

# Applying for a Protection Order



Information for people applying for  
protection orders under the Domestic  
Violence Act

# APPLYING FOR A PROTECTION ORDER IN THE FAMILY COURT

## ENSURING YOU AND YOUR FAMILY ARE SAFE

Deciding to take action against someone who has been violent towards you takes courage. A protection order can help to keep you and your children safe from domestic violence.

Remember that you are not alone, thousands of New Zealanders have successfully applied for protection orders. When domestic violence stops everyone is better off, including you, your children, your family/whānau and even the person who is being violent.

This pamphlet will tell you how to apply for a protection order in the Family Court and what a protection order will mean for you and your family. It will also tell you where you can go for further help and support as you work your way through the court process.

**REMEMBER, IF YOU FEEL YOU ARE IN DANGER CALL THE POLICE (DIAL 111) AND THEY WILL RESPOND QUICKLY.**

Specifically, this pamphlet tells you:

- what domestic violence is
- what a protection order is
- who the protection order will protect
- who can apply for a protection order
- how to apply for a protection order
- the difference between an urgent and non-urgent protection orders
- about appearing in Court
- what having a protection order means

- what happens if the protection order is breached
- what happens if you want to continue to live with the respondent
- about psychological violence
- about making care arrangements for your children
- what property orders are
- how protection orders help care for your children
- about free support for you and your children, and
- how to get more information, support and advice.

## WHAT IS DOMESTIC VIOLENCE?

Domestic violence may be:

### **Physical abuse**

behaviours like punching, slapping or kicking.

### **Sexual abuse**

any unwanted sexual contact/touching you do not want.

### **Psychological abuse**

for example stalking, damaging property, threatening violence or abuse, or harassing, scaring,



or intimidating a person. It can include trying to control your life by constantly humiliating you or controlling your money, time, car or contact with friends and family as a way of having power over you. If the respondent has allowed 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 you 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 you and any children that usually live with you from the person who has been violent.

### WHO WILL THE PROTECTION ORDER PROTECT?

A protection order is made to protect you and any children under 17 that usually live with you (the protected person) from:

- the person who is being violent (the respondent), and
- if necessary, any person who the respondent has encouraged to be violent towards you or your children (the associated respondent).



A protection order can also be made to protect other people who need protection from the respondent if they are named in your protection order application. For example, older children, a new partner, or a flatmate, if they are also at risk from the respondent or associated respondent's violence.

## WHO CAN APPLY FOR A PROTECTION ORDER?

To apply for a protection order you need to be in a domestic relationship with the person being violent. Domestic relationships include:

- 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.

## APPLYING FOR A PROTECTION ORDER

To apply for a protection order you need to file an application with the nearest Family Court. It is a good idea to get help from a **lawyer** or your local **community law centre** to help you fill out the application forms and write your affidavit. An affidavit is a sworn statement that says why you need a protection order.

If you don't already have a lawyer you could look under "Lawyers" and "Barrister & Solicitors" in the Yellow Pages or visit [www.familylaw.org.nz](http://www.familylaw.org.nz). You may also be eligible for legal aid to help pay for some or all of your legal bills.

You can get the application forms and detailed information on how to complete the forms directly from your local Family Court, or the Family Court website: [www.justice.govt.nz/family](http://www.justice.govt.nz/family).

## WHAT SHOULD I DO IF I NEED A PROTECTION ORDER URGENTLY?

If you need protection right away, you can apply for a protection order **without notice**. This means that the respondent isn't told that you've applied for a protection order until after a temporary protection order has been made by the Family Court.

The Family Court can usually make a temporary protection order on the same day you apply for it. The judge will not need to see you in Court and will make their decision based on the information provided in your application.

A Family Court judge will make a temporary protection order if they are satisfied that you or your children may be at risk of "undue hardship" if they don't make an order straight away.

