Domestic Violence Act 1995

Process Evaluation

MINISTRY OF JUSTICE

DEPARTMENT FOR COURTS
TE TARI KOOTI

DOMESTIC VIOLENCE ACT 1995

Process Evaluation

Helena Barwick
Alison Gray
Roger Macky

April 2000

MINISTRY OF JUSTICE

DEPARTMENT FOR COURTS
TE TARI KOOTI

This report was commissioned by
the Ministry of Justice and Department for Courts
from Gray Matter Research Ltd.

ISBN 0-478-20148-6

Acknowledgements

The authors acknowledge with thanks the women and men who were prepared to share their stories with a stranger in the cause of research. We are also grateful to the Judges, Family Court staff, lawyers, members of the Police and of community groups who made themselves available to us.

A number of people helped gather the data that formed the basis of this report. In alphabetical order they are: Garth Baker, Judith Byrne, Sarah-Jane Hall, Ron Hooper, Tania Hubber, Myra McFarland-Tautau, Paula Martin, Rosemary Nicolson, Ani Pitman, Vicki Wilde and Sarah Wylie.

Others helped with various aspects of the analysis. They are: Lanuola Asiasiga, Sandy Brinsdon, Linley Caudwell, Hana Ellis, John Lyons, Sharon Otene, Louise Pirini and Liza Wilcox.

Finally, we want to acknowledge the support of Angela Lee of the Department for Courts and Alison Chetwin of the Ministry of Justice, who jointly managed this project calmly and competently.

Helena Barwick
Alison Gray
Roger Macky

April 2000

Contents

Acknowledgements 3

List of Tables 8

List of Figures 8

Summary 9

Introduction 9
Method9
Use of the Act 10
Making an application 10
Serving temporary orders 11
The court process 12
Conditions 13
Enforcement 13
Programme issues 14
Other issues 15
Examples of good practice 16

1. Introduction 19

2. Research objectives 23

3. Methodology 25

3.1 Research design 25
3.2 Research sites 25
3.3 Participants and data analysis 26

Notes to the reader 33

4. Use of the Act 35

4.1 Applicants 35
4.2 Respondents 36
4.3 Relationship between applicants and respondents 36
4.4 Children 37
4.5 Others affected by the order 38
4.6 Applications on behalf of others 38
4.7 Groups that tend not to apply 39
4.8 Barriers to access 42
4.9 What would make it easier to apply 45
4.10 Summary 46

5. Making an application 47

5.1 Guidance from the Family Court 47
5.2 Referrals to community groups 48

5.3 Representation 48
5.4 Using a lawyer 49
5.5 Affidavits 50
5.6 Grounds for an application 53
5.7 Orders applied for 54
5.8 'On notice' or 'without notice' 55
5.9 Placed 'on notice' 56
5.10 Getting a temporary order 57
5.11 Mutual protection orders 58
5.12 Speed with which 'without notice' orders granted 58
5.13 Summary 59

6. Serving a temporary order 61

6.1 Serving a temporary order 61
6.2 When orders cannot be served 62
6.3 The respondents' experience 62
6.4 Understanding orders 64
6.5 Advice from Family Court staff 66
6.6 Summary 66

7. The court process 67

7.1 Defending a temporary order 67
7.2 Proceeding to final orders 67
7.3 Orders dealt with 'on notice' 68
7.4 Why some defences do not proceed 69
7.5 Respondents' experience 71
7.6 The 42-day rule 72
7.7 Use of other professionals 74
7.8 Protected persons' experience 74
7.9 Concurrent criminal court cases 75
7.10 Withdrawals and discharges 77
7.11 Respondents' experiences of discharges 79
7.12 Protected persons' experiences of discharges 79
7.13 Undertakings 79
7.14 Summary 80

8. Conditions and variations 81

8.1 Conditions placed on orders 81
8.2 Variations 84
8.3 Summary 84

9. Enforcement 85

9.1 Breaches of the order 85
9.2 Comments on enforcement by police and courts 87
9.3 Respondents' experiences 88
9.4 Protected persons' experiences 88
9.5 Summary 89

10. Programme issues 91

10.1 Respondents' programmes 91

10.2 Protected persons' programmes 99
10.3 Children's programmes 102
10.4 Summary 103

11. Other issues 105

11.1 Views on the Act 105
11.2 Safety issues 108
11.3 Training 110
11.4 Paperwork 111
11.5 Role of court staff 112
11.6 Interagency roles and relationships 112
11.7 Costs 113
11.8 Judgements 114
11.9 Summary 114

12. Examples of good practice 115

12.1 Conditions supporting good practice 115
12.2 Examples of good practice 115
12.3 Summary 120

13. Discussion 121

13.1 Views on the Act 121
13.2 Access to the provisions of the Act 121
13.3 Implementation issues 124
13.4 Enforcement 131

Appendix 1 133

Tables of applications from all courts for the research period 1 July to 30 September 1998 133
Tables of applications from all courts for the year 1 July 1997 to 30 June 1998 140

Appendix 2 141

Tables of applications from the file study for the research period 1 July to 30 September 1998 141

Appendix 3 145

Tables of breaches and apprehensions 145

Appendix 4 156

Questionnaires 156

List of Tables

		Page
Table 1	Number of cases selected	28
Table 2	Response to survey	29
Table 3	Characteristics of respondents, protected persons & potential applicants	31
Table 4	Advice given to potential applicants by Family Court staff	47
Table 5	Time between 'without notice' application and the temporary order	59
Table 6	Advice given to respondents by Family Court staff	66
Table 7	Percentage of lawyers' respondent clients defending a protection order	69
Table 8	Lawyers' views on cost issues for respondents	70

List of Figures

Figure 1	Applicants' age	35
Figure 2	Applicants' ethnic group	36
Figure 3	Relationship of applicant to respondent	37
Figure 4	Children protected by orders	38
Figure 5	Grounds for application	53
Figure 6	Orders applied for	54
Figure 7	Grounds for temporary orders	57
Figure 8	Time between temporary order and the service of documents	62
Figure 9	Outcomes of applications dealt with 'on notice' and 'without notice'	69
Figure 10	Time between a notice to defend a temporary order and the date when a hearing date was assigned	72
Figure 11	Time between a notice to defend a temporary order and the hearing date	73
Figure 12	Time between a temporary order and referral to a programme	93

Summary

Introduction

The Domestic Violence Act 1995 took effect on 1 July 1996. The Act is significantly different from the preceding legislation. There is now one protection order to which non-violence and non-contact conditions may be attached. The definition of a 'domestic relationship' is far broader than previously, and the grounds for granting an order have also been extended. The Act recognises that psychological abuse is committed against a child who witnesses abuse, and the protection of an order is automatically extended to any children of the applicant's family. The Act also contains provisions for an application to be made on behalf of another person.

The Act has a rehabilitative focus with respondents required to attend programmes to address their violence. Approved education programmes are also available free of charge to protected persons and their children.

In 1998 the Ministry of Justice and the Department for Courts commissioned a scoping study to identify issues and data sources prior to a full evaluation of the implementation of the Act. The scoping study informed the present project, which seeks to provide information on how well the object and aims of the Act are being achieved.

Method

Seven types of data were gathered for the evaluation:

- statistics on applications under the Domestic Violence Act from the Department for Courts Domestic Violence Act Database National Statistics, statistics on breaches of the Act from the Ministry of Justice, and statistics on reported offences from the New Zealand Police
- a study of 335 court files of applications made under the Domestic Violence Act (file study)
- a national survey of all Family Court Judges, all Family Court Coordinators and a sample of lawyers doing Family Court work
- interviews with judges, court staff, lawyers, police, private document servers, programme providers and community groups in four sites
- interviews with applicants and respondents under the Act
- interviews with those who have been victims of domestic violence but have not applied for a protection order
- case studies of best practice in different aspects of the implementation of the Domestic Violence Act.

Four sites, Whangarei, Auckland, Lower Hutt and Christchurch, were selected for the file study and the key informant interviews. The sites were chosen to give an indication of the range of experiences in implementing the Domestic Violence Act, and were not themselves under investigation.

As well as interviews undertaken in the research sites, interviews were also conducted with a number of informants in positions at a national level.

Use of the Act

In the period 1 July to 30 September 1998, 92% of applications under the Domestic Violence Act were from women. Sixty-two percent were from applicants aged between 25 and 44, and 19% from applicants aged between 17 and 24. Just over a quarter of all applicants were Maori.

Over three-quarters of applicants were married to or in partnership with the respondent at the time of the application. About three-quarters of the applicants had children who were automatically protected by the orders that were granted. Only 5% of applications were made on behalf of other people.

Key informants considered that there are people who need the protection of the Act but tend not to make applications in proportion to their need. Those most frequently mentioned were victims of domestic violence who are: on low incomes but above the threshold for legal aid; Maori; Pacific people; people of other cultures; men; people in same-gender relationships; and victims with gang associations.

Cost was identified as the biggest barrier to accessing the protection of the Act, particularly for those on low incomes, or for those women in partnerships where the male partner controls finances. Fear of violence or repercussions from the abuser, and fear of or lack of confidence in the court process itself was thought to be a deterrent for a number of people needing the protection of the Act. Other barriers identified included shame and embarrassment, lack of knowledge about the availability of protection orders, and personal and cultural acceptance of domestic violence and male domination.

The view that applications for protection orders were sometimes made to gain strategic advantage in disputes over custody and access had been raised in the scoping study; however it did not appear as an issue when key informant interviews for the full evaluation were analysed.

Making an application

The objective of making access to the court as 'speedy, inexpensive and simple as is consistent with justice' suggests that people in need of protection can apply under the Act without the assistance of a lawyer. In fact, this rarely happens. Over all courts in 1998, an estimated 96% of all applications were made through lawyers. The research suggests that people approaching the court seeking advice about a domestic violence issue are almost always advised to consult a lawyer.

Judges interviewed were opposed to the practice of applications being made without a lawyer on the basis that such applicants often provide insufficient evidence and may have their application turned down, put ‘on notice’, or if the temporary order is granted, challenged by the respondent.

Nationally, eighty-two percent of applications cited grounds of physical abuse, and 78% cited grounds of psychological abuse. Interestingly, in the research sites the file study revealed that 99% of applications cited grounds of psychological abuse.

Fourteen percent of applicants also sought occupation orders.

Applications for protection can be made 'on notice', when the respondent is advised of the application and has a chance to be heard before the order is made, or 'without notice', where the application is made and an order may be granted without the respondent being advised. Nationally in 1998, 81% of applications were 'without notice'; in the files from the research sites 95% were 'without notice'.

Of the applications made 'without notice' in the file study, 61 (19%) were not granted temporary orders, and 50 of these were put on notice. Of the 50, 30 were listed as withdrawn. The much higher withdrawal rate for those placed ‘on notice’ suggests that being placed ‘on notice’ makes it more likely that an applicant will withdraw the application.

The file study showed that 81% of 'without notice' applications were granted temporary protection orders. Those who cited physical abuse amongst the grounds for the application in the file study were more likely to be granted temporary orders than those who did not. There was widespread satisfaction with the speed with which 'without notice' orders are granted.

Serving temporary orders

Despite the prompt response from the court, an order cannot take effect until it is served on the respondent. Of the orders in the file study, 45% were served by court bailiffs, 28% by private servers, and 19% by police; 3% were unable to be served and the means of service was unclear in 4% of files.

For the cases included in the file study, the median length of time to serve a temporary protection order was two days.

Family Court staff and bailiffs reported some frustration at the efforts needed to locate some respondents and serve orders.

Participants interviewed for the research expressed concern that a proportion of respondents, particularly those with poor literacy skills, speakers of other languages and those with intellectual impairment, had difficulty understanding the orders served on them. Respondents confirmed that the often unexpected arrival of the order, and their anger when they realised what it was, made it difficult for them to understand the full implications of the order.

There was support for orders to be simplified and for all courts to adopt the practice of attaching a summary sheet in plain language to the orders.

The court process

A respondent who has been served with a temporary order can elect to defend the order. Many more respondents indicate that they intend to defend the order than actually do so. In the file study 18% of respondents who were served with temporary orders did defend them, and in half of those cases a permanent order was granted.

The reasons participants gave for the small proportion of defences which reach a hearing were that as time elapses the situation settles and the respondent becomes more accepting of the order; acceptable access to children has been negotiated; or, the respondent is advised by a lawyer not to proceed with a defence. The respondents interviewed cited cost as an important reason for deciding not to proceed with a defence.

If a defence is initiated against a temporary protection order, the Act requires that, unless there are special circumstances, a hearing date be assigned no later than 42 days after notification of the defence is received by the court. This does not always happen. Fewer than half of the hearings in cases included in the file study were held within the required 42 days. The most common reason for failing to schedule a hearing within 42 days was lack of court sitting time and judicial resources. Protected persons interviewed for the research found defended hearings stressful.

Most courts have mechanisms in place to alert the Family Court to concurrent proceedings in the District Court although this was less apparent in reverse. These systems were largely manual and vulnerable to staff shortages and staff changes.

A number of applications (8.3% in the file study) are withdrawn soon after they are made. Participants believed there were many reasons for this, including: pressure from the respondent and/or family members; applicant and respondent have separated; applicant and respondent have reconciled and the belief that an order is no longer required; fear of court processes; an application having been placed 'on notice'; agreement to undertakings; and financial pressures.

Most judges believe that convincing evidence should be provided that the threat of violence no longer exists before a protection order, whether temporary or final, should be discharged. They see this as particularly important if children are involved.

Participants expressed concern about the use of undertakings as an alternative to a protection order - an unenforceable commitment by the respondent to stop the abusive behaviour. While undertakings are favoured by respondents, particularly those who do not want to attend a programme, they are seen as working against the interests of applicants and children.

Conditions

Among standard and special conditions, concerns about access and custody attracted most comment from key informants, protected persons and respondents. This study confirmed earlier research which identified variations in judges' practice in relation to child access. Some judges always or frequently make supervised access a condition of the protection order, others rarely make access orders unless the protected person makes a specific request.

Twelve of the 15 respondents who discussed access arrangements were bitter about the impact of the protection order on their relationship with their children. These men were either no longer in contact with their children or saw them only rarely.

Enforcement

All participants agreed that the police response to domestic violence offences has greatly improved over the last two years. However, while at a national level policies are good, and some police do an excellent job, the police response is still variable.

In the three months July to September 1998 there were 936 reported Domestic Violence Act offences. Of these, 96% were for contravening a protection order. The police in some way resolved 82% of reported offences. In the same period police statistics show that there were 761 apprehensions, and 717 prosecutions for Domestic Violence Act offences. Convictions were achieved in about 65% of prosecutions.

Several participants noted that it is difficult to get police enforcement for psychological abuse, with some police only willing to act where there is threat of serious physical violence. Most of the front line police interviewed agreed that enforcement issues are much less clear cut where the threat is not a physical one.

Those respondents who commented on their experiences of enforcement were somewhat dismissive of the police response. The protected persons interviewed had had a range of experiences of police response.

Programme issues

In the file study only 80 of 221 respondents (36%) directed to a programme had completed it, or were in the process of completing it. While the study revealed some valid reasons why the respondent may not have attended the programme, such as where the direction to attend had been discharged, in many cases there was no obvious reason for non-attendance, and no action had been taken by the court.

Referrals to respondent programmes work well both from the perspective of court staff and programme providers. The range of respondent programmes available is improving, although more programmes are still needed in many areas for respondents who are Maori or Pacific people, for respondents from same-gender relationships, and for respondents with special needs such as mental health problems or serious substance abuse problems.

While some respondents lodge an objection to attending a programme, many participants indicated that the five-day period within which such an objection could be lodged was insufficient. Judges indicated that they are reluctant to excuse respondents from programmes but will do so on occasion, particularly if programme attendance will jeopardise the respondent's employment.

Court staff and programme providers interviewed considered that the processes for addressing respondent non-attendance at a programme were straightforward. The research found that providers are generally conscientious in informing the court of respondent non-attendance, but the court response is variable. In some areas court staff indicated that they do not give this time-consuming aspect of their work priority because they are discouraged when they see the sanctions respondents receive for non-attendance. Other courts pursue non-attending respondents energetically, in the belief that to do so gives a message to the whole community about the importance of programme attendance.

In 1998 of the respondents sanctioned for failure to attend a programme, fewer than 20% were given a custodial sentence. Thirty percent were convicted and discharged, or to be sentenced if called upon.

Many of the respondents interviewed had attended programmes and almost without exception were very positive about the experience.

The range of programmes for protected persons is improving in most areas although in some areas programmes for Maori are still needed, and many areas lack programmes for Pacific protected persons. Providers and court staff also identified a need for more group programmes for protected persons.

A major concern identified through the research was the low take-up of protected person's programmes. The reasons for this were thought to include: a lack of knowledge that protected persons programmes exist and are free; poor understanding by protected persons of how a programme might benefit them, particularly if the relationship with the respondent is over; and, the upheaval that often surrounds the time of the application making it difficult for the protected person to focus on their own needs and to commit themselves to a programme for several weeks or months.

The protected persons interviewed who had attended programmes viewed them positively.

Children's programmes were becoming available in many areas at the time of the research. Participants reported demand was high, and noted an additional benefit that enrolling children in programmes made available under the Act seemed to be encouraging protected persons to look more seriously at doing a programme themselves.

Other issues

Views of the act

Overwhelmingly, participants in the research see the current Act as a good piece of legislation that achieves its objectives, and as an improvement on the previous Domestic Protection Act and its amendments. The rehabilitative focus of the Act is seen as being of particular value, as are the broadened definitions of both 'a domestic relationship' and 'domestic violence'. The speed with which a protection order can be put in place and the simplification of the application process are other significant advantages. The provision that the protected person and the respondent can live together with the order in place is also viewed most positively.

Safety

Judges and Family Court staff were concerned about safety in the Family Court and the court environs. The concern was both for the safety of applicants and their children, and for the safety of judges, court staff and others at court.

Training

Participants recognised the need for ongoing education for all of those involved in the implementation of the Domestic Violence Act, both in the dynamics of family violence and in operational matters. Court staff sought some recognition of the specialist nature of Domestic Violence Act work, and appropriate training for clerical as well as specialist staff.

Paperwork

Participants acknowledged the amount of paperwork involved in implementing the Act. However, there was general agreement that all of it was essential, and few suggestions as to how to reduce the volume. Appropriate use of technology could streamline many administrative tasks.

Interagency relationships

Relationships between the various agencies engaged in implementing the Act are generally good. It appears easier to foster and maintain positive links between the Family Court and the community in smaller centres where there are fewer lawyers, fewer programme providers and fewer applications.

Examples of good practice

In seeking suggested improvements to the implementation of the Domestic Violence Act, the research concentrated on aspects of implementation where courts had expressed dissatisfaction with their own performance. These were service of documents, linking protected persons with programmes, exchange of information with the District Court, and pursuing respondents who fail to attend programmes.

Service of documents

Bailiff service of protection orders works best in courts where Collections management and staff accept that serving protection orders is an important task and part of their court business. For their part, Family Court staff need to support the work of the bailiffs by ensuring they have as much notice as possible of a protection order to be served and by seeking out and providing to bailiffs additional information such as alternative addresses at which the respondent might be located, car registration numbers and a physical description.

All participants agree that a summary sheet prefacing the order is useful in ensuring that the respondent understands the essential elements of the order, and in particular the five-day period within which an objection to attending a programme can be lodged.

Linking protected persons with programmes

The courts which have more success in linking protected persons with programmes tend to have the following features. The Family Court Coordinator expressly gives priority to this part of the work over other aspects of Domestic Violence Act implementation. The Family Court Coordinator often has a background in programme provision, or experience in another role with victims of domestic violence. The Family Court Coordinator has confidence in the quality of programmes for protected persons, and has good links with programme providers in the area. The Family Court Coordinator will attempt to phone all protected persons to encourage them to participate in a programme.

Exchange of information with the District Court

In the interviews and surveys Family Court informants indicated that it would be helpful to have a more comprehensive exchange of information with the District Court. In particular, for District Court Judges to be automatically advised of the existence of a protection order, and for Family Court Judges to have up-to-date information about criminal charges and convictions.

Most of those courts which have systems in place for information exchange report that the systems are manual, rely on the commitment and vigilance of one or two people, and are put at risk if those people leave. In some sites an electronic information matching system is in place, but Family Court staff report that the system is neither user-friendly nor reliable.

Following up respondents who fail to attend programmes

Some courts are energetic in their pursuit of respondents who do not attend programmes. Staff in other courts report that ineffectual sanctions do not provide an adequate return on the effort required to bring a prosecution.

The courts that are pursuing respondents with vigour see the value of prosecuting respondents for non-attendance being as much for the message it sends to the community about the seriousness with which the court takes the matter, as for sanctioning the respondent. Other features that encourage court staff to follow-up non-attendance are having confidence that programme providers will supply the court with prompt feedback about non-attendance; a clear message from prosecutors about the essential information needed for a successful prosecution; and a system of file management that allows an accurate and complete paper trail to be readily extracted from the file.

1. Introduction

Domestic violence was traditionally regarded as a private matter[1]. That attitude changed with the passing of the Domestic Protection Act 1982, which extended the remedies available to protect people experiencing domestic violence in the family environment. The Act introduced a non-violence order that allowed the police to become involved directly in a domestic dispute and gave them powers of arrest without formally having to charge the perpetrator with a criminal offence.

The 1982 Act was used extensively but came to be seen as too restrictive for the needs of modern society. In 1993, the Department of Justice published a paper with a range of reform options[2]. In 1994, a report by Sir Ronald Davison[3] recommended that penalties for breach of the Domestic Protection Act should be increased, and that where violence had been used, there should be a presumption against granting the violent party custody or unsupervised access to the children.

The Domestic Violence Act 1995 took effect on 1 July 1996. The Act introduced a number of changes to obtaining and enforcing protection orders. There is now one protection order to which non-violence and non-contact conditions may be attached. Eligibility has been broadened. The new Act includes children and young people, siblings, parents and children, members of the same whanau or culturally-recognised family group, boyfriends and girlfriends and people in same-gender relationships. The Act also applies to any person in a close personal relationship with another person. This need not be a sexual relationship but does need to be supported by evidence of the nature, intensity and duration of the relationship.

A person can apply on his or her own behalf, on behalf of a child aged under 17 who is not or never has been married, or on behalf of a person who is unable to apply himself or herself because of physical or other incapacity. Any orders that are made protect not only the applicant but also any child of the applicant's family. The court can direct that the order apply to other specified persons.

[1] The information in the first two paragraphs of this Introduction is drawn from *Family Law Service No.37* March 1997, Butterworths

[2] Department of Justice, 1993 *The Domestic Protection Act 1982 : A Discussion Paper,* Wellington

[3] Davison, Sir Ronald 1994 *Report of Inquiry into Family Court Proceedings Involving Christine Madeline Marion Bristol and Alan Robert Bristol*

The scope of behaviour that provides the grounds for granting an order has also been extended. Applications for orders can now be made in respect of behaviour involving physical violence, sexual abuse and psychological or emotional abuse, including threats, intimidation, harassment or damage to property. In addition, psychological abuse is committed against a child if that child witnesses abuse of a person with whom the child has a domestic relationship. Under the legislation either a single act of violence, or a number of acts that form part of a pattern, are sufficient grounds for a protection order.

The Act also provides for programmes for respondents, protected persons and children.

As well as protection orders, occupation orders, tenancy orders, property orders and furniture orders are available under the Act. However the key objective of the Act, and the subject of this report, is access to protection from domestic violence.

Section 5 of the Act sets out the aim of the legislation as follows:

> The object of this Act is to reduce and prevent violence in domestic relationships by:
> (a) Recognising that domestic violence, in all its forms, is unacceptable behaviour; and
> (b) Ensuring that, where domestic violence occurs, there is effective legal protection for its victims.

In commenting on the Act, Family Law Service No.46[4] notes that while object (b) provides for a legal framework for protection, object (a) is an attitudinal statement, and is more a statement of principle than one of practical application. The authors point out that 'while the Act provides for programmes for victims and perpetrators, the wider task of educating society and changing societal attitudes is left to others. The statement that all domestic violence is 'unacceptable behaviour' is more a moral than a legal one, even though it is found in legislation. The all-embracing nature of the proposition leaves no room to argue that any form of domestic violence is morally defensible and the scope to argue mitigating factors must likewise be reduced'.

Section 5 of the Act sets out five ways in which the Act seeks to achieve its object. These are by:

a) Empowering the court to make certain orders to protect victims of domestic violence;
b) Ensuring that access to the court is as speedy, inexpensive, and simple as is consistent with justice;
c) Providing, for persons who are victims of domestic violence, appropriate programmes;

[4] Family Law Service No.46 July 1998, Butterworths

d) Requiring respondents and associated respondents to attend programmes that have the primary objective of stopping or preventing domestic violence;
e) Providing more effective sanctions and enforcement in the event that a protection order is breached.

The Ministry of Justice administers the Act and has been responsible for most of the development of the Act, Rules and Regulations. The implementation of the Act has been the primary responsibility of the Department for Courts.

In 1998, the Department for Courts and the Ministry of Justice commissioned a scoping study to identify issues and data sources prior to a full evaluation of the implementation of the Act[5]. The scoping study informed the present project, which seeks to provide information on how well the object and aims of the Act are being achieve.

[5] Barwick, H., Gray, A. & Macky, R. (1998) *Domestic Violence Act 1995: Scoping Report* Department for Courts and Ministry of Justice, Wellington

2. Research objectives

The specific aims of this process evaluation are to:

1. provide an understanding of the dynamics of the operation of the Act
2. provide descriptive information on what is happening in selected districts and nationally
3. identify existing and potential problems with the operation of the Act
4. identify aspects of the Act that are working well in relation to the object of the Act.

In general, the report follows the chronology of applying for, receiving, defending and enforcing a protection order. It begins with a description of those who apply for or are respondents to orders, and explores barriers to access to protection orders. It continues with chapters which discuss making an application for an order and the various court processes associated with protection orders. Issues relating to referrals to programmes are reviewed in a separate chapter. These sections are intended to meet the first three aims of the research.

Chapters on other issues and best practice also provide an understanding of the dynamics of the operation of the Act. They identify both aspects that are working well and aspects that could be improved.

The findings of the report are summarised in a discussion chapter.

The researchers were not asked to look specifically at programme content and effectiveness. Separate programme evaluations are being undertaken:

- the Ministry of Justice has commissioned evaluations of two generic programmes for adult protected persons. Results from these evaluations should be available in mid-2000
- the Department for Courts and the Ministry of Justice have jointly commissioned an evaluation of two programmes for adult Maori protected persons. Results from these evaluations should be available in mid-2001
- the Department of Corrections is leading the evaluation of four community-based violence prevention programmes which includes programmes provided to Domestic Violence Act respondents. Results from this evaluation should be available in mid-2000
- the Department for Courts and the Ministry of Justice have also commissioned evaluations of three children's programmes. These evaluations are formative in nature as the programmes have not been running for very long. Results from these evaluations should be available in mid-2001.

3. Methodology

3.1 Research design

The evaluation had seven key components:

- a database study to provide statistics at the national level
- a file study to provide factual information at a local level
- a national survey of court staff and selected counsel
- key informant interviews
- interviews with applicants and respondents
- interviews with victims of domestic violence who have not applied for a protection order
- case studies of 'best practice'.

The database and file studies provided descriptive information both nationally and in selected districts.

The national survey, key informant interviews and interviews with potential applicants, applicants and respondents contributed to an understanding of the dynamics of the operation of the Act, as well as some descriptive information, and information on strengths and weaknesses in the implementation of the Act.

3.2 Research sites

While some data was gathered at the national level, more detailed information was collected in four courts selected to include a wide ethnic mix in the population, rural and urban situations and geographical spread. The research sites were:

- Whangarei
- Auckland Central
- Lower Hutt
- Christchurch

The research sites were chosen to give an indication of the range of experiences in implementing the Domestic Violence Act, and were not themselves under investigation. For this reason, the report does not include detailed comparisons of the four research sites.

3.3 Participants and data analysis

Database study

The national estimates on Domestic Violence Act matters given in this report come from administrative data sources. Information on applications for Domestic Violence Act orders was obtained from the Domestic Violence Act database held by the Department for Courts. The Ministry of Justice provided information on breaches of the Domestic Violence Act obtained from the Law Enforcement System and the police provided information on reported offences under the Domestic Violence Act.

Relevant data were obtained from the above sources for the period 1 July to 30 September 1998 (key tables are given in Appendices 1 and 3). In general, the analysis in the report is based on this three-month period. This is partly so that the data is consistent with the time period used for the file study (described below). However with the data from the Domestic Violence Act database, there are also issues of data quality, where the detail of data that was needed could not be provided reliably over a one-year period.

Yearly data is provided where feasible (see Appendices 1 and 3).

Please note that:

- This report has used data from existing administrative data sources. However the data from these databases are not always accurate. Without exhaustive examination, it is not possible to determine all the quality issues in the databases. In general, statistics given in this report should be seen as a guide only and treated with appropriate caution.
- Tables of applications under the Domestic Violence Act made nationally may include more than one application from the same person and a respondent may also appear in more than one application. Tables such as 'Age of Applicant' relate to the total applications made, rather than to the total individuals applying.
- Tables relating to breaches under the Domestic Violence Act are based on the number of charges laid, not on the number of offenders. However, multiple charges of the same type, which occurred on the same day for one offender, were only counted once.
- Tables relating to sentencing are case-based and relate to cases where the most serious offence was a breach of the Domestic Violence Act.
- Police National Headquarters have provided the following caveats to the data on apprehensions and offences:

  > There are limitations in respect to the police data on offenders.
  >
  > First, the data are not unique numbers. Since the data are collected in relation to recorded offences, and many offences involve multiple charges or multiple offenders, it is impossible to give an accurate count of individual offenders.

For example:

a) if an offender is apprehended on one occasion in relation to multiple offences, he or she will appear in the statistics for each offence ie. there will be multiple apprehensions involving the one offender;
b) if an offender is apprehended more than once in the 12 month period, that same person will appear in the statistics multiple times;
c) a single recorded offence may be resolved by apprehending multiple offenders.

Second, the statistics only relate to those offenders apprehended by police in relation to recorded offences. Police have no data on the age, gender and ethnicity of offenders who have committed the remainder of offences reported to police but whom the police have not managed to apprehend, or all other offenders whose crimes go unrecorded and undetected.

File study

The file study reviewed a selection of cases in each of the four research sites. The cases were drawn from applications made between 1 July and 30 September 1998. Each file was reviewed for eight months from the date it was opened. Key tables are given in Appendix 2.

Table 1 below shows the number of cases available for each court and the number of cases selected. Reasons why files were not available include those unable to be found[6] and those transferred to other courts. Overall, 95% of the files that were eligible for the study were available for selection.

Where possible, 100 cases were selected (systematically) from each court (101 were selected in Christchurch). For Whangarei and Lower Hutt this meant that all the available cases were selected. For Auckland Central and Christchurch, nearly all the available cases were selected.

In summary, 5% of cases were not available for the file study and a further 11 cases were not selected. Strictly speaking the file study cannot be seen as a census of the cases over the 1 July to 30 September 1998 period in the research sites. However, in practice, it does capture the great majority of cases over this period. It may be that the 5% of cases that were not available to the file study were different from those that were available, but the relative size of this group is such that it is unlikely to have a substantial impact on the patterns observed in the data. However the reader should be cautious when considering absolute numbers as these may be an under-count of the true values for the 1 July to 30 September 1998 period.

[6] Including files with the Judge. Files at the High Court on appeal were specifically tracked down and selected.

Table 1 Number of cases selected			
Court	**Available cases**	**Selected**	
		Number	*Percent*
Auckland Central	105	100	95
Christchurch	107	101	94
Lower Hutt	72	72	100
Whangarei	62	62	100

The analysis of the file study data has raised concern about the quality of data on court files. Sometimes different pieces of information on a file are contradictory. Where these contradictions have been observed, advice has been taken from the court staff about which pieces of information are likely to be correct. The reader should see the results from the file study as a guide and should exercise appropriate caution.

Survey

A nationwide postal survey was conducted of all Family Court Judges, all Family Court Coordinators and a sample of lawyers who have experience with the Domestic Violence Act (1995). The survey was adapted for each group of recipients and had three main objectives:

- to explore the range of some of the implementation problems identified in the scoping study
- to elicit participants' views about how the implementation of the Act could be improved
- to identify sites in which the Act is considered to be working well and which could be further examined and documented as 'best practice' examples.

The survey was used to gather a range of information from respondents. Table 2 shows the proportion of Family Court Judges and Family Court Coordinators and lawyers who answered the survey. Note that only a proportion of lawyers answered the survey and furthermore the survey of lawyers did not use a representative sample. Consequently, information provided from the lawyers should be seen as only representing those lawyers who responded and cannot be generalised to any wider group of lawyers.

Family Court Coordinators were asked to supply the names of lawyers in their area who were engaged in Family Court work. A sample of practitioners was drawn from this list.

