



NEW ZEALAND
LAW SOCIETY

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FAMILY VIOLENCE

FAMILY VIOLENCE

Violence takes many forms. It is unacceptable whenever it happens.

Violence by a family member who is loved and trusted can be particularly devastating. Family violence happens where the victim is abused (physically, sexually or psychologically) by someone who is or has been in a domestic relationship with the victim.

Physical abuse includes slapping, shaking, punching, shoving, kicking, hitting, biting, using a weapon against or in any other way assaulting another person.

Sexual abuse is any form of unwanted sexual contact with another person or intentionally hurting someone without their consent during sex.

Psychological abuse includes intimidation, harassment, damage to property and pets, and threats of abuse. Psychological abuse also includes behaviour such as constantly humiliating someone and putting them down, playing mind games, controlling their money, and isolating them from contact with their friends or family as a way of having power over them. It is also psychological abuse to allow a child to witness, or be at real risk of seeing or hearing, domestic violence against someone else in their family, such as the other parent or a brother or sister.

Financial or economic abuse includes denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education.

You do not have to put up with any of these forms of violence. You have the right to live free of violence.

WHAT PROTECTION DOES THE LAW OFFER?

All assaults and threats of violence are crimes. The police may charge offenders in the District Court.

Legal protection against domestic violence is also available under the Domestic Violence Act 1995. The Family Court can make protection orders against the violent person and other people (associates) if the violent person is encouraging them to use violence against you. Other types of orders to help people in violent relationships are also available.

WHO CAN APPLY FOR PROTECTION?

You can apply for protection (and other orders) under the Domestic Violence Act if you are in or have been in a domestic relationship with the violent person.

This Act covers a wide range of people in domestic relationships including:

- heterosexual or same sex couples;
- members of the same family;
- whanau or family group (eg, parents and children);
- people in close personal relationships even if they are not living together; and
- people who share accommodation, such as flatmates or boarders.

The relationships of landlord and tenant, employer and worker, and employees within the same business are not “domestic relationships” in themselves, unless the parties also have a family or household relationship recognised by the Domestic Violence Act.

Other laws (such as the Harassment Act) cover non-domestic violence or abuse. A child (a person who is under the age of 17 and not married) cannot make an application but must have a representative make an application on their behalf. Similarly, no application can be made against a child.

WHAT IS A PROTECTION ORDER?

A protection order is a legally enforceable order made by a Family Court judge and it puts conditions on a violent person to protect the applicant from domestic violence.

Protection orders automatically cover children in the applicant’s family. This includes children who live with the applicant either on a day-to-day basis or periodically. You can also ask for the order to cover other people (with their written consent) who are at risk because of their relationship with you (such as new partners and friends).

The police may also make a temporary order, called a **Safety Order**, in cases of emergency and at times when a lawyer may not be available. This is a temporary safeguard for

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approximately 5 days. It lets a police officer remove a violent person from the household.

If a Safety Order is made, you should seek legal help as soon as possible so you can get a Domestic Protection Order from a court.

Protection orders can apply whether the parties are living together or separately.

They contain non-violence and non-contact conditions.

Non-violence conditions apply whether the parties are living together or not. They say that the person who has used family violence (the “respondent”) must not physically or sexually abuse the protected person or threaten to do so, damage or threaten to damage their property, use psychological abuse against the protected person, or encourage others to do these things.

Non-contact conditions prohibit the respondent from making any contact with the protected person. Prohibited contact includes going onto the property; watching or loitering around someone’s home, workplace, school, church or other place they visit often; following them around or stopping and accosting them; and making telephone calls or sending letters, faxes, texts or emails to the protected person.

Contact between parents and protected children may be allowed in certain circumstances. If the protected person agrees to live with the violent person, the non-contact conditions of the order are suspended.

If they stop living together, the non-contact conditions come back into effect without having to reapply to the court.

Protected people who are considering living with the violent person again should seek legal advice beforehand about how any children might be affected, the children’s rights and what the law allows.

WHAT ELSE DOES A PROTECTION ORDER DO?

Temporary protection orders require the violent person to hand any firearms or weapons to the police within 24 hours and suspend any firearms licence. If a final protection order is made, the firearms licence will be revoked unless the court is satisfied that the protected person will be safe. Exceptions can be made if the protected person agrees and if the judge approves these.

The court must direct the violent person to attend a non-violence programme unless it considers there is good reason for the person not to attend. Where there has been a direction to attend a programme, it is a criminal offence for the violent person not to do so and they may be fined up to \$5000 or sent to prison for up to six months.

The applicant and children covered by the protection order can also attend a safety programme. This is voluntary and free of charge. For more information about programmes, contact the coordinator at your local Family Court.

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A judge may appoint a lawyer to assist the court or represent the children affected by the proceedings. The protection order can also include special conditions – for example, that the applicant has the use of the family car or that the violent person has to keep a minimum distance away from the applicant’s home.

WHAT OTHER ORDERS ARE AVAILABLE?

Property orders are also available under the Domestic Violence Act. These are:

An occupation order – gives the protected person the exclusive right to stay in the family home.

A tenancy order – gives the protected person the sole tenancy of a rented house or flat.

A furniture or ancillary furniture order – gives the protected person the right to take with them or to keep in their possession specified furniture and household items. The police can be asked to assist the protected person to collect and remove furniture and household goods.

HOW DO YOU GET THESE ORDERS?

A lawyer who specialises in family law is the best person to help you apply for a protection order, although you can apply without a lawyer.

