

Family and Whānau Violence Legislation Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Family and Whānau Violence Legislation Bill and recommends that it be passed with the amendments shown.

Introduction

The Family and Whānau Violence Legislation Bill is an omnibus bill that would significantly amend the Domestic Violence Act 1995, including changing its name to the Family and Whānau Violence Act 1995. The bill would also amend the Bail Act 2000, the Care of Children Act 2004, the Crimes Act 1961, the Criminal Procedure Act 2011, the Evidence Act 2006, and the Sentencing Act 2002.

New Zealand has unacceptably high rates of family violence

In 2016, police officers responded to 118,000 incidents involving family violence. However, we know that about 76 percent of family violence incidents are not even reported to the Police.¹ These are not necessarily one-off incidents, because family violence is cyclical with significant re-victimisation and high levels of recidivism.

In New Zealand, the family violence homicide rate per capita is more than twice that of Australia, Canada, or the United Kingdom. Between 2000 and 2010, New Zealand women reported the highest lifetime prevalence of physical violence and sexual violence by their intimate partner amongst 14 and 12 developed countries, respectively.²

¹ Family violence statistics can be found at: <http://bit.ly/2g4g7hv>.

² Ministerial Group on Family Violence and Sexual Violence: Update on the Progress of the Work Programme <http://bit.ly/2tyRoot>.

Children are present at two-thirds of all family violence incidents attended by police officers. In New Zealand, children who experience family violence are twice as likely to be victims of sexual violence, and four times more likely to commit sexual violence against a partner. They are three times more likely to attempt suicide, and 57 percent leave school without a qualification.

The role of legislation in addressing family violence

Reducing New Zealand's rates of family violence requires a comprehensive approach that prioritises early intervention and prevention. This bill is part of a wider work programme of the Ministerial Group on Family Violence and Sexual Violence, which is focusing on improving and coordinating family violence services to help all those affected by family violence in a timely and meaningful way.³

The bill has three main features:

- Establishing a framework to support a cross-government response to family violence, including increasing people's ability to access risk and needs assessments and services, providing for codes of practice, and new information-sharing provisions.
- Making changes to improve the accessibility and effectiveness of civil orders (including police safety orders (PSOs) and protection orders).
- Improving the criminal justice response by creating three new criminal offences and providing for more accurate recording of family violence offending in the criminal justice system.

Recommended amendments

We are recommending a number of amendments to the bill in response to issues raised by submitters and our own scrutiny. We consider that these changes would mean that the bill's provisions better reflect the nature of family violence.

The following sections of our commentary cover the main amendments that we recommend to the bill as introduced. We do not discuss minor or technical amendments.

At the end of our commentary, we discuss some other issues raised by submitters that did not result in any recommended amendments.

Part 1—Amendments to the Domestic Violence Act:

Purpose and principles

Clause 7 would replace the current object of the Domestic Violence Act, by inserting a purpose provision (new section 1A) and principles (new section 1B). The purpose section would update the intent of the Act, which is to recognise that all forms of

³ Find out more about the work of the Ministerial Group on Family Violence and Sexual Violence at: <http://bit.ly/2tzcljb>.

family violence are unacceptable, to stop and prevent perpetrators from inflicting family violence, and to keep victims safe. The principles provide guidance on how to achieve the purpose when a court or person exercises a power under the Act. There is no hierarchy between the principles. Where relevant they have equal weight, and do not override procedural provisions about protection orders and parenting orders.

Just over a third of submitters addressed clause 7 in their submissions. Suggested changes included the addition of principles to acknowledge that people with disabilities are particularly vulnerable (and so should, for example, have access to targeted services), and to recognise early intervention as a key means to address family violence. We agree with these principles, and recommend that clause 7 be amended to include them as new section 1B(da) and (db).

We also recommend that clause 7 be amended so that new section 1B(j) makes it clear that victims' views should be considered and respected unless there is a good reason not to. This would recognise that situations may arise where a victim's views may not be followed, for example when the Police choose to prosecute an alleged perpetrator in the public interest, even if the victim does not support the prosecution.

Overview of the Act as amended

We recommend inserting new section 1C to set out an overview of the legislation as it would stand with the amendments made by the bill, and a brief explanation of the content and purpose of each Part.

Including examples of psychological abuse

Clause 9 would amend the Act's definition of psychological abuse by including the ill-treatment of household pets and other animals whose welfare significantly affects a person's wellbeing. It would also list examples of intimidation and harassment.

Some submitters were concerned that including a definition with examples could potentially narrow the application of this provision. However, clause 11, new section 5A, makes it clear that examples used throughout the bill would not limit a provision, and may actually extend its operation. We are satisfied that providing a non-exhaustive list of examples would allow the courts to recognise other forms of psychological abuse that align with the general intent of Parliament.

We consider that the definition of psychological abuse should better reflect forms of abuse towards the elderly and disabled. We therefore recommend amending clause 9 to include examples of this type of abuse in section 3B(1)(ea).

Protection orders

Clauses 12 to 14 of the bill deal with applications for protection orders. They would amend or replace sections 7 through 12 of the Act.

Applications by children aged over 16 years

Under the bill as introduced, new section 9 would allow a person under the age of 18 years to apply for a protection order, either in their own name or through a representa-

tive. This provision aims to simplify the current age-based distinctions in the Act. At present, children under 16 years old must apply through a representative, while those aged 16 years and over may apply by themselves or through a representative, and children aged 17 years and over must apply by themselves.

We agree with the suggestion that new section 9 should be amended to allow children aged 16 years and over to choose whether to make an application in their own name or through a representative. We recommend amending clauses 12 and 14 (sections 7 and 9) accordingly.

Judges may interview children to ascertain their views

New section 9A concerns the views of a child on whose behalf an application for a protection order has been made by a representative. If the child expresses a view on the proceedings, the court must take it into account. We note that it is still the court's discretion to determine the weight to be placed on that person's views.

Court processes can be intimidating for anyone, especially a child. To help children better express their views, we recommend including a general provision to enable a judge to interview a child at any stage in the process if the judge thinks it is necessary or desirable. This would not affect the rules of the court on ascertaining the child's wishes at any hearing of the application. To do this, we recommend inserting clause 45A to insert new section 81A in the Act.

Applications against children aged 16 or 17 years old in special circumstances

In the bill as introduced, new section 10 would prevent the court from making a protection order against a child unless the court is satisfied that the order is justified by special circumstances. As the law stands, a protection order may only be made against a person under the age of 17 years if they are married, in a civil union, or in a de facto relationship. New section 10 is intended to maintain the status quo, allowing orders to be made against 16 and 17 year olds in special circumstances, but without the requirement that they must be in a relationship.

We are concerned that the wording of section 10 in the bill as introduced suggests that protection orders can be made against anyone under 18 years old. This is not the intention. We recommend amending section 10 to provide that a protection order may only be made against a child aged 16 or 17 years, and only if there are special circumstances.

We recommend a further amendment to assist the court in determining where there are special circumstances. We propose that the court:

- must consider whether a notification should be made to the Ministry for Vulnerable Children, Oranga Tamariki (the ministry)
- may request a social worker's report
- may make a referral to the ministry for a family group conference to be held
- may appoint a lawyer where the child against whom the application is made is unrepresented.

Advice from chief executive or social worker

We propose that, when the court considers applications for protection orders by or against children under new section 9 or 10, it should have the ability to obtain advice from the chief executive of the ministry or a social worker about any involvement the department has had with the parties.

We recommend inserting section 10AAA to enable the registrar to refer an application to the chief executive and request that they provide brief written advice. On receipt of such a request, the chief executive or a social worker must provide the advice, which then must be referred by the registrar to the judge who is considering the application.

Report from chief executive or social worker

We think that, when a court considers applications for protection orders by or against children under new section 9 or 10, it should be able to require the chief executive or social worker to report on the application.

We recommend inserting section 10AAB to allow the court to direct the registrar to give the chief executive a copy of the application. The chief executive would then be required to report to the court, and may appear personally or be represented by a lawyer.

Reports from the chief executive or a social worker are available to the court under sections 131A and 132 of the Care of Children Act (COCA). They are usually obtained when the court is alerted to concerns about care and protection during proceedings. We consider that they will be relevant to the court when considering applications for protection orders under section 9 or 10.

Court should take into account the views of people lacking capacity to make an application

New section 11 would allow protection orders to be applied for on behalf of people who lack capacity. Section 11(4) refers to “ascertaining” the views of the person who lacks capacity. We accept that ascertaining a person’s views is not the same as taking them into account when making a decision.

To make it clear that the person’s views must be taken into account, we recommend inserting new section 11(6) to require the court to take into account any views ascertained under section 11(4). We note that it is still the court’s discretion to determine the weight to be placed on that person’s views.

New section 12A states that if an application for a protection order is made by a representative on behalf of another person, that person may be heard in the proceedings. We recommend amending new section 12A to include an obligation that the court take that person’s views into account. Again, we note that it is still the court’s discretion to determine the weight to be placed on that person’s views.

Interim orders to be treated like interim parenting orders made under the Care of Children Act

Clause 24 would amend section 28B to clarify that an interim order made under section 28B(2) should be treated the same as an interim parenting order made under section 48(1) of the COCA.⁴ At present, interim orders expire after 12 months, which could leave a gap in protection if an application for a final order has not been made.

To ensure that the presiding judge is aware of any current orders under the COCA, we recommend amending clause 24 to provide that the court registrar should give the court information about any existing orders. We note that it is standard practice for registry staff to routinely provide information to a judge, and we consider it desirable that it be reflected in the legislation.

We further recommend amending clause 24 to provide that an order under section 28B should be clear how it relates to (that is, how it operates with, overrides, or replaces all, or any parts, of) any other existing relevant orders made under the COCA. This clarification would occur, for example, if the interim and other existing orders are inconsistent, and would prevent confusion about which order should prevail.

We acknowledge the submission from the Judges of the District and Family Courts suggesting that the relevant rules in the Family Court Rules 2002 be reviewed in consultation with the judiciary. We understand that these rules will be reviewed in the implementation stage, and the judiciary will be consulted on any proposed changes.

Variation or discharge on behalf of a protected person

New section 48 would re-enact current section 48, redrafting it in line with current legislative drafting practice. Section 48 applies to applications to vary or discharge a protection order on behalf of a protected person. Section 48(2) states that sections 9, 11, and 12 apply, but does not mention new sections 9A or 12A, which contain some content from current sections 9 and 12.

We recommend amending new section 48(2) to include reference to new sections 9A and 12A. This would make it clear that the court must have regard to the views of the child or person on whose behalf an application is made.

Releasing a completion report to a respondent who has completed a non-violence programme or service

When a respondent has completed a non-violence programme or prescribed service, new section 51Q would require the service provider to give the court registrar a completion report. The report would state whether the respondent has met the objectives of the programme or service, and advise of any concerns about the safety of a protected person.

⁴ Section 48 of the Care of Children Act can be found at <http://legislation.govt.nz/act/public/2004/0090/latest/DLM317610.html>.

We recommend inserting section 51Q(3) and (4). New section 51Q(3) would allow the court to release a copy of the completion report to either the respondent, or the lawyer for a child who applied for a protection order under section 9, or both, on any terms and conditions the court considers necessary or desirable to protect the safety of a protected person. New section 51Q(4) sets out examples of what these terms and conditions might include.

Information to be admitted as evidence with consent

New section 51R is intended to remove the legal barriers to programme providers sharing relevant information about the assessment and management of risk with other family violence agencies. As introduced, it would not allow this information to be admitted as evidence in any court or before any person acting judicially. However, that prohibition (in new section 51R(2)) on the information being used as evidence would not stop the information from being disclosed for all or any of the purposes set out in section 51R(3).

We note concerns that this would prevent the disclosure of this information to the court even with the authority of the person to whom the information relates. We consider that people should be able to authorise the disclosure of information about them to the court.

We recommend amending new section 51R(3) to allow this information to be admitted as evidence, with the authority of the person concerned. We further recommend amending new section 51R(4) to clarify that this section would not limit sharing or disclosing court information under the relevant court rules or the Privacy Act 1993.

Including reference to the Care of Children Act where a judge has the power to make, vary, or discharge a parenting order

New section 51S sets out what powers a judge would have where a registrar brings a matter to their attention under various sections in Part 2A. Section 51S(3)(g) would enable a judge to make, vary, or discharge the terms or conditions of a parenting order under the COCA relating to the respondent.

We note that, because the judge would be exercising powers under the COCA, the paramountcy principle in section 4(1)(b) of the COCA would automatically apply. However, we consider it desirable to make this clear. We therefore recommend amending section 51S(3)(g) to state that the provisions of the COCA apply.

New section 51W sets out the court's powers after hearing from a respondent. It includes the option for the court to admonish the respondent. We note that the effectiveness of an admonition can be questioned, but we consider it a suitable response when combined with any or all of the other options available to the court.

New section 51W(1)(g) would allow the court to make, vary, or discharge the terms or conditions of a parenting order under the COCA. As discussed above, we consider it desirable to make clear that the provisions of the COCA would apply. We recommend amending section 51W(1)(g) accordingly.

Applications without notice for occupation or tenancy orders

Section 60 relates to applications without notice for occupation orders or tenancy orders. In the bill as introduced, section 60 would be amended by removing section 60(3). This would align it with new sections 53 and 57, which relate to the court's power to make occupation orders and tenancy orders. At present, the tests distinguish between applications made with or without notice. An application without notice is limited to situations where the respondent has used physical or sexual abuse against the applicant. An application with notice includes the use of psychological abuse.

It has been pointed out that, as introduced, the bill would still only enable without-notice applications to be made if the respondent had used physical or sexual abuse against the respondent, and not solely psychological abuse.

We note that the bill's intent in amending section 60 is to remove this distinction. We believe the same test should be applied for applications with or without notice, and it should include psychological violence. We recommend amending section 60(1) accordingly.

A breach of a property order is a breach of the related protection order

Sections 62 to 70 of the Act deal with orders granting an applicant the possession and use of furniture and household appliances and effects. We recommend amending section 64, which relates to ancillary furniture orders, and section 68, which relates to furniture orders, to state that failure to comply with any term or condition of either order would amount to a breach of the related protection order. This would be an offence against section 49.

Application without notice for furniture order

We recommend inserting clause 43A to specify that an order under section 63 or 67 may be made on application without notice if the court is satisfied that a delay caused by proceeding on notice could expose the applicant, or their child, to family violence.

Children applying for property orders

Section 71 empowers a child to make an application for a property order. We recommend inserting section 71(2)(ab) to make it clear that a child may apply for a property order without a representative if they are 16 years old or over.

Taking into account the views of a child

Under section 71, a representative may make an application for a property order on behalf of a child. We recommend inserting new section 71A to state that the child may be heard during the proceedings, and to require the court to take their views into account.

Applications for property orders against children

We recommend amending section 72 to make it clear that the court must not make a property order against a child unless the child is 16 years old or over and the order is justified by special circumstances.

Police safety order against a child

A PSO is issued when the Police have reasonable grounds to believe that family violence has occurred, or may occur.

We recommend amending section 124D to state that a qualified constable must not issue an order against a child unless they are satisfied that child is aged 16 years or older.

Effect of Police safety orders on contact

Clause 58 would amend section 124E to update and simplify the Act's provisions relating to the effect of PSOs. It includes examples of permissible contact. The aim is to provide for contact in special circumstances, such as an emergency or a family group conference.

However, we note that this amendment would create inconsistency with section 124G, which applies when a parenting order is suspended. This is unintended. Further, we note that the examples of contact are unnecessary because contact is defined in the interpretation section of the principal Act.

We recommend removing section 124E(2A)(b) so that section 124G would determine the forms of contact permitted while PSOs are in place. Section 124G suspends a parenting order or an agreement giving to the person bound by the PSO the day-to-day care of, or contact with, a protected child.

Breaches of Police safety orders to be dealt with in the civil jurisdiction of the District Court

As introduced, clause 67 states that the balance of probabilities is the standard of proof to apply when determining whether to make a direction or order in response to a person's refusal or failure to comply with a PSO.

We heard evidence that clarifying the standard of proof to apply does not resolve ambiguity in court procedure for breaches of PSOs. We agree.

We recommend that clause 67 be amended to explicitly provide that breaches of PSOs are to be dealt with in the civil jurisdiction of the District Court. We further recommend inserting new section 124NA(1AAB) to allow rules of court to be made about dealing with breaches of PSOs.

Information sharing and disclosure**Agencies and practitioners may request, use, and disclose information**

New section 124V(1) would allow family violence agencies or social services practitioners to request personal information for specific purposes. New section 124V(5) states that, when determining whether to disclose that personal information, an agency or practitioner must have regard to the principle that victim protection should usually take precedence over confidentiality or any limit under privacy principle 11 in section 6 of the Privacy Act.

We heard concerns that section 124V(5) may create an assumption that confidentiality is mutually exclusive with victim safety. However, we consider that the phrase “should usually” indicates that, in some cases, it will not be appropriate to override a person’s confidentiality and privacy.

Section 7 of the Privacy Act ensures that, where there is conflict between the privacy principles and another piece of legislation, the other legislation prevails. There are many provisions throughout legislation where this override may apply without being explicitly stated. We acknowledge evidence from the Privacy Commissioner that including an explicit override in section 124V(5) could create legal uncertainty, because other implicit overrides may be interpreted to mean something different.

We therefore recommend amending section 124V to make it clear that the principle in section 124V(5) does not create mandatory sharing of information, but it must be considered before a decision is made about whether to disclose the information. We also recommend including new section 124VA to clarify the relationship between section 124V and other enactments, including the Privacy Act.

Privacy Commissioner should be consulted on codes of practice

New section 124Y would allow codes of practice to be issued by Order in Council to guide the delivery of services to victims or perpetrators of family violence to stop or prevent family violence.

It is intended that the codes would contain operational detail for family violence agencies and social services practitioners. The Governor-General would issue the codes by Order in Council, in accordance with recommendations from the Minister of Justice.

It was suggested that this section be amended to include a requirement for the Privacy Commissioner to be consulted on draft codes of practice relating to the use or disclosure of personal information. We agree, and recommend including new section 124Y(4A) to set out this requirement.

Regulation-making powers

Clause 70 would allow regulations to be made prescribing approval processes and criteria for assessors, service providers, and approved organisations.

Court information

New section 127(c) would enable court information of the District Court and Senior Courts to be shared with assessors and service providers.

We acknowledge the submission from the Judges of the District and Family Courts. They requested the removal of this section because it could undermine the existing statutory scheme in the District Court Act 2016 and the Senior Courts Act 2016. The Judges considered that if information sharing is deemed necessary, additional provisions should be included. We also received advice from the Regulations Review Committee that the disclosure of court information under new section 127(c) would be better provided for through court rules.

We have considered this feedback carefully. The intent of the provision is not to undermine the judiciary's ability to control access to court information, but to help assessors and service providers by improving appropriate access to court information.

We recommend inserting new section 127A to require that relevant members of the judiciary be consulted before regulations are made prescribing the approval process and criteria for assessors, service providers, and approved organisations.

Removing Schedule 2

New section 127(ga) would allow regulations to be made to amend or replace either or both of Parts 1 and 2 of Schedule 2 of the Act to add, amend, or delete items describing types of prescribed services. We received advice from the Regulations Review Committee that the criteria to apply when describing types of prescribed services should be provided for in the bill, rather than simply having regulations insert descriptions in the Schedule. The Regulations Review Committee also asked us to consider whether Schedule 2 is necessary, given that it has no content in the bill as drafted.

We consider it desirable for types of services to be prescribed by regulation because this would allow them to be flexible and responsive to needs as they arise. However, we agree that Schedule 2 is unnecessary because it appears that the intention is to insert this content by regulations. We recommend that the power under section 127(ga) be replaced with a regulation-making power, and Schedule 2 be removed.

Part 2—Amendments to other Acts:

Amendments to the Crimes Act 1961

Attorney-General's consent for extraterritorial prosecution of coerced marriage or prosecution

Section 7A of the Crimes Act allows certain offences to be prosecuted when they occur outside New Zealand but are linked to New Zealand. Section 7B requires the Attorney-General's consent for prosecutions under section 7A because they could affect New Zealand's international relationships.

As introduced, the bill would add the new offence of coerced marriage or civil union in section 7A. However, this offence was inadvertently not included in section 7B. We therefore recommend that new section 7B be amended to include the offence of coerced marriage or civil union.

Amendments to the Criminal Procedure Act 2011

Compliance with no-contact orders

Current law does not allow the courts to impose conditions preventing defendants, who have been remanded in custody, from contacting victims. The onus is on the victim to refuse contact. This is problematic because defendants may threaten and abuse victims, resulting in charges being dropped as they withdraw their evidence.

New section 168A would allow the court to impose no-contact conditions on defendants who are charged with a family violence offence and are remanded in custody. New section 168B sets out provisions about compliance with no-contact conditions, and processes to follow if the no-contact conditions are not complied with. These provisions include the responsibilities on a manager of the prison in which the defendant is remanded in custody.

We recommend rewording section 168B(2) to state that, where a defendant is held in custody on remand, the manager of the prison should use existing powers in the Corrections Act 2004 to detect or prevent non-compliance with a no-contact condition. This would make it clear that prison managers could take practical steps like checking and monitoring phone calls and mail.

Amendments to the Sentencing Act 2002

Appeals against a decision to make or refuse a protection order

It is the policy intent that, when there is an appeal against a protection order made during sentencing for an offence (and under section 123B of the Sentencing Act), it should follow the same process as an appeal against the sentence for the offence in the criminal jurisdiction. The case law on appeals of these protection orders, which now aligns with the policy intent, has suggested that this be clarified in legislation. We agree that clarification is desirable.

Accordingly, we recommend that section 123H be added to the Sentencing Act. It would state that appeals of protection orders made under section 123B are considered to be an appeal under subpart 4 of Part 6 of the Criminal Procedure Act against the sentence imposed for an offence.

New section 123H also requires the appeal court to send a copy of the order to the Family Court if, on an appeal against the sentence, a protection order is made or varied under section 123B.

Other issues raised in submissions:

We discuss below some other important issues raised by submitters during our scrutiny of this bill. Although they have not resulted in recommended amendments, they nevertheless formed a valuable part of our overall consideration.

Accessibility of protection orders

We received submissions about improving the accessibility of protection orders, including the availability of legal aid, assisting with the application process, and other measures to improve accessibility. We acknowledge the intent of these submissions, which is to help vulnerable people access protection orders more easily.

Legal aid for protection orders

The bill would not make any changes to the legal aid scheme. However, we are aware of concern that people who are ineligible for legal aid may face barriers in accessing

assistance to apply for protection orders. Various solutions were suggested, such as automatic entitlement to legal aid for victims of family violence, waiving repayment of legal aid for proceedings under the COCA when concurrent with protection order proceedings, or allowing people with disabilities to request their own lawyer instead of a legal aid approved lawyer.

We considered these suggestions carefully. However, we are concerned that altering the legal aid scheme so that assistance was based on factors other than a person's income would be inconsistent with the purposes of the scheme, which is to provide legal services to people with insufficient means. We are advised that 90 percent of people who apply for legal aid to fund a protection order application receive support.

Although we acknowledge that people with disabilities may feel more comfortable with a lawyer they already know, we do not support the suggestion to allow people with disabilities to request a lawyer who is not approved for legal aid funding. Legal aid lawyers must comply with approved criteria to ensure quality and consistency in legal aid representation.

Organisations assisting with applications for protection orders

New section 12 would allow approved organisations to be authorised to apply for a protection order on behalf of people who cannot apply for themselves. This section is intended to improve accessibility to protection orders by expanding on an existing power in the legislation which is not commonly used.⁵ We note that nothing in the bill would prevent a person from representing themselves before a court or tribunal.

We are aware of concern that this would allow non-lawyers to undertake legal work. This is not the case. The approved organisation would represent the victim in proceedings for protection order applications, and would still use a lawyer as necessary. We note that the Lawyers and Conveyancers Act 2006 prohibits non-lawyers from undertaking legal work. However, the Act does not prevent a person from representing themselves in proceedings before a court or tribunal.⁶

We do, however, acknowledge the need to balance access to protection orders with quality service provided by lawyers. Approved organisations would have to satisfy criteria set by the Minister of Justice to show they have the necessary skills and expertise. We are also advised that the Government intends to investigate further options to assist people with applying for protection orders.

New Zealand Police may apply for a protection order on behalf of a victim

The bill maintains the ability for people, including the Police, to apply for protection orders on behalf of victims unable to apply for themselves because of physical incapacity, fear, or other sufficient cause. The Police exercise this power when they determine it is appropriate to do so, generally in exceptional circumstances.

⁵ See the Family Court Rules 2002, rules 8(1) and 38(1): <http://bit.ly/2ulgkyl>.

⁶ See section 27(1)(a) and (b)(i): <http://bit.ly/2uWYvsZ>.

The bill also includes new provisions that would enable approved organisations to routinely apply for protection orders on behalf of people who cannot apply for themselves. This means that the approved organisations would no longer need to obtain the leave of the court before making an application. We considered whether it was necessary to explicitly state that the Police would fit within the criteria for an approved organisation.

We understand that the Police consider that the legislation is clear that they can make third-party applications, and that their current practice of only applying for protection orders in exceptional circumstances is appropriate. They believe a power to routinely apply on behalf of victims is better suited to specialist non-governmental organisations (NGOs).

We note that other jurisdictions, including Australia, allow the Police to routinely apply for protection orders on behalf of victims. However, these jurisdictions do not have an equivalent to New Zealand's PSOs. When attending a family violence incident, a police officer may either arrest the perpetrator or issue a PSO. The bill as introduced makes an important change to allow the Police to issue a PSO when a perpetrator is arrested but charges are not filed. Because a PSO lasts for up to five days, this would allow the Police to remove the immediate threat, and give the victim time to put safety measures in place (which may include a protection order).

Applications for protection orders require more evidence than PSOs: that the respondent has used violence against the applicant, and that an order is necessary to protect them. We consider that specialist NGOs are better placed for this work, and that the Police should only do so in exceptional circumstances. We therefore do not think it is necessary to amend the bill to explicitly state that the Police would fit within the criteria for an approved organisation.

