PSOs, property orders and parenting orders) in stopping the perpetrator's use of violence and enabling a swift response to violence. More victims and perpetrators will be linked into short term and ongoing services to address violence.
  - b. in particular, access to a protection orders is expected to lead to up to a 40% reduction in violence for people who would not otherwise have had a protection order.<sup>22</sup> It is also expected to reduce the protected person's fear of violence.
  - c. a more comprehensive criminal justice response to family violence that reduces perpetrator opportunities for violence through increased number of perpetrators incarcerated, and for longer.
  - d. the new offence of non-fatal strangulation will help recognise the importance of family violence strangulation as a risk factor for lethality and coercive control. Prosecuting strangulation separately, and identifying it on the perpetrator's criminal record, will inform future decisions regarding this risk factor.
87. Increased recognition will in turn create a justice response that shifts from a reactive incident based response to an approach concerned with the prevention of future serious harm.
88. The package is also expected to reduce family violence through supporting the work programme of the Ministerial Group.
89. Possible unintended consequences of the preferred package include the risk it:
- a. escalates the perpetrator's violent behaviour, for example in retaliation to their perceived loss of control over the victim
  - b. deters victims from reporting violence, for example if victims are not confident of, or comfortable with, the government's response
  - c. re-traumatizes victims, for example, if the victim feels the government's response further reduces their autonomy, and
  - d. creates confusion about the government's response, for example options designed to clarify existing legislation may create new uncertainties.

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<sup>22</sup> Russel, B (2012) *Effectiveness, victim safety, characteristics and enforcement of protective orders*. Partner Abuse 3(4) 531-552

## **Impacts on vulnerable population groups**

### *Impact on women*

90. Women are disproportionately impacted as victims of family violence, and options to increase victim safety will therefore have a disproportionate impact on women. Options that are expected to support women in particular include:
  - a. increasing the accessibility and effectiveness of protection orders to support women to obtain protection
  - b. improving parenting arrangements and property orders to protect women victims, who are often the primary carers of children, and
  - c. changing perpetrator behaviour, for example by better linking perpetrators to services, to reduce revictimisation of women.

### *Impact on children*

91. The options presented in this paper focus primarily on children and young people as victims of family violence, rather than as perpetrators. Policy proposals emphasise the importance of ensuring that decisions about the care and welfare of a child are made in the context of CoCA, the piece of legislation designed for this purpose.
92. Options to improve parenting arrangements are expected to support children and young people. For example, supervised hand-over arrangements seek to address a situation where children may be especially vulnerable to witnessing parental conflict.
93. Other options raise the visibility of children in the DVA more generally, ensuring that children's interests are adequately considered in decision-making, and that children and young people have better access to protection orders and to safety programmes in their own right.
94. Advice has been premised on an expectation that Child, Youth and Family (and its replacement entity) will continue to have responsibility for the care and protection of children and young people who are direct victims of family violence or who have been exposed to family violence.
95. Higher levels of incarceration are one of the anticipated outcomes of proposals relating to prosecuting family violence. Evidence to suggest that incarceration of a parent has a detrimental effect on the life outcomes of a child should be balanced against the safety needs of children and other victims.

### *Impact on Māori*

96. Māori are overrepresented both as victims and perpetrators of family violence, and options will have a disproportionate impact on Māori. Options that are expected to support Māori in particular include:
  - a. changing the name of the DVA and the definition from domestic violence to family violence, to better reflect the impact of the violence on whānau
  - b. clarifying the provisions regarding consent to contact. This is expected to have a positive impact on the whānau and support ongoing relationships with the perpetrator where the victim wishes it

- c. improving access to services, which should better support the safety of Māori victims while also holding Māori perpetrators to account, and
  - d. introducing codes of practice which should increase the provision of tikanga-based and culturally appropriate services for whānau experiencing family violence.
97. However, Māori are overrepresented as perpetrators in the criminal justice system. Proposals to increase the criminalisation of family violence and the length and type of sentences will disproportionately impact Māori.

*Impact on people with disabilities*

98. The preferred package aligns with the principles in the New Zealand Disability Strategy, including honouring Government obligations by removing barriers to participation and independence, as well as promoting the empowerment of people with disabilities. Specific proposals that were designed to have a positive impact on people with disabilities include:
- a. providing for special conditions on protection orders to address the vulnerability of people with disabilities
  - b. recognising coercive/controlling behaviour and a new offence of coercion and control behaviour, which is a common form of abuse for people with disabilities, and
  - c. helping people with disabilities to obtain protection orders by providing funded support and applications on behalf of the victim.
99. Risks for people with disabilities include judges not having adequate information to make informed decisions about special conditions. Applications made on behalf of the victim should include safeguards to limit the risk they may come into conflict with the rights of individual to make decisions.

