

# Responding to a Protection Order



Information for people who have had a protection order or an application for an order made against them

## RESPONDING TO A PROTECTION ORDER

If you have had a protection order made against you or you are subject to a protection order application (ie you are a respondent to a protection order) this pamphlet will tell you:

- what a protection order is
- what domestic violence is
- what a protection order means for you
- about the programme you will be required to attend
- what happens if you breach the protection order
- your rights if a temporary protection order is made against you
- your rights if you've been served with an application for a final protection order
- about property orders
- how the protection order affects your contact with your children, and
- how to get more information and advice.

### 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:

- domestic violence has occurred, 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, you will have the opportunity to tell your side of the story before the Family Court makes a final protection order.

### 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 you breach a **police safety order**, or
- a final protection order if you are convicted of a domestic violence offence.

## WHO IS PROTECTED BY THE PROTECTION ORDER?

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 usually or regularly live with them are also protected.

The order can also be made to protect other people who need protection from you. These people will be named on the order.

## WHAT IS DOMESTIC VIOLENCE?

Domestic violence may be:

### Physical abuse

For example punching, slapping or kicking.

## 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 you have allowed any children to witness the domestic violence this is psychological abuse against them.

## WHAT DOES THE PROTECTION ORDER MEAN?

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

## NON-VIOLENCE CONDITIONS

As a respondent to the protection order, you 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

As a respondent to the protection order, you 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 you are still living with the applicant. The applicant can tell you at any time that they no longer want you to live with them. If this happens the non-contact conditions will be put in place.

If the applicant asks you to leave the house, you **must** leave. If you do not then you are breaching the protection order and can be arrested or charged with a criminal offence.

## EXCEPTIONS

You may contact the protected person(s) if:

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

## SPECIAL CONDITIONS

The protection order may contain special conditions to deal with your particular situation, like arrangements for you to have contact with your children.

You need to read the protection order to see if it includes any special conditions.

## WEAPONS

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

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

If you are subject to a final protection order, your firearms licence will be automatically revoked by Police.

## STOPPING VIOLENCE PROGRAMMES

When a protection order is made against you, you will usually have to attend a programme about living without violence. Information about the programme will be on the protection order (ie when and where you have to report to a programme provider).

The stopping violence programme will teach you about:

- domestic violence and how it affects everyone
- 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 with a group of people or just for you. You will be required to attend the programme, often on a weekly basis, over several weeks. The programme is free.



## HOW LONG WILL THE PROTECTION ORDER LAST?

A temporary protection order will last for three months unless you successfully defend it. After three months the order becomes a final protection order.

A final protection order remains in force permanently, unless you or the applicant asks the Family Court to discharge it and the Court agrees to this.

## WHAT HAPPENS IF YOU BREACH THE PROTECTION ORDER?

Breaching the conditions of a protection order is a criminal offence. If you are charged by Police with a breach you will be required to appear in the criminal court.

If you breach a protection order, you will get a criminal record and you may be **sent to prison for up to two years**.

It is also a criminal offence if you do not attend the stopping violence programme. If you are convicted of this offence you may be **fined up to \$5,000 or sent to prison for up to six months**.

## WHAT HAPPENS IF YOU'RE SERVED WITH A TEMPORARY PROTECTION ORDER?

You can go to the Family Court to defend the order before it becomes final, if you think your side of the story hasn't been heard. If you want to do this you should contact a lawyer as soon as possible to help you.

If you do nothing then the protection order will automatically become a final protection order **three months** after the temporary order was made.

If you do not want to attend a stopping violence programme you can object to the direction in the Family Court. Your objection must be received by the Family Court within **five days** of receiving notice of the protection order. If you want to do this you

should contact a lawyer as soon as possible to help you.

The Family Court will set a date for when your objection will be heard. You don't have to go to the programme until a judge makes a decision on your objection.

### WHAT HAPPENS IF YOU'RE SERVED WITH A NOTICE THAT AN APPLICATION HAS BEEN MADE FOR A FINAL PROTECTION ORDER?

You may be notified by the Family Court that someone has applied for a protection order but it hasn't yet been made by the Court.

You have the right to tell the Family Court why you think it shouldn't make a protection order **before** the decision is made in Court. If you want to defend the application it's important that you speak to a lawyer as soon as possible to help you prepare. Your lawyer will file forms at the Family Court and a date will be set to attend Court.

You will have a chance to tell your side of the story and then a judge will decide whether a final order should be made.

You can also tell the Court if you think you shouldn't have to go to a stopping violence programme if the order is made. Your lawyer can help you make this application and a judge will decide whether you have to attend.

### IF I'VE HAD A PROTECTION ORDER MADE AGAINST ME CAN I STILL HAVE CONTACT WITH MY CHILDREN?

A protection order protects any children under 17 who usually or regularly live with the adult protected person. Because of the non-contact conditions of the protection order **you usually can't** have any contact with them.

If you and the adult protected person have children then the adult protected person will usually have sole day-to-day care of them for as long as the protection order is in force.

You **can have contact** with your children if:

- this is allowed under a **parenting order** or some other court order, or under a written parenting agreement that's been signed by both you and the adult protected person, or
- the applicant has agreed to live with you and so the non-contact conditions of the protection order don't apply.

### WHAT'S A PARENTING ORDER?

A parenting order will say who has day-to-day care of the children and who can have contact with them. You can apply for a parenting order to give you day-to-day care or contact with the children.

A judge has to be satisfied that the children will be safe with you to allow any level of contact. If you are subject to a protection order then you have been violent and so the judge may say that you can only have contact with your children when it's supervised by another adult.

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

### 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.

## OCCUPATION & TENANCY ORDERS

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

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

If the applicant has an occupation or tenancy order you must leave the property named on the order. If you stay in the property, the District Court can issue a warrant for your arrest and Police can come and remove you. You can also be charged with trespassing. If you are convicted of this offence you may be **sent to prison for up to three months**.

## FURNITURE ORDERS (INCLUDING ANCILLARY FURNITURE ORDERS)

If the applicant wants to stay in the house or flat they share with you, 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 you or the applicant owns the furniture.

## HOW TO GET MORE INFORMATION AND ADVICE

### INFORMATION FROM THE FAMILY COURT

For more information about protection orders and the Domestic Violence Act 1995 go onto the Family Court website [www.justice.govt.nz/family](http://www.justice.govt.nz/family) or contact your local Family Court.

Family Court staff can give you general information about protection orders but they can't give you legal advice about your particular situation.

The **forms you need to defend a protection order** or to oppose programme attendance can be found on the Family Court website.

### GETTING LEGAL ADVICE FROM A LAWYER

A lawyer can help you understand what the protection order means for you and together you can figure out what you should do next.

Choose a lawyer who is familiar with the Domestic Violence Act 1996 and the Family Court. Look in the Yellow Pages or on [www.familylaw.org.nz](http://www.familylaw.org.nz). Or you could ask about suitable lawyers at your local Family Court, District Law Society or community law centre.

### 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).

You can get information on **legal aid** 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)
- visiting the Legal Aid Services pages on the Ministry of Justice website at [www.justice.govt.nz/services/getting-legal-aid](http://www.justice.govt.nz/services/getting-legal-aid), or
- seeing a lawyer and discussing legal aid with them.

Legal aid is available for all Family Court cases, except dissolution of marriage (divorce).



[www.justice.govt.nz/family](http://www.justice.govt.nz/family)