Fighting Domestic Violence - New Zealand

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# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

**Overview**

In 2018, the New Zealand government repealed the Domestic Violence Act 1995 and replaced it with the Family Violence Act 2018 (FVA).

This legislation provides the foundation of a system of law in New Zealand that is designed to support victims, as well as to provide an effective punitive mechanism against perpetrators. The FVA was introduced after a series of high-profile cases concerning victims of domestic violence and child abuse in conjunction with a government-commissioned report, which acknowledged that women in New Zealand experienced some of the highest rates of intimate partner-related deaths internationally.[1] This legislative scheme aims to provide a comprehensive and systemic approach to combatting domestic violence in New Zealand.

[**Evidence Act 2006**](https://www.legislation.govt.nz/act/public/2006/0069/latest/DLM393463.html?search=ta_act%40act_E_ac%40ainf%40anif_an%40bn%40rn_25_a&amp;p=2)

This legislation governs the admissibility of evidence, but it also provides specific protections for evidence in sexual cases.

[**FVA**](https://legislation.govt.nz/act/public/2018/0046/latest/DLM7159322.html?search=ts_act%40bill%40regulation%40deemedreg_family+violence+act_resel_25_a&amp;p=1)

This legislation enables the family violence sector to have a more consistent response to victims and toward perpetrators of family violence. This legislation provides a set of principles to guide decision-making and to coordinate the consistent, appropriate and timely response of 10 government agencies to issues of family violence. The FVA also provides for imposing protection orders against perpetrators of family violence for the protection of victims.

[**Domestic Violence — Victims' Protection Act 2018**](https://www.legislation.govt.nz/act/public/2018/0021/latest/DLM7054315.html)

This legislation provides legal protections for persons affected by domestic violence in the workplace (i.e., allowing 10 days of paid domestic violence leave, providing short-term flexible working arrangements and prohibiting adverse treatment).

[**Harassment Act 1997**](https://www.legislation.govt.nz/act/public/1997/0092/latest/DLM417078.html)

This legislation criminalizes stalking and harassment, and it aims to provide greater protection to victims of these acts.

**Part 7 of the Crimes Act 1961**

This part criminalizes sexual offenses.

[**Section 195 of the Crimes Act 1961**](https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM329384.html)**and**[**Children's Act 2014**](https://www.legislation.govt.nz/act/public/2014/0040/latest/DLM5501618.html)

This section and this legislation criminalizes the neglect of and cruelty toward children, and it mandates government intervention into preventing the neglect and cruelty of children to improve their well-being.

[**Section 204A of the Crimes Act 1961**](https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM329734.html)

This section makes it a criminal offense to excise, infibulate or mutilate the "whole or part of the female genitalia of any person."

[**Sections 188-204 of the Crimes Act 1961**](https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM327382.html)

These sections criminalize physical violence, assaults and injuries to the person.

[**Care of Children Act 2004**](https://www.legislation.govt.nz/act/public/2004/0090/latest/whole.html)

This act enshrines the principle that the child's welfare and best interests are the first and paramount consideration in all decisions under the FVA.

[**Harmful Digital Communications Act 2015**](https://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html)

This legislation criminalizes sharing or threatening to share nude or nearly nude photos of another person.

## 1.2 What is the controlling case law?

[***Surrey v. Surrey* [2010] 2 NZLR 581**](http://www.lawreports.nz/surrey-v-surrey-2010-2-nzlr-581/)

This case created a legal presumption that, once an applicant for a protection order has proved the existence of past violence and a reasonable subjective fear of future violence, a protection order is necessary.

[***Martin v. Ryan* [1990] 2 NZFLR 209**](http://www.lawreports.nz/martin-v-ryan-1990-2-nzlr-209/)

*Ex parte* protection orders (protection orders brought by one party without the other party being notified) are justified when the below requirements are met:

There is a clear case on the merits.

There will be irreparable injury if the application proceeds on notice.

There will be no delay caused by the applicant.

The effect of an order will only be brief and provisional.

Strong grounds exist in the circumstances to override conventional requirements of natural justice.

[***Hartley v. The Queen* [2014] NZCA 162**](https://offenders.sst.org.nz/wp-content/uploads/2017/08/Peter-John-Hartley-Appeal-Notes.pdf)

This case interpreted Section 44 of the Evidence Act 2006 as protection for victims of sexual violence in legal proceedings, which is intended to prevent the reprehensible and inappropriate blackening of the characters of, particularly, women complainants by directly or indirectly "tarring" them in the eyes of the jury.

[***B v. R* [2013] NZSC 151**](https://www.courtsofnz.govt.nz/assets/cases/2013/sc-12-2013-b-v-the-queen.pdf)

This case determined that the previous sexual history of a victim is irrelevant and it has no bearing on consent.

[***R v. Wilson* [1991] 2 NZLR 707**](http://www.lawreports.nz/r-v-wilson-1991-2-nzlr-707/)

This case determined that where a defendant pleads self-defense to a charge of assault, the fact-finder's assessment of the alleged perpetrator's truthfulness may be influenced by their prior convictions of violent offenses.

[***KSB v. Accident Compensation Corporation* [2012] NZCA 82**](http://www.nzlii.org/cgi-bin/download.cgi/cgi-bin/download.cgi/download/nz/cases/NZCA/2012/82.pdf)

This case determined that the nondisclosure of an HIV-positive status prior to unprotected sexual intercourse vitiates or impairs a victim's consent, turning consensual sexual activity into the serious criminal offense of sexual violation. This case was pivotal as one of the first to extend the legal concept of a "mistake" to vitiating consent in sexual violence cases.

