

Domestic Violence Reform Bill

Government Bill

Explanatory note

General policy statement

Background: the need for reform

New Zealand has a comprehensive set of laws designed to protect women, children, and men from violence in the home, yet we continue to have high rates of domestic violence. For example, during 2006 the New Zealand Police responded to just over 71 000 family violence related incidents. In the same year domestic violence accounted for 16 of the 49 murders recorded.

A Ministry of Justice evaluation conducted in 2000, and further research commissioned by the Ministry of Women's Affairs in 2007, concluded that the domestic violence legislative regime did not need a major overhaul. The proposed amendments in this Bill therefore aim to strengthen the current regime to provide better protection to domestic violence victims.

Main changes to existing law

The Bill amends the Domestic Violence Act 1995, the Care of Children Act 2004, the Sentencing Act 2002, and the Bail Act 2000.

Amendments to Domestic Violence Act 1995 regarding court processes

The Bill seeks to ensure that court processes and programmes are more responsive to the needs of victims of domestic violence, including child victims. It includes provisions that more closely align some provisions of the Domestic Violence Act 1995 (the **DVA**) with those of the Care of Children Act 2004 (the **COCA**). The Family Court currently deals with many cases that involve proceedings under both of these Acts and more consistency between the two Acts is desirable.

Consistency with COCA

The DVA defines a **child** as a person who is under the age of 17 years. This is inconsistent with the definition of the age of a child under the COCA, and some other Acts that define a child as a person under the age of 18 years. The Bill addresses this inconsistency, which requires amendments to a number of provisions in the DVA.

Under the heading *Interim care and contact orders* are provisions that essentially re-enact section 54 of COCA. Relocating these provisions in the DVA means that provisions relating to orders about contact between the parties of protection order proceedings and their children are all in one place. An additional provision requires parties to apply for a parenting order as soon as possible, clearly linking the DVA process to the COCA.

Under the COCA, lawyers must be appointed for children whenever contact issues are being considered, unless the appointment would serve no useful purpose. The Bill provides the Court with discretion to appoint a lawyer for a child in certain protection order proceedings where the child is affected. The provision emulates provisions in the COCA that require a lawyer appointed to act for a child to meet with the child and seek the child's views.

Information session and programmes

Under the heading *Information session and domestic violence programmes* the Bill proposes that every protected person (and specified person) should receive an offer from the Court to attend an information session either on a group or one-to-one basis. The information session will provide information about how to make use of

the protection order; the sorts of programmes and social assistance that are available; and the structure and content of the respondent programmes.

The Bill also enhances access to programmes for both respondents and protected persons (including children) by extending the time allowed for attending a programme and increasing the number of programmes that can be attended. Other proposals with regard to respondents include extending the period for objecting to attend a programme from 5 to 10 working days; and enabling the Court to refer respondents at an unsuccessfully defended hearing to an assessment for an addiction issue.

Some new processes

To enhance victim safety, the Bill amends the way the Court deals with applications for temporary protection orders. The revised process requires the Court to give written reasons in a prompt manner to the applicant if it decides to decline an application for a without notice protection order or to make it on notice to the respondent. This process will mean that the applicant has an opportunity to discontinue the application if they do not wish it to proceed on notice.

It is also proposed that the provisions discharging a protection order should place more emphasis on ensuring the safety of the protected persons from domestic violence. The provision lists matters that the Court must take into account when considering whether to discharge a protection order. The Court may request a specialist report to assist this consideration.

Most protection orders prohibit contact between the respondent and the children covered by the order. Some respondents claim that orders made on a without notice basis against them unfairly deny them contact with their children. In response, the Court has adopted a practice of reviewing contact arrangements usually within two weeks after a temporary order is made. The Bill codifies this practice.

Finally, and specifically in regard to children, the Bill clarifies—

- that a child ceases to be covered by a protection order when he or she reaches the age of 18 years, unless the child has applied to the Court for a direction that the protection order

must continue to apply to them until they no longer reside with the applicant; and

- that children of a deceased protected person remain covered by the protection order and its conditions until the age of 18.

Amendments to Domestic Violence Act 1995 regarding enforcement

The Bill's provisions also strengthen police enforcement of the DVA in a number of ways. The current prescribed criteria for arresting respondents who breach protection orders are repealed. The provisions of the Crimes Act 1961 will apply so that a person whom a Police employee has good cause to suspect has committed a breach of a protection order may be arrested without a warrant, and without consideration of any other criteria. The Bill also reforms the structure of, and penalties to, the offence of breach of protection order and the offence of failing to attend a programme.

The key enforcement initiative is the introduction of the safety order. Safety orders are most likely to be made when the police have been called to a domestic violence incident in the home. The purpose of the safety order is to ensure the immediate safety of the victims by removing the alleged violent person from the home for a period not exceeding 72 hours. The safety order will provide a period of safety in which victims can consider their future options. The victims' consent to the safety order will not be required.

The safety orders will be made by police in situations where there is an insufficient basis to arrest but where the police believe there is a likelihood of domestic violence occurring and an order is necessary to protect the safety of the victim. Safeguards against the inappropriate issue of safety orders are provided. If the safety order is breached, the District Court may extend the current safety order, direct that a new safety order issue, or make a temporary protection order.

Amendments to Care of Children Act 2004

To enhance better linkages between the DVA and COCA, the Bill clarifies the principles relevant to the child's welfare and best interest under the COCA by providing that when "all forms of violence" are referred to in section 5(e) these are the same abuses (physical, sexual, and psychological) that fall under the definition of domestic violence

in the DVA. The Bill also amends the COCA by providing in sections 58 to 60 the inclusion of a definition of violent party which includes a party to the proceedings against whom there is currently a protection order in force.

The Bill also strengthens the provisions in the COCA for preventing the wrongful removal of children from New Zealand. Orders preventing removal are important to ensure that a parent does not deprive their child of contact with the other parent. Wrongfully removing children from New Zealand disrupts care arrangements that are in place and puts children at risk of harm. The changes in the Bill make it easier to obtain an order preventing removal. Currently, the applicant must show that someone is about to wrongfully remove the child from New Zealand. The Bill removes the requirement to show that the risk of wrongful removal is immediate. Currently, some parents may not seek an order preventing removal as this may prevent the child from travelling overseas for legitimate activities, such as a family holiday or school trip. The Bill introduces flexibility. For example, Judges will be able to permit the child to travel overseas with a named person, and it will be possible to suspend an order for a specified time. In addition, the maximum duration of orders will be until the child is 16 years of age, unless otherwise stated in the order. The Bill also allows for the discharge of an order for the return of a child abducted to New Zealand. In some cases, an order for the return of a child is made, but may not be enforced. In some cases it is appropriate that the order be discharged. However, there is currently no provision to allow these orders to be discharged.

Amendments to Sentencing Act 2002

The Bill proposes that when the criminal courts are sentencing a person convicted of a domestic violence offence the courts must consider making a protection order on behalf of the victim (if such an order is not currently in force), if it is satisfied that the making of the order is necessary for the protection of the victim, and the victim does not object to the making of the order. If the protection order is made, the defendant will be required to attend the compulsory stopping violence programme. The protection order may be made in addition to imposing a sentence or making any other order. The criminal courts' role will, however, be restricted to making the protection order. Con-

ditions, variations to the protection order, and matters relating to children will be dealt with by the Family Court.

Amendments to Bail Act 2000

The Bill will amend the Bail Act 2000 to ensure that when the police have arrested a person for alleged domestic violence offending, the police may impose bail conditions that will provide better protection for children.

Clause by clause analysis

Clause 1 is the Title clause. It is intended that the Bill will be divided, at committee of the whole House stage, into 4 separate Bills.

Clause 2 provides that the Bill comes into force on a date to be appointed by the Governor-General by Order in Council, and that 1 or more Orders in Council may be made appointing different commencement dates for different provisions.

Clause 3 is the purpose clause.

Part 1

Amendments to Domestic Violence Act 1995

Clause 4 provides that *Part 1* amends the Domestic Violence Act 1995.

Clause 5 amends section 2 which is the interpretation provision. It changes the definition of a child from a person under the age of 17 years, to a person under the age of 18 years. This change brings that definition into line with the definitions in the Care of Children Act 2004, the Children's Commissioner Act 2003, and the United Nations Convention on the Rights of the Child. A consequential change is also made to the definition of representative. The definition of programme is also amended to exclude an addiction treatment programme. *Clause 5* also inserts definitions for the terms day-to-day care and parenting order, which are used in *new sections 28A, 28C, and 81(1)(b)(iii)*.

Clause 6 amends section 5(2), which lists the means by which the Domestic Violence Act 1995 aims to achieve its object of reducing and preventing domestic violence. Paragraph (d), which describes

the programmes that respondents may be required to attend, is extended to cover addiction treatment programmes.

Clause 7 amends section 9 in line with the amended definition of child. The age at which a minor is required to apply for a protection order on his or her own behalf, without a next friend or guardian *ad litem*, is raised from 17 years to 18 years. Minors aged 16 years or 17 years may choose whether to make such an application on their own behalf or through a representative.

Clause 8 amends section 10 in line with the amended definition of child. The amendment raises the age at which a protection order may be applied for and made against a minor from 17 years to 18 years. (The existing exception for minors who are or have been married or in a civil union or de facto relationship remains.)

Clause 9 amends section 13 by inserting new subsections that require the Court to—

- give written reasons for decisions to decline an application without notice for a protection order, or to put an application on notice;
- promptly advise the applicant or his or her lawyer of the Court's decision and (if applicable) its reasons;
- give the applicant an opportunity to discontinue the application rather than have it proceed on notice.

Clause 10 amends section 16 to clarify when a child of an applicant is, and is not, protected by a protection order. The amendments provide that:

- a child ceases to be covered by a protection order when he or she reaches the age of 18 years;
- a child of the applicant's family may apply to the Court for a direction that the protection order must continue to apply to them until they no longer ordinarily or periodically reside with the applicant;
- a protection order continues in force to protect a child of a deceased protected person until the child reaches the age of 18 years or the order is discharged (that being the conclusion reached in *Hemopo v Spark* (1999) 18 FRNZ 271).

