

Domestic Violence and the Law





INTRODUCTION

This pamphlet provides a brief overview of how domestic violence is dealt with in the courts and how protection orders can help keep people safe from domestic violence in New Zealand.

This pamphlet tells you about:

- what domestic violence is
- what a protection order is
- how protection orders are made
- who will protection orders protect
- what the conditions of a protection order are
- how long the protection order will last for
- what happens if a protection order is breached
- free stopping violence programmes
- how protection orders affect arrangements for the care of children
- what property orders are
- what a police safety order is
- what the effect of a police safety order is
- what happens if a police safety order is breached, and
- where to go for more information and advice.

WHAT IS DOMESTIC VIOLENCE?

Domestic violence is defined by the Domestic Violence Act 1995 as including:

Physical abuse

behaviours like punching, slapping or kicking a person.

Sexual abuse

any unwanted sexual contact/touching.

Psychological abuse

for example stalking a person, damaging property, threatening violence or abuse, harassing, scaring, or intimidating a person. It can include trying to

control someone's life by constantly humiliating them or controlling someone's money, time, car or contact with friends and family as a way of having power over them. If the respondent allows any children to witness the domestic violence this is psychological abuse against them.

WHAT IS A PROTECTION ORDER?

A protection order is made by a judge to protect people from domestic violence.

A judge can make the order if they are satisfied that:

- there has been domestic violence, and
- the order is needed to protect a person and any children that usually live with them from the person who has been violent.

HOW ARE PROTECTION ORDERS MADE?

FAMILY COURT

A person who wants protection from domestic violence can apply for a protection order through the Family Court. The Family Court can make a temporary protection order, usually on the same day, if the situation is urgent. If the application is not urgent, the respondent will have the opportunity to tell their side of the story before the Family Court makes a final protection order.

To apply for a protection order you need to be in a domestic relationship with the person being violent. "Domestic relationships" are defined by the Domestic Violence Act 1995 as:

- married couples
- de facto couples
- gay and lesbian couples
- couples in civil unions
- parents and children
- members of the same family or whānau
- flatmates or other people who live in the same house or flat, and

- people in a close personal relationship, whether or not they live together.

CRIMINAL COURT

The **criminal court** can also make a protection order to protect victims from domestic violence. The criminal court can make:

- a temporary protection order if someone breaches a **police safety order**
- a final protection order if someone is convicted of a domestic violence offence.

WHO WILL A PROTECTION ORDER PROTECT?

The protection order will protect the person who applied for the order or the victim of the offence or the person who was protected by the police safety order. This person is called the applicant. Any children who live with them are also protected.

Any child who turns 17 while the protection order is in place is protected if they live with the applicant; no matter when the protection order was made.

The order can also be made to protect other people who need protection from the respondent, like a new partner, older children or a flatmate. These people will be named on the order.

The protection order will protect them from the respondent (the person who is being violent) and, if necessary, someone else who the respondent has encouraged to be violent towards the protected people (the associated respondent).



WHAT ARE THE CONDITIONS OF A PROTECTION ORDER?

The protection order will establish conditions (rules) that the respondent must not breach (break). If the respondent breaches any of the conditions in the order, they can be arrested and charged by Police with a **criminal offence**.

NON-VIOLENCE CONDITIONS

The respondent to the protection order must not:

- abuse (physically, sexually or psychologically) the person(s) protected by the order
- threaten to physically or sexually abuse the person(s) protected by the order
- damage, or threaten to damage the protected person's property, or
- encourage anyone else to abuse or threaten the person(s) protected by the order.

NON-CONTACT CONDITIONS

The respondent to the protection order must not:

- go to the protected person's home, workplace or school
- hang around where the protected person goes often or regularly, like where they work, their neighbourhood, or where they study.
- follow the protected person(s)
- try to stop the protected person(s) from coming or going somewhere, or



- phone, text, email, send letters, fax or contact the protected person(s) in any other way.

The non-contact conditions don't apply if the respondent and the applicant live together. The applicant can tell the respondent at any time that they no longer want to live with them. If this happens the non-contact conditions will be put in place.

The respondent must leave if asked, if they do not they are breaching the protection order and can be arrested and charged with a criminal offence.