There may be occasions where, based on the information provided, a judge does not make a temporary protection order. You will be told if this happens and can choose to withdraw the application or to go forward with an **on notice** protection order instead.

The respondent will be sent a copy of the temporary protection order after it has been made. The Police will also be given a copy of the protection order by the Court.

Respondents are entitled to defend (oppose) a temporary protection order if they wish. However if they don't defend it, the temporary protection order will automatically become a final protection order after three months. A final protection order remains in force permanently, unless either you or the respondent asks the Court to discharge (cancel) it and the Court agrees to this.

## WHAT IF I WANT A FINAL PROTECTION ORDER OR MY NEED FOR A PROTECTION ORDER IS NOT URGENT?

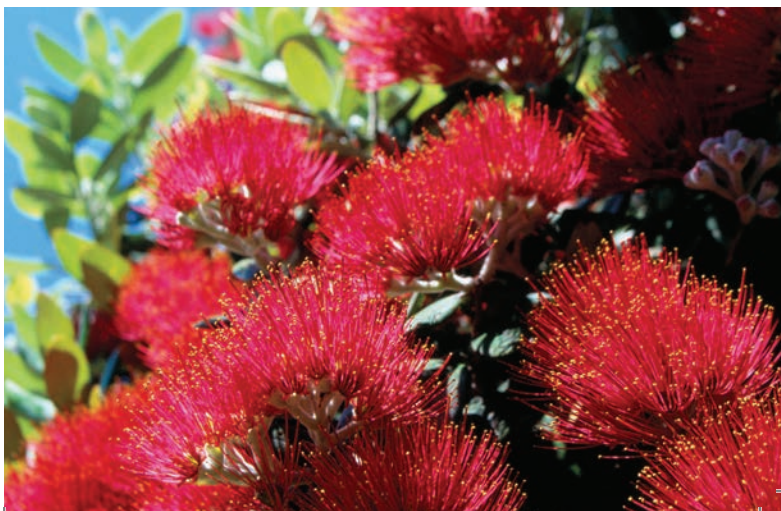
If you decide that your application for a protection order is not urgent, you may make an **on notice protection order application**. This means that the respondent is told that you've applied for a protection order before the judge decides whether to make the order.

The respondent may choose to go to Court and make their case for why the judge should not make the protection order. If the judge does make the order, it will immediately be a **final protection order** and will remain in force permanently, unless either you or the respondent asks the Court to discharge it and the Court agrees to this.

## WILL I HAVE TO APPEAR IN COURT?

You are unlikely to have to appear in Court when you apply for a 'without notice' temporary protection order.

You may have to appear in Court if you apply for an 'on notice' or final protection order or if the respondent goes on to defend a temporary protection order.



When you arrive at Court on the day of your hearing, speak to court staff if you have any questions about the Family Court process. Remember that court staff can't give you any legal advice specific to your case. Court staff are friendly, helpful and understand how stressful appearing in Court can be for some people. If you are worried about your safety while you are at the Court, tell court staff when you arrive and they will make sure you stay safe.

### WHO WILL BE AT COURT?

Usually only Court officials, the judge, the respondent and your lawyers will be in the courtroom. There is no jury and members of the public are not allowed to attend.

As well as your lawyer, a friend, family member or other person can come to the hearing to support you if the judge agrees.

Sometimes reporters attend Family Court hearings. They are not allowed to publish any information that could identify you or your children.

## WHAT DOES A PROTECTION ORDER MEAN FOR ME?

The protection order will establish conditions (rules) that the respondent must not breach (break).

### NON-VIOLENCE CONDITIONS

Every protection order contains non-violence conditions. These are rules that stop the respondent being violent or abusive towards you. The non-violence conditions say that the respondent must not:

- abuse (physically, sexually or psychologically) you or your children in any way
- threaten to physically or sexually abuse you or your children

- damage, or threaten to damage your property, or
- encourage anyone else to abuse or threaten you or your children.