Other measures to make protection orders more accessible

Access to protection orders was a common concern throughout submissions, particularly for elderly and disabled people. Suggestions to improve accessibility included simplifying court processes and forms, creating an Office of Public Guardian to assist disabled people in applying, and legislating timeframes for protection orders.

We agree that changing the application forms for protection orders is a simple way to improve accessibility. We understand that changes will be made by the time this bill comes into force. The effects of the changes on vulnerable people, including the disabled, will be taken into consideration when developing the policy proposals.

Although we support the intent of any proposals to help elderly and disabled people apply for protection orders, we note that establishing an Office of Public Guardian is outside this bill's scope. We are confident that the new protections to be introduced by the bill (for example, new section 27(1)) would assist elderly and disabled people, both by making protection orders more accessible, and by increasing their visibility in the legislation.

We consider it undesirable to include legislative timeframes for protection order applications because it could lead to orders lapsing automatically, regardless of any

safety needs of protected people. Protection orders last indefinitely so that protected people do not have to reapply for protection. They may be discharged after an application by the protected person or the respondent, but only if the court is satisfied that an order is no longer necessary.

Prioritising children’s safety

Prioritising the safety of children was a key consideration in our scrutiny of this bill. The bill introduces important protections for children, and we are satisfied that they, along with existing protections, will go a long way to keep children safe. We also discussed several other issues, such as the relationship between the care of children and family violence cases, and ensuring consistency between the different legislative frameworks that protect children when there is family violence.

Decision-making under the Care of Children Act

The COCA sets out what a court must consider when making orders about the care and protection of children. There is no presumption of shared parenting, because this would be inflexible and would prioritise the needs of parents over the needs of children.

Section 4 states that a child’s welfare and best interests must be the first and paramount consideration. Section 5 sets out six principles that relate to a child’s welfare and best interests, the first of which is that a child must be protected from all forms of violence. Section 5A supplements section 5 by requiring the court to take into account existing protection orders and the circumstances under which they were made.

In 2010, the Supreme Court indicated that, if relevant, section 5(a) will generally carry decisive weight in assessment because it is phrased in terms of “must” rather than “should”.⁷ If the court is not satisfied that the child will be safe with a parent, it may decline an application, or place specified conditions on a contact order.

We considered whether it was necessary to add further guidelines for the court. However, we are satisfied with the current protections and the further changes proposed by the bill.

Relationship between care of children and family violence cases

There is frequent overlap between applications for protection orders and parenting orders. In 2016, about 43 percent of those who applied without notice for a protection order also applied for a parenting order under the COCA on the same day.

A protection order has three standard conditions: no violence, no contact, and no encouragement of others to breach the order. A protected person may consent to contact with the respondent, but cannot consent to contact that is inconsistent with supervised contact under the terms of a parenting order. If the protected person consents to live in the same house as the respondent, the non-contact condition will be suspended. It will

⁷ K v B [2010] NZSC 112, at paragraph 22.

automatically revive if the protected person withdraws their consent. The Domestic Violence Act sets out other exceptions to the non-contact condition.

We received submissions raising concerns that protection orders seem to prioritise the rights of the respondent over the protected person and the rights of children. Some suggested that protection orders should override existing parenting orders, while others suggested that judges should be able to vary the terms of a parenting order when considering an application for a protection order.

Breaches of protection orders are offences, and are dealt with through the criminal courts, while parenting orders are handled in the Family Court. In practice, an alleged breach of a protection order may take months to determine. Further, not all prosecutions result in a conviction.

We do not consider that the breach of a protection order should automatically override parenting orders. It is important that the law allow judges to make decisions that take account of the particular facts of each case. The COCA and the Domestic Violence Act require judges to weigh up different considerations when making parenting orders as opposed to protection orders.

We are aware that, if a breach of a protection order occurs, it is up to the applicant to apply for a variation of a parenting order. We acknowledge that this can be an additional burden on a victim of family violence, but we consider that the proposed new sections in the bill will provide sufficient support to an applicant in doing so.

We note that if a parenting order has already been made, section 28B allows the court, when considering an application for a protection order, to vary an order about providing day-to-day care for or contact with a child of the applicant's family.

Appropriate information sharing

We received just over 30 submissions on new Part 6B of the bill, which relates to information requests, use, and disclosure, and service delivery codes of practice. Submitters drew our attention to the relationship of trust that service providers have with victims, and how these provisions may affect that relationship. Privacy concerns were also raised, specifically about whether information sharing between agencies would be a deterrent to individuals seeking help, and whether consent should be required before information is shared.

We consider that the bill adequately balances privacy considerations with victim safety. We appreciate submitters' concerns that victim autonomy is critical in situations that involve family violence, and we agree that, wherever possible, consent should be sought before sharing information about a person. We note that the bill does not prevent agencies or practitioners from obtaining consent from a person before sharing their information. We do not agree, however, that seeking consent should be mandatory before sharing information. This is inflexible, and does not acknowledge that there are some situations in which it is not possible, or safe, to gain consent. The bill provides safeguards around the use and sharing of information, and the privacy principles in the Privacy Act continue to apply to the handling of information by agencies and practitioners.

The bill's relationship with the Oranga Tamariki Act

We discussed the bill's relationship with the Oranga Tamariki Act 1989. The information-sharing framework in the Oranga Tamariki Act differs from this bill, which may create confusion for the professionals whose work is covered by both pieces of legislation.

Both provide for the development and approval of information-sharing codes of practice. These codes of practice will provide guidance for agencies and practitioners.

The framework in the Oranga Tamariki Act provides for mandatory sharing unless a listed exception applies. This is because children are seen as more vulnerable than adults. In contrast, this bill allows agencies to share information either when they receive an information request, or when they believe sharing will help to protect a person from family violence.

In practice, the professionals whose work is covered by both pieces of legislation will be able to share information under either framework. They should clearly state the purpose for which they are sharing the information. If an agency receives an information request, the request should clearly state which legislation applies. If the Oranga Tamariki Act applies, the request must be complied with unless an exception applies. In contrast, if this bill applies the agency must consider sharing the information, but is not required to share it.

New Zealand Labour Party minority view

The Labour Party commends the Government for reviewing domestic violence legislation; however, we are disappointed that it has missed the opportunity to make bold changes to improve our horrendous rates of family and domestic violence. We would have preferred a review of the reforms made to the Family Court, which has certainly made it more difficult for some to have appropriate access to legal support; and the setting of the thresholds at which one may be eligible for legal aid.

We would have welcomed the bill addressing the very real issue of lack of resource to deal with complaints of breach of protection orders.

Specific to this legislation, the Labour Party would like to address the following matters. Firstly, like many others who submitted to the committee, we would rename this legislation the Family, Domestic and Sexual Violence Legislation Bill. The use of "Whānau" in the title has not been justified and is a negative use of te reo Māori which we do not support.

We would have ensured a specific immigration pathway for those married overseas and living in New Zealand via a partnership visa if there is proof of coercion to marry. Too many immigrant women come to New Zealand under false pretences, finding themselves in abusive and violent relationships; and if they can leave these violent relationships, they should be supported to do so. This in particular relates to wives (and occasionally husbands) who have their residency sponsored by their partner and are left in the position of having to seek residency when their partner withdraws sponsorship. This does mean that women are forced to leave the country, sometimes leaving

children behind. They may seek residency under the provisions of the Domestic Violence Act or support by the ethnic refuge Shakti, under its specific contract to serve women without immigration status; however, the number of women supported by this contract is capped. Labour believes these women should be supported to obtain residency in their own right within two years of coming to New Zealand.

The Labour Party would extend the period for a PSO for up to 10 days from 5 days. This would allow sufficient time for victims to seek protection orders themselves or with the support of NGOs empowered under this legislation to provide support. We understand that the issuing of PSOs is viewed as a limitation on the rights of the users of violence, but having consulted with the NGO sector, 10 days provides sufficient time for those who need protection orders to obtain one. The PSOs, though introduced to provide a period of “cooling off” for the parties at the centre of a domestic violence callout, should also be used as a way for victims and their children to achieve a greater level of safety through protection orders via the courts. This would provide a seamless transition from PSO to protection order.

The Labour Party is concerned for the safety of children who are at risk of being harmed by parents going through separation and divorce. There have been many incidents where children have been hurt or killed while a parenting and protection order is in place. The Labour Party supports a review of the parenting order should a breach of protection order be found. We expect protection orders to be reviewed in light of these breaches, to ensure the safety of the children is maintained. These changes would be made within a wider context of reviewing the reforms made to the Family Court by the current Government.

The Labour Party commends the Green MP Jan Logie for her private member’s bill on Special Domestic Violence leave, and recommends the provisions of that bill be included within this legislation. The Labour Party suggests, however, that amendment be made to the Holidays Act 2003 to provide 10 days of special leave for the purposes of domestic violence. This will be available to those who experience violence, those who use violence, children who witness or experience violence, and any support people assisting a family member or friend who is leaving a violent relationship or seeking to change their behaviour through anger management programs. We will not require a family violence document to be produced for the purposes of authentication of violence.

Green Party of Aotearoa New Zealand minority view

The Green Party will support the progression of this legislation despite remaining concerns because we believe, on balance, this will improve our legal infrastructure and there are many things that we do support. However, we are deeply disappointed that the 2013 reforms to the Family Court that prioritised saving money over the safety of women and children have not been considered in this legislative review. We believe this limits the potential benefits of this legislation.

We are concerned that the intentions to enable community agencies to support victims to prepare applications for protection orders will potentially heighten imbalances in

access to justice; where victims, typically women on lower incomes or temporarily without independent means, will access support from non-legal avenues, and people who use violence, typically with more access to money, will get legal assistance to defend or challenge the orders.

We are also concerned that, despite many years of feedback and research on the inconsistent and often anti-victim interpretation of the Domestic Violence Act in the courts, there is no serious response to that problem in this legislation. We heard the call for a Royal commission of inquiry into the functioning of the Family Court presented to the committee, on behalf of over 800 victims of domestic violence, by Backbone Collective. We want to thank them for raising their voices, and acknowledge the chasm between the public and political discussion of how the system is working and their experiences. The Green Party supports a victim-led review of the functioning of the Family Court and in the interim we believe independent domestic and child abuse expert advisors in the courts should provide advice and monitor the application of the law. We believe there would be value in developing an accreditation system for all people engaged in the Family Court to ensure they understand the most up-to-date evidence on domestic violence and child abuse, and that their practice and decisions are consistent with this.

We are also very concerned that, despite the negative impacts on children of living within a household with domestic violence and the much higher likelihood of those children experiencing direct violence themselves, these reforms have largely been developed in isolation from the reforms of Child, Youth and Family (CYF). We are deeply concerned that this bill will effectively create a third legal information sharing regime alongside two already established in the most recent CYF legislation. This risks confusion for practitioners and legal uncertainty, when our goal should be the safety of victims, especially children.

The Green Party believes we need much clearer direction on protecting children from the impacts of domestic violence and supporting work to rebuild attachment with the protective parent. The Green Party believes reforms to the Domestic Violence Act should have been done in tandem with the reforms to our child protection services.

While we recognise some amendments have been made to recognise the circumstances of disabled people, we do not believe the bill goes far enough. We would have amended the Act to recognise the employee/employer relationship when that relationship is for the provision of personal support and/or personal care. We also believe there needs to be serious consideration given to establishing an Office of Public Guardian to ensure access to justice and protection for people with disabilities who may need third party assistance, as suggested by several submitters. The Green Party believes we need to recognise the extent of the marginalisation of the elderly and disabled in our society and ensure our justice system is accessible and effective for everyone.

Like the Labour Party, we too support a specific immigration pathway for those married overseas and living in New Zealand via a partnership visa, if there is proof of

coercion to marry. We believe these women should be supported to obtain residency in their own right within 2 years of coming to New Zealand.

The Green Party also shares the Labour Party view that the use of “Whānau” in the title has not been justified and is a negative use of te reo Māori which we do not support. We believe the current title should be maintained or be amended to the Family and Domestic Violence Act.

For the changes within this bill to be truly effective we will need more housing and support for people who use violence, as well as for the many women’s refuges, which are stretched to breaking point from long-term underfunding. We will also need more resources for the Family Court.

While this bill is a step forward, after we have taken several back, we are still disappointed at what seems like continued fragmented thinking and a lack of bravery. We need brave solutions.

Appendix

Committee process

The Family and Whānau Violence Legislation Bill was referred to the committee on 11 April 2017. The closing date for submissions was 24 May 2017. We received and considered 91 submissions from interested groups and individuals.

We received advice from the Ministry of Justice and the Parliamentary Counsel Office. The Regulations Review Committee reported to the committee on the powers contained in clause 70 (amending section 127 of the principal Act).

Committee membership

Sarah Dowie (Chairperson)

Jacinda Ardern

Chris Bishop

Paul Foster-Bell

Marama Fox

Jono Naylor

Denis O'Rourke

Maureen Pugh

Metiria Turei

Louisa Wall

Jan Logie replaced Metiria Turei for this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Amy Adams

Family and Whānau Violence Legislation Bill

Government Bill

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<u>123H</u>	<u>Appeal against decision to make or refuse to make protection order under section 123B is appeal against sentence</u>	<u>95</u>
	Schedule 1	97
	New Schedules 1 and 2 of Family and Whānau Violence Act 1995 inserted	
	Schedule 2	101
	Consequential amendments	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Family and Whānau Violence Legislation Act **2017**.
- 2 Commencement**
- (1) This Act comes into force on **1 July 2018**.
- (2) However, the following provisions come into force on a date or dates set by Order in Council: 5
- (a) **Part 1 and Schedules 1 and 2** (amendments to Domestic Violence Act 1995):
- (b) **subpart 2 of Part 2** (amendments to Care of Children Act 2004):
- (c) **subpart 4 of Part 2** (amendments to Criminal Procedure Act 2011): 10
- (d) **subpart 5 of Part 2** (amendments to Evidence Act 2006).
- (3) One or more orders may be made setting different dates for different provisions.
- (4) Any part of the Act that is not already in force on **1 July 2020** comes into force then. 15

Part 1

Amendments to Domestic Violence Act 1995

- 3 Principal Act**
This Part amends the Domestic Violence Act 1995 (the **principal Act**).
- Title* 20
- 4 Name of principal Act changed**
As from the commencement of this section,—
- (a) the Domestic Violence Act 1995 is called the **Family and Whānau Violence Act 1995**:
- (b) every reference in any enactment (other than an enactment amended or replaced by this **Part**), and in any document, to the Domestic Violence Act 1995 must, unless the context otherwise requires, be read as a reference to the **Family and Whānau Violence Act 1995**. 25
- 5 Long Title repealed**
Repeal the Long Title. 30
- 6 Section 1 amended (Short Title and commencement)**
- (1) In the heading to section 1, delete “**Short**”.
- (2) In section 1(1), replace “may be cited as the Domestic Violence Act 1995” with “is the **Family and Whānau Violence Act 1995**”.

*Preliminary provisions (Part 1)***7 New sections 1A and ~~1B~~ to 1C inserted**

Before section 2, insert:

1A Purpose of this Act

- (1) The purpose of this Act is to stop and prevent family violence by— 5
- (a) recognising that family violence, in all its forms, is unacceptable; and
 - (b) stopping and preventing perpetrators from inflicting family violence; and
 - (c) keeping victims, including children, safe from family violence.
- (2) A court that, or a person who, exercises a power conferred by or under this Act (for example, the District Court exercising a power conferred by or under Part 6A) must be guided in the exercise of that power by the purpose of this Act. 10

1B Principles

The following principles are to guide the achievement of the purpose of this Act: 15

- (a) family violence, in all its forms, is unacceptable:
- (b) decision makers should, whenever appropriate, recognise that family violence is often a pattern of behaviour that causes cumulative harm:
- (c) decision makers should, whenever appropriate, recognise that children are particularly vulnerable to family violence, including seeing or hearing violence against others: 20
- (d) decision makers should, whenever appropriate, recognise that children are at particular risk of lasting harm to their current and future well-being:
- (da) decision makers should, whenever appropriate, recognise that people with disabilities, and other people (for example, due to their age or health condition, or to any other cause), may also be particularly vulnerable to family violence: 25
- (db) decision makers should, whenever appropriate, recognise that early intervention helps to stop and prevent family violence: 30
- (e) perpetrators who inflict family violence should face effective responses to, and sanctions for, family violence:
- (f) perpetrators of family violence should have access to, and in some cases be required to engage with, services to help them stop and prevent their family violence: 35
- (g) victims of family violence should have access to services to help secure their safety from family violence:

(h)	arrangements that support the ongoing safety and wellbeing of a victim of family violence should whenever practicable be sustained (for example, employment, education, housing, or community involvement):	
(i)	responses to family violence should be culturally appropriate and, in particular, responses involving Māori should reflect tikanga:	5
(j)	decision makers should consider the views of victims of family violence, and respect those views unless a <u>good reason exists in the particular circumstances for not doing so (for example, because doing so would or may compromise victims' safety):</u>	
(k)	decision makers should collaborate, whenever appropriate, to identify and respond to family violence:	10
(l)	access to the court should be as speedy, inexpensive, and simple as is consistent with justice.	
1C	<u>Overview of this Act</u>	
(1)	<u>This Part contains the purpose of this Act, principles to guide the achievement of that purpose, definitions, and other preliminary provisions.</u>	15
(2)	<u>Part 2 (Protection orders) contains provisions about—</u>	
(a)	<u>who may apply for, and the making of, protection orders against a respondent who has inflicted, or is inflicting, family violence; and</u>	
(b)	<u>the scope, and standard or special conditions, of protection orders; and</u>	20
(c)	<u>the making of interim orders about care for, or contact with, a child of the applicant's family; and</u>	
(d)	<u>the duration, variation, and discharge of protection orders; and</u>	
(e)	<u>the enforcement of protection orders (or related property orders), for example, by prosecution for a criminal offence.</u>	25
(3)	<u>Part 2A (Programmes and prescribed services) provides for—</u>	
(a)	<u>approval of assessors and service providers; and</u>	
(b)	<u>authorities to be notified of safety concerns of assessors or service providers; and</u>	
(c)	<u>safety programmes for protected persons (if requested by those persons); and</u>	30
(d)	<u>mandatory non-violence programmes, and discretionary prescribed services, for respondents; and</u>	
(e)	<u>confidentiality of information; and</u>	
(f)	<u>enforcement and powers when a matter is (for example, because of safety concerns or non-compliance) referred back to the court.</u>	35
(4)	<u>Part 3 (Orders relating to property) contains provisions about applications for, and powers to make,—</u>	

- (a) an occupation order (which is an order granting to the applicant the right to personally occupy a specified dwellinghouse); and
- (b) a tenancy order (which is an order vesting in the applicant the tenancy of a specified dwellinghouse); and
- (c) an ancillary furniture order (which is an order, ancillary to an occupation order or a tenancy order in respect of a dwellinghouse, granting to the applicant the possession and use of all or any of the furniture, household appliances, and household effects in that dwellinghouse); and 5
- (d) a furniture order (which is an order granting to the applicant the possession and use of all or any of the furniture, household appliances, and household effects in the dwellinghouse in which the parties live or have lived). 10
- (5) Part 4 (Procedure) contains provisions about temporary orders, general procedural matters (for example, appointment of lawyers to assist the court or to represent a child, and explaining orders to respondents), and appeals. 15
- (6) Part 5 is about enforcement of New Zealand protection orders overseas, and enforcement in New Zealand of foreign protection orders.
- (7) Part 6 is about non-publication on public registers of information relating to a protected person (as defined in section 2).
- (8) Part 6A (Police safety orders) contains provisions about a qualified constable issuing against a person (**person A**) an order— 20
- (a) to help make another person (**person B**) safe from family violence; and
- (b) requiring person A to vacate any land or building occupied by person B (or any child residing with person B), to comply with conditions about violence and no-contact, and (if directed to do so) to arrange and attend a risk and needs assessment; and 25
- (c) continuing in force for the period (not exceeding 5 days) specified in it; and
- (d) that, if person A has failed or refused to comply with it, can be extended or renewed, or replaced with a temporary protection order. 30
- (9) **Part 6B** (Information requests, use, and disclosure, and service delivery codes of practice)—
- (a) enables family violence agencies and social services practitioners to request, use, or disclose personal information for purposes related to family violence; and 35
- (b) requires family violence agencies and social services practitioners, in certain circumstances, to consider disclosing personal information for those purposes; and

- (c) provides for codes of practice to guide the delivery of services provided, to stop or prevent family violence, to victims or perpetrators of family violence.
- (10) Part 7 contains miscellaneous provisions, for example, about publication of reports of proceedings, and rules and regulations. 5
- (11) **Sections 123A to 123H** (Protection orders) of the Sentencing Act 2002 apply if an offender is convicted of a family violence offence (as defined in **section 123A** of that Act) and no protection order made under this Act is in force against the offender for the protection of the victim of the offence, and enable the court, as well as imposing a sentence or making any other order, to make a protection order against the offender if— 10
- (a) the court 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.
- (12) This section is only a guide to the general scheme and effect of this Act (and of those sections of the Sentencing Act 2002). 15

8 Section 2 amended (Interpretation)

- (1) In section 2, insert in their appropriate alphabetical order:
- approved organisation** means an organisation approved under **section 12B**
- chief executive** means the chief executive of the department 20
- constable** has the meaning given in section 4 of the Policing Act 2008
- department** means the department for the time being responsible for the administration of the Oranga Tamariki Act 1989
- digital communication** has the same meaning as in section 4 of the Harmful Digital Communications Act 2015 25
- family relationship** means one of the relationships set out in section 4(1)
- family violence** has the meaning set out in **section 3**
- government organisation** means—
- (a) a department specified in Schedule 1 of the State Sector Act 1988; or
- (b) a Crown entity (as defined in section 7 of the Crown Entities Act 2004) 30
- ill-treat**, in relation to an animal, has the same meaning as in section 2(1) of the Animal Welfare Act 1999
- inflict family violence**, in relation to any person, means to engage in behaviour that amounts to family violence against that person
- perpetrator**, of family violence,— 35
- (a) means a person who has inflicted, or is inflicting, family violence (even if no offence involving the violence was, is, or is to be, admitted or prosecuted); but

- (b) in **Part 6B**, has the meaning given in **section 124U prescribed non-standard service** means a service that—
- (a) is, or is to be, provided to a respondent by a service provider (as defined in **section 51A**); and
- (b) has the objective of stopping or preventing family violence, or helping the respondent to stop inflicting family violence; and
- (c) is a type of non-standard service specified in ~~Part 2 of Schedule 2~~ **regulations made under section 127(aaa)**
- prescribed service** means a service that is—
- (a) a prescribed non-standard service; or
- (b) a prescribed standard service
- prescribed standard service** means a service that—
- (a) is, or is to be, provided to a respondent by a service provider (as defined in **section 51A**); and
- (b) has the objective of stopping or preventing family violence, or helping the respondent to stop inflicting family violence; and
- (c) is a type of standard service specified in ~~Part 1 of Schedule 2~~ **regulations made under section 127(aaa)**
- property order** means an order made under Part 3
- social worker** means a person employed under Part 5 of the State Sector Act 1988 in the department as a social worker
- tikanga** means customary values and practices
- (2) In section 2, repeal the definitions of **domestic relationship** and **domestic violence**.
- (3) In section 2, replace the definitions of **child**, **child of the applicant's family**, **contact**, **court**, **family member**, **partner**, and **representative** with:
- child** means a person who is under the age of 18 years
- child of the applicant's family**, for an applicant and at any time, means a child who at that time ordinarily or periodically resides with the applicant, whether or not—
- (a) the child is a child of the applicant, the respondent, or both; and
- (b) for a protection order, the child resided ordinarily or periodically with the applicant at, or was born only after, the time when that order was made
- contact**, by a respondent or other person, and with a child or protected person, means any form of 1 or both of the following:
- (a) direct (that is, face-to-face) interaction:

(b) indirect interaction (including, without limitation, by telephone, letters or other writing, or email, or by communication on or via an Internet site or other digital communication, or in any other way)

court—

(a) means the Family Court; and includes a Family Court Judge; or 5

(b) if another court has jurisdiction in the proceedings, means that court

family member, in relation to a person, means—

(a) any other person who is or has been related to the person by blood or by or through marriage, a civil union, or a de facto relationship, or by adoption: 10

(b) any other person who is a member of the person’s whānau or other culturally recognised family group

partner, in the phrase “spouse or partner” and in related contexts, means, in relation to a person (**P**),—

(a) P’s civil union partner; or 15

(b) P’s de facto partner; or

(c) if P is a biological parent of a person, another biological parent of that person

representative,—

(a) in relation to a child, means a litigation guardian or next friend appointed under or recognised by rules of court, or an approved organisation authorised by **section 12C**, to take proceedings under this Act on behalf of that child: 20

(b) in relation to a person lacking capacity to whom **section 11** applies, means a litigation guardian appointed under or recognised by rules of court, or an approved organisation authorised by **section 12C**, to take proceedings under this Act on behalf of that person: 25

(c) in relation to a person to whom **section 12** applies, means a litigation guardian appointed under that section, or an approved organisation authorised by **section 12C**, to take proceedings under this Act on behalf of that person 30

(4) In section 2, definition of **protected person**, paragraph (c), replace “pursuant to” with “under”.

(5) In section 2, definition of **specified person**, replace “pursuant to” with “under”. 35

(6) In section 2, repeal the definition of **use domestic violence**.

