

Departmental Disclosure Statement

Family and Whānau Violence Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

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Contents

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information8

Part Three: Testing of Legislative Content.....10

Part Four: Significant Legislative Features14

Part One: General Policy Statement

Background

The Family and Whānau Violence Legislation Bill is an omnibus Bill introduced under Standing Order 263(a), as the amendments in the Bill deal with an interrelated topic that implements a single broad policy. That policy is to ensure more complete and fit-for-purpose family violence-related legislation, with the intention of reducing family violence.

The Bill has been drafted following an extensive review of existing legislation relating to family violence. This review included public consultation on a discussion document, with almost 500 submissions received from a wide range of organisations and individuals. The discussion document can be found at https://consultations.justice.govt.nz/policy/family-violence-law/user_uploads/fv-consultation-discussion-document-v2.pdf, and a summary of the submissions can be found at <http://www.justice.govt.nz/assets/Documents/Publications/fv-consultation-summary-of-submissions-20160304.pdf>.

A clear and effective legislative framework can set the direction for the response to family violence, empower agencies to act, provide the legal levers and tools that help protect victims and hold perpetrators to account, and drive change in the system. Legislation alone cannot solve family violence. To tackle family violence, there needs to be an effective, integrated system for addressing it. The Bill is intended to work alongside a range of other initiatives developed as part of a Ministerial work programme to achieve the following objectives:

- keeping victims of family violence safe
- holding perpetrators of family violence to account for their behaviour and reducing further violence
- ensuring adequate responses to family violence in all its forms, and
- promoting consistent and collaborative responses to family violence.

The Bill progresses reforms to the family violence legislative framework, and makes amendments under three broad categories:

- improving the accessibility and effectiveness of civil orders (including protection orders and Police safety orders)
- strengthening the criminal justice response to family violence, and
- supporting a better coordinated and responsive family violence system.

It amends the following Acts:

- Domestic Violence Act 1995 (DVA), which the Bill renames as the Family and Whānau Violence Act 1995 (FWVA), noting that this general policy statement refers throughout to 'the Act'
- Bail Act 2000
- Care of Children Act 2004 (CoCA)
- Crimes Act 1961
- Criminal Procedure Act 2011
- Evidence Act 2006, and
- Sentencing Act 2002.

It also makes consequential amendments to 23 Acts and 10 legislative instruments.

Main changes

Improving the accessibility and effectiveness of civil orders

Improving the uptake of protection orders

The Bill includes a range of provisions to reduce barriers to applying for protection orders. Provisions in the Bill reflect that additional support is needed by people who are particularly vulnerable. The Bill:

- allows non-government organisations (NGOs) to be approved by the Minister of Justice to apply for protection orders on behalf of people who cannot apply for themselves due to incapacity, fear, or another sufficient cause
- makes it easier for a young person to apply for a protection order without a representative, if the court considers it appropriate
- improves access to safety programmes for children and young people who are protected by protection orders, and
- clarifies the court's ability to impose special conditions on protection orders to address the use of family violence against older people and people with disabilities.

Making protection orders more effective

The Bill includes provisions to enhance the effectiveness of protection orders to stop the use of violence. Effectiveness will be increased by better preventing breaches and encouraging the development of more proactive service responses. The Bill:

- empowers the Family Court to direct respondents to attend a wider range of services in the future, and expands the court's powers when responding to service providers' notifications of safety concerns or a respondent's failure to engage with the programme
- enables a coordinated service response when a protection order is made by:
 - providing Police with more information about the relevant risk factors to inform assessing and managing the risk of future violence
 - clarifying Police may share information about the order and risk factors with other agencies, as appropriate, subject to the Privacy Act and the new information sharing provisions described below, and
 - enabling programme providers to share, with other agencies, information that is relevant to assessing and managing risk, subject to the new information sharing provisions
- clarifies the circumstances in which the protected person may consent to contact, and the effects of that consent, and
- provides a non-exhaustive list of criteria the court must consider when deciding whether to discharge a protection order (including a temporary order).

Clarifying the intent and use of property orders

The use and effectiveness of all property orders (occupation, tenancy, furniture and ancillary furniture orders) will be enhanced so they can be used to their full advantage to reduce homelessness and disruption for victims of family violence. The Bill clarifies that:

- an occupation order or tenancy order may be issued if it is necessary for the reasonable accommodation and stability needs of the applicant and any children
- a property order can only be made if a protection order has been, or is being, made
- a failure to leave a property in contravention of a property order is to be treated as breach of the protection order, and
- preventing the applicant from retrieving furniture that is subject to a furniture order is a breach of the protection order.