Until it is discharged, a protection order also continues in force after the death of the applicant to protect any other person for whose benefit the order applied pursuant to a direction under section 16(2).

Clause 11 inserts a new heading *Interim care and contact orders* and new sections 28B to 28D, which in essence re-enact section 54 of the Care of Children Act 2004 (which is repealed by *clause 42*). *New section 28B* provides that where an applicant who has a child applies for a protection order, the Court may make interim care or contact orders to protect the welfare and best interests of the child. *New section 28C* provides that such interim orders cease to have effect on the earlier of 1 year after the date that the order is made or the date the child attains the age of 16. *New section 28D* requires a party in whose favour an interim order has been made to apply for a parenting order as soon as possible.

Clause 12 amends the heading above section 29 to read *Information session and domestic violence programmes*. The change ensures the heading relates to the new provisions covering information sessions, and aligns the heading with the new heading *Addiction treatment programmes* inserted by *clause 23*.

Clause 13 inserts new sections 28E and 28F, which relate to the provision of an information session to applicants and specified persons. An information session will cover how to make the best use of the protection order, the sorts of social assistance and programmes that are available to protected persons, and any other information prescribed by regulations. It will also describe the programmes that the respondent is required to attend. The Court must ensure that, reasonably soon after a protection order is made, the applicant is contacted and invited to attend an information session. The Court is also required to follow up every applicant who does not attend an information session within 6 months of the first invitation, and extend a further invitation to that person. The Court is not required to do this, however, if the applicant has advised the Registrar that he or she does not wish to be contacted for this purpose. Information sessions will be provided on a group basis, or on a one-to-one basis. Criteria for determining when a one-to-one information session is provided may be set out in regulations.

Clause 14 amends section 29(4), which provides for making and authorising requests for the provision of programmes to protected persons. *New paragraphs (c) to (e)* are substituted and *paragraph (g)* is repealed. *New paragraph (c)* enables a lawyer appointed for a child to request the provision of a programme for the child. *New paragraphs (d) and (e)* provide that applicants may make a request

to attend a programme at any time while the protection order is in force, and that the Registrar may authorise attendance at more than 1 programme. Currently, section 29(4) authorises attendance at 1 programme only, and prevented, except in special circumstances, the Registrar authorising attendance at a programme if the request was made 3 or more years after the protection order was made.

Clause 15 inserts *new section 29A*, which allows the Registrar to authorise the provision of a programme to a child of the applicant's family until he or she reaches the age of 18 years, even if that child no longer resides with the applicant, and even if the protection order has been discharged.

Clause 16 repeals section 32(3), which provides that a direction to attend a programme is a condition of a protection order. The purpose of making a direction a condition of the order is to make non-attendance an offence under section 49. However, this is no longer necessary because *new section 49A* (as inserted by *clause 26*) creates a separate and specific offence for failure to attend a programme.

Clause 17 amends section 33 to address the difficulty that arises when the respondent or associated respondent has not been served with a copy of the protection order prior to the date specified in a direction for his or her first attendance at a programme. Section 33 is amended to provide that in these circumstances the Registrar can enlarge the date in the direction and, if necessary, require the respondent or associated respondent to attend the programme at a different time and place.

Clause 18 amends section 36, which relates to directions to attend a programme made on applications without notice. The amendments—

- extend the time period between service of the direction and its taking effect from 5 clear days to 10 working days; and
- allow the respondent or associated respondent to lodge a notice of objection within those 10 days; and
- provide for the direction to be suspended from the time a notice of objection is received by the Court, until the Court confirms the direction.

Clause 19 inserts a *new section 40A* that gives the Registrar power to authorise a respondent or associate respondent to attend additional

programmes if the Registrar is satisfied that he or she would benefit from doing so.

Clause 20 amends section 41A by adding a reference to *new section 44E*. The addition of that reference will enable the Registrar to deal with notices of absence from addiction treatment programmes in the same manner as notices of absence from programmes.

Clause 21 amends section 42 by adding references to sections that relate to addiction treatment programmes. The effect of adding these references is to allow the Judge to call before the Court a respondent who has failed to attend any session.

Clause 22 consequentially updates a cross-reference in section 43(4)(c)(i), which is necessitated by the creation of *new section 49A* inserted by *clause 26*.

Clause 23 inserts a new heading and a series of new sections that relate to addiction treatment programmes.

New section 44A sets out the meaning of addiction assessment, and *new section 44B* gives the Court power to direct that a respondent or an associated respondent must undergo an addiction assessment. That power can only be exercised if the Court grants a protection order at a defended hearing.

New section 44C provides that fees and expenses for such assessments may be prescribed by regulation and are payable out of public money appropriated by Parliament for the purpose.

New sections 44D, 44E, and 44F relate to addiction treatment programmes. *New section 44D* gives the Court power to direct that a respondent or an associated respondent must attend an addiction treatment programme, if an addiction assessment determined that a suitable programme can reasonably be made available and that he or she may benefit from receiving treatment. *New section 44E* requires the provider of an addiction treatment programme to notify the Court if the respondent or associated respondent fails to attend any session of a programme that the respondent has been directed to attend. *New section 44F* provides for the provider of an addiction treatment programme to notify the Registrar when that programme concludes, and to state whether the person participated fully in the programme.

Clause 24 amends section 47 to include a *new subsection (1A)* that sets out the matters that the Court must take into account when exercising its discretion to grant a discharge of a protection order.

Clause 25 inserts *new sections 47A, 47B, and 47C*. *New section 47A* provides that the Court may request a report on certain matters when considering an application for the discharge of a protection order. *New section 47B* provides that copies of a report must be given to the lawyer for each party, and to any lawyer appointed to act for a child who is the subject of the proceedings. *New section 47C* provides that fees and expenses for such reports may be prescribed by regulation and are payable by the parties to the proceedings or out of public money appropriated by Parliament for the purpose.

Clause 26 substitutes *new sections 49 and 49A*. The effect of the substitution is to—

- remove the first-and second tier penalty structure for the offence of contravening a protection order, leaving only the current maximum penalty of a term of imprisonment not exceeding 2 years:
- separate out the offence of failing to attend a programme as directed, and retain the current penalty of up to 6 months' imprisonment or a fine not exceeding \$5,000 for that offence:
- add new offences for failure to undergo an addiction assessment and failure to attend an addiction treatment programme, as directed. The penalty for these offences is the same as the penalty for failure to attend a programme.

A consequential amendment is also made to Part 2 of Schedule 1 of the Summary Proceedings Act 1957, to ensure that the offence of contravening a protection order is an indictable offence that may be tried summarily.

Clause 27 repeals section 50(2) of the principal Act. That subsection prescribes a number of statutory criteria that an arresting officer must consider before arresting a person who they have good cause to suspect has breached a protection order. This amendment aligns section 50 with other legislation, in particular the Crimes Act 1961, which permits arrest without a warrant where there is good cause to suspect an offence has been committed, without consideration of any other criteria.

Clause 28 amends section 60 to provide that where a temporary occupation or tenancy order becomes final by operation of law 3 months after the date on which it is made, the final order comes into effect

immediately. This amendment is consistent with those made to sections 70 and 77 (in *clauses 29 and 32* respectively).

Clause 29 amends section 70 to provide that where a temporary ancillary furniture order or furniture order becomes final by operation of law 3 months after the date on which it is made, the final order comes into effect immediately. This amendment is consistent with those made to sections 60 and 77 (in *clauses 28 and 32* respectively).

Clause 30 amends section 71 in line with the amended definition of child. The age at which a minor is required to apply for a property order on his or her own behalf, without a next friend or guardian *ad litem*, is raised from 17 years to 18 years. Minors aged 16 years or 17 years may choose whether to make such an application on their own behalf or through a representative.

Clause 31 amends section 72 in line with the amended definition of child. The amendment raises the age at which a property order may be applied for and made against a minor from 17 years to 18 years. (The existing exception for minors who are or have been married or in a civil union or de facto relationship remains.)

Clause 32 amends section 77 to provide that where a temporary protection order becomes final by operation of law 3 months after the date on which it is made, the final order comes into effect immediately. This amendment responds to the decisions of *Police v Bragovits* (District Court, Waitakere, 16 March 2000) and *Police v Fox* (High Court, Hamilton, 13 December 2000), to ensure there is no lacuna in the legislation in respect of when the final order can be enforced. Similar amendments are made to sections 60 and 70 (*see clauses 28 and 29*).

Clause 33 inserts *new section 79A* to provide an early opportunity to review contact issues after a temporary protection order is made. This addresses the criticism made by some respondents that a temporary protection order obtained on a without notice application unfairly denies them contact with their children in those cases where contact arrangements cannot be agreed with the applicant. *New section 79A* provides that when making a temporary protection order the Court may direct the Registrar to convene a review before a Family Court Judge of the contact arrangements between the respondent and a child of the applicant's family. Both the applicant and respondent are invited to attend the review. At the review the Judge may do any of the following: make an interim contact order, impose conditions

relating to the manner in which the respondent is to have contact, and make any necessary directions.

Clauses 34 and 35 address the uncertainty that has arisen about whether a Judge needs to specifically discharge a temporary order when making a final order. Section 80(1)(b) is amended to remove reference to the discharge of a temporary order and *new section 80A* is inserted to provide that where a temporary order is replaced by a final order, or is confirmed, the temporary order is automatically discharged.

Clause 36 amends section 81 to enable the Court to appoint a lawyer for a child when—

- a temporary protection order is made; or
- an application is made to vary or discharge a special condition of a protection order; or
- an application is made to discharge a protection order; or
- an application is made for an occupation order; or
- an application is made for a tenancy order.