[***Christian v. R* [2017] NZSC 145**](http://www.nzlii.org/nz/cases/NZSC/2017/145.html#fn26)

This case determined that consent to sexual intercourse must be full, voluntary, free and informed to be real, genuine or true legal consent.

[***G v. G* [1997] 3 NZLR 66**](http://www.lawreports.nz/garty-v-garty-1997-3-nzlr-66/)

This case stands for the proposition that victims of domestic violence are able to successfully bring private action against a domestic violence perpetrator in court for exemplary damages. This remedy was issued in *G v. G* where a wife was awarded a sum of NZD 85,000 against her husband as the court sought to make an example of him, stating the following:

[…] the persistence and severity of the violence and the fact that the defendant is a member of the medical profession which is entrusted to care for the physical and mental health of the community.

## 1.3 What are the specific parts of the court system that address domestic violence?

Incidents of domestic violence can be addressed in different types of courts, depending on the type of offense. There are options available to criminally pursue an alleged abuser or to have a domestic violence matter heard before specialist family courts.

**The Family Court of New Zealand**

The Family Court of New Zealand ("**Family Court**") is a specialist district court service. The police and Crown prosecutor are also able to prosecute any alleged perpetrators criminally. For example, if a victim attends the Family Court to seek the imposition of a protection order against an abuser and the abuser then breaches any conditions associated with that protection order, this becomes a criminal offense. The police and Crown prosecutor will then assess the evidence to determine if there is enough to charge the individual with an offense, which will be heard in either the criminal division of the District Court of New Zealand or the High Court of New Zealand for more serious offenses.

**Waitakere or Manukau Family Violence Courts**

Family violence cases can also be heard in either of the specialist Waitakere or Manukau Family Violence Courts. These courts were implemented as part of the justice program as a result of judicial and community collaboration in the early 2000s, and they integrate principles of therapeutic jurisprudence and conference-based proceedings to provide a victim-centric and timely response to any family violence matters that may arise. The specialist family violence courts are intended to be able to address family violence matters in culturally sensitive ways, through a holistic and collaborative approach between the courts and community agencies.

## 1.4 What are potential causes of action?

Depending on the circumstances, victims can institute a civil claim for a protection order, but the police have jurisdiction to pursue a police safety order against an alleged abuser.

**Protection orders**

Primarily, the main remedy a victim of domestic violence can seek is a protection order, which arises under the operation of the FVA. This mechanism is a private law response, meaning that the person responsible for initiating the proceedings under the FVA is the victim (or their suitable representative), rather than the state beginning proceedings against an abuser. Under a protection order, the court is able to impose certain conditions or restrictions on an abuser, with criminal punishment provisions for breaches of protection orders then able to be imposed on the individual.

Protection orders can additionally be made *ex parte* on the papers, sent through to the Family Court judge on duty, without notifying the alleged abuser. This makes the accessibility of protection orders simpler, more cost-effective and less emotionally taxing on the victim. To successfully apply for *ex parte* orders to be made, the judge must be satisfied of the following:

There is a clear case on the merits.

There will be irreparable injury if the application proceeds on notice.

There will be no delay caused by the applicant.

The effect of an order will only be brief and provisional.

Strong grounds exist in the circumstances to override conventional requirements of natural justice.[2]

**Police safety orders**

The police are also able to impose police safety orders, whereby a qualified constable can issue an on-the-spot order, which prevents the recipient of an order from sharing any contact with the alleged victim, their children and other family members for up to five days.

Section 9 of the FVA defines "family violence" extremely broadly and it includes psychological abuse. Behavior may be psychological abuse even though it does not involve any threatened or actual sexual or physical violence against a victim. Further, under Section 10 of the FVA*,* a single act is able to amount to abuse, as well as a number of acts that can form a pattern of behavior, even though some of these acts, when viewed in isolation, may be minor or appear trivial. This wide definition enables victims to have a wide base from which to bring an action for protection or police safety orders against an abuser.

**Safety provisions under the Care of Children Act 2004**

Under the Care of Children Act 2004, various safety provisions can be invoked to advance the health and welfare of a child, brought by a victim of family violence against an alleged perpetrator. In particular, the main order that can be sought is a parenting order or an interim parenting order when a protection order has been granted. However, the chief executive of the department responsible for the Children, Young Persons and Their Families Act 1989is able to apply to the Family Court's juvenile supervisory jurisdiction to remove decision-making powers from the parents and have the court appointed as the legal guardian of the child. These are state-driven proceedings that can be brought against a perpetrator.

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

**Restraining orders**

Domestic violence victims can apply for criminal remedies in the District Court of New Zealand for restraining orders. Restraining orders can be sought if the victim is experiencing harassment.[3] The Harassment Act 1997 identifies the grounds for which a restraining order can be sought as "specific acts," which include the following:

harassment (watching, loitering near or preventing or hindering access to or from that person's place of residence, business, employment or any other place that the person frequents for any purpose)

stalking (following, stopping, accosting or otherwise communicating with that person)

entering or interfering with that person's possessions

giving offensive material to that person (whether by electronic means or in a manner that will be brought to the attention of that person)

any other act that causes that person to fear for their safety or would cause a reasonable person in their position to fear for their safety

There is no filing fee to apply for a restraining order and the relevant forms are available online.[4] A victim will be required to file an affidavit in support of an application for a restraining order. An affidavit is a formal legal document containing a statement of an account of evidence or facts.