## NON-CONTACT CONDITIONS

The respondent must not:

- go to your home or workplace or go onto your property
- hang around where you go often or regularly, like where you work, your neighbourhood, or where you study
- follow you
- try to stop you coming or going, or
- phone, text, email, send letters or faxes, or contact you in any other way.

The non-contact conditions do not apply if you agree to live with the respondent.

If they don't leave then they are breaching the protection order; they can be arrested and charged with a criminal offence.

## EXCEPTIONS

The respondent can contact you 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 respondent
- the contact is allowed under 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 case, like when and where the respondent can have contact with your children. Talk to your lawyer about what special conditions you may want to apply for.

## WEAPONS ARE BANNED

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

- any firearms licence they hold, and
- any weapons they have. Weapons means any firearm, airgun, pistol, restricted weapon, ammunition or explosive.

If the protection order is made final, the respondent's firearms licence will be automatically revoked.

**If you know that the respondent has access to weapons you should tell the Police, Family Court staff or your lawyer.**

## STOPPING VIOLENCE PROGRAMMES

The respondent will usually have to attend a programme about living without violence.



The programme will give them the chance to learn about:

- domestic violence and how it affects victims
- 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.

## WHAT SHOULD I DO IF ANY OF THE CONDITIONS ARE BREACHED BY THE RESPONDENT?

You should **ring the Police (dial 111)** straight away if you think you are in danger. If the respondent breaches (breaks) any of the conditions in the protection order, talk to your local community police when it is convenient or your lawyer.

It is a **criminal offence** for the respondent to breach any of the protection order conditions. If Police arrest and charge the respondent they will have to appear in the criminal court.

If a respondent is convicted in criminal court of a breach of the protection order they can be **sent to prison for up to two years**.

## CAN I GET A PROTECTION ORDER IF I'M STILL LIVING WITH THE RESPONDENT?

Yes. If you want to continue living with the respondent the non-contact conditions do not apply.

If you want the respondent to stop living with you, you **don't** have to apply for a new protection order. You just have to tell the respondent that the non-contact conditions are now in place. This means the respondent must immediately move out of the house and leave you alone.

If they don't leave, you should call the Police as they are breaching the non-contact and non-violence conditions of your protection order.

## WHAT HAPPENS IF THE RESPONDENT HASSLES OR STALKS ME (IS PSYCHOLOGICALLY VIOLENT) BUT ISN'T PHYSICALLY VIOLENT?

If you have a protection order, the respondent cannot threaten, harass, scare or intimidate you, irrespective of whether you're living together or not. A protection order protects you from psychological as well as physical violence.

If the respondent behaves like this, it is a breach of the protection order conditions and you should call the Police.

## IF I HAVE A PROTECTION ORDER, WHO GETS TO CARE FOR OR CONTACT MY CHILDREN?

Because of the non-contact conditions in a protection order, the respondent usually can't have any contact with children who usually or regularly live with you.

This means that if you and the respondent have children together, you will usually keep sole day-to-day care of them for as long as the protection order is in force.

The respondent can have contact with the children if:

- this is allowed under a parenting order or some other court order, or under a written parenting agreement between you and the respondent, or
- you agree to live with the respondent.

If you have a good reason to think the respondent will take the children away or harm them, talk to the Police and your lawyer about this as soon as possible.

## PARENTING ORDERS

At the same time as you apply for a protection order, you can also apply to the Family Court for a parenting order. A parenting order can decide who

has day-to-day care of the children and who can have contact with them. The respondent can also apply for a parenting order.

To allow a respondent access or contact with the children the judge will have to be satisfied that the children will be safe with the respondent. The judge may say that the respondent can only have contact if they are supervised by another adult. The parenting order will also say when the respondent can have contact with the children.

## WHAT ARE PROPERTY ORDERS?

If you want to keep living in your home or leave and take furniture with you, you can apply for a property order.

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.

A judge will make a property order if it is needed to protect you, or if it is in the best interests of your children.

