

Family Violence (Amendments) Act 2018 and Family Violence Act 2018:

Background information for media

Background

The Family Violence (Amendments) Act 2018 and the Family Violence Act 2018 improve the legislative framework for addressing family violence by giving priority to the safety of victims, including children, and preventing perpetrators from inflicting family violence. The Family Violence Act 2018 replaces the Domestic Violence Act 1995.

The new legislation is taking effect in two phases:

- Phase one (3 December 2018) strengthened the criminal law by:
 - introducing three new offences
 - making victim safety the primary consideration in bail decisions, and
 - making it easier for complainants to give evidence by video recording.
- Phase two changes (1 July 2019) include those in the Family Violence Act and the Family Violence (Amendments) Act, which strengthen family law by:
 - modernising the definition of family violence
 - providing principles to guide decision-making
 - improving the visibility of family violence in the justice system
 - naming Family Violence Agencies
 - extending Police Safety Orders and increasing support for the bound person
 - improving access to Protection Orders, Property Orders and Safety Programmes
 - removing legal barriers to information sharing between agencies, and
 - protecting victims from offenders on remand.

The new legislation is one part of a whole-of-government work programme to transform the response to family violence.

Updated definitions

The term 'domestic violence' is replaced with family violence to reflect that violence happens in a range of intimate and family relationships both inside and outside the home and that it is not a 'domestic' or private matter.

The definition of family violence is expanded to include coercive or controlling behaviour. This means behaviour that is done against a person to coerce or control them and causes them cumulative harm.

The meaning of 'family relationship' in the Act has been expanded to clarify people in a care/carer relationship may be included. This means that a carer who is in a close personal relationship with the person they care for could be subject to a Protection Order or be charged with a family violence offence under the new law. This reinforces the need for people with disabilities, or the elderly, to be protected from abuse and the unique dynamics of those relationships.

A close personal relationship is determined by the nature, intensity and duration of the relationship, how much time is spent together, where and in what way. It does not need to include a sexual relationship.

The Family Violence Acts describes family violence as physical, sexual or psychological. New examples of family violence are added:

- abusing pets or threatening to abuse pets or animals of importance to a person is a common tactic to control or coerce a partner or family members
- withholding medicine or medical equipment
- dowry abuse: dowry is money, jewellery, gifts or property brought by a bride to her husband on their marriage. Dowry abuse is when violence occurs around whether dowry is given, how, or how much it is.

Including dowry abuse in the new Act gives visibility to the experience of women in ethnic communities. It reminds practitioners of the need to stay alert to different forms of coercion, as people in different cultural groups may experience different forms of abuse. Women in ethnic communities have spoken about the need for services to better understand the issues they face and ensure they are not isolated from helping agencies.

Psychological abuse includes threats, intimidation, stalking, harassment, damage to property and financial or economic abuse.

Other forms of psychological abuse are allowing a child to see or hear violence and disrupting the care of someone who needs it because of their age, disability or health condition.

Principles

A set of 15 principles is included in the legislation and will guide decision making by the courts, Police and family violence agencies. The principles are expected to inform practice in the wider family violence sector, as well as having direct application to decisions made under the Family Violence Act. They are designed to bring the themes and purposes of the new legislation into the everyday interpretation and application of the new laws.

The principles give priority to victim safety and stability at all times, in particular recognising the long term impacts on children when violence is happening around them.

Victims' views should be considered unless doing so may put them at risk. Perpetrators should face effective responses to, and sanctions for, family violence and have access to services to help them stop being violent. Other principles relate to ensuring people vulnerable due to age, disability or health are responded to appropriately and that responses are culturally suitable, in particular that responses involving Māori should reflect tikanga Māori.

Family Violence Flag

Family violence offences will be flagged in the criminal justice system and will remain on an offender's criminal record. The flag gives visibility to family violence offences. It will inform and guide Judges and Police, so they can respond to the particular dynamics of family violence when they make decisions to manage risks related to the perpetrator and the safety of victims.

Family Violence Agencies

The new law names 10 government agencies and a range of social service practitioners as family violence agencies. They are:

- ACC, Department of Corrections, Ministry of Education, Ministry of Health, Housing NZ, Immigration NZ, Ministry of Justice, NZ Police, Oranga Tamariki, Ministry of Social Development
- Non-government agencies that receive government funding for family violence services either to protect and help victims or support people to stop using violence
- School boards
- Licensed early childhood services
- Teachers holding a practising certificate
- Registered health practitioners
- Registered social workers
- Registered community housing providers
- District Health Boards (DHBs).

Family Violence Agencies are expected to collaborate to identify, stop, prevent and respond to family violence. The law requires them to consider sharing information for the purposes of risk and needs assessments or planning responses to family violence.

Victims and survivors must be included in decisions about information sharing wherever possible.

Agencies and practitioners are receiving written guidance and tools to support safe and appropriate information sharing. If practitioners have questions about the family violence information sharing guidance, or the Oranga Tamariki guidance, they can contact the joint helpline on **0508 INFOSH (463 674)**. This helpline is to assist agencies and practitioners to use the guidance documents and apply the new laws.