The act contains a mechanism that allows for the anonymity of the applicant to a restraining order.[5] It is an offense to breach or not comply with a court-imposed restraining order without a reasonable excuse.[6] The maximum penalties are as follows:

for an initial breach — six months of imprisonment or a fine of NZD 5,000[7]

for repeat offenses on two different occasions (in the preceding three years) — two years of imprisonment[8]

**Police safety orders**

Further criminal remedies are available in the form of police enforcement. Under the FVA, police may issue "police safety orders."[9] The orders that can be issued include the following:

helping make an individual safe from family violence

requiring an individual to vacate any land or building where a child or person affected by family violence is residing

surrendering weapons and/or suspending any firearms licenses

preventing contact or behavior that amounts to any form of family violence

suspending parenting orders

**Protection orders**

A court may also make a protection order if the court is satisfied that there has been an instance of family violence against the victim and/or their child, and making the order is necessary for the protection of the victim and/or their child.[10]

A protection order can be applied for by a person who is or has been in a family relationship,[11] or on behalf of such a person by a representative and/or an approved organization.[12]

A protection order applies for the person whose protection the order is made **and** for the benefit of their child.[13] It may also be applied in one of the following ways:

for the protection of any other child or person the court directs[14]

against any person related to the person the order is against, including their associates[15]

If a protection order is made, standard conditions will apply to that order. The person the order is made against must not do the following:[16]

engage in behavior that amounts to any form of family violence

make unauthorized contact with the protected person

encourage a person to engage in behavior against or to make contact with the protected person that would be otherwise prohibited under the protection order

When applying for a protection order, special conditions can be sought by a victim that are particular to that victim's circumstances. For example, special conditions may often relate to contact with children but may seek to restrain contact to certain times and places.

A breach of a protection order is a criminal offense and individuals in breach are liable to imprisonment for a maximum of three years.[17] Any breach should be reported to the police, as additional criminal charges may result.

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Domestic violence protection is not specifically identified in national law as a human right. However, the Human Rights Act 1993 refers to domestic and family violence. It recognizes that adverse treatment in employment of people affected by family violence is a human right, rather than protection of domestic violence in and of itself.

New Zealand provides protection from domestic violence through indirect means, particularly through the FVA. This legislation enables the family violence sector to have a more consistent and streamlined response to victims of family violence, and those who inflict family violence. The purpose of this act is to stop and prevent family violence by the following means:[18]

recognizing family violence, in all its forms, as unacceptable

stopping and preventing perpetrators from inflicting family violence

keeping victims, including children, safe from family violence

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

New Zealand has not signed or ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210).

## 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

New Zealand has not signed or ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210).

## 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

As of November 2021, New Zealand has not made any definitive statement about signing or ratifying the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210).

## 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

New Zealand signed the 1979 Convention in 1980 and ratified it in 1985. By ratifying the convention, New Zealand has agreed to affirm women's legal rights, devote attention to women's reproductive rights, and address cultural conceptions of women and address how stereotypes, customs and norms can perpetuate discrimination.[19]

The Committee on the Elimination of Discrimination Against Women (CEDAW) administers the 1979 Convention. Under the convention, state parties are required to submit a national report to the CEDAW at least every four years, outlining the measures they have adopted to give effect to convention provisions. The New Zealand body responsible for implementing and monitoring the 1979 Convention is the Ministry for Women. On its website, the Ministry for Women highlights what the government is currently doing to address and implement the recommendations and articles.

The most recent report is the eighth periodic report (Eighth Report) produced in 2016. It addresses how New Zealand has implemented concluding observations and recommendations made by the CEDAW in response to the 2012 report.

In response to the 2016 report, the CEDAW asked New Zealand to provide, within two years, follow-up written information on a number of processes in 2018 (2018 Report).[20] These included undertaking to implement its four recommendations relating to the resourcing of the New Zealand Human Rights Commission (NZHRC) and its jurisdiction in relation to migrant workers, a strategy to combat gender-based violence against women, including women with disabilities, decriminalization of abortion and access to justice in the Family Court system.[21]

Consequently, New Zealand issued its interim CEDAW report in August 2020 (Interim Report). This report addresses the concluding observations and recommendations as mandated by the CEDAW. For instance, one of the recommendations in the 2018 Report was to provide the NZHRC with sufficient resources to protect women's rights.[22] In response, New Zealand stated that the NZHRC received an increase in funding in 2019-2020. Particularly, the funding for 2019-2020 was NZD 11.1 million and the funding for 2020-2021 is NZD 10.8 million.[23]

In respect of the CEDAW's General Recommendation No. 35, New Zealand has addressed one aspect of it in its Interim Report. The 2018 Report provided a recommendation that New Zealand adopt a comprehensive and cross-party strategy on combating gender-based violence against women in accordance with General Recommendation No. 35 (2017) on gender-based violence against women, updating General Recommendation No. 19 and ensuring its consistent implementation, including by strictly applying the Family and Whanau Violence Legislation Bill and, among others, by including measures that specifically protect women with disabilities that are confronting abusive caregivers.[24]

In response, New Zealand has detailed the steps it has taken to combat gender-based violence. This approach includes the following:[25]

introducing new laws and policies (including the FVA, the Family Violence (Amendments) Act 2018, the Domestic Violence — Victims' Protection Act 2018, the Sexual Violence Legislation Bill and the New Zealand Police Policy)

developing a national strategy for the prevention of family and sexual violence

increasing funding for sexual violence and family violence services, including Kaupapa Maori family violence services

improving the collection and understanding of incidence data

committing to a long-term program of reform to build a stronger health and disability system with a specific focus on addressing issues for disabled people seeking to live free from violence

## 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

This does not apply.