An appointment may only be made if an application for a parenting order under the Care of Children Act 2004 is not currently before a Family Court in respect of the child (as section 7 of the Care of Children Act 2004 provides for the appointment of a lawyer for the child where the child is the subject of proceedings under that Act).

Clause 37 amends section 83 to enable a lawyer who is appointed under the Care of Children Act 2004 to act for a child to be present at the hearing of proceedings under the Domestic Violence Act 1995 where the child is a child of the applicant's family. Currently, only a lawyer who is appointed under the Domestic Violence Act 1995 to represent a child may be present at the hearing of proceedings.

Clause 38 inserts a new Part 6A (*new sections 124A to 124K*), which is about police-issued safety orders.

New section 124A is the interpretation section for this new Part and includes definitions for constable and qualified constable.

New section 124B sets out when a qualified constable may make a safety order, and the matters that a constable must have regard to when considering whether to make a safety order.

New section 124C provides that a safety order may be made without needing to obtain the consent of the person for whose safety the safety order is proposed to be made.

New section 124D provides that a safety order may not be made against a child.

New section 124E sets out the effect of a safety order. A person against whom a safety order is made must immediately surrender any firearm or weapon in his or her possession or control and vacate any land or building occupied by the person named in the order for whose safety the safety order is made. A condition of the safety order is that the person against whom the order is made refrain from engaging in certain behaviours, which mirrors the standard conditions of a protection order set out in section 19.

New section 124F provides that while a safety order continues in force against any person, the provisions of a parenting order or agreement affording that person the day-to-day care of, or contact with, a child are suspended where the child is living with the person for whose safety the safety order was made.

New section 124G requires a safety order to be issued and served on the person against whom the order is made. That person may meanwhile be detained for up to 2 hours. The order must be explained, to the extent it is reasonably practicable to do so in the circumstances, both to the person against whom the order is made and the person for whose safety the order is made.

New section 124H provides that a safety order continues in force for up to 72 hours after it has been served.

New section 124I provides that if a person against whom a safety order is made refuses or fails to comply with the order, that person may be taken into custody and brought before a District Court. The District Court may direct that the safety order continue in force for up to a further 72 hours, or direct that another safety order be issued, or make a temporary protection order.

New section 124J requires that a person taken into custody under *new section 124I* must be brought before a District Court within 24 hours.

New section 124K provides the Crown and police immunity from criminal and civil liability except when acting in bad faith or without reasonable care.

Clause 39 amends section 127, which sets out the regulation-making powers under the Act. The amendment will enable regulations to be made to—

- determine the number of programme sessions that may be provided to a child pursuant to an application under *new section 29A*; and
- determine the number of programme sessions that may be provided to a respondent or associated respondent who has been authorised to attend an additional programme under *new section 40A*; and
- determine the amount of fees and expenses, including minimum and maximum amounts, payable in respect of the preparation of—
 - an addiction assessment requested by the Court under *new section 44B*; and
 - a report requested by the Court under *new section 47A* when considering an application for the discharge of a protection order.

Part 2

Amendments to Care of Children Act 2004

Clause 40 provides that *Part 2* amends the Care of Children Act 2004.

Clause 41 amends section 5, which sets out the principles relevant to the child's welfare and best interests. Paragraph (e) states that a child's safety must be protected and, in particular, the child must be protected from all forms of violence. The words "as defined in section 3(2) of the Domestic Violence Act 1995" are added to paragraph (e), to clarify that the reference to violence includes not only physical and sexual abuse, but also psychological abuse.

Clause 42 repeals section 54, which provides that when an application is made under the Domestic Violence Act 1995 for a protection order, the Court may make interim care and contact orders. This provision has been carried over to the Domestic Violence Act 1995 (*see clause 11*) and can therefore be repealed.

Clause 43 makes a technical amendment consequential on the repeal of section 54.

Clause 44 amends section 58 to define allegation of violence, protection order, and violent party, which are terms used in sections 59 and 60 (as amended by *clauses 45 and 46*).

Clauses 45 and 46 amend sections 59 and 60, which set out the procedure for dealing with applications for day-to-day care of, or contact with, a child when there is an allegation that one of the parties has used violence against the child or the other party to the proceedings. In such cases the Court must have regard to a number of matters and only make an order if it is satisfied that the child will be safe while the violent party provides day-to-day care for the child, or has contact with the child. If the Court is not satisfied of this, it may make an order for supervised contact between the child and the violent party. The effect of the amendments in *clauses 45 and 46*, combined with the new definition of violent party, is to extend sections 59 and 60 to apply not only where an allegation of violence is made, but also where there is currently in force a protection order against one of the parties for the protection of the child or the other party.

Clause 47 amends section 77, which deals with preventing the removal of a child from New Zealand. Under section 77, an order can be made preventing the removal of a child. Currently, an order can only be made if it is believed on reasonable grounds that a person is about to take a child out of New Zealand. This is a high threshold and does not acknowledge that the risk of removal may not be immediate, but is nonetheless real and ongoing. Section 77 is amended to lower this threshold and enable an order to be made when there are reasonable grounds to believe that a person may take a child out of New Zealand. Rather than a blanket prohibition on removal, the amendment affords flexibility to enable an order to name persons with whom a child may leave New Zealand.

Clause 48 inserts *new sections 77A and 77B*. *New section 77A* provides that, unless there are special circumstances, an order made under section 77 preventing the removal of a child from New Zealand—

- may not be made in respect of a child of or over the age of 16 years:
- will expire when a child attains the age of 16 years.

New clause 77B provides for an order made under section 77 to be suspended for a specified time and in relation to a specified person. An application may be made to—

- a High Court Judge, District Court Judge, or a Family Court Judge; or
- a Registrar of the High Court or of a District Court, if the application is made by a person who was a party to proceedings under section 77 and every other person who was a party to those proceedings consents to the suspension of the order.

Clause 49 amends section 118(3) so that *new sections 77A and 77B* also apply where a Judge makes an order under section 77 preventing the removal of a child in the circumstances set out in section 118.

Clause 50 inserts *new section 122A* to enable the discharge of an order made under section 105 that a child abducted to New Zealand be returned to a person or country specified in the order. After a section 105 order is made, parents can subsequently come to an agreement on the child's care arrangements, including that the child remain in New Zealand, and that the order not be enforced. There is currently no mechanism in the legislation for discharging a section 105 order and this was confirmed in the recent Court of Appeal decision *Butler v Craig* [2008] NZCA 198. This means that a party who obtains an order under section 105 could choose to enforce it at any time until the child attains 16 years. *New section 122A* empowers a Judge to discharge a section 105 order on the application of a person who was a party to the proceedings under section 105 if—

- all the parties to the earlier proceedings under section 105 consent; or
- the application is made more than 1 year after the order was made and the Court is satisfied that the child is settled in New Zealand and that in all the circumstances the discharge of the order is warranted.

Part 3

Amendments to Sentencing Act 2002

Clause 51 provides that *Part 3* amends the Sentencing Act 2002.

Clause 52 inserts a new heading *Protection orders* and *new sections 123A to 123G*, which empower a Judge when sentencing a person

for a domestic violence offence to issue a protection order for the protection of the victim.

New section 123A is an interpretation provision and includes definitions for domestic relationship and domestic violence offence.

New section 123B sets out when a Court may make a protection order against an offender. It must be satisfied that the order is necessary for the protection of the victim of the offence and that the victim of the offence does not object to the making of the order. A protection order may be made in addition to imposing a sentence or making any other order.

New section 123C sets out the provisions of the Domestic Violence Act 1995 that apply to a protection order made under *new section 123B*. These provisions apply as if the protection order were a final protection order made under the Domestic Violence Act 1995.

New section 123D requires the Judge or Registrar to give certain explanations to the offender.

New section 123E requires the Registrar to immediately issue the protection order and, wherever practicable, to give a copy of the order to the offender before he or she leaves the Court. The offender may be detained in the custody of the Court for up to 2 hours for this purpose.

New section 123F requires the Court to send a copy of the protection order to the Family Court nearest to where the victim resides. On receipt, the Family Court must enter the order in the records of the Court.

New section 123G provides that as soon as an order has been entered in the records of the Family Court, the order is to be treated as a final protection order made by that Court under the Domestic Violence Act 1995, and specified provisions of that Act are to apply.

Part 4

Amendments to Bail Act 2000

Clause 53 provides that *Part 4* amends the Bail Act 2000.

Clause 54 amends section 21 by providing that, if a person is charged with a domestic violence offence, the police may impose any bail conditions considered reasonably necessary to protect any child who is in a domestic relationship with that person.

Regulatory impact statement

Executive summary

Despite a comprehensive set of laws designed to protect women, children, and men from violence in the home, New Zealand continues to have high rates of domestic violence, affecting thousands of New Zealanders from all cultures, backgrounds, and circumstances. During the 13 years of operation of the Domestic Violence Act 1995 (DVA), concerns have been raised about the need to strengthen the ability of the DVA to achieve its object of reducing and preventing domestic violence, and providing victims with effective legal protection. Legislative amendment is required to provide an optimal legislative response to domestic violence that will benefit all members of society.

Adequacy statement

The Ministry of Justice confirms that the analysis contained in this Regulatory Impact Statement meets the adequacy requirements. The need for regulatory reform has been considered in consultation with a range of stakeholders, and included a public domestic violence discussion document as well as consultation with government agencies and non-government organisations (NGOs) involved in the domestic violence sector.

Status quo and problem

Despite a comprehensive set of laws designed to protect women, children, and men from violence in the home, New Zealand continues to have high rates of domestic violence, affecting thousands of New Zealanders from all cultures, backgrounds, and circumstances. For example, police responded to just over 71 000 domestic violence incidents in 2006. Although it is difficult to measure, the social and economic cost of domestic violence is significant, both for victims experiencing violence, and for children who witness it. Offending inflicts emotional harm, serious physical injury, and death.

