

FAMILY VIOLENCE LEGISLATION BILL

Changes coming into effect on enactment
Factsheet 1 - July 2018

These changes include new sections and amendments to the Criminal Procedure Act 2011; the Crimes Act 1961; the Evidence Act 2006; the Bail Act 2000; the Sentencing Act 2002, and the Domestic Violence Act 1995 (the Act).

New offences

STRANGULATION, ASSAULT ON A FAMILY MEMBER, COERCION TO MARRY

The Bill applies a modern understanding of family violence to effectively address harmful behaviours. The new offence of “strangulation or suffocation” is added to the Crimes Act 1961, recognising that strangulation is a significant risk factor for serious violence. Strangulation is used to obtain power and control over the victim. The offence carries a maximum penalty of seven years’ imprisonment.

The new offence of assault on a family member reflects the diverse nature of family violence offending. It sits alongside male assaults female and assault on a child, and carries a maximum penalty of two years’ imprisonment.

Coerced marriage or civil union criminalises the act of coercing another person to enter a marriage or civil union, regardless of whether the marriage occurs in New Zealand or overseas. This means cultural marriages will be covered by the offence and recognises coercion to marry is a form of abuse. The maximum penalty will be five years’ imprisonment.

Family Violence Flag

MAKING FAMILY VIOLENCE VISIBLE

The Bill directs that an offence charged, or conviction entered, is specified as a family violence offence. This provision will make family violence more visible to judges and Police so that this can be taken into consideration when decisions are made. The flag will also support the further development of differentiated responses to family violence offences.

Video Evidence

VIDEO EVIDENCE TAKEN WITHIN TWO WEEKS OF AN ALLEGED OFFENCE

The Bill clarifies how video evidence taken at the time of an offence may be used in court, by inserting new sections 106A and 106B into the Evidence Act 2006. A family violence complainant will be entitled to give evidence via a video record made prior to the hearing, so long as it is within two weeks of the alleged incident. This change will help reduce trauma and improve the court experience for victims of violent crimes.

Defendants will be entitled to apply to a Judge for a direction that a family violence complainant gives their evidence in the ordinary way.

Police Safety Orders (PSO)

PSO MAY BE ISSUED IF A PERSON HAS BEEN ARRESTED

Police will have the power to issue a PSO if a person is arrested following a family violence incident, but no charges are subsequently filed.

The PSO places restrictions on the bound person to keep the victim safe. The Bill provides that, under special circumstances, Police will be able to issue a PSO against young people under the age of 18 years.

Police will have the ability to require the bound person to attend a risk and needs assessment. The assessor will determine the likelihood of further family violence occurring and identify any needs that the bound person may have that can be met by the family violence sector. A person's refusal or failure to comply with the direction to attend risk and needs assessment is treated as refusal to comply with the PSO. This power will be brought into force by Order in Council once the service has been developed and procured.

A breach of a PSO will need to be proved on the balance of probabilities (the civil standard) rather than beyond reasonable doubt (the criminal standard)

No-Contact Conditions

PERPETRATORS HELD IN CUSTODY MAY BE ORDERED TO HAVE NO CONTACT WITH VICTIMS

Judges will have the power to impose no-contact provisions on a family violence defendant while they are remanded in custody. This provision is designed to keep victims safe and avoid situations in which perpetrators may pressure victims not to testify in court.

Victim Safety in Bail

SAFETY IS THE PRIMARY CONSIDERATION FOR POLICE AND COURTS

The safety of the victim and family will be the most important consideration for Police and courts when making decisions about bail for a defendant charged with a family violence offence. Police and court staff are empowered to impose any bail condition they consider reasonably necessary in order to protect the victim and family.

Sentencing

RECOGNISE AT SENTENCING THE HARM CAUSED BY FAMILY VIOLENCE

In order to recognise the severity of family violence there have been changes to the Sentencing Act 2002 to add offending while subject to a protection order, against a protected person under that order, as an aggravating factor. If a protection order is issued at sentencing any appeal seeking to have it removed will be an appeal against the sentence, not the protection order. The court will also share information with service providers when a protection order is made as part of sentencing.

Information Sharing

SUPPORTING AGENCIES TO ASSESS AND MANAGE RISK AND CO-ORDINATE RESPONSES

The Bill provides agencies operating in the family violence sector with clear authorisation to share personal information for the purpose of promoting victims' safety. It does this by allowing them to request, use, and disclose personal information for purposes relating to family violence while granting good faith immunity for anyone who shared information for this purpose.

Codes of practice

CODES OF PRACTICE WILL SUPPORT COORDINATED, CONSISTENT AND EFFECTIVE SERVICE DELIVERY

Professional practice needs to be consistent, based on a common approach to screening and assessing risk, sharing information and taking steps to prevent future violence. Services must recognise and respond to multiple needs, including those of children.

Family Violence Agencies

DEFINING FAMILY VIOLENCE AGENCIES

The Bill defines 'family violence agencies' as: ACC; Corrections; Ministry of Education; Ministry of Health; any DHB; Housing NZ; every registered community housing provider; Immigration NZ; Ministry of Justice; Police; Oranga Tamariki; MSD; social service practitioners; any school board and; any licenced early childhood service.

These provisions are intended to support agency behaviour change to achieve enhanced information sharing; improve the quality and consistency of service delivery; and support shared integrated practice and clear accountability arrangements across government agencies.