Judges, Family Court Coordinators, domestic violence clerks and lawyers who were individually interviewed were not asked to complete a questionnaire. The questions were covered as part of their interview. The questionnaires are included as Appendix 4. The response to the survey is summarised below:

Table 2 Response to survey				
	Sent	**Returned**	**Useable**	**% useable**
Judges	24	19	19	79
Family Court Coordinators	22	16	16	73
Lawyers	161	100	88	55

Despite their names having been provided by Family Court Coordinators, several lawyers returned surveys saying they had not done any or enough domestic violence cases recently to warrant completing the questionnaire.

The surveys required participants to both select from options and to elaborate with comments. The researchers coded the comments and entered the data onto an Excel spreadsheet for analysis. As responses were received from relatively small numbers (although high proportions) of judges and Family Court Coordinators, percentages have not been used when discussing this data.

Key informant interviews

Key informant interviews were carried out at each research site and at the national level with Family and District Court Judges (10), Department for Courts staff, including bailiffs (20), lawyers (10), police (9), private process servers (1), programme providers (17) and community groups (8). The interviews discussed issues raised in the file study and survey as well as those identified in the scoping study completed in 1998.

Potential applicant, protected persons and respondent interviews

Finding people willing to share their experiences with interviewers was a complicated, time-consuming and delicate process. For both safety and privacy reasons, it was essential to work through intermediaries and to ensure that the interviews were carried out by experienced and qualified interviewers. One person in each of the four research sites was responsible for arranging the interviews. This group of four included a former social worker, a mental health nurse with a social science background, a psychologist and a woman with both a legal background and experience in the health area. Additional interviewers were used as appropriate. These included Maori and Pacific interviewers and some men. All were experienced, and received additional training for the job.

Interviews were carried out with 27 potential applicants, 41 protected persons and 43 respondents in total (see Table 3). Because the aim was to get as wide a cross-section of participants as possible, potential interviewees were sought through a variety of sources, including:

[7] Barwick, H. , Gray, A.& Macky, R.(1998) *Domestic Violence Act 1995: Scoping Report* Department for Courts and Ministry of Justice, Wellington

- programme providers
- women's refuges
- lawyers
- Family Court Coordinators
- community law centres
- Victim Support groups
- marae-based services
- community groups.

In the event, most protected person interviews were obtained through programme providers, women's refuges, marae-based services and community groups. Despite efforts to do so, it was not possible to interview any male applicants for this report.

Most respondent interviews were obtained through programme providers. This was not entirely satisfactory as only about a third of respondents complete programmes, meaning the sample was biased towards those who had complied with their order, and excluded respondents who were excused from programmes or who did not attend.

Finding potential applicants to interview was the most difficult aspect of the project. Interviewers in all sites reported difficulty in finding people who had experienced domestic violence but had not applied for a protection order. Interviewees were both difficult to locate and unwilling to talk about their experiences. In several cases, arrangements were broken because the potential interviewee was too nervous to speak out or actively feared for her safety. Because of these issues, the report does not include the experiences of the most frightened potential applicants or protected persons.

The safety of participants was the prime concern of interviewers. Intermediaries were asked to identify any potential safety issues and all interviewers had a protocol to follow should they fear for the safety of protected persons or children or for their own safety. Interviews were carried out at a place chosen by the interviewee and no interviews were carried out with a protected person and the respondent to the same order. With these precautions, no incidents occurred, although one field manager did arrange for support for a protected person with a young child.

The researchers discussed the nature and purpose of the interviews with intermediaries, stressing safety issues and the need for confidentiality and fully informed consent. Intermediaries then obtained consent for interviews from protected persons, respondents and potential applicants.

As the sample of potential applicants, protected persons and respondents was neither random nor systematic, the information gathered represents the range of experiences of these groups. It cannot be generalised to any wider group of potential applicants, protected persons or respondents.

Table 3 Characteristics of respondents, protected persons and potential applicants			
	Respondents	**Protected persons**	**Potential applicants**
Pakeha	20	28	16
Maori	16	10	9
Pacific	3	2	2
Maori/Pacific	2		
Asian	1	1	
Indian	1		
Total	**43**	**41**	**27**
Female	2	41	27
Male	41	-	-
Living with applicant/ respondent	8	3	6
People interviewed who had children affected	29	25	21
First order	32	33	-
Second/subsequent order	11	8	-

Case studies of 'best practice'

This component of the research was designed as a means of capturing some of the good ideas and innovation that Family Courts demonstrate in implementing the Domestic Violence Act 1995. The surveys and interviews asked judges, Family Court Coordinators and a sample of Family Court lawyers for any examples of particularly good practice in elements of the Domestic Violence Act process in the courts in which they worked. The intention was to seek more detail from court staff in that area about the good practice which had been highlighted by their colleagues. Perhaps reassuringly, informants felt overwhelmingly positive about the performance of their local courts. However, this was not a great deal of help in narrowing the field to select some examples of best practice for more detailed examination.

In order to focus the search for examples, key processes of Domestic Violence Act implementation were identified for further examination. In processing Domestic Violence Act applications and subsequent protection orders, five points stood out as being areas in which several courts were dissatisfied with their own performance. These were:

- service of documents
- exchange of information with the District Court
- linking protected persons with programmes
- dealing with respondents' non-attendance at programmes
- managing the paperwork.

It was decided to concentrate on these points in the process in the hope that dissatisfied courts might pick up ideas from others' practices. To help identify courts that performed well, the researchers met with the Domestic Violence Regional Advisors to seek their advice and consulted the Family Jurisdiction Team at Department for Courts National Office.

The various strategies led to 15 sites being identified, a number of them noted as having good practice in more than one of the areas of interest. This, and the subsequent interviews, confirmed what is already widely known - that it is important to have good selection processes to ensure that appropriate people are appointed. It must be stressed that the somewhat ad hoc method used to determine best practice sites will not have identified all sites in which high quality work and innovation is evident.

Phone interviews about best practice were conducted with 12 Family Court Coordinators. These courts were selected with a view to including a mix of larger and smaller courts, courts with a Domestic Violence clerk and those without. With a couple of exceptions the Family Court Coordinators interviewed were asked about their court's practice in each of the areas of enquiry.

Notes to the reader

1. In New Zealand, most applications under the Domestic Violence Act are from women and most respondents are men. For this reason, and to improve the readability of the report, the term 'he' is generally used in relation to respondents and the term 'she' when describing a potential applicant or protected person, in preference to the more correct 's/he'. The researchers acknowledge that some applicants are male and some respondents are female. The female respondents included in the study are clearly identified.

2. Applicants for a protection order become protected persons as soon as an order is granted. The report uses this terminology, although most key informants continue to describe protected persons as 'applicants', even after an order has been granted. This is apparent in some of the comments quoted in the report.

3. Respondents are persons against whom an application has been made for an order under the Act, and includes people (other than an associated respondent) against whom an order is made under the Act.

4. The court may direct that a protection order apply against a person whom the respondent is encouraging or has encouraged to engage in behaviour against a protected person, where that behaviour, if engaged in by the respondent, would amount to domestic violence. This person is called an associated respondent.

5. The terms 'withdrawal' and 'discharge' are used interchangeably by some people in relation to protection orders. In this report, the term 'withdrawal' is limited to applications that applicants seek to withdraw before an order is granted. Once an order is granted, any application to have it revoked is in effect an application for a discharge.

6. The report refers to 'undertakings'. This is a written undertaking by a respondent not to engage in violent behaviour. In return, the applicant withdraws the application for a protection order before the order is made. Undertakings have no legal standing and cannot be enforced by the police or the courts.

7. A protection order is first issued as a 'temporary' order. The respondent has three months in which to give notice of his or her intention to defend the order. If there is no defence, the order automatically becomes a 'final' order and stays in place until the protected person or the respondent applies for and is granted a discharge by the court.

8. The court may grant a variety of orders in association with a protection order. These include a 'furniture order' and an ' ancillary furniture order'. Under a 'furniture order', the protected person may remove the furniture from the house she previously shared with the respondent. An 'ancillary furniture order' is always made in conjunction with an occupation or tenancy order. In this case, the protected person retains possession of the house and the furniture.

9. Percentages are given only for data drawn from the national domestic violence database study, police statistics, the Law Enforcement System of the Ministry of Justice and from the file study. Actual numbers are given for information from the surveys of judges, Family Court staff and lawyers.

10. This report provides a number of descriptive statistics on issues related to the Domestic Violence Act. Because there are quality concerns about the data, the statistics should be treated with caution (see methodology section for more discussion on data quality).

11. No one data source provides all the information needed on applications under the Domestic Violence Act. Consequently in this report it has been necessary to repeatedly move between one data source and another. National information on applications comes from the Domestic Violence Act database while more information from the files in the pilot courts comes from the file study. Note that only limited information is available nationally. For example, reliable national information is available on the types of orders applied for but not on the type of orders made.

4. Use of the Act

The Domestic Violence Act 1995 broadened eligibility for protection and increased the grounds for granting an order. While there has been a substantial increase in the number of applications for domestic protection since the new Act was implemented, it appears that some groups in the community use the Act more than others. This chapter looks at who uses the Act and at possible barriers to access.

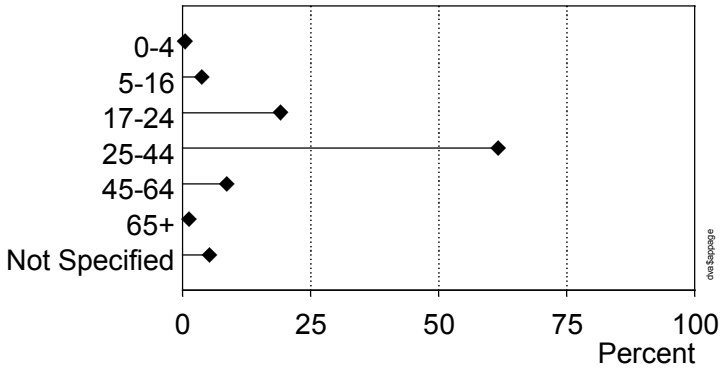
4.1 Applicants

Nationally, applications under the Domestic Violence Act were predominantly from women: an estimated[8] 92% compared to 8% from men. There was little difference between the patterns for Maori and non-Maori applicants.

These percentages were similar for the 335 files reviewed in the four research courts. However the proportions in the file study did vary from court to court. For example the proportion of male applicants was 13% in Whangarei and only 4% in Lower Hutt.

Figure 1 shows that throughout New Zealand, most applications (62%) were from applicants aged 25-44[9]. Applications from other age groups were relatively uncommon, the next largest group being 17-24 year olds (19%). These patterns were similar for Maori and non-Maori groups. Furthermore the file study showed similar age distributions for the different research courts.

Figure 1 Applicants' Age



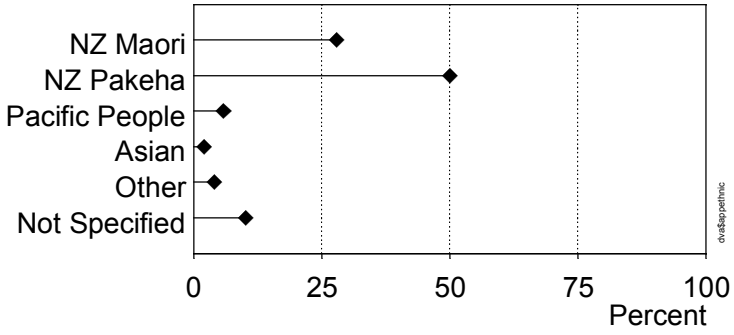
Source: DVA database

[8] Estimated means distributing the small number of applications that were listed as "not specified" in the same proportion to those applications that were specified.

[9] Note that the age categories used in this report are of uneven size.

Figure 2 shows that just over a quarter of all applications were from NZ Maori, one half were from Pakeha and 6% from Pacific People[10]. Once again, the pattern in the research courts was similar overall. However, the proportion of NZ Maori applicants was higher in Whangarei (53% Maori, 42% Pakeha, 0% Pacific People and 3% not specified), and lower in Christchurch (11% Maori, 55% Pakeha, 2% Pacific People and 25% not specified).

Figure 2 Applicants' Ethnic Group



Source: DVA database

4.2 Respondents

Generally, the national age and ethnic group distributions for the respondents were similar to the age and ethnic group distributions of the applicants discussed above[11]. While 92% of applications were from women and 8% from men, an estimated 92% of respondents were men and 8% were women. This is consistent with a general pattern of women taking applications out against men. Patterns were relatively similar for Maori and non-Maori respondents.

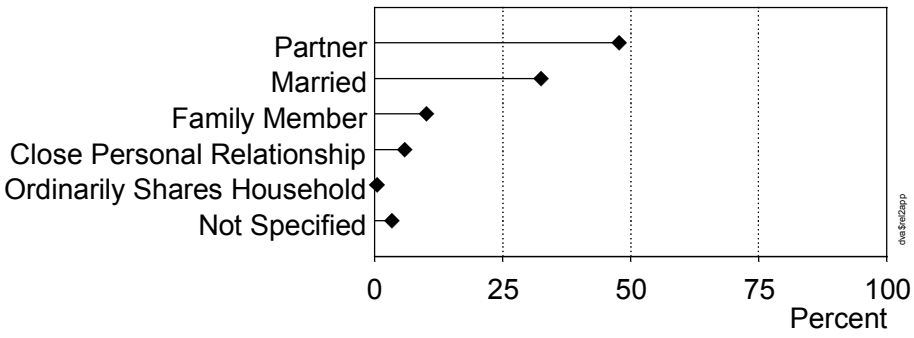
4.3 Relationship between applicants and respondents

Nationally, the relationship between the applicant and the respondent was most often one of partnership or marriage (see Figure 3). Other types of relationship such as family member, close personal relationship and 'ordinarily shares household' made up only a small proportion of applications (10%, 6% and less than 0. 5% respectively).

[10] National statistics for the year 1 July 1997 to 30 June 1998 (i.e. the year prior to the three-month reference period) show an estimated 93% of applications were from women and 7% from men. A quarter were from NZ Maori, just over half were from Pakeha, 6% were from Pacific People and 10% were not specified. See Appendix 1 for details.

[11] National statistics for the year 1 July 1997 to 30 June 1998 (ie the year prior to the three-month reference period) show an estimated 92% of respondents were men and 8% were women. The distribution of different ethnic group was similar to that for applicants. See Appendix 1 for details.

Figure 3 Relationship of Respondent to Applicant



Source: DVA database

National statistics show that the types of relationships between the applicant and the respondent tended to vary according to the age and ethnic group of the applicant and the grounds for the application.

In particular:

- minors (ie those under 17 years) were proportionately more likely to make Domestic Violence Act applications against family members — 65 of the 80 applications (81%) in this age group were of this type
- for those 17 years old and over, the proportion of applications against a partner tended to decrease as the age of the applicant increased. However, the proportion of applications where the applicant was married to the respondent stayed relatively constant for ages of 25 and over
- the respondent in applications from Pacific and Asian people was almost always a partner or a spouse (91% and 95% respectively). For Pakeha and Maori, the proportion of applications against a partner or spouse was slightly less (83% and 76% respectively)
- the proportion of applications against a family member was relatively high for Maori, ie17% compared to 7% for Pakeha
- the proportion of applications against a family member was relatively high for applications made on sexual grounds (28% compared to the overall average of 10%).

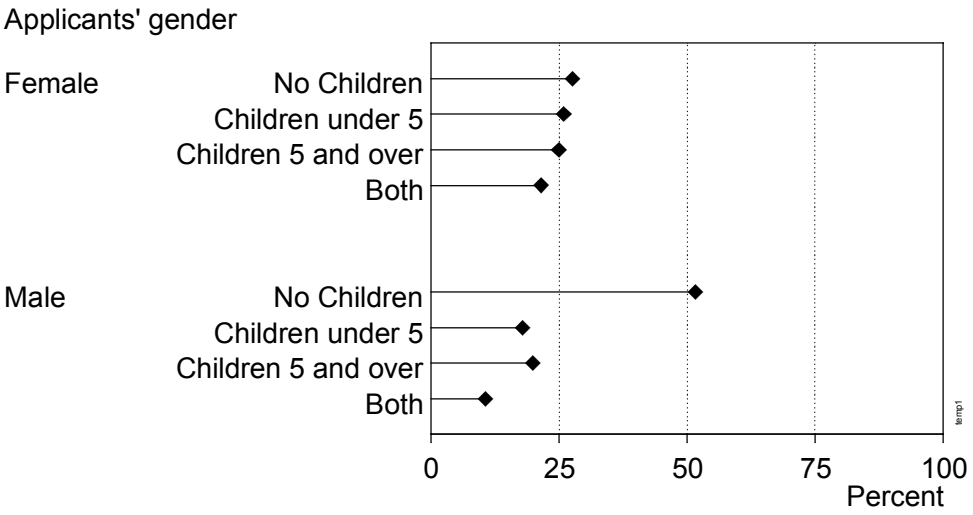
4.4 Children

When a person makes an application under the Domestic Violence Act, the children who are living in the household are automatically protected by the order. Figure 4 shows the proportion of children protected by orders nationally[12]. Applications from women showed roughly equal numbers of applications with no children, children under 5, children 5 and over, and with both children under 5 and children 5 and over. However only about half of the applications made by men included children.

[12] Applications with missing gender details (1. 5%) have not been included in the chart.

Overall there was little difference in the pattern of children protected by the order, for Maori and non-Maori applicants.

Figure 4 Children protected by orders



Source: DVA database

4.5 Others affected by the order

Other protected persons

It is possible for the application to list other people to be protected by the order. Only 6% of applications nationally included other protected persons with no notable differences between Maori and non-Maori groups.

Associated respondents

Under the Domestic Violence Act, an applicant can gain protection from more than one person. In these circumstances the order lists associated respondents. Nationally, 4% of applications recorded associated respondents with little difference between Maori and non-Maori groups. However, there was a tendency for applications against women to include associated respondents (20%) whereas applications against men tended not to (2%).

4.6 Applications on behalf of others

Under the Domestic Violence Act, applications can be made on behalf of someone else. This is uncommon. Nationally 5% of applications were made on behalf of someone else (results from the file study were broadly consistent with this overall trend at 2%). Three percent of applications nationally were on behalf of minors. Other categories ('lacking capacity' and 'other') were very uncommon. There were some differences between Maori and non-Maori groups in the proportion of applications on behalf of minors. Eight percent (43) of Maori applications were on behalf of minors, compared to 1% (13) for non-Maori.

Thirteen of the 88 lawyers surveyed commented on the barriers facing people for whom applications have been made by others, such as older people or children. Four thought cost was a barrier, three mentioned poor knowledge of legal rights and six referred to other factors, including children feeling they would not be believed and the problem of third-hand information.

4.7 Groups that tend not to apply

Key informants were asked to identify any groups that they thought might need the protection of the Act, but tended not to make applications. They named a range of groups but did not rank them according to their readiness or lack of readiness to apply. The groups included:

People not eligible for legal aid

Cost is a barrier for some applicants, particularly those not eligible for legal aid[13]. Two of the potential applicants interviewed were deterred from applying because of cost. One woman was living with her husband at the time she wanted to apply for an order. Her lack of access to money made it impossible for her to apply for an order:

> When I was at the lawyer and they told me I wasn't entitled to legal aid, that really crushed me. I was so exhausted in every way by that point anyway and that was the final blow. My husband was controlling the money so how was I supposed to pay for a protection order? I remember crying at the lawyer's office and asking, 'What's the point of the bloody law?' and walking out. - *(Potential applicant interview, Pakeha, 4 children)*

Lawyers were particularly aware that applicants who are not eligible for legal aid sometimes can not afford to pursue a protection order. While those on $20,000 to $30,000 a year experience difficulties, potential applicants in households with higher incomes may also face problems when their partner controls access to money. In one city, the cost of getting an undefended order was estimated at $800 to $1200. A defended order could cost $2,000 to $3,000. A judge commented:

[13] There are specific provisions in the Legal Services Act 1991, which apply to the granting of civil legal aid in relation to applications made under the Domestic Violence Act 1995. In these cases applicants are exempt from any requirement to pay a contribution towards the cost of legal aid. Where applications made under both the Domestic Violence Act 1995 and other legislation (for example, for custody and/or access under the Guardianship Act 1968), then any requirement to pay a contribution, both an initial $50 and any means tested further contribution, is applied on a pro-rata basis, to allow a partial exemption. New charging instructions which take effect on 1 May 1999 make it clear that charges should be considered for most civil legal aid grants except in a number of cases, one of these being Domestic Violence Act applications. The statutory exemption only exists for those who are applicants in domestic violence proceedings. Contributions and charges may be required of a person who applies for legal aid to defend proceedings under the Domestic Violence Act 1995. The income of the spouse or partner of an applicant for a protection order is not taken into account in the legal aid application.

> Either the state has to accept that it has to provide access to justice, or deal to lawyers who charge too much. The state has to measure the cost of not giving women access to justice. - (*KI interview, judge)*

One lawyer pointed out that for some women:

> It is not so much the cost of legal advice but how they are going to live if they don't have a partner, who's going to help with childcare. - *(KI interview, lawyer)*

While three-quarters of the 88 lawyers surveyed thought that less than a quarter of potential applicants who came to see them were deterred from taking action because of the cost, nine out of 10 lawyers also said that more than three-quarters of their applicant clients were receiving legal aid. They were quite clear that cost was the main barrier for those not eligible for legal aid.

Three Family Court Coordinators out of the 16 surveyed thought that cost deterred potential applicants often or about half the time. These figures suggest that women who are just above the cut-off point for legal aid or who do not have access to family income are less likely to use the Act than women with better access to financial resources.

Other practical barriers included lack of transport and the need to make arrangements for small children. One woman was deterred from applying for this reason:

> The system doesn't take into account the emotional state of the victim, the mental exhaustion, the guilt, having to make appointments, find transport, find babysitters etc. Sometimes it's easier just to forget it all and hope it doesn't happen again. – *(Potential applicant interview, Pakeha, 1 child)*

Maori

Family Court staff acknowledged that while many Maori do use the Act, some who may need to do not. Several Maori staff believed that this is because a lot of Maori people tend to work within the framework of whanau and marae and only come forward in extreme difficulties for assistance.

Lawyers who responded to the survey were more divided in their perceptions of the barriers faced by Maori applicants. Seven referred to shame or reluctance, seven to lack of confidence in the process or cultural pressure not to use the system and six to family pressure to withdraw. Five referred to cultural acceptance of violence and male domination, while four said applicants believed the violence needed to be more serious before Maori would take out an order. It was not clear what proportion of those responding were Maori.

Pacific people

Family Court staff and lawyers identified a similar pattern among Pacific people with the Pacific community trying to resolve the issue within the community itself. Eleven of the 88 lawyers who commented believed that family pressure to withdraw limited Pacific people's willingness to apply. Seven identified shame as a barrier, while five thought that lack of confidence in the process or cultural pressure not to use the system was a problem. Four thought that cultural acceptance of violence and male domination was a barrier. It was thought that language barriers also inhibited some Pacific people from applying. It was not clear what proportion of those responding were Pacific people.

People from other cultures

Judges, Family Court staff and lawyers thought that cultural factors made it difficult for members of other cultural groups to apply. They mentioned people from Indian, Asian and African cultures and those belonging to different religious groups, including Moslems.

Fourteen lawyers identified language as the main barrier for people from other cultures. Ten thought poor knowledge of legal rights or lack of confidence in using the legal system was a barrier. Six said family pressure to withdraw was a barrier, while four each thought shame or cultural acceptance of male dominance was a problem.

Men

Social taboos, stigma and shame can make it difficult for men to apply for an order. Court staff commented that some men choose to leave the relationship and the district rather than apply for an order. Court staff thought that some men believe that the court system is biased towards women, meaning that their experiences of violence are not taken seriously. Twenty-three out of 88 lawyers thought that men were inhibited by their own and others' perceptions that men should not need orders. A further 10 thought that shame and fear of ridicule limited men's willingness to apply, while seven saw cost as a barrier for men.

Gay men and lesbians

Court staff, lawyers and community groups observed that relatively few gay men or women identifying as lesbians applied for orders. They believed that gay men were particularly reluctant to apply for protection.

Associates of gang members

Family Court staff and community groups believed that it is difficult for people with gang associations to apply for orders. To do so would make them part of the 'narking' process and lose them their immediate support and social structure. As one informant commented:

> It is really difficult because it's protection against a whole group of people that's needed. Women who live with gangs tolerate an extraordinary level of violence and are too frightened to do anything about it. - *(KI interview, community group)*

Other groups

Other groups mentioned by Family Court staff included:

- women afraid of provoking further domestic violence
- women in higher socio-economic groups who think they may not be taken seriously
- very young women who are not aware of the process open to them and have few community networks
- children who are unable to be heard.

4.8 Barriers to access

The research found a number of barriers that prevented some people who need protection from domestic violence using the Domestic Violence Act 1995.

Cost

The impacts of the potential costs associated with applying for an order have been discussed above.

Fear

Lawyers, Family Court staff and programme providers identified fear as a major barrier. This includes fear of violence and repercussions, fear of seeing the other person in court, and fear or distrust of the court environment itself.

Four potential applicants did not apply because they were afraid of provoking their partner to further violence. One described her situation:

> I didn't get medical help because I thought he would hurt me further. The neighbours called the police once. He was there so I said I was all right. If I couldn't ask for help with the police right there in my face, how the hell am I supposed to reach out and apply for a protection order, knowing that in the end that bit of paper wouldn't stop the blood from pouring out? I knew that if he was served with orders, he'd be after me in a big way. – (*Potential applicant interview, Pakeha, no children)*

Another who had two children and had experienced both physical and psychological abuse for much of her 22-year marriage, finally left her husband but without an order:

> I didn't speak to anyone about it the last time it happened. I knew no matter what that he would attempt to kill me. I know him well. I decided there must be a way out of this relationship without him wanting revenge. I knew about protection orders, but that would be adding fuel to the fire. I knew that if I took out an order and the police failed to take the right action, I could be dead. – *(Potential applicant interview, Pakeha, 2 children)*

Lack of confidence in the system

A Maori informant commented that it is difficult for potential applicants to break out of the belief that:

> The system is set up to process Maori, not serve them. - *(KI interview, Family Court Coordinator)*

While some potential applicants had very satisfactory contacts with the Family Court, either in relation to domestic violence or on other family matters, two did not like the experience:

> There are no directions, no one to help people coming in. Some of the staff there are really unhelpful or patronising. The way you are perceived, you're just lumped in with everyone else. It just reinforces my resolve not to apply for an order. – (*Potential applicant interview, Maori, children)*

One woman decided not to go ahead with an application when she learned that her partner could defend it and she would have to appear in court with him. She settled for an undertaking instead[14]. Two others had taken out non-molestation orders under the previous Act and had found the experience so stressful they were not prepared to go through the process again.

According to Family Court staff, some potential applicants do not apply because their family has a profile with the police. They believe that, as a result, the police will not take the issue seriously. Some potential applicants did not believe they could rely on the police for enforcement. One woman commented:

> What's the point in calling the police? There's too many hurdles. Are you going to get someone who's got a hang-up about women or family violence or race? Changes in the police are only superficial. Orders are good for women in town, but for a woman out in the wop-wops like me, what use is it? It doesn't take long to empty your body of blood if your throat's been cut. – *(Potential applicant interview, Maori, children)*

Shame and embarrassment

Two women were too embarrassed to take out an order. One was in a lesbian relationship. She worked in an organisation that dealt with protection orders:

> The last incident, which caused our break up, I prefer not to talk about. I never spoke to anyone other than my mother about it. I knew about protection orders, but because I work in _____, I did not want to share my most intimate details of my embarrassing and abusive relationship with staff. I never called the police. Never once did it cross my mind that her behaviour was illegal, and that I had any right to call the police. – *(Potential applicant interview, Pakeha, no children)*

[14] See Notes to the Reader pg XX

The other was a Maori woman with two children who is still in her relationship. Her family became actively involved in her situation:

> Because of my shame and embarrassment I neither wanted the police or the courts involved in this. I managed to persuade my sister not to call the police but I did not manage to keep anything else secret. She involved not only my parents but also the parents of my partner, explaining that if we couldn't keep the children free from abuse, maybe the family could. Part of the deal that would ensure the family would not bring the courts or the police into our lives was that we were to attend counselling and my partner was to attend a 'stopping violence' course. We did this and at times I feel it was not always helpful or conducive to our relationship. There has been no violence in our lives for 18 months now and we are getting married at the end of the year. – *(Potential applicant interview, Maori, 2 children)*

Perceptions of seriousness of violence

In some cases women perceived the violence they experienced as 'normal' or acceptable and two were discouraged by their lawyer from applying.

One Pacific woman with two children suffered physical and psychological abuse over a period of eight years, but did not apply for an order because she thought such behaviour was 'normal'. She also wanted the financial security of having a partner and saw him as her 'strong protector'.

A Pakeha woman was encouraged to seek a protection order by a counsellor and went to a lawyer.

> The lawyer said, 'No, a letter will be sufficient. It's not worth doing anything about. A judge would say it's not important'. I felt I just had to put up with it, felt like it wasn't important, not big time violence. He took no notice of the letter. He's still coming round. Unless you have evidence you can't prove anything. He just laughs. I feel like I'm the criminal. – *(Potential applicant interview, Pakeha, 2 children)*

Lack of knowledge

Lack of knowledge is also a barrier. Key informants noted that some potential applicants do not understand:

- how to go about getting a protection order
- that the order can give access to programmes for the applicant, the respondent and children
- that they can have an order and still live with their partner.

The potential applicants interviewed confirmed these views. Of the 27 interviewed, five had no knowledge of the Act, four did not realise that psychological and emotional abuse were covered by the order and one did not know that she could apply for an order while living with her partner.

4.9 What would make it easier to apply

Key informants and non-applicants identified several factors that would make it easier for people to apply for orders, including:

Police

- giving applicants **one** booklet with all relevant information in it at the time of the incident so that applicants can access the information when they are ready, including information on programmes
- ensuring police are well-trained and can provide correct information to potential applicants
- ensuring police respond to breaches, thereby increasing applicants' confidence in the order.

Courts

- simplifying the forms and the language used in them
- putting orders on different coloured forms so applicants only have to deal with ones that are relevant to them
- having forms available in different languages
- ensuring that Family Court staff are culturally diverse and sensitive and can relate well to people of different ages and socio-economic groups
- instituting a system whereby the applicant could have someone come to his/her home on the night of the incident with an application form to complete straight away.

Lawyers and other professionals

- educating lawyers about the disadvantages of undertakings
- strengthening professionals' knowledge and understanding of aspects of psychological abuse.

Community

- community education through:
  - programmes and advertisements on television and radio
  - information on the back and inside of buses
  - information in free local newspapers and the telephone book
  - information available through community programmes such as Family Start and Parents as First Teachers
  - information available through community agencies such as Citizens Advice Bureau
- training community workers to help applicants apply for orders.

4.10 Summary

The information in this chapter indicates that the main users of the Act are couples, people aged between 25 and 45, and people with children. The majority of applications were from Maori and Pakeha applicants. The disproportionately high number of applications by Maori against partners and family members is likely to be related to the amount of violence experienced by Maori.[15] [16]

Barriers to accessing the Act include cultural and social pressures, cost, language difficulties, lack of knowledge of the Act and its provisions, fear and lack of confidence in the court system. Informants believed that cultural pressures can inhibit Maori, Pacific peoples and people from other cultures from using the Act. Some people from these groups may experience language difficulties and be resistant to using the New Zealand justice system. Men, lesbians and gay men face social stigma. Cost is a major barrier for women and men who are not eligible for legal aid.

[15] Morris, Allison 1997 *Women's safety survey 1996*, commissioned by the Victmisation Survey Committee from Victoria Link Ltd

[16] Young, Warren et al 1997 *New Zealand national survey of crime victims 1996*, commissioned by the Victimisation Survey Committee from Victoria Link Ltd

5. Making an application

One of the objects of the Act is to 'ensure that access to the court is as speedy, inexpensive, and simple as is consistent with justice' (s5 (2) (b)). This chapter looks at the avenues used by potential applicants in making an application. These include seeking advice from the Family Court or community groups and either representing themselves or being represented by a lawyer.

5.1 Guidance from the Family Court

A number of people approach the Family Court for help with a domestic violence issue. Court staff cannot offer legal advice but can suggest a number of options. According to both the survey and key informant interviews, by far the most common practice is to suggest potential applicants see a lawyer, with most court staff offering clients a list of lawyers to choose from. Court staff rarely referred clients to a particular lawyer or assisted them to make an application. Table 4 gives information from the survey.

Table 4 Advice given to potential applicants by Family Court staff n=16

	Always	Usually	About half	Seldom	Never	No answer
Suggest they see a lawyer	11	5	-	-	-	-
Offer them a list of lawyers	4	7	-	1	1	3
Refer to a particular lawyer	-	-	-	7	5	4
Refer to a community law centre	1	2	1	4	4	4
Refer to other services, eg Refuge	1	1	2	6	3	3
Assist to make an application	1	1	-	9	2	3

Family Court Coordinators were asked to say how often communication with applicants was made difficult because they are speakers of other languages. Only one of the 16 coordinators said that communication with potential applicants was difficult 'about half the time'. Fourteen said this was seldom the case, while one had no experience of this happening.