Although there is a general consensus that the principles of the DVA are sound, concerns raised with the Ministry of Justice about particular aspects of the DVA during its 13 years of operation indicated a need for further examination and consultation. Many concerns related to the need to strengthen the ability of the DVA to achieve its ob-

ject of reducing and preventing domestic violence and providing victims with effective legal protection. This strengthening requires legislative reform in order to improve the way the DVA operates. Further non-legislative reform is being undertaken including improvements to law enforcement procedures and changes to NGO sector funding.

Concerns cover the enforcement response, the courts' response, the need to widen programme provision (education being a key component of the regime), and aligning provisions relating to children between the DVA and the Care of Children Act 2004 (COCA).

For example, there are concerns that the DVA—

- does not provide adequate protection for victims through an appropriately strong enforcement response, especially at the time that police are called to a domestic violence incident, including those incidents involving breaches of protection orders, and about the ability to protect children of alleged offenders in setting police bail conditions. Concerns were also raised about the structure of the offences relating to breach of protection orders and their penalties:
- presents problems in the Court response: applications for temporary protection orders being declined without Judges providing reasons; protection orders being discharged after pressure is put on protected persons by respondents to seek a discharge; the acceptance of unenforceable undertakings by respondents that they will refrain from acts of domestic violence; criminal courts not adequately addressing the protection needs of victims of domestic violence:
- inadequately provides for or enforces mandatory programme attendance for respondents, and does not allow for effective, ongoing access to programmes for protected persons and their children:
- does not provide an adequately balanced approach to issues relating to children. Examples include respondents' access to their children, especially where access is denied after the issue of a temporary protection order (issued without notice to the respondent) and the interface between the DVA and COCA relating to parenting orders and issues of psychological abuse, lawyers for children, and the differing age provisions between

the two Acts. Finally the DVA also lacks clarity about whether a protected person's order still covers their children after they reach 17 years of age, or in situations where the protected person dies.

The above issues raise concerns about the effectiveness of the current DVA that affect all parties—victims, respondents, and children, as well as the police and the court system. Keeping the status quo exposes all of these key stakeholders to levels of risk that will be minimised by the reform proposals.

Objectives

The reforms seek to strengthen the DVA and related legislation to ensure an optimal response to domestic violence. In line with the object of the DVA, the policy objectives of the reforms are to—

- strengthen the enforcement response to better protect victims and to hold offenders accountable:
- make aspects of the Family Court's decision-making processes more transparent:
- improve protection for victims by amending provisions for discharging protection orders:
- enable the Courts in the criminal jurisdiction to make protection orders in certain circumstances:
- acknowledge the importance of educating respondents by creating a more meaningful response to programme attendance, including requirements to attend other treatment programmes (for example, drug and alcohol treatment services):
- acknowledge the importance of educating victims and their children by broadening provisions relating to programme eligibility and by introducing a government-funded information session:
- ensure consistency with the DVA, and to improve support for children by including psychological abuse within the ambit of the parenting order provisions of the COCA and by allowing children to be represented by a lawyer under the DVA:
- ensure consistency with the COCA and with New Zealand's international obligations by increasing the age of a child under the Act to a person under 18 years of age under the DVA:

- clarify the extent to which a protected person's order covers their children and that the children remain covered by a protection order in the event of the death of the protected person.

Alternative options

Non-regulatory options

An effective legislative response to domestic violence forms an important component of the overall government response to family violence, but it operates within other measures such as prevention and education. This reform package has been designed to work with and strengthen a range of other non-regulatory measures, including improved inter-agency responses and the work programme of the Taskforce for Action on Violence within Families.

In each case where legislative reform is proposed, regulation is viewed as providing the best way to achieve the desired policy objectives, and non-regulatory options are considered to provide a less effective response.

Alternative regulatory options

The public domestic violence discussion document *A Review of the Domestic Violence Act 1995 and Related Legislation* sets out a range of regulatory options for some reform proposals. These alternative regulatory measures were discounted after careful consideration of the issues and after consultation. Many offered a weak or partial solution, especially in terms of victim safety. Other options did not adequately balance the rights of all parties.

Status quo

Problems with the status quo gave rise to the issues consulted on in regard to proposals for change. Therefore, retaining the status quo in each case would only serve to perpetuate the particular problem under consideration.

Preferred option: Legislative reform

The preferred options involve amending the law to—

- strengthen the enforcement response to better protect victims and hold offenders accountable by—

- introducing a new short-term on-the-spot safety order issued by police:
- extending considerations under police bail to include the safety of any children in a domestic relationship with the alleged offender:
- removing the arrest for breach criteria:
- removing the two-tier penalty system:
- creating a separate offence for failure by a respondent to attend a programme:
- make aspects of the Court's response more transparent, by requiring a Judge to provide a written reason for declining a temporary protection order or for putting the application on notice:
- improve protection for victims by amending provisions for discharging protection orders, by requiring a Judge to be satisfied that the respondent has stopped using violence and the order is no longer necessary for the protection of the applicant or child of the applicant's family:
- improve links between the Family Court and the criminal court by allowing the criminal court to issue a protection order, when sentencing a domestic violence related case where the offender is in a domestic relationship with the victim, based on the same criteria for protection orders in the Family Court, with any variations or matters relating to children being referred to the Family Court:
- acknowledge the importance of educating respondents by—
 - suspending programme attendance for respondents of a temporary order if the respondent has filed a notice objecting to their attendance and extending the objection period to 10 days:
 - providing for compulsory recall of respondents who fail to attend a programme:
 - extending programme eligibility where benefits can be demonstrated and enabling Judges to direct respondents to addiction treatment programmes:
- acknowledge the importance of educating protected persons and their children by—

- allowing programme attendance at any time under a protection order, not just during the first three years:
- allowing protected persons and their children to attend more than one programme if they establish a need to do so:
- introducing a government-funded information session for protected persons:
- ensure consistency with the COCA and with New Zealand's international obligations by—
 - providing that when a protection order is issued on the basis of psychological abuse the supervised access provisions of the COCA are triggered:
 - providing for psychological abuse within the ambit of the parenting order provisions of the COCA:
 - providing the Court with a discretion to appoint a lawyer for children in protection order proceedings under the DVA:
 - increasing the age of a child under the DVA to a person under 18 years of age:
- ensure greater clarity in law in regard to some aspects that affect children by—
 - amending the law to make it clear that a child remains covered by a protection order in the event of the death of the protected person:
 - ending cover under a protection order once a child turns 18.

Benefits

The proposed reforms will improve justice sector outcomes and assist in enhancing the safety of New Zealand society. The proposals assist in achieving these outcomes by reducing crime and the impact of crime, increasing the accountability of offenders, and creating a more trusted justice system.

The reforms will increase protection for private individuals, including children, who are victims of domestic violence, and increase the accountability of offenders by strengthening the enforcement response, including by the introduction of a short-term safety order.

Better links between the Family Court and the criminal court will improve Court processes. The importance of educating respondents and protected persons will be affirmed and enhanced by expanded referral to programmes. Effective programmes have been found to reduce domestic violence. Alignment with the COCA will be achieved by providing for a protection order made on the grounds of psychological abuse to trigger the supervised access provisions, psychological abuse within the ambit of the parenting order provisions of that Act, allowing for the appointment of a lawyer for children under the DVA, and raising the age of a child under the DVA to a person under 18. Continued protection order cover will be provided for the children of deceased protected persons, while the reforms will provide clarity that cover will end for any child included on a protection order once they turn 18.

Costs

The implementation costs of the proposals will fall on Vote: Courts, Vote: Police, and Vote: Corrections. Increased costs for Courts will arise from greater access to programmes and a greater range of judicial directions, and include increased judicial and staff time, training, and information technology changes. Police face costs relating to the issue of safety orders. Corrections will have increased costs due to an expected increase in convictions for breach of protection orders. These justice sector agencies appropriately bear the costs of proposals aimed at improving justice sector outcomes.

Implementation and review

The proposals will be implemented through the Domestic Violence Reform Bill, which currently has category 4 priority on the 2008 Legislation Programme.

Consultation

One hundred and three submissions were received from a wide range of stakeholders, including individuals, community organisations, and government agencies, in response to a public domestic violence discussion document released in December 2007. The domestic violence discussion document invited comment on preliminary proposals. Proposals for reform were consulted on widely within govern-

ment, and with a variety of NGOs, taking these submissions into account.

The following government agencies were consulted on the Cabinet papers: the Office of the Children's Commissioner, the Department of Corrections, the Office for Disability Issues, the Office of Ethnic Affairs, the Families Commission, the Ministry of Health, the Department of Labour, the Legal Services Agency, the Ministry of Pacific Island Affairs, the New Zealand Police, the Office for Senior Citizens, the Ministry of Social Development, Te Puni Kōkiri, the Treasury, and the Ministry of Women's Affairs. The Department of the Prime Minister and Cabinet was informed.

Hon Annette King

Domestic Violence Reform Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Domestic Violence Reform Act **2008**.

2 Commencement

This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions. 5

3 Purpose

The purpose of this Act is to amend the Domestic Violence Act 1995, the Care of Children Act 2004, the Sentencing Act 2002, and the Bail Act 2000, to—

- (a) strengthen the object and implementation of the Domestic Violence Act 1995; and 5
- (b) strengthen certain provisions of the Care of Children Act 2004 to further promote the safety of children; and
- (c) enhance consistency between the Domestic Violence Act 1995 and the Care of Children Act 2004. 10

Part 1
Amendments to Domestic Violence Act
1995

4 Principal Act amended

This Part amends the Domestic Violence Act 1995. 15

5 Interpretation

- (1) The definition of **child** in section 2 is amended by omitting “17” and substituting “18”.
- (2) The definition of **programme** in section 2 is amended by omitting “**programme**, means” and substituting “**programme**, except in the case of an addiction treatment programme, means”. 20
- (3) Paragraph (a) of the definition of **representative** in section 2 is amended by omitting “16 or under” in each place where it appears and substituting in each case “under 18 years”.
- (4) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order: 25
 - “**day-to-day care** has the meaning given to it by section 8 of the Care of Children Act 2004
 - “**parenting order** has the meaning given to it by section 8 of the Care of Children Act 2004”. 30

6 Object

Section 5(2) is amended by omitting paragraph (d) and substituting the following paragraph:

“(d) requiring respondents and associated respondents to attend—

“(i) programmes that have the primary objective of stopping or preventing domestic violence:

“(ii) other appropriate programmes.”