9 Section 3 replaced (Meaning of domestic violence)

Replace section 3 with:

3	Meaning of family violence	
(1)	In this Act, family violence , in relation to a person, means violence inflicted—	
	(a) against that person; and	
	(b) by any other person with whom that person is, or has been, in a family relationship.	5
(2)	In this section, violence means all or any of the following:	
	(a) physical abuse:	
	(b) sexual abuse:	
	(c) psychological abuse.	
(3)	Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:	10
	(a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):	15
	(b) it causes the person, or may cause the person, cumulative harm.	
(4)	Subsection (2) is not limited by subsection (3) , and must be taken to include references to, and so must be read with, sections 3A and 3B .	
3A	Abuse for purposes of section 3(2)	
(1)	A single act may amount to abuse.	20
(2)	A number of acts that form part of a pattern of behaviour (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial) may amount to abuse.	
(3)	This section does not limit section 3(2) .	
3B	Psychological abuse for purposes of section 3(2)(c)	25
(1)	Psychological abuse includes—	
	(a) threats of physical abuse, of sexual abuse, or of abuse of a kind stated in paragraphs (b) to (f) :	
	(b) intimidation or harassment (for example, all or any of the following behaviour that is intimidation or harassment:	30
	(i) watching, loitering near, or preventing or hindering access to or from, a person's place of residence, business, or employment, or educational institution, or any other place that the person visits often:	
	(ii) following the person about or stopping or accosting a person in any place:	35

- (iii) if a person is present on or in any land or building, entering or remaining on or in that land or building in circumstances that constitute a trespass):
- (c) damage to property:
- (d) ill-treatment of 1 or both of the following: 5
- (i) household pets:
- (ii) other animals whose welfare affects significantly, or is likely to affect significantly, a person's well-being:
- (e) financial or economic abuse (for example, unreasonably denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education): 10
- (ea) in relation to a person unable, by reason of age, disability, health condition, or any other cause, to withdraw from the care or charge of another person, hindering or removing (or threatening to hinder or remove) access to any aid or device, medication, or other support, that affects, or is likely to affect, the person's quality of life: 15
- (f) in relation to a child, abuse stated in **subsection (2)**.
- (2) A person psychologically abuses a child if that person—
- (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a family relationship; 20
- or
- (b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring.
- (3) However, the person who suffers the abuse in **subsection (2)(a) and (b)** is not regarded, under **subsection (2)**, as having (as the case may be)— 25
- (a) caused or allowed the child to see or hear that abuse; or
- (b) put the child, or allowed the child to be put, at risk of seeing or hearing that abuse.
- (4) Psychological abuse may be or include behaviour that does not involve actual or threatened physical or sexual abuse. 30
- (5) This section does not limit **section 3(2)(c)**.
- 10 Section 4 amended (Meaning of domestic relationship)**
- (1) In the heading to section 4, replace “**domestic relationship**” with “**family relationship**”.
- (2) In section 4(1), replace “**domestic relationship**” with “**family relationship**”. 35
- 11 Sections 5 and 6 replaced**
- Replace sections 5 and 6 with:

5A Status of examples

An example provided in this Act of the operation of a provision of an enactment—

- (a) does not limit the provision; and
- (b) may extend the operation of the provision.

5

Compare: Acts Interpretation Act 1901 s 15AD (Aust); 2012 No 120 s 5A; 2014 No 58 s 5(2)

5B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

6 Act binds the Crown

10

This Act binds the Crown.

*Protection orders (Part 2)***12 Section 7 amended (Application for protection order)**

(1) In section 7(1), replace “domestic relationship” with “family relationship”.

(2) Replace section 7(2) with:

15

(2) Where the person who is eligible to apply for a protection order is a child, the child may under **section 9(2)** make the application only—

- (a) by a representative (for example, an approved organisation that is authorised by **section 12C** to take proceedings under this Act on behalf of the child); or

20

(ab) if aged 16 years old or over (in which case **section 9(2)(ab)** authorises the child to take proceedings without a representative); or

- (b) if authorised under rules of court to do so without a representative.

(3) In section 7(3), after “a person”, insert “lacking capacity”.

(4) In section 7(4),—

25

- (a) replace “years or older” with “years old or over”; and

- (b) replace “section 12(1)(b)” with “**section 12(1)(c)**”.

13 Section 8 amended (Contents of application)

(1) In section 8(a), replace “domestic relationship” with “family relationship”.

(2) In section 8(b), replace “domestic violence” with “family violence”.

30

14 Sections 9 to 12 replaced

Replace sections 9 to 12 with:

9	Applications by children	
(1)	A child may, in accordance with this section, make an application for a protection order.	
(2)	A child may make the application only—	
	(a) by a representative (for example, an approved organisation that is authorised by section 12C to take proceedings under this Act on behalf of the child); or	5
	<u>(ab) if aged 16 years old or over (in which case this paragraph authorises the child to take proceedings without a representative); or</u>	
	(b) if authorised under rules of court to do so without a representative.	10
(3)	This section does not limit or affect the making or operation of rules of court (for example, rules made under section 16A(1) of the Family Courts Act 1980) that—	
	(a) prevent an incapacitated child from taking part in, or from taking a step in, all or any specified proceedings under this Act without a litigation guardian:	15
	(b) provide for a representative to make all or any specified applications under this Act on behalf of a child prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally.	
9A	Views of child on whose behalf application made by representative	20
(1)	This section applies if an application for a protection order is made, on behalf of a child, by a representative, under section 9(2)(a) .	
(2)	The child may be heard in the proceedings, even though they arose from the application made by the representative, and despite section 9(2)(a) .	
(3)	Where the child expresses views on any matters related to the proceedings, the court must take account of those views.	25
10	Applications against children	
(1)	The court must not make a protection order against a child unless satisfied <u>that the child is aged 16 years old or over and that the order is justified by special circumstances.</u>	30
(2)	The court must not make a direction under section 17 (protection from respondent's associates) that a protection order apply against a child unless satisfied <u>that the child is aged 16 years old or over and that the direction is justified by special circumstances.</u>	
(3)	<u>In determining under this section whether a protection order, or direction under section 17, is justified by special circumstances, the court—</u>	35
	<u>(a) must consider whether to report concerns about the well-being of the child under section 15 of the Oranga Tamariki Act 1989; and</u>	

- (b) may, if the child is not represented by a lawyer in respect of the proceedings related to the order or direction, appoint a lawyer under **section 81(1)(ba)** to act for the child in respect of those proceedings; and
- (c) may under **section 10AAB** (report from chief executive or social worker) direct the Registrar to supply to the chief executive a copy of the application for the protection order; and 5
- (d) may refer the matter to a care and protection co-ordinator under section 19 of the Oranga Tamariki Act 1989.

10AAA Advice from chief executive or social worker

- (1) This section applies to an application under **section 9 or 10** for a protection order. 10
- (2) For the purpose of expediting consideration of the application, a Registrar, on the Registrar's own initiative, may—
 - (a) refer the application to the chief executive; and
 - (b) request the chief executive to provide brief written advice on the nature and extent of any involvement that the department has had with the parties. 15
- (3) On receipt of a request to provide such brief written advice, the chief executive or a social worker must provide the advice.
- (4) The Registrar must refer advice received (from the chief executive or a social worker) to the Judge who is considering the application. 20

Compare: 2004 No 90 s 131A

10AAB Report from chief executive or social worker

- (1) This section applies to an application under **section 9 or 10** for a protection order (other than a temporary order). 25
- (2) The court may direct the Registrar to supply to the chief executive a copy of the application.
- (3) The Registrar must, if directed by the court to do so, supply to the chief executive a copy of the application.
- (4) If the Registrar supplies the chief executive with a copy of the application, the chief executive or a social worker— 30
 - (a) must report on the application; and
 - (b) may appear on the application personally or by a lawyer.

Compare: 2004 No 90 s 132

10A Meaning of person lacking capacity 35

For the purposes of **section 11**, **person lacking capacity** means a person who is aged 18 years old or over and who—

- (a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or
- (b) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters. 5
- 11 Applications on behalf of people lacking capacity**
- (1) This subsection applies if a person lacking capacity (**P**) is eligible to apply for a protection order and— 10
- (a) no one has power, under an appointment made under the Protection of Personal and Property Rights Act 1988, to make such an application on P’s behalf; or
- (b) a person has power, under such an appointment, to make such an application, but the person so appointed has refused or failed to do so. 15
- (2) If **subsection (1)** applies, the protection order must be applied for, on P’s behalf, and in accordance with rules of court, by a representative (for example, an approved organisation that is authorised by **section 12C** to take proceedings under this Act on behalf of P).
- (3) No representative may be appointed under rules of court to make an application for a protection order on behalf of a person lacking capacity (**P**) unless, before making the appointment, the court or, as the case requires, the Registrar is satisfied— 20
- (a) that the representative is not, and is not acting for, an approved organisation (which can be authorised to act as a representative under this section only under **section 12C**); and 25
- (b) that reasonable steps have been taken to ascertain P’s views in relation to the appointment; and
- (c) if P’s views have been able to be ascertained,— 30
- (i) that P does not object to the appointment; or
- (ii) that P’s objection is not freely made.
- (4) A representative who under this section makes an application for a protection order on behalf of a person lacking capacity (**P**) must— 35
- (a) take reasonable steps to ascertain P’s views in relation to the matter; and
- (b) take reasonable steps to ascertain P’s welfare guardian’s views in relation to the matter, if P has a welfare guardian appointed under the Protection of Personal and Property Rights Act 1988 and no good reason exists not to ascertain those views; and

- (c) include in the application any views ascertained under **paragraphs (a) and (b)**; and
- (d) take reasonable steps to inform P’s welfare guardian of the progress of the application (for example, of any order made on it), if P has a welfare guardian appointed under the Protection of Personal and Property Rights Act 1988, and no good reason exists not to do so. 5
- (5) However, **subsections (3) and (4)** do not require reasonable steps to be, or to have been, taken to ascertain P’s views in relation to an appointment or a matter if P wholly lacks the capacity to communicate decisions in respect of matters relating to P’s personal care and welfare. 10
- (6) In determining the application, the court must take into account any views ascertained under **subsection (4)(a) and (b)**.
- 12 Applications on behalf of people prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally**
- (1) This section applies if a person aged 18 years old or over (**P**)— 15
- (a) is not a person lacking capacity to whom **section 11** applies; and
- (b) is eligible to apply for a protection order; and
- (c) is prevented by physical incapacity, fear of harm, or another sufficient cause from making the application personally.
- (2) An application (made with or without notice) for a protection order may be made on behalf of P by a representative (for example, an approved organisation authorised by **section 12C** to take proceedings under this Act on behalf of P). 20
- (3) The court or a Registrar may, on an application made under this subsection for the purpose, appoint a person as a representative of P for the purpose of making and prosecuting, on behalf of P, an application (made with or without notice) for a protection order, if the person— 25
- (a) is not, and is not acting for, an approved organisation (which can be authorised to act as a representative under this section only under **section 12C**); and
- (b) is 18 years old or over; and 30
- (c) is not incapacitated (as defined in **subsection (5)**).
- (4) If an application for the appointment of a representative is made under **subsection (2)**, the court or Registrar must make the appointment sought if satisfied— 35
- (a) that reasonable steps have been taken to ascertain P’s views in relation to the appointment; and
- (b) where the views of P have been able to be ascertained,—
- (i) that P does not object to the appointment; or
- (ii) that P’s objection is not freely made; and

(c)	that it is in P's best interests to make the appointment; and	
(d)	that the proposed appointee—	
	(i) consents in writing to the appointment; and	
	(ii) is not incapacitated; and	
(e)	that there is unlikely to be any conflict between the interests of the proposed appointee and P's interests; and	5
(f)	that the proposed appointee has filed in the court an undertaking to be responsible for any costs awarded against P in the proceedings.	
(5)	In this section, a person is incapacitated if, by reason of physical, intellectual, or mental impairment, whether temporary or permanent, the person is—	10
	(a) not capable of understanding the issues on which the person's decision would be required as a representative of a litigant conducting proceedings; or	
	(b) otherwise unable to perform the duties of such a representative.	
12A	Views of person on whose behalf application made under section 12 by representative	15
(1)	This section applies if an application for a protection order is made <u>under section 12</u> , on behalf of a person (P), by a representative appointed under section 12 .	
(2)	P may be heard in the proceedings, even though they arose from the application made by the representative.	20
(3)	<u>Where P expresses views on any matters related to the application, the court must take account of those views.</u>	
12B	Approved organisations	
(1)	An organisation approved under this section may be authorised by section 12C to take proceedings—	25
	(a) under section 9 on behalf of a child (including that section as applied by section 22(6), 48 , or 92); or	
	(b) under section 11 on behalf of a person lacking capacity (including that section as applied by section 22(6), 48 , 73(2) , or 92); or	30
	(c) under section 12 on behalf of a person prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally (including that section as applied by section 22(6), 48 , 73(2) , or 92).	
(2)	An organisation may be approved under this section by the Minister of Justice—	35
	(a) on an application made for the purpose by the organisation; or	
	(b) on the Minister's own motion, and with the organisation's written consent.	

- (3) An organisation seeking an approval under this section by way of an application, or an own-motion approval under this section, must follow the applicable process (if any) prescribed by regulations made under **section 127(a)(i)**.
- (4) The Minister may, at any time, amend, suspend, or cancel an approval under this section. 5
- (5) In deciding whether to grant, amend, suspend, or cancel an approval under this section, the Minister must apply the criteria (if any) prescribed for the purposes of this section by regulations made under **section 127(a)(ii)**.
- (6) An approval, or an amendment, suspension, or cancellation of an approval, under this section must be by written notice copied to the organisation. 10
- (7) The Secretary must publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice an up-to-date list of approved organisations.
- 12C Applications by approved organisation authorised to act as representative**
- (1) An approved organisation that complies with **subsection (2)** is authorised by this section to make and prosecute under **section 9, 11, or 12**, on behalf of a child or person (**P**), an application (made with or without notice) for an order. 15
- (2) To comply with this subsection, the organisation must, without making an application to be appointed or to act as a representative for P, complete and file in the court an application form for the order, and that shows or includes—
- (a) that reasonable steps have been taken to ascertain P’s views in relation to the organisation acting as a representative for P; and 20
- (b) where the views of P have been able to be ascertained,—
- (i) that P does not object to the organisation acting as a representative for P; or
- (ii) that P’s objection is not freely made; and 25
- (c) that it is in P’s best interests for the organisation to act as a representative for P; and
- (d) that there is unlikely to be any conflict between the interests of the organisation and P’s interests; and
- (e) an undertaking to be responsible for any costs awarded against P in the proceedings. 30
- (3) However, **subsection (2)** does not require reasonable steps to be, or to have been, taken to ascertain P’s views in relation to the organisation acting as a representative for P if P wholly lacks the capacity to communicate decisions in respect of matters relating to P’s personal care and welfare. 35

14A Section 13 amended (Application without notice for protection order)

- (1) Replace section 13(4)(e) with:

- (e) if a direction is made under **section 51E**, in respect of the respondent, notify the court, in accordance with **section 51F**, that the respondent objects to the direction.
- (2) Replace section 13(5)(e) with:
- (e) if a direction is made under **section 51E**, in respect of the associated respondent, notify the court, in accordance with **section 51F**, that the associated respondent objects to the direction. 5
- 15 Section 14 amended (Power to make protection order)**
- (1) In section 14(1)(a), replace “is using, or has used, domestic violence” with “has inflicted, or is inflicting, family violence”. 10
- (2) In section 14(2) and (4), replace “domestic violence” with “family violence”.
- 16 Section 15 amended (Existence of other proceedings not to preclude granting of protection order)**
- In section 15, replace “minor” with “child”.
- 17 Section 16 amended (Protection of persons other than applicant)** 15
- (1) In section 16(1B), replace “17 years” with “18 years”.
- (2) Replace section 16(2), (3), and (4) with:
- (2) In or after making a protection order, the court may (subject to **subsections (2A) and (3)**) direct that the order also apply for the benefit of either or both of the following: 20
- (a) a particular child of the applicant who, because the child does not ordinarily or periodically reside with the applicant, is not a child of the applicant’s family (as defined in section 2):
- (b) any particular person with whom the applicant has a family relationship, and who is not a child of the kind specified in **paragraph (a)**. 25
- (2A) No direction may be made under **subsection (2)(a)** (in respect of a child of the applicant who is not a child of the applicant’s family) unless the court is satisfied that the making of the direction is necessary for the protection of the child.
- (3) No direction may be made under **subsection (2)(b)** (in respect of a person who is not a child of the kind specified in **subsection (2)(a)**) unless the court is satisfied that— 30
- (a) the respondent is engaging, or has engaged, in behaviour that, if the respondent and the person were or, as the case may be, had been in a family relationship, would amount to family violence against the person; and 35
- (b) the respondent’s behaviour towards the person is due, in whole or in part, to the applicant’s family relationship with the person; and

<ul style="list-style-type: none"> (c) the making of a direction under this section is necessary for the protection of the person; and (d) where practicable, the person consents to the direction being made. 	
<ul style="list-style-type: none"> (4) Section 14(2) to (5) applies, with the necessary modifications, to an application for a direction under subsection (2)(a) or (b) of this section. 	5
<ul style="list-style-type: none"> (3) In section 16(5)(a), replace “17 years” with “18 years”. 	
<ul style="list-style-type: none"> (4) <u>In section 16(6), after “(1B),”, insert “(2), (2A), (3),”.</u> 	
<p>18 Section 17 amended (Protection from respondent’s associates)</p> <p>In section 17(1) and (2)(a), replace “domestic violence” with “family violence”.</p>	10
<p>19 Sections 19 and 20 replaced</p> <p>Replace sections 19 and 20 with:</p>	
<p>19 Standard conditions: no family violence, no contact, no having others breach order</p> <p>A protection order has, as standard conditions, that the respondent must not—</p> <ul style="list-style-type: none"> (a) engage in behaviour that amounts to any form of family violence against the protected person (<i>see sections 3, 3A, and 3B</i>): (b) make any contact with the protected person that is not contact authorised under or by section 20 or 20B (which describe the condition in this paragraph as the standard no-contact condition): (c) encourage a person to engage in behaviour against, or to make contact with, a protected person, if the behaviour or contact, if engaged in or made by the respondent, would be prohibited by the protection order. 	15
<p>20 Standard no-contact condition: exceptions with consent</p> <p><i>Protected person can suspend or reinstate condition by giving or cancelling consent to contact</i></p> <ul style="list-style-type: none"> (1) The protected person may suspend the standard no-contact condition by giving consent to contact. (2) The protected person may reinstate the standard no-contact condition by cancelling consent to contact. <p><i>Contact to which protected person can give or cancel consent</i></p> <ul style="list-style-type: none"> (3) Contact to which the protected person may give or cancel consent under subsection (1) or (2) may be or include all or any of the following: <ul style="list-style-type: none"> (a) contact made when the respondent and protected person are, with the protected person’s consent, living in the same dwellinghouse: (b) contact made— 	25
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<ul style="list-style-type: none"> (i) if the protected person is present on or in any land or building; and (ii) by or after the respondent entering or remaining on or in that land or building: 	5
<ul style="list-style-type: none"> (c) contact made when the respondent is a prisoner and receives the protected person as a private visitor under section 73(1) of the Corrections Act 2004 and any regulations made under that Act that regulate the visiting of prisons: (d) contact made by telephone, letters or other writing, or email, or by communication on or via an Internet site, or by other digital communication. 	10
<p>(4) No consent under this section can authorise contact inconsistent with—</p> <ul style="list-style-type: none"> (a) an order for supervised contact in relation to a child: (b) no-contact conditions imposed by a direction under section 168B168A of the Criminal Procedure Act 2011. 	15
<i>Giving of consent must be in required form, but cancelling may take any form</i>	
<p>(5) No consent to contact is valid unless in writing or in a digital communication (for example, in a text message, email, letter, or standard form).</p> <p>(6) However, a cancelling of consent to contact may take any form (for example, words spoken face to face, or by telephone).</p>	20
<i>No limit on number of times condition can be suspended and reinstated</i>	
<p>(7) The standard no-contact condition may any number of times—</p> <ul style="list-style-type: none"> (a) be suspended under subsection (1); and (b) be reinstated under subsection (2). 	25
20A Standard no-contact condition: references to consent	
<p>(1) This section applies if a protection order has a special condition imposed under section 27(3) that specifies that a person (other than the respondent or the associated respondent) is entitled to consent, on the protected person's behalf, in relation to contact with the protected person.</p> <p>(2) References in section 20 to the giving or cancelling of the consent of a protected person include, as the case requires,—</p> <ul style="list-style-type: none"> (a) the giving of the consent of the specified person: (b) the cancelling of consent by the specified person. 	30
20B Standard no-contact condition: other exceptions	
<p>(1) Contact by the respondent with the protected person is authorised, and not in breach of the standard no-contact condition, if the contact is—</p> <ul style="list-style-type: none"> (a) reasonably necessary in any emergency; or 	35

- (b) permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of,—
- (i) any child (within the meaning of section 8 of the Care of Children Act 2004); or
- (ii) any child or young person (within the meaning of section 2 of the ~~Children, Young Persons, and Their Families Act 1989~~ Oranga Tamariki Act 1989); or
- (c) permitted under any special condition of the protection order; or
- (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the ~~Children, Young Persons, and Their Families Act 1989~~ Oranga Tamariki Act 1989); or
- (e) necessary to attend any ~~court~~ proceeding (of any kind) in or before any court or person acting judicially, or to attend any other matter that is associated with a ~~court~~ such a proceeding and that is a matter that the parties to the ~~court~~ proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).
- (2) The contact authorised by **subsection (1)** may be contact made—
- (a) if the protected person is present on or in any land or building; and
- (b) by or after the respondent entering or remaining on or in that land or building.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- 20C Standard conditions: associated respondents**
- (1) This section applies if, under a direction made under section 17, a protection order applies against an associated respondent.
- (2) **Sections 19 to 20B** apply, with the necessary modifications, in respect of the associated respondent.
- 20 Section 21 amended (Standard condition relating to weapons)**
In section 21(5), replace “pursuant to” with “under”.
- 20A Section 22 amended (Court may dispense with, modify, discharge, or re-impose standard condition relating to weapons)**
In section 22(6), replace “Sections 9, 11, and 12,” with “Sections 9, **9A**, 11, 12, and **12A**,”.
- 21 Section 23 amended (Further provisions relating to powers conferred by section 22)**
In section 23(1), (3)(a) and (b), and (4)(a) and (b)(ii), replace “domestic violence” with “family violence” in each place.

22 Section 27 amended (Court may impose special conditions)

(1) Replace section 27(1) with:

(1) In or after making a protection order, the court may impose any conditions that are reasonably necessary, in the opinion of the court, for either or both of the following purposes:

(a) to protect the protected person from further family violence by the respondent, or the associated respondent, or both:

(b) to address the inflicting of family violence against protected people who are particularly vulnerable (for example, due to age, disability, or health condition).

(2) In section 27(3), replace “19(2), 20,” with “**19(b), 20, 20A,**”.

23 Section 28 replaced (Further provisions relating to certain special conditions)

Replace section 28 with:

28 Special conditions inconsistent with contact: exceptions with consent

(1) This section applies to a special condition of a protection order if the special condition requires the respondent not to make contact with the protected person.

(2) **Sections 20, 20A, 20B, and 20C** apply to the special condition as if it were the standard no-contact condition specified in **section 19(b)**.

24 Section 28B amended (Interim orders in respect of child of applicant’s family)

(1) In section 28B(1)(a) and (2), replace “Family Court” with “court”.

(2) After section 28B(3), insert:

(3A) Before the court makes an order under subsection (2), the Registrar should ensure the court has copies of, or information about all terms of, all existing relevant orders (if any) made under the Care of Children Act 2004.

(3B) An interim order made under subsection (2) should make clear how it relates to (how it operates with, overrides, or replaces all, or any parts, of) all existing relevant orders (if any) made under the Care of Children Act 2004.

(4) An interim order made under subsection (2) must be taken to be an interim parenting order made under section 48(1) of the Care of Children Act 2004 (so that, for example,—

(a) section 49A of that Act applies to it; and

(b) it may be varied or discharged under section 56 of that Act).

25 Section 28C repealed (Duration of interim order)

Repeal section 28C.

26 Section 28D replaced (Application for parenting order under Care of Children Act 2004 must be made)

Replace section 28D with:

28D Proceedings about interim order in respect of child of applicant's family: legal aid

- (1) This section applies to proceedings under the Care of Children Act 2004 if—
- (a) section 28B of this Act applies, under section 28B(1) of this Act, because an application has been made to the ~~Family Court~~ court for a protection order, and there is a child of the applicant's family; and
 - (b) the ~~Family Court~~ court makes under section 28B(2) of this Act, and in respect of the child concerned, an interim order; and
 - (c) **section 28B(4)** of this Act requires that interim order to be taken to be an interim parenting order made under section 48(1) of the Care of Children Act 2004; and
 - (d) the proceedings under the Care of Children Act 2004 relate to that interim order being varied, or discharged, or replaced with a further interim parenting order or with a final parenting order.
- (2) For the purposes of section 19(1) of the Legal Services Act 2011 (which contains special provisions about conditions on grants of legal aid to persons involved in proceedings under this Act), proceedings to which this section applies are a kind of proceedings that relate to, or arise out of, an application for a protection order under Part 2 of the **Family and Whānau Violence Act 1995**.

26A Section 46 amended (Power to vary protection order)

- (1) Replace section 46(1)(c) and (d) with:
- (c) by varying or discharging a direction made under **section 51E**:
 - (d) by making a direction under **section 51E**.
- (2) Replace section 46(2)(c) and (d) with:
- (c) by varying or discharging a direction made under **section 51E**:
 - (d) by making a direction under **section 51E**.