Improving the effectiveness of parenting arrangements and child safety

The Bill contains provisions to reduce the risks in parenting arrangements to adult victims of family violence and to children.

In relation to consideration of children and contact arrangements under CoCA, the Bill:

- empowers judges to impose protective conditions for hand-over arrangements whenever family violence has occurred, including psychological violence, and
- supports better informed decision-making by:
 - amending the Criminal Procedure Act 2011 to enable regulations to be made allowing information about criminal proceedings to be shared with a court considering CoCA matters
 - under CoCA, extending the matters judges must take into account when assessing a child's safety to include the existence or breach of a protection order, and
 - empowering judges considering applications under CoCA to make temporary protection orders where the CoCA order will not provide enough protection.

In relation to the consideration of children and contact arrangements when making a protection order under the Act, the Bill:

- continues to enable the court to make interim care and contact orders under the Act while ensuring substantive decisions about parenting arrangements are made under CoCA
- empowers the court to add to a protection order, any of the applicant's children who are not currently living with the applicant, and
- makes provision for the applicant's subsequent children (eg. children born after the protection order is made) to be automatically covered by the protection order.

Improving the effectiveness of Police safety orders

The Bill contains provisions to enhance the ability of Police safety orders (PSOs) to stop perpetrators' use of violence. These provisions:

- enable Police to direct that bound persons are required to make arrangements to attend a risk and needs assessment, and require the bound person to comply with those arrangements
- treat a failure to comply with this direction as a breach of the order
- empower Police to issue a PSO if a person is arrested, but no charges are subsequently filed, and
- confirm that complaints of breaches of PSOs are to be proved to the civil standard, instead of the criminal standard.

Modern and fit-for-purpose legislation

Providing more guidance about the nature of family violence and expectations about the response will enhance the consistency of decision-making. To achieve this purpose, the Bill amends the Act by:

- adding a purpose (which replaces the current object) and principles to guide decision-making
- replacing the term 'domestic violence' with 'family violence' throughout the Act and changing the title of the DVA to the FWVA
- referring to coercive or controlling behaviour in the definition of family violence, and
- including ill-treatment of pets in the definition of family violence.

Strengthening the criminal justice response to family violence

Identifying and distinguishing family violence offences

In order to ensure that family violence offending is identified and recorded consistently within the justice system, the Bill:

- defines family violence and family relationship in relevant criminal legislation, cross-referencing to definitions in the Act, and
- introduces a process to facilitate the consistent identification of family violence in criminal proceedings, and allows the court to use that information throughout the criminal court process as described below.

Prosecuting family violence offending in all its forms

The Bill introduces new criminal offences of strangulation or suffocation, coerced marriage or civil union, and assault on a person in a family relationship.

Recognising at sentencing the harm caused by family violence

The Bill ensures that the serious and repeat nature of family violence offending is recognised, by:

- introducing an aggravating factor for judges to take into account at sentencing that an offender was subject to a protection order and the victim was the protected person under that protection order, and
- introducing a requirement, upon conviction, for the court to direct an offence be recorded on a person's criminal record as a family violence offence, if satisfied this was the case.

Ensuring the safety of victims through the criminal justice process

To ensure the safety of victims, including children, is adequately considered in decisions which affect them, the Bill:

- makes the safety of victims, and those in a family relationship with a victim, the primary consideration in bail decisions for family violence cases, and
- empowers the court to:
 - impose any condition it considers reasonably necessary to protect victims, and those in a family relationship with or residing with a victim, in family violence bail decisions, and
 - place no-contact conditions on defendants remanded in custody to prevent a defendant from contacting a victim or any other specified person.

Improving victims' experience of court proceedings

In order to enhance practice in courts to provide additional support to victims, the Bill introduces a legislative presumption in the Evidence Act 2006 that video records of on-scene interviews with the complainant be played as all or part of their evidence in chief.

Supporting a better coordinated and responsive family violence system

Information sharing to assess and manage risk

To support effective frontline risk assessment and service delivery, the Bill:

- provides for the ability for family violence agencies to request, use and disclose personal information for purposes related to assessing and managing the risk relating to family violence
- provides that family violence agencies must consider sharing information if they believe that this may help to ensure a victim is protected, or if they receive a request from another family

violence agency to share the information for the purpose of assessing and/or managing the risk relating to family violence, and

- provides an immunity for anyone who appropriately shares relevant personal information under the information sharing provisions in family violence legislation, unless the information is shared in bad faith.