*International obligations*

100. Reducing family violence and the focus on options to support vulnerable populations contributes to New Zealand's international obligations, in particular the United Nations:
- a. Convention on the Elimination of All Forms of Discrimination against Women (1979), in particular article 3 (ensure the full development and advancement of women), article 15 (equality between women and men) and article 16(b) (women to freely choose a spouse).
  - b. Convention on the Rights of the Child (1989), by improving the safety of child victims of family violence.
  - c. Convention on the Rights of People with Disabilities (2008), by ensuring effective access to justice for people with disabilities.
101. It also supports human rights obligations under the Covenant on Economic, Social and Cultural Rights, the Declaration on the Rights of Indigenous People, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

## Social and economic impacts

102. Reduced family violence will reduce the pain and suffering of victims, their families and their communities, and premature mortality. Averted costs resulted from reduced violence include:

- a. a reduction in individual and societal fear of violence
- b. averted health costs from reduce physical and psychological harm
- c. gains to productivity and less absenteeism by victims and perpetrators
- d. reduced homeless among victims, averting direct health costs and the pain and suffering associated with this
- e. the demonstrative and educative value of signalling that family violence is not accepted by society, and that society expects the state to take steps to protect victims and stop perpetrators using violence.

103. Some costs to society and the economy may result from the package. For example, an increase in the number of incarcerated perpetrators and the length of incarceration will have costs for the perpetrator including lost earnings and lost future employment opportunities. This may impact their families, which may include victims who are economically reliant on the perpetrator.

104. The socio-economic costs fall disproportionately on population groups most represented in criminal justice statistics, including males, Māori and young offenders, and female, Māori and 20-29 year old victims.<sup>23</sup>

## Impacts for government

105. Withheld under 9(2)(f)(iv): Confidentiality of advice

<sup>24</sup> These costs are spread across Votes Justice, Courts, Police and Corrections. Costs in the table below are estimates only and are based on assumptions where there is uncertainty.

Approximate costs in millions over the four years 2017/18-2020/21
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Withheld under 9(2)(f)(iv): Confidentiality of advice
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106. The cost of the civil order options is primarily driven by an expected up to 30% increase in protection orders resulting from improved accessibility, and the corresponding increase in prosecutions for breach.<sup>25</sup>

<sup>23</sup> NZ CASS <http://www.justice.govt.nz/publications/global-publications/n/new-zealand-crime-and-safety-survey-2014/index>. NZ Clearinghouse <https://nzfvc.org.nz/family-violence-statistics>

<sup>24</sup> Based on a maximum penalty of seven years imprisonment for the new offence of strangulation.

<sup>25</sup> The breach rate for protection orders is expected to remain steady. While some options may reduce the likelihood of breach, others are expected to increase the detection of breaches.

107. The implementation costs include the creation of an implementation team at the Ministry of Justice, along with information and communications technology (ICT) costs and training costs across justice sector agencies.
108. Costs to Votes Justice and Courts are largely driven by an expected increase in the number of applications for civil orders and prosecutions for family violence offending. The increase in prosecutions will largely be driven by an increase in the ability of the criminal justice system to prosecute existing family violence, rather than an increase in levels of family violence.
109. There is expected to be a consequential increase in applications for legal aid, Court/Judicial time to consider cases, and costs for Ministry-funded non-violence and safety and education programmes.
110. Costs to Police are driven by the new offences and the increase in protection orders. This is expected to lead to an increase in investigations and prosecutions for family violence offending, including protection order breaches.
111. Costs to Corrections are driven by an expected increase in the number of perpetrators convicted of family violence, and the expected increase in the length and type of sentences imposed.

Withheld under 9(2)(f)(iv): Confidentiality of advice

112. Options designed to support the Ministerial Group work programme are primarily enabling provisions. The cost of the options to relevant agencies will depend on how the agencies choose to apply the provisions and further decisions by the Ministerial Group.
113. In addition to these costs, publicity from announcing and implementing changes to family violence law may lead to an increased awareness of family violence and confidence in the government's response. This may result in an increase in family violence reporting, providing more victims with access to protection and holding more perpetrators to account.

#### *Averted costs to government due to the reduction in family violence*

114. The long term outcome of the package is expected to be an eventual reduction in family violence. This is expected to lead to averted costs through a reduction in the number of cases in the civil and criminal justice system. It is also expected to have averted costs across other agencies, for example through reduced health costs accruing from violence.
115. Given the complex nature of family violence, and the impact of other work across government to address the problem, the level and timeframes for these averted costs are unclear.

#### *Increased demand for services*

116. Requiring the bound person to attend a risk and needs assessment is expected to increase the number of victims and perpetrators referred to services. Currently, there is a lack of available services. Other options that have the potential to increase demand for services in the future include:

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<sup>26</sup> This figure is lower than that set out in the Cabinet papers as it does not include the estimated prison beds for making family violence an aggravating factor at sentencing.