5

7 Applications by minors

(1) Section 9 is amended by repealing subsection (2A) and substituting the following subsection:

“(2A) A minor who is aged 16 years or 17 years and who wishes to apply for a protection order may either—

10

“(a) make the application on his or her own behalf; or

“(b) make the application by a representative.”

(2) Section 9(3) is amended by omitting “17” and substituting “18”.

(3) Section 9 is amended by repealing subsection (4) and substituting the following subsections:

15

“(4) A minor who is aged 18 years or over and who wishes to apply for a protection order must make the application on his or her own behalf without a next friend or guardian *ad litem*.

“(5) **Subsections (2A) and (4)** are subject to sections 11 and 12.

20

“(6) Where a minor makes an application under **subsection (2A) or (4)**, orders may be made on the application, and enforced, as if the minor were of full age.”

8 Applications against minors

Section 10 is amended by omitting “age of 17” in each place where it appears and substituting in each case “age of 18”.

25

9 Application without notice for protection order

Section 13 is amended by inserting the following subsections after subsection (2):

“(2A) When the Court decides an application without notice for a protection order, the Court must—

30

“(a) give written reasons for its decision if it decides to—

“(i) decline the application; or

“(ii) direct that the application proceed on notice; and

“(b) promptly notify the applicant or his or her lawyer of its decision and, if **paragraph (a)** applies, of its reasons for that decision.

“(2B) If the Court directs that an application without notice for a protection order must proceed on notice, the Registrar must ensure that the applicant is given an opportunity to discontinue the application before any further steps are taken.” 5

10 Protection of persons other than applicant

(1) Section 16(1) is amended by adding “until that child reaches the age of 18 years, unless the order is sooner discharged”. 10

(2) Section 16 is amended by inserting the following subsections after subsection (1):

“(1A) The Court, on an application by a child of the applicant’s family, must direct that a protection order continues to apply for his or her benefit after he or she has attained the age of 18 years until whichever of the following occurs first: 15

“(a) he or she no longer ordinarily or periodically resides with the applicant; or

“(b) the order is discharged by the Court.

“(1B) An application for a direction under **subsection (1A)** may be made by— 20

“(a) the child; or

“(b) a representative of the child.”

(3) Section 16 is amended by adding the following subsection:

“(5) A protection order that has not lapsed or been discharged continues to apply for the benefit of a person described in subsection (1) or (2) notwithstanding the death of the applicant.” 25

11 New heading and sections 28B to 28D inserted

The following heading and sections are inserted after section 28A: 30

“Interim care and contact orders

“28B Interim orders in respect of child of applicant’s family

“(1) This section applies when—

“(a) an application has been made to the Family Court for a protection order; and 35

“(b) there is a child of the applicant’s family.

- “(2) The Court may make 1 or more of the following orders if it considers the order or orders are necessary to protect the welfare and best interests of the child concerned:
- “(a) an interim order or orders about the role of providing day-to-day care for, or about contact with, a child of the applicant’s family: 5
- “(b) any interim order or orders varying any order of the kind referred to in **paragraph (a)**.
- “(3) An order must not be made under **subsection (2)** in respect of a child of the applicant’s family of or over the age of 16 years unless there are special circumstances. 10
- “(4) In considering whether an order or orders are necessary to protect the welfare and best interests of the child concerned, the Court must take into account any of the principles specified in section 5 of the Care of Children Act 2004 that are relevant to the particular circumstances of the child. 15
- “**28C Duration of interim order**
- An interim order made under **section 28B** ceases to have effect (if it has not ceased to have effect sooner) on the earlier of— 20
- “(a) the date that is 1 year after the day on which the order is made; or
- “(b) the date that the child attains the age of 16 years, unless the Court in special circumstances orders otherwise on or after making the order. 25
- “**28D Application for parenting order under Care of Children Act 2004 must be made**
- “(1) Where 1 or more interim orders have been made under **section 28B**, a party in whose favour an order has been made must as soon as possible (if that party has not already done so) make an application under the Care of Children Act 2004 for a parenting order. 30
- “(2) For the purposes of section 16(1) of the Legal Services Act 2000, proceedings that relate to, or arise out of, an application for a protection order under Part 2 of the Domestic Violence Act 1995 include proceedings commenced pursuant to an application referred to in **subsection (1)**.” 35

12 New heading substituted

The heading above section 29 is repealed and the following heading substituted:

“Information session and domestic violence programmes”. 5

13 New sections 28E and 28F inserted

The following sections are inserted before section 29:

“28E Purpose of information session

The purpose of an information session is to provide information to the applicant about— 10

“(a) how to make effective use of the protection order; and

“(b) the programmes that are available to protected persons; and

“(c) any social assistance that is or may be available to the applicant; and 15

“(d) the structure and content of respondent programmes; and

“(e) such other information (if any) as is prescribed for the purposes of this paragraph by regulations made under this Act. 20

“28F Information session must be offered to protected persons

“(1) Where the Court makes a protection order the Registrar must, as soon as is reasonably practicable after the order has been made, ensure that an information session is offered to—

“(a) the applicant; and 25

“(b) any specified person (other than a child).

“(2) The offer under **subsection (1)** may be an offer to attend—

“(a) a group information session; or

“(b) an individual information session.

“(3) The Registrar must repeat the offer of an information session to the applicant as soon as is reasonably practicable after 6 months has elapsed from the date of the first offer under **subsection (1)**, if— 30

“(a) the applicant has not attended an information session during that time; and 35

“(b) the order remains in force.

- “(4) **Subsection (3)** does not apply if the applicant has advised the Registrar that he or she does not wish to receive offers of an information session.
- “(5) Every lawyer acting for an applicant for a protection order must— 5
- “(a) ensure that the applicant is aware of his or her right to attend an information session under this section; and
- “(b) where the applicant wishes to exercise that right, take such further steps as the lawyer considers necessary to enable the applicant to do so. 10
- “(6) An applicant or specified person may, at any time while the protection order remains in force, request the Registrar to authorise him or her to attend—
- “(a) an information session; or
- “(b) a further information session. 15
- “(7) If the Registrar is satisfied that the applicant or specified person would benefit from attendance at an information session, or a further information session, the Registrar may offer him or her—
- “(a) a group information session; or 20
- “(b) an individual information session.
- “(8) In determining whether to offer an individual information session to the applicant under **subsection (1) or (7)**, the Registrar must apply the criteria specified in regulations made under this Act (if any).” 25

14 Programmes for protected persons

- (1) Section 29(4) is amended by repealing paragraphs (c) to (e) and substituting the following paragraphs:
- “(c) a request may be made under this section, on behalf of a child, by a lawyer appointed under section 81(1)(b) to represent the child: 30
- “(d) the applicant or specified person may—
- “(i) make a request pursuant to this section at any time while the protection order is in force; and
- “(ii) make more than 1 request in relation to the same protection order: 35

- “(e) the Registrar may authorise the provision of more than 1 programme to a person if the Registrar is satisfied that attendance at the programmes will benefit that person’s future safety or well-being.”
- (2) Section 29(4)(g) is repealed. 5
- 15 New section 29A inserted**
- The following section is inserted after section 29:
- “29A Programmes for child who was protected person**
- “(1) A request may be made to a Registrar to authorise the provision of a programme to a child who is no longer a protected person because— 10
- “(a) the child no longer ordinarily or periodically resides with the applicant; or
- “(b) the protection order has been discharged.
- “(2) A request under **subsection (1)** may be made by— 15
- “(a) the applicant; or
- “(b) the child, if he or she is 16 years of age or over; or
- “(c) a representative of the applicant or the child.
- “(3) Where a request is made to a Registrar under **subsection (1)**, the Registrar must arrange for the matter to be referred to a programme provider without delay if the Registrar is satisfied that attendance at the programme will benefit the child’s future safety or well-being. 20
- “(4) A request under **subsection (1)** may be made in addition to a request under section 29. 25
- “(5) The number of programme sessions to be provided in respect of a referral under **subsection (3)** must be determined in accordance with such regulations as may be made under this Act or, if no regulations apply, by the Registrar.”
- 16 Power to direct respondent or associated respondent to attend programme** 30
- Section 32(3) is repealed.

17 Terms of direction that respondent or associated respondent attend programme

Section 33 is amended by inserting the following subsections after subsection (1):

- “(1A) **Section (1B)** applies if— 5
- “(a) the Court makes a direction under section 32; and
 - “(b) the respondent or associated respondent, as the case requires, has not been served with a copy of the protection order at least 10 working days prior to the date specified in the direction for his or her first attendance at the programme. 10
- “(1B) The Registrar may amend the direction made under section 32 to specify that the respondent or associated respondent, as the case requires, attend the programme for the first time on a later date and, if necessary, at a different— 15
- “(a) time:
 - “(b) place.”

18 Direction to attend programme made on application without notice

Section 36 is amended by repealing subsections (2) and (3) 20 and substituting the following subsections:

- “(2) Where this section applies—
- “(a) the direction does not take effect until 10 working days after a copy of the direction is served on the person to whom it relates; and 25
 - “(b) that person may, within those 10 days, notify the Court that he or she objects to the direction.
- “(3) Where the respondent or associated respondent notifies the Court, in accordance with **subsection (2)(b)**, that he or she objects to the direction— 30
- “(a) the Registrar must, if the respondent or associated respondent wishes to be heard, assign a hearing date, which must be—
 - “(i) as soon as practicable; and
 - “(ii) unless there are special circumstances, in no case later than 42 days after receipt of the notice of objection; and 35

“(b) the direction is suspended from the date on which the Court receives the notice of objection until the Court, after considering the person’s objection, confirms the direction (whether with or without variation).”