Some court staff were concerned that some potential applicants were missing out on orders:

> Coming to court may not be so useful. I worry that we lose some. We always recommend that they see a lawyer. The forms are complex and really complicated – we can't help them fill them in. They're normally in such a panic, they don't write as much as they should – they get upset, take the form away and often don't come back. – *(KI interview, Family Court Coordinator)*

> Police often tell women to 'go along to court and they will give you an order'. Consequently, women come along to court with an expectation of being given an order over the counter in a similar way to getting a trespass order against someone. They are then told that they have to back this up with factual information and to fill out affidavits, etc. They often get very distressed about this. This incorrect information from the police is unhelpful. – *(KI interview, Family Court Coordinator)*

5.2 Referrals to community groups

A third of the protected persons interviewed for the study (14 of the 41) found out about protection orders from the police following a violent incident. Most were satisfied with the help given by the police at this point, which usually included a referral to a refuge, Victim Support or a lawyer. Applicants appreciated the support they received from Women's Refuge, Victims Advisers and Victim Support.

> The lawyer recommended by the police was great. The police also suggested that I contact the women's refuge. They rang me several times and were very supportive. – (*Protected person interview, Pakeha, 2 children)*

> A female cop came to where I was staying and told me a woman from women's refuge would visit me the next day. She came and told me to get a protection order. She took me to a lawyer who explained everything and helped me all the way through to get it. – *(Protected person interview, Samoan, no children)*

5.3 Representation

The objective of making access to the court as 'speedy, inexpensive and simple as is consistent with justice' suggests that people in need of protection can apply without legal representation[17]. In fact, this rarely happens. Over all courts, an estimated 96% of applications were made through lawyers. This pattern was similar for the files from the research sites where 92% of applications were made through lawyers. There was some variation between courts, with Whangarei having no self-applications and Auckland having 16% self-applications.

Four of the 41 protected persons interviewed for the study had applied without the help of a lawyer, but with the guidance of court staff in three cases and the help of a community group in the fourth. All four obtained their orders without incident and without cost.

[17] That this was the intention of the Act is apparent from the 1995 report *The Domestic Violence Bill: report of the Department of Justice*, which states that "parties to proceedings are not required to have legal assistance. The new rules that will come into force with this Act will attempt to simplify the procedures and forms as far as possible."

One woman had reported her husband's attempt to strangle her to the police. He subsequently went to court and pleaded guilty to assault. While he was waiting to go into court she asked a court representative about getting a protection order. The staff member explained what was involved. The applicant filled out the forms and was granted a three-month temporary order which subsequently became final.

The police referred another to the SAFTINET/Domestic Violence Centre in Auckland:

> They helped me with the affidavit and the orders. I went to the Family Court to complete the order. The woman there gave the order [sic] to the judge and it was granted the same day. The orders were served on him the following morning. I was really happy with the help I was offered. – *(Applicant interview, Maori, no children)*

Judges interviewed as key informants were opposed to the practice of self-application on the grounds that applicants often provide insufficient information and may be turned down or have their application put 'on notice':

> It's most concerning if someone doesn't know the evidentiary threshold. They may in fact have all the evidence there and may qualify for having the matter dealt with 'without notice' but because they don't know, they could miss out. I think they should take legal advice. – *(KI interview, judge)*

Court staff and lawyers generally agreed with this view. As one court staff member noted:

> The legislation and regulations don't support a do-it-yourself application. People have no idea what a judge is going to want to know. They are also in no position to give an objective account of their experiences. You need someone to walk you through it. There are no obvious advocates available. If the application is defended they will need a lawyer anyway. Court staff are prevented from helping people make applications because that would be construed as giving legal advice. – *(KI interview, Family Court Coordinator)*

5.4 Using a lawyer

Thirty-seven of the 41 protected persons had used the services of a lawyer in obtaining their order. Five used a lawyer they already knew, 13 were referred to a lawyer through a women's refuge and 18 either found a lawyer for themselves or were referred to one by the police or a counsellor.

Most protected persons described their lawyers as efficient and helpful, using terms such as 'excellent' and 'great' and in most cases the orders were granted quickly and without complications. The choice of a lawyer was often quite arbitrary. Women described looking for a lawyer in the telephone book, 'door knocking down town' and walking down the street to find a lawyer. This protected person successfully applied for interim custody as well as a protection order:

> I picked a law firm by walking down the street until I saw one and went in and asked for a lawyer to apply for a protection order. I told him that I had no money. The lawyer wrote my statement, which was about four pages long, and I came back and signed it and got an affidavit. The order was served on him [respondent] and that was it. – *(Protected person interview, Maori, 3 children)*

On one occasion the protected person did not actually see the lawyer:

> That's the 'stinkest' thing about it. I went to see the lawyer but instead I was told to sit with the lawyer's PA [personal assistant] and she asked me questions and typed up the affidavit. She was nice because she said she'd been through it too. – (*Protected person interview, Maori, 2 children)*

Seven of the 41 protected persons had to pay for their protection order, with costs ranging from $900 to $10,000. The latter included a custody order. Four of the seven paid between $900 and $1300. One protected person had to pay an additional $200 to have the order served in another town.

5.5 Affidavits

Lawyers and court staff discussed the quality and nature of affidavits and the steps lawyers took to satisfy themselves that an application should be made under the Domestic Violence Act. Court staff were aware of the difficulties applicants had completing an affidavit unaided. They suggested that a brief guide could be provided, covering what to include and how to shape an affidavit. Most lawyers interviewed included the following in an affidavit:

- details of the most recent episode
- police involvement
- reports on any visits to doctors or the hospital
- details of children's experience of and witnessing of violence
- the context and history of violence
- the applicant's fears for the future
- whether it is the first application or not
- whether the respondent has made any threats.

Several lawyers agreed with this lawyer's comment:

> One area still presenting challenges is the definition and parameters of psychological violence and how you demonstrate and substantiate that. – *(KI interview, lawyer)*

The review of files showed that very few applicants had gone to the doctor or hospital with injuries, even when these were severe. Applicants' affidavits mentioned that sometimes the respondent prevented them from seeking any medical advice, whilst others were embarrassed and did not want anyone to see their injuries.

While most applicants had no difficulty completing an affidavit, one described the process as 'reliving the experiences - a nightmare, humiliating, very unpleasant'. Another commented on the legal language:

> It's a big jump from deciding to take action, then seeing the written statement on the affidavit. He looked really bad. It would be better to have the affidavit written more the way I talk[18]. It would make it easier to understand and relate to. – *(Protected person interview, Maori, 4 children)*

Two key informants remarked that lawyers can no longer get a list of previous convictions from the criminal court, which could enhance their case and help to establish whether or not there was a history of violence[19].

Some lawyers went to considerable lengths to satisfy themselves that the application was warranted, including documenting referrals by the police or community agencies, calling social workers where they had been involved or obtaining copies of previous affidavits. However, as one pointed out:

> Often it is simply relying on their word. I tell them that this is their affidavit and it has to hold up in court and that they can be questioned on everything in it. – *(KI interview, lawyer)*

Most lawyers interviewed said they explored other matters with clients in association with an application for a protection order, including:

- ensuring applicant's personal safety
- individual counselling
- trespass orders
- custody and matrimonial property orders
- practical matters such as shifting house and changing telephone numbers
- considering laying criminal charges.

[18] It is an accepted principle that affidavits are in the words of the person making the affidavit

[19] In fact, there was no provision under the Domestic Protection Act authorising the release of previous convictions of a respondent.

Several protected persons agreed that their lawyer told them 'everything about the order' without spelling out exactly what they were told. One said her lawyer urged her to consider applying for custody and retaining the family home. Other lawyers recommended that their clients seek individual counselling or attend programmes. Most protected persons said that their lawyer referred them to Women's Refuge, Victim Advisers and Victim Support and those agencies provided practical support as well as information about programmes, counselling and safety issues. One protected person described a positive experience with a lawyer arranged by Refuge:

> The lawyer could tell that I was having mixed feelings. She wanted to hear my story from beginning to the end. She made me talk about how often I got the beatings, what happened after each beating. She made me open my eyes to what the consequences would be if I decided to go back to my husband. The lawyer and the court asked about custody and access arrangements and I said that my husband and I have made a mutual agreement that the children would not be affected by the case. There will be no restrictions on access and the children will be free to visit or stay with either of us. – *(Protected person interview, Samoan, 2 children)*

A number of protected persons went through the legal process and still did not understand it or have any idea where they could get the support or information they needed.

> I'm not clear on what you can get regarding orders and custody. I'm not clear about legal custody and access arrangements or what I do next to make them permanent. I'm not the type of person who will ask either. – *(Protected person interview, Maori, 2 children)*

Most lawyers said that they explained the implications of the order to applicants, including access to children, residence or occupation, programme requirements for respondents and the availability of programmes for protected persons. Some saw protected persons again once the order was granted and reminded them of the need to keep the order at hand and to call the police for each breach. Others had little or no further contact with their clients.

5.6 Grounds for an application

The grounds for an application are that domestic violence[20] has occurred between people in a domestic relationship and the applicant is in need of protection. Grounds for an application can be:

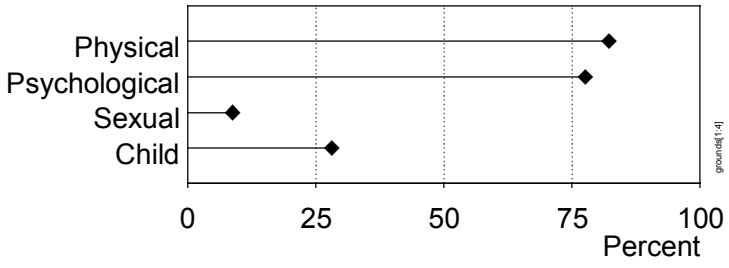
- physical abuse
- psychological abuse
- sexual abuse
- psychological abuse of a child through witnessing abuse.

For an application to be made 'without notice', the court must be satisfied that the delay that would be caused by putting the application 'on notice', would or might entail a risk of harm or undue hardship to the applicant, or a child of the applicant's family, or both. See below for further discussion of applications made 'on notice' or 'without notice'.

An applicant can list more than one ground for an application. National figures for the proportions of applications made on different grounds, for all courts, are shown in Figure 5. High proportions of applications were made on physical and psychological grounds (82% and 78% respectively). Applications on the grounds of 'children affected' made up over a quarter of the applications.

Women more often made applications on physical grounds (84%) than did men (73%). Maori more often applied on physical grounds (88% compared to 81% for non-Maori) and on the grounds of 'child' (35% compared to 26% for non-Maori). However Maori applied less frequently on the grounds of psychological abuse (71% compared to 81% for non-Maori).

Figure 5 Grounds for Application



Source: DVA database

[20] Section 3 of the Act defines "violence" as "physical abuse, sexual abuse or psychological abuse, including, but not limited to (i) intimidation: (ii) harassment: (iii) damage to property: (iv) threats of physical abuse, sexual abuse, or psychological abuse: (v) in relation to a child, abuse of the kind set out in subsection (3) of this section." A person psychologically abuses a child if that person "(a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or (b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring".

Information on the grounds for an application can be difficult to interpret. For example, some courts adopt the practice of always listing psychological grounds if there are physical grounds. The rationale is that all physical abuse has a psychological aspect to it. In the files from the research sites only 1% of applications were listed as not having applied on the grounds of psychological abuse (5% not specified).

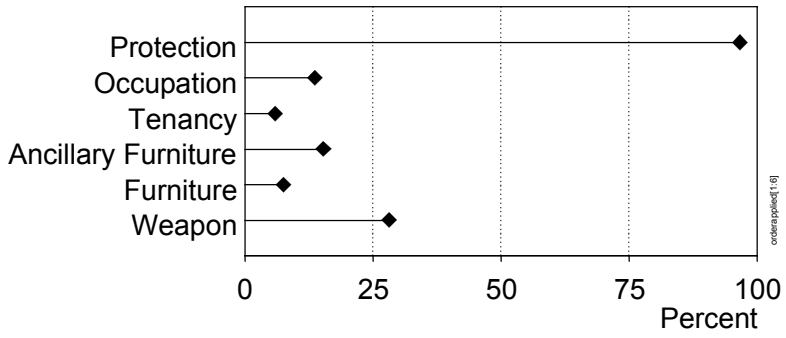
The file study showed that approximately 80% of applicants applied on physical grounds. Pakeha applicants applied slightly less often on physical grounds (75%) than Maori (88%), Pacific (93%) or Asian (86%) applicants. Generally the quality of the information in the files on grounds was poor, so no more details (eg figures for those applying on the grounds of sexual or child abuse) are given in this report.

During the scoping study a number of key informants had expressed concern that applications for protection were sometimes made to gain strategic advantage in disputes over custody and access. However, this was not confirmed as an issue by key informants in the full process evaluation.

5.7 Orders applied for

The following chart shows orders applied for nationally. The data shows that 97% of applicants applied for protection orders. Generally the trend in the orders applied for was similar for Maori and non-Maori groups.

Figure 6 Orders and Conditions Applied For



Source: DVA database

The national statistics for the various types of orders and conditions show the following trends:

- 14% of applications sought occupation orders. The proportion of occupation orders was particularly large for Asian people, with 31% of applications from this group seeking occupation orders
- women were more likely to apply for ancillary furniture applications than men - 16% compared to 6% for men.

- weapons conditions[21] were sought in 28% of the applications. A similar proportion of applications from men and women included weapons conditions - 25% compared to 29% for women.

The information from the file study for orders applied for did not appear to be particularly reliable. However the broad trends for protection orders (almost 100%), occupation orders (15%) and ancillary furniture orders (7%) were similar to the national trends.

5.8 'On notice' or 'without notice'

Applications can be made 'on notice' or 'without notice' (often called 'ex-parte'). An application 'on notice' means that the respondent is advised of the application and of the hearing date and has the chance to attend court and challenge the application before the order is made. After hearing the parties, the court may or may not make the order. An application 'without notice' is made without the respondent being advised of the application. The court may then make a temporary order that the respondent can challenge later at a separate hearing.

This section compares the numbers and nature of applications made 'on notice' and 'without notice'.

Nationally 81% of Domestic Violence Act applications were 'without notice'[22] and 19% applications were listed as 'on notice'. 'Without notice' applications were proportionately higher for female applicants than for male applicants (83% of applications from women were made without notice compared to 56% for men). For applications from people 17 years and over, the proportion of 'on notice' applications tended to increase with the age of the applicant. There was little difference in the proportion of 'without notice' applications for Maori and non-Maori groups.

The file study in the research sites showed a larger proportion of applications 'without notice' (95% or 319). Four percent (14) were listed as having applied 'on notice' and 1% (2) were not specified. Again, there was little difference between Maori and non-Maori groups.

The survey of lawyers confirmed the national data. Over the last three months, 70 of the 88 lawyers surveyed said that they made between 80 and 100% of their applications 'without notice'. Over the same period, 38 had made no applications 'on notice'.

[21] see Chapter 8

[22] The criteria for an application without notice are set out in s13 of the Act and are that "the court is satisfied that the delay that would be caused by proceeding on notice would or might entail (a) a risk of harm; or (b) undue hardship to the applicant or a child of the applicant's family, or both."

5.9 Placed 'on notice'

The file study showed that out of the 319 'without notice' applications, 19% (61) did not get temporary orders. There was little difference between Maori and non-Maori groups in the proportion getting temporary orders. Out of the 319 'without notice' applications, 52 withdrawals were granted.

Of the 61 applications that did not get a temporary order, 50 were placed 'on notice' and of these, 30 were also listed as withdrawn. The much higher withdrawal rate for those placed 'on notice' suggests that having the application placed 'on notice' makes it more likely that an applicant will withdraw the application.

Forty-nine of the 88 lawyers surveyed had had 'without notice' applications placed 'on notice' by a judge. Twenty-nine said that this had happened in fewer than 15% of cases.

Judges were asked to give the main reasons for requiring a 'without notice' application to be put 'on notice'. These were, in order of mention:

- when they believed the delay would not increase the risk
- when the application did not meet the statutory criteria for a 'without notice' application
- when they believed the severity of the violence did not warrant such an action – one referred specifically to psychological abuse
- when there had been some delay since the violence occurred
- where the parties were living apart.

One judge believed that proceeding 'without notice' could cause more litigation and problems. In his view:

> Unless there is a serious risk of injury then really there is no reason why an application can't be dealt with 'on notice', given a hearing date promptly and give the respondent a chance to be heard. – *(KI interview, judge)*

Another believed that 'on notice' applications do not give adequate protection for the applicant, particularly for those applying on the grounds of psychological abuse. As is apparent from Figure 7 below, judges are more likely to place applications on grounds other than physical abuse 'on notice'.

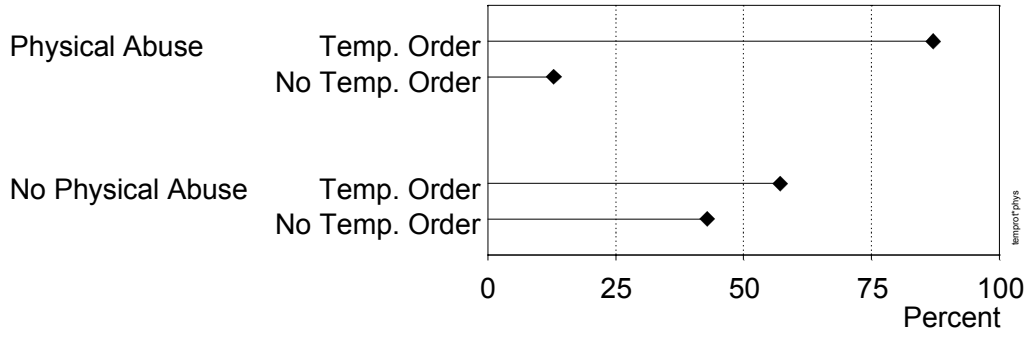
5.10 Getting a temporary order

Of the 319 applications in the file study that were listed as being 'without notice', 258 (81%) went on to get temporary orders. As noted above there were no notable differences in the proportion of Maori and non-Maori applications getting temporary orders.

The 255 applicants who applied on the grounds of physical abuse were more likely to get temporary orders than the 63 who did not apply on physical grounds (see Figure 7).

Applicants who suffer psychological abuse may be disadvantaged by the tendency to place applications 'on notice' where there is no physical abuse. Applications placed 'on notice' are also more likely to be withdrawn. See section 7.10 below for further discussion of reasons for withdrawals.

Figure 7 Grounds for temporary orders



Source: file study

Fifty-four of the 88 lawyers surveyed said that they prepared applications solely on the grounds of psychological abuse differently to applications on other grounds. They did this mainly by:

- including more detail of the abuse
- trying to include supporting or expert evidence
- making clear the links between the violence and the impact on the victim
- giving more history, and
- attempting to show a pattern.

Forty-eight lawyers thought that the courts treated applications on psychological grounds differently to applications on other grounds, in that they were less likely to grant them 'without notice' and required a higher standard of proof of violence.

Sixteen of the 19 judges surveyed were satisfied or very satisfied with the information provided for 'without notice' applications. Three were neither satisfied nor dissatisfied. Suggestions for improvement included having more succinct and detailed information, more independent corroboration of events and better information on access and custody issues.

5.11 Mutual protection orders

On occasions, two parties apply for protection orders against each other. S18 of the Act states that 'where the court grants an application for a protection order, it must not also make a protection order in favour of the respondent unless the respondent has made an application for a protection order and the court had determined that application in accordance with this Act'.

Ten of the 19 judges surveyed had issued between one and five mutual protection orders in the past year. Nine had not issued any. None made any comment on these orders.

The two female respondents interviewed for this study held protection orders against their partners and had mutual orders made against them. One felt that the mutual order was a 'travesty' and that the court had given her husband 'full permission to harass' her and establish contact with her again.

5.12 Speed with which 'without notice' orders granted

Participants, including judges, lawyers, Family Court staff and protected persons, were generally satisfied with the speed with which 'without notice' orders were granted, although a number of applicants were critical of the cost. One lawyer questioned whether the process is in fact 'inexpensive and simple' as proposed in the Act.

Table 5 shows the time taken[23] between a 'without notice' application and a temporary order being granted for the files in the file study[24]. Note that in the large majority of cases, the temporary order is made the same day as the application. Ninety seven percent of temporary orders were made within 10 days.

[23] In this report, time taken is in terms of calendar days.

[24] This table only includes applications where there was enough information to be able to calculate the time taken.

Table 5	Time between 'without notice' application and the temporary order	
Time taken	**Number**	**Percent**
Same day	190	75.4
1 day	35	13.9
2 days	9	3.6
3 days	6	2.4
5-7 days	4	1.6
8-21 days	5	2.0
22-35 days	2	0.8
145 days	1	0.4
Total	252	100.0

5.13 Summary

This chapter confirms that although one of the aims of the Act is to ensure that access to the court is as speedy, inexpensive and simple as is consistent with justice, it is rare for applicants to apply without using a lawyer. While four of the protected persons interviewed successfully completed self-applications, judges, lawyers and court staff generally opposed self-representation. Very few of the protected persons knew a lawyer prior to applying and had to approach a stranger with their request. Most were satisfied with the lawyer who acted for them.

The data relating to psychological abuse is not helpful in establishing the nature or intensity of psychological abuse.

This chapter also shows that most applications for protection orders are made 'without notice'. Applications on grounds other than physical violence were less likely to be granted temporary orders. In the file study, over half the applications placed 'on notice' were withdrawn. Informants' responses to the issue of when applications should be placed 'on notice' highlighted the need to balance respondents' right to be heard with the need to protect applicants from further violence.

6. Serving a temporary order

Despite the prompt response of the court in granting temporary orders, an order cannot take effect until it is served on the respondent, either directly or through substitute service. Protection orders are usually served either by court bailiffs or by private process servers. Where there are firearms involved or there is a threat of violence to the server, police serve the orders. This section discusses issues relating to the service of temporary orders, including the respondents' experience, and the steps taken to clarify for respondents what the orders mean.

6.1 Serving a temporary order

Of the 258 temporary orders granted in the file study, the largest number (117 or 45%) were served by bailiffs. Seventy-three (28%) were served by private process servers, 50 (19%) by police and one by a lawyer. Ten files did not say who served the order. This probably includes some cases where the order was not served at all. Only seven orders (3%) were identified as being unable to be served.

In 13 out of 16 courts surveyed, court bailiffs usually serve orders. Private process servers employed by lawyers usually carry out this task in three court areas.

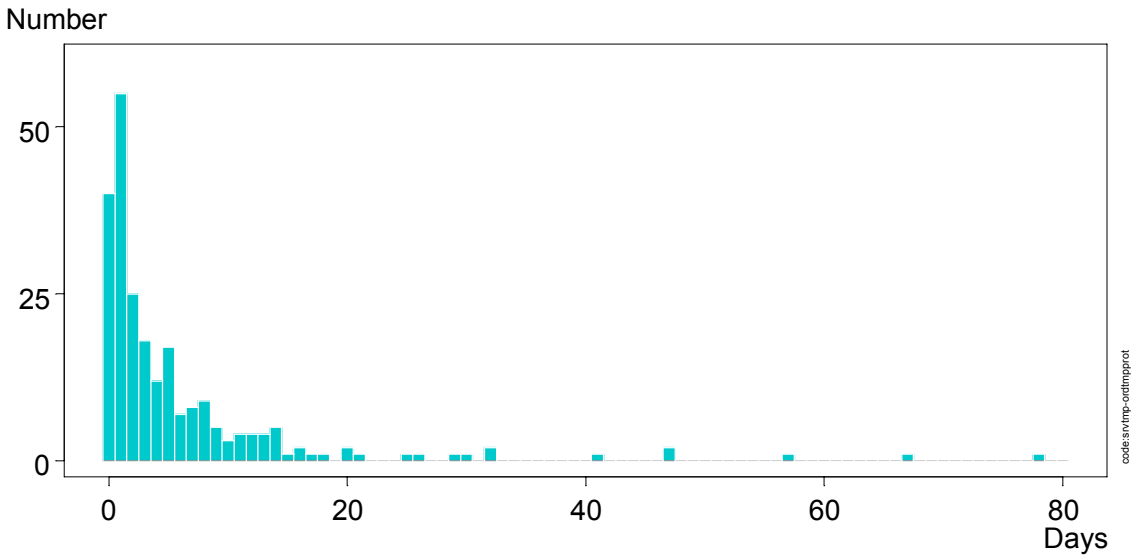
Lawyers surveyed confirmed this pattern. Only 20 of the 88 arranged service for more than three-quarters of their clients. Those who used private process servers said they did so because they were quicker, whereas others were satisfied with the court-arranged bailiff service.

Family Court Coordinators and lawyers were generally satisfied with the efforts made to serve orders and agreed that most are served in a timely fashion. Problems arise when the respondent's whereabouts are not known. A number of participants suggested ways of improving service. These are included in the Chapter 12: Examples of Best Practice.

Several lawyers interviewed wanted a better system for the courts to inform applicants and counsel when an order had been served. In a similar vein, some Family Court Coordinators wanted a speedier notification of service by private process servers.

Family Court Coordinators and police agreed that the firearms check works efficiently and effectively.

Figure 8 Time between temporary order and the service of the documents



Source: file study

Figure 8 shows the time taken between a temporary order and the service of the documents in the file study[25]. The median[26] length of time to serve the documents was two days. Eighty-four percent of applications were served within 10 days. One temporary order took 146 days (almost five months) to serve. This case is not included in Figure 8.

6.2 When orders cannot be served

Bailiffs and private process servers interviewed said they tried two or three times to serve an order before returning it to the Family Court to arrange alternative service. This could involve finding a new address, finding a work address or arranging substitute service.

6.3 The respondents' experience

Thirty of the 43 respondents interviewed were served by a bailiff and eight by the police. Two were served by their lawyer, one by his partner and the server in two cases was unclear.

Three-quarters of the bailiffs either explained the implications of the order or advised the recipient to contact a lawyer or both. A quarter did not explain the orders. Three of the eight police explained the orders. Two respondents described their experiences:

[25] This graph only includes applications where there was enough information to be able to calculate the time taken.

[26] The median is the middle mark.

> A bailiff served them to me. He advised me to obey them or pay the price. I was angry at my ex, I believe she brought it on herself. It was shameful because they served them to me at work. I was very embarrassed. – (*Respondent interview, Samoan)*

> A policeman served me the orders while I was in police custody. He handed it to me without explanation and walked off. On top of everything I had been through, I was shattered, especially since the order included my kids and there was no reason for that. My lawyer advised me to speak to a Family Court lawyer. I didn't because I refuse to fight for my children through the system. – (*Respondent interview, Pakeha)*

In one case the bailiff was unable to explain the order because the respondent did not speak English. When the affidavits subsequently arrived in the post, the respondent approached a relative who was a lawyer, who explained the order to him.

Respondents' primary response was one of anger, confusion, denial and a sense of outrage and injustice. Typical responses included:

> One day when she was out the police turned up. I was really angry. They were lucky I didn't meet them with a gun. They said I had to leave the house immediately and told me what the order was about. It was awful. I didn't know what to do and I rang some friends. The Act is draconian – I was forced out of my own home just on what she said. – *(Respondent interview, Pakeha)*

> I asked my mother to explain the order. The lawyer and court staff told me about it but I couldn't understand what they were saying. They talk at you but not to you and I couldn't understand them. – *(Respondent interview, Maori)*

Twenty-seven of the 43 respondents interviewed consulted a lawyer about their order. Six approached the court with mixed results. While four received some explanation or referrals, two said they were 'treated rudely' or that 'there was no one available to help me'. Four discussed the order with family and friends. Three did not talk to anyone about them. Three either threw their orders in the rubbish bin or burnt them.

One man's views summed up the general reaction of respondents when orders were served:

> A man served them. I thought it was for unpaid speeding tickets. He didn't tell me what he was serving or why. When I found out what they were I felt like a fool. I was pissed off. I didn't deserve them because she was just as violent as I was. At least I didn't hit the kids like she did. I talked to a couple of friends about it and we decided it was useless defending them because I didn't have any money and I had some 'male assaults female' cases coming up. And they said it's no use anyway because they [applicants] always win. – *(Respondent interview, Maori)*

Only two protected persons interviewed commented on the service of orders. One, whose partner was an active gang member, thought this was the reason it took two months to serve the order on him. Another was threatened by her partner after the order was served. It took several phone calls before she was able to get a police response.

6.4 Understanding orders

Seven out of 19 judges surveyed were satisfied that respondents understood the implications of the orders served on them. Five were neither satisfied nor dissatisfied, while three were dissatisfied. Four did not comment. Judges interviewed for the study agreed that there are literacy issues:

> The information available to the respondent on the order is not well set out. Most respondents have a reading age of 10-12 years old. The language is very technical. There is some legal information that needs to be there but there should also be a simple explanation for respondents of low reading age. The text is written in the passive and is very hard to understand. The orders need to be set out in plain language and summarised in a way that is easy to understand and then followed by the full content later in the document. – *(KI interview, judge)*

Twenty-four out of 88 lawyers surveyed thought that the respondents who had contacted them in the last three months had 'good' or 'very good' understanding of the orders; 39 rated respondents' understanding as 'partial', while 21 thought it was 'poor' or 'very poor'. Four did not answer.

Participants identified problems for:

- people with poor literacy skills
- speakers of other languages
- those with intellectual impairment.

Several providers of respondent programmes agreed that many respondents do not understand that they can object to an order. One provider described his experience:

> Non-Maori men are really clever about protection orders. They know the system, they know what the score is and they just get angry and annoyed and all those wicked behaviours. Since I have been working here I have noticed that the Maori men don't have too great an understanding. All they know is they can't go near her – they've figured that out. Can't see the kids and that's where it ends for them. They have no idea about objections – they don't know the process. Only about half of them know how to read the piece of paper. They don't know about the non-user-friendly words. They don't know about their rights to object and we don't tell them about it either. By the time they come here it's past the five days allowable. There are those who are confused about not being able to attend whanau tangi and their whanau obligation to attend any tangi of their partner's whanau. They find it hard to realise that they simply cannot go near there. – (*KI interview, programme provider)*

In some courts, the bailiff or process server explained the order to the respondent, drawing their attention to the parts they needed to know about.

> They explain that the respondent has five days to object [to attending a programme]. They explain that the respondent can object to attending a programme and issues about their access to children while there is an order in place. – *(KI interview, Family Court staff)*

In other courts, bailiffs believed that their job was just to deliver the document.

> The Department for Courts customer service approach works in the office but bailiffs are on the back foot when serving orders because they are on someone else's property. – *(KI interview, bailiff)*

Whether they explained the order themselves or simply delivered the document, most bailiffs referred respondents to the Family Court or to a lawyer for further advice:

> I tell them to read it very carefully and to ring the Family Court or their lawyer, if they have one, if they don't understand it. I recommend that they talk to a lawyer about it. Often they aren't very literate so I point them to the free legal service or the Family Court. I impress on them that they must comply with the order. – *(KI interview, bailiff)*

Suggestions for improving respondents' understanding of the orders are included in Chapter 12: Examples of Best Practice. One summarised the prevailing view:

> Orders served on lay people without representation need to be accompanied by an explanation – a very simple sheet in plain English. This could also be translated into other languages. It could be more difficult to administer but worth the money. – *(KI interview, judge)*

6.5 Advice from Family Court staff

When respondents contacted the court seeking an explanation of orders, court staff either explained the order or suggested the respondent saw a lawyer. Most said they offered respondents a list of lawyers to choose from.

Table 6 Advice given to respondents by Family Court staff n=16

	Always	Usually	About half the time	Seldom	Never	No answer
Suggest they see a lawyer	7	6	3	0	0	0
Offer them a list of lawyers	4	7	0	1	1	3
Refer to a particular lawyer	0	0	0	7	5	4
Refer to a community law centre	1	3	1	3	6	2
Explain order	7	6	2	1	0	0

6.6 Summary

Despite the difficulties inherent in serving orders, a very high proportion of temporary orders do get served. Questions remain over how much explanation respondents should be given at the time of service. Respondents often experience feelings of anger, confusion and denial at this time and may need further explanation and advice. However, not all seek it within the five-day period allowed for objecting to having to attend a programme.

7. The court process

A respondent who has been served a temporary order can elect to defend the order. If the respondent does not pursue a defence, the temporary order becomes final after three months. Respondents also have five days in which to object to the direction to attend a programme. Programme objections are discussed in more detail in Chapter 10: Programmes. This chapter looks at defences of the order, concurrent proceedings in the criminal court, and discharges and undertakings.

7.1 Defending a temporary order

Many respondents give notice that they will defend the order but few actually do. In the file study about a third gave notice that they would defend it but only 18% (44) of those who were served temporary orders did defend them. There were no obvious factors associated with whether a respondent defended a temporary order or not.

For the 44 temporary orders that were defended, half (22) became final orders and almost all of these final orders (20) were served. It seems that once a respondent is in the legal system it is much easier to serve them with papers. For the 21 temporary protection orders that were listed as having no final order, five were also listed as having been discharged.