- a. improving the effectiveness of property orders, by increasing the demand for perpetrator emergency housing (this may largely be a shift from victims seeking accommodation to perpetrators doing so).
  - b. improving the effectiveness of protection orders by enabling protection orders to be linked to the multi-agency response and enabling the Court to direct respondents to additional services in the future.
117. Effectively implementing these options will require access to appropriate services that matches demand. Under the current funding model, this may impact the social sector agencies that are the primary funder of services. It may also have a flow-on impact for the service providers, with increased cost and resource pressures as a result of the increased demand.
118. As part of the Ministerial Group work programme, Corrections is leading a project to identify the optimum mix and delivery model for perpetrator programmes. The Ministries of Justice and Social Development are working closely with Corrections on this project. The Ministerial Group also recently added a project to review government funded services for victims to the work programme.

## **Consultation**

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### **Scoping the review**

119. Following Cabinet's initial agreement to a review of the Domestic Violence Act 1995, the Ministry of Justice engaged with key government agencies, academics and non-government organisations on the proposed scope of the review. Overall, stakeholders thought the legislative framework was sound, but raised concerns with its implementation. A number of stakeholders suggested that relevant provisions in related Acts should also be reviewed, to enable broader systemic issues to be addressed. Informed by this feedback, the review was broadened in scope to include relevant provisions in criminal law and in the Care of Children Act 2004 and the Privacy Act 1993.

### **Discussion document**

120. The review has been informed by public consultation on the discussion document "Strengthening New Zealand's legislative response to family violence". Government agencies were consulted on the content and process of the consultation and were broadly supportive. The discussion document can be found at [https://consultations.justice.govt.nz/policy/family-violence-law/user\\_uploads/fv-consultation-discussion-document-v2.pdf](https://consultations.justice.govt.nz/policy/family-violence-law/user_uploads/fv-consultation-discussion-document-v2.pdf).
121. The discussion document was open for public submissions in August and September 2015. Over 500 submissions were received from a wide range of organisations and individuals, including government agencies, the judiciary, service providers, academics, and victims. The submissions were considered in the development and analysis of options.
122. A summary of submissions was released in March 2016 and can be found at <http://www.justice.govt.nz/consultations/previous-consultations/better-family-violence-law/documents/summary-of-submissions>. Key themes that were evident in submissions included the importance of:

- a. recognising the different needs of different population groups, in particular those at increased risk of family violence, including women, children and Māori
- b. improving the accessibility of protection orders so that victims could get them
- c. using civil orders, especially protection orders and PSO, as an opportunity to link the victim and perpetrator in with services to address the risk of future violence
- d. providing access to services for those affected by violence who did not engage with the justice system, and
- e. improving information sharing between agencies and Courts to ensure relevant parties had access to adequate information to make informed decisions.

### **Developing advice and agency consultation on the RIS and Cabinet papers**

123. Officials from the following Government agencies, Crown entities and other bodies were either consulted or contributed to the development of the package of options: the Ministries of Social Development (including Child, Youth and Family, Offices for Disability Issues, and Senior Citizens), Health, and Education; the Ministries for Women, and Pacific Peoples; the Departments of Corrections, and Internal Affairs; Accident Compensation Corporation; New Zealand Police; Crown Law Office, Te Puni Kokiri, State Services Commission, Social Policy Evaluation and Research Unit; Health, Quality and Safety Commission; Statistics New Zealand; and the Office of the Privacy Commissioner. Treasury and the Department of Prime Minister and Cabinet were kept informed.
124. Overall, agencies support the intent of the review to improve the government response to family violence and the direction of the package. Agencies raised a number of issues in relation to specific options, and the Ministry of Justice will continue to work with agencies to address these issues.
125. The following summarises comments from key agencies regarding the final package of options set out in the Cabinet paper. Key themes common across a number of agencies included:
- a. ensuring the options align with the wider Ministerial Group work programme
  - b. recognising the impact of the options on demand for perpetrator and victim services, and considering this issue as part of the Ministerial Group work programme
  - c. considering the impact of options on vulnerable populations who are disproportionately victims of family violence, and
  - d. the level of uncertainty underlying much of the analysis and the assumptions included in developing the costs and benefits of the proposals.

### *MSD*

126. Options that will impact MSD include options to improve parenting arrangements, options to support a co-ordinated consistent government response, enabling CYF to apply for a protection order and the impact of options in increasing demand for services. MSD noted that:

- a. options should align with ‘Investing in Children’ reforms, which includes reforming Child, Youth and Family. This includes considering how the Domestic Violence Act works in conjunction with a reformed Children, Young Persons, and their Families Act 1989 and aligning information-sharing options with the reforms.
- b. the interests of children affected by family violence, and the need to promote their long-term stability and wellbeing, should be placed at the centre of responses to family violence, and desired outcomes for children should be clearly set out.
- c. options to improve workforce competency should align with the core competencies for the children’s workforce being developed through the Children’s Action Plan.