You usually apply for a property order at the same time as the protection order and it can be made by a judge without notice or on notice to the respondent.

### Orders dealing with who lives in the home

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

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

If you have an occupation or tenancy order, the respondent must leave the property named on the order. If the respondent stays in the property tell the Police, 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 you want to stay in the home, you can apply to the Family Court for an **ancillary furniture order** to let you keep the furniture and appliances in the home.

If you want to move out, you can apply for a **furniture order** to let you take the furniture and appliances, or some of it, to your new home.

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

## **FREE DOMESTIC VIOLENCE EDUCATION AND SUPPORT PROGRAMMES**

You and your children can access free and confidential domestic violence education and support programmes from the Family Court.

These programmes can help you and your children feel more confident, and will help you to move forward in your life. Most importantly the programmes can teach you how to keep yourself safe from domestic violence in the future. The programmes will also give you 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 you and your children are very different from programmes that the respondent must attend.

If you want to go to a programme or you think your children could benefit from a programme talk to either your lawyer or Family Court staff and they will make sure you get access to the nearest services to where you live.

## **WHERE DO I GO TO GET MORE INFORMATION, SUPPORT AND ADVICE ON PROTECTION ORDERS?**

### **FAMILY COURT**

For more information about protection orders, legislation and domestic violence visit the Family Court website [www.justice.govt.nz/family](http://www.justice.govt.nz/family) or contact your nearest Family Court.



## LAWYERS

Your lawyer can help you to work out what orders to apply for and will know how to do this. Together you can work out what the next steps should be.

Choose a lawyer who is familiar with the Domestic Violence Act and the Family Court. Look in the *Yellow Pages* or on [www.familylaw.org.nz](http://www.familylaw.org.nz) or you can ask your local Family Court, District Law Society or community law centre for some names.

**Community law centres** offer legal information and advice for little or no cost. Some can help you apply for a protection order.

## ACCESSING LEGAL AID

If you are on a low income, your lawyer can help you to apply for legal aid to pay for some or all of your lawyer's bills.

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](http://www.justice.govt.nz/services/getting-legal-aid).

## WHERE CAN I GET HELP?

It's important to have a plan for keeping yourself and your children safe, and to find out what else you can do to stop the violence. In the phonebook and in the Family Services Directory at [www.familyservices.govt.nz/directory](http://www.familyservices.govt.nz/directory) you will find a list of agencies that can help you develop a safety plan.

Some of these agencies include:

## WOMEN'S REFUGE

Your local Women's Refuge provides 24 hour help for women who feel unsafe or experience domestic violence. Call Women's Refuge on **0800 REFUGE** for help. Women's Refuge will support you by:

- providing you and your children with a safe place to stay if you need it
- giving you legal information about the Domestic Violence Act, protection orders and the court system
- helping you find a lawyer
- talking to the Police with you
- helping you work out a safety plan for you and your children, and
- putting you in touch with other community services and government agencies that can support you like Work and Income.

Women's Refuge Advocates are available to tell you how they may be able to help, and will support you if you need to make some tough decisions. You can access Women's Refuge services even if you are staying in your own home or plan to move (including using one of their safe houses).

## VICTIM SUPPORT

Victim Support is available in most areas to provide 24 hour practical assistance and emotional support to victims of crime. **Call 0800 VICTIM for help and support.** Victim Support can tell you about your safety options including explaining about protection orders and how the Court process works, and about their services and support available (including financial assistance).

## NATIONAL NETWORK OF STOPPING VIOLENCE SERVICES

The Network provides education and support programmes for adults and children who are victims of violence. These programmes include information about the Domestic Violence Act 1995 and how protection orders work. The Network also provides stopping violence programmes for respondents. Visit their website for contact details for an organisation in your area at [www.nnsvs.org.nz](http://www.nnsvs.org.nz).

## WORK AND INCOME

Work and Income can help you with benefits and other kinds of income support.





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