EXCEPTIONS

The respondent may contact the protected person(s):

- if there is an emergency and the contact is reasonably necessary
- if the contact is allowed under a court order (such as a parenting order) or a written parenting agreement between respondent and the adult protected person
- if the contact is listed as a special condition of the protection order, or
- to attend a family group conference under the Children, Young Persons and Their Families Act 1989.

SPECIAL CONDITIONS

The protection order may contain special conditions, for example, contact arrangements allowing the respondent to have contact with their children.

WEAPONS

When a temporary protection order is made, the respondent must give the Police:

- any firearms licences they have, and
- any weapons they have. Weapons are any firearm, airgun, pistol, restricted weapon, ammunition or explosive.

If the respondent is subject to a final protection order, their firearms licence will be automatically revoked by Police.

STOPPING VIOLENCE PROGRAMMES

When a protection order is made, in most cases the respondent will be directed by the court to attend a stopping violence programme. Information about the programme will be on the protection order (ie when and where they have to report to a programme provider).

The stopping violence programme will teach the respondent about:

- domestic violence and how it affects protected persons
- how the Domestic Violence Act 1995 works, and
- skills for living without violence and for dealing with any future arguments or conflict in better ways.

The stopping violence programme may be for an individual or a group of respondents. Respondents will be required to attend the programme often on a weekly basis over a period of several weeks. The programme is free.

HOW LONG WILL THE PROTECTION ORDER LAST FOR?

A temporary protection order lasts for three months unless the respondent successfully defends it. After three months it automatically becomes a final protection order.

A final protection order does not expire.

If the applicant dies, any children under 17 stay protected.

Only the court can cancel the order, but the applicant or respondent must ask the court first.

WHAT HAPPENS IF THE CONDITIONS OF THE PROTECTION ORDER ARE BREACHED?

Breaching the conditions of a protection order is a criminal offence. If a respondent is charged by Police with a breach they will have to appear in the criminal court.

Respondents may get a criminal record and could be **sent to prison for up to two years.**

It is also a criminal offence if respondents do not attend and complete a stopping violence programme. If respondents are convicted in a criminal court of this offence they could be **fined up to \$5,000 or sent to prison for up to six months AND** they'll still have to attend a programme.

FREE DOMESTIC VIOLENCE EDUCATION AND SUPPORT PROGRAMMES

Protected people (including children) can access domestic violence education and support programmes from the Family Court that are **free and confidential**.

These programmes can help protected people feel more confident, and help them to move forward in life. Most importantly the programmes can teach protected people how to keep themselves safe from domestic violence in the future. The programmes also give protected people detailed information about domestic violence, its effects on families and more information about how protection orders work.

Programmes developed specifically for children can help them to understand and deal with the violence and its effects on them and the family. Although these programmes cover very serious issues they are designed to be interactive and fun so that children will enjoy the programme.



Programmes for protected people are very different from programmes that the respondent must attend.

If protected people want to attend a programme they should talk to either their lawyer or Family Court staff. They will make sure the protected person gets access to the nearest available programme.

HOW DOES A PROTECTION ORDER AFFECT ARRANGEMENTS FOR THE CARE OF CHILDREN?

A protection order protects any children under 17 who usually or regularly live with the applicant. Because of the non-contact conditions in a protection order, the respondent usually can't have any contact with them.

This means that the children will usually stay with the applicant or someone else the court orders.

The respondent can't usually have contact with their children unless:

- it is allowed under a court order, or under a written parenting agreement, or
- the applicant has agreed to live with the respondent.

The court can review any care or contact orders, especially if a temporary protection order is made. This means both parties may have to go to court.

PARENTING ORDERS MADE UNDER THE CARE OF CHILDREN ACT

Both the applicant and respondent can apply to the Family Court for a parenting order under the Care of Children Act 2004. A parenting order can decide who has day-to-day care of the children and who can have contact with them.

A judge has to be satisfied that the children will be safe with the respondent to allow any level of contact. The judge may say that the respondent can only have contact with their children when it's supervised by another adult.

If the judge allows supervised contact, then the parenting order will say when the respondent can see their children.

Often an application for a parenting order is made at

the same time as the protection order application, unless the protection order has been made in the criminal court. In that case the applicant or the respondent will have to apply separately to the Family Court.

For more information about parenting orders, see the pamphlet **Parenting Orders** (Courts/005).

WHAT ARE PROPERTY ORDERS?