It is especially important to get legal advice if there are children or property issues involved. You may be entitled to legal aid to assist with your legal costs. Ask the lawyer about this.

You can apply for your address and contact details to be kept confidential.

An application for an urgent protection order can be prepared and processed, and a temporary protection order granted, within 24 hours, although it can take longer. A temporary protection order is made “without notice”, which means the other person does not know about it until after the order is made.

A Family Court judge can make a temporary protection order without notice if delay would involve risks to the safety of the applicant or children. The legal terms for this are “risk of harm” and “undue hardship”.

In almost all cases, judges make temporary protection orders in their office without a court hearing. You can also apply for an order “on notice”, where the other person knows about your application before any orders are made. Applications may be made on notice if, for example, there has been family violence in the past and delay would not involve a risk of harm or undue hardship.

WHAT HAPPENS THEN?

The police or a court bailiff will give the other party a copy of the temporary order (or on-notice application). If that person wants to challenge the temporary order, they have three months to file a defence to it.

If no defence is filed, after three months the temporary order automatically becomes final. If an on-notice application is made, the court papers will say how long the other party has to file a defence.

If the other party files a defence to a temporary order or to an on-notice application, there will be a hearing in the Family Court before a judge about whether a final protection order should be issued. Getting a protection order is not automatic.

The judge will make a final protection order if they are satisfied that there has been family violence and that a protection order is necessary. The judge will hear both sides, then make a decision. Only a Family Court judge can cancel a final protection order.

You will get a copy of any temporary or final protection order from the Family Court or from your lawyer.

Remember to keep a copy at home and with you at all times and give a copy to the local police station. If children are covered, give a copy to their school.

CHILDREN AND FAMILY VIOLENCE

The law recognises that children are affected by seeing and hearing family violence as well as if they are direct victims of it. The Domestic Violence Act is about stopping violence in families and about breaking cycles of violence between generations.

The Family Court will not allow a parent day-to-day care of or contact with a child unless the judge is satisfied that the child will be safe. If a parent has been violent this is likely to mean that contact will have to be supervised. The judge can also make special orders to protect the other parent during any changeovers in care of the children.

Supervised contact is contact in a safe situation with someone else there. Some areas have supervised contact centres. Your lawyer or the Family Court will have more information about supervised contact.

WHAT IF A PROTECTION ORDER IS BREACHED?

A breach of a protection order is a criminal offence. The police can arrest the violent person and hold them for 24 hours before releasing them on bail. If charged with a breach, the violent person will have to appear in the criminal court.

If convicted they will get a criminal record and may be sent to prison for up to **three** years.

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Some examples of breaches are:

- phoning, emailing or texting;
- coming round to the house;
- sending presents or flowers;
- physical violence;
- visiting the children at school;
- threats;
- damage to property.

It is important to report all breaches to the police even if they seem minor. One incident on its own may not look serious, but a series of breaches can make the protected person feel threatened and unsafe. Also, minor breaches can escalate into more serious breaches if not dealt with.

HOW CAN YOU GET HELP?

If you need help, you can phone the police, a lawyer, Women's Refuge, Victim Support, Community Law Centre, Citizens Advice Bureau or the coordinator at your local Family Court.

There are agencies that can provide personal counselling, advice about stopping violence courses, parenting help, advice about drug or alcohol abuse, and help if you have been sexually abused. The website www.justice.govt.nz/family-justice has useful information.

DO THE RIGHT THING - SEE YOUR LAWYER FIRST

Lawyers deal with many personal, family, business and property matters and transactions.

No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Lawyers must follow certain standards of professional behaviour which are set out in their *Rules of Conduct and Client Care*. When you instruct a lawyer, he or she must provide you with certain information, as outlined in our guide *Seeing a lawyer – what can you expect?*

This includes informing you up front about the basis on which fees will be charged, and how and when they are to be paid. The fee – which must be fair and reasonable – will take into account the time taken and the lawyer's skill, specialised knowledge and experience. It may also depend on the importance, urgency and complexity of the matter.

There could also be other costs to pay, such as court fees. You should discuss with your

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lawyer how you will pay for the work and advise if you don't want to spend more than a certain sum without the lawyer checking with you. A lawyer is required to tell you if you might be entitled to legal aid.

The guide *Seeing lawyer – what can you expect?* also outlines how you can help control your legal costs and get best value from your lawyer. Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice.

Lawyers must have a practising certificate issued by the New Zealand Law Society. You can call the Law Society on (04) 472 7837 or email registry@lawsociety.org.nz to see if the person you plan to consult holds a current practising certificate.

You can also check this on the Register of Lawyers which is accessible through the website www.lawsociety.org.nz. If you have a concern about a lawyer, you can talk to the Lawyers Complaints Service, phone 0800 261 801.

IF YOU DON'T HAVE A LAWYER

- ask friends or relatives to recommend one;
- look in the Yellow Pages under “lawyers” or “barristers and solicitors”;
- inquire at a Citizens Advice Bureau or Community Law Centre;

CHECK THESE WEBSITES

www.lawsociety.org.nz/for-the-community/find-lawyer-and-organisation

www.familylaw.org.nz/public/find-a-lawyer

To the best of the New Zealand Law Society's knowledge, the information in this guide is true and accurate as at 1 July 2014. However, the Law Society assumes no liability for any losses suffered by any person relying directly or indirectly on information in this guide. It is recommended that readers consult a lawyer before acting on this information.

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