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

Many of the terms below are defined in the FVA. Other relevant legislation includes the Crimes Act 1961, the Harassment Act 1997and the Victims' Rights Act 2002 (VRA).

The FVA refers to "family violence" rather than "domestic violence." "Family violence" is defined as violence inflicted against a person by any other person with whom the first person is or has been in a family relationship.[26] "Violence" is defined as physical, sexual or psychological abuse and it can include a pattern of behavior that is coercive or controlling (or with the effect of coercing or controlling) or causes cumulative harm. Violence can also be dowry related (violence that arises around the existence and nature of goods, gifts, money, property or other benefits given from one marrying party to another).

Abuse can be a single act or a pattern of behavior that may amount to abuse, even where singular acts, in isolation, may seem minor or trivial.[27] Psychological abuse can include the following:

threats of physical or sexual abuse

intimidation or harassment, which can include the following:

watching, loitering near, or preventing or hindering access to or from a person's place of residence, business, employment, educational institution or any other place that the person visits often

following the person or stopping or accosting a person in any place

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 trespassing

damage to property

ill-treatment of pets or animals whose welfare would affect a person's well-being

financial or economic abuse

removing access to support that affects the quality of life of a person who is impaired by reason of age, disability, health condition or another cause

Psychological abuse may be or may include behavior that does not involve actual or threatened physical or sexual abuse.

## 3.2 Stalking

No provisions explicitly criminalize stalking. However, Community Law Centres o Aotearoa (New Zealand's peak community legal center organization) notes that the Harassment Act 1997 covers behavior that includes stalking in its definition of harassment.[28] See below for the Harassment Act 1997 provisions on harassment.

## 3.3 Harassment

A person harasses another if "he or she engages in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least 2 separate occasions within a period of 12 months."[29] The specified acts do not need to be directed at the same person on each separate occasion, as long as the pattern of behavior is directed at one person. One continuing act carried out over a protracted period can also be harassment.

A "specified act" includes the following:

watching, loitering near, or preventing or hindering access to or from a person's place of residence, business, employment or any other place that the person frequents for any purpose

following, stopping or accosting a person

entering or interfering with property in a person's possession

making contact with a person (whether by telephone, correspondence, **electronic communication** or in any other way)

giving offensive material to a person or leaving it where it will be found by, given to or brought to the attention of a person

giving offensive material to a person by placing the material in any electronic media where it is likely that it will be seen by or brought to the attention of a person

acting in any other way that:

causes a person (**person A**) to fear for their safety

would cause a reasonable person in person A's particular circumstances to fear for their safety[30]

Specified acts also include acts directed at a person that cause them to fear for their safety, but they must also cause a reasonable person, in the circumstances, to fear for their safety for harassment to be made out.

If a person is being harassed (if another person directs two or more specified acts at them within 12 months), they may apply for a civil restraining order.[31] Further detail on restraining orders is given in Part 3 of the Harassment Act 1997.

A criminal offense is committed if the person engaging in the specified acts intends that the harassment constituted by the specified acts will cause the other person to fear for their safety or fear for the safety of a family member.[32] The alleged harasser must know that the harassment is likely to cause the other person (given their particular circumstances) to reasonably fear for their own safety or the safety of a family member. The threshold for a criminal offense is an actual knowledge test, whereas civil harassment is a reasonable person test.

## 3.4 Victim

In relation to family violence, a "victim" is a person who "has experienced, is experiencing, or may experience family violence (even if no offence involving the violence was, is, or is to be admitted or prosecuted) or is, has been, or may be affected by family violence (even if no offence involving the violence was, is, or is to be admitted or prosecuted)."[33]

The broader definition of a victim (in relation to offenses committed) is defined in the VRA as follows:

a person against whom an offense is committed by another person

a person who, through or by means of an offense committed by another person, suffers physical injury, loss of or damage to property

a parent or legal guardian of a child, or of a young person, unless that parent or guardian is charged with committing, is convicted or found guilty of, or pleads guilty to the offense concerned

a member of the immediate family of a person who, as a result of an offense committed by another person, dies or is incapable, unless that member is charged with committing, or is convicted or found guilty of, or pleads guilty to the offense concerned[34]

## 3.5 Abuser

There is no explicit definition of an "abuser" in New Zealand law, but it is effectively defined in the FVA.[35]

The FVA defines "family violence" as violence inflicted against a person by another person who is or has been a family relation. The term "violence" is physical, sexual or psychological abuse.[36]

Therefore, while "abuser" is not explicitly defined, for the purposes of domestic violence law, someone engaging in family violence is engaging in abuse.

## 3.6 Civil protection order

Protection orders are orders made under Part 4 of the FVA. Protection orders are made on application to the Family Court. According to the New Zealand Police, the court normally responds to a protection order request on the same day.[37]

Applicants in a family relationship can apply for protection orders or have a representative or approved organization apply on their behalf.[38] A protection order does not require notice to the respondent.[39] Orders made for applicants also apply to their children and they can be extended to other children, or persons deemed in need of protection.[40] Both the applicant and respondent can apply to have the order discharged or varied.[41] Standard protection order conditions are that the respondent must not do the following:

physically, psychologically or sexually abuse or threaten the applicant or their children

damage or threaten to damage the applicant's property

encourage anyone else to physically, sexually or psychologically abuse or threaten the applicant or their children[42]

The no-contact conditions of a protection order mean the respondent must not do the following:

come to the applicant's home or onto the applicant's property

hang around the neighborhood

try to stop the applicant, their children or those close to the applicant from coming or going

phone, write, fax or in any way contact the applicant unless it is an emergency, there is written permission or they are both asked to attend a family group conference[43]

Any firearm license held by the respondent is suspended and they must hand over any firearms to the police within 24 hours.