Note that most of the Family Violence Agencies named in law are also members of the Joint Venture. Joint Venture agencies include the Department of Prime Minister and Cabinet, Oranga Tamariki, Health, Te Puni Kōkiri, Social Development, Education, Justice, Police, ACC and Corrections. The Department of Prime Minister and Cabinet and Te Puni Kōkiri are not named in law as Family Violence Agencies. Immigration is a Family Violence Agency but is not a member of the Joint Venture.

Protection Orders

Changes have been made to Protection Orders to improve uptake and make them work better for both applicants and respondents. A new, user-friendly application form has been developed with guidelines for both applicants and respondents.

Standard conditions contained in all Protection Orders have been simplified and will apply to all Protection Orders issued before and after the new legislation takes effect on 1 July 2019.

No-contact: Protection Order

A condition of a Protection Order is that the respondent can't contact the protected person without their permission. The new legislation clarifies how permission for contact can be arranged.

The Act clarifies that contact by internet site or other digital channel such as messages on social media is still contact and is a breach of a Protection Order unless consent has been given.

Prohibited behaviours

All forms of family violence are prohibited by a Protection Order, including harassing behaviours such as stalking or loitering in places the protected person goes.

Under new legislation hurting pets (or other loved animals), dowry abuse and disrupting medical care have been added as examples of family violence to the existing definition.

No-contact on Remand

The court will be able to impose a no-contact condition on a defendant who is remanded in custody for a family violence offence.

A breach of the no-contact order will be reported to the court by the Department of Corrections or Police and may be taken into consideration in any application for bail by the defendant over his or her lifetime for any offence, not only a family violence offence.

Discharging Protection Orders

Criteria has been created to guide Judges when considering an application to discharge a Protection Order, including a temporary Protection Order.

Changes to Other Orders

Changes have been made to other court orders (Occupation Orders, Occupation, Tenancy and Furniture Orders) to support the safety and stability of protected people and their children. A breach of a Property Order becomes an offence and will be treated as a breach of a Protection Order.

Access to Protection Orders: Young People

Changes have been made to Protection Orders that relate to young people aged under 18 years. A young person aged 16 or over may apply for a Protection Order without a representative. The eligible age was previously 17.

Protection Orders may be issued against a young person under the age of 18 in special circumstances. This is intended to help young couples in particular. These changes align with the definition of a child in the Oranga Tamariki Act as a person aged under 18 years.

Sentencing

Judges will take into account any aggravating factors that distinguish family violence from other offending, for example:

- a. that the offender was subject to a Protection Order at the time of offending
- b. the offending was part of a pattern of offending
- c. the offending was witnessed by children
- d. strangulation was a feature of the offending.

Overseas Protection Orders

Changes have been made to overseas Protection Orders, so they can be more effectively enforced. Overseas Protection Orders are:

- issued in another country, but held by a protected person living in New Zealand
- issued in New Zealand but held by a protected person living in another country.

Transfer of Information

Information may be transferred between jurisdictions, that is between the criminal court and the family court. This means Judges will have more information about a perpetrator's violent behaviour when making decisions about a victim and their children's safety.

The family court will be able to request information from the criminal court when it is relevant to CoCA (Care of Children Act) proceedings and Protection Order applications.

The criminal court will be able to request information from the family court to be considered in bail decisions when a defendant is appearing on family violence charges.

Children and Young People

All children of an applicant will be covered by a Protection Order. Children born after an Order is granted will be automatically included; children not living with the applicant can be included on request.

Children will be able to ask to attend a safety programme independently of their parents or carers attending a safety programme. This will help children and young people deal with the trauma caused by exposure to family violence.

Safety of Children

Judges can impose protective conditions for handover arrangements to keep children safe, whenever family violence has occurred, including psychological violence. The family court will be able to respond more effectively to safety concerns reported by a non-violence programme provider, including varying a Parenting Order where there are concerns about the safety of children.

Protection for Vulnerable People

A small number of NGOs will be funded to apply for Protection Orders on behalf of people who are unable to apply themselves due to trauma or fear.

Police Safety Orders

When Police attend a family violence call out, they can arrest the perpetrator or primary aggressor, and also issue a Police Safety Order.

Police Safety Orders have been extended to a maximum of up to 10 days, from the current 5 days maximum. This allows more time for both the bound person and the protected person to access support.

PSOs can be issued against a child over 16 years old, in exceptional circumstances. Police and Oranga Tamariki will work together in these cases.

Police will be able to direct bound people to attend a risk and needs assessment. Failure to comply with this direction will be treated as a breach of the PSO. This new provision is being tested in three sites across New Zealand. Testing will conclude in August 2019 and the results will inform national roll out of the new risk and needs assessment service.

Visit www.justice.govt.nz or email familyviolencelaw@justice.govt.nz for more information