Existing mechanisms, such as contracting and employment arrangements, will continue to be used to address poor information sharing practice.

Aligned approaches to service delivery

The Bill enables codes of practice to be issued by Order in Council to guide coordinated and consistent service delivery. A code of practice may include provisions on:

- the assessment and management of risk related to family violence
- workforce competencies
- information requests, and the use and disclosure of information
- the outcomes of assessment, programmes or prescribed services.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Strengthening New Zealand's legislative response to family violence: a public discussion document</i>, Ministry of Justice, August 2015. Available at https://consultations.justice.govt.nz/policy/family-violence-law/user_uploads/fv-consultation-discussion-document-v2.pdf</p> <p><i>Strengthening New Zealand's legislative response to family violence: summary of submissions</i>, Ministry of Justice, March 2016. Available at: http://www.justice.govt.nz/assets/Documents/Publications/fv-consultation-summary-of-submissions-20160304.pdf</p> <p><i>Strangulation: the case for a new offence</i>, Law Commission Report 138, March 2016. Available at: http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R138.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Review of family violence legislation: Regulatory impact statement</i>, prepared by the Ministry of Justice. To be published once the Bill is introduced at: https://justice.govt.nz/assets/Documents/Publications/ris-review-fv-legislation.pdf and http://www.treasury.govt.nz/publications/informationreleases/ris.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>The Regulatory Impact Analysis Team at the Treasury (RIAT) considered that the information and analysis summarised in the regulatory impact statement (RIS) meets the QA criteria.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The RIS contains discussion of the costs and benefits of the proposals, as well as the possible impact on the income or wealth of particular groups of individuals (particularly relating to changes that may result in increased imprisonment, and from an intended increase in the use of property orders).</p> <p>The Cabinet papers noted below also contain relevant discussion:</p> <p><i>Reform of Family Violence Legislation – Cabinet paper one: Context and supporting integrated responses</i>, Office of the Minister of Justice, August 2016. Publicly released version available at: http://justice.govt.nz/assets/Documents/Publications/fv-reform-paper-1-context-and-supporting-integrated-responses2.pdf</p> <p><i>Reform of Family Violence Legislation – Cabinet paper two: Family violence civil law</i>, Office of the Minister of Justice, August 2016. Publicly released version available at: http://justice.govt.nz/assets/Documents/Publications/fv-reform-paper-2-family-violence-civil-law2.pdf</p> <p><i>Reform of Family Violence Legislation – Cabinet paper three: Prosecuting family violence</i>, Office of the Minister of Justice, August 2016. Publicly released version available at: http://justice.govt.nz/assets/Documents/Publications/fv-reform-paper-3-prosecuting-family-violence4.pdf.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The RIS and the Cabinet papers referred to at 2.5 note that the benefits sought through the package of reforms are reliant on changes in behaviour by justice and social sector agencies, judges, lawyers, and perpetrators.</p> <p>Work being progressed as part of the Ministerial Working Group on Family Violence and Sexual Violence aims to encourage and support improved, more coordinated and consistent responses to family violence. Information on the work programme of the Ministerial Working Group on Family Violence and Sexual Violence can be found at http://justice.govt.nz/justice-sector-policy/key-initiatives/reducing-family-and-sexual-violence/work-programme/.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry has considered New Zealand's commitments under a variety of international instruments to which New Zealand is a signatory during the development of the Bill. In particular:

- the change in the age of the child aligns with our commitment to the United Nations Convention on the Rights of the Child
- the offence of forced marriage aligns with our commitment to the Convention on the Elimination of all forms of Discrimination Against Women

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry has considered the potential impacts of the Bill for Māori, who are overrepresented both as victims and perpetrators of family violence. Options that are expected to support Māori in particular include:

- changing the name of the Domestic Violence Act 1995 to the Family and Whānau Violence Act 1995, and the definition from domestic violence to family violence, to better reflect the impact of violence on whānau
- the inclusion in the Act of a principle that responses to family violence should be culturally appropriate and, in particular, should reflect appropriately tikanga Māori
- clarifying the provisions regarding consent to contact. This is expected to have a positive impact on the whānau and support ongoing relationships with the perpetrator where the protected person initiates or consents to it
- improving access to services, which should better support the safety of Māori victims while also supporting Māori perpetrators to change their behaviour, and
- introducing codes of practice which could increase the provision of tikanga-based and culturally appropriate services for whānau experiencing family violence.