A breach of a protection order is a criminal offense that carries a maximum term of three years in prison.[44]

An applicant can also apply for a property order alongside or after having received a protection order under Part 5 of the FVA. Property orders include the following:

occupation orders, which gives the victim the exclusive right to live in a property that either they or the respondent owns or has a legal interest in

tenancy orders, which gives the victim the exclusive right to live in a property that either they or the respondent have been renting

furniture orders, which allows the victim to take possession of some or all of the furniture, household appliances and household effects from a house they have shared with the respondent

Under Part 3 of the FVA, the police can issue an on-the-spot police safety order if the police officer "has reasonable grounds to believe that the issue of an order is necessary to help make an alleged victim safe from family violence."[45] The person served with a police safety order cannot "assault, harass, threaten, stalk or intimidate the protected person, or go near any land or building that they occupy, even if they have a legal or equitable interest in the land or building."[46]

Protection orders are specific to family violence situations. Restraining orders are for nonfamilial relationships. One can apply for a restraining order if they are being harassed (see the definitions of "stalking" and "harassment" above).

## 3.7 Causes of action

See the definitions of "civil protection order," "harassment" and "stalking" above.

## 3.8 Marital rape

A rape is included under the umbrella of a sexual violation, along with "unlawful sexual connection with another person."[47] "Rape" is defined as the penetration of genitalia by the penis of person A without the consent of the penetrated party, person B, and without reasonable grounds to believe that person B consents to the connection. Unlawful sexual connection is defined as above, but it does not need to involve penetration.

The Crimes Act 1961 explicitly states that "one person may be convicted of the sexual violation of another person at a time when they were married to each other."[48] This extends to same-sex couples.[49]

Rape carries a sentence of up to 20 years in prison.[50]

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

**Representative**[51]

This means the following:

In relation to a child, it means a litigation guardian or next friend appointed under or recognized by the rules of court, or an approved organization to take proceedings under the act on behalf of that child.

In relation to a person lacking capacity to whom [Section 67](https://legislation.govt.nz/act/public/2018/0046/latest/link.aspx?search=ts_act%40bill%40regulation%40deemedreg_family+violence+act_resel_25_a&amp;p=1&amp;id=LMS113115#LMS113115) of the FVAapplies, it means a litigation guardian appointed under or recognized by the rules of court, or an approved organization to take proceedings under the act on behalf of that person.

In relation to a person who is unable to apply personally (i.e., a person aged 18 years old or over who is: (i) not a person lacking capacity; (ii) eligible to apply for a protection order; and (iii) prevented by physical incapacity, fear of harm or another sufficient cause from making the application personally), it means a litigation guardian or an approved organization to take proceedings under the act on behalf of that person.

**Litigation guardian**[52]

This is a person who is authorized by or who is under an enactment to conduct proceedings in the name of or on behalf of an incapacitated person or a minor.

**Approved organization**

This is an organization that must, without making an application to be appointed or to act as a representative for a child or person, complete and file in the court an application form (for the order) that does the following:

shows that reasonable steps have been taken to ascertain a person's views in relation to the organization acting as a representative for that person

if the views of a person have been able to be ascertained:

that the person does not object to the organization acting as a representative for that person

that the person's objection is not freely made

shows that it is in the person's best interests for the organization to act as a representative for that person

shows that there is unlikely to be any conflict between the interests of the organization and the person's interests

includes an undertaking to be responsible for any costs awarded against a person in the proceedings

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, civil protection orders are available to victims of domestic violence in New Zealand. These are referred to as protection orders. The following diagram outlines the protection order application process for a person experiencing family violence:[53]



## 4.1.2 Who can petition for civil protection orders?

**The applicant**

Anyone over 16 years old may apply for a protection order against another "with whom the applicant is or has been in a family relationship if they have been violent or abusive."[54]

**On behalf of an applicant**

A protection order can be applied for on behalf of an applicant who is unable to apply themselves (including children, people lacking capacity and people unable to apply personally) by a representative or an approved organization.

## 4.1.3 Are there temporary custody of a child or child support orders?

**Custody**

Yes, the applicant or the respondent may apply for a parenting order. A parenting order sets out who has day-to-day care of the children.[55]

**Child support**

If the court is satisfied that a child or young person is in need of care or protection, it may make an order directing a person or organization to provide support to that child for a period.[56] The person providing support must monitor the standard of care and protection exercised over that child and coordinate the provision of services and resources (including financial resources) to ensure that appropriate care is provided.[57] The court also has the power to impose any additional conditions, such as mandating that the child should not associate with a specified person.[58]

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

**Abuser to stay away from places**[59]

Yes, a protection order sets out the rules and conditions that the respondent must not breach. If the respondent breaches these conditions, the respondent can be arrested and charged with a criminal offense, facing imprisonment.

It is also a standard condition under the protection order that the respondent must not make any contact with the applicant unless the applicant has provided their consent. This standard no-contact condition includes the prohibition of going to the applicant's home, workplace or school. However, these conditions do not apply if the applicant agrees to live with the respondent.

**Abuser to move out**

The applicant may apply for a property order. The property order requires the respondent to vacate the premises and it allows the applicant and their children to remain. However, the applicant must have a protection order or they must be applying for a protection order to seek a property order.