- 19 New section 40A inserted** 5
 The following section is inserted after section 40:
- “40A Registrar may authorise respondent or associated respondent to attend additional programmes**
- “(1) A respondent or associated respondent who has completed a programme in accordance with a direction made under section 32 may, at any time while the protection order remains in force, request the Registrar to authorise the provision of a further programme to the respondent or associated respondent. 10
- “(2) The Registrar may authorise a respondent or associated respondent to attend a further programme if the Registrar is satisfied that he or she would benefit from attendance at that programme. 15
- “(3) Where the Registrar authorises the provision of a further programme under **subsection (2)**, the Registrar must arrange for the matter to be referred to a programme provider without delay. 20
- “(4) The number of programme sessions to be provided in respect of a referral under **subsection (3)** must be determined in accordance with such regulations as may be made under this Act or, if no regulations apply, by the Registrar.” 25
- 20 Powers of Registrar on receipt of notice under section 39 or 41**
 Section 41A(1) and the heading to section 41A are amended by omitting “39 or 41” in each place where it appears and substituting in each case “39, 41, or **44E**”. 30
- 21 Judge may call respondent or associated respondent before Court**
 Section 42(1)(a) is amended by omitting “section 32(1) or section 32(2)” and substituting “section 32(1), 32(2), or **44D(2)**”.

- 22 Confidentiality of information disclosed to programme provider**
Section 43(4)(c)(i) is amended by omitting “section 49(1)(c)” and substituting “**section 49A**”.
- 23 New heading and sections 44A to 44F inserted** 5
The following heading and sections are inserted after section 44:
“Addiction treatment programmes
- “44A Meaning of addiction assessment**
An **addiction assessment** is an assessment to determine 10
whether—
“(a) the respondent or associated respondent may benefit from receiving treatment for an addiction; and
“(b) a suitable addiction treatment programme is reasonably available to that person, taking into account location and 15
timeliness.
- “44B Power to direct addiction assessment**
“(1) This section applies if the Court makes a final protection order following a defended hearing.
“(2) If the Court considers there are reasonable grounds for believing 20
that the respondent or associated respondent may suffer from an alcohol, drug, gambling, or other addiction, the Court may direct the respondent to undergo an addiction assessment.
- “44C Costs of addiction assessments**
Fees for addiction assessments provided pursuant to **section** 25
44B, and reasonable expenses incurred,—
“(a) may be determined in accordance with regulations made under **section 127(ea)**; and
“(b) are payable out of public money appropriated by Parlia- 30
ment for the purpose.
- “44D Power to direct attendance at addiction treatment programme**
“(1) This section applies if an addiction assessment—

- “(a) determines that a respondent or an associated respondent may benefit from receiving treatment for an addiction; and
 - “(b) identifies a suitable addiction treatment programme that is reasonably available to that person. 5
- “(2) The Court may direct the respondent or associated respondent to attend an addiction treatment programme identified in the addiction assessment.

- “**44E Notice of absence from addiction treatment programme**

 - “(1) The provider of an addiction treatment programme to whom a respondent or an associated respondent is referred pursuant to a direction under **section 44D(2)** must notify the Registrar if that person fails to attend any session of that programme, unless the provider has excused the person from attendance at that session. 10
15
 - “(2) A notice under **subsection (1)** must be given—
 - “(a) in writing; and
 - “(b) within 7 days of the failure to attend the session.

- “**44F Notice of conclusion of addiction treatment programme**

 - “(1) The provider of an addiction treatment programme to whom a respondent or an associated respondent is referred pursuant to a direction under **section 44D(2)** must, when that addiction treatment programme concludes, notify that fact, in writing and without delay, to the Registrar. 20
 - “(2) The notice given under **subsection (1)** must also state whether or not the respondent or associated respondent— 25
 - “(a) was excused from attending any session or sessions, and the reasons for that non-attendance:
 - “(b) participated fully in the addiction treatment programme.” 30

- 24 Power to discharge protection order**

Section 47 is amended by inserting the following subsection after subsection (1):

- “(1A) In exercising its discretion under subsection (1) to grant a discharge of a protection order, the Court must take into account the following matters:
- “(a) whether the respondent is complying with all standard conditions and special conditions (if any) of the protection order (to the extent that compliance is not excepted under section 19(2)(e)(i) to (iv), or suspended in accordance with section 20(2) or 28(3)); and 5
 - “(b) the participation of the respondent in any programme that he or she has been directed to attend under section 32 or **44D**, and whether that programme has been concluded; and 10
 - “(c) the length of time the protection order has been in force; and
 - “(d) whether the applicant consents to the discharge of the protection order; and 15
 - “(e) whether there is currently contact between the applicant and the respondent, and the nature of that contact; and
 - “(f) the current arrangements for contact between the respondent and the children of the applicant’s family; and 20
 - “(g) the future safety of the applicant and the children of the applicant’s family.”

25 New sections 47A to 47C inserted

The following sections are inserted after section 47:

- “**47A Report on domestic violence** 25
- “(1) This section applies to an application for the discharge of a protection order where the Court considers that sufficient evidence has not been presented to it by, or on behalf of, the parties to the proceedings of the matters set out in **section 47(1A)(a) and (g)**. 30
- “(2) The Court may request a person whom it considers qualified for the purpose to prepare a written report on those matters.
- “**47B Distribution, etc, of report under section 47A**
- “(1) The Registrar of the Court must copy a report prepared pursuant to a request under **section 47A(2)** (the **report**) to— 35

- “(a) the lawyer acting for each party to the proceedings or, subject to **subsection (3)**, if a party has no lawyer acting for that party, to that party; and
- “(b) a lawyer appointed to act for a child who is the subject of the proceedings (if any). 5
- “(2) If the Court orders a lawyer referred to in **subsection (1)(a)** not to give or show the report to the person for whom the lawyer is acting, the lawyer must comply with the order.
- “(3) If a party has no lawyer acting for that party and the Court is satisfied that information in the report would, if provided 10 directly to that party, place the safety of a protected person at risk, the Court may—
 - “(a) order that the report not be copied to that party under **subsection (1)(a)**; and
 - “(b) appoint counsel to assist the Court under section 15 81(1)(a).
- “(4) Before the report is copied to a lawyer under **subsection (1)(b)**, the Court must consider whether the report may be given or shown to the child for whom the lawyer is acting.
- “(5) A lawyer referred to in **subsection (1)(b)** may give or show 20 the report to the child for whom the lawyer is acting only if the Court so orders, but in every case the lawyer must explain to the child the purpose and contents of the report, unless the lawyer considers that to do so would be contrary to the welfare and best interests of the child. 25
- “(6) A party to the proceedings, or a lawyer appointed to act for a child who is the subject of the proceedings, may present evidence on any matter referred to in the report.
- “(7) The Court may, if it thinks fit, call as a witness the person who made or prepared the report. 30
- “**47C Costs of reports under section 47A**
- “(1) Fees for reports prepared pursuant to a request under **section 47A(2)**, and reasonable expenses incurred,—
 - “(a) may be determined in accordance with regulations made under **section 127(eb)**; and 35

- “(b) are payable out of public money appropriated by Parliament for the purpose or, if the Court so orders, are payable by any party or parties to the proceedings.
- “(2) An amount of any fees and expenses ordered to be paid by a party under **subsection (1)(b)** is, if paid by the Crown, a debt due to the Crown by that party and, in default of payment of the amount, payment of the amount may be enforced, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that Court.” 5
- 26 New sections 49 and 49A substituted** 10
- (1) Section 49 is repealed and the following sections are substituted:
- “**49 Offence to contravene protection order**
- “(1) Every person commits an offence who, without reasonable excuse,— 15
- “(a) does any act in contravention of a protection order; or
- “(b) fails to comply with any condition of a protection order.
- “(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 2 years. 20
- “**49A Offence to fail to comply with direction**
- “(1) Every person commits an offence who, without reasonable excuse, fails on any occasion to comply with—
- “(a) a direction made under section 32(1) or (2) to attend a specified programme; or 25
- “(b) a direction made under **section 44B** to undergo an addiction assessment; or
- “(c) a direction made under **section 44D** to attend an addiction treatment programme.
- “(2) Every person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.” 30
- (2) The second column of the item relating to the Domestic Violence Act 1995 in Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is consequentially amended by omitting “49(3)” and substituting “**49(2)**”. 35

- 27 Power to arrest for breach of protection order**
- (1) Section 50(1) is amended by omitting “section 49(1)(c) of this Act” and substituting “**section 49A**”.
- (2) Section 50(2) is repealed.
- 28 Application without notice for occupation order or tenancy order** 5
- Section 60 is amended by inserting the following subsection after subsection (2):
- “(2A) When a temporary order becomes a final order pursuant to subsection (2), the final order comes into effect immediately.” 10
- 29 Application without notice for ancillary furniture order or furniture order**
- Section 70 is amended by inserting the following subsection after subsection (2):
- “(2A) When a temporary order becomes a final order pursuant to subsection (2), the final order comes into effect immediately.” 15
- 30 Applications for property orders by minors**
- (1) Section 71(1)(a) is amended by omitting “17” and substituting “18”.
- (2) Section 71(2) is amended by omitting “16 years” and substituting “16 years or 17 years”. 20
- 31 Applications for property orders against minors**
- Section 72 is amended by omitting “17” in each place where it appears and substituting in each case “18”.
- 32 Procedure where respondent does not require hearing** 25
- Section 77 is amended by inserting the following subsection after subsection (1):
- “(1A) When a temporary order becomes a final order pursuant to subsection (1), the final order comes into effect immediately.”
- 33 New section 79A inserted** 30
- The following section is inserted after section 79:

“79A Review of contact arrangements

- “(1) When making a temporary protection order, the Court may direct the Registrar to convene a review before a Family Court Judge of the arrangements for contact between the respondent and a child of the applicant’s family. 5
- “(2) On receiving a request under **subsection (1)**, the Registrar must—
- “(a) appoint a time and place for the holding of the review; and
 - “(b) inform the applicant and respondent of the date, time, and place of the review, and invite them to attend. 10
- “(3) Only the following persons may attend the review—
- “(a) the applicant;
 - “(b) the respondent;
 - “(c) a lawyer representing the applicant or respondent: 15
 - “(d) a lawyer appointed under section 81.
- “(4) At the review the Judge may—
- “(a) make an interim order relating to contact under **section 28B**;
 - “(b) impose any condition under section 27 relating to the matter set out in subsection (2)(a) of that section: 20
 - “(c) give any directions that the Judge considers necessary.
- “(5) The provisions of this section, so far as applicable and with the necessary modifications, apply to an associated respondent as if the person were a respondent.” 25

34 Procedure where hearing required

Section 80(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) make the temporary order a final order (whether with or without variation); or”. 30

35 New section 80A inserted

The following section is inserted after section 80:

“80A Temporary order discharged when made final order under section 80(1)

- “(1) Where a temporary order is made a final order under **section 80(1)(b)**, the temporary order is automatically discharged. 35

“(2) Where the part of a temporary order not already a final order is confirmed under section 80(1)(c)(i) or (ii), the temporary order is automatically discharged.”

36 Court may appoint lawyer

(1) Section 81(1)(b) is amended by adding the following subparagraph: 5

“(iii) in the circumstances specified in **subsection (1A)**, if an application for a parenting order under the Care of Children Act 2004 is not currently before a Family Court in respect of the child; 10
or”.

(2) Section 81 is amended by inserting the following subsections after subsection (1):

“(1A) The circumstances referred to in **subsection (1)(b)(iii)** are—

“(a) that the Court makes a temporary protection order; or 15

“(b) that an application is made under any of the following provisions:

“(i) section 46(1)(a) (an application to vary or discharge a special condition of a protection order):

“(ii) section 47 (an application to discharge a protection order): 20

“(iii) section 53 (an application for an occupation order):

“(iv) section 57 (an application for a tenancy order).

“(1B) A lawyer appointed under **subsection (1)(b)(iii)** must, unless he or she considers it inappropriate to do so because of exceptional circumstances, meet with the child and afford the child the opportunity to express any views on matters affecting the child.” 25

37 Conduct of proceedings

Section 83(1) is amended by inserting the following paragraph after paragraph (d): 30

“(da) any lawyer appointed pursuant to section 7 of the Care of Children Act 2004 to act for a child who in proceedings under this Act is a child of the applicant’s family:” 35

38 New Part 6A inserted

The following Part is inserted after section 124:

**“Part 6A
“Safety orders**

“124A Interpretation

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In this Part, unless the context otherwise requires,—

“**constable** has the meaning given to it by section 4 of the Policing Act 2008

“**qualified constable** means a constable who is of or over the level of position of sergeant

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“**safety order** means an order issued under **section 124B**.

“124B Police may make safety order

“(1) A qualified constable may make a safety order against a person (**person A**) who is in a domestic relationship with another person (**person B**) if the constable—

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“(a) does not arrest person A for an offence; but

“(b) has reasonable grounds to believe, having regard to the matters specified in **subsection (2)**, that the issue of a safety order is necessary to ensure the immediate safety of person B.

20

“(2) When considering whether to make a safety order against person A, the constable must have regard to the following matters:

“(a) whether, in the circumstances, he or she considers it is likely that—

“(i) person A has used, or is using, domestic violence against person B:

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“(ii) person A has used, or is using, domestic violence against any other person with whom he or she has a domestic relationship:

“(b) whether there is a serious likelihood that person A will use, or again use, domestic violence against person B:

30

“(c) the welfare of any children residing with person B:

“(d) the hardship that may be caused if the order is issued:

“(e) any other matter the constable considers relevant.

“(3) A constable who is not a qualified constable may make a safety order under this section only if he or she is authorised by a qualified constable to do so.

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“124C Consent to making of order not required

A safety order may be made without the consent of the person for whose safety the order is proposed to be made.

“124D Safety order not to be made against child

A safety order may not be made against a child.

5

“124E Effect of safety order

“(1) A person against whom a safety order is made must immediately—

“(a) surrender to a constable any firearm or other weapon in his or her possession or control:

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“(b) vacate any land or building occupied by a person at risk, whether or not he or she has a legal or equitable interest in the land or building.

“(2) It is a condition of every safety order that the person against whom the order is made must not—

15

“(a) physically or sexually abuse a person at risk; or

“(b) threaten to physically or sexually abuse a person at risk; or

“(c) damage, or threaten to damage, property of a person at risk; or

20

“(d) engage, or threaten to engage, in other behaviour, including intimidation or harassment, that amounts to psychological abuse of a person at risk; or

“(e) encourage any person to engage in behaviour against a person at risk, where the behaviour, if engaged in by the person against whom the order is made himself or herself, would be prohibited by the order; or

25

“(f) watch, loiter near, or prevent or hinder access to or from the place of residence, business, or employment of a person at risk, or an educational institution attended by a person at risk, or any other place that a person at risk visits often; or

30

“(g) follow a person at risk about or stop or accost a person at risk in any place; or

“(h) where a person at risk is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or

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- “(i) make any other contact with a person at risk (whether by telephone, correspondence, or otherwise) except such contact as is reasonably necessary in any emergency.
- “(3) In this section, a **person at risk** means—
- “(a) the person named in the order for whose safety the safety order is made; and
- “(b) any child residing with that person.

“**124F Suspension of parenting orders, etc**

- “(1) This section applies where—
- “(a) a safety order is made; and
- “(b) a child is residing with a person named in the safety order for whose protection the order is made (a **protected child**); and
- “(c) a parenting order or day-to-day care or contact agreement is in force in respect of a protected child; and
- “(d) the person against whom the safety order is made is a party to that parenting order or agreement.
- “(2) While a safety order continues in force against any person, the provisions of a parenting order or an agreement affording to that person the day-to-day care of, or contact with, a protected child are suspended.

“**124G Safety order to be issued, served, and explained**

- “(1) A constable who makes a safety order must arrange for the order to be issued and served on the person against whom the order is made.
- “(2) For the purpose of **subsection (1)**, the constable may detain the person against whom the order is made for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and served.
- “(3) A constable who makes a safety order must, if and to the extent that it is reasonably practicable to do so in the circumstances, explain at the time the order is made, or served, to the person against whom the order is made, and to the person for whose safety the order is made,—
- “(a) the purpose, duration, and effect of the order; and

- “(b) the consequences that may follow if the person against whom the order is made contravenes the order.
- “(4) A safety order is not invalid merely because—
 - “(a) the constable did not give the explanation referred to in **subsection (3)** or arrange for someone else to give the explanation; or
 - “(b) a person whom the constable arranged to give the explanation did not give the explanation.

- “**124H Duration of safety order**
 - “(1) A safety order comes into force immediately it is served on the person against whom the order is made.
 - “(2) A safety order continues in force for the period specified in the order, which period must not exceed 72 hours.

- “**124I Failure to comply with safety order**
 - “(1) In this section—
 - “**person A** means a person against whom a safety order is made
 - “**person B** means the person named in a safety order for whose safety the safety order is made.
 - “(2) If a person A refuses or fails to comply with a safety order, a constable may, using such force as is reasonably necessary, take person A into custody.
 - “(3) A person A who is taken into custody under **subsection (1)** must be brought before a District Court as soon as possible.
 - “(4) Where the District Court is satisfied that a person A has refused or failed to comply with the safety order, the District Court may,—
 - “(a) if the safety order has not expired, direct that the safety order continue in force for a further period not exceeding 72 hours from that time; or
 - “(b) if the safety order has expired, direct that another safety order be issued in the same terms as the expired order and served in accordance with **section 124G**; or
 - “(c) if person B does not object and without an application from any person, make a temporary protection order

under section 14 against person A for the protection of person B.

- “(5) However, the District Court may not make an order referred to in **subsection (4)(c)** if person B has made an application for a protection order against person A that is currently pending determination by a Court. 5

“**124J District Court summons**

- “(1) If a person to whom **section 124I(3)** applies is not brought before a District Court within 24 hours of being taken into custody, the person must, at the expiry of that period, be released and may be summoned to appear before a District Court. 10

- “(2) Where a person is summoned under **subsection (1), section 124I(4) and (5)** applies.

“**124K Police employees, etc, protected from proceedings**

No action or proceedings may be brought against the Crown or any constable in respect of any thing done, or omitted to be done, for the purpose of carrying out the provisions of this Part, where the Crown or the constable acted in good faith and with reasonable care.” 15

39 Regulations 20

- (1) Section 127(d) is amended by omitting “section 29 or section 32” and substituting “section 29, **29A**, 32, or **40A**”.
- (2) Section 127(e) is amended by omitting “section 29 or section 32” and substituting “section 29, **29A**, 32, or **40A**”.
- (3) Section 127 is amended by inserting the following paragraphs after paragraph (e): 25
- “(ea) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of the preparation of assessments provided pursuant to **section 44B**: 30
- “(eb) providing for the determination of the amount of fees and expenses, including minimum and maximum amounts, payable in respect of the preparation of reports requested under **section 47A(2)**.”.