7.2 Proceeding to final orders

The majority (207 or 82%) of respondents in the file study who were served with temporary orders did not defend them. However not all of these applications progressed through to a final order.

73% (151) of the temporary protection orders did become final orders. There were no notable characteristics associated with which protection orders became final.

Of these 151 final orders, 95 (63%) were served and 39 (26%) were unable to be served. It was unclear whether the remaining 17 (11%) final orders were served or not.

The number of final orders that were unable to be served is higher than for the temporary orders. There are different explanations for this. It may be that the respondents were aware that they were to be served and tried to avoid being served. Alternatively the court may not make the same effort to serve the papers as the respondent has already been informed that the temporary order will become final. In one of the research sites, the court staff confirm to the protected person's counsel that the three months is up and the temporary order has been made final. If a final order is sent to the solicitor there is no record on file on whether or not that order was served.

It was apparent from the interviews that not all protected persons understood that a temporary order becomes final after three months if it is not defended. One interviewer noted that it was common, particularly amongst the Maori women protected persons interviewed, for the protected person to have little understanding of the current legal status of their temporary protection order or their custody and access arrangements. They tended to see gaining a temporary protection order as an event that should settle their concerns rather than part of an ongoing process. One protected person commented:

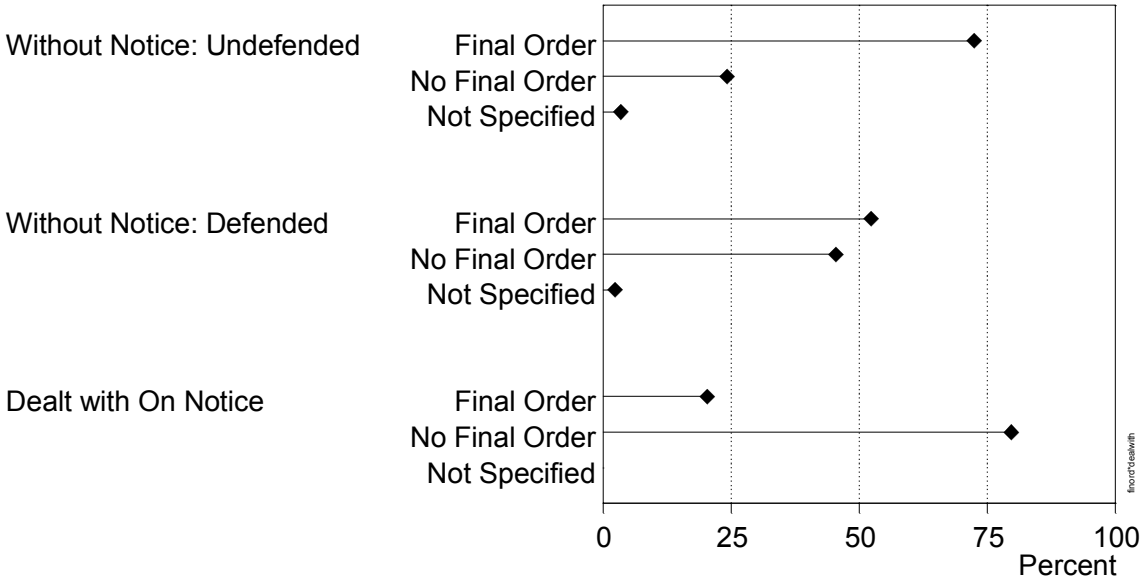
> The protection order was for three months and has run out. I think he doesn't realise it's run out, which suits me. I'm going to carry on as if it's still there. I'll take out another one if I have to. – *(Protected person interview, Maori, 4 children)*

Of those 56 applications that were served with a temporary order, were not defended, and were not listed as having resulted in a final order, 48 were explicitly listed as not having final orders. It is unclear what happened to the other eight applications. Of the 48 applications without final orders, 38 were listed as discharged with 9 of these also listed as withdrawn. It is unclear what happened to the other 10 applications.

7.3 Orders dealt with 'on notice'

Out of the 335 applications in the file study a total of 64 were dealt with 'on notice'. Fourteen of these applied 'on notice' and the remaining 50 were placed 'on notice'. Overall applications dealt with 'on notice' less frequently resulted in a final order. As shown in Figure 9 below, only 20% of applications dealt with 'on notice' resulted in a final order, compared to 72% for undefended 'without notice' applications and 52% for defended 'without notice' applications.

Figure 9 Outcomes of applications dealt with 'on notice' and 'without notice'



Source: file study

7.4 Why some defences do not proceed

As noted above, the file study suggested that many more respondents want to defend an order than actually do. The experience of the lawyers surveyed confirms this pattern, although obviously respondents who go to a lawyer to discuss the order are more likely to want to defend it than those who do not. Fifty-two out of 88 lawyers said that the majority of their clients wanted to defend the order, a similar number also said that fewer than 25% of their clients actually went to a defended hearing.

Table 7 Percentage of lawyers' respondent clients defending a protection order n=88

	Wanted to defend	Lodged a defence	Defended hearing
Less than 25%	10	18	60
26 – 50%	5	11	11
51 – 75%	9	22	5
76 – 100%	59	32	3
Did not answer	17	17	20
Total	100	100	100

Although a relatively high proportion of respondents received legal aid, lawyers identified cost as a factor for some respondents. Lawyers answering the survey were asked what proportion of their clients received legal aid and what proportion were deterred from taking action because of the cost. Fifteen lawyers thought that more than a quarter of their respondent clients were deterred from going ahead with a defence because of the cost.

Table 8 Lawyers' views on cost issues for respondents		
% of respondent clients receiving legal aid	**Number of lawyers**	**Percentage of lawyers**
Less than 25%	16	18
26 – 50%	8	9
51 – 75%	13	15
76 – 100%	34	39
No answer or not applicable	17	19
Total	**88**	**100**
% of respondent clients deterred by cost		
Less than 25%	45	51
26 – 50%	10	11
51 – 75%	3	3
76 – 100%	2	2
No answer or not applicable	28	32
Total	**88**	**100**

Eleven lawyers believed a number of respondents wanted to defend an order because of concerns about custody and access, eight thought they did so because they wanted the protected person's violence acknowledged and eight because they wanted a chance to put their case.

Lawyers and judges surveyed put forward a number of other reasons why defences do not reach a hearing. These included, in order of mention:

- respondent accepts situation more
- advised not to proceed
- situation has settled down
- access has been negotiated
- perception that courts 'always believe the woman'
- undertakings signed
- used as programme objection.

Nine of 19 judges surveyed were satisfied with the information provided for defended hearings. Eight were neither satisfied nor dissatisfied and only two were dissatisfied. They suggested that information could be improved by providing a better statement of the grounds for defence and of the changes made since the application for the order.

7.5 Respondents' experience

Twenty-seven of the 43 respondents interviewed consulted a lawyer and only four lodged a defence. Of the other 23:

- 8 did not do so because of cost
- 8 decided it would be 'too much hassle' to defend the order
- 2 were currently appearing on criminal charges and were advised not to defend
- 1 was deterred by both cost and criminal charges
- 1 did not want to see her ex-husband again
- 3 did not specify why they did not defend the order.

Several respondents were facing considerable legal bills associated with custody cases or criminal charges. Four cited bills between $5,000 and $13,000. Others thought the cost of defence was not worth it. Typical comments included:

> I didn't fight the orders, it would have cost too much, it wasn't worth it. – *(Respondent interview, Tongan)*

> I was going to defend the order but it was too expensive so I gave up. It still cost me $500 in lawyer's fees. – *(Respondent interview, Pakeha)*

An Asian respondent was deterred both by cost, language difficulties and lack of familiarity with the court system. His lawyer advised him simply to stay away from his wife and not waste money by defending the order.

One thought all orders should be 'on notice':

> It's too much in favour of the woman. They don't want to hear my side. She started it. She threw things round and I'm the one who has to leave. I think they should find out the truth from both sides and then put the order on, not straightaway. – (*Respondent interview, Indian)*

For the four who did initiate a defence, the cost ranged from $700 to $2,500. One lodged a notice of defence and then withdrew.

> I could see there was still a lot of anger round and going on with it would have been destructive for both of us. I went to a pre-trial conference for the original intention to defend. I never followed it through and I was pleased with the way the judge dealt with the situation. It cost $2,500 in legal fees. – *(Respondent interview, Pakeha)*

Another described a hearing but it was unclear whether this was a full defended hearing or not:

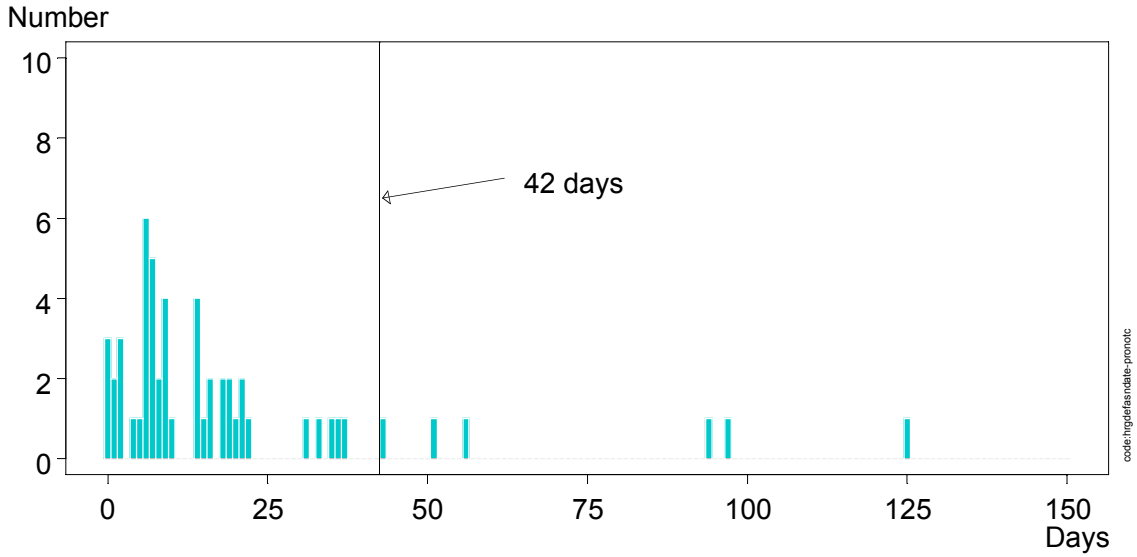
> The lawyer was useless. He said nothing at the hearing. I thought that he didn't present any proper evidence and the judge didn't even read my affidavit. And it will cost me about $2,000. – *(Respondent interview, Pakeha)*

7.6 The 42-day rule

When the respondent notifies his intention to appear in defence of the order, the Act requires that the Registrar assign a hearing date '(a) as soon as practicable and (b) unless there are special circumstances, in no case later than 42 days after the receipt of the respondent's notice' (s. 76). In fact, this does not always happen.

Figure 10 shows the length of time between the notice to defend a temporary order and the assigning of a hearing date. Approximately 90% of cases were assigned a hearing date within the required 42 days.

Figure 10 Time between a notice to defend a temporary order and the date when a hearing date was assigned



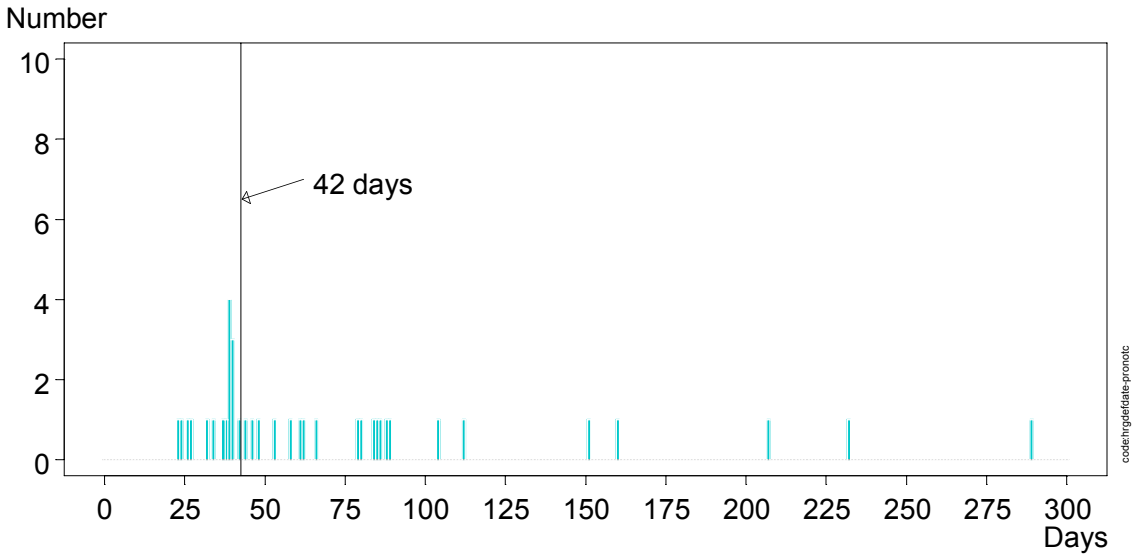
Source: file study

Figure 10 includes only application where there was enough information to be able to calculate the time taken.

However hearings are not always held on the date when they are assigned. Figure 11 shows the length of time between the notice of intention to defend a temporary order and the actual hearing date[27]. Approximately two fifths of the hearings in the file study were actually held within 42 days.

[27] This graph only includes applications where there was enough information to be able to calculate the time taken.

Figure 11 Time between a notice to defend a temporary order and the hearing date



Source: file study

Seven out of 16 Family Court Coordinators, said they were always or usually able to meet the 42-day rule, while a further four said they met the timeframe about half the time. Four coordinators, all from courts in provincial towns, said they were seldom or never able to meet the deadline and one was unable to comment. Eleven out of the 19 judges surveyed agreed that it was almost impossible to meet the 42-day rule.

By far the most usual reason for not meeting the timeframe was the lack of court sitting time and judicial resources – 11 of the 16 court coordinators surveyed mentioned this, as did 12 of 19 judges. In smaller courts, Family Court sittings were held for only one or two days a month. A Family Court Coordinator in such a court commented:

> Defended hearings with a time estimate of up to four hours have a 2-3 month wait. Anything over that time has to wait for a special day to be allocated. – *(Survey, Family Court Coordinator)*

Another added:

> I note respondents find delays particularly frustrating, especially when they have been denied access to their children. However, we may need to extend the 42-day rule or get more judicial support. – *(Survey, Family Court Coordinator)*

Other problems included:

- solicitors not available for hearing dates
- lack of full documentation by counsel
- requests by counsel for adjournments.

Some judges sought more flexibility:

> I do not believe meeting the 42-day rule should be mandatory, rather directory. It is impossible to comply with it in all cases. We do our best but only have so much court time. The court should be able to prioritise its work according to need rather than having one type of case gaining precedence automatically. – *(Survey, judge)*

Two referred to the High Court decision [C v C, 22 September 1998] that they saw as confirming the directory nature of the 42-day rule:

> I am pleased the High Court has held it to be directory rather than mandatory – it is virtually (otherwise) impossible to comply with in circuit courts where sittings are one day per month and generally involve 'list' work. – *(Survey, judge)*

A survey commissioned by the Family Law Section Executive of the New Zealand Law Society[28] found that in general, time limits were not being met. However, there was a marked variation between courts, with particular difficulties in areas where court sittings are less frequent.

7.7 Use of other professionals

Only a small proportion of file study cases involved the services of professionals other than lawyers. These included a psychologist (9 cases, 3%), a social worker (9 cases, 3%) and other services (11 cases, 3%). Witnesses were called in seven cases (2%).

7.8 Protected persons' experience

Nine of the 41 protected persons interviewed described their experience of defended hearings. All found the experience stressful. They used terms such as 'humiliating', 'not at all pleasant', 'like airing dirty laundry in public', 'intimidating' and 'one of the worst things I've had to do'. Two were dissatisfied with their lawyers. One contested a custody order at the same time as her protection order. She was successful with both:

> His affidavits were all lies. It was really humiliating having to stand up in court and listen to all this bullshit and defend it in front of a bunch of strangers. I felt my lawyer let me down. She never checked the truth of his stories. – *(Protected person interview, Pakeha)*

[28] Domestic Violence Special Projects Committee, 1998 *Domestic Violence Act 1995: Report to the Family Law Section Executive, NZ Law Society*, Wellington

> My lawyer didn't apply straight away for a protection order. She sent him a warning letter first. She didn't do what I asked. Women have to pay heaps for protection orders [$900] and I think that stinks. Having to go to court and fight for the full protection order was terrible. That was the worst thing I had to do. It was a whole day – (*Protected person interview, Pakeha*)

Two were dissatisfied with the response of the judge. Both described the judge as 'unsympathetic' and 'disinterested'.

> His lawyer kept filing late affidavits that I couldn't respond to. The judge's behaviour was diabolical. He couldn't decide whether my husband's pinching and choking me were moments of intimacy or violence! He said I was excitable, emotional and that parts of my evidence were exaggerated. I was in the witness box for two hours. I wanted the order left in place till the property was settled but he discharged it. – *(Protected person interview, Pakeha)*

7.9 Concurrent criminal court cases

Following a violent incident, some respondents will be the subjects of both an application for a protection order and a criminal charge. Judges and lawyers interviewed agreed that most counsel would rather have a defended criminal hearing before a hearing in the Family Court, because the former has a higher standard of proof.

However, not all District Court Judges were aware of concurrent hearings in the Family Court, although one of those interviewed took active steps to obtain information relevant to cases involving domestic violence by:

- obtaining information on concurrent proceedings in the Family Court
- asking for police callout records, and
- asking for up-to-date victim impact statements.

He felt that this was particularly important in relation to bail applications at the first hearing relating to domestic violence, 'because the protection of the victim is paramount'.

Most courts had some arrangements in place to alert the Family Court to concurrent proceedings in the criminal court, although this did not always happen in reverse. A 1998 Courts Circular[29] notes that 'it is essential for courts to identify as early as possible any proceedings in another jurisdiction which will have a bearing on their case'. The circular gives two examples of how this might happen in relation to cases under the Domestic Violence Act:

[29] Courts Circular 1998/38 sets out the requirements for the transfer of information between Family Court, civil jurisdiction and criminal jurisdiction, under the domestic violence and harassment rules. Under Rule 96 of the Domestic Violence Rules 1996, the Family Court must give the criminal court information when requested to by the criminal court about orders or proceedings in particular circumstances. Regulation 15Q of the Summary Proceedings Regulations 1958 provides that the criminal court must give the Family Court a record of a conviction where a respondent is convicted of a breach of a protection order.

- **with a criminal case of domestic violence,** the criminal section will check the family jurisdiction in their court and telephone any other court which they consider may be applicable, for the existence of a protection order and/or property order, where the respondent is the defendant in the criminal case and the applicant or named person in the order is the victim in the criminal case
- **with a family case of domestic violence,** the family section will check the criminal jurisdiction in their court for the existence of a criminal domestic violence case, where the defendant is the named person in the protection order and the victim is the applicant or named person for that order.

The criminal court may request the civil or Family Court to supply a copy of any order made and information about the current status of civil or family proceedings. The criminal court must forward a certified copy of the conviction to the Family Court. The civil or family registrar can request additional information relating to the charge or conviction, such as a witness statement, victim impact statement, psychiatric report, probation report and bail conditions. A copy of the full criminal history would not be supplied because it would not relate to that charge or conviction.

In one of the research site courts, Family Court staff checked the criminal list each day and attached a yellow sheet to the criminal file listing information about any concurrent proceedings. Family Court Coordinators at this court would like a protocol to allow them to either attach the whole file or brief the judge on the circumstances of the case. In another court, staff shortages, staff changes and lack of training made it difficult to maintain reliable services.

Police acknowledged that their internal files are rarely coordinated either. One added that:

> No part of the system matches the Family Court and District Court systems. It's only if there's an application for a protection order that there's a match for a firearms check which brings up the history of offending. The Family Court could do this check themselves (through their records). It seems like the Family Court and District Courts don't do a lot of talking. – *(KI interview, police)*

Respondent/protected person understanding of concurrent proceedings

Lawyers believed their clients generally understood the difference between the two courts. If they did not, the lawyer explained that in the Family Court, cases could be decided on the 'balance of probabilities', whereas in the criminal court a case must be proved 'beyond all reasonable doubt', which is a higher level of proof. One lawyer said she focused on the different safety aspects of the two courts. She believed that the relative informality of the Family Court could put applicants at greater risk than in the criminal court.

7.10 Withdrawals and discharges

Some applicants seek to withdraw their applications for orders soon after the application is made. Of the 335 files in the file study, 62 (19%) included a request to withdraw the application for a protection order.

Participants in the survey, including judges, lawyers and Family Court staff, and key informants identified a number of reasons for this:

- pressure from the respondent, including not wanting to attend a programme
- pressure from family members
- applicant and respondent have separated
- applicant and respondent have reconciled or want to reconcile
- applicant changes mind or the crisis has passed
- fear of having the documents served
- the application is put 'on notice'
- fear of the court process
- applicant has agreed to undertakings
- financial pressures.

In surveys and interviews judges and court staff noted their concerns when there is a move to discharge an order soon after the initial application. Applications to discharge an order months or years after it has been granted are viewed somewhat differently.

Sixteen of the 19 judges surveyed believed that convincing evidence should be provided that the threat of violence no longer exists before early discharges should be granted. Both judges and lawyers believed that this was particularly important where children were involved. One key informant commented:

> Where there are children who have the protection of their parents' order and the parent wants to withdraw, the court may be worried about the safety of the children and refuse to agree. The court will appoint Counsel to Assist. There's a public cost to that – we need to balance safety issues versus cost. – *(KI interview, judge)*

Some judges believed that where there were no children involved, it was the applicant's right to make that decision:

> It's her life. I have the view that if a judge refuses to allow her to withdraw [sic], it's another abusive exercise of power. I have no qualms about it, even though I know that in about two months time she'll make another application. – *(KI interview, judge)*

All but two of the Family Court Judges surveyed indicated that they had measures in place to ensure that the application to discharge was freely made. These steps included, in order of mention:

- requiring the applicant to attend court
- providing evidence that the respondent's behaviour has changed
- appointing Counsel to Assist or Counsel for the Child
- requiring an affidavit
- ensuring the applicant has had independent legal advice
- having the Family Court Coordinator check with the applicant's counsel.

While 10 of the 19 judges were satisfied with the information they had available when considering discharges, five wanted a better statement of the grounds for the application to discharge and three wanted more information on changes that had occurred since the application or order was made.

Judges and lawyers interviewed agreed that women apply for a discharge more often than men do, usually because the couple has reconciled or because the man has gone away.

Judges generally appointed Counsel to Assist or Counsel for the Child when children were involved and delayed discharge until programmes were completed.

Family Court staff noted that some protected persons did not understand that they could retain the order if they reconciled with their partner. Nor did they understand that discharging the order would mean that their partner would not have to complete a programme or that their own and their children's eligibility for programmes would cease.

Some courts invite all applicants or protected persons wanting to withdraw an application or discharge an order to the court to talk with the Family Court Coordinator. The purpose of this discussion is to ensure that the applicant realises the implications of their intentions, and to determine whether the applicant is under pressure to withdraw or discharge the order.

One protected person who had experienced severe physical and psychological abuse described how she wanted to discharge the order before it became final but was dissuaded from doing so.

> My husband always made me feel weak. When I was at the refuge I found I was missing him and I used to go back each time he beat me. The lawyer could tell I was having mixed feelings about going through with the order and told me that the beatings would happen again, so I didn't apply [for a discharge]. – *(Protected person interview, Samoan, 2 children)*

Of the 88 lawyers surveyed, 18 thought that the court was reluctant to allow discharges, and 12 approved of the discretion regarding discharges remaining with the court.

7.11 Respondents' experiences of discharges

Only four respondents commented on discharges. In all four cases, the order was still in place but all were hoping to have it discharged. One claimed that his partner, with whom he was currently living, wanted to 'change the order but she says her lawyer won't let her', Another was 'waiting for my wife to drop the order. When I agree to her terms she will take me back', None of the four had taken any active steps to have the order discharged.

7.12 Protected persons' experiences of discharges

Eleven protected persons interviewed for the study commented on discharges. Two had obtained a discharge, two lost a defended hearing for a permanent order, while seven had been pressured by the respondent to apply to have the order discharged, but had either refused to do so or, in one case, had the application declined.

All but one of those who had been pressured to discharge the order planned to keep it in place for the long term. They described it as 'a safeguard', their 'only form of protection' and 'a safety net that will be taken seriously by the police'.

It was the police who opposed granting a discharge to a Samoan woman who had an order against another family member. A criminal court case related to the matter is still pending.

One of the protected persons who had the order discharged did so after four months following pressure from the respondent. She commented:

> I think he just wanted to clear his name. Once the order was gone he said he didn't want to have anything to do with me any more. I think protected people shouldn't be able to remove the protection order for at least 12 months because you're too vulnerable to being manipulated by your partner. – *(Protected person interview, Pakeha)*

The other protected person had an order against a family member. She sought a discharge soon after the order was granted as a result of pressure from other family members.

7.13 Undertakings

A number of key informants, including judges, lawyers and Family Court staff, discussed undertakings, which potential applicants may agree to when they do not want to go through with a defended hearing or where the respondent has agreed to some other condition or arrangement. The cost of proceeding with an application can sometimes be a factor. Lawyers who predominantly dealt with applicants were clear that they generally discouraged them from accepting undertakings on the basis that they are not enforceable and do not compel the respondent to attend a programme. Lawyers acting for respondents sometimes saw undertakings as a useful alternative to an order.

Two applicants interviewed had withdrawn their applications in favour of undertakings. One had sought an order on the grounds of psychological abuse. The judge put the order 'on notice'. Meanwhile, the police removed the respondent's guns. Following discussions, the applicant withdrew the application and agreed to an undertaking (at a cost of $930). The potential applicant commented:

> I didn't feel confident the first time I went to the lawyer, and I don't now. He has breached the letter of understanding constantly. I believe that my lawyer genuinely didn't believe that I would be granted an order by the judge. I think the only thing we're hanging our hat on is that in the last letter we filed in the court he said he'd have no contact with me. I should have been able to get ex-parte orders and he should have been made to stay away. – *(Potential applicant interview, Pakeha)*

7.14 Summary

The research confirmed that while many respondents would like to defend an order, few actually do. Respondents are inhibited both by cost and by the fact that some face charges in the criminal court.

Those who do want to proceed with a defence are not always able to have a hearing within the 42-day time frame set out in the Act. Lack of court resources and sitting time are the main cause of delays.

Family Court staff wanted to improve systems for informing District Court Judges of cases where an application for a protection order has been made.

Some applicants seek to withdraw their applications for an order or to discharge an order soon after it is granted as a result of pressure, fear or cost. Most judges take steps to ensure the safety of children when such applications are made. Applications to discharge an order months or years after it has been granted are viewed somewhat differently. Other potential applicants settle for undertakings, which do not give them the same legal protection as an order.

8. Conditions and variations

The protection order includes a number of standard conditions relating to contact, threats, intimidation, damage to property and harassment (s.19 –26). The condition relating to non-contact can be suspended with the protected person's express consent (for example, when the protected person and the respondent are living together). This suspension can be revoked by the protected person at any time. The standard firearm condition requires the surrender of both weapons and a firearms licence as long as the protection order is in place. The court may vary this condition in certain circumstances.

The court may also impose any special conditions necessary to protect the protected person from further violence, eg relating to access to children or contact between the respondent and the protected person (s. 27-28).

8.1 Conditions placed on orders

Among the standard and special provisions, concerns about access and custody attracted most comment from key informants, protected persons and respondents. The implementation and impacts of the new provisions have been investigated in a recent report[30] that identified variation in judges' practice. This was confirmed in the present study with one judge 'automatically' making supervised access a special condition where there were concerns about the children and another saying that as long as the protected person was happy with arrangements, he would 'go with this'. One judge rarely made access orders:

> Unless the applicant specifically asks for an order suspending access or asking for a supervised access order, I don't make any access orders at all. That allows the applicant to continue to negotiate their own access arrangement with the father of the children. My personal view is that unless it's been specifically asked for, it creates huge problems because the mothers don't want (in many cases) to stop access and the father feels hugely frustrated. Suddenly he's not allowed to see his kids and sometimes it just exacerbates the situation. – *(KI interview, judge)*

Another was concerned that protection orders could become de facto custody orders:

> Protection orders prevent all but supervised access in most cases. They are a very effective way of getting custody and the hope is that custody is being granted in this way when it is appropriate. What other way could an applicant get all except supervised access within a 24-hour period? Regardless of the rights and wrongs, it does have the effect of

[30] Chetwin, A, Knaggs, T and Young, P. 1999 *The Domestic Violence Legislation and Child Access in New Zealand,* Ministry of Justice, Wellington

> determining custody. This does protect the child but also can do some harm. – *(KI interview, judge)*

One lawyer was aware that submissions made under s16B of the Guardianship Act, stating that there are no violence concerns for the children, could not be guaranteed:

> We don't have a crystal ball. Children respond differently to violence… There are situations where it creates difficulties for the smooth functioning of access where access is totally justified. Guys defend around issues of access. – *(KI interview, lawyer)*

The main issue for police was protected persons' lack of understanding of the limits of police powers in relation to access.

> People seem to think that if the partner has them for access and doesn't return them, we can then go around and pick them up. We obviously can't. We have to get a warrant for enforced custody. That's not clearly understood by people who have the custody. I don't think their lawyers do them any favours either because they don't explain to them what the procedure is if the children aren't returned. – (*KI interview, police)*

Firearms conditions and occupation and property orders attracted little comment. Judges, lawyers and police agreed that firearms' conditions are generally working well.

One lawyer believed that it is difficult to get occupation and property orders for 'without notice' applications made on the grounds of psychological abuse. Another described the associated respondent provisions as 'a headache':

> Respondent may have the motivation to observe the order because it may influence his future custody/access arrangements, but the associated respondent has no such motivation. The associated respondent provision is granted too easily by the court. It should be a much less common provision. – *(KI interview, lawyer)*

Respondents' views on custody and access issues[31]

The 15 respondents who discussed access arrangements were generally bitter and angry at their loss of ready contact with their children. Three of the 15 continued to see their children regularly, two by arrangement and one because the children themselves took the initiative. Others had either lost contact with their children or saw them only rarely. Four men, including three Maori respondents, referred to the effect of the order on their wider family:

[31] For more detail on the views of respondents and protected persons, see Chetwin, A, Knaggs, T and Young, P. 1999 *The Domestic Violence Legislation and Child Access in New Zealand,* Ministry of Justice, Wellington

> The order holds not only me but my whole whanau to ransom. My parents want to keep in touch with their mokopuna. We can't contact them even in emergencies. It takes away their rights. – *(Respondent interview, Maori)*

A comment from a Pakeha respondent summarises the feelings of many respondents:

> I think the orders suck, they're one-sided and a way for women to entrap their ex's and use children as tools to hurt, persuade and make you feel guilty. They should make them so both parties have equal responsibility towards each other. The kids weren't present when the incident took place. I have no record of abuse towards them or any other children. They should never have been included in the order. The woman gets everything including full custody of the children, while I lose everything I've built my life around. I barely see my kids – five or six times in the past six months. – *(Respondent interview, Pakeha)*

A spokesman for a community group made a case for greater contact between fathers and their children:

> The Domestic Violence Act can mean that women are the final arbiters in the access that men have to their children. They can use this as a weapon against the man. They can say they can't see their children and therefore the men can't develop a relationship with their children. There are also instances when the father can arrange access to his children for considerable cost, only to have it withdrawn at the last minute and not being able to see his children. Violence to the mother can be part of psychological abuse of the child. If this is the case, then the father should not have access. However if there is no harm, ie the children are not exposed to the violence, then it is not good for the men to be removed from contact with their children. Unless the father is proved to be violent (including psychological abuse) to his children, he should still be able to have access to the children. They should not be denied access to the children automatically (or close to automatically). – *(KI interview, community group)*

Protected persons' views on custody and access

Sixteen protected persons commented on custody and access issues. Their experience was mixed, ranging from supervised access to negotiated arrangements to no access at all. A common pattern was for women to decide how much access there should be, even where this contradicted organised arrangements. For example, one woman with supervised access had increased contact through private arrangements:

> I'm not sure now about custody. He was never violent with the kids. He has access regularly and this is supervised because he had threatened to take the kids. However we made access arrangements ourselves by verbal agreement and this seems to be working OK. – *(Protected person interview, Maori)*

Another was willing to allow some access where none was provided for:

> With his criminal record he wasn't granted any visiting rights at all. But I can let him see the kids and take them to his family. – (*Protected person interview, Maori)*

Others had limited their partner's contact with their children:

> He manipulated the children, saying he would kill himself if he didn't see them. When this happened I decided it wasn't good for the children to see him. – *(Protected person interview, Pakeha)*

> I won't let my kids go over there because he's in another relationship and doesn't have much time for the kids. Once he tried to take the kids from the kohanga. The staff warned me and stopped him by talking to him. Knowing that I had custody of the kids and that the law's on my side made me more able to stand up to him. – *(Protected person interview, Maori)*

8.2 Variations

Very few participants commented on variations to orders. One judge noted that these usually relate to firearms or to excluding one of the children from the order.