There are two types of property orders:

Occupation order: This order allows the applicant to remain in the property in which they are currently living or wish to live that is owned by the applicant and/or the respondent. The order also prevents the respondent from living at the property.

Tenancy order: This order removes the respondent as a tenant of the property that they have been renting with the applicant. The order allows the applicant to continue living at the property while preventing the respondent from doing the same.

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

Yes, the police may issue police safety orders to protect victims of domestic violence and their families. This gives the victims and their families time to make decisions about their ongoing safety and access support.[60]

A police safety order is a temporary order that may last for up to 10 days. During this 10-day period, the person whom the order is served against cannot assault, harass, threaten, stalk or intimidate the protected person, or go near any land or building that they occupy, even if they have a legal or equitable interest in the land or building.

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Whilst there are currently no specific laws found in this regard, it is presumed that protection orders can be requested by direct or indirect victims or legal representatives in children's cases. However, it is ultimately the court's decision to grant a protection order.[61]

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

Yes, a court may make a protection order either with or without notice.[62]

**"Without notice" protection order (i.e., temporary)**

The court may make a "without notice" protection order if the applicant needs urgent protection. This protection order is temporary only and it can be issued without notifying the purported abuser beforehand. The purported abuser is only notified once the temporary protection order is in place.

**"On notice" protection order**

The court may make an "on notice" protection order, which is not temporary. In assessing the "on notice" protection order application, the respondent is notified about the application and both the respondent and applicant are required to attend court. In court, both parties discuss with the judge whether the protection order should stand. In court, the respondent will have the chance to defend their case. The judge retains discretion on whether to keep the protection order or remove it.

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Yes[63] — see the response above in Section 4.1.7. The applicant may apply for a protection order "without notice," meaning that the respondent is not informed about the application.

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes, temporary protection orders protect the applicant and their children. The applicant may also seek the protection of other people, such as their new partner or mother, when applying for the protection order.[64]

## 4.1.10 How long do the orders last?

Temporary protection orders last for three months. During these three months, a decision is made by the court on whether the protection order should be elevated to a non-temporary protection order. The purported abuser is provided the opportunity to defend themselves within this three-month assessment period. If the purported abuser does not defend themselves, the protection order automatically becomes final and lasts until either party applies to the court to change or end the protection order.[65]

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

In 2016:

There were 118,910 family violence investigations by the New Zealand Police.

5,461 applications were made for protection orders:

89% were made by women and 10% were made by men.

89% of respondents were men and 10% were women.[66]

<https://nzfvc.org.nz/sites/nzfvc.org.nz/files/Data-summaries-snapshot-2017.pdf>

Landing page for "family violence statistics"[67]

<https://nzfvc.org.nz/family-violence-statistics>

Statistics (as of June 2017) on family violence deaths and violence against women[68]

<https://nzfvc.org.nz/our-work/data-summaries>

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

To obtain a protection order, the applicant must file a completed application form with an attached affidavit at a Family Court. The affidavit must contain a statement on why a protection order is necessary and it must provide any relevant evidence. The application for a protection order form can be [accessed here](https://www.justice.govt.nz/assets/Documents/Publications/About-Family-Violence-and-Protection-Orders-Booklet.pdf).[69]

## 4.2.2 Does the victim need to attend a hearing?

In assessing the application, the Family Court judge will read the application and, in many cases, make a decision without the applicant needing to attend court. Where the judge requires the applicant to attend, the applicant may be accompanied by their lawyer or others providing assistance.[70]

## 4.2.3 Can you request remedies?

No, the applicant cannot request any remedies for a breach of the protection order. However, if the perpetrator breaches the order, fails to comply with a condition of the order or contravenes a term, this will be an offense.[71] Consequently, this gives the police the power, without a warrant, to arrest the perpetrator.[72]

## 4.2.4 Are there time limits?

There is no time limit as to when an applicant must make an application for a protection order.[73]

**Temporary protection order**

A temporary protection order will usually be issued the same day as applying. Often, it will be made within minutes of the application reaching the Family Court. A temporary protection order will continue to be in force until the order becomes a final order, the order lapses or the order is discharged.[74] A final protection order continues to be in force until it is discharged.[75]

**"On notice" protection order**

Although no specific period is given for the respondent to contest the application, the court must be fair to both parties. Therefore, there is an opportunity for the respondent to contest the protection order.

## 4.2.5 Are there different rules in emergencies?

An applicant may apply for a protection order "without notice" where the applicant fears for their immediate safety and a delay in getting a protection order might put the applicant and/or their children in danger. The temporary protection order stands for three months and it is then reviewed before being made final or canceled.[76]

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

The judge has full discretion to grant a protection order as long as the following conditions are satisfied:[77]

The respondent has inflicted or is inflicting family violence against the applicant or a child of the applicant's family, or both.

Making the order is necessary for the protection of the applicant, a child of the applicant's family or both.[78]

**Temporary protection order**

During the three-month period of the temporary protection order, the respondent may attend court to attest against the protection order. If this occurs, the court will set a hearing date to listen to both the applicant and the respondent before deciding on whether to either cancel the temporary protection order or make it final.

**Parenting orders**

Depending on the circumstances, a parenting order may allow the respondent to have contact with their children. However, the judge must ensure that the children will be safe at all times. If the judge determines that the children will not be safe with the respondent, the judge may require the supervision of any contact between the respondent and the children, and they may dictate when contact may occur. Additionally, judges may add certain conditions to the parenting order to keep the children safe during the handover between the applicant and the respondent.