Part 2
Amendments to Care of Children Act
2004

- 40 Principal Act amended**
This Part amends the Care of Children Act 2004. 5
- 41 Principles relevant to child’s welfare and best interests**
Section 5(e) is amended by inserting “as defined in section 3(2) of the Domestic Violence Act 1995” after “violence”.
- 42 Section 54 repealed**
Section 54 is repealed. 10
- 43 Procedure if child’s parents are parties to interim order**
Section 57(5)(b) is amended by omitting “or section 54(1)”.
- 44 Interpretation**
Section 58 is amended by inserting the following definitions in their appropriate alphabetical order: 15
- “**allegation of violence**, in relation to a party to proceedings, means an allegation that that party has used violence against—
- “(a) another party to the proceedings; or
- “(b) a child who is the subject of the proceedings; or
- “(c) a child of the family 20
- “**protection order** means—
- “(a) a protection order, including a temporary order, made under the Domestic Violence Act 1995:
- “(b) a protection order made under **section 123B** of the Sentencing Act 2002 25
- “**violent party** means a party to the proceedings against whom—
- “(a) there is currently in force a protection order for the protection of any of the following persons:
- “(i) another party to the proceedings: 30
- “(ii) a child who is the subject of the proceedings:
- “(iii) a child of the family; or
- “(b) an allegation of violence is made that, on the basis of the evidence presented by, or on behalf of, the parties to the

proceedings (without the Court being required to make inquiries on its own initiative), the Court is satisfied is proved”.

- 45 Allegations of violence made in proceedings relating to parenting orders** 5
- (1) Section 59 is amended by omitting the heading and substituting the following heading: “**Application of section 60**”.
- (2) Section 59(1) is amended by omitting paragraph (b) and substituting the following paragraph:
 “(b) in which there is a violent party.” 10
- 46 Procedure for dealing with proceedings in section 59(1)**
- (1) Section 60(1) and (2) are repealed.
- (2) Section 60(3) is repealed and the following subsections are substituted:
- “(3) In proceedings to which this section applies in accordance with section 59 (the **proceedings**), the Court must not make— 15
- “(a) an order giving the violent party the role of providing day-to-day care for the child to whom the proceedings relate; or
- “(b) any order allowing the violent party contact (other than supervised contact) with that child. 20
- “(3A) **Subsection (3)** is subject to subsection (4).”
- 47 Preventing removal of child from New Zealand**
- (1) Section 77(2) is amended by omitting “is about to” and substituting “may”. 25
- (2) Section 77(3) is amended by repealing paragraph (c) and substituting the following paragraph:
 “(c) may, whether or not a warrant has been issued under paragraph (a) (either with or without an additional order under paragraph (b)), order that the child not be removed from New Zealand by— 30
- “(i) any person; or
- “(ii) any person other than a person named in the order.”

(3) Section 77 is amended by inserting the following subsection after subsection (3):

“(3A) An order made under **subsection (3)(c)** may specify that the order is to continue until—

“(a) the expiry of a specified period; or 5

“(b) a further order is made by an authority.”

48 New sections 77A and 77B inserted

The following sections are inserted after section 77:

“**77A Orders under section 77(3)(c) in respect of children of or over 16 years** 10

“(1) An order under **section 77(3)(c)** must not be made in respect of a child of or over the age of 16 years unless there are special circumstances.

“(2) An order under **section 77(3)(c)** made in respect of a child under the age of 16 years expires when the child attains that age unless the Court in special circumstances orders otherwise on or after making the order. 15

“**77B Orders under section 77(3)(c) may be suspended for specified period**

“(1) On an application for the purpose by any person, a High Court Judge, a District Court Judge, or a Family Court Judge may suspend an order made under **section 77(3)(c)**. 20

“(2) On an application for the purpose, a Registrar of the High Court, or of a District Court, may suspend an order made under **section 77(3)(c)** if— 25

“(a) the application is made by a party to the proceedings under section 77 in which the order was made (the **earlier proceedings**); and

“(b) every other person who was a party to the earlier proceedings consents. 30

“(3) A suspension of an order made under **section 77(3)(c)** must be—

“(a) for a specified time; and

“(b) in relation to a specified person.”

49 Preventing removal of child to defeat application

Section 118(3) is amended by—

- (a) omitting “section 77(4) and (5)” and substituting “sections 77(4) and (5), **77A**, and **77B**”; and
- (b) omitting “applies” and substituting “apply”. 5

50 New section 122A inserted

The following section is inserted after section 122:

“122A Discharge of order under section 105 for return of child

- “(1) This section applies where a Court makes an order under section 105(2) for the return of a child (the **removal order**). 10
- “(2) A party to the proceedings under section 105 in which the removal order was made (the **removal proceedings**) may apply to the court for the discharge of the removal order.
- “(3) On an application under **subsection (2)**, the Court may discharge the removal order if— 15
 - “(a) the application is made not earlier than 1 year after the removal order was made, or any appeal in relation to the removal order was determined, and the Court is satisfied that—
 - “(i) the child is now settled in his or her new environment in New Zealand; and 20
 - “(ii) having regard to all the circumstances of the case, the discharge of the removal order is warranted; or
 - “(b) every other person who was a party to the removal proceedings consents.” 25

Part 3**Amendments to Sentencing Act 2002****51 Principal Act amended**

This Part amends the Sentencing Act 2002. 30

52 New heading and sections 123A to 123G inserted

The following heading and sections are inserted after section 123:

“Protection orders

“123A Interpretation of terms used in this section and sections 123B to 123G

For the purpose of this section and **sections 123B to 123G**, unless the context otherwise requires,—

5

“**child** has the meaning given to it by section 2 of the Domestic Violence Act 1995

“**domestic relationship** has the meaning given to it by section 4 of the Domestic Violence Act 1995

“**domestic violence offence** means an offence against any enactment (other than the Domestic Violence Act 1995) involving the use of violence against a person, other than a child, with whom the offender is, or has been, in a domestic relationship

10

“**victim of the offence** means the person against whom the offence was committed by the offender

15

“**violence** has the meaning given to it by section 3(2) of the Domestic Violence Act 1995.

“123B Protection order

“(1) This section applies if—

“(a) the offender is convicted of a domestic violence offence; and

20

“(b) there is not currently in force a protection order against the offender made under the Domestic Violence Act 1995 for the protection of the victim of the offence; and

“(c) the victim of the offence has not made an application under the Domestic Violence Act 1995 for a protection order against the offender that is currently pending determination by a Court.

25

“(2) The Court may make a protection order against the offender if—

30

“(a) it is satisfied that the making of the order is necessary for the protection of the victim of the offence; and

“(b) the victim of the offence does not object to the making of the order.

“(3) A protection order may be made under this section in addition to imposing a sentence or making any other order.

35

“123C Provisions applying to protection order made under section 123B

- “(1) Subject to the modifications set out in **subsection (2)**, the following provisions apply so far as applicable to a protection order made under **section 123B** as if that order were a final protection order made under the Domestic Violence Act 1995:
- “(a) sections 16(1) and **(5)**, 19 (except subsection (3)), 20 (except subsection (5)), 21 (except subsections (2)(a), (4), and (5)), 24(3), 25(1) (except paragraph (a)), 26(1), 28 (except subsection (6)), 32(1) and (4), and 33 of the Domestic Violence Act 1995; and
- “(b) section 27 of the Domestic Violence Act 1995, except that the Court may not impose a condition relating to the matter set out in subsection (2) of that section.
- “(2) The modifications referred to in **subsection (1)** are as follows:
- “(a) every reference to protection order or final order must be read as a reference to an order made under **section 123B**;
- “(b) every reference to the respondent must be read as a reference to the offender;
- “(c) every reference to the applicant or protected person must be read as a reference to the victim of the offence.

“123D Explanation of order

- “(1) On making a protection order, the Judge or Registrar must explain to the offender—
- “(a) the effect of the order; and
- “(b) the consequences that may follow if the offender fails to comply with the terms of the order; and
- “(c) the means by which the order can be varied or discharged.
- “(2) Failure to give the explanation required by **subsection (1)** does not affect the validity of the order made.

“123E Protection order to be issued and served on offender

- “(1) Where the Court makes a protection order under **section 123B**, the Registrar of that Court must—
- “(a) immediately issue the order; and

- “(b) wherever practicable, serve a copy of the order on the offender before he or she leaves the Court.
- “(2) For the purpose of **subsection (1)**, the Court may direct that the offender be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and a copy served on the offender. 5
- “**123F Protection order to be sent to Family Court**
- “(1) Immediately after the issue of a protection order in accordance with **section 123E**, the Court must send a copy of the order to the Family Court nearest to where the victim of the offence resides. 10
- “(2) On receipt of a copy of an order under **subsection (1)**, the Registrar of the Family Court must enter the order in the records of the Family Court.
- “**123G Protection order treated as if made by Family Court** 15
- As soon as an order has been entered in the records of the Family Court under **section 123F(2)**,—
- “(a) the order is to be treated as if it were a final protection order made by that Court under the Domestic Violence Act 1995; and 20
- “(b) sections **16(1A) and (1B)**, 22(2)(b) and (6), 23, **28E, 28F**, 29 to 31, 34, 35, 38 to 44, 45(2), 46(1), 47(1), **47A to 47C**, 48, **49, 49A(1)(a) and (2)**, 50, 82, and 88 to 90 of the Domestic Violence Act 1995 apply to the order accordingly.” 25

Part 4

Amendments to Bail Act 2000

- 53 Principal Act amended**
- This Part amends the Bail Act 2000.
- 54 Defendant admitted to bail by member of police** 30
- Section 21 is amended by inserting the following subsections after subsection (4):
- “(4A) If a person charged with a domestic violence offence is granted bail under this section, the Police employee who takes

the bail bond of that person may, in addition to the conditions that may be imposed under subsections (3) and (4), also impose any condition that he or she considers reasonably necessary to protect any child who is in a domestic relationship with that person. 5

“(4B) For the purposes of this subsection and **subsection (4A)**,—

“**domestic relationship** has the same meaning as in section 4 of the Domestic Violence Act 1995

“**domestic violence offence** means an offence against any enactment involving the use of violence against a person with whom the offender is, or has been, in a domestic relationship 10

“**violence** has the meaning given to it by section 3(2) of the Domestic Violence Act 1995.”