Nine of the 15 lawyers who commented on variations said they experienced no problems 'as long as the reason for the variation is given'. Two believed that variations on firearms conditions were difficult to obtain. One argued that where variations included associated respondents they should be given the chance to be heard.

8.3 Summary

Although a number of conditions can be placed on orders, concerns about custody and access attracted far more comment than any other condition. The study confirmed earlier research identifying variation in judges' practice in relation to child access. Most of the respondents who commented on access issues had lost contact with their children or saw them rarely, although this may have had nothing to do with the protection order. Maori respondents were concerned at the consequent loss of access for their whanau. It was apparent that protected persons controlled access to a considerable degree.

There were few comments on variations to orders.

9. Enforcement

9.1 Breaches of the order

Reported domestic violence offences

Police figures for reported Domestic Violence Act offences for the July to September 1998 period show 936 reported offences. The majority (96%) were for contravening a protection order. Failure to comply with the conditions of the order and other breaches of the Domestic Violence Act made up the other 4%. The police in some way resolved 82% of the reported offences. The data for the 1 July 1998 to 30 June 1999 year showed similar patterns.

Offender apprehensions

Police figures for offender apprehensions for Domestic Violence Act offences over the July to September period show 761 apprehensions. Similarly to the reported offences, 97% were for contravening a protection order. The figures show that 2.5% (19) of apprehensions were of women. Thirty-five percent of apprehensions were of Maori and 55% were of Pakeha. The data for the 1 July 1998 to 30 June 1999 year showed similar patterns.

The way the police record age and ethnic group is not consistent with the other data used in this report. However, allowing for these differences, there do not appear to be any marked differences between the age and ethnic distribution of apprehensions and the equivalent distributions for prosecutions.

Prosecutions and convictions

From July to September 1998 there were 717 prosecutions under the Domestic Violence Act nationally. The great majority (655 or 91%) were breaches of a protection order; nine cases involved firearms, 646 did not.

Ninety-seven percent of those prosecuted for breaches of a protection order were male. Fifty-one percent were by Pakeha and 39% were by Maori. The most common age group for those who breached was 25-44 years.

Nationally, 8% of breaches under the Domestic Violence Act (59) were for failure to attend a programme. More Maori were prosecuted for failing to attend programmes than Pakeha and all those who failed to attend programmes were men.

For the 1998 calendar year there were 2579 prosecutions with the data similar in structure to the three month data described above.

The data on prosecutions and convictions cannot be directly compared to the data on applications. For example, respondents could have breached orders that were made well before the July to September period.

About 65% of all prosecutions for breaching protection orders were brought through to a conviction. Almost all respondents prosecuted for failure to attend a programme were convicted. Generally the patterns of age, gender and ethnic group of those convicted were similar to those who were prosecuted. This suggests that where a respondent was being prosecuted, there was no particular tendency to convict some age, gender, and ethnic groups more than others.

In the 1998 calendar year there were 1693 convictions (compared to 480 for the three month period) and the data from the calendar year had a similar structure to the three months of data described above.

The number of convictions (for a non-molestation order or a protection order) has increased markedly with the introduction of the Domestic Violence Act in mid-1996. The average number of convictions for the three years prior to 1996 was 415 and the figure for 1996 was 499. However the 1997 and 1998 figures were 1227 and 1885 respectively (see Table 3.9, Appendix 3). Note that these figures are charge-based and include multiple offences by single offenders. Consequently, the trend information cannot be directly compared with other conviction data presented in this report.[32]

Sentencing

Of the 263 sentences imposed in the three months from 1 July 1998 to 30 September 1998 the most common were periodic detention only (19%) and an order to come up for sentence if called upon (18%). These two groups were also the most common among the 929 sentences imposed in the 1998 calendar year. Sentences of imprisonment, supervision only and fine were each imposed in around 12-14% of cases.

In the file study, no data was collected on the number of respondents given bail when arrested for breach of a protection order or on the sentences they received when convicted. However, a number of police and community group informants believed that respondents are regularly given bail and thought that relatively few cases proceed to prosecution. This perception does not accord with the figures given above, but does accord with the experiences of applicants described below. The difference may be attributable to the way 'reported offences' are recorded.

A spokesperson for a Pacific group offering a programme for respondents suggested an alternative for Pacific respondents:

> In our culture it is hard to separate the man and the woman. They can reconcile after a couple of days, perhaps with family involvement, but the order is still in place. Courts need to recognise this and know it is settled. Instead of enforcing the order, the court could make a plan - like family group conference, identifying what the family will do, it could include violence programmes and involve both men and women. – *(KI interview, programme provider)*

[32] In particular, note that the trend figure for convictions in 1998 is 1885, and this does not agree with the equivalent figure of 1693 given in the paragraph above.

9.2 Comments on enforcement by police and courts

Judges, Family Court staff, lawyers and community groups agreed that the police response has improved greatly over the last two years. However, while some police do an excellent job, overall the police response is still variable. Forty-six of the 88 lawyers surveyed thought the police response was good or very good, while a third (29) thought it was neither good nor bad. Only eight thought the police response was bad.

Participants suggested that the variable police response could be attributed to four things:

- the individual police officer's knowledge of the Act
- their understanding of the processes of domestic violence
- the culture of the police station in which they worked
- the pressure of work.

Participants identified a number of areas where some police appear to misunderstand the Act. Misunderstandings included police advising that:

- they cannot protect children unless they are named on the order
- the old non-molestation orders are not valid
- the orders are not valid if the couple are living together.

Commentators, including lawyers, Family Court staff and community groups, thought that some police do not understand the processes of domestic violence, including the likelihood of women returning to the respondent several times before finally leaving. A typical comment was:

> Police have been known to say that the first couple of breaches aren't important. Police don't understand about what they see as 'minor' breaches. They don't understand this can be the last straw on top of a long history of abuse. – *(KI interview, community group)*

Lawyers commented that it is sometimes difficult to get enforcement for psychological abuse, with police being only willing to act where there is serious physical violence. Most of the front line police interviewed confirmed this, with a typical comment being:

> For physical abuse we lock them up straight away, and arrest them for assault and for breach – two separate charges. For phone calls, we need to work out if it really was abuse. – *(KI interview, police)*

There was a strong call for further training for police in the dynamics of abuse as well as in operational issues, particularly in police districts where there is a high turnover of staff or a culture that is unsupportive of the Act. While Police domestic violence coordinators were well-informed about both the dynamics of violence and the Act, they were less confident about their front line staff, some of whom had difficulty with s50, which gives police the power to arrest for a breach.

> If they arrest the guy and there's good back up for the applicant so she is less likely to be a victim again, then the guys don't have too much of a problem. But when they see the same thing happening and nothing seems to be changing, then it's hopeless. Also, when the Act first came out some of the cops saw it as pretty harsh, which it is. I don't know any other Act of Parliament which gives us the power to arrest and hold someone for 24 hours and then not run anything in court, it's incredible[33]. I am most impressed it hasn't been challenged. It's a very powerful piece of legislation. – *(KI interview, police)*

Almost all courts had a system in place for informing the Family Court when a respondent appeared in the District Court following a breach[34]. This usually involved a copy of the outcome of the appearance being forwarded from the District Court or court lists being sighted for those with a protection order.

9.3 Respondents' experiences

Only eight respondents (19%) commented on breaches. Most were rather dismissive of the police action. Four had been to court and three were waiting to go to court. All three believed they would 'get off' the charge, with one claiming that his partner wanted to drop the charges but the police would not agree. The eighth respondent had been warned but not arrested. In some cases the respondents appeared not to understand the conditions of the order restricting contact, or, in the case of one man, that the order could remain in force while he was living with his partner.

9.4 Protected persons' experiences

Fifteen out of 41 protected persons had reported breaches of the order with a mix of good, variable and poor responses. Good experiences included a speedy response by police, police treating the situation seriously, and support from Victim Advisers, lawyers and the judge. Sentences included jail terms and fines. Police gave one woman advice on a mechanism for tracing her ex-partner's calls and reassured her about their support.

Mixed experiences included the police coming but not acting appropriately, for example, by issuing a verbal warning only or by not treating the incident seriously.

Poor responses included no response or action by the police, either because they did not take the case seriously, or because of an apparent misunderstanding of the Act. One interviewer reported that:

[33] In fact, the police had this power under the Domestic Protection Act 1982.

[34] The Summary Proceedings Regulations 1958, 15Q includes the following clause relating to a breach of a protection order: Where a defendant is convicted of an offence against section 49 of the Domestic Violence Act 1995, the Registrar of the court on which the conviction is entered must, without delay, forward a certified copy of the entry in the Criminal Records relating to that conviction to the Registrar of the relevant court.

> Since C has had the order she has contacted the police regarding three incidents. The first was for breaking bail conditions whereby the respondent was breaking a curfew. The police said they were unable to do anything about this. The second incident was where the respondent sent her a Valentine's Day card. Police told her they were unable to do anything about this breach as the card did not have the respondent's name on it, only his nickname. The third incident involved the respondent hand-delivering a parcel to her letterbox. Police told her that three breaches were required before they could act. She said this was pointless as it need only take one breach to kill a woman. – *(Protected person interviewer)*

A protected person commented:

> He used to come round and harass me on the street when I was taking the children to school. He nearly ran me down in his car and smashed the French doors in the house. When I called police they couldn't do anything without proof of him being there. They never did anything or would ask him where he'd been and he'd lie and they'd take no notice of me. – *(Protected person interview, Pakeha)*

The delay in having a case heard created problems for some women. One applicant dropped the charges following pressure from the respondent during the eight-week wait for a court hearing.

9.5 Summary

Most reported offences and apprehensions were for contraventions of a protection order. Only very small proportions were for failure to attend a programme. Two-thirds of the cases prosecuted led to a conviction.

There was strong agreement that the performance of the police in enforcing the Act has greatly improved over the years the Act has been in force. Participants called for ongoing training for all those involved in administering the Act.

10. Programme issues

10.1 Respondents' programmes

Under the Domestic Violence Act (1995), the court must direct the respondent to attend a specified programme, unless the court considers there is good reason for not making such a direction.

In the file study 253 respondents were listed as having been referred to programmes. Of these, 33 were excused from attending a programme. Of the remaining 220 respondents referred, only 80 had either completed or were still attending the programme at the time of the file study. Forty-four respondents either had the direction to the programme or the order itself discharged. One further respondent had the direction to attend a programme suspended.

Providers send a notice of non-attendance to the court immediately a respondent fails to attend a session of the programme without having first had the absence approved. The first step taken by court staff is to send a notice to the respondent asking him to contact the court or the programme provider immediately. If the respondent restarts the programme at this point no further action is required. If he does not, the letter is usually followed by a summons to the court where the judge considers the matter and will usually direct the respondent back to the programme, or may discharge the direction to attend. In the file study, of the 220 that were referred to programmes and not listed as excused, only 43 (approximately 20%) were summonsed to appear before the court.

The fact that only about a third of those who were referred to programmes actually completed (or are in the processes of completing) them is of considerable interest.

The file study revealed that there are some valid reasons why the respondent may not have attended the programme, such as where the direction to attend has been discharged. However, in other cases it seemed that there was no obvious reason for non-attendance and no action had been taken.

Referrals

There was general agreement amongst providers that the process by which courts refer respondents to programmes works smoothly. Most programme providers spoken to thought that court staff managed the referral process very well, in some cases extremely well, as illustrated by this comment:

> They (court staff) are committed to the networking process. They co-ordinate with us really well. They keep us up to date with protocols and changes and updates. – (*KI interview, programme provider)*

A few providers indicated that it would be useful to have more information about the nature of the violence perpetrated by the respondent, but most were happy with the level of detail currently supplied by courts.

The biggest stumbling block to respondents being referred to programmes is getting an order served in the first place. Once the order has been served, and an initial contact has been made with a respondent, either by the Family Court Coordinator or a programme provider, the chances of engaging a respondent in a programme increase markedly.

One key informant expressed the view that respondents should not be referred to programmes until orders have been served and objections heard. To do otherwise, in her view, seriously compromises the engagement process necessary between the respondent and the programme provider.

Some programme providers commented that it is not always clear or transparent why a Family Court Coordinator would choose one provider over another. On a similar theme, some informants questioned the basis of the decision about whether a respondent should be referred to an individual or a group programme. Several providers affirmed the view that unless there is a good reason, a respondent should be referred to a group programme. Furthermore, some held the view that some respondents manipulate the option for a group or individual programme:

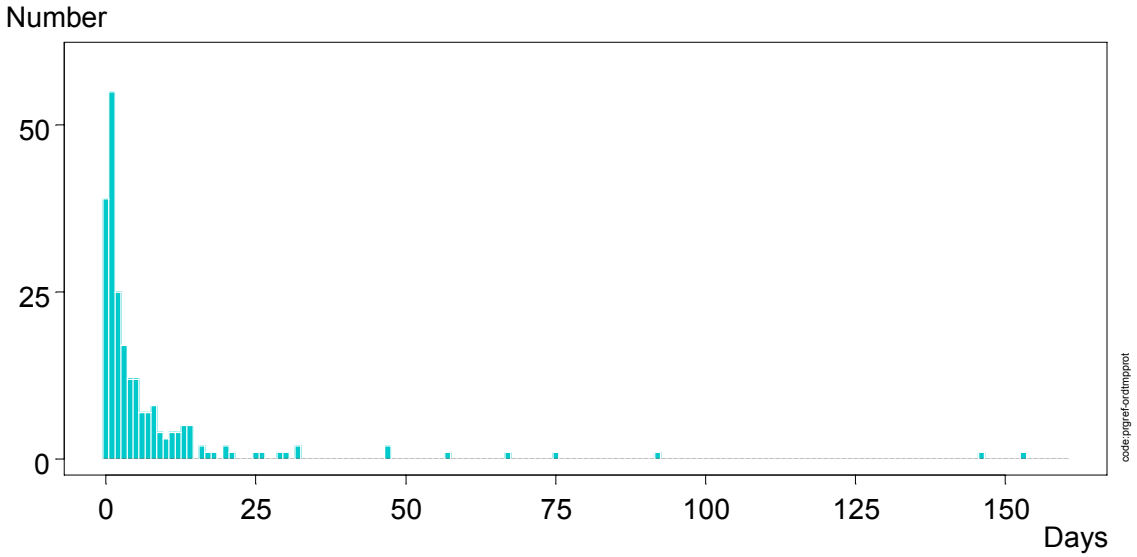
> There's sort of a middle-class, savvy type of respondent who knows how to access smart lawyers. They get into individual programmes rather than group programmes. That's a reward, only 12 sessions rather than 36 hours if you're in a group. That's decided at court. – *(KI interview, programme provider)*

Providers make their own assessment of respondents when they appear for the first session, and some of those spoken to would like to be involved in the decision about whether a group or an individual programme would be more suitable. Indications for an individual programme would include evidence of serious drug or alcohol problems, mental health problems, limited cognitive capacity, or speakers of other languages.

Key informants noted that there needs to be more clarity on the process for sending respondents back to court if they are unremittingly disruptive during the programme itself. Throughout the course of the research, this issue was noted as being an unresolved problem.

Figure 12 shows the time between a temporary order being made and the referral to a programme[35]. The date of referral to programme is taken as the date when the temporary order is served. The papers served with the order include notice of referral to a programme. Not surprisingly this graph is very similar to the graph for the time taken for the service of temporary orders. The median length of time was two days and two cases took approximately five months for a referral to be made. Eighty-three percent of cases were referred within 10 days.

Figure 12 Time between a temporary order and referral to a programme



Source: file study

Availability

Court staff in the three city research sites indicated that there were an adequate number of programmes for them to refer respondents to, but although the range was improving there were not appropriate programmes available in every case.

In rural areas there may be a range of providers but respondents may need to travel some distance to attend an appropriate programme. Given the lack of public transport and many people's lack of private transport, this constitutes an enormous barrier to programme participation.

Gaps in programme provision most frequently identified through the surveys and by key informants included programmes for:

- Maori respondents (in some areas, others are well served)
- Pacific respondents
- those with special needs such as sexual abusers, those with mental health problems and respondents with serious drug or alcohol problems

[35] This graph only includes applications where there was enough information to be able to calculate the time taken.

- gay men
- lesbian respondents (in some areas)
- female respondents.

The need for culturally-appropriate programmes is considered particularly important. One member of court staff commented:

> Maori and Pacific Island programmes can work very well with the programme providers actually following up very conscientiously, ie going to the house to get the respondent and asking them to attend, and sitting on their doorstep and waiting outside until they come out. – *(KI interview, court staff)*

Even when there are good programmes in place for Maori, other respondents are frequently put together in programmes which may not be culturally appropriate for them. One provider made this comment:

> People who come down from the Family Court are identified as Maori and non-Maori. We have separate caucusing for non-Maori and Maori. There are issues for P[acific] I[sland] participants that are part of the non-Maori caucus. I sometimes have a feeling about Cook Islands Maori and Samoans - there's got to be something for them. – *(KI interview, programme provider)*

While many key informants felt encouraged at the increasing range of programmes for respondents, there was some anxiety that providers, especially those providing programmes to Maori, Pacific people, or to people of other cultures, will be deterred from reapplying for accreditation by the complexity of the process.

Objection to attending a programme

Most court staff and programme providers who were interviewed believed that the majority of respondents do understand their right to object to a programme, and that five days is adequate for an objection to be lodged. They did concede that respondents from ethnic minority backgrounds are more likely to have problems understanding the right to object to programme attendance, and to confuse the timeframe for the right to object with the time within which a defence could be filed. One judge suggested it would be useful for judges to have the power to suspend, rather than discharge, the direction to attend a programme when a defence is lodged.

Those interviewed for the research cited the following as the most common reasons for respondents objecting to attending programmes:

- they see attending a programme as an admission of guilt which they are denying
- they have been to a programme already and do not need another one
- the programme time or location is unsuitable

- work commitments prevent programme attendance
- in their view the applicant needs a programme as much, if not more, than they do
- the relationship is over and therefore there is no need to address the issues.

Excusals

The judges interviewed for the research indicated that they are reluctant to excuse a respondent from attending a programme. The main reason these judges would consider excusing a respondent from programme attendance would be if the respondent's employment location or hours of work made programme attendance impossible. One judge summed up:

> If it got extremely difficult workwise or timewise and there was no alternative programme suitable. One of the other issues is clashes with people who have night shifts so they can't do the night courses. You often get guys who work in the forest and they are away for a couple of weeks on end. So there are a number I have to discharge the direction to attend a programme because it's impossible to get them there. There's no way I'm going to send a guy to a programme if he's going to miss out on his employment or lose his job. – *(KI interview, judge)*

In the survey and through the interviews, judges gave other reasons that they would consider for excusing a respondent from programme attendance. These included:

- the respondent living too far from a suitable programme
- someone who had been to one or more programmes already
- if there was evidence that the respondent was undertaking other work or counselling to address his violence
- mental health or substance abuse problems making it unlikely that the respondent would be able to benefit from a programme.

Another instance in which judges may consider an excusal is when the respondent's counsel indicates that the order will not be opposed if the direction to a programme is waived. The judge describing this situation indicated that she felt uncomfortable with this arrangement unless the degree of violence was low.

Non-attendance and enforcement by courts

Programme providers interviewed considered that the processes for dealing with respondent non-attendance at programmes were straightforward and easy to follow.

All the providers interviewed took regular programme attendance by respondents very seriously. Most were prepared to accept legitimate reasons for non-attendance on up to two occasions, but any other absence would result in the respondent being referred back to the court. One provider put it this way:

> Two legitimate excuses and then they're out. The third time, whether it's a 'legitimate' excuse or unexplained absenteeism, we refer them back to court immediately. – *(KI interview, programme provider)*

As with programme providers, court staff interviewed considered that the processes for dealing with respondent non-attendance at programmes were straightforward and easy to follow. However, the view of key informants was that in many areas prosecutions of respondents for non-attendance at programmes are not pursued with enthusiasm. In some areas, court staff acknowledged that they do not give this priority. This is in part because of the time required to prepare a file for the prosecutions section. Some court staff also commented that they are discouraged from pursuing respondents who do not attend programmes when they see the sanctions handed down by judges for this offence.

Over half of the judges who responded to the survey indicated that they were more than satisfied with the way that the court follows up respondents who fail to attend programmes. The Family Court Coordinators' survey indicated that while providers are very reliable about notifying the court when a respondent does not attend a programme, in almost a third of the courts that responded, this seldom or never led to further action being taken.

The staff in those courts which do pursue respondents more energetically said that what motivates them to do so is the importance of giving a clear message about how seriously the court views programme attendance. Some of the courts visited, and court staff from other courts spoken to when seeking of examples of best practice, noted that their follow-up of respondents who did not attend improved significantly when the court prioritised this work, either informally or by making it part of a performance plan. One court markedly improved its performance in this aspect of the process when the court staff decided that to keep good faith with providers ,the court needed to put the same effort into following up non-attendance at programmes, as providers put into delivering the programmes.

A DV Regional Advisor noted that while effort should be put into following up respondents who do not attend programmes, it is important that the enthusiasm to prosecute does not override the key purpose - getting men back to programmes.

In 1998, of the 57 respondents sanctioned for failure to attend a programme, 11 were imprisoned, eight were convicted and discharged, nine were to be sentenced if called upon, and the remainder received sentences including fines, supervision, periodic detention and community service. (Table 3.8 Appendix 3)

Respondents' experiences

The respondents who were interviewed for the research and who had attended a programme were extremely positive about what they had gained. Even those who had been very reluctant to attend, acknowledged the benefits. It must be remembered however, that the sample of respondents is not representative of respondents as a whole and may not be representative of those who attended programmes. The following is a sample of quotes from respondents:

> I did a men's programme by court order. At first I didn't like it but it was awesome in the end and really cool to do it in my own language. I felt comfortable. – (*Respondent interview, Samoan)*

> I go to _____ by court order. At first it seemed like it was going nowhere, but lately I think the counselling has helped me. I've had no more contact with Police and courts. – *(Respondent interview, Samoan)*

> I ended up going to _____ for an anger/violence course. I resented being forced to do the programme. As things went on I decided to make the most of it. I took a handful of things away from it. – *(Respondent interview, Pakeha)*

> It's good. I should have done a programme like this years ago. – *(Respondent interview, Maori)*

> My eyes are just starting to open up. When I first started I was just like all men, I thought it's not my fault, and resisted. Now I feel it's good. Wish I'd done it 15 years ago. – *(Respondent interview, Pakeha)*

Protected persons' views of respondent programmes

Interviews with protected persons focused predominantly on the protected person's experience, and not many protected persons commented on respondent programmes. Here are two different protected person views of respondent programmes:

> He seems to be taking more responsibility for his behaviour - stops and thinks. He will now apologise for his own behaviour. – *(Protected person interview, Maori)*

> The programme just made him smarter with words. – *(Protected person interview, Pakeha)*

The value and quality of respondent programmes

Judges and court staff expressed concern that there has been no evaluation of respondent programmes and no indication of whether programmes affect the rate of reoffending[36]. One judge expressed her reservations in these comments:

[36] As noted in the Introduction to this report, some evaluations of protected persons and respondent programmes are taking place.

> It is hard to judge the quality of what is going on with the programmes. There is a high reoffending rate from programmes with no evaluation of programmes. Men have said that the dynamics of the programmes mean that unless they confess to violence then they are outcast from the group. …There is little information about what goes on in the programmes, the context and the dynamics. – *(KI interview, judge)*

Another expressed the view that the money spent on programmes could possibly be spent more effectively elsewhere. He favoured rigorous evaluation of programmes:

> There needs to be more evaluation of programmes and the technical appraisal of how they are evaluated. There are questions about the value for money of respondent programmes. There could be more value for money in doing life skills courses. Individual programmes can be cheaper and do a better job. We need to consider these. – *(KI interview, judge)*

A number of key informants, particularly protected persons programme providers, were concerned about the quality and content of respondent programmes. They believed that respondent programmes sometimes simply give men information about more sophisticated ways to control their partners' behaviour.

Other key informants also said they wondered whether the money spent on respondent programmes would be more likely to reduce domestic violence if spent on programmes for protected persons.

A few providers indicated that they did not think the programmes are long enough to impact on lifelong patterns of behaviour. This quote from a provider illustrates that view:

> Men have actually told us that a 12-week programme is just a tickle in the ear…For some at six weeks the light turns on and they think 'Ooh! Man, I really need to be here'. But for many of them it takes 12 weeks - that's three months - before they really start participating and they're very open and owning up. The first three months they're just trying to deal with 'why am I here?' All programmes should be 25 weeks in my belief. – *(KI interview, programme provider)*

Another concern amongst some providers is that with money available to run respondents' programmes' organisations that previously had little interest in the issue of domestic violence are now delivering programmes under the Act.

10.2 Protected persons' programmes

Availability

In the areas visited for the research, informants held the view that the availability of programmes for protected persons was improving, but not all areas had much of a choice of protected person programme providers.

In some areas, key informants noted that programmes for Maori women are lacking. One provider of a Maori respondents' programme made this comment:

> I think there's a lack of women's programmes. We've been asked by women for programmes here but we have to refer them back to F[amily] C[ourt]. They are all Maori women who come here asking if we have programmes. Because we operate a Maori kaupapa, there's an understanding that we work for Maori and a definite interest in coming to us for programmes. They know relations who come to our organisation and know who we are as an organisation and that we work for Maori. But we have to turn them away; we don't have programmes as yet for them. It's a common ground for them to come to and non-threatening in that someone they know is here. – *(KI interview, programme provider)*

The surveys confirmed that in many areas there are insufficient programmes for women from Pacific cultures.

Many areas lack group programmes for protected persons. Programme providers in one site identified the problem as being insufficient numbers of referrals from the Family Court to make a protected persons' programme viable.

In areas with significant ethnic minority populations, the need for appropriate protected persons' programmes is even more pronounced, as many key informants noted that issues of domestic violence and the appropriate response to it are culturally determined.

One of the research sites had a programme provider catering for lesbian protected persons. Key informants in other areas noted a lack of suitable programmes for lesbian protected persons and male protected persons.

Take-up of programmes

The low rate of protected person attendance at programmes under the Domestic Violence Act was one of the foremost concerns of those interviewed for this research.

The lawyers who responded to the survey indicated that the steps they took most frequently to encourage protected persons to attend programmes included:

- talking to the applicant about the value of attending the programme
- contacting the court for the applicant
- telling the applicant to contact the court, and/or
- putting a request for a programme in the body of the application.

From the interviews it was clear that most lawyers see encouraging protected persons to attend programmes as their responsibility at the time of making the application. However, they do not see themselves in a position to follow-up their clients subsequently to encourage them to attend a programme.

Family Court Coordinators vary in how actively they encourage protected persons to attend programmes. All the coordinators interviewed for the research send protected persons a letter outlining their entitlement to a programme, and enclosing pamphlets describing available options. Some take a more active role by contacting protected persons by phone and talking about the availability of programmes. Some coordinators will also contact the protected person three or six months after the order as a reminder that the option of a programme is still available. Other coordinators interviewed indicated that their workload, and the characteristics of their communities, made such follow-up unfeasible.

Some coordinators are prepared to refer a protected person to a programme on the basis of a verbal request; others require a written request for referral before passing the protected person's name on to a programme provider.

Anecdotally, it seems that those courts where the coordinator takes a more active role do have more success linking protected persons to programmes.

There was little support from key informants for making attendance at programmes by protected persons mandatory. However, at least one judge would like the power to direct protected persons to attend a programme.

Family Court staff and providers interviewed thought that there needs to be much more public education about the availability of programmes for protected persons, so that people will be encouraged to attend programmes by others in their network. One provider commented that courts' performance in this respect is not monitored. Furthermore, unlike the statutory requirements surrounding referral to respondent programmes, there are no consequences for failing to ensure protected persons' access to and engagement with programmes.

Several informants noted that seeing their children engaged with a programme was encouraging women protected persons to consider a programme for themselves.

Barriers

In the view of key informants the following are the most significant reasons for low attendance at programmes for protected persons:

- lack of knowledge that programmes exist and are free
- poor understanding of how the programme will benefit them
- the upheaval often surrounding the time of application means that women are unable to focus on doing something of this kind for themselves - they are in a crisis

- logistical problems such as transport and childcare
- not knowing what they will be doing next week makes it impossible to commit to a programme that might take three or four months
- a view that if the perpetrator is out of their lives they do not need to do anything more about the violence, alternatively if they have reconciled with the respondent, a view that there is no longer a problem
- a perception that programme attendance acknowledges that the problem is theirs.

Some key informants were concerned that in areas where there is substantial use of undertakings, the victim of the violence has no eligibility to attend a programme. Similarly, should an application be withdrawn or an order discharged, the same is true.

Experiences

Only a few of the protected persons interviewed for the research had attended a programme. Those who did not attend gave a number of explanations for this:

- three said they had not been told about counselling or programmes
- two received counselling pamphlets through the mail. One thought it would have been helpful if the lawyer had told her about the programmes and counselling help available, rather than her having to read about it in the protection order papers the lawyer sent to her
- three chose not to attend any applicants' programmes even though they knew they existed. One said that at the time she was told, she just wanted to be inside closed doors. She was afraid of her husband who was still following her. Another said she read the pamphlets she was given and decided not to attend, even though she did not understand what the programme entailed
- another was given a brochure about applicant programmes but chose to find alternative counselling in a familiar environment. She had felt alienated by the system thus far and expected this would remain the same with a court-approved programme
- one intends to attend counselling in the future.

Those who had attended viewed the programmes positively and made these comments:

> I have been in denial a lot. The programme taught me a lot about how they (abusers) behave and how they take you into their web. – *(Protected person interview, Pakeha)*

> It taught me what was normal and acceptable behaviour. It reinforced my sense of self, who I am and what I was doing was OK, because my self-doubt was huge when I left. – *(Protected person interview, Pakeha)*

The value and quality of protected persons' programmes

Some providers interviewed had concerns about the content of protected persons' programmes which they see as not meeting the needs of all those who attend. The programmes are designed as education programmes which is valuable, but some women need support to get them to a point where the education is meaningful to them and relates to their lives and their experiences. As one person from a community group said:

> Violence is a very complex issue, socially and culturally determined. Sometimes you have to deal with a woman's current reality in order to get her to a point where she can make use of an education programme. It is important to deliver the programme that acknowledges that woman's reality rather than trying to fit her into a recipe programme. – *(KI interview, community group)*

Providers would like to see more flexibility in what is delivered, and the option for two or three sessions of counselling before a protected person undertakes an education programme.

Providers and court staff alike would like to see more group programmes available for protected persons, but recognise that while the numbers of referrals are small, the viability of group programmes is questionable.

10.3 Children's programmes

Availability

Responses from the surveys indicate that the availability of children's programmes still varies widely across the country. One of the courts visited indicated that they had an over-supply of children's programmes but this was not an issue anywhere else.

Key informants in those areas that had programmes available for children spoke very positively about the programmes, although even in those areas informants noted that there was an absence of programmes for Maori children, and for children of other cultures. Several informants mentioned the need for programmes to be developed for teenagers.

Take up

Court staff in those areas where there are programmes available for children indicated that there is a strong demand for the programmes, and protected persons appear to be more ready to access help for their children than for themselves.

Barriers

With the strong demand for childrens' programmes' informants could not think of any barriers that were affecting take-up of programmes, other than lack of availability in some areas.

Quality

No concerns about the quality of children's programmes were mentioned by anyone interviewed during the course of the research.

10.4 Summary

Attendance at respondent programmes was remarkably low, with about a third of those who were referred to a programme and not excused, actually completing them. Transport was seen as a major barrier to attendance. Excusals tend to be for practical reasons or for attendance at previous or other programmes. Informants identified a need for more culturally-appropriate programmes, and for more discussion of the timing of referrals, in deciding whether respondents should attend individual or group programmes and in ways to deal with resistant or disruptive respondents. Many courts gave little priority to following up non-attendance at programmes. Courts where it was a priority tended to have more positive outcomes.

The lack of availability of suitable programmes for protected persons was a major concern for informants and accounts for much of the low rate of take up. Lack of knowledge is also a problem. Again, where Family Court Coordinators are proactive, the take up rate improved. There was a call for more public education on the availability and purpose of protected persons' programmes.

Many areas do not have children's programmes. Where they do exist, demand is strong.

11. Other issues

11.1 Views on the Act

Judges

Over three-quarters of the judges who responded to the survey, and virtually all of the judges interviewed for the research, believed that this Act provides effective legal protection for victims of domestic violence. Furthermore, overwhelmingly they see the Act as an improvement on the previous domestic violence legislation. Those interviewed gave the following reasons for their views:

- the Act provides more effective protection
- it has stimulated the growth of community initiatives designed to respond to domestic violence
- a protection order can now be put in place on the same day as the application
- the programme components of the Act give it a more rehabilitative focus by addressing the behaviours rather than just delivering sanctions
- the inclusion of psychological abuse as grounds for seeking protection
- the recognition in the Act that children also need to be protected from domestic violence.