Property orders say who can live in a particular house or flat and who can keep the furniture and appliances, for example the TV or stereo. The furniture covered by the property order will be listed in the order. The applicant applies to the Family Court for property orders.

A judge will make the property order if the protected person needs it, or if it is in the best interests of the children.

Property orders are usually applied for at the same time as the protection order and it can be made by a judge without notice or on notice to the respondent. If a protection order has been made in the criminal court then an application for a property order will have to be made separately by the protected person in the Family Court.

Orders dealing with who lives in the home

An **occupation order** gives the applicant the right to live in the house or flat where they are now living. The order stops the respondent from living there without the applicant's consent.

A **tenancy order** says that the respondent is no longer the tenant of a house that they have been renting with the applicant. The applicant can continue living there and the order stops the respondent from living there.

If the applicant has an occupation or tenancy order the respondent must leave the property named on the order. If the respondent stays in the property, the District Court can issue a warrant for arrest and Police can come and remove the respondent. The respondent can also be charged with trespassing.

If they are convicted of this offence they may be

sent to prison for up to three months.

Orders dealing with furniture

If the applicant wants to stay in the house or flat they share with the respondent, they can apply to the Family Court for an **ancillary furniture order** to let them keep the furniture and appliances in the house or flat.

If the applicant wants to move out, they can apply for a **furniture order** to let them take all or some of the furniture and appliances with them to their new home.

It doesn't matter if the respondent or the applicant owns the furniture.

WHAT IS A POLICE SAFETY ORDER?

A police safety order (PSO) is issued in circumstances where the Police believe on reasonable grounds that domestic violence has occurred or might occur.

The order lasts for up to five days but more usually one or two days.

The purpose of a PSO is to protect the person at risk (the protected person) from violence, harassment or intimidation. The order stays in force until the expiry time/date listed on the order.

The Police do **not** need the consent of the person at risk to issue the order.

WHAT IS THE EFFECT OF A POLICE SAFETY ORDER?

When a PSO is made, the respondent must leave the address while the PSO is in force, even if they own the address and/or normally live there.

The respondent must not assault, threaten, intimidate or harass the protected person or encourage anyone else to do the same.

The respondent must not follow, stop or contact the protected person in any way, in any place, either at home, at work, or anywhere else the protected person visits often.



The respondent must surrender all firearms and their firearms licence to the Police for the period of the PSO.

The PSO also protects any children living with the person at risk and any conditions of parenting orders or agreements permitting access or care by the respondent are suspended.

The Police may detain the respondent for up to two hours to issue and serve the PSO.

There is no right of appeal.

WHAT HAPPENS IF SOMEONE BREACHES A POLICE SAFETY ORDER?

If the respondent breaches the PSO, the Police can charge the respondent and put them before the criminal court.

The court may issue a warrant to arrest the respondent if it is required to bring them before the court.

The court may:

- release the respondent without any further order
- direct the Police to issue another PSO, or
- issue a temporary protection order (if the person at risk does not object).

The court does not need an application from anyone to issue a temporary protection order.

Other offences, such as assaults or property damage will be investigated and charges laid where sufficient evidence exists.

HOW TO GET MORE INFORMATION AND ADVICE

INFORMATION FROM THE FAMILY COURT

For more information about protection orders and any Family Court processes look online at the Family Court website www.justice.govt.nz/family or contact the nearest Family Court.

INFORMATION FROM THE POLICE

Information about protection orders and police safety orders is on the Police website at www.police.govt.nz.

GETTING LEGAL ADVICE FROM A LAWYER

A lawyer can help people understand what a protection order means and how to get a protection order in the Family Court.

Lawyers can be found by looking under “Lawyers” or “Barristers & Solicitors” in the Yellow Pages, on www.familylaw.org.nz. The Family Court, District Law Society or Community Law Centre can also make a recommendation.

GETTING LEGAL AID

Anyone who needs a lawyer but can't afford one may be able to get legal aid. This is where the Government pays some or all of the lawyer's bills. Sometimes you may have to pay some or all of it back.

Information about Legal Aid is available from a lawyer or by contacting your local Legal Aid Services office, based at your local District Court (see the blue Government pages at the front of the phonebook), or by visiting the Legal Aid website: www.justice.govt.nz/services/getting-legal-aid





www.justice.govt.nz/family