27 Section 47 amended (Power to discharge protection order)

- (1) After section 47(1), insert:
- (1A) However, the court must not discharge the order unless satisfied that the order is no longer necessary for the protection of any protected person.
 - (1B) In determining whether to discharge a protection order, the court must have regard to the following matters to the extent that they are relevant in the particular case:

- (a) the length of the period since the order was made:
- (b) the behaviour that led to the making of the order (including its nature, its seriousness, and how often violence occurred):
- (c) whether, and if so how, the respondent acknowledges the respondent's past behaviour that led to the making of the order: 5
- (d) whether the respondent to the order complied with required attendance at or engagement with, and achieved objectives of, any assessment or programme or prescribed services:
- (e) any relevant safety concerns that an assessor or a service provider has notified or advised under **section 51C or 51Q**: 10
- (f) any family violence or breaches of the order since it was made:
- (g) the necessity for contact and the likelihood (if the order is discharged) of future contact:
- (h) the risk of future family violence:
- (i) whether areas of concern that led to the order are no longer evident: 15
- (j) any protected person's ascertained views on the application (whether it is made by, or on behalf of, the applicant or the respondent).
- (1C) **Subsection (1B)** does not limit the matters to which the court may have regard in determining whether to discharge a protection order.
- (2) ~~In section 47(2)(a) and (b) and (4)(a) and (b), replace "pursuant to" with "under".~~ 20
- 28 Section 48 replaced (Variation or discharge on behalf of protected person)**
Replace section 48 with:
- 48 Variation or discharge on behalf of protected person**
- (1) This section applies in relation to— 25
- (a) any application on behalf of a protected person for the variation or discharge of a protection order under this Act; and
- (b) the defending on behalf of a protected person of any such application made by the respondent or the associated respondent.
- (2) **Sections 9, 9A, 11, and 12, and 12A** apply to those matters, so far as applicable and with the necessary modifications, as they apply in relation to the making of an application for a protection order. 30
- 29 Section 49 amended (Offence to breach protection order)**
- (1A) In the heading to section 49, after "protection order", insert "(or related property order)". 35
- (1) Replace section 49(1) with:
- (1) A person commits an offence if the person breaches a protection order by—

(a)	doing any act in contravention of the protection order; or	
(b)	failing to comply with any condition of the protection order; or	
(c)	contravening, or failing to comply with any term and condition of, a related occupation order (for example, by failing to leave the dwelling-house to which the order relates); or	5
(d)	contravening a related tenancy order (for example, by failing to leave the dwellinghouse to which the order relates); or	
(e)	contravening, or failing to comply with any term and condition of, a related ancillary furniture order (for example, by preventing possession and use of all or any items to which the order relates); or	10
(f)	contravening, or failing to comply with any term and condition of, a related furniture order (for example, by preventing possession and use of all or any items to which the order relates).	
(2)	<u>Replace section 49(4) with:</u>	
(4)	<u>A failure to comply with a direction made under section 51E is not a breach of a protection order under subsection (1)(b).</u>	15
30	Section 50 replaced (Power to arrest for breach of protection order) Replace section 50 with:	
50	Power to arrest for breach of protection order (or related property order) Where a protection order is in force, any constable may arrest, without warrant, any person who the constable has good cause to suspect has—	20
(a)	contravened the protection order; or	
(b)	failed to comply with any condition of the protection order; or	
(c)	contravened, or failed to comply with a term and condition of, a related occupation order; or	25
(d)	contravened a related tenancy order; or	
(e)	contravened, or failed to comply with a term and condition of, a related ancillary furniture order; or	
(f)	contravened, or failed to comply with a term and condition of, a related furniture order.	30

Programmes (Part 2A)

31	Part 2A replaced Replace Part 2A with:	
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Part 2A

Programmes and prescribed services

Interpretation

51A Interpretation

In this Part, unless the context otherwise requires,— 5

approval means an approval under **section 51B**, and that has not been suspended or cancelled, of 1 of the following kinds:

- (a) an approval of an assessor:
- (b) an approval of a service provider

assessment, in relation to a respondent, means an assessment of the respondent undertaken by an assessor to determine— 10

- (a) the extent to which the respondent poses a safety risk to any person or the public; and
- (b) if the assessment is an assessment for a non-violence programme, what, if any, non-violence programme is the most appropriate for the respondent to attend; and 15
- (c) if the assessment is an assessment for prescribed services, what, if any, prescribed services may be appropriate for and may benefit the respondent

assessor means a person or an organisation that has been granted an approval to undertake assessments (for non-violence programmes, prescribed services, or both) 20

non-violence programme means a programme that—

- (a) is provided by a service provider; and
- (b) is provided to a respondent; and 25
- (c) has the primary objective of stopping or preventing family violence on the part of the respondent

prescribed non-standard service has the meaning given to it by section 2

prescribed service has the meaning given to it by section 2

prescribed standard service has the meaning given to it by section 2 30

programmes means—

- (a) safety programmes; and
- (b) non-violence programmes

respondent means the person against whom an application has been made for an order under this Act, and includes an associated respondent 35

safety programme means a programme that—

- (a) is provided by a service provider; and
- (b) is provided to a protected person; and
- (c) has the primary objective of promoting (whether by education, information, support, or otherwise) the protection of the protected person from family violence

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service provider means a person or an organisation that has been granted an approval to provide programmes, prescribed services, or both.

Approval of assessors and service providers

51B Assessors and service providers

- (1) The Secretary may decide to grant, amend, suspend, or cancel—
 - (a) an approval of a person or an organisation (for example, a government organisation) as an assessor (for non-violence programmes, prescribed services, or both):
 - (b) an approval of a person or an organisation (for example, a government organisation) as a service provider.
- (2) A person or an organisation may be approved under **subsection (1)** by the Secretary—
 - (a) on an application made for the purpose by the person or organisation; or
 - (b) on the Secretary's own motion, and with the person's or organisation's written consent.
- (3) A person or an organisation seeking an approval under **subsection (1)** by way of an application, or an own-motion approval under **subsection (1)**, must follow the applicable process (if any) prescribed by regulations made under **section 127(a)(i)**.
- (4) A person or an organisation may (subject to, and to the prescribed criteria referred to in, **subsection (5)**) seek, be granted, or hold, both—
 - (a) an approval as an assessor (for non-violence programmes, prescribed services, or both); and
 - (b) an approval as a service provider.
- (5) In deciding whether to grant, amend, suspend, or cancel an approval under **subsection (1)**, the Secretary must apply the criteria (if any) prescribed for the purposes of this section by regulations made under **section 127(a)(ii)**.
- (6) An approval, or an amendment, suspension, or cancellation of an approval, under this section must be by written notice copied to the person or organisation.
- (7) The Secretary must publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice—
 - (a) an up-to-date list of assessors approved under this section:

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- (b) an up-to-date list of service providers approved under this section.

Notification of safety concerns

51C Assessor or service provider to notify safety concerns

- (1) This section applies if,—
- (a) a service provider has, during or after the provision by the provider to a protected person of a safety programme, concerns about the safety of a protected person (whether or not a protected person attending, or who attended, the safety programme); or 5
- (b) an assessor has, during or after the undertaking by the assessor of an assessment of the respondent, concerns about the safety of a protected person; or 10
- (c) a service provider has, during or after the provision by the provider to a respondent of a non-violence programme or a prescribed service, concerns about the safety of a protected person.
- (2) In **subsection (1)**, **concerns about the safety of a protected person** means concerns about a risk (to the safety of the protected person) that— 15
- (a) is imminent, escalating, or grave; and
- (b) adds to the concerns that supported the making of the protection order.
- (3) The assessor or service provider must, without delay, notify the following authorities of those concerns: 20
- (a) the Registrar;
- (b) the District Commander at the appropriate Police District Headquarters;
- (c) if there is a perceived risk to any child, the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for administration of the Children, Young Persons, and Their Families Act 1989. 25
- (4) On receiving a notification under **subsection (3)(a)**, the Registrar must—
- (a) arrange for the protected person to be advised of the assessor’s or service provider’s concerns; and
- (b) comply with **section 51U** (Registrar’s response to notice of safety concerns or non-compliance). 30

Safety programmes

51D Safety programmes for protected persons

- (1) If the court makes a protection order,—
- (a) the applicant, or the applicant’s representative, may request the Registrar to authorise the provision of a safety programme to all or any of the following persons: 35

<ul style="list-style-type: none"> (i) the applicant: (ii) a child of the applicant’s family: (iii) a specified person; and 	5
<ul style="list-style-type: none"> (b) a child of the applicant’s family may request the Registrar to authorise the provision of a safety programme to that child if no request has been made under paragraph (a)(ii); and (c) a specified person (other than a child) may request the Registrar to authorise the provision of a safety programme to that specified person if no request has been made under paragraph (a)(iii). 	5
<p>(2) If, at the time the protection order is made, the applicant has not made a request under this section, and the applicant is not legally represented, the Judge or the Registrar must inform the applicant of the applicant’s right to make such a request.</p>	10
<p>(3) One or more requests may be made under all or any of subsection (1)(a), (b), and (c), in respect of the same person or different people, at any time while the protection order remains in force.</p>	15
<p>(4) If a request is made to a Registrar under subsection (1)(a), (b), or (c), the Registrar—</p> <ul style="list-style-type: none"> (a) must arrange for the matter to be referred to a service provider without delay, if the request is the first one made by or on behalf of the applicant, child of the applicant’s family, or specified person; and (b) may do so, if the request is a later one made by or on behalf of the applicant, child of the applicant’s family, or specified person. 	20
<p>(5) Every lawyer acting for an applicant for a protection order must—</p> <ul style="list-style-type: none"> (a) ensure that the applicant is aware of the applicant’s right to make a request under this section; and (b) if the applicant wishes to exercise that right, take any further steps the lawyer considers necessary to enable the applicant to do so. 	25
<i>Non-violence programmes and prescribed services</i>	
<p>51E Directions for assessments, non-violence programme, and prescribed standard services</p> <p><i>Court making protection order must make direction for non-violence programme</i></p>	30
<p>(1) On making a protection order, the court must direct the respondent to—</p> <ul style="list-style-type: none"> (a) undertake an assessment for a non-violence programme; and (b) attend a non-violence programme, provided by a service provider, that an assessor determines is an appropriate non-violence programme for the respondent to attend. 	35

- (2) However, the court need not make a direction under **subsection (1)** if the court considers that there is a good reason for not making a direction.
Court making protection order may make direction for prescribed services
- (3) On making a protection order, the court may direct the respondent to—
- (a) undertake an assessment for prescribed services; and 5
 - (b) engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the respondent.
- 51F Objection process if direction made on application without notice**
- (1) This section applies if the court makes a direction under **section 51E** on an application made without notice. 10
- (2) If this section applies,—
- (a) the direction does not take effect until 10 working days after a copy of the direction is served on the respondent; and
 - (b) the respondent may, within those 10 working days, notify the court that the respondent objects to the direction. 15
- (3) If the respondent, under **subsection (2)(b)**, notifies the court that the respondent objects to the direction,—
- (a) the Registrar must, if the respondent wishes to be heard, assign a hearing date, which must be— 20
 - (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
 - (b) the direction is suspended from the date on which the court receives the notice of objection until the court, after considering the respondent's objection, confirms (whether with or without variation) or discharges the direction. 25
- (4) Nothing in this section or **section 51G** gives the court power to review any order or decision other than the direction to which the notice relates, but nothing in this section limits section 76 or 79. 30
- 51G Court may confirm or discharge direction after considering objection**
- (1) After considering an objection, made under **section 51F**, to a direction, the court may—
- (a) confirm the direction; or
 - (b) vary the direction; or 35
 - (c) discharge the direction.

- (2) If the court under **subsection (1)** confirms or varies a direction and the respondent is before the court, the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment.
- (3) Failure to give the warning required by **subsection (2)** does not affect the validity of the direction confirmed or varied. 5
- 51H Referral of respondent to assessor**
- (1) After the court has made a direction under **section 51E**, the Registrar must, without delay,—
- (a) arrange for the respondent to be referred to an assessor who has been granted an approval to undertake an assessment of the kind required by the direction; and 10
- (b) notify the assessor of the direction made under **section 51E**.
- (2) This section is subject to **section 51F** (objection process if direction made on application without notice).
- 51I Assessor meets with respondent, undertakes assessment, and makes determinations** 15
- Undertaking assessment and making determinations*
- (1) As soon as possible after receiving a notification under **section 51H**, the assessor must arrange to meet with the respondent to—
- (a) undertake an assessment of the respondent; and 20
- (b) determine, if the direction in the notification is that the respondent undertake an assessment for a non-violence programme, whether there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend; and
- (c) determine, if the direction in the notification is that the respondent undertake an assessment for prescribed services, whether (and, if so, which of) the types of services specified in **Schedule 2 regulations made under section 127(aaa)** (if any), provided by a service provider, may be appropriate for and may benefit the respondent. 25
- When assessments or determinations need not be undertaken or made* 30
- (2) However, the assessor need not undertake or complete an assessment, or make a determination, under **subsection (1)**, if the assessor considers that there is a good reason for not doing so.
- (3) On making a decision under **subsection (2)** not to undertake or complete an assessment, or not to make a determination, under **subsection (1)**, the assessor must notify, and send a copy of the decision to, the Registrar. 35
- (4) On receiving notification of, and a copy of, the assessor's decision under **subsection (2)**, the Registrar must bring the matter to the attention of a Judge (*see section 51S*).

Order of, and delaying, respondent's attendance or engagement

- (5) **Subsection (6)** applies to an assessor who makes all or any of the following (unless the assessor also determines under **subsection (1)(c)** that a prescribed non-standard service, provided by a service provider, may be appropriate for and may benefit the respondent, in which case **section 51L** applies): 5
- (a) a determination under **subsection (1)(b)** that there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend:
- (b) a determination under **subsection (1)(c)** that a prescribed standard service, provided by a service provider, may be appropriate for and may benefit the respondent. 10
- (6) The assessor must, in making the 1 or more determinations, decide (jointly with any other assessor referred under **section 51H** a direction made under **section 51E** on the making of the protection order) what order the respondent must attend a non-violence programme or engage with a prescribed standard service, and whether the respondent's attendance at the programme, or engagement with the prescribed standard service, or both, should be delayed to enable other matters to be addressed first. 15
- (7) On making a decision under **subsection (6)** that the respondent's attendance at the programme, or engagement with the prescribed standard service, or both, should be delayed to enable other matters to be addressed first, the assessor must notify the Registrar, and the Registrar must bring the matter to the attention of a Judge (*see section 51S*). 20
- 51J When assessor must refer respondent back to court**
- (1) This section applies if, after undertaking an assessment of the respondent, the assessor makes 1 or both of the following: 25
- (a) a determination under **section 51I(1)(b)** that there is not an appropriate non-violence programme, provided by a service provider, for the respondent to attend:
- (b) a determination under **section 51I(1)(c)** that there is not a prescribed standard service, provided by a service provider, that may be appropriate for and may benefit the respondent. 30
- (2) The assessor must, without delay, notify, and copy the 1 or more determinations to, the respondent and the Registrar.
- (3) After receiving a notification under **subsection (2)**, the Registrar must— 35
- (a) arrange for the protected person to be notified of the 1 or more determinations; and
- (b) bring the matter to the attention of a Judge (*see section 51S*).

51K When assessor must refer respondent to service provider

- (1) This section applies if, after undertaking an assessment of the respondent, the assessor makes 1 or both of the following:
- (a) a determination under **section 51I(1)(b)** that there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend: 5
 - (b) a determination under **section 51I(1)(c)** that a prescribed standard service, provided by a service provider, may be appropriate for and may benefit the respondent.
- (2) The assessor must, without delay,— 10
- (a) notify, and copy the 1 or more determinations to, the respondent, and otherwise arrange for the respondent to be referred to the service provider; and
 - (b) notify the service provider of the relevant direction or directions made under **section 51E** and of the 1 or more determinations; and 15
 - (c) notify, and copy the 1 or more determinations to, the Registrar.

51L Court may direct respondent to engage with prescribed non-standard service

- (1) This section applies if the assessor determines under **section 51I(1)(c)** that a prescribed non-standard service, provided by a service provider, may be appropriate for and may benefit the respondent. 20
- (2) The assessor must promptly notify the Registrar, and send the Registrar—
- (a) the result of the assessment of the respondent undertaken by the assessor; and
 - (b) all information related to the assessor's determination under **section 51I(1)(c)** that the assessor considers may help a Judge to determine whether to make a direction under **subsection (4)**. 25
- (3) After receiving a notification under **subsection (2)**, the Registrar must bring the matter to the attention of a Judge.
- (4) When a matter is brought to the attention of a Judge under **subsection (3)**, the Judge may, if the Judge thinks fit, by written direction copied promptly to the respondent, to the assessor, and to the service provider, require the respondent to engage with the prescribed non-standard service as provided by a service provider. 30
- (5) The Judge, in making the direction, may decide in what order the respondent must attend a non-violence programme or engage with the prescribed non-standard service (or with any prescribed standard services with which the respondent is required to engage), and whether the respondent's attendance at the programme, or engagement with all or any prescribed services, or both, should 35

be delayed to enable other matters to be addressed first, and may make any other order or direction that may be made under **section 51S**.

51M Referral to different service provider

- (1) This section applies if the service provider—
- (a) is notified of, or copied, under **section 51K or 51L**, a direction about a programme or prescribed service and a respondent; but 5
 - (b) is not able to provide that programme or service to the respondent.
- (2) The service provider must—
- (a) notify the assessor referred to in **section 51K or 51L**; and
 - (b) send to that assessor the following information: 10
 - (i) the result of the assessment of the respondent undertaken by the assessor; and
 - (ii) any information that is held by the service provider and that relates to the assessment by the assessor of, or to the provision of the programme or service by the service provider to, the respondent. 15
- (3) After receiving a notification under **subsection (2)(a)** and the information referred to in **subsection (2)(b)**, the assessor must—
- (a) notify or copy under **section 51K or 51L(4)** (which apply with the necessary modifications) the direction about the programme or prescribed service and the respondent to a service provider that is able to provide that programme or service to the respondent, and notify the Registrar of the respondent's referral under this paragraph to a different service provider; or 20
 - (b) notify the Registrar. 25
- (4) After receiving a notification under **subsection (3)(b)**, the Registrar must bring the matter to the attention of a Judge (*see section 51S*).

51N Referral back to court if programme or service to be delayed or inappropriate

- (1) This section applies if the service provider, after being notified of, or copied, under **section 51K or 51L**, a direction about a non-violence programme or prescribed service and a respondent, determines that— 30
- (a) the respondent's attendance at the programme, or engagement with the service, or both, should be delayed to enable other matters to be addressed first; or 35
 - (b) it would not be appropriate for the respondent to attend the programme, engage with the service, or both.

- (2) The service provider must notify the Registrar, and the Registrar must bring the matter to the attention of a Judge (*see* **section 51S**).

51O Terms of attendance at or engagement with non-violence programme or prescribed service

- (1) Before providing a non-violence programme to a respondent (in line with the direction made under **section 51E(1)(b)** and the determination made under **section 51I(1)(b)**), the service provider must settle in writing with the respondent the terms of attendance, which must include—
- (a) the number of programme sessions that the respondent must attend; and
 - (b) details and arrangements about the programme venue, sessions, and times.
- (2) Before providing a prescribed service to a respondent directed under **section 51E(3)(b) or 51L** to engage with the service, the service provider must settle in writing with the respondent the terms of the respondent's engagement with the service.
- (3) The service provider must provide to the Registrar a copy of the terms of attendance or (as the case requires) the terms of engagement that the service provider has settled with the respondent.
- (4) If a service provider is not able to settle with a respondent the terms of attendance or (as the case requires) the terms of engagement, the service provider must notify the Registrar.
- (5) On receipt of a notice under **subsection (4)**, the Registrar must—
- (a) settle the terms of attendance or (as the case requires) the terms of engagement with the respondent and the service provider; or
 - (b) bring the matter to the attention of a Judge (*see* **section 51S**).

51P Referral back to court if continued provision no longer appropriate or practicable or affected significantly by non-compliance

- (1) This section applies if, at any time during the provision of a non-violence programme, the service provider considers that—
- (a) it is no longer appropriate or practicable for the service provider to provide the programme to the respondent; or
 - (b) the respondent is not participating fully in the programme, and that this is significantly affecting the respondent's ability to benefit fully from the programme.
- (2) This section also applies if, at any time during the provision of a prescribed service, the service provider considers that—
- (a) it is no longer appropriate or practicable for the service provider to provide the service to the respondent; or

- (b) the respondent is not engaging fully with the service, and that this is significantly affecting the respondent's ability to benefit fully from the service.
- (3) The service provider must—
- (a) notify the Registrar; and 5
- (b) send to the Registrar all information that is held by the service provider and that relates to the provision of the non-violence programme or (as the case requires) to the provision of the prescribed service to the respondent.
- (4) After receiving a notification under **subsection (3)(a)** of a determination (about continued provision of the programme or the prescribed service) under **subsection (1)(a) or (2)(a)** and the information referred to in **subsection (3)(b)**, the Registrar must— 10
- (a) make a new referral under **section 51M** to a different service provider; or 15
- (b) bring the matter to the attention of a Judge (*see section 51S*).
- (5) A service provider who makes a determination (about the respondent's non-compliance) under **subsection (1)(b) or (2)(b)** is required by **section 51T** to give written notice to the Registrar of that determination (and **sections 51U, 51V, 51W, and 51X** apply accordingly). 20
- 51Q Report and notice of completion and outcome of programme or service**
- (1) When a respondent has completed a non-violence programme or has completed engagement with a prescribed service, the service provider must, without delay, provide to the Registrar a report that—
- (a) states whether, in the opinion of the service provider, the respondent has met the objectives of the non-violence programme or of the engagement with the prescribed service; and 25
- (b) advises of any concerns that the service provider has about the safety of any protected person (as those concerns are defined in **section 51C(2)**).
- (2) On receiving a report under **subsection (1)**, the Registrar must— 30
- (a) comply with **section 51U** if—
- (i) the report advises that the respondent has failed to meet the objectives of the programme or of the engagement with the prescribed service; or
- (ii) the report advises of any concerns that the service provider has about the safety of any protected person; and 35
- (b) arrange for the protected person to be notified—
- (i) that the respondent has completed a non-violence programme or engagement with a prescribed service; and

(iii)	of any concerns that the service provider has about the safety of the protected person, and that are advised in the report provided under subsection (1) .	
(3)	<u>The court may release a report under subsection (1) to either or both of the following people on any terms and conditions the court considers necessary or desirable to protect the safety of a protected person:</u>	5
(a)	a respondent;	
(b)	a lawyer acting for a child who made under section 9 the application for the protection order.	
(4)	<u>Those terms and conditions may include (without limitation) the timing of the release, whether all, or only a part, of the report is released, and whether a copy of the report or part, or only an explanation of its effect, is released.</u>	10
<i>Confidentiality of information</i>		
51R	Information being admitted as evidence or used without court's authorisation	15
(1)	This section applies to information (for example, a statement or an admission) received—	
(a)	by an assessor or a service provider; and	
(b)	for the purposes of, or in the course of, undertaking an assessment, or providing a programme or prescribed service.	20
(2)	The information must not be admitted as evidence—	
(a)	in any court; or	
(b)	before any person acting judicially.	
(3)	However, subsection (2) does not prohibit the information from being disclosed for the purposes of all or any of the following:	25
(a)	giving a notification (for example, to a Registrar) under this Act:	
(b)	making a referral (for example, to a service provider) under this Act:	
(c)	proceedings under section 51U or 51V (which are proceedings <u>in response to notice of safety concerns or about the respondent's non-compliance with a direction</u>):	30
(d)	investigating or prosecuting an offence against section 51X :	
(e)	investigating or prosecuting an offence committed, or alleged to have been committed, during the provision of a programme, a prescribed service, or both:	
(f)	an inquiry that may be or is opened, ordered, or conducted into a death (including any related inquest that may be or is held) under the Coroners Act 2006:	35

- (g) any disclosure of the information that is authorised by the individual to whom the information relates (even if that individual is not the person who provided the information to the assessor or the service provider).
- (4) ~~If the information is court information of the District Court (within the meaning of section 236(4) and Schedule 1 of the District Court Act 2016), the information must not be disclosed except with authorisation given by a court or the Registrar or under rules of court.~~ 5
- (4) This section does not affect or limit court information being able to be accessed by, disclosed to, or shared with, an assessor or a service provider only as authorised by or under— 10
- (a) section 236 or 237 of the District Court Act 2016; or
- (b) section 173 or 174 of the Senior Courts Act 2016; or
- (c) regulations made under **section 127(c)** of this Act; or
- (d) any other enactment.
- (5) This section does not affect or limit any collection, use, or disclosure of the information authorised or required by or under the Privacy Act 1993 or any other enactment. 15

Enforcement and powers when matter referred back to court

51S Powers if matter brought to attention of Judge

- (1) This section applies if the Registrar brings a matter to the attention of a Judge under— 20
- (a) **section 51I(4)** (which applies if an assessor decides under **section 51I(2)** not to undertake or complete an assessment, or not to make a determination, under **section 51I(1)**); or
- (b) **section 51I(7)** (which applies if an assessor decides under **section 51I(6)** that the respondent's attendance at a non-violence programme, or engagement with a prescribed standard service, or both, should be delayed); or 25
- (c) **section 51J(3)** (when assessor must refer respondent back to court); or
- (d) **section 51M(4)** (referral to different service provider); or 30
- (e) **section 51N(2)** (referral back to court if programme or service to be delayed or inappropriate); or
- (f) **section 51O(5)(b)** (terms of attendance at or engagement with non-violence programme or prescribed service); or
- (g) **section 51P(4)(b)** (which applies if the service provider considers that is no longer appropriate or practicable for the service provider to provide a non-violence programme or prescribed service to the respondent). 35

- (2) The Judge may make any order or direction (for example, under **section 51E, 51J, 51L, 51P, 51M, or 51Q**) the Judge thinks fit in the circumstances.
- (3) The Judge may under **subsection (2)** do all or any of the following:
- (a) make a direction under **section 51E(3)(a) and (b)** (that the respondent undertake an assessment for prescribed services, and engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the respondent): 5
 - (b) suspend, vary or replace, or discharge the direction (to attend a non-violence programme or engage with a prescribed standard service) made under **section 51E(1)(b) or (3)(b)**: 10
 - (c) suspend, vary or replace, or discharge a direction (to engage with a prescribed non-standard service) made under **section 51L**: 15
 - (d) make a direction (to engage with a prescribed non-standard service) under **section 51L** in respect of the respondent: 15
 - (e) make under **section 51M** a referral to a different service provider that is able to provide a non-violence programme or prescribed service to the respondent:
 - (f) settle the terms of attendance or (as the case requires) the terms of engagement with the respondent and the service provider under **section 51O**: 20
 - (g) make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent (in which case the provisions of that Act apply with all necessary modifications). 25
- (4) **Subsection (3)** does not limit **subsection (2)**.