Four judges interviewed considered that the court has a responsibility to ensure that access and custody arrangements are safe for the children. One commented:

> There is a need to consider who should represent the children when a woman consents to the respondent having contact (section 27(3)). – (*KI interview, judge)*

Two judges also mentioned the need for an appropriate and consistent response from police if protection orders are to be effective.

Department for Courts staff

The Family Court Coordinators who responded to the survey were somewhat less convinced that the Act provides effective legal protection for those who seek it. While the Family Court Coordinators interviewed expressed more enthusiasm for the Act, they too had reservations about how effectively it protects victims of domestic violence. These reservations centred round the variable enforcement of protection orders by both protected persons themselves and by the police.

Some Family Court Coordinators expressed the view that the Act has enormous potential, but to be truly effective it must be supported by an ongoing programme of community education about domestic violence and the availability of protection.

Department for Courts National Office staff expressed the view that while there are many positive aspects to the Domestic Violence Act, one disadvantage is that because women no longer need to come to court, they no longer appear in front of a judge and get the institutional affirmation that what the perpetrator is doing is wrong. For many women, domestic violence is a very isolating experience and to be able to do the process completely on paper compounds the isolation – there is no chance of meeting other women in the same situation. Under the Act it is more likely that respondents will go to court and they are the ones accessing the support offered by the court staff, rather than the women.

Lawyers

The lawyers who responded to the survey and those who were interviewed were generally enthusiastic about the Domestic Violence Act. Individuals drew attention to these advantages:

- the Act has created a much greater awareness of the extent and nature of domestic violence in the community
- the breadth of coverage and broadened definition of domestic violence extend the protection of the Act far beyond that of the previous legislation
- the order is flexible and comprehensive
- one order is much better, simplified in its structure and in the application
- applicant and respondent are able to live together with the order in place
- the order is easier to enforce
- penalties are a lot more realistic
- the Act gives more options open to lawyers
- direction to programmes is excellent for addressing the problem.

Police

The police interviewed spoke positively about the Domestic Violence Act. They were in favour of the broader coverage of this legislation and the simplified process of application for protection.

Most considered it an improvement that a protection order remains in force even if the applicant chooses to live with the respondent. Several indicated that the provision for contact between applicant and respondent sometimes made their job of enforcing the order more difficult. Police gave a number of examples of situations in which protected persons have reported a breach but have been reluctant for the police to take action when they attend the complaint. This comment illustrates the point:

> It works quite well since they revamped it. The only problem is with the guidelines we are given to enforce it. We're meant to lock up for every breach but victims often make it hard for us to prosecute by not co-operating. – *(KI interview, police)*

Some police believed that while the order has great potential, the onus for enforcement falls too squarely on them, and what is needed is more emphasis on encouraging protected persons to use the order. The following comment was made by a police officer:

> It offers a lot more protection to a lot more people, which is good. As a system, I think it is flawless, however a system is only perfect until you put people in it. You can get a protection order quickly but it's expensive if you are on a low income but above the legal aid threshold. People think that once they have a protection order they're safe, and they're not. Just being able to ring the police when you feel threatened doesn't ensure safety. There is a wider understanding in the Act around the dynamics of domestic violence but we need to ensure that women take up programmes. We need to follow them up at say, two years and ring women and encourage them to access the programmes. Education is vital if we are to make a dent in the problem. – *(KI interview, police)*

Police officers spoke of the value they saw in being able to arrest an offender for breach of protection order without a complaint from the protected person, and the space it gives the protected person if they can take the offender into custody for 24 hours, or until a court appearance.

Some of the police officers interviewed acknowledged that they find it difficult to know how to deal with some complaints that protected persons make against respondents - such as the complaint of phone calls which are not persistent or harassing. This quote illustrates one officer's dilemma:

> There's a few things, the phone call aspect of it, if it's not persistent phone calls. It's a lower threshold. From a cop's perspective it's a training issue. If there are breaches, we tend to say 'get a life', rather than really dealing with it cleverly. We need to have more appropriate training. It's hard to understand the issues involved if a guy looks like he's trying to win his partner back. – *(KI interview, police)*

Programme providers

Protected persons' programme providers interviewed thought the Domestic Violence Act was a significant improvement over previous legislation. The main improvements these programme providers identified were:

- giving precedence to the rights of victims of domestic violence
- extending the protection to victims of psychological and emotional abuse
- making an attempt to attend to the needs of children
- sending a clear message to society about the unacceptability of domestic violence
- simplification of the process.

Some protected persons' programme providers expressed reservations about the amount of money spent on respondents' programmes, and were of the view that more change would be effected through spending the money improving the take-up of protected persons' programmes. Providers of programmes for respondents were also enthusiastic about the new Act, largely because it affirms perpetrators' abilities to change and resources programmes to help them do so. A number of these providers noted that to keep people safe, protection orders must be used by protected persons and enforced by the police. They also support effective sanctions for respondents who do not attend programmes.

As with others interviewed, national programme providers were largely positive about the Act, although one large provider put forward the view that the Act lacks some flexibility. This comment illustrates that view:

> Generally the Domestic Violence Act works well but there is some fine-tuning needed. There is a 'one size fits all' approach'. It is hard to say what parts of the current Domestic Violence Act operations is the Domestic Violence Act itself, and what parts are just the way it is dealt with. Lawyers, police, judges can greatly influence the effectiveness of the Act and this is not the problem of the Act itself. There is a need to keep up to date with current thinking on Domestic Violence Act matters. Regulations should be regularly reviewed. The Act needs flexibility in its implementation – regulations are very prescriptive rather than dealing with the principles in allowing new ways of doing things. – *(KI interview, programme provider)*

There was strong support for the sanctions imposed on respondents and in particular the requirement to attend a programme. There was recognition once again, that the Act will be most effective when protected persons use their orders well, and access the programmes that can help them break the cycle of violence.

11.2 Safety issues

Judges, Family Court staff and police were invited to comment on applicants', judges' or court staff's physical safety in the Family Court or the court environs.

In both the survey and interviews, a majority of judges described themselves as 'very concerned' about the safety of applicants and children. Half were also 'very concerned' about their own safety and that of court staff. They favoured:

- having security in court at all times
- having security available on demand
- having a separate waiting area for applicants and children
- improving the design of new and existing courts.

Their comments included:

> The waiting area is a major concern. It should be spacious with dividers so victims don't have to be confronted by the respondent. There needs to be waiting room surveillance and notices reminding people that this is a safe place, asking people who feel threatened to make their concerns known. It is easy for witnesses to be intimidated without a word being said. There have been cases where women are so terrified they can't sit in the same court as the respondent or they have to go in a separate entrance, eg judge's entrance. – *(KI interview, judge)*

> The Family Court can be a very emotionally-charged atmosphere. Security is arranged on an informal basis and in say, 20% of cases, there will be a security presence. However there should be security permanently in place. – *(KI interview, judge)*

Judges working in the new Christchurch Family Court appreciated the greater security and the presence of a security officer.

The level of concern tended to be slightly less among Family Court staff than among judges. Over a third of Family Court staff noted that they had already introduced or had plans to introduce a security presence on Domestic Violence Act days. They were concerned that meeting, interview and waiting rooms rarely had alarms or any way of attracting attention. Waiting rooms are often too small. In one court:

> The room is so small that everyone is in arm's reach of everyone else. You have to keep swapping seats to avoid having the respondent sitting next to the applicant. – *(KI interview, Family Court Coordinator)*

Court staff made a number of suggestions for improvement, including:

- doors between criminal and family courts to be kept closed and have swipe card access
- staff to receive ongoing training in safety issues
- Family Court Coordinators to have confidential phone numbers
- alternative exits to be provided from both rooms and buildings
- Family Court counters and fines counters to be separated.

While police pointed out that security is a matter for the courts, they agreed that a security presence would be helpful.

Two protected people referred to safety at the court. One described the experience of waiting for a hearing as 'awful':

> Sitting in a small town court waiting room with all the local thugs and petty criminals is not a pleasant experience. My husband was in the same waiting room. – *(Protected person interview, Pakeha)*

Another went to the court for assistance:

> There was a drunk man at the counter, picking up his bail conditions or something and I felt really unsafe. It was just the day after I was beaten up and this was another drunk man. – *(Protected person interview, Pakeha)*

11.3 Training

A number of participants identified a need for all those involved in administering the Act, from judges to community groups, to receive introductory and ongoing training both in the nature of domestic violence and in the intention and provisions of the Act.

Court staff

Eleven out of 16 Family Court Coordinators thought they had received adequate training in the Act. Six of those surveyed identified areas where they or other court staff needed further training or information. One suggested that the role of court staff is to make it as easy as possible for people to get a protection order and to have a basic understanding of issues surrounding domestic violence. She and others thought that the domestic violence clerk in particular needs training in domestic violence as a social issue, not just in administrative matters. One of the coordinators interviewed agreed, saying:

> It can be hard for court staff – it's borderline social work. Even the coordinator doesn't necessarily have a background in domestic violence. The domestic violence clerk is appointed as a clerk. Some people ask why there should be specialist training for court workers but in fact, they do the work. We need seminars and workshops. They should promote staff to attend conferences and meetings to get other people's perspectives, eg lawyers and community groups. There can be resistance in courts to people going out. There's a sense that they're skiving off. – *(KI interview, Family Court Coordinator)*

Specific requests by court staff included:

- a final, as opposed to a draft, manual on procedures
- advice on when to act in the case of non-attendance and excusals
- procedures re objections to programmes, including a complaints procedure for respondents who are unhappy with the programme or the facilitator
- criteria for judges for suspending or not referring to a programme
- advice on giving evidence in prosecution matters
- supervised access protocols[37]
- liaison between groups to standardise consistency in the application of the Domestic Violence Act.

[37] These have been developed and were distributed in May 1999.

Several participants commented on training for bailiffs. One suggested that although bailiffs are supposed to give some explanation to respondents when they serve orders, there is a case for 'customised service' which would allow for a better explanation. It would be more expensive but could save money in the long run.

Police

Most of the police interviewed thought their introductory training was adequate and that they gained further expertise on the job. Others disagreed, making a strong call for ongoing training for police in the dynamics of abuse as well as in operational issues, particularly in police districts where there is a high turnover of staff or a culture that is unsupportive of the Act.

Lawyers

One key informant noted that lawyers are set up by training for an adversarial approach. This can be unhelpful in domestic violence cases. She suggested that lawyers need to act responsibly in acting for both applicants and respondents.

11.4 Paperwork

Court staff interviewed as key informants and those who completed the survey were in agreement that processing an application under the Domestic Violence Act requires a great deal of paperwork.

From the survey, Family Court Coordinators identified preparing applications, referral to programmes and dealing with respondent non-attendance at programmes as the points in the process which required the most paperwork. However, there was general agreement that all of the paperwork is essential and there were few suggestions for ways that the volume could be reduced.

A Family Court Manager made this comment:

> The reporting side is important. We want to be able to case manage - to see what's in the system and what needs to be served. We handle 500 cases per year. There's a lot of information for each application that needs to be gathered. DV advisors are useful at pulling it together. At present, there is a manual system as well as the electronic database. We need to lose the manual system and integrate that into one electronic system. (Department for Courts Head Office) are working on that. – *(KI interview, Family Court staff)*

Others also recognised that Department for Courts is working on updating technology and integrating on-line and manual systems. While some court staff interviewed had most of the key Domestic Violence Act documents set up as templates on computers, others did not and would value them being available. A few informants indicated that more computers were needed so that court staff did not have their use restricted by being required to share computers.

Most of the programme providers interviewed for the research indicated that they had systems in place to manage the paperwork required and that it was no longer perceived as such a burden as it had been at the time of the scoping study interviews. This comment is typical of the views expressed by programme providers:

> Yes, huge amounts of paper work. However we accept the process because we see it as an accountability measure. Although huge, it's a good and refined system. – *(KI interview, programme provider)*

11.5 Role of court staff

Court staff were asked about what they see as their role in processing Domestic Violence Act applications. It was clear from the responses that they see it as both an administrative and a facilitative role. These comments by Family Court Coordinators are typical:

> To make it as easy for people as possible to get a protection order and to be friendly and have a base of understanding of issues surrounding domestic violence. Not to be judgmental and to believe that violence is not okay. Staff need to be trained, and the DV clerk needs training in domestic violence as a social issue and not just in administrative matters. – *(KI interview, Family Court Coordinator)*

> It's a very complicated Act to administer – role of court is theoretically just paper shuffling. In fact, we act as advisors and do need people who are committed and interested. – *(Survey, Family Court Coordinator)*

Other roles of court staff mentioned by key informants included:

- monitoring service providers' quality of programme and accountability for money received to deliver Domestic Violence Act programmes
- networking with community agencies.

11.6 Interagency roles and relationships

The courts visited, and the court staff spoken to in the best practice research, varied in their relationships with lawyers and community groups. In general it appears easier to foster and maintain positive links between the court and the community in smaller areas where there are fewer lawyers, fewer programme providers and fewer Domestic Violence Act applications. In larger areas court staff cannot sustain the same level of relationship with the many programme providers and lawyers serving the court.

Some court staff are more proactive than others in their community relationships. In one court visited, the Family Court Coordinator described a recent meeting between lawyers doing Family Court work in the area, court staff and programme providers. Lawyers and programme providers interviewed in the jurisdiction spoke extremely positively of the benefits of this meeting. In particular they felt they gained a better understanding of the role of other professionals and the challenges inherent in those roles.

Another court visited for the research convenes a monthly inter-agency meeting which includes programme providers, Police, and staff from Community Corrections, Women's Refuge and Victim Support.

Courts visited reported their relationship with the police was generally good. This is particularly the case in those areas where there is a police officer with responsibility for domestic violence matters. Courts recognise that front line police practice in dealing with domestic violence incidents is variable, but there is a belief that the New Zealand Police are doing their best to improve this situation.

Programme providers interviewed were extremely positive about their relationships with the courts and Family Court staff in particular, both at a district and a national level.

The police interviewed for the research were mostly positive about their relationships with the courts.

11.7 Costs

A number of lawyers interviewed said that the current level of legal aid for making a Domestic Violence Act application is not sufficient to give the applicant the time she needs to present her story and work through the options she has. One lawyer put it this way:

> I have to push out a 'without notice' for $420. There is a phenomenal amount of paperwork. It doesn't give me sufficient time with the client, who is in crisis. They have difficulty in some cases articulating. Some have been so emotionally and psychologically abused, they need more time. Also need extra attendance after to follow-up because they haven't taken on information given in the first consultation. It doesn't allow phone calls of reassurance and advice…Lawyers are pressured in terms of time, we don't get to provide the best service. Usually I do an extra hour of unpaid work for each one - some are hours and hours. It's really stressful work too. – *(KI interview, lawyer)*

These lawyers expressed grave concerns that the threat of further cuts to legal aid for this work will seriously compromise the quality of domestic violence legal work.

11.8 Judgements

Only a few of the judges interviewed commented on issues raised in judgements under the Domestic Violence Act. Issues that judges noted out of judgements included:

- whether there is a domestic relationship under the Act
- whether there is currently a necessity for protection
- no power to make interim orders, and therefore no right of review.

11.9 Summary

All key informants and survey participants in the research saw the current Act as an improvement on the previous legislation. They saw the rehabilitative focus as one of the strongest aspects of the Act. A number of informants believed that enforcement needs to be strengthened if the Act is to provide effective protection. This could be achieved in part by protected persons taking greater advantage of the programmes available to them and stronger sanctions being imposed on respondents who do not attend programmes.

Concern about safety was high, particularly in relation to applicants and respondents having to be in close proximity, both in waiting rooms and in the courtroom itself. The physical design of court offices also caused problems and a sense of insecurity for some court staff.

Participants recognised a need for ongoing education for all those involved in implementing the Act, both in the dynamics of violence and in operational matters. Court staff sought some recognition of the specialist nature of Domestic Violence Act work and appropriate training for clerical as well as specialist staff.

Informants acknowledged the amount of paperwork involved in administering the Act and recognised that the use of appropriate technology can help manage this.

Relationships between the various agencies engaged in implementing the Act are generally good.

12. Examples of good practice

This chapter describes examples of good practice and summarises suggested improvements to implementing the Domestic Violence Act. Some of these have already been mentioned in earlier chapters. They are repeated here to ensure full coverage of the suggestions made.

12.1 Conditions supporting good practice

Through the research it was clear that some courts are implementing some aspects of the process extremely well.

Prior to identifying courts to approach for the 'best practice' component of the research, it had been anticipated that a variety of courts would excel in managing different aspects of the process. In reality, it appears that courts executing one aspect of the process very well are likely to be performing well overall.

The research revealed that there are, without doubt, some conditions that support best practice in the implementation of the Domestic Violence Act. Courts are advantaged in the implementation of the Domestic Violence Act when:

- they are not overwhelmed by the number of applications and therefore have more success in adopting a case management approach, and more time to spend on each stage of the process
- they have a DV Clerk, especially one with skill and initiative dedicated to implementing and refining the Domestic Violence Act processes
- there is a ‘systems person’, be it the Family Court Manager, the Family Court Coordinator, or the DV clerk as part of team responsible for Domestic Violence Act implementation
- the key people involved in Domestic Violence Act implementation believe in the potential of the Act and bring energy and enthusiasm to bear in making the process work
- they are located in smaller centres where the networks are good, and those responsible for Domestic Violence Act implementation know, and have frequent contact with the other stakeholders in the process.

12.2 Examples of good practice

As well as these general conditions which encourage good practice, interviews revealed a number of useful suggestions in each of the areas under examination.

Service of documents

A number of courts have the majority of temporary protection orders served by private process servers arranged through protected persons’ counsel.

In other sites, court staff and lawyers could not speak highly enough of the service provided by court bailiffs. This was in contrast to those courts which had difficulty getting the court bailiffs to serve temporary protection orders with the urgency and energy that is required.

Those sites where bailiffs serve temporary protection orders promptly, where they are prepared to pursue respondents who may not be found at the first address, and where they are prepared to spend a few minutes with the respondent helping him or her to understand the order, had the following characteristics:

- an acceptance by Collections management and staff that serving protection orders is important work and part of their core business
- occasional meetings between the Family Court Coordinator and Collections staff to reinforce the importance of prompt service of orders and to discuss ways that the Family Court can support the bailiffs. In some cases this extends to the Family Court Coordinator giving the bailiffs training in serving protection orders
- the Family Court takes responsibility for encouraging protected persons or their counsel to provide alternative addresses at which the respondent may be found, or other information such as car registration numbers, and supply these additional details to bailiffs with the order
- the Family Court notifies Collections as soon as an application is received in order that bailiffs can make plans to serve the order later that day
- bailiffs are prepared to make inquiries as to a respondent's whereabouts if not found at the first address and to seek the respondent elsewhere
- the order is prefaced by a front sheet drawing respondents' attention to the key points of the order, and in particular to the instruction to attend a programme.

Bailiffs interviewed in the course of the research were divided in their views as to whether it is part of their job to spend some time with the respondent helping him/her to understand the protection order, or whether a bailiff's responsibility ends with ensuring the respondent has the papers.

Linking protected persons with programmes

There is widespread concern about the low level of attendance at programmes by protected persons.

Those courts, which have more success in linking protected persons to programmes, have some or all of the following features:

- the Family Court Coordinator expressly gives priority to this part of the work over other aspects of Domestic Violence Act implementation
- the Family Court Coordinator has a background in programme provision, or in another role with victims of domestic violence

- the Family Court Coordinator has confidence in the quality of programmes for protected persons and has strong links with programme providers in the area.

In the courts that were having more success in linking protected persons with programmes, the Family Court Coordinator phones all applicants for a protection order who have a phone, as well as sending information about programmes and a letter outlining protected persons' eligibility for programmes. This call is used to:

- confirm that the applicant understands the order and knows how to use it
- ask them about the support they have, and whether it is adequate
- explain the applicant's entitlement to a programme
- discuss the value of attending a programme
- emphasise that programme attendance is at no cost to the applicant.

One coordinator noted she has most success in reaching protected persons when she phoned around 8.00 in the morning or 5.00 in the evening. While many coordinators consider that they do not have the time to make these calls, a number who are doing it indicated that it really does not take a lot of time if they approach it systematically.

Some courts have bring-up systems in place that that trigger another letter and/or phone call to the protected person three or six months after the order is granted if they have not taken up their entitlement to a programme.

In some courts, coordinators do not require a signed request to attend a programme from an applicant or her counsel before referring her to a programme provider. They are prepared to refer to a programme provider on the basis of a verbal request from an applicant, and will pursue the written request once the applicant is engaged with the programme. They recognise that by doing this they are likely to be more successful in engaging protected persons with programmes than if they were to wait for a signed request to attend a programme.

Several coordinators noted that the availability of children's programmes has increased the interest protected persons have in programmes for themselves. Other examples of initiatives designed to increase protected persons' engagement with programmes include:

- ongoing contact with lawyers reminding them of the importance of protected persons' programmes and encouraging them to discuss the matter with protected persons and include the request for a programme with the application itself
- at least one court is able to offer protected persons reimbursement of transport and creche costs incurred through attending a programme

- a letter sent to an applicant's counsel at the time of the final order if she has not taken advantage of a programme, asking that the lawyer encourage her to attend a programme and remind her that she has three years within which to exercise that option.

Exchange of information with the District Court

Courts have systems that allow the Family Court to be informed if a respondent appears in the District Court charged with breach of a protection order (see Chapter 7). In the interviews and surveys Family Court informants indicated that it would be helpful to have a more comprehensive exchange of information with the District Court. To be advised of the existence of a protection order against the accused might inform a District Court Judge's decision about the disposal of charge of male assaults female. Similarly, to have up-to-date information about criminal charges and convictions might influence the way Family Court Judges deal with matters before them.

However, those courts which have systems in place for information exchange report that the system relies on the vigilance and commitment of one or two people, and is put at risk if those people leave.

In a number of courts the Victims Advisor takes responsibility for setting up a system for information exchange. This usually involves manually checking and matching District Court lists with Family Court files. Where a match is found, a note can be put on the Family Court file if a respondent has appeared in the District Court on a charge of assaulting a partner and/or a note on the District Court file alerting the judge to the existence of a protection order. However, as the District Court is not set up to respond with urgency to a request for information from the Family Court, any response to a request for information regarding a person's convictions would only inform future matters before the Family Court, rather than the application for a protection order itself.

While these systems often work well for those courts using them, the risk is that when the Victims Advisor leaves, as was the case in two of the courts contacted, the system collapses.

One large court has a computerised system for matching District Court and Family Court matters but Family Court staff report that the system is neither user friendly nor reliable, and consequently is not being used. Another has a set of purpose-designed forms but also indicated that they tend not to be used.

Following up respondents who fail to attend a programme

Some courts have refined the process for dealing with respondents who do not attend programmes, are energetic in their pursuit of them, and have prepared a number of files for prosecution. Staff in other courts report that they are discouraged by what they see as excessive paperwork and ineffectual sanctions that do not provide an adequate return on the effort required to bring a prosecution.

Those courts that are performing well in this area have the following characteristics:

- staff see the value of prosecuting respondents for non-attendance being as much for the message it sends to the community about the seriousness with which the court views programme attendance, as for sanctioning the individual respondent
- a good working relationship with the Crown Prosecutor's office, and a clear message from the prosecutors about the essential information required for a prosecution to be successful
- a system of file management that allows an accurate and complete paper trail to be easily pulled from the file and copied
- having seen the process through prosecution a few times and feeling confident with what is required
- having confidence in the provider, and being able to rely on prompt feedback of respondent non-attendance at a session.

The research did not reveal any shortcuts with this process. Once again what was obvious was that the courts having more success with this had prioritised it either informally, or formally as a key objective of an annual performance plan.

Two examples of small innovations were revealed through the research. One court had had a problem with referring respondents for prosecution then finding that the case fell apart because the respondent had actually been excused from one or more sessions of the programme by the provider on the basis of a valid excuse. This court has developed a simple form for the provider to send to the court when a respondent has been excused from a programme session.

Another court was having problems with the defence of a prosecution for non-attendance being based on how the respondent knew to attend the programme on the specified dates. This court initiated a system with the provider whereby at the first session the respondent signs a contract which lists all the session dates. The respondent, the provider and the court all get a copy of the contract. If the respondent misses a session and subsequently restarts, or is excused a session, a new contract is signed and a copy forwarded to the court. Should the case proceed to prosecution, the file can provide evidence that the respondent was informed of all the dates he was required to attend the programme.

Managing the paperwork

Both in the scoping study and during the site visits for the full evaluation, court staff mentioned the weight of paperwork that accompanies the implementation of the Domestic Violence Act. During the course of the evaluation it became apparent that some progress has been made towards developing electronic templates for the orders themselves and for many of the other forms used in the process. The court staff interviewed for this component of the research were all using computer-based templates and regarded this as extremely timesaving. Those with ready and sole access to a computer terminal were at a distinct advantage in managing the paperwork.

Although court staff believe there is some duplication of information on Domestic Violence Act forms, none could easily suggest any short cuts in the process or ways that the paperwork could be reduced.

12.3 Summary

The research revealed that some conditions support best practice in implementing the Domestic Violence Act. These include having sufficient court staff dedicated to Domestic Violence Act processes, with key people who believe in the potential of the Act. Service of orders is also enhanced by good communication between the Family Court and Collections, and by staff giving high priority to serving protection orders. Linking protected persons with programmes also requires a high level of commitment to be successful, as does follow up of respondents who fail to attend a programme.

The research identified a need for a more comprehensive and efficient exchange of information between the Family and District Courts. Having access to adequate computer resources facilitated administration and the management of paperwork.

13. Discussion

13.1 Views on the Act

Overwhelmingly the people who were interviewed as key informants for this research, and those who responded to the surveys, consider the Domestic Violence Act 1995 to be a good piece of legislation that achieves its objectives. These include recognising that domestic violence, in all its forms, is unacceptable behaviour; and ensuring that where domestic violence occurs, there is effective legal protection for its victims. Furthermore, almost without exception, judges, lawyers, and court staff believe the 1995 Act is an improvement on the previous legislation.

The Act's focus on addressing problem behaviours rather than simply applying sanctions is seen as being an extremely positive element, and something quite different from what was in place before. The programmes attempt both to address respondents' behaviour and send a message to wider society that domestic violence is taken seriously and will not be tolerated by the courts. The recognition implicit in the Act that children need to be protected from domestic violence is valued; and the resourcing of programmes to help children out of the cycle of domestic violence is seen as an enlightened innovation.

The broadened definitions of both a 'domestic relationship', and of 'domestic violence' mean that the 1995 Act makes protection available to those who could not formerly seek it; for protection from behaviour which would not, under previous legislation, have been regarded as domestic violence. These are both considered to be major improvements.

The speed with which a protection order can be put in place, and the simplification of the application process are other significant advantages of the Act. The order is seen as flexible and comprehensive.

Another positive aspect of the Act is the perceived strengthening of enforcement provisions, particularly the power given to police to be able to arrest an offender for breach of protection order without a complaint from the protected person. This, and the power to keep an offender in custody for 24 hours or until a court appearance, is seen as a way of giving a protected person immediate protection.

13.2 Access to the provisions of the Act

The coverage of the Act has been extended, yet it is apparent that there are still barriers to effective protection for some groups.

General barriers to access

Lack of knowledge

There is still a widespread lack of knowledge about the Act, and a misunderstanding of some of its provisions. In particular, it seems that some people in need of protection are unaware that psychological and emotional abuse are grounds for which protection can be sought, and that a protection order can remain in force when a protected person is living with the respondent.

The need for more publicity about the provisions of the Act in many languages and through a range of print and broadcast media was endorsed by many of those involved in this research.

Cost

The cost of a protection order for those not eligible for legal aid is a significant barrier to the protection offered by the Act. In many relationships where protection from domestic violence is needed, the person in need of protection may be completely financially dependent upon the perpetrator.

The protected persons interviewed for this research who had not been eligible for legal aid had each paid more than $900 for the protection order.

The need for a low cost alternative for those not eligible for legal aid may need further exploration. Such alternatives could include plain language guidelines about how to complete applications without a lawyer, and training and promotion of community advocates to assist victims with their applications.

Fear and lack of confidence in enforcement agencies

The extent of the fear victims of domestic violence have of their abusers, and the extent some perpetrators will go to punish victims who 'tell', should never be underestimated. Several victims spoken to in the course of the research believed that for them to take out a protection order would only incite their abusers to further violence. They had no confidence that anyone could protect them from this, including the police.

In particular, victims in rural areas and victims who are from families known to the police have little confidence that the police will be able to protect them from a violent assault from their abuser.

As well as fear of violence and repercussions, victims expressed fear of seeing the other person in court, and fear or distrust of the court environment itself.

While it is impossible to eliminate this fear entirely, it is possible to boost confidence in enforcement agencies by encouraging a rapid and effective response from police, by ensuring that safety in court is improved and by promoting a responsive culture among court staff. The support received from community agencies also plays an important part in allaying applicants' fears.

Barriers for specific groups

Maori

Despite the fact that more than a quarter of all applications were from Maori, key informants were inclined to believe that many Maori who need the protection of the Act are still reluctant to apply for it.

The legal processes associated with obtaining an order, the complexities of the Act and the need to understand a range of legal terms might deter potential Maori applicants. The lack of confidence that many victims have in the police to be able to enforce a protection order is thought to be particularly strong amongst Maori.

Shame about domestic violence, and a propensity to seek solutions and support within family networks may contribute to Maori reluctance to seek legal protection. It was suggested that for some Maori, particularly in rural areas where there are fewer options for women living in a violent situation, there is a community culture of silence surrounding family abuse.

More information about the Domestic Violence Act needs to be provided in the Maori language, as well as in a more readable form of English. To make the court a less alien place for Maori, the appointment of more Maori court staff needs to be encouraged. Training and promotion of Maori community-based domestic violence advocates might support more Maori who need the protection of the Act to seek it. Steps to increase confidence in the police could also help Maori applicants and respondents.

Pacific people

Key informants from the justice sector agreed that Pacific people experience similar problems to Maori in accessing lawyers, understanding the process and coming to terms with the implications of the Act.

In general Pacific people prefer to deal with domestic violence issues within the family, the church or the Pacific community, and may choose, or may be pressured by family, not to seek support elsewhere. Some informants believe that amongst Pacific cultures there is an acceptance of violence and the domination of men that works against those in need of protection.

Education and awareness programmes about family violence and support programmes for individuals and families need to be available on an ongoing basis. More information on the Act needs to be provided in Pacific languages and disseminated widely through Pacific communities.

Other ethnic groups

People from other ethnic groups are using the Domestic Violence Act, although some informants believe they are not using it in proportion to their need for protection. In addition to some of the barriers faced by Maori and Pacific people, victims from other cultures face language problems, and may have a limited understanding of both their rights under the law and where to seek advice.

Courts in areas with ethnic minority populations need to establish links with community agencies supporting those populations, and to ensure they have clear plain language information about the Act, if possible in the native language(s) of their communities.

Men

Few male applicants, and in particular gay men, are yet using the Act. In the experience of lawyers who have prepared applications for men, as well as court staff who have processed applications and judges who have decided on them, male applicants are not disadvantaged when applying under the Act, but rather they are reluctant to apply. Social taboos, stigma, shame and embarrassment can make it difficult for men to apply for an order. Some men believe that the court system is biased towards women, and that their experiences will not be taken seriously.

The barriers to more widespread use of the Act by men are based on enduring gender stereotypes. It may be only as men apply for protection, and are granted orders without prejudice, that more will be encouraged to apply. Education and awareness programmes aimed at men would help both those who may wish to apply and potential respondents.

13.3 Implementation issues

As with confidence in the Act itself, the judges, court staff, lawyers and community informants involved in the research were generally positive about the way the Act is being implemented.

Some courts are better placed to meet the requirements of implementation than others. Where key people involved in implementing the Domestic Violence Act believe in the potential of the Act, they bring energy and enthusiasm to the process in a way that markedly affects outcomes. Courts which are not swamped with applications have more success in adopting a case management approach, and the coordinators in those courts can often go the extra mile in ways such as personally contacting protected persons about programmes, which can make a real difference. A skilled and organised Domestic Violence clerk can take a great deal of responsibility for implementation of the Act and make an enormous difference to the workload of a Family Court Coordinator. Courts in smaller centres where the networks are good, and court staff know the other stakeholders in the process, have a head start with interagency relationships that can support programme attendance of both respondents and protected persons, as well as follow-up of respondent non-attendance.

Larger courts are often under greater pressure than smaller courts in implementing the Act, highlighting the need for adequate resourcing in terms of both staff and technology. It would be useful to recognise the specialist nature of Domestic Violence Act work and provide appropriate training for clerical and specialist staff.

Issues for applicants

Applications made without a lawyer

In 1998, an estimated 96% of all applications were made through lawyers. This contrasts with the intention of the 1995 legislation, which was that the process should be such that applicants could prepare an application on their own behalf. This research found that judges and court staff do not favour more applications made without a lawyer. They believe it is difficult for applicants to prepare affidavits that will meet the evidentiary threshold, and that it may lead to future problems and expense for applicants if inadequate applications are put on notice or are defended.