## 4.3.2 Are there age limits on who can obtain orders?

Yes, an individual must be 16 years old or older to apply for a protection order. However, if the individual is under 16 years old, an application may be applied for on their behalf by a representative, for example, a police officer.[79]

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

**No-fault compensation scheme**

A person can rely on the Accident Compensation Act 2001 to claim compensation cover for a personal injury suffered in New Zealand. The no-fault cover means that a person will be covered as long as the injury falls within the Accident Compensation Act 2001. It does not matter who was at fault.

The injuries that the scheme covers include but are not limited to the following:[80]

physical injuries — sprains or strains, wounds, burns, fractures, dislocations and concussion[81]

mental injuries — caused or not caused by a criminal act (e.g., sexual violation)[82]

Physical injuries may be caused by an accident and not by common illness or stress. Mental injuries must be caused by a physical injury suffered by the person or caused by certain criminal acts. The mental injury must be diagnosed as a mental condition by a health professional.

Compensation may be awarded to cover the following (non-exhaustive):

medical and treatment expenses

counseling and therapy sessions

loss of earnings

**Criminal case**

Where the respondent has additionally been sentenced for a criminal offense against the applicant, for example, assault, then the applicant may ask for costs and restitution as a victim of this crime. The judge may order the offender to pay the victim money if the victim has suffered emotional harm or lost property as a result of the crime. During the sentencing process, the judge will ask for a report to decide how much reparation the offender must pay to the victim. The judge will consider how much damage or cost the victim has incurred and the offender's ability to pay it. If the judge orders reparation, the victim will receive a reparation notice outlining how much the offender has been ordered to pay. The offender usually has 28 days to pay the court in full or to arrange payment by installments.

## 4.4.2 Can they recover wages and profits lost?

Yes. The Accident Compensation Corporation will pay a person weekly compensation for loss of earnings if they have an incapacity to work resulting from a personal injury and they were an earner immediately before their incapacity commenced.[83] The weekly compensation payable is 80% of the person's weekly earnings.

## 4.4.3 Is a separate civil process required?

No.

# 5. Prosecutorial considerations

## 5.1 Police procedures

## 5.1.1 When do the police get involved in domestic disputes or legal actions?

**Family violence information disclosure scheme**

The police have introduced a disclosure scheme that allows the public to request information related to another individual's violence history. This policy allows for any concerned third party, whether a friend or family member, to request information from the police about an individual's violence history. The police maintain discretion to disclose such information on a case-by-case basis in accordance with the exemptions to general privacy principles that originate from theOfficial Information Act 1982 and Privacy Act 2020.[84]

**Police safety orders**

The police may issue a police safety order when attending a family violence incident, which will protect the victim and their family for up to 10 days. During this time, the protected person and the person bound by the police safety order are encouraged to seek help. The victim's consent is not necessary to issue the police safety order.[85] A breach of the police safety order by the family violence offender gives the police the power to take the offender into custody and bring them before the court.

**Breaching a protection order**

Where a protection order has been issued by the court and has subsequently been breached, the offender will be arrested and they will remain in police custody for at least 24 hours before being released on bail.[86] If an alleged offender is charged with a family violence offense, when deciding whether to grant bail, the court or police will consider the need to protect the victim and any people in a family relationship with the victim.[87] The maximum penalty for breaching a protection order is three years of imprisonment.[88] If the respondent fails to attend a nonviolence program as required, the maximum penalty is six months in prison or a fine of NZD 5,000.[89]

**Surrendering weapons**

Once an individual has been served with notice of a protection order, they are required to hand over any firearms licenses and any weapons held. In case the protection order is made final, the individual's firearms licenses will be canceled.[90]

**Criminal offenses**

The police have the power to lay criminal offenses against family violence offenders. Such offenses include the following:

assault[91]

assaulting a child[92]

assaulting a family member[93]

strangling or suffocating someone[94]

sexual violation[95]

sexual harassment[96]

threats or intimidation[97]

homicide[98]

## 5.1.2 What circumstances effect law firm involvement?

The applicant may engage a law firm for assistance in filling out the application form and drafting the affidavit.[99]

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

Yes, every question of fact arising from civil proceedings must be decided on the balance of probabilities.[100]

## 5.2.2 Are there any requirements regarding evidence and documents?

Yes, the applicant must submit an affidavit along with the application document when applying for the protection order. The affidavit outlines what violence, abuse and/or threats the respondent has used against the applicant. Everything in the affidavit must be true and correct.[101]

## 5.2.3 Is proof "beyond a reasonable doubt" required?

No — see Section 5.2.1.[102]

## 5.2.4 Is the standard of proof different for ex parte orders?

No, the standard of proof for *ex parte* orders is on the balance of probabilities.[103]

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes. If the accused assaults an alleged victim and this was done as a form of self-defense, then the accused will be able to rely on this as a form of affirmative offense.[104]

## 5.3.2 Is willful intent required?

Willful intent is not required for the court to issue a protection order. The court will issue a protection order as long as the following conditions are satisfied:

The respondent has inflicted or is inflicting family violence against the applicant or a child of the applicant's family, or both.

Making an order is necessary for the protection of the applicant, a child of the applicant's family or both.[105]

## 5.3.3 Are false accusations punishable for the victim?

Perjury — an assertion made in judicial proceedings that is known to be false and made with the intention to mislead — is a crime punishable under Section 108 of the Crimes Act 1961. However, it is rare for a person to be convicted of perjury as a result of Family Court proceedings.[106]

## 5.3.4 How is consent discussed in the law?

**Consent discussed generally within New Zealand law**[107]

Consent is required when two or more people agree to take part in sexual activity. Consent must be given freely each time without pressure or coercion from another person.