However, Māori are overrepresented as perpetrators in the criminal justice system. Proposals to increase the criminalisation of family violence and the length and type of sentences will disproportionately impact Māori.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill creates or amends the following offence provisions in the Crimes Act 1961:</p> <ul style="list-style-type: none"> • Section 189A: strangulation or suffocation • Section 194A: assault on a person in a family relationship • Section 207A: coerced marriage or civil union • Section 208: abduction for the purposes of marriage or civil union or sexual connection - a technical amendment to clarify that this section covers civil union as well as marriage. <p>It amends section 49 of the Act (offence to breach a protection order) by providing that any breaches of a related property order are also breaches of the protection order.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice has led the policy development of the Bill. Offence provisions were checked and approved internally through the standard process by which all offences and penalties are vetted. This process includes consideration of consistency with existing criminal offences.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill inserts new sections 124T-124X into the Act. These new sections have the effect of:</p> <ul style="list-style-type: none"> • enabling family violence agencies and social services practitioners to use, disclose, and request personal information for purposes related to family violence; and • requiring family violence agencies and social services practitioners, in certain circumstances, to consider disclosing personal information for those purposes. <p>Also, section 51S of the Act is amended to provide that information a service provider receives while providing a service may be disclosed, for example under the new information sharing provisions, but may not be admitted as evidence.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
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The Ministry of Justice has had discussions with the Office of the Privacy Commissioner, which supports the provisions in the Bill relating to information sharing with the exception of proposed sections 124V(5) and 124W.

Section 124V(5) provides that helping to ensure that a victim is protected from family violence takes precedence over any applicable confidentiality of the information or any applicable limit under privacy principle 11 in section 6 of the Privacy Act 1993. The Commissioner considers section 124V(5)(b) unnecessary, as section 124V already takes precedence over principle 11, in accordance with section 7 of the Privacy Act.

While the Commissioner supports the enabling information sharing provision created by new section 124V(1) – 124V(4), he recommends that new section 124W be removed from the Bill. This section is considered unnecessary as it has no practical effect, but could be interpreted as introducing compulsory information sharing which may put off some at-risk victims from seeking the help they need.

The Commissioner also recommended that where codes of practice, to be issued under new section 124Y, relate to the sharing of personal information, the legislation require consultation with the Privacy Commissioner before the code is finalised. The Ministry of Justice considers providing for this step in legislation unnecessary, as the standard Cabinet process for consulting the Commissioner will apply to the codes.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The review of family violence legislation included public consultation on a discussion document, with almost 500 submissions received from a wide range of organisations and individuals. The discussion document can be found at https://consultations.justice.govt.nz/policy/family-violence-law/user_uploads/fv-consultation-discussion-document-v2.pdf.</p> <p>Submissions responded to questions under five broad headings:</p> <ul style="list-style-type: none"> • Understanding family violence • Victim safety • Prosecuting family violence perpetrators • An additional pathway to safety and • Better services for victims, perpetrators and whānau. <p>A summary of the submissions can be found at http://www.justice.govt.nz/assets/Documents/Publications/fv-consultation-summary-of-submissions-20160304.pdf.</p> <p>We have also engaged with education representative bodies, the New Zealand Nurses Organisation and the New Zealand College of Midwives about the provisions relating to the sharing of information.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
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The Bill reflects a review of the existing provisions of the Act and other related legislation, and contains a number of amendments intended to strengthen the effectiveness and workability of those provisions. We have consulted with the government agencies responsible for implementing the Bill, including New Zealand Police, the Department of Corrections, the Ministry of Social Development, the Ministry of Education and the Ministry of Health.

We have consulted with all core government agencies included in the definition of 'specified government agency' for the purposes of Part 6B of the Bill about the provisions relating to the sharing of information.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
<p>Property orders, which are temporary, play an important role in addressing the temporary accommodation and stability needs of the people protected by the protection order including, in particular, children's access to education.</p> <p>They exist under the current legislation, but the Bill contains provisions to clarify their intent, to ensure they are used to their full advantage to reduce homelessness and disruption for victims of family violence.</p> <p>Property orders are able to be varied or discharged by the court, and the Bill clarifies that they can only be made when a protection order has been, or is being, made.</p>	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>The new section 124X of the Act creates an immunity from civil, criminal or disciplinary proceedings for anyone who shares information for family violence purposes as set out in the new section 124V of the Act, unless information is disclosed in bad faith.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
The Bill provides that Parts 1 and 2 of Schedule 2 to the Act can be amended via regulations to specify standard and non-standard services for the purposes of the Act.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
The new Section 124Y of the Act provides that service delivery codes of practice may be issued by Order in Council to guide delivery of services provided to victims or users of family violence.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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