Family Court staff cannot offer legal advice, and when approached by a person seeking information about how to apply for a protection order they are obliged to refer them to a lawyer or community group. It is not possible to know how many potential applicants are deterred from proceeding further at this point because of lack of confidence in using the legal system or fears of what it will cost.

Four protected persons interviewed for the report had applied for orders without a lawyer. All of these applicants had found the process straightforward and all had been granted orders without difficulty. This leads to questions of whether the judiciary and court staff are over-rating problems associated with applications made without the assistance of a lawyer. The objective of the Act, to provide protection that is 'as speedy, inexpensive and simple as is consistent with justice' may be better served by supporting appropriate community groups to act as advocates. With the assistance of a plain language guide to making an application, they could help people in need of protection apply for orders without the assistance of a lawyer.

Being placed 'on notice'

The vast majority of protection orders are made, and proceed, 'without notice'. Judges put applications 'on notice' when they do not meet the statutory criteria for 'without notice', when the degree or historical nature of the violence does not warrant such an action, or when they believe the delay will not increase the risk to the applicant.

There is a much higher rate of withdrawal of those applications placed 'on notice'. The research suggests that one of the reasons for withdrawing in these circumstances is the applicant's fear of further violence when the respondent is notified of the application. One judge was particularly concerned about the lack of interim protection for those who make 'on notice' applications. That means, in order for there to be immediate protection where there is any question of safety, the application should remain 'without notice'.

Discharges

A proportion of applicants seek to withdraw their applications soon after making them and before the order is made. The research shows that the main reasons for seeking to withdraw an application before the order is made are pressure from the respondent, permanent separation, reconciliation, change of heart, use of undertakings, fear of the respondent or the process and cost.

Courts are very conscious that applicants will often be under pressure to apply to discharge orders soon after they are made. There is evidence that some protected persons are not aware that the order can remain in place if they reconcile with their partner. Most courts have processes in place to help determine the extent of the pressure being brought to bear. Some judges and courts are very cautious when considering an application to discharge, particularly if the application includes children. Other judges and courts are more inclined to the position that an applicant should be allowed to make a decision about whether or not protection is required, especially where there are no children involved, and in these circumstances an application to discharge should usually be granted. A broadened debate about the merits of each of these positions should be encouraged.

Undertakings

The research revealed widespread use of undertakings, which are agreements between victim and abuser which do not give any legal protection. It was not possible to quantify the extent to which undertakings are used. Lawyers acknowledge that when acting for victims of violence they discourage the use of undertakings, but conversely that they often promote them as being in their client's interest when acting for people accused of domestic violence. Anecdotally, it appears that undertakings are more commonly used amongst middle and upper socio-economic groups.

The chief disadvantage of undertakings is that they are unenforceable. Furthermore, they do not compel the abuser to attend a programme, nor entitle the victim to a programme that could help break the cycle of abuse.

Further research into the extent to which undertakings are currently used, and the circumstance of their use, could inform decisions about whether and how this issue needs to be addressed.

Issues for respondents

Understanding of orders

Respondents do not always understand protection orders when they are served. The size, complexity and legalese of the order, the respondent's state of mind, literacy levels, and the often unexpected nature of service, result in the respondent having limited understanding of the detail and implications of the order. These factors are compounded for respondents of other cultures and languages.

Bailiffs interviewed for the research disagreed about how much it is their role to explain protection orders to respondents. Some courts have designed and are using summary cover sheets to draw respondents' attention to the main features of the order. There is a need for more coordinated development and use of user-friendly cover sheets simply expressed, and in a number of languages, drawing the respondent's attention to the essential elements of the order, in particular to the five-day period within which an objection to attending a programme can be lodged.

Respondents requesting help to understand the order frequently approach court staff. While they are happy to provide assistance, should the issue of a defence of the order be raised, court staff will refer the respondent to a lawyer.

Defences

The research suggests that many more respondents would like to defend an order than actually do. Key informants indicated that they believe many men lodge a defence as a way to avoid having to attend a programme.

It seems clear that cost is a major deterrent to some respondents contemplating defending the order taken out against them. Four of the respondents interviewed for the research who were not eligible for legal aid, cited bills of $5000 to $13,000 for legal services to defend themselves against a protection order.

Lawyers and judges believe that many defences do not reach a hearing because with the elapse of time the situation often settles, the respondent may have accepted that the relationship is over, and arrangements for access to children have been satisfactorily negotiated. In a smaller proportion of cases respondents will be advised by their lawyers not to proceed, or the matter may have been settled with undertakings.

Given that the majority of defences initiated do not proceed to a defended hearing, it is reasonable to assume many respondents face bills for legal advice that leads to no further action being taken. A community-based advice and advocacy service could be a much cheaper way of respondents being able to discuss the issues and reach a decision about whether they want to defend the order.

When the respondent notifies their intention to appear in defence of the order, the Act requires that a hearing date be set as soon as practicable and unless there are special circumstances, within 42 days after the receipt of the respondent's notice. Not all courts are meeting the 42-day rule. Courts in provincial towns have particular difficulty meeting this time frame because of a lack of court sitting time and judicial resources. Two judges indicated that they had welcomed the High Court decision that they saw as confirming the directory, rather than mandatory nature of the 42-day rule. If the 42-day rule is to be met, more resources will need to be committed to Domestic Violence cases.

Impact of orders on custody and access

Protection orders can have a major impact on otherwise satisfactory custody and access arrangements, and can sometimes be used strategically to gain advantage in custody or access disputes. While the research suggested that strategic use of orders is not widespread, there was disquiet about the unintended effects orders can have on the relationship between fathers and their children. Should a respondent choose to defend a temporary order, a hearing may not be scheduled for many weeks beyond the point at which the defence is lodged. If the protected person is denying access to children, there is potentially a period of several months in which a father may have no contact with his children. Respondents interviewed for the research expressed very strong feelings about the effect protection orders had had on contact with their children.

There was strong support from all quarters for a means by which custody and access issues could be sorted out ahead of the decision about the protection order, if the circumstances suggest that ongoing contact between father and children is in the best interests of the child.

Issues for the court

Service of documents

While the research shows that almost all temporary orders are eventually served, applicants, court staff and lawyers in many areas expressed dissatisfaction with the speed of service and the efforts required to find respondents.

In some areas bailiffs serve most of the orders, in others the bulk of service is carried out by private process servers employed by lawyers. Those courts where bailiffs serve temporary protection orders promptly, are prepared to pursue respondents who may not be found at the first address, and to spend a few minutes with the respondent helping him or her to understand the order, were most satisfied with the bailiff service.

The research suggested that for a high standard of bailiff service to the Family Court there needs to be an acceptance by Collections management and staff that serving protection orders is important work and part of their core business. For its part, the Family Court needs to take responsibility for encouraging applicants or their counsel to provide alternative addresses at which the respondent may be found, or other information such as car registration numbers, and supply these additional details to bailiffs with the order.

A much smaller proportion of final orders than temporary orders are served and the question has been raised through the research about whether it should be necessary to serve final orders when the respondent knows that an undefended temporary order will automatically become final.

Paperwork

Throughout the research, Family Court staff have talked about the enormous amount of paperwork involved in preparing applications, referral to programmes and dealing with respondent non-attendance at programmes. However, there was general agreement that all of the paperwork is essential and there were few suggestions for ways that the volume could be reduced.

There were, however, a number of suggestions for simplifying processes, using plain language in court documents, developing easily understood summary material, and improving the interface between paper-based and electronic systems.

Issues for lawyers

The research highlighted the importance of lawyers explaining the implications of the orders fully to their clients. Some lawyers may also benefit from more training on preparing good affidavits for the courts, as well as on completing information sheets for the courts more accurately. The poor recording of ethnicity is a particular concern. Asking clients their ethnicity needs to become a routine part of data collection.

Issues for the community

Programme issues

(i) Respondent programmes

This research showed that only of a third of respondents who are referred to a programme and are not excused, actually completed one.

While some respondents will be excused from attending programmes for reasons of distance from a suitable programme, work commitments or by virtue of having attended a programme already, there was a whole range of reasons why other respondents did not complete programmes. No dominant pattern emerged.

The most likely explanation is that in many areas prosecutions of respondents for non-attendance at programmes are not pursued. In some areas court staff acknowledged that they do not give this priority, both because of the time it takes, and because they are discouraged by what they see as ineffectual sanctions handed down by judges. In other courts, staff have prioritised the pursuit of respondents who do not attend programmes, and have prepared a number of files for prosecution. They do this as much to give a message about the importance of programme attendance to the wider community. The research did not reveal any shortcuts with this process.

Virtually all the respondents interviewed for the research who had attended programmes spoke very positively about the experience; this was true of even those who had been extremely reluctant initially.

There needs to be greater use made of the provision for sending respondents back to court if they are disruptive during the programme itself. Given the importance of the rehabilitative aspects of the Act, it may be necessary to review the priority given to pursuing prosecutions for non-attendance at programmes.

(ii) Protected person's programmes

The availability of programmes for protected persons is improving in most areas, although there are still some gaps in programmes suitable for protected persons from ethnic minority groups, and in group programmes.

One of the major issues emerging from the research is how to more effectively encourage protected persons to take advantage of their entitlement to programmes.

The research found that protected persons still lack knowledge that programmes exist for them and are free. At the time of getting the order their lives are often in upheaval and they are not well placed to make an ongoing commitment to programme attendance. Their lack of understanding about the cycle of violence leads some to believe that with the respondent out of their lives, or even if they have reconciled with the order in place, the problem is resolved and will not need further attention. On a more positive note, the availability of children's programmes appears to have increased the interest protected persons have in programmes for themselves.

The courts which have more success in linking protected persons to programmes expressly give priority to this part of the work over other aspects of Domestic Violence Act implementation. The Family Court Coordinator will often phone all protected persons as well as sending information about programmes and a letter outlining applicants' eligibility for programmes. Some will refer a protected person to a programme on the basis of a verbal request, and will pursue the written request once the protected person is engaged with the programme. Some courts employ bring-up systems which remind them to contact protected persons again three or six months after the order is granted if they have not taken advantage of their eligibility for a programme.

There needs to be much more widespread public education about the availability of programmes for protected persons, in order that protected persons can receive encouragement from members of their own communities to take advantage of this provision.

13.4 Enforcement

Enforcement of breaches of the Domestic Violence Act by police is improving but is still variable. The effectiveness of response is thought to be influenced by each individual police officer's knowledge of the Act and understanding of the dynamics of domestic violence, as well as the culture of the local police station and the pressure of other work.

Respondents interviewed for the research generally played down the importance of any police action that had been taken against them when they had breached the protection order.

There is clearly a need for further training for police in the dynamics of abuse as well as in operational issues, particularly in police districts where there is a high turnover of staff or a culture that is unsupportive of the Act.

Appendix 1

Tables of applications from all courts for the research period 1 July to 30 September 1998[38]

Table 1.1 Applicants' gender

Gender	*Number*	*Percent*
Female	1725	90.7
Male	151	7.9
Not specified	26	1.4
Total	**1902**	**100**

Table 1.2 Applicants' age

Age	*Number*	*Percent*
0-4	8	0.4
5-16	72	3.8
17-24	363	19.1
25-44	1173	61.7
45-64	163	8.6
65+	23	1.2
Not specified	100	5.3
Total	**1902**	**100**

Table 1.3 Applicants' ethnic group

Ethnicity	*Number*	*Percent*
NZ Maori	531	27.9
Pakeha	952	50.1
Pacific peoples	111	5.8
Asian	39	2.1
Other	76	4.0
Not specified	193	10.1
Total	**1902**	**100**

Table 1.4 Respondents' gender

Gender	*Number*	*Percent*
Female	147	7.7
Male	1723	90.6
Not specified	32	1.7
Total	**1902**	**100**

[38] *Source*: Domestic Violence Act Database, Department for Courts

Table 1.5 Respondents' age

Age	*Number*	*Percent*
0-4	0	0
5-16	[39]4	0.2
17-24	270	14.2
25-44	1226	64.5
45-64	264	13.9
65+	29	1.5
Not specified	109	5.7
Total	**1902**	**100**

Table 1.6 Respondents' ethnic group

Ethnicity	*Number*	*Percent*
NZ Maori	532	28.0
Pakeha	876	46.1
Pacific peoples	134	7.0
Asian	30	1.6
Other	102	5.4
Not specified	228	12.0
Total	**1902**	**100**

Table 1.7 Respondents' relationship to applicant

Relationship	*Number*	*Percent*
Partner	909	47.8
Married	618	32.5
Family member	192	10.1
Close personal relationship	111	5.8
Ordinarily shares household	8	0.4
Not specified	64	3.4
Total	**1902**	**100**

[39] Note that s10 of the Domestic Violence Act states that 'No application for a protection order may be made against a child'. However, 'an application for a protection order may be made against a minor who is or has been married…'

Table 1.8 Respondents' relationship to applicant

Applicants' Gender	Partner	Married	Family Member	Close Personal Relationship	Ordinarily Shares Household	Not Specified	Total
	Number						
Female	870	572	149	91	8	35	1725
Male	39	45	43	20	0	4	151
Not specified	0	1	0	0	0	25	26
Total	**909**	**618**	**192**	**111**	**8**	**64**	**1902**
	Percent						
Female	50.4	33.2	8.6	5.3	0.5	2.0	100
Male	25.8	29.8	28.5	13.2	0	2.6	100
Not specified	0	3.8	0	0	0	96.2	100
Total	**47.8**	**32.5**	**10.1**	**5.8**	**0.4**	**3.4**	**100**

Table 1.9 Respondents' relationship to applicant

Applicants' Age	Partner	Married	Family Member	Close Personal Relationship	Ordinarily Shares Household	Not Specified	Total
	Number						
0-4	0	0	8	0	0	0	8
5-16	[40]7	[41]1	57	5	1	1	72
17-24	259	35	25	29	1	14	363
25-44	564	468	59	61	5	16	1173
45-64	39	79	27	11	1	6	163
65+	2	11	10	0	0	0	23
Not specified	38	24	6	5	0	27	100
Total	**909**	**618**	**192**	**111**	**8**	**64**	**1902**
	Percent						
0-4	0	0	100.0	0	0	0	100
5-16	9.7	1.4	79.2	6.9	1.4	1.4	100
17-24	71.3	9.6	6.9	8.0	0.3	3.9	100
25-44	48.1	39.9	5.0	5.2	0.4	1.4	100
45-64	23.9	48.5	16.6	6.7	0.6	3.7	100
65+	8.7	47.8	43.5	0	0	0	100
Not specified	38.0	24.0	6.0	5.0	0	27.0	100
Total	**47.8**	**32.5**	**10.1**	**5.8**	**0.4**	**3.4**	**100**

[40] Note that it is possible to have a partner at the age of 16.

[41] Note that it is possible to be married at the age of 16.

Table 1.10 Respondents' relationship to applicant by ethnicity

Applicants' Ethnicity	Partner	Married	Family Member	Close Personal Relationship	Ordinarily Shares Household	Not Specified	Total
	Number						
NZ Maori	302	100	90	31	2	6	531
Pakeha	450	341	70	67	4	20	952
Pacific peoples	46	55	6	2	0	2	111
Asian	6	31	1	1	0	0	39
Other	21	41	7	2	1	4	76
Not specified	84	50	18	8	1	32	193
Total	**909**	**618**	**192**	**111**	**8**	**64**	**1902**
	Percent						
NZ Maori	56.9	18.8	16.9	5.8	0.4	1.1	100
Pakeha	47.3	35.8	7.4	7.0	0.4	2.1	100
Pacific peoples	41.4	49.5	5.4	1.8	0	1.8	100
Asian	15.4	79.5	2.6	2.6	0	0	100
Other	27.6	53.9	9.2	2.6	1.3	5.3	100
Not specified	43.5	25.9	9.3	4.1	0.5	16.6	100
Total	**47.8**	**32.5**	**10.1**	**5.8**	**0.4**	**3.4**	**100**

Table 1.11 Age of children affected by applicants' gender

Gender	No Children	Children under 5	Children 5 and over	Both	Total
	Number				
Female	477	447	430	371	1725
Male	78	27	30	16	151
Not specified	25	1	0	0	26
Total	**580**	**475**	**460**	**387**	**1902**
	Percent				
Female	27.7	25.9	24.9	21.5	100
Male	51.7	17.9	19.9	10.6	100
Not specified	96.2	3.8	0	0	100
Total	**30.5**	**25.0**	**24.2**	**20.3**	**100**

Table 1.12 Age of children affected by grounds applied for

Grounds	No Children	Children under 5	Children 5 and over	Both	Total
	Number				
Physical	443	412	384	325	1564
Psychological	407	370	378	321	1476
Sexual	74	20	41	32	167
Child	[42]70	158	169	137	534
Total	**580**	**475**	**460**	**387**	**1902**
	Percent				
Physical	28.3	26.3	24.6	20.8	100
Psychological	27.6	25.1	25.6	21.7	100
Sexual	44.3	12.0	24.6	19.2	100
Child	13.1	29.6	31.6	25.7	100
Total	**30.5**	**25.0**	**24.2**	**20.3**	**100**

Table 1.13 Other protected persons

Other person(s)	*Number*	*Percent*
Yes	111	5.8
No	1791	94.2
Total	**1902**	**100**

Table 1.14 Associate respondent by respondents' gender

Gender	Associate Respondent	No Associate Respondent	Total
	Number		
Female	29	118	147
Male	42	1681	1723
Not specified	3	29	32
Total	**74**	**1828**	**1902**
	Percent		
Female	19.7	80.3	100
Male	2.4	97.6	100
Not specified	9.4	90.6	100
Total	**3.9**	**96.1**	**100**

Table 1.15 Representation

Representation	*Number*	*Percent*
Counsel	1736	91.3
Self	66	3.5
Not specified	100	5.3
Total	**1902**	**100**

[42] It may seem unusual that an application is made on the grounds of "child" but that the application specifies that there are "no children". However this situation might be possible, if for example the applicant is themselves a child.

Table 1.16 Application made on behalf of

Application type	*Number*	*Percent*
Normal application	1814	95.4
Lacking capacity	3	0.2
Minor[43]	62	3.3
Other	23	1.2
Total	**1902**	**100**

Table 1.17 Application made on behalf of by applicants' ethnicity

Ethnicity	Normal Application	Lacking Capacity	Minor	Other	Total
	Number				
NZ Maori	481	0	43	7	531
Non-Maori	1150	2	13	13	1178
Not specified	183	1	6	3	193
Total	**1814**	**3**	**62**	**23**	**1902**
	Percentage				
NZ Maori	90.6	0.0	8.1	1.3	100
Non-Maori	97.6	0.2	1.1	1.1	100
Not specified	94.8	0.5	3.1	1.6	100
Total	**95.4**	**0.2**	**3.3**	**1.2**	**100**

Table 1.18 Grounds for application[44]

Grounds	*Number*	*Percent*
Physical	1564	82.2
Psychological	1476	77.6
Sexual	167	8.8
Child	534	28.1

Table 1.19 Grounds for application by applicants' ethnicity[45]

Ethnicity	Grounds		
	Physical	Psychological	Child
	Number		
NZ Maori	465	375	185
Non-Maori	952	958	310
Not specified	147	143	39
Total	**1564**	**1476**	**534**
	Percent		
NZ Maori	87.6	70.6	34.8
Non-Maori	80.8	81.3	26.3
Not specified	76.2	74.1	20.2
Total	**82.2**	**77.6**	**28.1**

[43] An application is being made on behalf of a minor but the minor is the applicant.

[44] More than one ground may be applied for. The total is out of 1902. The percentages show the percentage of applications made under each of the grounds listed.

[45] The percentages show the percentage of applications made under each of the grounds listed.

Table 1.20 Applications on physical grounds by applicants' gender[46]

Gender	*Number*	*Percent*
Female	1443	83.7
Male	110	72.8
Not specified	11	42.3
Total	**1564**	**82.2**

Table 1.21 Applications on physical grounds by applicants' ethnicity[47]

Ethnicity	*Number*	*Percent*
NZ Maori	68	88.3
Pakeha	115	75.2
Pacific	26	92.9
Asian	19	86.4
Other	8	80.0
Not specified	26	57.8
Total	**262**	**78.2**

Table 1.22 Orders and conditions applied for[48]

Orders and Conditions	*Number*	*Percent*
Protection	1838	96.6
Occupation	260	13.7
Tenancy	112	5.9
Ancillary furniture	292	15.4
Furniture	144	7.6
Weapons	536	28.2
Supervised access	45	2.4
Special conditions	79	4.2

[46] The percentages show the percentage of applications made under physical grounds. Note that this table indicates that of all applications applied for by females, 84% were on physical grounds compared with 82% for all applications.

[47] The percentages show the percentage of applications made under physical grounds.

[48] More than one order may be applied for. Total is out of 1902. The percentages show the percentage of applications which included the order or condition listed.

Tables of applications from all courts for the year 1 July 1997 to 30 June 1998[49]

Note that these tables relate to the year prior to the three month reference period used in this report.

Table 1A.1 Applicants' gender

Gender	*Number*	*Percent*
Female	6607	91.6
Male	490	6.8
Not specified	117	1.6
Total	7214	100.0

Table 1A.2 Applicants' ethnic group

Ethnicity	*Number*	*Percent*
NZ Maori	1779	24.7
Pakeha	3868	53.6
Pacific peoples	425	5.9
Asian	102	1.4
Other	297	4.1
Not specified	743	10.3
Total	7214	100.0

Table 1A.3 Respondents' gender

Gender	*Number*	*Percent*
Female	572	7.9
Male	6588	91.3
Not specified	54	0.7
Total	7214	100.0

Table 1A.4 Respondents' ethnic group

Ethnicity	*Number*	*Percent*
NZ Maori	1806	25.0
Pakeha	3508	48.6
Pacific peoples	552	7.7
Asian	92	1.3
Other	379	5.3
Not specified	877	12.2
Total	7214	100.0

[49] *Source*: Domestic Violence Act Database, Department for Courts

Appendix 2

Tables of applications from the file study for the research period 1 July to 30 September 1998[50]

Table 2.1 Court by applicants' gender

Gender	Auckland Central	Christchurch	Lower Hutt	Whangarei	Total
	Number				
Female	91	94	68	54	307
Male	9	6	3	8	*26*
Not specified	0	1	1	0	2
Total	**100**	**101**	**72**	**62**	**335**
	Percent				
Female	91.0	93.1	94.4	87.1	91.6
Male	9.0	5.9	4.2	12.9	7.8
Not specified	0	1.0	1.4	0	0.6
Total	**100**	**100**	**100**	**100**	**100**

Table 2.2 Applicants' age

Age	*Number*	*Percent*
0-4	15	4.5
5-16	6	1.8
17-24	71	21.2
25-44	207	61.8
45-64	33	9.9
65+	2	0.6
Not specified	1	0.3
Total	**335**	**100**

[50] *Source*: File study from the research courts

Table 2.3 Court by applicants' ethnicity

Ethnicity	Auckland Central	Christchurch	Lower Hutt	Whangarei	Total
	Number				
NZ Maori	16	11	17	33	77
Pakeha	44	55	28	26	153
Pacific	17	2	9	0	28
Asian	12	5	4	1	22
Other	3	3	4	0	10
Not specified	8	25	10	2	45
Total	**100**	**101**	**72**	**62**	**335**
	Percent				
NZ Maori	16	10.9	23.6	53.2	23
Pakeha	44	54.5	38.9	41.9	45.7
Pacific	17	2	12.5	0	8.4
Asian	12	5	5.6	1.6	6.6
Other	3	3	5.6	0	3
Not specified	8	24.8	13.9	3.2	13.4
Total	**100**	**100**	**100**	**100**	**100**

Table 2.4 Court by applicants' representation

Representation	Auckland Central	Christchurch	Lower Hutt	Whangarei	Total
	Number				
Counsel	82	97	67	62	308
Counsel and self	1	0	0	0	1
Self	16	3	5	0	24
Agency	1	0	0	0	1
Not specified	0	1	0	0	1
Total	**100**	**101**	**72**	**62**	**335**
	Percent				
Counsel	82	96	93.1	100	91.9
Counsel and self	1	0	0	0	0.3
Self	16	3	6.9	0	7.2
Agency	1	0	0	0	0.3
Not specified	0	1	0	0	0.3
Total	**100**	**100**	**100**	**100**	**100**

Table 2.5 Ethnicity of those applying on physical grounds[51]

Ethnicity	*Number*	*Percent*
NZ Maori	68	88.3
Pakeha	115	75.2
Pacific	26	92.9
Asian	19	86.4
Other	8	80.0
Not specified	26	57.8
Total	**262**	**78.2**

Table 2.6 Orders applied for[52]

Order	*Number*	*Percent*
Protection	[53]334	99.7
Occupancy	49	14.6
Ancillary Furniture	24	7.2

Table 2.7 Type of notice of applications

Notice	*Number*	*Percent*
Without notice	319	95.2
On notice	14	4.2
Not specified	2	0.6
Total	**335**	**100**

Table 2.8 Application to withdraw

Application	*Number*	*Percent*
Application to withdraw	62	18.5
No application	270	80.6
Not specified	3	0.9
Total	**335**	**100**

Table 2.9 Counsel to Assist appointed

Counsel to Assist	*Number*	*Percent*
Appointed	28	8.4
Not appointed	306	91.3
Not specified	1	0.3
Total	**335**	**100**

[51] The percentages show the percentage of applications made under physical grounds.

[52] More than one order may be applied for. Total is out of 335. The percentages show the percentage of applications which included the order listed.

[53] 334 files had been listed as 'applied for a protection order', 1 file did not specify.

Table 2.10 Psychologist appointed

Psychologist	*Number*	*Percent*
Appointed	9	2.7
Not appointed	325	97.0
Not specified	1	0.3
Total	**335**	**100**

Table 2.11 Social worker appointed

Social worker	*Number*	*Percent*
Appointed	9	2.7
Not appointed	325	97.0
Not specified	1	0.3
Total	**335**	**100**

Table 2.12 Other services used

Other services	*Number*	*Percent*
Yes	11	3.3
No	323	96.4
Not specified	1	0.3
Total	**335**	**100**

Table 2.13 Witnesses called

Witnesses	*Number*	*Percent*
Called	7	2.1
Not called	327	97.6
Not specified	1	0.3
Total	**335**	**100**

Appendix 3

Tables of breaches and apprehensions

Table 3.1 Prosecutions for breaches of the Domestic Violence Act finalised in the period 1 July to 30 September 1998[54]

Characteristic	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to comply with conditions of order	Fail to attend programme	Other breaches of DV act	Total
	Number					
Gender						
Male	9	627	0	59	2	697
Female	0	19	1	0	0	20
Age						
17-24	1	78	0	13	0	92
25-44	8	502	1	24	1	536
45-64	0	65	0	13	0	78
Other/unknown	0	1	0	9	1	11
Ethnicity						
NZ Maori	3	252	0	31	0	286
Pakeha	4	328	1	14	1	348
Pacific peoples	1	36	0	0	0	37
Other/unknown	1	30	0	14	1	46
Total	**9**	**646**	**1**	**59**	**2**	**717**
	Percent					
Gender						
Male	1.3	90.0	0.0	8.5	0.3	100.0
Female	0.0	95.0	5.0	0.0	0.0	100.0
Age						
17-24	1.1	84.8	0.0	14.1	0.0	100.0
25-44	1.5	93.7	0.2	4.5	0.2	100.0
45-64	0.0	83.3	0.0	16.7	0.0	100.0
Other/unknown	0.0	9.1	0.0	81.8	9.1	100.0
Ethnicity						
NZ Maori	1.0	88.1	0.0	10.8	0.0	100.0
Pakeha	1.1	94.3	0.3	4.0	0.3	100.0
Pacific peoples	2.7	97.3	0.0	0.0	0.0	100.0
Other/unknown	2.2	65.2	0.0	30.4	2.2	100.0
Total	**1.3**	**90.1**	**0.1**	**8.2**	**0.3**	**100.0**

[54] *Source*: Law Enforcement System

Table 3.2 Convictions for breaches of the Domestic Violence Act finalised in the period 1 July to 30 September 1998[55]

Characteristic	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to comply with conditions of order	Fail to attend programme	Other breaches of DV act	Total
	Number					
Gender						
Male	9	402	0	57	2	470
Female	0	9	1	0	0	10
Age						
17-24	1	45	0	13	0	59
25-44	8	338	1	23	1	371
45-64	0	27	0	13	0	40
Other/unknown	0	1	0	8	1	10
Ethnicity						
NZ Maori	3	152	0	31	0	186
Pakeha	4	219	1	13	1	238
Pacific peoples	1	21	0	0	0	22
Other/unknown	1	19	0	13	1	34
Total	**9**	**411**	**1**	**57**	**2**	**480**
	Percent					
Gender						
Male	1.9	85.5	0.0	12.1	0.4	100.0
Female	0.0	90.0	10.0	0.0	0.0	100.0
Age						
17-24	1.7	76.3	0.0	22.0	0.0	100.0
25-44	2.2	91.1	0.3	6.2	0.3	100.0
45-64	0.0	67.5	0.0	32.5	0.0	100.0
Other/unknown	0.0	10.0	0.0	80.0	10.0	100.0
Ethnicity						
NZ Maori	1.6	81.7	0.0	16.7	0.0	100.0
Pakeha	1.7	92.0	0.4	5.5	0.4	100.0
Pacific peoples	4.5	95.5	0.0	0.0	0.0	100.0
Other/unknown	2.9	55.9	0.0	38.2	2.9	100.0
Total	**1.9**	**85.6**	**0.2**	**11.9**	**0.4**	**100.0**

[55] *Source*: Law Enforcement System

Table 3.3 Sentences imposed for convicted cases involving a breach of the Domestic Violence Act finalised between 1 July and 30 September 1998[56]

Sentence	Contravene protection order	Fail to attend programme	Other breaches of DV Act	Total
	Number			
Imprisonment	37	2	0	39
Periodic detention, supervision, & suspended sentence	1	0	0	1
Periodic detention & supervision	18	2	0	20
Periodic detention & suspended sentence	1	0	0	1
Periodic detention only	50	1	0	51
Community programme & suspended sentence	1	0	0	1
Community service & suspended sentence	1	0	0	1
Community service only	12	2	0	14
Supervision & suspended sentence	2	0	1	3
Supervision only	30	3	0	33
Fine	30	4	1	35
Reparation	1	0	0	1
Sentence if called upon	48	0	0	48
Suspended sentence	1	0	0	1
Convicted & discharged	13	1	0	14
Total	**246**	**15**	**2**	**263**
	Percent			
Imprisonment	15.0	13.3	0.0	14.8
Periodic detention, supervision, & suspended sentence	0.4	0.0	0.0	0.4
Periodic detention & supervision	7.3	13.3	0.0	7.6
Periodic detention & suspended sentence	0.4	0.0	0.0	0.4
Periodic detention only	20.3	6.7	0.0	19.4
Community programme & suspended sentence	0.4	0.0	0.0	0.4
Community service & suspended sentence	0.4	0.0	0.0	0.4
Community service only	4.9	13.3	0.0	5.3
Supervision & suspended sentence	0.8	0.0	50.0	1.1
Supervision only	12.2	20.0	0.0	12.5
Fine	12.2	26.7	50.0	13.3
Reparation	0.4	0.0	0.0	0.4
Sentence if called upon	19.5	0.0	0.0	18.3
Suspended sentence	0.4	0.0	0.0	0.4
Convicted & discharged	5.3	6.7	0.0	5.3
Total	**100.0**	**100.0**	**100.0**	**100.0**

Note: The figures in this table are case-based and relate to cases where the most serious offence was a breach of the Domestic Violence Act.