51T Notice of non-compliance with direction

- (1) This section applies if, after the court makes a direction under **section 51E or 51L**, 1 or more of the following events happen:
- (a) the respondent fails to undertake an assessment with the assessor to whom notice of the direction has been given under **section 51H**: 30
 - (b) the respondent fails to attend a non-violence programme in accordance with a direction made under **section 51E(1)(b)** and with the terms of attendance settled under **section 51O**:
 - (c) the respondent fails to engage with a prescribed service in accordance with a direction made under **section 51E(3)(b) or 51L** and with the terms of engagement settled under **section 51O**: 35
 - (d) during the provision of a non-violence programme, the service provider determines under **section 51P(1)(b)** that the respondent is not partici-

	pating fully in the programme and that this is significantly affecting the respondent's ability to benefit fully from the programme:	
	(e) during the provision of a prescribed service, the service provider determines under section 51P(2)(b) that the respondent is not engaging fully with the service and that this is significantly affecting the respondent's ability to benefit fully from the service.	5
(2)	The assessor or service provider concerned must give written notice to the Registrar of the 1 or more events that have happened.	
(3)	Notice under subsection (2) of an event must be given before the end of the seventh day after the day that the event happened.	10
51U	Registrar's response to notice of safety concerns or non-compliance	
(1)	This section applies if the Registrar receives any of the following:	
	(a) a notification under section 51C(3)(a) of an assessor's or a service provider's concerns about the safety of a protected person:	
	(b) a notice under section 51T of a respondent's non-compliance with a direction (for example, a direction made under section 51E(3)(b) or 51L that requires the respondent to engage with a prescribed service):	15
	(c) a non-violence programme completion or prescribed service engagement completion report under section 51Q(1) —	
	(i) that advises that the respondent has failed to meet the objectives of the programme or of the engagement with the prescribed service; or	20
	(ii) that advises of concerns that the service provider has about the safety of any protected person.	
(2)	The Registrar must, without delay,—	25
	(a) exercise the powers under section 82, as if the Registrar were the court referred to in that section, to call the respondent before the court; or	
	(b) bring the matter to the attention of a Judge so that the Judge may consider whether to exercise the power conferred by section 51V in relation to the respondent.	30
(3)	If the Registrar exercises the powers under section 82 in the manner allowed by subsection (2)(a) , then, subject to any regulations made under this Act, section 82 applies, so far as applicable and with the necessary modifications, as if the respondent were a witness in proceedings.	
51V	Judge may call respondent before court	35
(1)	This section applies if, under section 51U(2)(b) , a Registrar brings a matter to the attention of a Judge.	
(2)	The Judge may exercise the powers under section 82 to call the respondent before the court.	

- (3) If the Judge exercises those powers, section 82 applies, so far as applicable and with all necessary modifications, as if the respondent were a witness in proceedings.

51W Respondent called before court

- (1) If a respondent appears before the court under **section 51U(2)(a) or 51V(2)**, the court may, after hearing from the respondent, do all or any of the following: 5
- (a) admonish the respondent:
 - (b) confirm, vary or replace, or discharge the direction (under **section 51E or 51L**), or change the terms of attendance at or engagement with the programme or prescribed service under **section 51O**: 10
 - (c) make a replacement direction (under **section 51E or 51L**) that requires the respondent to attend or engage with a further, or different, assessment, programme, or prescribed service:
 - (d) make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent (in which case the provisions of that Act apply with all necessary modifications): 15
 - (e) make any order or direction the court thinks fit in the circumstances.
- (2) If the court confirms or varies a direction under **subsection (1)**, the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment. 20
- (3) Failure to give the warning required by **subsection (2)** does not affect the validity of the direction confirmed or varied.

51X Offence to fail to comply with direction

A respondent who fails, without reasonable excuse, to comply with a direction made under **section 51E or 51L** commits an offence and is liable on conviction to— 25

- (a) a fine not exceeding \$5,000; or
- (b) a term of imprisonment not exceeding 6 months.

Orders relating to property (Part 3) 30

32 Section 52 replaced (Application for occupation order)

Replace section 52 with:

52 Application for occupation order

- (1) A person who makes an application for a protection order may, at any of the following times, also apply for an occupation order: 35
- (a) when making the application for the protection order; or

- (b) before the application for the protection order is determined; or
- (c) while the protection order applied for, if it is made, is in force.
- (2) ~~An occupation order grants the applicant the right to live in a dwellinghouse owned by either party to the proceedings, or in which either party to the proceedings has a legal interest (for example, a tenancy), both—~~ 5
- (a) ~~during all or any of the period of existence of the family relationship in respect of which the protection order is sought or was made; and~~
- (b) ~~when the occupation order is made.~~
- (2) Where the person who is eligible to apply for an occupation order is a child, the child may make the application only in accordance with **section 71(2)**. 10
- (3) An occupation order grants the applicant the right to live in a dwellinghouse owned by either party to the proceedings, or in which either party to the proceedings has a legal interest (for example, a tenancy), at the time the occupation order is made.
- (4) However, no occupation order may be made in respect of any dwellinghouse unless either party to the proceedings owned it, or either party to the proceedings had a legal interest (for example, a tenancy) in it, at a time when the family relationship in respect of which the protection order is sought or was made existed. 15
- Compare: 1982 No 120 s 19 20

33 Section 53 amended (Power to make occupation order)

- (1) Replace section 53(1) and (2) with:
- (1) On or after making a protection order and on an application for an occupation order, the court may make an order granting to the applicant the right to personally occupy a specified dwellinghouse. 25
- (1A) **Subsection (1)** is subject to **subsection (2)** and to section 74, but applies despite anything in the Property (Relationships) Act 1976.
- (2) The court may make an order under **subsection (1)** only if it is satisfied that the order— 30
- (a) is reasonably necessary for 1 or both of the following purposes:
- (i) to meet the accommodation needs of the applicant, a child of the applicant’s family, or both;
- (ii) to enable the applicant to continue existing childcare, education, training, or employment arrangements for that person, a child of the applicant’s family, or both; or 35
- (b) is in the best interests of a child of the applicant’s family.
- (2A) **Subsection (2)** does not limit the matters to which the court may have regard in determining whether to make the order.
- (2) In section 53(4), replace “all persons” with “any other persons”.

34 Section 54 amended (Effect of occupation order)

Repeal section 54(2).

Replace section 54(2) with:

- (2) Contravening, or failing to comply with any term and condition of, an occupation order (for example, by failing to leave the dwellinghouse to which the order relates) is— 5
- (a) a breach of the related protection order; and
- (b) an offence against section 49.

35 Section 56 amended (Application for tenancy order)

Replace section 56(1) with:

- (1) A person who makes an application for a protection order may, at any of the following times, also apply for a tenancy order: 10
- (a) when making the application for the protection order; or
- (b) before the application for the protection order is determined; or
- (c) while the protection order applied for, if it is made, is in force. 15
- (1A) ~~A tenancy order vests in the applicant the tenancy of any dwellinghouse of which either party to the proceedings is the sole tenant, or a tenant holding jointly, or in common, with the applicant, both—~~
- (a) ~~during all or any of the period of existence of the family relationship in respect of which the protection order is sought or was made; and~~ 20
- (b) ~~at the time the tenancy order is made.~~
- (1A) Where the person who is eligible to apply for a tenancy order is a child, the child may make the application only in accordance with **section 71(2)**.
- (1B) A tenancy order vests in the applicant the tenancy of any dwellinghouse of which either party to the proceedings is the sole tenant, or a tenant holding jointly, or in common, with the applicant, at the time the tenancy order is made. 25
- (1C) However, no tenancy order may be made in respect of the tenancy of any dwellinghouse unless either party to the proceedings was the sole tenant, or a tenant holding jointly, or in common, with the applicant, at a time when the family relationship in respect of which the protection order is sought or was made existed. 30

36 Section 57 amended (Power to make tenancy order)

(1) Replace section 57(1) and (2) with:

- (1) On or after making a protection order and on an application for a tenancy order, the court may make an order vesting in the applicant the tenancy of a specified dwellinghouse. 35
- (1A) **Subsection (1)** is subject to **subsection (2)** and to section 74, but applies despite anything in the Property (Relationships) Act 1976.

- (2) The court may make an order under **subsection (1)** only if it is satisfied that the order—
- (a) is reasonably necessary for 1 or both of the following purposes:
 - (i) to meet the accommodation needs of the applicant, a child of the applicant, or both: 5
 - (ii) to enable the applicant to continue existing childcare, education, training, or employment arrangements for that person, a child of the applicant, or both; or
 - (b) is in the best interests of a child of the applicant’s family.
- (2A) **Subsection (2)** does not limit the matters to which the court may have regard in determining whether to make the order. 10
- (2) In section 57(3), replace “all persons” with “any other persons”.
- 37 Section 58 amended (Effect of tenancy order)**
- ~~Repeal section 58(2).~~
- Replace section 58(2) with: 15
- (2) Contravening a tenancy order (for example, by failing to leave the dwelling-house to which the order relates) is—
- (a) a breach of the related protection order; and
 - (b) an offence against section 49.
- 38 Section 60 amended (Application without notice for occupation order or tenancy order)** 20
- (1) Replace section 60(1) with:
- (1) An occupation order or a tenancy order may be made under section 53 or 57 on an application without notice if the court is satisfied that the delay that would be caused by proceeding on notice would or might expose the applicant or a child of the applicant’s family to family violence. 25
- (2) Repeal section 60(3).
- 39 Section 61 amended (Procedure for occupation orders and tenancy orders)**
- (1) Replace section 61(1)(c) with:
- (e) section 74 has been complied with in respect of the making of a tenancy order other than a temporary order; and 30
 - (d) a protection order has been made, or that it will at the same time make a protection order,—
- (2) Replace section 61(2)(c) with:
- (e) section 74 has been complied with in respect of the making of an occupation order other than a temporary order; and 35

- (d) ~~a protection order has been made, or that it will at the same time make a protection order,—~~
- (1) Replace section 61(1)(a) with:
- (a) it has jurisdiction to make a tenancy order (in particular because, as required by **section 57(1) or 60(1)**, a protection order has been made, or it will at the same time make a protection order); and 5
- (2) Replace section 61(2)(a) with:
- (a) it has jurisdiction to make an occupation order (in particular because, as required by **section 53(1) or 60(1)**, a protection order has been made, or it will at the same time make a protection order); and 10
- 39A Section 62 amended (Application for ancillary furniture order)**
- After section 62(1), insert:
- (1A) Where the person who is eligible to apply for an ancillary furniture order is a child, the child may make the application only in accordance with **section 71(2)**. 15
- 40 Section 64 amended (Effect of ancillary furniture order)**
- Repeal section 64(2).
- Replace section 64(2) with:
- (2) Contravening, or failing to comply with any term and condition of, an ancillary furniture order (for example, by preventing possession and use of all or any items to which the order relates) is— 20
- (a) a breach of the related protection order; and
- (b) an offence against section 49.
- 41 Section 66 amended (Application for furniture order)**
- (1) In section 66, delete “aged 16 years or over”. 25
- (2) In section 66(b)(i), replace “domestic relationship” with “family relationship”.
- (3) In section 66, insert as subsection (2):
- (2) Where the person who is eligible to apply for a furniture order is a child, the child may make the application only in accordance with **section 71(2)**.
- 42 Section 67 amended (Power to make furniture order)** 30
- (1) Replace section 67(1) with:
- (1) On or after making a protection order, the court may also make an order granting to the applicant the possession and use of all or any of the furniture, household appliances, and household effects in the dwellinghouse in which the parties live or have lived. 35

- (1A) **Subsection (1)** is subject to subsections (2) and (6) and to section 74, but applies despite anything in the Property (Relationships) Act 1976.
- (2) After section 67(5), insert:
- (5A) Terms and conditions imposed under subsection (5) may, without limitation, require or relate to all or any of the following: 5
- (a) access to the dwellinghouse in which the parties live or have lived:
 - (b) the timing of collection of the items to which the order relates:
 - (c) the manner of collection of those items:
 - (d) the absence from that dwellinghouse, at the time or times of collection of those items, of a specified person or specified people. 10
- 43 Section 68 amended (Effect of furniture order)**
- Repeal section 68(2).
- Replace section 68(2) with:
- (2) Contravening, or failing to comply with any term and condition of, a furniture order (for example, by preventing possession and use of all or any items to which the order relates) is— 15
- (a) a breach of the related protection order; and
 - (b) an offence against section 49.
- 43A Section 70 amended (Application without notice for ancillary furniture order or furniture order)** 20
- (1) Replace section 70(1) with:
- (1) An order under section 63 or 67 may be made on an application without notice if the court is satisfied that the delay that would be caused by proceeding on notice would or might expose the applicant or a child of the applicant's family to family violence. 25
- (2) Repeal section 70(3) and (4).
- 44 Sections 71 to 73 replaced**
- Replace sections 71 to 73 with:
- 71 Applications for property orders by children**
- (1) A child may, in accordance with this section, make an application for a property order. 30
- (2) A child may make the application only—
- (a) by a representative (for example, an approved organisation that is authorised by **section 12C** to take proceedings under this Act on behalf of the child); or 35

- (ab) if aged 16 years old or over (in which case this paragraph authorises the child to take proceedings without a representative); or
- (b) if authorised under rules of court to do so without a representative.
- (3) This section does not limit or affect the making or operation of rules of court (for example, rules made under section 16A(1) of the Family Courts Act 1980) that— 5
- (a) prevent an incapacitated child from taking part in, or from taking a step in, all or any specified proceedings under this Act without a litigation guardian:
- (b) provide for a representative to make all or any specified applications under this Act on behalf of a child prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally. 10
- 71A Views of child on whose behalf application made by representative**
- (1) This section applies if an application for a property order is made, on behalf of a child, by a representative, under **section 71(2)(a)**. 15
- (2) The child may be heard in the proceedings, even though they arose from the application made by the representative, and despite **section 71(2)(a)**.
- (3) Where the child expresses views on any matters related to the proceedings, the court must take account of those views.
- 72 Applications for property orders against children** 20
- The court must not make a property order against a child unless satisfied that the child is aged 16 years old or over and that the order is justified by special circumstances.
- 73 Applications for property orders on behalf of people other than children**
- (1) This section applies to an application made under this Part by a person who is not a child. 25
- (2) **Sections 11 and 12, and 12A** (applications on behalf of a person lacking capacity or prevented from applying personally) apply to the application, so far as applicable and with the necessary modifications, as if it were an application under Part 2 for a protection order. 30

Procedure (Part 4)

44A Section 79A amended (Review of contact arrangements)

In section 79A(1), replace “the Family Court” with “the court”.

45 Section 81 amended (Court may appoint lawyer)

- (1) In section 81(1)(b)(i), replace “section 9(2)” with “**section 9(2)(a)**”. 35
- (1A) After section 81(1)(b), insert:

- (ba) to represent a child (unless the child is, in the proceedings concerned, already represented by a lawyer)—
- (i) in any proceedings on an application made under **section 10(1) or (2)** for a protection order, or a direction under section 17 that a protection order apply, against the child; or
 - (ii) in any proceedings relating to or arising out of a protection order or a direction made, under this Act, on any such application; or
- (2) In section 81(1)(c), replace “any other person (being a person to whom section 11 applies)” with “a person lacking capacity to whom **section 11** applies”.
- (3) In section 81(2), replace “subsection (1)(c)” with “subsection (1)(**ba**) or (c)”.
- (4) In section 81(2A), replace “subsection (1)(a) or (b)” with “subsection (1)(a), (b), or (**ba**)”.
- 45A New section 81A inserted (How Judge ascertains child’s views (other than at hearing))**
- After section 81, insert:
- 81A How Judge ascertains child’s views (other than at hearing)**
- (1) If the court is required, or considers it necessary or desirable, to ascertain a child’s views (other than at any hearing of any application), a Judge may interview the child to ascertain those views.
 - (2) This section does not affect rules of court on the court ascertaining a child’s views at any hearing of any application.
- 46 Section 83 amended (Conduct of proceedings)**
- In section 83(2), replace “whanau” with “whānau”.
- 47 Section 88 amended (Copies of orders to be sent to Police)**
- (1) In the heading to section 88, after “**Copies of orders to be sent**”, insert “, **and risk factor information may be sent**”.
 - (2) After section 88(3), insert:
 - (4) When making a copy of an order available to a District Commander under subsection (1), the Registrar must at the same time also make available to that District Commander, in a way specified in subsection (3), information supplied—
 - (a) to the Registrar, by or on behalf of the applicant for the order; and
 - (b) to help the Police assess risks, or needs, arising from family violence.
 - (5) Risk factor information made available under this section may be disclosed by the Police under **section 124V**, or under any other enactment that authorises or requires the Police to disclose that information, ~~or in any other way that is~~

~~not an interference with the privacy of an individual (within the meaning of section 66 of the Privacy Act 1993).~~

48 Section 90 amended (Police to consider exercise of powers under Arms Act 1983)

In section 90(4), replace “section 60A of the Arms Act 1983 (which relates to the seizure of a firearm in cases of domestic violence)” with “section 18 (warrantless searches associated with arms, including in cases of family violence) of the Search and Surveillance Act 2012”.

48A Section 91 amended (Appeals to High Court)

After section 91(1AA), insert:

(1AB) Subsection (1AA) does not apply to a decision to make or refuse to make a protection order under section 123B of the Sentencing Act 2002 (see **section 123H** of that Act, which ensures that an appeal against a decision of that kind is an appeal against the sentence imposed for an offence).

49 Section 92 amended (Application of provisions relating to minors, etc)

- (1) In the heading to section 92, replace “**minors**” with “**children**”.
- (2) In section 92, replace “Sections 9, 11, and 12,” with “Sections 9, **9A**, 11, 12, and **12A**”.

Enforcement of protection orders overseas and foreign protection orders
(Part 5)

50 Sections 96 and 97 replaced

Replace sections 96 and 97 and the cross-headings above sections 96 and 97 with:

Enforcement of New Zealand orders overseas

96 Enforcement of New Zealand orders overseas

- (1) The Registrar may request the appropriate court or authority in a foreign country to make arrangements for the enforcement in that country of a protection order made by a New Zealand court.
- (2) **Subsection (1)** is subject to **subsections (3) and (4)**.
- (3) A person who wishes a request to be sent to a foreign country under **subsection (1)** must make a request in writing to the Registrar of the court in which the protection order was made.
- (4) The Registrar must send to the foreign country under **subsection (1)** a request made under **subsection (3)** if, on receiving the request, the Registrar is satisfied that—
 - (a) the request is made by or on behalf of a protected person; and

<ul style="list-style-type: none"> (b) the request relates to a protection order made by a New Zealand court; and (c) orders of that nature may be enforced in the foreign country to which the request relates. 	5
<p>(5) Nothing in this section prevents—</p> <ul style="list-style-type: none"> (a) a protected person from applying to a court or other appropriate authority in a foreign country for enforcement, in that country, of a protection order; or (b) the variation or discharge, under this Act, of a protection order that is enforced in a foreign country. 	10
<p>(6) In this section and section 96A, enforcement includes registration and enforcement, and enforced has a corresponding meaning.</p> <p>Compare: 1968 No 63 ss 22L–22LA; 1979 No 52 s 2; 1991 No 19 s 34</p>	15
<p>96A Information necessary to process request or secure enforcement of order</p>	
<p>(1) This section applies if the Registrar receives a request under section 96(3) for the sending<u>enforcement</u> of a protection order to<u>in</u> a foreign country.</p>	15
<p>(2) The Registrar may require the person by whom, or on whose behalf, the request is made to supply to the Registrar any information or evidence (including certified copies of the order) necessary or desirable for either or both of the following purposes:</p> <ul style="list-style-type: none"> (a) to enable the Registrar to determine whether or not the request satisfies the requirements of section 96(4); and (b) to secure enforcement of the order in the foreign country. 	20
<p>(3) After imposing a requirement under subsection (2) for a request made under section 96, the Registrar may refuse to take any action, or further action, in relation to the request, until the requirement is met.</p> <p>Compare: 1968 No 63 ss 22L–22LA; 1979 No 52 s 2; 1991 No 19 s 34</p>	25
<p><i>Making requests and making documents available</i></p>	
<p>96B Ways requests may be made and documents may be made available</p>	
<p>For the purposes of sections 96, 96A, and 97, a request may be made to the Registrar, the Registrar may send the request to the foreign country, and copies, evidence, or information may be sent to the Registrar, and received and sent by the Registrar, in any of the following ways (none of which also requires a later hard copy):</p>	30
<ul style="list-style-type: none"> (a) sending a copy by means of electronic transmission (whether by way of facsimile transmission, electronic mail, or other similar means of communication): 	35

- (b) making a copy available in any other manner appropriate in the circumstances.

Enforcement of foreign protection orders

97 Registration of foreign protection orders

- (1) The Registrar of a court must register in the court a foreign protection order if the Registrar receives, for the purposes of registration, the following documents: 5
- (a) a certified copy of the order; and
- (b) a certificate that—
- (i) is signed by an officer of a court in the foreign country in which the order was made; and 10
- (ii) contains a statement that the order is, at the date of the certificate, enforceable in the foreign country.
- (2) The registration is done by filing in the court a certified copy of the order. 15
- Compare: 1968 No 63 s 22A; 1979 No 52 s 2

51 Section 106 amended (Evidence of orders made in foreign country)

In section 106, replace “domestic violence” with “family violence”.

*Non-publication of information relating to protected person on public registers
(Part 6)*

52 Cross-heading above section 122 amended 20

In the cross-heading above section 122, replace “Codes” with “Public register codes”.

53 Section 122 amended (Codes of practice)

In the heading to section 122, replace “practice” with “practice: public registers”. 25

54 Section 123 amended (Application of certain provisions of Privacy Act 1993)

In section 123, replace “under this Act” with “under this Part” in each place.

Police safety orders (Part 6A)

55 Section 124A amended (Interpretation) 30

In section 124A, insert in its appropriate alphabetical order:

bound person, in relation to an order, means the person against whom the order is issued

56 Section 124B amended (Qualified constable may issue Police safety order)

(1) Replace section 124B(1) with:

(1) A qualified constable may issue an order against a person (**person A**) who is, or has been, in a family relationship with another person (**person B**) if the constable has reasonable grounds to believe, having regard to the matters specified in subsection (2), that the issue of an order is necessary to help make person B safe from family violence.

5

(2) In section 124B(2)(a)(i) and (ii), replace “has used, or is using, domestic violence” with “has inflicted, or is inflicting, family violence”.

(3) In section 124B(2)(a)(ii), replace “domestic relationship” with “family relationship”.

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(4) In section 124B(2)(b), replace “will use, or again use, domestic violence” with “will inflict, or again inflict, family violence”.

57 Section 124D replaced (Police safety order not to be issued against child)

Replace section 124D with:

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124D Police safety order against child

A qualified constable must not issue an order against a child unless satisfied that the child is aged 16 years old or over and that the order is justified by special circumstances.

58 Section 124E amended (Effect of Police safety order)

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Replace section 124E(1) and (2) with:

Duty to surrender weapons and firearms licence and vacate occupied land or building

(1) A bound person must immediately—

(a) surrender to a constable—

25

(i) any weapon in the bound person’s possession or control; and

(ii) any firearms licence held by the bound person:

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

No family violence, no contact, no having others breach order

30

(2) It is a condition of every order that the bound person must not—

(a) engage in behaviour that amounts to any form of family violence against a person at risk (*see sections 3, 3A, and 3B*):

(b) make any contact with a person at risk (~~whether by telephone, letters or other writing, or email, by communication on or via an Internet site or other digital communication, or in any other way~~) that is not contact

35

	authorised by subsection (2A) (which describes the condition in this paragraph as an order’s no-contact condition):	
	(c) encourage a person to engage in behaviour against, or to make contact with, a person at risk, if the behaviour or contact, if engaged in or made by the bound person, would be prohibited by the order.	5
	<i>Contact that is authorised, and not in breach of order’s no-contact condition</i>	
(2A)	Contact by the person bound with a person at risk is authorised, and not in breach of an order’s no-contact condition, if the contact is—	
	(a) reasonably necessary in any emergency; or	
	(b) permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of,—	10
	(i) any child (within the meaning of section 8 of the Care of Children Act 2004); or	
	(ii) any child or young person (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or	15
	(c) permitted under any special condition of any relevant protection order; or	
	(d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989 Oranga Tamariki Act 1989); or	20
	(e) necessary to attend any court proceeding (of any kind) in or before any <u>court or person acting judicially</u> , or to attend any other matter that is associated with a court such a proceeding and that is a matter that the parties to the court proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).	25
	<i>Meaning of person at risk</i>	
59	Section 124F amended (Suspension of firearms licence on issue of Police safety order)	
	In section 124F(a) and (b), replace “person against whom the order is issued” with “bound person”.	30
60	Section 124G amended (Suspension of parenting orders, etc)	
	In section 124G(1)(d), replace “person against whom the order is issued” with “bound person”.	
61	Section 124H amended (Prompt service of Police safety order required)	35
	In section 124H(1), replace “person against whom the order is issued” with “bound person”.	