*New Zealand Police*

127. Police will be affected by civil order options, including changes to PSOs and the expected increase in protection orders, and criminal justice system options, including the creation of new offences. Police are broadly supportive of the proposals. The Ministry of Justice is continuing to work with Police to further refine the option of requiring bound persons to attend a risk and needs assessment, and the scope of the new offences.

*Department of Corrections*

128. Corrections will be primarily affected by options to increase the number of protection orders, and strengthen the criminal law, that are expected to increase the number of prosecutions in the criminal justice system and consequently sentences managed by Corrections. In particular, Corrections note that there are currently considerable pressures on the prison estate that may be impacted by these options.

*Treasury*

129. The total cost of the options and flow-on impacts are significant. Treasury has noted the importance of properly assessing the overall impact of the options. Treasury has suggested additional information is provided on the potential increase in demand for supporting services and the expected impact on prison capacity.

**Cabinet paper**

130. The options in the Cabinet paper differ slightly from the preferred package set out in this paper. Specifically, the Cabinet papers:
- a. do not explicitly name Police and CYF as agencies applying for protection orders on behalf of the victim
  - b. propose requiring bound persons to attend a risk assessment, and
  - c. propose clarifying that family violence is an aggravating factor at sentencing.

**Conclusions and recommendations**

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131. The RIS identifies preferred options that together form a preferred package for addressing family violence that are designed to improve the effectiveness of civil orders and the criminal justice system at responding to family violence, and support a co-ordinated cross-government response.

132. The expected impact of the options in the preferred package is cumulative. The more options that are progressed, the greater the expected impact on family violence. However, the cost and scale of change may constrain decisions and it is possible that a narrower set of options will be progressed.
133. Options to strengthen the civil law response are considered overall to be more effective than options to strengthen the criminal justice system. The civil options seek to intervene at an earlier stage and link parties in to services to prevent reoffending and re-victimisation. While the criminal justice system options send a strong symbolic message, prosecuting family violence is not expected to lead to a significant reduction in reoffending.
134. The option to use legislation to support a more co-ordinated response to family violence across agencies is likely to have a significant impact on reducing family violence. This option is designed to improve system efficiency, affecting the greatest number of family violence victims and perpetrators, including those outside the justice system. However, the impact of this option will depend on how it is utilised by agencies across government.

### **Implementation plan**

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135. Implementation will require new legislation to amend the Domestic Violence Act 1995 and related legislation including: Care of Children Act 2004, Crimes Act 1961, Criminal Procedure Act 2011, Bail Act 2000 and Sentencing Act 2002. The Minister intends to seek to introduce legislation into the Parliament by the end of 2016.
136. If passed, commencement of some of the civil order options may be staged to enable the adequate development of the system to underpin the changes. Timing will be considered during drafting of the legislation and final advice will be provided when approval to introduce the Bill is sought from Cabinet.
137. Following policy approval an implementation team will be created to design a detailed implementation plan. Within the Ministry of Justice, the key impacts of the options will be on the Operational and Services Delivery Group. The implementation team will include representatives from teams within these groups.
138. Together, the options seek behaviour change from a wide range of groups. Successful implementation will require the Ministry of Justice to continue to work closely with government agencies affected by the options, such as Corrections and agencies leading relevant Ministerial Group work programme projects along with Police and the Judiciary. It will also require the buy-in of non-government groups affected by the change, for example Court based professionals (mainly lawyers) and family violence service providers. Achieving this will require raising awareness of the changes, for example providing guidance about changes to improve information sharing.

### **Monitoring, review and evaluation**

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139. The purpose of monitoring and review activities for this package will be to support the ongoing improvement of the identification and response to family violence. It will also consider how the package aligns with the Ministerial Group work programme.
140. Assessing the impact of the package will be challenging. It is expected it will be implemented along with initiatives resulting from the Ministerial Group work programme. In addition, a number of government and non-government agencies are

progressing work that will impact family violence. It will be difficult to distinguish the impacts of this package from wider work.

141. The implementation team will develop a plan for monitoring, review and evaluation processes that recognises and responds to this challenge. The team will develop key performance indicators. Processes may include:
  - a. specific reviews of certain options, for example trialling NGO support for victims to apply for protection orders, and
  - b. utilising existing mechanisms, such as the New Zealand Crime and Safety Survey, to assess changes in the prevalence and fear of family violence as a consequence of the changes.
142. The intention is to review the impacts and implementation of the legislation after the third year following commencement. Specific timeframes will be developed following Cabinet agreement to options.