[56] *Source:* Law Enforcement System

Table 3.4 National Recorded Offender Apprehensions for Domestic Violence Act offences for the period 1 July to 30 September 1998[57]

Characteristic	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to comply with conditions of order	Other breaches of DV act	Total
	Number				
Gender					
Male	13	709	16	4	742
Female	0	19	0	0	19
Age					
17-20	2	30	0	1	33
21-30	4	229	1	0	234
31-50	6	445	15	2	468
51-99	1	24	0	1	26
Ethnicity					
NZ Maori	4	258	3	0	265
Pakeha	7	399	12	4	422
Pacific peoples	2	52	1	0	55
Other/unknown	0	19	0	0	19
Total	**13**	**728**	**16**	**4**	**761**
	Percent				
Gender					
Male	1.8	95.6	2.2	0.5	100.0
Female	0.0	100.0	0.0	0.0	100.0
Age					
17-20	6.1	90.9	0.0	3.0	100.0
21-30	1.7	97.9	0.4	0.0	100.0
31-50	1.3	95.1	3.2	0.4	100.0
51-99	3.8	92.3	0.0	3.8	100.0
Ethnicity					
NZ Maori	1.5	97.4	1.1	0.0	100.0
Pakeha	1.7	94.5	2.8	0.9	100.0
Pacific peoples	3.6	94.5	1.8	0.0	100.0
Other/unknown	0.0	100.0	0.0	0.0	100.0
Total	**1.7**	**95.7**	**2.1**	**0.5**	**100.0**

[57] *Source*: NZ Police

Table 3.5 National recorded and resolved Domestic Violence Act offences, for the period 1 July – 30 September 1998[58]

Offence	Recorded		Resolved	
	Number	*Percent*	*Number*	*Percent*
Contravenes protection order – firearm	21	2.2	13	1.7
Contravenes protection order – no firearm	879	93.9	738	95.6
Fail to comply with conditions of order	28	3.0	17	2.2
Other breach of Domestic Violence Act	8	0.9	4	0.5
Total	936	100	772	100

[58] *Source*: NZ Police

Table 3.6 Prosecutions for breaches of the Domestic Violence Act for the 1998 calendar year[59]

Characteristic	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to comply with conditions of order	Fail to attend programme	Other breaches of DV Act	Total
	Number					
Gender						
Male	46	2214	39	194	24	2517
Female	0	60	1	0	0	61
Unknown	0	0	0	0	1	1
Age						
17-24	5	289	16	69	0	379
25-44	35	1741	21	81	12	1890
45-64	6	232	3	16	0	257
Other/unknown	0	12	0	28	13	53
Ethnicity						
NZ Maori	13	841	30	50	8	942
NZ Pakeha	27	1168	10	63	1	1269
Pacific peoples	2	146	0	1	0	149
Other/unknown	4	119	0	80	16	219
Total	**46**	**2274**	**40**	**194**	**25**	**2579**
	Percent					
Gender						
Male	1.8	88.0	1.5	7.7	1.0	100.0
Female	0.0	98.4	1.6	0.0	0.0	100.0
Unknown	0.0	0.0	0.0	0.0	100.0	100.0
Age						
17-24	1.3	76.3	4.2	18.2	0.0	100.0
25-44	1.9	92.1	1.1	4.3	0.6	100.0
45-64	2.3	90.3	1.2	6.2	0.0	100.0
Other/unknown	0.0	22.6	0.0	52.8	24.5	100.0
Ethnicity						
NZ Maori	1.4	89.3	3.2	5.3	0.8	100.0
NZ Pakeha	2.1	92.0	0.8	5.0	0.1	100.0
Pacific peoples	1.3	98.0	0.0	0.7	0.0	100.0
Other/unknown	1.8	54.3	0.0	36.5	7.3	100.0
Total	**1.8**	**88.2**	**1.6**	**7.5**	**1.0**	**100.0**

[59] *Source*: Law Enforcement System

Table 3.7 Convictions for breaches of the Domestic Violence Act for 1998 calendar year[60]

Characteristic	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to comply with conditions of order	Fail to attend programme	Other breaches of DV Act	Total
	Number					
Gender						
Male	37	1398	34	179	12	1660
Female	0	31	1	0	0	32
Unknown	0	0	0	0	1	1
Age						
17-24	4	187	15	68	0	274
25-44	29	1099	17	73	12	1230
45-64	4	132	3	15	0	154
Other/unknown	0	11	0	23	1	35
Ethnicity						
NZ Maori	10	531	27	48	8	624
NZ Pakeha	22	746	8	59	1	836
Pacific peoples	2	82	0	0	0	84
Other/unknown	3	70	0	72	4	149
Total	**37**	**1429**	**35**	**179**	**13**	**1693**
	Percent					
Gender						
Male	2.2	84.2	2.0	10.8	0.75	100.0
Female	0.0	96.9	3.1	0.0	0.0	100.0
Unknown	0.0	0.0	0.0	0.0	100.0	100.0
Age						
17-24	1.5	68.2	5.5	24.8	0.0	100.0
25-44	2.4	89.3	1.4	5.9	1.0	100.0
45-64	2.6	85.7	1.9	9.7	0.0	100.0
Other/unknown	0.0	31.4	0.0	65.7	2.9	100.0
Ethnicity						
NZ Maori	1.6	85.1	4.3	7.7	1.3	100.0
NZ Pakeha	2.6	89.2	1.0	7.1	0.1	100.0
Pacific peoples	2.4	97.6	0.0	0.0	0.0	100.0
Other/unknown	2.0	47.0	0.0	48.3	2.7	100.0
Total	**2.2**	**84.4**	**2.1**	**10.6**	**0.8**	**100.0**

[60] Source: Law Enforcement System

Table 3.8 Sentences imposed for convicted cases involving a breach of the Domestic Violence Act finalised in the 1998 calendar year[61]

Sentence	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to attend programme	Other breach of DV Act	Total
	Number				
Imprisonment	4	114	11	2	131
Periodic detention, supervision, & suspended sentence	0	4	0	0	4
Periodic detention & supervision	1	55	5	1	62
Periodic detention & suspended sentence	0	2	0	0	2
Periodic detention only	6	164	3	1	174
Community programme & suspended sentence	0	2	0	0	2
Community programme only	1	2	0	0	3
Community service & suspended sentence	0	1	0	0	1
Community service only	1	28	3	0	32
Supervision & suspended sentence	0	8	0	1	9
Supervision only	3	108	9	1	121
Fine & suspended sentence	0	0	1	0	1
Fine	4	119	8	3	134
Reparation	0	7	0	0	7
Sentence if called upon	3	173	9	0	185
Suspended sentence	0	7	0	0	7
Convicted & discharged	0	45	8	1	54
Total	**23**	**839**	**57**	**10**	**929**

continued

[61] Source: Law Enforcement System

	Percent				
Imprisonment	17.4	13.6	19.3	20	14.1
Periodic detention, supervision, & suspended sentence	0.0	0.5	0.0	0	0.4
Periodic detention & supervision	4.3	6.6	8.8	10	6.7
Periodic detention & suspended sentence	0.0	0.2	0.0	0	0.2
Periodic detention only	26.1	19.5	5.3	10	18.7
Community programme & suspended sentence	0.0	0.2	0.0	0	0.2
Community programme only	4.3	0.2	0.0	0	0.3
Community service & suspended sentence	0.0	0.1	0.0	0	0.1
Community service only	4.3	3.3	5.3	0	3.4
Supervision & suspended sentence	0.0	1.0	0.0	10	1.0
Supervision only	13.0	12.9	15.8	10	13.0
Fine & suspended sentence	0.0	0.0	1.8	0	0.1
Fine	17.4	14.2	14.0	30	14.4
Reparation	0.0	0.8	0.0	0	0.8
Sentence if called upon	13.0	20.6	15.8	0	19.9
Suspended sentence	0.0	0.8	0.0	0	0.8
Convicted & discharged	0.0	5.4	14.0	10	5.8
Total	**100.0**	**100.0**	**100.0**	**100**	**100.0**

Table 3.9 Number of convictions for breaching a non-molestation or protection order, 1989 to 1998 calendar years[62]

Year	**1989**	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**
Number	268	273	243	321	383	440	421	499	1227	1885

[62] *Source:* Law Enforcement System. Note that these figures are charge-based and include multiple offences against single offenders

Table 3.10 National Recorded Offender Apprehensions for Domestic Violence Act offences for the period 1 July 1998 to 30 June 1999[63]

Characteristic	Contravene protection order (firearm)	Contravene protection order (no firearm)	Fail to comply with conditions of order	Other breach of DV Act	Total
	Number				
Gender					
Male	67	3260	54	48	3429
Female	2	120	6	2	130
Age					
17-20	3	112	0	2	117
21-30	16	959	17	13	1005
31-50	42	1669	37	24	1772
51-99	8	638	6	11	663
Other/unknown	0	2	0	0	2
Ethnicity					
NZ Maori	22	1396	13	24	1455
Pakeha	39	1591	43	19	1692
Pacific peoples	7	311	4	6	325
Other/unknown	1	82	0	1	87
Total	**69**	**3380**	**60**	**50**	**3559**
	Percent				
Gender					
Male	2.0	95.1	1.6	1.4	100.0
Female	1.5	92.3	4.6	1.5	100.0
Age					
17-20	2.6	95.7	0.0	1.7	100.0
21-30	1.6	95.4	1.7	1.3	100.0
31-50	2.4	94.2	2.1	1.4	100.0
51-99	1.2	96.2	0.9	1.7	100.0
Other/unknown	0.0	100.0	0.0	0.0	100.0
Ethnicity					
NZ Maori	1.5	95.9	0.9	1.6	100.0
Pakeha	2.3	94.0	2.5	1.1	100.0
Pacific peoples	2.2	95.7	1.2	1.8	100.0
Other/unknown	1.1	94.3	0.0	1.1	100.0
Total	**1.9**	**95.0**	**1.7**	**1.4**	**100.0**

[63] *Source*: NZ Police

Table 3.11 National recorded and resolved domestic violence act offences, for the year 1 July 1998 to 30 June 1999[64]

Offence	Recorded		Resolved	
	Number	*Percent*	*Number*	*Percent*
Contravenes protection order – firearm	90	2.3	63	2.0
Contravenes protection order – no firearm	3615	93.6	2935	94.7
Fail to comply with conditions of order	83	2.1	58	1.9
Other breach of Domestic Violence Act	76	2.0	43	1.4
Total	**3864**	**100**	**3099**	**100**

[64] *Source*: NZ Police

EVALUATION OF THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT 1995

FAMILY COURT CO-ORDINATORS SURVEY

As you will be aware, Department for Courts and the Ministry of Justice have commissioned an evaluation of the implementation of the Domestic Violence Act 1995.

Last year a team of researchers completed a scoping study as part of that evaluation. This year much more extensive research is being undertaken to explore the extent of some of the issues identified in the scoping report. The present phase of the research has five components;

- a national survey of judges, Family Court staff and lawyers working in the area of domestic violence
- examination of the Family Court database and DV database to gather national information about the volume and characteristics of applications
- a file study of 100 files in each of four courts designed to provide sound information on the process of cases through the courts and to identify any local implementation issues
- interviews with judges, court staff, lawyers, programme providers and police in each of the four research sites
- interviews with applicants, respondents, and those who may need the protection of the DVA but have not made an application in each of the research sites.

This survey seeks your views on some of the issues raised in the scoping research, including:

- access to orders
- service of orders
- court processes
- referrals to programmes.

Through the survey and interviews the researchers also hope to identify areas in which particular aspects of the implementation of the DVA are working well. We will document these examples of good practice and make them available to other courts who may wish to adopt them. The final part of this survey, therefore, asks you to indicate any aspects of the way the DVA is implemented in your area that work particularly well, which maybe of further value to the research.

Your response will be confidential. In the report no individual court or court staff will be identified unless they are used as one of 'best practice' examples. The code on the survey form is only so that we can know who has returned the survey and who needs a follow-up phone call.

Because we know you are busy, we have made the survey form as simple to complete as possible. If there is more than one FCC or DVA Clerk at your court you are welcome to send in a combined response or individual responses. Please indicate at the start of the survey form whether it is an individual or a combined response.

The researchers

PLEASE TICK THE BOXES CLEARLY

PLEASE INDICATE WHO HAS CONTRIBUTED TO THIS RESPONSE:

☐ one FCC ☐ two FCCs
☐ DVA Clerk ☐ other (please specify) .....

APPLICATIONS

1. **In the instances where people come to the court asking for help with a domestic violence issue, and you consider they need to make an application under the DVA, do you:**

	always	usually	about half the time	seldom	never
suggest that they see a lawyer	☐	☐	☐	☐	☐
offer them a list of lawyers	☐	☐	☐	☐	☐
refer them to a particular lawyer	☐	☐	☐	☐	☐
refer them to a community law service	☐	☐	☐	☐	☐
refer them to another service (eg Citizens Advice Bureau)	☐	☐	☐	☐	☐
assist them to make an application	☐	☐	☐	☐	☐
other (please specify)	☐	☐	☐	☐	☐

2. **How often is communication with applicants made difficult because they are speakers of other languages?**

☐ often ☐ about half the time ☐ seldom ☐ never ☐ don't know

3. **In your experience how often are people deterred from making applications under the DVA because of the cost?**

☐ often ☐ about half the time ☐ seldom ☐ never ☐ don't know

4. **Any comments on making applications:**

.....

PROCESSING ORDERS

5. **Court staff have told us that processing DVA applications involves a lot of paperwork. We are keen to identify the points in the process that require the *most* paperwork.** *(Please tick up to 3 options)*

- ☐ preparing applications to go to the judge
- ☐ arranging service of orders
- ☐ making referrals to programmes
- ☐ dealing with recalls from programmes
- ☐ dealing with non attendance at programmes
- ☐ scheduling and preparing for defended hearings
- ☐ withdrawals / discharges
- ☐ preparing returns for statistical purposes
- ☐ other (please specify) .....

6. **Any comments on how the paperwork might be reduced:**

.....

APPLICANT ISSUES

7. **When you have contact with applicants, how often do you explain to them how the protection order will work?**

☐ always ☐ usually ☐ about half the time ☐ seldom ☐ never

8. **Which of the following methods do you use *most often* to let applicants know about programmes?** *(Please tick up to 3 options)*

- ☐ provide programme information to lawyers
- ☐ write to the applicant inviting them to contact the court for information
- ☐ give an applicant the name of a person to contact
- ☐ give an applicant a list of programme providers
- ☐ send the applicant pamphlets about programmes
- ☐ talk to applicants about programmes
- ☐ other (please specify) .....

9. **If there are children's programmes available in your area, how do you refer children to programmes?**

.....

10. **Any other comments on applicant issues:**

.....

SERVICE OF DOCUMENTS

11. **Which of the following statements best describes the way protection orders are served from your court?**

- ☐ usually served by court bailiffs
- ☐ usually served by private servers
- ☐ served about equally by court bailiffs and private servers
- ☐ other (please specify) .....
- ☐ don't know

12. **Any comments on arranging service:**

.....

13. **Any comments on means of service:**

.....

14. **Any comments on time frames within which orders are served:**

.....

RESPONDENT ISSUES

15. **When respondents contact the court seeking explanation of orders, how often do you:**

	always	usually	about half the time	seldom	never
suggest that they see a lawyer	☐	☐	☐	☐	☐
offer them a list of lawyers	☐	☐	☐	☐	☐
refer them to a particular lawyer	☐	☐	☐	☐	☐
refer them to a community law service	☐	☐	☐	☐	☐
spend time with them explaining the order	☐	☐	☐	☐	☐
other (please specify)	☐	☐	☐	☐	☐

16. **In general, how often does your court meet the 42-day period for defended hearings?**

☐ always ☐ usually ☐ about half the time ☐ seldom ☐ never ☐ don't know

17. **What are the main reasons your court fails to meet the 42 day rule?**

18. **Is there a process in place for informing the Family Court of when a respondent has appeared in the District Court following a breach of a protection order ?**

☐ yes ☐ no

19. **If so, what procedures are in place:**

20. **Any comments on respondent issues:**

PROGRAMME ISSUES

21. **How satisfied or dissatisfied are you that there are suitable programmes in your area for:**

	very satisfied	quite satisfied	neither satisfied nor dissatisfied	dissatisfied	very dissatisfied	don't know
Pakeha applicants	☐	☐	☐	☐	☐	☐
Maori applicants	☐	☐	☐	☐	☐	☐
Pacific Islands' applicants	☐	☐	☐	☐	☐	☐
male applicants	☐	☐	☐	☐	☐	☐
other applicants (please state)	☐	☐	☐	☐	☐	☐
children	☐	☐	☐	☐	☐	☐

22. **How satisfied or dissatisfied are you that there are suitable programmes in your area for:**

	very satisfied	quite satisfied	neither satisfied nor dissatisfied	dissatisfied	very dissatisfied	don't know
Pakeha male respondents	☐	☐	☐	☐	☐	☐
Maori male respondents	☐	☐	☐	☐	☐	☐
Pacific Islands respondents	☐	☐	☐	☐	☐	☐
female respondents	☐	☐	☐	☐	☐	☐
other respondents (please state)	☐	☐	☐	☐	☐	☐

23. **The process for dealing with respondents not attending programmes is defined by rules and regulations. The pressures on courts mean the process is not always followed. When your court is informed of a respondent's non-attendance how often do the following steps occur:**

	always	usually	about half the time	seldom	never
documentation received from programme provider	☐	☐	☐	☐	☐
contact made with respondent to clarify attendance obligations	☐	☐	☐	☐	☐
non-attendance brought to the attention of Judge	☐	☐	☐	☐	☐
respondent called before the court to explain	☐	☐	☐	☐	☐
recommendation made re sentence	☐	☐	☐	☐	☐
prosecution for default offence	☐	☐	☐	☐	☐
other - please specify	☐	☐	☐	☐	☐

24. **Any suggestions for improving performance in this area:**

OTHER ISSUES

25. **We are interested in the relationships between court staff and the staff of other agencies with which you have contact in the operation of the DVA. Which best describes your relationships with the following:**

	very good	good	neither good nor poor	poor	very poor	N/A
lawyers	☐	☐	☐	☐	☐	☐
providers of programmes for respondents	☐	☐	☐	☐	☐	☐
providers of programmes for applicants	☐	☐	☐	☐	☐	☐
police	☐	☐	☐	☐	☐	☐
women's support agencies, Refuges etc	☐	☐	☐	☐	☐	☐
other (please specify)	☐	☐	☐	☐	☐	☐

26. **Do you consider that you have received adequate training in your responsibilities in relation to the implementation of the DVA?**

☐ yes ☐ no

If no, in what areas do you require training and/or information resources:

27. **How concerned are you about physical safety in the Family Court?**

	very concerned	quite concerned	somewhat concerned	slightly concerned	not at all concerned
the safety of applicants and their children	☐	☐	☐	☐	☐
your safety, or that of judges and other court staff	☐	☐	☐	☐	☐

28. **Any comments on physical safety in the Family Court:**

29. **When people make application under the Act, how satisfied are you that the Act provides 'effective legal protection' for them?**

☐ very satisfied ☐ quite satisfied ☐ satisfied ☐ neither satisfied nor dissatisfied ☐ dissatisfied ☐ very dissatisfied ☐ can't know

30. **Any comments on the effectiveness of the Act:**

31. **From your point of view what 3 changes would most improve the way the DVA is implemented? Please prioritise.**

1.

2.

3.

EXAMPLES OF BEST PRACTICE

1. **As part of the evaluation the researchers hope to identify examples of 'best practice' in different aspects of the implementation of the DVA. Once sites have been identified, the researchers will document the practice which may then be adopted by other courts.**

Please tick any of the following that you consider work very well in your area

☐ taking applications
☐ responding to Maori applicants
☐ responding to Pacific Islands applicants
☐ liaison between court and Police
☐ service of documents by Police or police
☐ liaison with support agencies
☐ referral to programmes for respondents
☐ referral to programmes for applicants
☐ referrals to programmes for children
☐ follow up of non-attendance
☐ processing withdrawals of applications
☐ managing the workload
☐ exchange of information between District Court and Family Court
☐ other (please specify)

2. **Please indicate whether you are happy for one of the researchers to contact you for more details.**

☐ yes

Court

Phone

Name

Thank-you for your participation

EVALUATION OF THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT 1995

FAMILY COURT LAWYERS SURVEY

As you may be aware, Department for Courts and Ministry of Justice have commissioned an evaluation of the implementation of the Domestic Violence Act 1995.

Last year a team of researchers completed a scoping study as part of that evaluation. This year much more extensive research is being undertaken to explore the extent of some of the issues identified in the scoping report. The present phase of the research has five components:

- a national survey of judges, Family Court staff and lawyers working in the area of domestic violence
- examination of the Family Court database and DV database to gather national information about the volume and characteristics of applications under the DVA
- a file study of 1100 files in each of four courts designed to provide sound information on the process of cases through the courts and to identify any local implementation issues
- interviews with judges, court staff, lawyers, programme providers and police in each of the four research sites
- interviews with applicants, respondents, and those who may need the protection of the DVA but have not made an application in each of the research sites.

This survey seeks your views on some of the issues raised in the scoping research, including:

- access to orders
- service of orders
- court processes
- referrals to programmes.

Through the survey and interviews the researchers also hope to identify areas in which particular aspects of the implementation of the DVA are working well. We will document these examples of good practice and make them available to other courts who may wish to adopt them. The final part of this survey asks you to indicate any aspects of the way the DVA is implemented in your area that work particularly well, which may be of further value to the research.

Your response will be confidential. The report will not identify any individuals. The code on the survey form will only be used to let us know who has returned the survey and who requires a follow-up call.

Because we know you are busy, we have made the survey form as simple to complete as possible. Where we have asked you to indicate a proportion of your DVA caseload, we are happy with your best estimate; we do not expect you to give us precise numbers. We welcome any additional comments you would like to make.

The researchers

PLEASE TICK THE BOXES CLEARLY

ACCESS TO ORDERS

1. **About how many clients have you acted for in the last three months who have been either applicants or respondents under the DVA 1995?** *(Please estimate)*

	applicants	*respondents*
none	☐	☐
1 - 5	☐	☐
6 - 10	☐	☐
11 - 20	☐	☐
21 - 30	☐	☐
more than 30	☐	☐

2. **About what proportion of these clients received legal aid?**

	applicants	*respondents*
less than 25%	☐	☐
26 - 50%	☐	☐
51 - 75%	☐	☐
more than 75%	☐	☐
not applicable	☐	☐

3. **In the past three months, as far as you are aware, what proportion of people who came to see you on domestic violence related matters were deterred from taking action by the cost?**

	potential applicants	*respondents*
less than 25%	☐	☐
26 - 50%	☐	☐
51 - 75%	☐	☐
more than 75%	☐	☐
not applicable	☐	☐

4. **In the last three months, how many times have you acted for someone seeking a protection order on behalf of another person — other than a child of the family?**

☐ 0 ☐ 1 ☐ 2
☐ 3 ☐ 4 ☐ 5 or more times

5. **If you have acted for applicants from the following groups, what in your view are the main barriers they face to obtaining protections orders:**

men .....

.....

.....

people in same sex relationships .....

.....

.....

Maori .....

.....

.....

Pacific people .....

.....

.....

people from other cultures .....

.....

.....

people not eligible for legal aid .....

.....

.....

people for who applications have been made by others, eg elderly, children .....

.....

MAKING AN APPLICATION

6. **What proportion of the applications you made over the last three months were:**

without notice	☐
on notice	☐

7. **Were any of those made without notice placed on notice by judge**

☐ yes ☐ no

DEFENDED APPLICATIONS

8. **It seems that many respondents who want to initiate a defence against a protection order do not proceed to a defended hearing. Of the respondents you have seen in the past three months, what proportion:**

	wanted to defend	*lodged a defence*	*went to a defended hearing*
less than 25%	☐	☐	☐
26 - 50%	☐	☐	☐
51 - 75%	☐	☐	☐
more than 75%	☐	☐	☐

9. **Any comments on defended applications from a respondent perspective:**

.....

.....

.....

.....

GROUNDS FOR APPLICATIONS

10. **If you have made applications solely on the grounds of psychological abuse, are there any differences in the way you prepare these than for applications on any other grounds?**

☐ yes ☐ no ☐ not applicable

If yes, please explain: .....

.....

.....

.....

11. **In your view does the court treat an application on the grounds of psychological abuse differently from an application on any other grounds?**

☐ yes ☐ no

If yes, please explain .....

.....

.....

.....

WITHDRAWALS, VARIATIONS AND DISCHARGES

12. If you have acted for an applicant who has wanted to withdraw an application, do you have any comments on withdrawals of applications:

13. If you have acted for a client who has sought a variation to a protection order, do you have comments on variations to protection orders:

14. If you have acted for a client who has sought a discharge of a protection order, do you have any comments on discharges of protection orders:

SERVICE OF DOCUMENTS AND INFORMING RESPONDENTS ABOUT ORDERS

15. For about what proportion of the orders obtained for your clients in the last three months did you arrange service of documents:

☐ less than 25% ☐ 26 - 50% ☐ 51 - 75% ☐ more than 75%

16. Any comments on arranging service:

17. Any comments on means of service:

18. Any comments on timing of service:

19. Of the respondents who have contacted you in the past three months, how would you rate their understanding of the protection order when they contacted you:

☐ very good ☐ good ☐ [illegible] ☐ poor ☐ very poor

PROGRAMME ISSUES

20. When you talk to applicants how often do you tell them about applicants' and children's programmes:

☐ always ☐ usually ☐ about half the time ☐ seldom ☐ never

21. When you do this, how do you usually do it? *(Tick up to 3)*

☐ [illegible] applicant to contact the court
☐ give the applicant the name of a person to contact
☐ give the applicant a list of programme providers
☐ send the applicant pamphlets about programmes
☐ talk to the applicant about programmes
☐ contact court on the applicant's behalf
☐ other (please specify) .....

22. How satisfied or dissatisfied are you that there are suitable programmes in your area for:

	very satisfied	quite satisfied	neither satisfied nor dissatisfied	dissatisfied	very dissatisfied	don't know
Pakeha applicants	☐	☐	☐	☐	☐	☐
Maori applicants	☐	☐	☐	☐	☐	☐
Pacific Islands' applicants	☐	☐	☐	☐	☐	☐
male applicants	☐	☐	☐	☐	☐	☐
other applicants (please state)	☐	☐	☐	☐	☐	☐
children	☐	☐	☐	☐	☐	☐

23. Any comments on programme issues:

EXCUSALS FROM PROGRAMMES AND ENFORCEMENT ISSUES

24. If in the last three months, you have acted for a respondent seeking to be excused from a programme, do you have any comments:

25. How good or bad is police enforcement of protection orders in your area:

☐ very good ☐ good ☐ [illegible] ☐ bad ☐ very bad ☐ don't know

26. Any comments on enforcement of protection orders:

27. In your view is the current domestic violence legislation an improvement on what was in place before?

☐ Yes ☐ No

Please comment: .....

28. From your point of view what 3 changes would most improve the way the DVA is implemented? *Please prioritise.*

1 .....

2 .....

3 .....

Please indicate whether you are

☐ male ☐ female

☐ Pakeha ☐ Maori ☐ of Pacific Islands origin ☐ other - please specify: .....

EXAMPLES OF BEST PRACTICE

1. As part of the evaluation the researchers are hoping to identify examples of 'best practice' in different aspects of the implementation of the DVA. Once sites have been identified, the researchers will document the practice which may then be adopted by other courts.

Please tick any of the following that you consider work very well in your area.

☐ liaising applicants
☐ responding to Maori applicants
☐ responding to Pacific Islands applicants
☐ liaison between counsel and courts
☐ service of documents by police/court/police
☐ liaison with support agencies
☐ referral to programmes for respondents
☐ referral to programmes for applicants
☐ referrals to programmes for children
☐ follow-up of non-attendance
☐ processing withdrawals/discharges
☐ managing the paperwork
☐ exchange of information between District Court and Family Court
☐ other (please specify): .....

2. Please indicate whether you are happy for one of the researchers to contact you for more details.

☐ Yes

Name: .....

Phone: .....

Thank-you for your participation

EVALUATION OF THE IMPLEMENTATION OF THE DOMESTIC VIOLENCE ACT 1995

FAMILY COURT JUDGES SURVEY

As you will be aware, Department for Courts and Ministry of Justice have commissioned an evaluation of the implementation of the Domestic Violence Act 1995.

On the basis of a scoping study, further research is being undertaken to explore the extent of some of the issues identified in the scoping report. The research has five components.

- a national survey of judges, Family Court staff and lawyers working in the area of domestic violence
- examination of the Family Court database and DV database to gather national information about the volume and characteristics of DVA applications
- a file study of 100 files in each of four courts designed to provide sound information on the process of cases through the courts and to identify any local implementation issues
- interviews with judges, court staff, lawyers, programme providers and police in each of the four research sites
- interviews with applicants, respondents, and those who may need the protection of the DVA but have not made an application in each of the research sites

This survey seeks your views on some of the issues raised in the scoping report.

Through the survey and interviews the researchers also hope to identify areas in which particular aspects of the implementation of the DVA are working well. We will document these examples of good practice and make them available to other courts who may wish to adopt them. The final part of this survey asks you to indicate any aspects of the way the DVA is implemented in your area that work particularly well and which may be of further value to the research.

Your response will be confidential. In the report no individuals or courts will be identified unless they are used as one of 'best practice' examples. The code on the survey form will only be used to let us know who has returned the survey, and who needs a follow-up call.

Because we know you are busy, we have made the survey form as simple to complete as possible. We do appreciate you taking the time to do this, and would welcome any additional comments you want to make.

The researchers

MAKING APPLICATIONS

1. **One of the aims of the Act is to ensure that access to the Court is "as speedy, inexpensive and simple as is consistent with justice." How often do you think this is the case for applicants under the DVA 1995?**

   ☐ always ☐ usually ☐ more than half the time ☐ seldom ☐ never ☐ don't know

2. **Do you have any comments on this:**

   ……

3. **Please give the main reasons you require a without notice application to be put on notice:**

   ……

4. **In the past year approximately how many mutual protection orders have you made?**

   ☐ None ☐ 1 - 5 ☐ 6 - 10 ☐ 11 - 20 ☐ more than 20

SERVICE OF DOCUMENTS

5. **How satisfied or dissatisfied are you that respondents understand the implications of the orders that are served on them?**

very satisfied	satisfied	neither satisfied nor dissatisfied	dissatisfied	very dissatisfied	don't know
☐	☐	☐	☐	☐	☐

6. **Do you have any comments on service of documents and/or explanation of orders:**

   ……

DEFENDED APPLICATIONS

7. **Do you have any comments on the 42-day rule?**

   ……

8. **Relatively few applications reach a defended hearing, although a higher proportion of respondents initiate a defence. Why do you think this is?**

   ……

WITHDRAWALS

9. **Some applicants seek to withdraw applications before the final order is granted. Which of the following options is closest to your own view:**

   ☐ such applications should be accepted at face value
   ☐ convincing evidence must be provided for the threat of violence no longer exists
   ☐ other (please specify) ……

10. **Do you have measures in place to ensure that an application to withdraw is freely made?**

    ☐ yes ☐ no

    If so, what are these measures? ……

INFORMATION

11. **How satisfied or dissatisfied are you with the information you have available when considering the following:**

	very satisfied	satisfied	neither satisfied nor dissatisfied	dissatisfied	very dissatisfied
without notice applications	☐	☐	☐	☐	☐
defences	☐	☐	☐	☐	☐
withdrawals	☐	☐	☐	☐	☐
discharges	☐	☐	☐	☐	☐

    Please suggest improvements you would like to see to the quality of the information you have available

    without notice applications ……

    defences ……

    withdrawals ……

    discharges ……

PROGRAMME ISSUES

12. **Please give the most common reasons why you would excuse a respondent from attending a programme, or not impose a direction to attend a programme in the first place.**

    ……

13. **How satisfied or dissatisfied are you with the way the court follows up respondents who fail to attend programmes.**

very satisfied	satisfied	neither satisfied nor dissatisfied	dissatisfied	very dissatisfied	don't know
☐	☐	☐	☐	☐	☐

14. Do you have any comments on the adequacy of programmes or on programme attendance issues:

ENFORCEMENT

15. Do you have any comments on the enforcement of protection orders?

SAFETY

16. How concerned are you about applicants', judges' or court staff's physical safety in the Family Court, or the Court environs?

	very concerned	*quite concerned*	*somewhat concerned*	*slightly concerned*	*not at all concerned*
applicants' safety and that of their children	☐	☐	☐	☐	☐
your safety or that of other staff	☐	☐	☐	☐	☐

17. Do you have any comments on safety in the Family Court and its environs:

18. In your view does the Act have any shortcomings in meeting the needs of the following groups?

Maori

Pacific peoples

applicants of other cultures

those making applications on behalf of others

applicants from same sex relationships

male applicants

19. When people make applications under the Act how satisfied or dissatisfied are you that the Act meets its objective of providing 'effective legal protection' for the victims of domestic violence?

very satisfied	*satisfied*	*either satisfied or dissatisfied*	*dissatisfied*	*very dissatisfied*	*don't know*
☐	☐	☐	☐	☐	☐

20. Do you have any comments on how well the Act provides 'effective legal protection'?

21. In your view is the current domestic violence legislation an improvement on what was in place before?

☐ yes ☐ no

Do you have any comments?

22. From your point of view what 3 changes would most improve the way the DVA is implemented?
Please prioritise

1

2.

3

EXAMPLES OF BEST PRACTICE

As part of the evaluation the researchers hope to identify examples of 'best practice' in different aspects of the implementation of the DVA. Once sites have been identified, the researchers will document the practice which may then be adopted by other courts.

Please tick any of the following that you consider work very well in your area.

- ☐ making applications
- ☐ responding to Maori applicants
- ☐ responding to Pacific Islands applicants
- ☐ liaison with counsel
- ☐ service of documents
- ☐ referral to programmes for respondents
- ☐ referral to programmes for applicants
- ☐ referrals to programmes for children
- ☐ follow-up of non-attendance
- ☐ processing withdrawals/discharges
- ☐ managing the paperwork
- ☐ exchange of information between District Court and Family Court
- ☐ other please specify

Please indicate whether you are happy for one of the researchers to contact you for more details.

☐ yes

Court

Name

Phone

Thank-you for your participation