62 New section 124HA inserted (Police safety orders: risk and needs assessment of bound person)

After section 124H, insert:

124HA Police safety orders: risk and needs assessment of bound person

- | | | |
|-----|---|----|
| (1) | An assessor carries out an assessment under this section to identify— | 5 |
| | (a) any risk assessed by the assessor that the bound person is likely, after the expiry of a Police safety order, to continue inflicting family violence; and | |
| | (b) any steps that the assessor considers the bound person should take to help that person accept responsibility for, and stop, that person’s inflicting of family violence. | 10 |
| (2) | A constable (even if not a qualified constable) or Police employee may, while a Police safety order is in force, issue to the bound person a written direction to— | |
| | (a) arrange, before the end of the tenth working day after the direction is served on the bound person, for an assessment on the bound person to be carried out promptly by an assessor; and | 15 |
| | (b) attend the assessment at the arranged time and place. | |
| (3) | The constable or Police employee must, as soon as practicable after issuing the direction to the bound person, ensure that a copy of the direction is served on the bound person. | 20 |
| (4) | The direction lapses if— | |
| | (a) the order to which it relates lapses (because that order has not been served within 48 hours from the time of issue) under section 124H(2); or | |
| | (b) at or after the time that the direction is issued, a protection order is made against the bound person. | 25 |
| (5) | A person’s refusal or failure, without reasonable excuse, to comply with the direction after it has been served on the person, and if it has not lapsed, is taken for the purposes of section 124L to be a refusal or failure by the person to comply with an order served on the person. | 30 |
| (6) | In this section, assessor means a person or an organisation that has been granted an approval (to carry out assessments under this section)— | |
| | (a) under section 124HB ; and | |
| | (b) that has not been suspended or cancelled. | |

63 New section 124HB inserted (Approvals of assessors for section 124HA) 35

Before section 124J, insert:

124HB Approvals of assessors for section 124HA

- (1) A person or an organisation approved to do so under this section may carry out assessments under **section 124HA**.
- (2) A person or an organisation (for example, a government organisation) may be approved under this section by the Secretary—
 - (a) on an application made for the purpose by the person or organisation; or
 - (b) on the Secretary’s own motion, and with the person’s or organisation’s written consent.
- (3) A person or an organisation seeking an approval under this section by way of an application, or an own-motion approval under this section, must follow the applicable process (if any) prescribed by regulations made under **section 127(a)(i)**.
- (4) The Secretary may, at any time, amend, suspend, or cancel an approval under this section.
- (5) In deciding whether to grant, amend, suspend, or cancel an approval under this section, the Secretary must apply the criteria (if any) prescribed for the purposes of this section by regulations made under **section 127(a)(ii)**.
- (6) An approval, or an amendment, suspension, or cancellation of an approval, under this section must be by written notice copied to the person or organisation.
- (7) The Secretary must publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice an up-to-date list of assessors approved under this section.

64 Section 124J amended (Police safety order to be explained)

- (1) In the heading to section 124J, after “**Police safety order**”, insert “, **and direction to arrange and attend risk and needs assessment**,”.
- (2) In section 124J(1), replace “person against whom the order is issued” with “bound person” in each place.
- (3) After section 124J(2), insert:
 - (a) the purpose and effect of the direction; and
 - (b) the consequences that may follow if the bound person fails or refuses to comply with the direction.
- (4) A constable or Police employee who issues a direction under **section 124HA** related to a Police safety order must also, either before or after issue and ser-

vice of the direction, explain to the person for whose safety the order is issued the matters set out in **subsection (3)(a) and (b)**.

65 Section 124K amended (Duration of Police safety order)

In section 124K(1), replace “person against whom the order is issued” with “bound person”. 5

66 Section 124L amended (Contravention of Police safety order)

In section 124L(2), after “a constable”, insert “who believes on reasonable grounds that the person has refused or failed to comply with the order or a condition of the order”.

67 New section 124NA inserted (Nature of proceedings and standard of proof under section 124N or 124O) 10

After section 124N, insert:

124NA Nature of proceedings and standard of proof under section 124N or 124O

(1AAA) The jurisdiction conferred on the District Court or a Registrar under section 124N or 124O is civil jurisdiction of the District Court. 15

(1AAB) Rules of court may be made under section 126(1)(a) of this Act, or under section 228(1)(b) of the District Court Act 2016, regulating the practice and procedure of the District Court in proceedings under section 124N or 124O.

(1AAC) **Subsection (1AAB)** does not limit the generality of section 126(1)(a) or (b) of this Act or of section 228(1)(b) of the District Court Act 2016. 20

(1) Every question of fact arising in any proceeding under section 124N or 124O must (in accordance with, but without limiting, section 85) be decided on the balance of probabilities.

(2) ~~This section~~ **Subsection (1)**— 25

(a) does not affect the application to the proceeding of section 12A of the Family Court Act 1980 (which applies under section 12A(3)(~~eda~~) of that Act, and under which the court hearing the proceeding may receive any evidence, whether or not admissible under the Evidence Act 2006, that the court considers may assist it to determine the proceeding); and 30

(b) applies despite any contrary law (for example, every enactment or other law in the decision in *Mark v Police* [2013] NZHC 1041).

68 Section 124O amended (Issue of warrant to arrest person who contravenes Police safety order or fails to attend adjourned proceedings)

Replace section 124O(1) with: 35

(1) Subsection (2) applies if—

- (a) the bound person refuses or fails to comply with a Police safety order, or any condition of the order; or
- (b) the District Court is satisfied that the bound person has refused or failed to comply with a Police safety order, and the bound person does not attend personally at the time and place to which proceedings have been adjourned under section 124N(1)(c)(i).

New Part 6B inserted

69 New Part 6B inserted

After Part 6A, insert:

Part 6B	10
Information requests, use, and disclosure, and service delivery codes of practice	
<i>Purpose and interpretation</i>	
124T Purpose of this Part	15
The purpose of this Part is to—	
(a) enable family violence agencies and social services practitioners to request, use, or disclose personal information for purposes related to family violence; and	
(b) require family violence agencies and social services practitioners, in certain circumstances, to consider disclosing personal information for those purposes; and	20
(c) provide for codes of practice to guide the delivery of services provided, to stop or prevent family violence, to victims or perpetrators of family violence.	
124U Interpretation	25
In this Part, unless the context otherwise requires,—	
DHB means an organisation established as a DHB (that is to say, as a district health board) by or under section 19 of the New Zealand Public Health and Disability Act 2000	
family violence agency means any of the following:	30
(a) a specified government agency (as defined in this section):	
(b) any non-governmental organisation that is funded wholly or in part by government, and that exercises powers, performs functions, or provides services, for 1 or both of the following purposes:	
(i) to protect, or otherwise help, victims of family violence:	35

(ii) to help people to stop their inflicting of family violence:

- (c) any school board:
- (d) any licensed early childhood service

family violence risk or need assessment means an assessment of risk, or of need, arising from family violence

5

held includes deemed for the purposes of the Official Information Act 1982 to be held (*see*, for example, section 2(4) and (5) of that Act)

licensed early childhood service has the same meaning as in section 309 of the Education Act 1989

perpetrator, of family violence, means either of the following:

10

(a) a person who has inflicted, or may have inflicted, family violence (even if no offence involving the violence was, is, or is to be, admitted or prosecuted):

(b) a person who is inflicting, or may be inflicting, family violence (even if no offence involving the violence is, or is to be, admitted or prosecuted)

15

personal information has the same meaning as in section 2 of the Privacy Act 1993

school board means a board or body that is, or 1 or more managers who are,—

(a) a board as defined in section 60, and for the purposes of Part 7 (control and management of State schools), of the Education Act 1989; or

20

(b) a sponsor of a partnership school kura hourua (as those terms are defined in section 2 of that Act); or

(c) the manager or managers of a private school that is registered under section 35A of that Act

social services practitioner means an individual who is providing education, health, or other social services as all or any of the following:

25

(a) a holder of a teacher's practising certificate, or a limited authority to teach, under the Education Act 1989:

(b) a person who is, or is deemed to be, registered with an authority as a practitioner of a particular health profession under the Health Practitioners Competence Assurance Act 2003:

30

(c) a registered social worker (as defined in section 4 of the Social Workers Registration Act 2003)

specified government agency means any of the following:

(a) Accident Compensation Corporation:

35

(b) Department of Corrections:

(c) Ministry of Education:

(d) Ministry of Health:

- (e) any DHB:
 - (f) Housing New Zealand Corporation:
 - (g) every registered community housing provider (as defined in section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992):
 - (h) the part of the Ministry of Business, Innovation, and Employment referred to as Immigration New Zealand: 5
 - (i) Ministry of Justice:
 - (j) New Zealand Police:
 - (ja) Ministry for Vulnerable Children, Oranga Tamariki:
 - (k) Ministry of Social Development: 10
 - (l) any government agency established in substitution for, or set up to take over any relevant function of, the departments and agencies listed in **paragraphs (a) to (k)**
- victim**, of family violence, means a person who—
- (a) has experienced, is experiencing, or may experience, family violence; or 15
 - (b) is, has been, or may be, affected by family violence.

Information requests, use, and disclosure

124V Agencies and practitioners may request, use, and disclose information

- (1) A family violence agency or social services practitioner may request personal information about a victim or perpetrator of family violence from any, or from another, family violence agency or social services practitioner, to use or disclose for all or any of the following purposes: 20
 - (a) to make, or contribute to, a family violence risk or need assessment:
 - (b) to make, or contribute to the making or carrying out of, a decision or plan that is related to, or that arises from or responds to, family violence: 25
 - (c) to help ensure that a victim is protected from family violence.
- (2) The rest of this section applies to a family violence agency that, or social services practitioner who, holds personal information about a victim or perpetrator of family violence (the **holder agency or practitioner**).
- (3) The holder agency or practitioner may use the personal information for all or any of the purposes in **subsection (1)(a) to (c)**. 30
- (4) The holder agency or practitioner may disclose the personal information to any, or to another, family violence agency or social services practitioner (the **recipient agency or practitioner**)—
 - (a) if the holder agency or practitioner believes on reasonable grounds that the disclosure will or may help the recipient agency or practitioner to use 35

- the personal information for all or any of the purposes specified in **sub-section (1)(a) to (c)**; and
- (b) after, or without, receiving from the recipient agency or practitioner a request to disclose personal information to the recipient agency or practitioner for use for all or any of those purposes. 5
- (5) ~~In determining making a decision whether or not to disclose information under this section (which authorises, but does not require, a decision that information be made available), the holder agency or practitioner must have regard to the principle that helping to ensure that a victim is protected from family violence should usually take precedence over both—~~ 10
- (a) any applicable confidentiality of the information; and
- (b) any applicable limit under information privacy principle 11 in section 6 of the Privacy Act 1993 on disclosure of the information.
- (6) When requesting, using, or disclosing information under this section, an agency or practitioner must comply with any applicable code issued under **section 124Y**. 15
- (7) ~~Disclosure under this section does not limit the right, under a privilege or right referred to in section 53(5), 54, 56, 57, 58, 59, 60, or 68 of the Evidence Act 2006, to refuse to disclose any communication or information sought by a requirement to provide information.~~ 20

124VA Relationship with other enactments

- (1) **Section 124V** does not affect or limit court information being able to be accessed by, disclosed to, or shared with, a family violence agency or social services practitioner only as authorised by or under— 25
- (a) section 236 or 237 of the District Court Act 2016; or
- (b) section 173 or 174 of the Senior Courts Act 2016; or
- (c) regulations made under **section 127(c)** of this Act; or
- (d) any other enactment.
- (2) **Section 124V** does not affect or limit any collection, use, or disclosure of the information authorised or required by or under the Privacy Act 1993 or any other enactment. 30
- (3) Disclosure under **section 124V** does not limit the right, under a privilege or right referred to in section 53(5), 54, 56, 57, 58, 59, 60, or 68 of the Evidence Act 2006, to refuse to disclose any communication or information sought by a requirement to provide information. 35

124W Duty to consider information disclosure

- (1) This section applies to a family violence agency that, or social services practitioner who, holds personal information about a victim or perpetrator of family violence (the **holder agency or practitioner**).

- (2) The holder agency or practitioner must consider disclosing that information under **section 124V** to any, or to another, family violence agency or social services practitioner (the **recipient agency or practitioner**) if the holder agency or practitioner—
- (a) believes on reasonable grounds that disclosure to the recipient agency or practitioner will or may help ensure that a victim is protected from family violence; or
 - (b) receives from the recipient agency or practitioner a request to disclose personal information of that kind or description to the recipient agency or practitioner for use for all or any of the purposes specified in **section 124V(1)(a) to (c)**.

124X Protection of agency or practitioner disclosing information under section 124V

- (1) This section applies to the disclosure by an agency or a practitioner, and in any manner, of information under **section 124V**.
- (2) No civil, criminal, or disciplinary proceedings lie against the agency or practitioner in respect of that disclosure, or the manner of that disclosure, by the agency or practitioner of that information.
- (3) However, **subsection (2)** does not apply if that information was disclosed in bad faith.

Compare: 1989 No 24 s 16; 1996 No 9 s 17; 2009 No 35 s 44

Service delivery codes of practice

124Y Codes of practice: service delivery

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister of Justice, issue codes of practice to guide delivery of services provided—
 - (a) to victims or perpetrators of family violence, or both; and
 - (b) to stop or prevent family violence.
- (2) A code of practice may contain provisions on all or any of the following:
 - (a) assessment and management of risk related to family violence:
 - (b) workforce competencies:
 - (c) information requests, use, and disclosure under this Part:
 - (d) outcomes of assessments, programmes, or prescribed services.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) A code of practice must not be inconsistent with this Act, public register codes of practice issued under Part 6, or regulations or rules of court made under or for the purposes of this Act.

- (4A) The Minister may recommend the issuing, amendment, replacement, or revocation of code of practice provisions on information requests, use, or disclosure only after the Minister has consulted on the matter the Privacy Commissioner.
- (5) In this section, **delivery of services** includes the delivery of services for the purposes of, or incidental to, the exercise of a power conferred by or under this Act. 5

Miscellaneous provisions (Part 7)

69A Section 126 amended (Rules of court)

- (1) In section 126(1)(a), before “this Act”, insert “Part 6A (Police safety orders) of”. 10
- (2) In section 126(1)(b), before “this Act”, insert “Part 6A of”.
- (3) In section 126(2)(h), replace “the Secretary” with “a Registrar”.

70 Section 127 amended (Regulations)

- (1AA) In section 127, after “by Order in Council”, insert “made on the recommendation of the Minister of Justice”. 15

- (1) Replace section 127(a) and (b) with:

(aaa) specifying types of non-standard services (for the purposes of the definition in section 2 of prescribed non-standard service), types of standard services (for the purposes of the definition in section 2 of prescribed standard service), or both: 20

- (a) prescribing for the purposes of all or any of **sections 12B, 51B, and 124HB**,—

- (i) the process to be followed by a person or an organisation seeking an approval by way of an application (*see* **section 12B(2)(a), 51B(2)(a), or 124HB(2)(a)**), the process to be followed for an own-motion approval (*see* **section 12B(2)(b), 51B(2)(b), or 124HB(2)(b)**), or both; and 25

- (ii) the criteria that the Minister of Justice or (as the case requires) the Secretary must apply when deciding whether to grant, amend, suspend, or cancel an approval (for example, criteria for when a person or an organisation may under **section 51B(4)** be granted or hold both an approval to undertake assessments for, and an approval to provide, prescribed services): 30

- (b) prescribing the amount of fees and expenses, or a method for calculating the amount of fees and expenses, payable for all or any of the following: 35

- (i) the provision by assessors of assessments under **Part 2A**:

- (ii) the provision by service providers of programmes, prescribed services, or both under **Part 2A**:

- (e) ~~providing for and authorising disclosure to, or sharing with, assessors and service providers (as defined in **section 51A**), for the purposes of all or stated provisions of this Act, and by the court concerned or under its authority or direction, of—~~
- (i) ~~court information of the District Court (within the meaning of section 236(4) and Schedule 1 of the District Court Act 2016):~~ 5
- (ii) ~~court information of a senior court (within the meaning of section 173(4) and Schedule 2 of the Senior Courts Act 2016):~~
- (c) ~~authorising disclosure to, or sharing with, an assessor or a service provider (as those terms are defined in **section 51A**)—~~ 10
- (i) ~~of court information subject to section 236 or 237 of the District Court Act 2016 or section 173 or 174 the Senior Courts Act 2016;~~
- ~~and~~
- (ii) ~~for the purposes of all or stated provisions of this Act; and~~
- (iii) ~~by the court concerned or under its authority or direction:~~ 15
- (1A) In section 127(g), replace “section 51O or 51P” with “**section 51U or 51V**”.
- (2) After section 127(g), insert:
- (ga) ~~amending or replacing either or both of **Parts 1 and 2 of Schedule 2** (specified types of prescribed services) to add, amend, or delete items describing types of non-standard services, standard services, or both prescribing the amount of fees and expenses, or a method for calculating the amount of fees and expenses, payable for the provision by assessors of assessments under **section 124HA**:~~ 20

- 70A** **New section 127A inserted (Consultation required for some regulations under section 127)** 25
- After section 127, insert:

127A **Consultation required for some regulations under section 127**

Before recommending regulations be made under **section 127(a) or (c)**, the Minister of Justice must first consult,—

- (a) so far as the regulations relate to **section 12B or 51B**, the Principal Family Court Judge: 30
- (b) so far as the regulations relate to **section 124HB**, the Chief District Court Judge:
- (c) so far as the regulations relate to court information subject to section 236 or 237 of the District Court Act 2016, the Chief District Court Judge: 35
- (d) so far as the regulations relate to court information subject to section 173 or 174 of the Senior Courts Act 2016, the Chief Justice.

*Schedules and updating or consequential amendments***71 New Schedules 1 and 2 inserted**

Insert the **Schedules 1 and 2** set out in **Schedule 1** of this Act as the first schedules to appear after the last section of the principal Act.

71A Amendments to update expression

5

In the following provisions, replace “pursuant to” with “under” in each place:

- (1) section 2, definition of **applicant**, paragraph (b):
- (2) section 2, definition of **associated respondent**:
- (3) section 2, definition of **dwellinghouse**, paragraph (a):
- (4) section 2, definition of **protected person**, paragraph (c): 10
- (5) section 2, definition of **registered foreign protection order**:
- (6) section 2, definition of **special condition**:
- (7) section 2, definition of **specified person**:
- (8) section 2, definition of **tenant**, paragraph (b):
- (9) section 13(4)(b), (c), and (d), (5), and (5)(b), (c), and (d): 15
- (10) section 17(3) and (4):
- (11) section 21(4) and (5):
- (12) section 22(1)(b):
- (13) section 23(5) and (6)(a) and (b):
- (14) section 24(1)(b), (2), (2)(b), and (3): 20
- (15) section 25(1), (1)(a)(i), (b), and (c), (1)(d)(i), and (2):
- (16) section 26(2)(a) and (b):
- (17) section 45(1)(b) and (c) and (2):
- (18) section 46(3)(a) and (b):
- (19) section 47(2)(a) and (b), (3), and (4)(a) and (b): 25
- (20) section 55(1)(a) and (b):
- (21) section 58(3)(b)(i) and (ii):
- (22) section 60(2A) and (5)(b) and (c):
- (23) section 65(1)(a) and (c):
- (24) section 69(1)(a) and (c): 30
- (25) section 70(2A) and (6)(b) and (c):
- (26) section 74(2):
- (27) section 77(1A), (2), (3), and (4):
- (28) section 78(4):

(29)	<u>section 79(2) and (3)(a):</u>	
(30)	<u>section 80(1), (2), (3), and (5):</u>	
(31)	<u>section 80A(1):</u>	
(32)	<u>section 82(3)(b)(iii):</u>	
(33)	<u>section 83(1)(d) and (e) and (4):</u>	5
(34)	<u>section 90(3):</u>	
(35)	<u>section 98 and 98(b):</u>	
(36)	<u>section 99:</u>	
(37)	<u>section 100(1):</u>	
(38)	<u>section 101(2)(a):</u>	10
(39)	<u>section 102:</u>	
(40)	<u>section 110(2)(b):</u>	
(41)	<u>section 111:</u>	
(42)	<u>section 114(1), (2)(d)(ii), (2), (3)(b)(ii), and (5):</u>	
(43)	<u>section 118(1), (2), (3), and (4):</u>	15
(44)	<u>section 119:</u>	
(45)	<u>section 120:</u>	
(46)	<u>section 121(2):</u>	
(47)	<u>section 122(2)(a):</u>	
72	Other enactments amended consequentially	20
(1)	Amend the Acts listed in Part 1 of Schedule 2 as indicated in that Part.	
(2)	Amend the legislative instruments listed in Part 2 of Schedule 2 as indicated in that Part.	

Part 2

Amendments to other enactments 25

Subpart 1—Amendments to Bail Act 2000

73	Principal Act	
	This subpart amends the Bail Act 2000 (the principal Act).	
74	Section 3 amended (Interpretation)	
	In section 3, insert in their appropriate alphabetical order:	30
	family relationship has the same meaning as in section 4 of the Family and Whānau Violence Act 1995	
	family violence offence means an offence—	

- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and
- (b) involving family violence (as defined in **section 3** of that Act)
- protected person**, in relation to a protection order, has the same meaning as in section 2 of the **Family and Whānau Violence Act 1995** 5
- 75 New section 3A inserted (References to Family and Whānau Violence Act 1995)**
- (1) After section 3, insert:
- 3A References to Family and Whānau Violence Act 1995** 10
- A reference in this Act to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995.
- (2) Repeal **section 3A** on **1 July 2020**. 15
- 76 Section 7 amended (Rules as to granting bail)**
- Replace section 7(2) with:
- (2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one against— 20
- (a) section 194 of the Crimes Act 1961 (which relates to assault on a child, or by a male on a female); or
- (b) **section 194A** of the Crimes Act 1961 (which relates to assault on a person with whom the defendant is, or has been, in a family relationship). 25
- 77 Section 8 amended (Consideration of just cause for continued detention)**
- (1) Before section 8(4), insert:
- (3A) In deciding, in relation to a defendant charged with a family violence offence, whether or not to grant bail to the defendant or to allow the defendant to go at large, the court's primary consideration is the need to protect— 30
- (a) the victim of the alleged offence; and
- (b) any particular person or people in a family relationship with the victim.
- (3B) **Subsection (3A)** is subject to **subsection (3C)**.
- (3C) In deciding, in relation to a defendant charged with an offence against section 49 of the **Family and Whānau Violence Act 1995**, whether or not to grant bail to the defendant or allow the defendant to go at large, the court's par- 35

- amount consideration is the need to protect every person who, in relation to the protection order, is a protected person.
- (2) Repeal section 8(5).
- 78 Section 21 amended (Police employee may grant bail)**
- Replace section 21(3) with: 5
- (2A) In determining whether it is prudent to grant Police bail to a defendant charged with a family violence offence, the Police employee must make the primary consideration the need to protect—
- (a) the victim of the alleged offence; and
- (b) any particular person or people in a family relationship with the victim. 10
- (2B) **Subsection (2A)** is subject to **subsection (3)**.
- (3) In determining whether it is prudent to grant Police bail to a defendant charged with an offence against section 49 of the **Family and Whānau Violence Act 1995**, the Police employee must make the paramount consideration the need to protect every person who, in relation to the protection order, is a protected person. 15
- 79 Section 22 replaced (Conditions of Police bail granted to defendant charged with domestic violence offence)**
- Replace section 22 with:
- 22 Conditions of Police bail granted to defendant charged with family violence offence** 20
- A Police employee who grants Police bail to a defendant charged with a family violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 21B) any condition that the employee considers reasonably necessary to protect— 25
- (a) the victim of the alleged offence; and
- (b) any particular person residing, or in a family relationship, with the victim.
- 80 Section 23 amended (Bail and breach of protection order)**
- (1) In section 23(1), replace “section 50 of the Domestic Violence Act 1995 and charged with an offence against section 49 of that Act” with “**section 50 of the Family and Whānau Violence Act 1995** and charged with an offence against section 49 of that Act”. 30
- (2) In section 23(4), replace “section 49 of the Domestic Violence Act 1995” with “section 49 of the **Family and Whānau Violence Act 1995**”. 35

- 81 New section 30AAA inserted (Conditions of bail granted to defendant charged with family violence offence)**
After section 30AA, insert:
- 30AAA Conditions of bail granted to defendant charged with family violence offence** 5
- A judicial officer or Registrar who grants bail to a defendant charged with a family violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 30) any condition that the judicial officer or Registrar considers reasonably necessary to protect—
- (a) the victim of the alleged offence; and 10
- (b) any particular person residing, or in a family relationship, with the victim.
- 82 Section 31 amended (Release of defendant granted bail)**
In section 31(1), after “section 30”, insert “or **30AAA**”.
- Subpart 2—Amendments to Care of Children Act 2004 15
- 83 Principal Act**
This subpart amends the Care of Children Act 2004 (the **principal Act**).
- 84 Section 5 amended (Principles relating to child’s welfare and best interests)**
In section 5(a), replace “section 3(2) to (5) of the Domestic Violence Act 1995” 20
with “**sections 3(2), 3A, and 3B of the Family and Whānau Violence Act 1995**”.
- 85 Section 5A replaced (Domestic violence to be taken into account)**
Replace section 5A with:
- 5A Family violence to be taken into account** 25
- (1) This section applies if—
- (a) an application is made to the court for—
- (i) a guardianship order under section 19 or 27; or
- (ii) a direction under section 46R in relation to a guardianship dispute; 30
or
- (iii) a parenting order under section 48 (whether an interim parenting order or a final parenting order); or
- (iv) a variation of a parenting order, under section 56; and

- (b) 1 or both of the following kinds of orders made under section 14 of the **Family and Whānau Violence Act 1995** is or are, or at any time has or have been, in force against 1 or more parties to the application:
- (i) a temporary protection order: 5
 - (ii) a final protection order.
- (2) In taking into account the principle in section 5(a), the court must have regard in particular to the following matters:
- (a) whether a temporary protection order, or final protection order, is still in force:
 - (b) the circumstances in which that order was made: 10
 - (c) any written reasons, given by the Judge who made that order, for that Judge’s decision to make that order.
- (3) In taking into account the principle in section 5(a), the court must, if practicable, have regard in particular to—
- (a) all relevant convictions (if any), of 1 or more parties to the application, for an offence against section 49 of the **Family and Whānau Violence Act 1995** (breaching a protection order or related property order), or for any other family violence offence: 15
 - (b) all relevant safety concerns (if any) that an assessor or a service provider has notified or advised under **section 51I–51C or 51Q of the Family and Whānau Violence Act 1995**. 20
- (4) In this section, **family violence offence** means an offence—
- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and
 - (b) involving family violence (as defined in **section 3** of that Act). 25
- 86 Section 22 amended (Restrictions on making appointments under section 23)**
- In section 22(1)(d) and (2)(d), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.
- 87 Section 23 amended (Appointment of eligible spouse or partner of parent as additional guardian)** 30
- (1) In section 23(2)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.
 - (2) In section 23(2)(d)(i), replace “violence (that is, physical abuse or sexual abuse),” with “family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**),” 35

- 88 Section 46E amended (Family dispute resolution mandatory before commencement of proceedings)**
In section 46E(4)(f)(ii), replace “domestic violence” with “family violence”.
- 89 Section 51 amended (Court must consider protective conditions in certain cases)** 5
In section 51(1)(b), replace “physically or sexually abused” with “inflicted family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**) against”.
- 90 New section 57A and cross-heading inserted** 10
After section 57, insert:
- Incidental temporary protection orders*
- 57A Power to make incidental temporary protection order**
- (1) This section applies if—
- (a) an application has been made to the court for any of the following in respect of a child: 15
- (i) a guardianship order under section 19 or 27;
- (ii) a direction under section 46R in relation to a guardianship dispute;
- (iii) a parenting order under section 48 (whether an interim parenting order or a final parenting order);
- (iv) a variation of a parenting order, under section 56; and 20
- (b) no application has been made to the court for, but the court is satisfied that had an application been made to it for the purpose the court would have made, a protection order (whether a temporary protection order or a final protection order) made under the **Family and Whānau Violence Act 1995** in respect of all or any of— 25
- (i) the child, or a parent or any other person who has the role of providing day-to-day care for, or who may have contact with, the child; and
- (ii) a party to the application (in **paragraph (a)**) for the order or direction under this Act. 30
- (2) The court may make a temporary protection order under section 14 of the **Family and Whānau Violence Act 1995** if satisfied that any orders or directions made under this Act will not, by themselves, provide enough protection for all or any of the people specified in **subsection (1)(b)**.
- (3) Section 13(3) to (5) of the **Family and Whānau Violence Act 1995** applies 35
to a temporary protection order made under this section as if the order were one

made on an application without notice, and with all other necessary modifications.