Principles

PRINCIPLES PROVIDE GUIDANCE TO DECISION-MAKERS

The new legislation provides a set of principles, which will guide decisions made under the Act.

The principles recognise that family violence is often a pattern of behaviour that causes cumulative harm. They acknowledge that people have complex needs, and set out the importance of early intervention and prevention. The principles recognise that some people are particularly vulnerable to the harm of family violence, and that this should be considered in decision making. The importance of tikanga Māori, culturally appropriate responses, and the views of victims and children are set out in the principles.

Definition of Family Violence

MODERNISING THE DEFINITION

As part of the modernisation of the Act the phrase 'Domestic Violence' will be replaced by family violence to better reflect the modern understanding.

Family violence is defined to include a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:

- (a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):
- (b) it causes the person, or may cause the person, cumulative harm.

The definition of family violence will also specifically state that abuse of pets can be family violence.

Protection Orders

SIMPLIFYING THE APPLICATION FORM AND MAKING IT EASIER TO ACCESS PROTECTION

Application forms for Protection Orders are being simplified to make it easier for customers to complete the forms.

The Bill provides for third-party organisations to be approved to apply for protection orders on behalf of a person prevented by physical or mental incapacity, fear of harm or another sufficient cause from applying. If appropriate, the representative will take reasonable steps to consult with that person's welfare guardian.

Young people over the age of 16 will be able apply for a protection order, and those under 16 can apply through a representative. In special circumstances, a Family Court Judge will also be able to make a protection order against a young person under 18.

The court may impose special conditions in protection orders. These can be used to address the use of family violence against older people and people with disabilities who may require special conditions.

MAKING PROTECTION ORDERS MORE EFFECTIVE AND FOCUS ON PREVENTING BREACHES

In order to proactively prevent breaches of protection orders the Act will:

- Empower the court to:
 - Direct respondents to a wider range of services in future.
 - Respond to notifications of safety concerns or failure to engage with programmes by including the power to make or vary parenting orders.
- Clarify:
 - When the protected person may consent to contact.
 - That the non-contact of the protection order includes any contact via internet sites or other digital communications
- Enable a coordinated service response when a protection order is made by:
 - providing Police with more information about the violence that led to the protection order
 - clarifying Police may share information about the order with other agencies, as appropriate, subject to the Privacy Act and the proposed new information sharing provision
 - enabling programme providers to share, with other agencies, information that is relevant to assessing and managing risk.
 - ensuring judges have more information on existing parenting orders, and ensure they are clear about the relationship between existing orders and any new order

The act will also specify what the court must consider before deciding whether to discharge a protection order and improve enforcement of overseas protection orders.

Property Orders

PROPERTY ORDERS UPDATED

Property orders, including occupation of a property or access to furniture, are designed to provide safety and stability for victims of family violence and their children. The Bill clarifies that failing to comply with a property order is an offence and will be treated as a breach of the related protection order.

The threshold for a property order will change and will be based on need rather than risk. It will also be clarified that a property order can only be made if a protection order has been, or is being, made.

Children over the age of 16 years may also apply for a property order, or have an application made on their behalf by a representative.

Services for Perpetrators

RISK AND NEEDS ASSESSMENT

The Family Court will be able to refer respondents to a wider range of services in future.

The Bill also creates a new role of ‘assessor’ to identify the extent to which a respondent to a Protection Order, or person bound by a Police Safety Order, poses a safety risk, what kind of non-violence programme is suitable and whether any ‘prescribed services’ would be appropriate.

The assessor will identify the risk that family violence will continue and any steps the perpetrator should take that would help them accept responsibility for, and stop, inflicting violence.

Parenting arrangements and child safety

CONSIDERATION OF CHILDREN AND CONTACT ARRANGEMENTS UNDER COCA

There are unique challenges involved in care of children cases where family violence is involved. The Bill addresses these by allowing Judges to impose protective conditions for handover arrangements whenever family violence has occurred. It will also allow family court judges to vary the terms of a parenting order where the circumstances require it.

The Bill will support better informed decision making by allowing criminal information to be shared with care of children act proceedings. It will also extend the matters judges must take into account when assessing a child’s safety and allow judges considering applications made under the care of children act to make temporary protection orders.

Interim parenting orders issued under the DVA will be treated the same as orders issued under CoCA. People will be eligible for legal aid for proceedings related to interim care and contact orders under the DVA. Judges will be given copies of existing parenting orders when they’re considering making an interim parenting order under the DVA and Judges will need to state how an interim parenting order under the DVA interacts with any existing parenting order.

CONSIDERATION OF CHILDREN AND CONTACT ARRANGEMENTS WHEN MAKING A PROTECTION ORDER

The definition of ‘child’ in the Domestic Violence Act will be amended to include 17 year olds. The court can add children not living with the applicant and children not yet born to a protection order.

Improving children’s access to safety programmes

SAFETY PROGRAMMES WILL BE OFFERED TO CHILDREN AND THEY CAN REQUEST A PROGRAMME ON THEIR OWN BEHALF

Children covered by a protection order are able to access age-appropriate safety programmes to help them deal with the trauma caused by, and the consequences of family violence. The Bill makes it possible for children and young people to request a safety programme on their own behalf. The opportunity to attend a programme will be offered directly to children and young people via the court, and information also made available on appropriate websites.