Subpart 3—Amendments to Crimes Act 1961

Amendments to principal Act

- 91 Principal Act** 5
This subpart amends the Crimes Act 1961 (the **principal Act**).
- 92 Section 7A amended (Extraterritorial jurisdiction in respect of certain offences with transnational aspects)**
In section 7A(1), after “section 117,”, insert “**section 207A**.”
- 92A Section 7B amended (Attorney-General’s consent required where jurisdiction claimed under section 7A)** 10
In section 7B(1), after “section 117,”, insert “**section 207A**.”
- 93 New section 189A inserted (Strangulation or suffocation)**
After section 189, insert:
- 189A Strangulation or suffocation** 15
Everyone is liable to imprisonment for a term not exceeding 7 years who intentionally or recklessly impedes another person’s normal breathing, blood circulation, or both, by doing (manually, or using any aid) all or any of the following:
- (a) blocking that other person’s nose, mouth, or both: 20
(b) applying pressure on, or to, that other person’s throat, neck, or both.
- 94 New section 194A inserted (Assault on person in family relationship)**
(1) After section 194, insert:
- 194A Assault on person in family relationship** 25
(1) Everyone is liable to imprisonment for a term not exceeding 2 years who—
(a) assaults another person; and
(b) is, or has been, in a family relationship with that other person.
- (2) In **subsection (1)**, **family relationship** has the same meaning as in section 4 of the **Family and Whānau Violence Act 1995**.
- (3) The reference in **subsection (2)** to the meaning of family relationship in section 4 of the **Family and Whānau Violence Act 1995** is, until the commencement of **section 9 of the Family and Whānau Violence Legislation Act 2017**, a reference to the meaning of domestic relationship in section 4 of the Domestic Violence Act 1995. 30

- (2) Repeal **section 194A(3)** on the commencement of **section 9 of the Family and Whānau Violence Legislation Act 2017**.

95 Cross-heading above section 205 amended

In the cross-heading above section 205, replace “*feigned marriage*”, with “*and feigned or coerced marriage or civil union*”.

5

96 Section 207 amended (Feigned marriage or feigned civil union)

In the heading to section 207, replace “**feigned civil union**” with “**civil union**”.

97 New section 207A inserted (Coerced marriage or civil union)

After section 207, insert:

207A Coerced marriage or civil union

10

- (1) Everyone is liable to imprisonment for a term not exceeding 5 years who, with intent to cause another person to enter into a marriage or civil union, uses coercion (for example, intimidation, threats, or violence) against that other person.

- (2) **Subsection (1)** applies even if the marriage or civil union—

- (a) is not governed by New Zealand law: 15
- (b) is an arrangement or a relationship (however described, and even if not legally binding) in the form of a marriage or civil union:
- (c) is not solemnised or otherwise completed:
- (d) is, or if solemnised or otherwise completed would be, void or not legally binding (for example, for lack of consent, absence of formality, or non-compliance with a legal requirement). 20

98 Section 208 replaced (Abduction for purposes of marriage or sexual connection)

Replace section 208 with:

208 Abduction for purposes of marriage or civil union or sexual connection

25

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person (**P**) without P’s consent or with P’s consent obtained by fraud or duress,—

- (a) with intent to go through a form of marriage or civil union with P; or
- (b) with intent to have sexual connection with P; or 30
- (c) with intent to cause P to go through a form of marriage or civil union, or to have sexual connection, with some other person.

Compare: 1908 No 32 s 226

*Consequential amendments to Births, Deaths, Marriages, and Relationships
Registration Act 1995*

99 Principal Act

Sections 100 and 101 amend the Births, Deaths, Marriages, and Relationships Registration Act 1995. 5

100 Section 60 replaced (Convictions for bigamy to be recorded)

Replace section 60 with:

60 Convictions for bigamy, and for coerced marriage, to be recorded

- (1) This section applies if a person who is a party to a marriage is convicted of bigamy or coerced marriage because the marriage is a bigamous or coerced marriage. 10
- (2) The Registrar of the court in which the conviction was entered must immediately send to the Registrar-General a certificate of the conviction specifying—
 - (a) the names of the parties to the bigamous or coerced marriage; and
 - (b) the date and place of the bigamous or coerced marriage; and 15
 - (c) the date of the conviction.
- (3) **Subsection (4)** applies if—
 - (a) information relating to the bigamous or coerced marriage has been recorded under this Act or a former Act; and
 - (b) information relating to the bigamous or coerced marriage is sent to the Registrar-General under **subsection (2)**. 20
- (4) The Registrar-General must record, as part of the information relating to the bigamous or coerced marriage, the information sent under **subsection (2)**.

101 Section 62F replaced (Convictions for bigamy to be recorded)

Replace section 62F with: 25

62F Convictions for bigamy, and for coerced civil union, to be recorded

- (1) This section applies if a person who is a party to a civil union is convicted of bigamy or coerced civil union because the civil union is a bigamous or coerced civil union.
- (2) The Registrar of the court in which the conviction was entered must immediately send to the Registrar-General a certificate of the conviction specifying—
 - (a) the names of the parties to the bigamous or coerced civil union; and
 - (b) the date and place of the bigamous or coerced civil union; and 30
 - (c) the date of the conviction.
- (3) **Subsection (4)** applies if— 35

- (a) information relating to the bigamous or coerced civil union has been recorded under this Act or a former Act; and
 - (b) information relating to the bigamous or coerced civil union is sent to the Registrar-General under **subsection (2)**.
- (4) The Registrar-General must record, as part of the information relating to the bigamous or coerced civil union, the information sent under **subsection (2)**. 5

Consequential amendments to Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995

102 Principal regulations

Sections 103 and 104 amend the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995. 10

103 Regulation 8 amended (Marriage certificates)

In regulation 8(a)(x), after “bigamy”, insert “or coerced marriage”.

104 Regulation 8A amended (Civil union certificates)

In regulation 8A(a)(xi), after “bigamy”, insert “or coerced civil union”. 15

Consequential amendments to Criminal Records (Clean Slate) Act 2004

105 Principal Act

Section 106 amends the Criminal Records (Clean Slate) Act 2004.

106 Section 4 amended (Interpretation)

- (1) In section 4, definition of **criminal record**, replace “**criminal record** means,—” with “**criminal record,—**”. 20
- (2) In section 4, definition of **criminal record**, paragraph (a), before “any—,” insert “means”.
- (3) In section 4, definition of **criminal record**, paragraph (b)(i), before “any official record” insert “means”. 25
- (4) In section 4, definition of **criminal record**, paragraph (b)(ii), after “bigamy”, insert “or coerced marriage or civil union”.

Subpart 4—Criminal Procedure Act 2011

Amendments to principal Act

107 Principal Act

This subpart amends the Criminal Procedure Act 2011 (the **principal Act**). 30

108 New section 16A inserted (Specifying that offence charged is, or that conviction entered is for, family violence offence)

(1) After section 16, insert:

16A Specifying that offence charged is, or that conviction entered is for, family violence offence

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(1) The charging document may specify that the offence charged is a family violence offence.

(2) The court may, at any time after a charging document is filed and before the delivery of the verdict or decision of the court, amend the document to add, confirm, or remove a specification that the offence charged is a family violence offence.

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(3) The power in **subsection (2)**—

(a) is exercisable on the court's own motion or on the application of the defendant or the prosecutor:

(b) is exercisable by the Registrar, if both the defendant and the prosecutor agree:

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(c) does not limit the powers in section 133.

(4) If the defendant is convicted (even if the charging document does not specify that the offence charged is a family violence offence), the court may enter in the permanent court record of the proceeding a specification that the conviction is for a family violence offence.

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(5) In this section, **family violence offence** means an offence—

(a) against any enactment (including the **Family and Whānau Violence Act 1995**); and

(b) involving family violence (as defined in **section 3** of that Act).

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(6) A reference in this section to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995.

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(2) Repeal **section 16A(6)** on **1 July 2020**.

109 New sections 168A and 168B inserted

(1) After section 168, insert:

168A No-contact conditions if family violence offence defendant remanded in custody

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(1) This section applies to a defendant—

- (a) who is charged with an offence that is (even if the charging document does not under **section 16A** specify that the offence is) a family violence offence; and
- (b) who is, or is to be, remanded in custody under section 168(1)(c) (dealing with a defendant on an adjournment). 5
- (2) A judicial officer may give a direction imposing on the defendant 1 or more conditions requiring the defendant, while remanded in custody under section 168(1)(c), to have no contact (except as the judicial officer specifies) with the victim of the offence, any other person specified by the judicial officer, or both. 10
- (3) The power in **subsection (2)** is exercisable—
- (a) on the judicial officer’s own motion or on the application of the defendant or the prosecutor:
- (b) by the Registrar, if the prosecutor agrees.
- (4) In this section and **section 168B**,— 15
- contact**, by a defendant with a person, means contact or communication that is—
- (a) direct (that is, face-to-face), or indirect (regardless of the means of contact or communication used); and
- (b) initiated, or brought about, by the defendant; and 20
- (c) with the person
- family violence offence** means an offence—
- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and
- (b) involving family violence (as defined in **section 3** of that Act). 25
- (5) A reference in this section to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995. 30

168B Provisions about compliance with no-contact conditions

- (1) A direction given under **section 168A** must be copied to the defendant and to the manager of the prison in which the defendant is held in custody on remand, and overrides any entitlement of the defendant under enactments in, or made under, the Corrections Act 2004 (for example, under the following sections of that Act: 35
- (a) section 73 (entitlement to private visitors):
- (b) section 76 (prisoners may send and receive mail):
- (c) section 77 (outgoing telephone calls)).

- (2) ~~The manager of the prison in which the defendant is held in custody on remand must take all reasonable steps to ensure that the defendant complies with conditions imposed by the direction.~~
- (2) The manager of the prison in which the defendant is held in custody on remand, or any other person, may use relevant powers of that manager or person under sections 103A to 110C (about opening and reading of mail and withholding of correspondence) of the Corrections Act 2004, or under sections 111 to 122 (about monitoring of telephone calls) of that Act, to detect and prevent non-compliance by the defendant with conditions imposed by the direction. 5
- (3) After becoming aware of a breach of those conditions, the manager of the prison in which the defendant is held in custody on remand, or the Police, must take all reasonable steps to notify it promptly to the Registrar. 10
- (4) The Registrar, on being notified, must bring the matter to the attention of a judicial officer, who may reconsider the conditions of remand and any exceptions specified under **section 168A(2)**, and must direct the Registrar that the nature of the condition and the breach be entered in the permanent court record. 15
- (5) Despite **subsection (4)**, the judicial officer may decide not to direct that those matters be entered in the permanent court record if satisfied that—
- (a) the defendant had a reasonable excuse for the breach; or
- (b) the breach is so minor in nature that it should not be recorded and able to be considered in a later application for bail made by that defendant. 20
- (6) A breach entered under this section in the permanent court record may be considered in a later application for bail made by that defendant over his or her lifetime (whether or not the defendant is charged with a family violence offence). 25
- (7) A direction given under this section by a judicial officer that the breach of the condition be entered in the permanent court record may be appealed against by the defendant under sections 51 and 52 of the Bail Act 2000 (which apply with all necessary modifications).
- (2) Repeal **section 168A(5)** on **1 July 2020**. 30

110 Section 170 replaced (Defendant in custody may be brought up before expiry of period of adjournment)

Replace section 170 with:

- 170 Defendant in custody may be brought up before expiry of period of adjournment** 35
- (1) This section applies to a defendant who has been remanded in custody on any charge, even if the period for which the defendant was remanded in custody has not expired.
- (2) The defendant may at any time be brought before—

- (a) a judicial officer, for the consideration or giving of a direction under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody):
- (b) a court, to be dealt with on that charge.

Compare: 1957 No 87 s 59

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111 Section 386 amended (Rules)

After section 386(2)(v), insert:

~~(va) provide for and authorise, if a protection order is made under section 123B of the Sentencing Act 2002 on sentencing or otherwise dealing with an offender for a family violence offence, disclosure to, or sharing with, assessors and service providers (as defined in **section 51A** of the **Family and Whānau Violence Act 1995**), for the purposes of all or stated provisions of that Act, and by the court concerned or under its authority or direction, of specified court documents relating to the offender, every protected person for the order, or both:~~

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(va) if a protection order is made under section 123B of the Sentencing Act 2002 on sentencing or otherwise dealing with an offender for a family violence offence, authorise disclosure to, or sharing with, an assessor or a service provider (as those terms are defined in **section 51A** of the **Family and Whānau Violence Act 1995**)—

20

(i) of specified court documents relating to the offender, every protected person for the order, or both; and

(ii) for the purposes of all or stated provisions of that Act; and

(iii) by the court concerned or under its authority or direction:

112 Section 387 amended (Regulations)

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In section 387(1)(h), replace “Domestic Violence Act 1995,” with “Care of Children Act 2004, the **Family and Whānau Violence Act 1995**,”.

Consequential amendments to Corrections Act 2004

113 Principal Act

Sections 114 to 117A amend the Corrections Act 2004.

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114 Section 73 amended (Entitlement to private visitors)

In section 73(2), after “prisoners”, insert “, and to directions given under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011”.

- 115 Section 76 amended (Prisoners may send and receive mail)**
 In section 76(2)(a), after “sections 105 and 108”, insert “of this Act, and directions given under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011”.
- 116 Section 77 amended (Outgoing telephone calls)** 5
 After section 77(4), insert:
 (4A) The entitlement in subsection (3) is overridden by directions given under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011.
- 117 Section 108 amended (Withholding mail)** 10
 In section 108(1)(d)(vi), after “any court”, insert “(for example, a direction given under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011)”.
- 117A Section 112 amended (Purposes of monitoring prisoners’ calls)**
 After section 112(1)(c), insert: 15
 (ca) detect and prevent non-compliance with directions given under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011; and
- Subpart 5—Amendments to Evidence Act 2006
- 118 Principal Act** 20
 This subpart amends the Evidence Act 2006 (the **principal Act**).
- 119 Section 4 amended (Interpretation)**
 (1) In section 4(1), repeal the definition of **domestic violence**.
 (2) In section 4(1), insert in their appropriate alphabetical order:
family violence has the same meaning as in **section 3 of the Family and Whānau Violence Act 1995** 25
family violence case—
 (a) means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for, a family violence offence; but 30
 (b) does not include a sexual case
family violence offence means an offence—
 (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and
 (b) involving family violence (as defined in **section 3** of that Act) 35

	police employee has the same meaning as in section 4 of the Policing Act 2008	
120	Section 95 amended (Restrictions on cross-examination by parties in person) In section 95(1), replace “domestic violence” with “family violence” in each place.	5
121	Section 102 amended (Application) In section 102, before paragraph (a), insert: (aa) section 106A (which relates to family violence complainants):	
122	Section 103 amended (Directions about alternative ways of giving evidence) Repeal section 103(5).	10
123	Section 106 amended (Video record evidence) After section 106(9), insert: (10) In this section, a reference to a person being given a video record includes a reference to the person being given access to the video record, for example, being given access to an electronic copy of the video record through an Internet site.	15
124	New sections 106A and 106B and cross-heading inserted After section 106, insert: <i>Giving of evidence by family violence complainants</i>	20
	106A Giving of evidence by family violence complainants	
(1)	This section applies to a complainant who is not a child and who is to give or is giving evidence in a family violence case (a family violence complainant).	
(2)	A family violence complainant is entitled to give his or her evidence in chief by a video record made before the hearing.	25
(3)	The video record must be one recorded— (a) by a police employee; and (b) no later than 2 weeks after the incident in which it is alleged a family violence offence occurred.	
(4)	If a video record is to be or has been used as the complainant’s evidence in chief, a Judge must give a direction under section 103 about how the complainant will give the other parts of his or her evidence, including any further evidence in chief.	30
(5)	To avoid doubt, section 106 applies to a video record offered as the complainant’s evidence in chief under this section.	35

- (6) If the prosecution intends to use a video record as a complainant's evidence in chief, the prosecution must provide the defendant and the court with a written notice stating that intention to do so.
- (7) Unless a Judge permits otherwise, the notice must be given no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011. 5
- 106B Application by defendant for family violence complainant to give evidence in ordinary way or different alternative way**
- (1) Despite **section 106A**, a defendant may apply to a Judge for a direction that a family violence complainant give evidence or any part of his or her evidence in the ordinary way under section 83 or in a different alternative way under section 105. 10
- (2) Unless a Judge permits otherwise, the application must be made no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011. 15
- (3) Before giving a direction under this section, the Judge—
- (a) must give each party an opportunity to be heard in chambers; and
- (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way. 20
- (4) When considering whether to give a direction under this section, the Judge must have regard to—
- (a) whether the interests of justice require a departure from the usual procedure under **section 106A** in the particular case; and 25
- (b) the matters in section 103(3) and (4).

Subpart 6—Amendments to Sentencing Act 2002

125 Principal Act

This subpart amends the Sentencing Act 2002 (the **principal Act**).

126 New section 4A inserted (References to Family and Whānau Violence Act 1995) 30

- (1) After section 4, insert:

4A References to Family and Whānau Violence Act 1995

A reference in this Act to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a refer- 35

ence to the whole or the corresponding provision of the Domestic Violence Act 1995.

- (2) Repeal **section 4A** on **1 July 2020**.

127 Section 9 amended (Aggravating and mitigating factors)

After section 9(1)(c), insert:

- (ca) that the offence was a family violence offence (as defined in **section 123A**) committed—
- (i) while the offender was subject to a protection order (as defined in section 2 of the **Family and Whānau Violence Act 1995**, or that was made under section 123B of this Act); and
 - (ii) against a person who, in relation to the protection order, was a protected person (as so defined):

128 Section 123A replaced (Interpretation of terms used in this section and sections 123B to ~~123G~~123H)

Replace section 123A with:

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

In this section and sections 123B to ~~123G~~**123H**, unless the context otherwise requires,—

child has the meaning given to it by section 2 of the **Family and Whānau Violence Act 1995**

family relationship has the meaning given to it by section 4 of the **Family and Whānau Violence Act 1995**

family violence offence means an offence—

- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and
- (b) involving family violence (as defined in **section 3** of that Act)

family violence proceedings means proceedings in the Family Court under the **Family and Whānau Violence Act 1995** that relate wholly or partly to an application for a protection order

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

129 Section 123B amended (Protection order)

- (1) In section 123B(1)(a), replace “domestic violence offence” with “family violence offence”.
- (2) In section 123B(1)(b), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

- (3) In section 123B(4), replace “domestic violence proceedings” with “family violence proceedings”.
- (4) In section 123B(5), replace “domestic violence proceedings” with “family violence proceedings”.

130 Section 123C replaced (Provisions applying to protection order made under section 123B) 5

Replace section 123C with:

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

- (1) A protection order made under section 123B is subject to the following provisions of the **Family and Whānau Violence Act 1995**, and those provisions apply (so far as applicable, and subject to the modifications in **subsection (2)**) to that order as if it were a final protection order made under the **Family and Whānau Violence Act 1995**: 10
- (a) section 16(1):
 - (b) **section 19**: 15
 - (c) **sections 20 to 20B**:
 - (d) section 21 (except subsections (2)(a), (4), and (5)):
 - (e) section 24(3):
 - (f) section 25(1) (except paragraph (a)):
 - (g) section 26(1): 20
 - (h) section 27:
 - (i) **section 28** (except for **section 20C** as applied by **section 28(2)**):
 - (j) **Part 2A**.
- (2) The modifications are—
- (a) every reference to a protection order or a final order must be read as a reference to an order made under section 123B: 25
 - (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: 30
 - (d) the court cannot impose a condition relating to the matters set out in section 27(2) of the **Family and Whānau Violence Act 1995**.

123CA Disclosure of documents to assessor and service provider

- (1) This section applies to a court that makes—
- (a) a protection order under section 123B; and 35

- (b) a direction under **section 51E** (directions for assessments, non-violence programme, and prescribed standard services) or **51L** (about a direction to engage with a prescribed non-standard service) of the **Family and Whānau Violence Act 1995** (as applied by **section 123C(1)(j)**).
- (2) ~~The court must consider making under this section and at the same time a direction requiring disclosure to or sharing with relevant assessors and service providers, to help those assessors and providers perform all or any of their functions under the **Family and Whānau Violence Act 1995**, of specified court documents relating to the offender, every protected person for the order, or both.~~ 5
- (2) The court, when it makes the order or direction, must consider making under this section a direction requiring disclosure or sharing— 10
- (a) of specified court documents relating to the offender, every protected person for the order, or both (*see section 123CB*); and
- (b) to or with relevant assessors and service providers (*see section 123CC*); and 15
- (c) to help those assessors and service providers perform all or any of their functions under the **Family and Whānau Violence Act 1995**.
- (3) ~~The relevant assessors and service providers include any undertaking or providing all or any of the following assessments, programmes, or services:~~ 20
- (a) ~~a safety programme to a protected person (under **section 51D** of the **Family and Whānau Violence Act 1995**, as applied by **section 123G(3)(g)**);~~
- (b) ~~an assessment undertaken of the offender (under a direction made under **section 51E(1)(a) or (3)(a)** of the **Family and Whānau Violence Act 1995**);~~ 25
- (c) ~~a non-violence programme to the offender (under a direction made under **section 51E(1)(b)** of the **Family and Whānau Violence Act 1995**);~~
- (d) ~~a prescribed standard service to the offender (under a direction made under **section 51E(3)(b)** of the **Family and Whānau Violence Act 1995**, as so applied);~~ 30
- (e) ~~a prescribed non-standard service to the offender (under a direction made under **section 51L** of the **Family and Whānau Violence Act 1995**, as so applied).~~
- (4) ~~The specified court documents relating to the offender may be or include copies of the following:~~ 35
- (a) ~~the relevant charging document;~~
- (b) ~~the offender's contact details;~~
- (c) ~~the offender's criminal conviction history;~~
- (d) ~~the court's decision to make the protection order under section 123B;~~ 40

- (e) a copy of that order:
 - (f) any current notice of bail or bail bond document.
- (5) ~~The specified court documents relating to every protected person for the order may be or include copies of the documents specified in **subsection (4)**, except for the offender's contact details.~~

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123CB Court documents for section 123CA

- (1) For the purposes of **section 123CA**, the specified court documents relating to the offender may be or include copies of the following:
- (a) the relevant charging document:
 - (b) the offender's contact details:
 - (c) the offender's criminal conviction history:
 - (d) the court's decision to make the protection order under section 123B:
 - (e) a copy of that order:
 - (f) any current notice of bail or bail bond document.
- (2) For the purposes of **section 123CA**, the specified court documents relating to every protected person for the order may be or include copies of the documents specified in **subsection (1)**, except for the offender's contact details.

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123CC Assessors and service providers for section 123CA

For the purposes of **section 123CA**, the relevant assessors and service providers include any undertaking or providing all or any of the following assessments, programmes, or services:

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- (a) a safety programme to a protected person (under **section 51D** of the **Family and Whānau Violence Act 1995**, as applied by **section 123C(1)(j)**):
- (b) an assessment undertaken of the offender (under a direction made under **section 51E(1)(a) or (3)(a)** of the **Family and Whānau Violence Act 1995**):
- (c) a non-violence programme to the offender (under a direction made under **section 51E(1)(b)** of the **Family and Whānau Violence Act 1995**):
- (d) a prescribed standard service to the offender (under a direction made under **section 51E(3)(b)** of the **Family and Whānau Violence Act 1995**, as so applied):
- (e) a prescribed non-standard service to the offender (under a direction made under **section 51L** of the **Family and Whānau Violence Act 1995**, as so applied).

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131 Section 123D amended (Explanation of protection order)

- (1) In section 123D(1)(a)(ii), replace “direction to attend a programme made under section 51D of the Domestic Violence Act 1995 (as applied by section 123C(1)(a))” with “direction to attend a programme or engage with prescribed services made under **section 51E(1)(b) or (3)(b) or 51L** of the **Family and Whānau Violence Act 1995** (as applied by **section 123C(1)(j)**)”. 5
- (2) In section 123D(1)(b)(ii), after “to attend”, insert “or engage with any prescribed services that he or she has been directed to engage with”.

132 Section 123G replaced (Protection order treated as if made by Family Court) 10

Replace section 123G with:

123G Protection order treated as if made by Family Court

- (1) This section applies to an order entered, as soon as it has been entered, in the records of the Family Court under section 123F(2).
- (2) The order is to be treated as if it were a final protection order made by that court under the **Family and Whānau Violence Act 1995** (except that an appeal against the order is, under **section 123H** of this Act, an appeal against a sentence). 15
- (3) The order is, accordingly, subject to the following provisions of the **Family and Whānau Violence Act 1995** (*see also section 123H(7) and (8)*): 20
- (a) section 22(2)(b) and (6):
 - (b) section 23:
 - (c) section 45(2):
 - (d) section 46(1):
 - (e) section 47(1): 25
 - (f) sections **48**, 49, and **50**:
 - (g) **Part 2A**:
 - (h) section 82:
 - (ha) section 88:
 - (hb) section 89: 30
 - (hc) section 90:
 - (i) sections 88-91 to 95.

123H Appeal against decision to make or refuse to make protection order under section 123B is appeal against sentence

- (1) An appeal against a decision to make or refuse to make a protection order under section 123B is an appeal under subpart 4 of Part 6 of the Criminal Procedure Act 2011 against the sentence imposed for an offence (and the decision 35

- cannot be appealed against under sections 91 to 95 of the **Family and Whānau Violence Act 1995**).
- (2) If a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011 is filed in a court in respect of a protection order made under section 123B, the court must send a copy to the Family Court nearest to where the victim of the offence resides. 5
- (3) No protection order made under section 123B is suspended just because a person files a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011, unless the appeal court expressly directs that the protection order be suspended (*see* section 343 of that Act). 10
- (4) If, on an appeal under subpart 4 of Part 6 of the Criminal Procedure Act 2011, a court suspends, varies, or discharges, or makes, a protection order made under section 123B (or the appeal is withdrawn or otherwise finally determined), the court must send a copy of the order (or a notice of the withdrawal or other final determination of the appeal) to the Family Court nearest to where the victim of the offence resides. 15
- (5) **Subsection (4)** does not prevent the appeal court (whether the appeal is a first, or a further, appeal) remitting the sentence to the court that imposed it, and directing that court to take any action, under section 251(2)(c) and (3), 257(2), or 259(5)(b) of the Criminal Procedure Act 2011. 20
- (6) On receipt of a copy of an order or a notice under **subsection (4)**, the Registrar of the Family Court must enter the order or notice in the records of the Family Court.
- (7) This section does not prevent a protection order made under section 123B from being varied, discharged, or enforced under any of sections 46(1), 47(1), **48**, 49, and **50** of the **Family and Whānau Violence Act 1995** (as applied by **section 123G(3)** of this Act), or a decision made under any of those sections (as so applied) from being appealed against under sections 91 to 95 of that Act (as so applied). 25
- (8) However, a court that varies or discharges under **subsection (7)** a protection order made under section 123B must copy the variation or discharge to the appeal court under the Criminal Procedure Act 2011 if— 30
- (a) the Family Court has been sent under this section a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011 in respect of the order; and 35
- (b) the records of the Family Court contain no entry under this section of a notice of the withdrawal or final determination of the appeal under the Criminal Procedure Act 2011 against the order.

Schedule 1
New Schedules 1 and 2 of Family and Whānau Violence Act 1995
inserted

s 71

Schedule 1
Transitional, savings, and related provisions

5

s 5B

Part 1
Provisions relating to Family and Whānau Violence Legislation Act
2017

10

1 Changeover defined

In this **Part**, **changeover**, for an amending enactment in **Part 1 and Schedules 1 and 2 of the Family and Whānau Violence Legislation Amendment Act 2017**, means the enactment's commencement.

2 Application, request, or proceeding made or begun, but not determined or completed, before changeover

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(1) This clause applies to any application, request, or proceeding made or begun under this Act, but not determined or completed, before the changeover.

(2) After the changeover, the application, request, or proceeding must be determined or completed under this Act as if the **Family and Whānau Violence Legislation Amendment Act 2017** had not been enacted.

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Example

Property order enforcement proceedings begun under section 54(2), 58(2), 64(2), or 68(2), but not determined or completed, before the changeover must, after the changeover, be completed as if **section 34, 37, 40, or 43** of the **Family and Whānau Violence Legislation Amendment Act 2017** had not been enacted.

25

(3) However, if the determination or completion of the application, request, or proceeding includes the making of an order or a direction under this Act (other than an order or a direction made on an interlocutory application), **clauses 3 and 4** apply to the order or direction as if it were made under this Act before, and were in force on, the changeover.

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3 Order or direction in force on changeover

(1) This clause applies to an order or a direction made under this Act before, and in force on, the changeover.

(2) After the changeover, the order or direction—

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<ul style="list-style-type: none"> (a) is not subject to this Act as in force immediately before the changeover; but (b) is subject to, continues in effect under, may be varied, discharged, or enforced under, and (if an interim order) may be replaced by a final order under, this Act as amended on the changeover. 	5
<ul style="list-style-type: none"> (3) This clause— <ul style="list-style-type: none"> (a) applies as if the order or direction were made under any power in this Act as amended on the changeover that, with or without modification, replaces, or that corresponds to, the power under which the order or direction was made; and (b) applies even if the order or direction can no longer be made (in the same way, or at all) under this Act as amended on the changeover; and (c) allows the order or direction to be enforced under this Act as amended on the changeover only in respect of breaches that occur after the changeover. 	10 15
4 Protection order in force on changeover	
<ul style="list-style-type: none"> (1) This clause applies to a protection order made under this Act before, and in force on, the changeover. (2) The order— <ul style="list-style-type: none"> (a) is not subject to the standard conditions and exceptions in sections 19 and 20 (as repealed on the changeover); but (b) is subject to the standard conditions and exceptions in sections 19 to 20B (as inserted on the changeover). (3) Subclause (2)(b) is subject to any contrary special conditions of the order. (4) A giving or withdrawal, before the changeover, of a person’s express consent to contact that creates an exception to, suspends, or revives a standard condition or special condition of the order continues in force as if it were a giving or cancelling by that person of consent under section 20 (as inserted on the changeover). (5) The order— <ul style="list-style-type: none"> (a) is not subject to the power to discharge in section 47 (as in force immediately before the changeover); but (b) is subject to the power to discharge in section 47 (as amended on the changeover). (6) This clause does not limit the generality of clause 3. 	20 25 30 35
5 Property orders in force on changeover	
<ul style="list-style-type: none"> (1) This clause applies to an order made under this Act before, and in force on, the changeover, that is— 	

- (a) an occupation order; or
- (b) a tenancy order; or
- (c) an ancillary furniture order.
- (2) The order may be enforced under section 49 (as amended on the changeover), in respect of breaches that occur after the changeover, as if the order had been made with or after a related protection order. 5
- (3) This clause does not limit the generality of **clause 3**.
- 6 Approvals under section 51B of service providers**
- (1) This clause applies to an approval— 10
- (a) of a person or an organisation as a service provider; and
- (b) granted under section 51B before the changeover; and
- (c) in force (that is, not cancelled, even if suspended) on the changeover.
- (2) After the changeover, the approval is no longer one to undertake assessments under **Part 2A**, but otherwise continues, and may be amended, suspended, or cancelled, as if it had been granted under **section 51B** (as inserted on the changeover). 15
- (3) However, the person or organisation is taken to have been granted, on the changeover, and under **section 51B** (as inserted on the changeover), an approval to undertake assessments under **Part 2A** for non-violence programmes, but not also assessments for prescribed services (and each deemed approval under this clause as an assessor may be amended, suspended, or cancelled under that section accordingly). 20
- 7 Notifications under section 51G to service providers**
- (1) This clause applies to a person or an organisation who is a service provider and receives a notification under section 51G (as in force before the changeover) but, on the changeover, has not completed the duties under section 51H(a) and (b) (as in force before the changeover) to— 25
- (a) undertake an assessment of the respondent; and
- (b) determine whether there is an appropriate non-violence programme for the respondent to attend. 30
- (2) After the changeover,—
- (a) the notification continues to have effect as if it were a notification given under **section 51H** (as in force after the changeover) to the person or organisation as an assessor (as taken to have been approved under **clause 6**); and 35
- (b) the person or organisation must complete the duties under **section 51I(1)(a), (b), and (c)** (as in force after the changeover) accordingly; and

(c) the rest of **Part 2A** (as in force after the changeover) applies accordingly.

8 Direction under section 51E(3) can be made only if prescribed services specified

No direction under **section 51E(3)** can be made if no type or types of services is or are specified in a Part of ~~Schedule 2~~ regulations made under **section 127(aaa)**.

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Schedule 2

Specified types of standard services and non-standard services

~~ss 2, 127(ga)~~

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Part 1

Standard services

Part 2

Non-standard services

Schedule 2

Consequential amendments

s 72

Part 1

Amendments to Acts

5

Arms Act 1983 (1983 No 44)

In the heading to section 27A, replace “**Domestic violence**” with “**Family violence**”.

In section 27A, replace “Without limiting the generality of sections 24 and 27, it is hereby declared that a commissioned officer of Police may, under either or both of those sections,” with “A commissioned officer of Police may, under either or both of sections 24 and 27,”. 10

In section 27A(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In section 27A, insert as subsection (2):

(2) **Subsection (1)** declares the effect of, and does not limit, sections 24 and 27. 15

Aviation Crimes Act 1972 (1972 No 137)

In section 2(1), definition of **act of violence**, paragraph (a), after “194,”, insert “**194A**,”.

In section 2(1), definition of **act of violence**, paragraph (b), after “189,”, insert “**189A**,”. 20

Child Support Act 1991 (1991 No 142)

In section 9(8), definition of **violence**, replace “section 3 of the Domestic Violence Act 1995” with “**section 3 of the Family and Whānau Violence Act 1995**”.

~~**Children, Young Persons, and Their Families Act 1989 (1989 No 24)**~~

~~In section 158, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.~~ 25

~~In Schedule 1, clause 3A(a)(iii), replace “domestic violence” with “family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**)”.~~

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31)

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In section 17, new section 14AA(2)(b) (if it is not in force on the commencement of this item), replace “domestic violence (within the meaning of section 3 of the Domestic Violence Act 1995)” with “family violence (within the meaning of **section 3 of the Family and Whānau Violence Act 1995**)”.

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31)—continued

In section 41, new section 65A(2)(b) (if it is not in force on the commencement of this item), replace “domestic relationship with that child or young person (within the meaning of section 4 of the Domestic Violence Act 1995)” with “family relationship with that child or young person (within the meaning of section 4 of the **Family and Whānau Violence Act 1995**)”.

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In section 41, new section 66F, definition of **information relevant to the safety or well-being of a child or young person**, paragraph (b) (if it is not in force on the commencement of this item), replace “domestic relationship (as defined in section 2 of the Domestic Violence Act 1995)” with “family relationship (within the meaning of section 4 of the **Family and Whānau Violence Act 1995**)”.

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District Court Act 2016 (2016 No 49)

In Schedule 1, Part B, column headed “**Description**”, paragraph (2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Electoral Act 1993 (1993 No 87)

In section 115(2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

15

Family Court Act 1980 (1980 No 161)

In section 11D(h), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Repeal section 12A(2)(e).

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After section 12A(2)(f), insert:

(fa) **Family and Whānau Violence Act 1995:**

After section 12A(3)(d), insert:

(da) the District Court hearing a proceeding under Part 6A (Police safety orders) of the **Family and Whānau Violence Act 1995**:

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Repeal section 16A(4)(f).

After section 16A(4)(h), insert:

(ha) the **Family and Whānau Violence Act 1995**:

Repeal section 16D(1)(a)(iv).

After section 16D(1)(a)(v), insert:

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(va) section 81(1)(b) of the **Family and Whānau Violence Act 1995**:

(vb) section 81(1)(ba) of the **Family and Whānau Violence Act 1995**:

Repeal section 16D(1)(b)(iv).

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Family Court Act 1980 (1980 No 161)—continued

After section 16D(1)(b)(v), insert:

(va) section 81(1)(a) of the **Family and Whānau Violence Act 1995**:

Family Dispute Resolution Act 2013 (2013 No 79)

In section 4, repeal the definition of **domestic violence**. 5

In section 4, insert in its appropriate alphabetical order:

family violence has the meaning given to it in **section 3** of the **Family and Whānau Violence Act 1995**

In section 12(1)(b), replace “domestic violence” with “family violence”.

Harassment Act 1997 (1997 No 92) 10

In section 6(2)(b), replace “domestic violence legislation” with “family violence legislation”.

In section 9(4), replace “domestic relationship” with “family relationship”.

In section 9(5), replace “**domestic relationship** has the same meaning as it has in the Domestic Violence Act 1995” with “**family relationship** has the same meaning as it has in the **Family and Whānau Violence Act 1995**”. 15

Income Tax Act 2007 (2007 No 97)

In section HC 36(1)(b)(iii), replace “section 2 of the Domestic Violence Act 1995” with “section 2 of the **Family and Whānau Violence Act 1995**”.

Land Transfer Act 1952 (1952 No 52) 20

In section 156F(3), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Land Transfer Act 2017 (2017 No 30)

In section 40(5)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 25

In section 82(3), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 2, Part 1, delete the item relating to the Domestic Violence Act 1995 (if that item is not in force on the commencement of this item).

In Schedule 2, Part 1 (if the item relating to the Domestic Violence Act 1995 is not in force on the commencement of this item), insert in its appropriate alphabetical order: 30

Family and Whānau Violence Act 1995 (1995 No 86)

In section 2, definition of **dwellinghouse**, paragraph (a), replace “section 121A of the Land Transfer Act 1952” with “section 122 of the Land Transfer Act 2017”.

Legal Services Act 2011 (2011 No 4)

In section 4(1), definition of **civil proceedings**, paragraph (a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In section 4(1), definition of **specified application**, paragraph (f)(i), replace “a protection order under Part 2 of the Domestic Violence Act 1995, or an order relating to property under Part 3 of that Act” with “a protection order under Part 2 of the **Family and Whānau Violence Act 1995**, or an order relating to property under Part 3 of that Act”.

In section 10(6)(b), replace “domestic violence” with “family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**)”.

In the heading to section 19, replace “**Domestic Violence Act 1995**” with “**Family and Whānau Violence Act 1995**”.

In section 19(1), replace “a protection order under Part 2, or an order relating to property under Part 3, of the Domestic Violence Act 1995” with “a protection order under Part 2, or an order relating to property under Part 3, of the **Family and Whānau Violence Act 1995**”.

In section 19(4), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 1, clause 4(6)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 2, repeal the item relating to the Domestic Violence Act 1995.

In Schedule 2, insert in its appropriate alphabetical order:

Family and Whānau Violence Act 1995**Maritime Crimes Act 1999 (1999 No 56)**

In section 2, definition of **act of violence**, paragraph (a), after “194,”, insert “**194A**,”.

In section 2, definition of **act of violence**, paragraph (b), after “189,”, insert “**189A**,”.

Oranga Tamariki Act 1989 (1989 No 24)

In section 14AA(2)(b) (if it is in force on the commencement of this item), replace “domestic violence (within the meaning of section 3 of the Domestic Violence Act 1995)” with “family violence (within the meaning of **section 3 of the Family and Whānau Violence Act 1995**)”.

In section 65A(2)(b) (if it is in force on the commencement of this item), replace “domestic relationship with that child or young person (within the meaning of section 4 of the Domestic Violence Act 1995)” with “family relationship with that child or young person (within the meaning of section 4 of the **Family and Whānau Violence Act 1995**)”.

In section 66F, definition of **information relevant to the safety or well-being of a child or young person**, paragraph (b) (if it is in force on the commencement of this item), replace “domestic relationship (as defined in section 2 of the Domestic Violence Act 1995)” with “family relationship (as defined in section 2 of the **Family and Whānau Violence Act 1995**)”.

Oranga Tamariki Act 1989 (1989 No 24)—*continued*

“Domestic Violence Act 1995”) with “family relationship (within the meaning of section 4 of the **Family and Whānau Violence Act 1995**)”.

In section 158, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 1, clause 3A(a)(iii), replace “domestic violence” with “family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**)”.

Privacy Act 1993 (1993 No 28)

In Schedule 2A, item relating to the Approved Information Sharing Agreement for Improving Public Services for Vulnerable Children dated 25 June 2015, fifth column, paragraph (l), replace “domestic violence” with “or family violence”.

In Schedule 5, table relating to Police records, item relating to firearms licences, third column, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 5, table relating to Police records, item relating to protection orders, second column, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 10(1), delete “, subject to subsection (2),”.

In section 10(1)(i), after “the District Court”, insert “or the Family Court”.

After section 10(1), insert:

(1A) Subsection (1) is subject to subsections (2) and **(2B)**.

After section 10(2), insert:

(2A) No order under section 10(1)(i) may be applied for by any person, or made by the court, solely for the purpose of the commencement of proceedings under the **Family and Whānau Violence Act 1995**.

(2B) **Subsection (2A)** overrides any contrary provisions of this Act.

Search and Surveillance Act 2012 (2012 No 24)

In section 18(2)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Senior Courts Act 2016 (2016 No 48)

In Schedule 2, Part B, column headed “**Description**”, paragraph (2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Social Security Act 1964 (1964 No 136)

Replace section 70A(9) with:

Social Security Act 1964 (1964 No 136)—continued

(9) For the purposes of this section, **violence** has the same meaning as in **sections 3(2), 3A, and 3B of the Family and Whānau Violence Act 1995**.

Summary Offences Act 1981 (1981 No 113)

In section 6A(3)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

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In section 6A(3)(b)(i), replace “domestic relationship (as defined by section 4 of that Act)” with “family relationship (as defined by section 4 of that Act)”.

In section 6A(3)(b)(ii), replace “domestic relationship” with “family relationship”.

Victims’ Orders Against Violent Offenders Act 2014 (2014 No 45)

In section 7(2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

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In section 7(4), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Victims’ Rights Act 2002 (2002 No 39)

In section 4, repeal the definition of **domestic violence**.

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In section 4, insert in its appropriate alphabetical order:

family violence has the meaning given in **section 3 of the Family and Whānau Violence Act 1995**

In section 4, definition of **victim**, paragraph (b)(iii), replace “domestic violence” with “family violence”.

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Part 2**Amendments to legislative instruments****Care of Children (Appointment of Additional Guardian by Parents) (Forms) Rules 2005 (SR 2005/97)**

In the Schedule, form 1, paragraphs 3(1) and (2) and 4, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

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Care of Children (Counselling) Regulations 2013 (SR 2013/432)

In regulation 6(f)(i), replace “domestic violence” with “family violence”.

Criminal Procedure (Transfer of Information) Regulations 2013 (SR 2013/177)

In regulation 3(1), definition of **associated respondent**, replace “domestic violence” with “family violence”.

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In regulation 3(1), definition of **associated respondent**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Criminal Procedure (Transfer of Information) Regulations 2013 (SR 2013/177)—
continued

In regulation 3(1), revoke the definitions of **domestic violence**, **domestic violence offence**, and **domestic violence proceeding**.

In regulation 3(1), insert in their appropriate alphabetical order:

family violence has the same meaning as in **section 3 of the Family and Whānau Violence Act 1995**

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family violence offence means an offence against any enactment (other than the **Family and Whānau Violence Act 1995**) in any case where—

(a) the offence is committed—

(i) by a person against whom a protection order is in force, or in respect of whom proceedings on an application for a protection order are pending, at the time the offence is committed; and

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(ii) against any person who is a protected person (within the meaning of that Act) under that protection order, or whom that application seeks to make a protected person, as the case may be; and

(b) the offence consists of or includes conduct that is family violence

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family violence proceeding means a proceeding in the Family Court under the **Family and Whānau Violence Act 1995** in which an application for a protection order—

(a) is pending; or

(b) has been granted

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In regulation 3(1), definition of **protection order**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In regulation 3(1), definition of **relevant court**, paragraph (a), replace “an offence against section 49 of the Domestic Violence Act 1995 or a domestic violence offence” with “an offence against section 49 of the **Family and Whānau Violence Act 1995** or a family violence offence”.

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In regulation 3(1), definition of **respondent**, replace “domestic violence proceeding” with “family violence proceeding”.

In regulation 4(1), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

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In the heading to regulation 5, replace “**domestic violence offences**” with “**family violence offences**”.

In regulation 5(1) and (2), replace “domestic violence offence” with “family violence offence”.

In the heading to regulation 7, replace “**domestic violence proceeding**” with “**family violence proceeding**”.

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In regulation 7(1), replace the definition of **domestic relationship** with:

Criminal Procedure (Transfer of Information) Regulations 2013 (SR 2013/177)—
continued

family relationship has the meaning given to it by **section 2 of the Family and Whānau Violence Act 1995**

In regulation 7(1), definition of **violence**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In regulation 7(2), (3), and (4), replace “domestic violence proceeding” with “family violence proceeding”.

In regulation 7(2)(a)(i) and (b)(i), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the heading to regulation 7A, replace “**domestic violence proceeding**” with “**family violence proceeding**”.

In regulation 7A(1) and (2), replace “domestic violence proceeding” with “family violence proceeding”.

In the heading to regulation 7B, replace “**domestic violence proceeding**” with “**family violence proceeding**”.

In regulation 7B(1) and (2), replace “domestic violence proceeding” with “family violence proceeding”.

Domestic Violence (General) Regulations 1996 (SR 1996/150)

In regulation 1(1), replace “Domestic Violence” with “Family and Whānau Violence”.

After regulation 1, insert:

1A Renaming of these regulations, and references to their previous name

(1) These regulations are the Domestic Violence (General) Regulations 1996 as renamed by the **Family and Whānau Violence Legislation Act 2017**.

(2) After the commencement of this regulation, a reference in an enactment or in a document to the Domestic Violence (General) Regulations 1996 must, unless the context otherwise requires, be read as a reference to the Family and Whānau Violence (General) Regulations 1996.

In regulation 2(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 1, replace “*Sections 124A, 124B, Domestic Violence Act 1995*” with “*Sections 124A, 124B, **Family and Whānau Violence Act 1995***”.

In the Schedule, form 1, paragraph 9(b), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 2, replace “*Section 124O(1)(a) and (2), Domestic Violence Act 1995*” with “*Section 124O(1)(a) and (2), **Family and Whānau Violence Act 1995***”.

Domestic Violence (General) Regulations 1996 (SR 1996/150)—continued

In the Schedule, form 3, replace “*Section 124L(3), Domestic Violence Act 1995*” with “*Section 124L(3), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 3, paragraph 3, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 4, replace “*Section 124M(1)(b) and (2), Domestic Violence Act 1995*” with “*Section 124M(1)(b) and (2), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 5, replace “*Section 124M(3), Domestic Violence Act 1995*” with “*Section 124M(3), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 5, paragraph 2, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 6, replace “*Section 124O(1)(b) and (2), Domestic Violence Act 1995*” with “*Section 124O(1)(b) and (2), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 7, replace “*Section 124N(2)(b), Domestic Violence Act 1995*” with “*Section 124N(2)(b), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 7, heading to paragraph 1, replace “**domestic violence**” with “**family violence**”.

In the Schedule, form 7, under the heading “**Conditions of order**”, in the note to paragraph 2, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 7, under the heading “Important information for respondent”, and under the subheading “**Modification or discharge of this order**”, paragraph (a), replace “domestic violence” with “family violence”.

In the Schedule, form 7, under the heading “Important information for protected persons”, and under the subheading “**Modification or discharge of this order**”, paragraph (a), replace “domestic violence” with “family violence”.

Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)

In regulation 1(1), replace “Domestic Violence” with “Family and Whānau Violence”.

After regulation 1, insert:

1A Renaming of these regulations, and references to their previous name

(1) These regulations are the Domestic Violence (Public Registers) Regulations 1998 as renamed by the **Family and Whānau Violence Legislation Act 2017**.

(2) After the commencement of this regulation, a reference in an enactment or in a document to the Domestic Violence (Public Registers) Regulations 1998 must,

Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)—continued

unless the context otherwise requires, be read as a reference to the Family and Whānau Violence (Public Registers) Regulations 1998.

In regulation 2(1), definition of **the Act**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 2, form 1, replace “*Section 110, Domestic Violence Act 1995*” with “*Section 110, Family and Whānau Violence Act 1995*”. 5

In Schedule 2, form 1, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 2, form 2, replace “*Section 110(2), Domestic Violence Act 1995*” with “*Section 110(2), Family and Whānau Violence Act 1995*”. 10

In Schedule 2, form 2, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Domestic Violence Rules 1996 (SR 1996/148)

Revoke.

Family Dispute Resolution Regulations 2013 (SR 2013/434) 15

In regulation 7(k)(i), replace “domestic violence” with “family violence”.

Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001 (SR 2001/122)

In regulation 6B(1)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 20

Health and Safety at Work (Hazardous Substances) Regulations 2017 (LI 2017/131)

In regulation 6.7(1)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In regulation 7.2(1)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 25

Privacy (Information Sharing Agreement for Improving Public Services for Vulnerable Children) Order 2015 (LI 2015/162)

In clause 3(1), revoke the definition of **domestic violence**.

In clause 3(1), insert in its appropriate alphabetical order: 30

family violence has the same meaning as in **section 3 of the Family and Whānau Violence Act 1995**

In clause 11(1)(l), replace “domestic violence” with “family violence”.

Sentencing Regulations 2002 (SR 2002/178)

In the Schedule, form 11AA, under the heading “**Conditions of order**”, heading to paragraph 1, replace “**domestic violence**” with “**family violence**”.

In the Schedule, form 11AA, under the heading “**Conditions of order**”, notes to paragraph 2, in the first note, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 5

In the Schedule, form 11AA, under the heading “Important information for offender”, and under the subheading “**Modification or discharge of this order**”, in paragraph (a), replace “domestic violence” with “family violence”.

In the Schedule, form 11AA, under the heading “Important information for protected persons”, and under the subheading “**Modification or discharge of this order**”, in paragraph (a), replace “domestic violence” with “family violence”. 10

Social Security (Exemptions under Section 105) Regulations 1998 (SR 1998/270)

In regulation 2(1), definition of **family violence**, replace “domestic violence as that term is defined in section 3 of the Domestic Violence Act 1995” with “family violence as that term is defined in **section 3 of the Family and Whānau Violence Act 1995**”. 15

Legislative history

15 March 2017
11 April 2017

Introduction (Bill 247–1)
First reading and referral to Justice and Electoral Committee