"Consent" is defined by the courts of New Zealand as follows:

True consent freely given by a person who is in a position to make a rational decision. There is no presumption of law that a person is incapable of consenting to sexual connection because of age. Lack of protest or physical resistance does not, of itself, amount to consent. There are some circumstances where allowing sexual activity does not amount to consent, including:

the application of force to the complainant or the threat or fear of such application of force; or

the complainant's intellectual or mental development is such that they cannot consent or refuse to consent to the activity; or

the complainant is mistaken about or incapable of comprehending the nature and quality of the act of sexual activity.

**Consent as defined under the Crimes Act 1961**

The Crimes Act 1961 does not provide a specific definition of consent. However, Section 128A of the Crimes Act 1961 sets out the circumstances where a person does not consent to sexual activity.

Section 128A of the Crimes Act 1961 states the following:

A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.

A person does not consent to sexual activity if he or she allows the activity because of the following:

force applied to him or her or some other person

the threat (express or implied) of the application of force to him or her or some other person

the fear of the application of force to him or her or some other person

A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.

A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.

A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.

One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.

A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality.

## 5.3.5 Is self-defense or insanity a defense?

Yes, normal defenses for criminal acts are available such as self-defense and insanity.

## 5.4 Witness status

## 5.4.1 What is a witness's duty to testify honestly and completely?

Witnesses who are asked to give evidence in court must swear to tell the truth and answer any questions the judge says they must answer.[108] Witnesses who are over 12 years old must take an oath (on the holy book of their religion) or affirmation (of the truth) before giving evidence.[109] If a witness is under 12 years old, the judge must inform them of the importance of telling the truth and not telling lies. After being given that information, the witness who is under 12 years old must make a promise to tell the truth before giving evidence.[110]

## 5.4.2 Who may abstain from testifying in certain situations?

Under the FVA, the court, of its own motion, may call as a witness any person whose evidence may be, in its opinion, of assistance to the court in any proceedings before the court other than criminal proceedings. In such instances, the witness has the same privilege to refuse to answer any question as the witness would have if called by a party to the proceedings as opposed to the court.[111]

## 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

Witnesses generally have no excuses to refuse to testify. If the prosecution or defense believes that their evidence is important, they can summon a witness to be at the trial.[112] A summons document is signed by the court registrar mandating a witness to come to court.[113] If a witness fails to appear before the court under the summons with no reasonable excuse, the court may issue a warrant to arrest the witness.[114]

## 5.4.4 What is the impact of domestic violence on witnesses who are children?

A child witness is entitled to one person (with the permission of the judge, more than one person) to support them when they are giving evidence.[115] There are also alternative ways a child witness may give evidence, as follows:[116]

by a video recording made before the hearing of the proceedings

while in the courtroom but unable to see the defendant or some other specified person

from an appropriate place outside the courtroom (either in New Zealand or elsewhere)

Both parties may apply to the court to have the child witness give evidence in the ordinary way or in an alternative way to what is stated above.[117]

## 5.4.5 Can children be called upon to testify?

Yes, under Section 169 of the FVA, the court has the power to call a "specified person" as a witness who may be a child.[118] Child witnesses are entitled to special measures as discussed above.

## 5.4.6 What is the effect of a child victim on the charges against the offender?

Domestic violence adversely affects children's well-being. Those who have witnessed it firsthand are more susceptible to developing anxiety, depression and aggressive behaviors like fighting, bullying and lying.[119] However, the effects can also differ depending on a child's age. Young children, such as those in preschool, may show signs of terror, such as hiding or stuttering, exhibit separation anxiety, and resort to behaviors such as whining, increased crying or even bed-wetting.[120] School-aged children may distance themselves from other people and school activities, and may blame themselves for any offending.[121] Teenagers are likely to act out in negative ways. This may include skipping school, fighting with others and turning to alcohol consumption.[122]

As victims of domestic violence, the court process often has an adverse effect on children. For example, children who appear scared of the offender while they are giving evidence are less likely to be able to answer the questions put to them.[123] Other issues that a child victim may have to confront are fear of the offender's retaliation and fear of not being believed.[124] This can cause considerable distress to children.

## 5.5 Penalties and sentencing; penalty enhancements

## 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

As domestic violence can often comprise different offenses, the penalties and sentencing laws applicable vary depending on the actual offense committed. The fact that this is the offender's first time may be a mitigating factor that is considered during sentencing if the perpetrator is found guilty. Other mitigating factors include cooperating with the police, pleading guilty and expressing remorse.[125] The Sentencing Act 2002identifies factors that judges must take into account. While first-time offending may be considered under the offender's "personal circumstances,"[126] this is balanced with other considerations, such as the following: [127]

the gravity of offending

the blameworthiness of the offender

the maximum penalty prescribed for the offense

the desirability of the consistency of sentences for similar offending

whether any restorative justice agreements or terms have been reached

## 5.5.2 Are there criminal penalties?

Yes.

**Assault of a family member**: Section 194A of the Crimes Act 1961 criminalists the assault of a family member and imposes a maximum of two years of imprisonment. A family member is anyone with whom the aggressor is in a family relationship. This penalty is more excessive than that for common assault, which is a maximum of one year of imprisonment.[128]

**Strangling or suffocating someone**: Section 189A of the Crimes Act 1961 makes it a serious crime to assault someone by strangling or choking them around the throat or neck, or by suffocating them through blocking off air to their mouth or nose. This attracts a penalty of up to seven years of imprisonment.[129]

## 5.5.3 What is the result of a violation of an existing order for protection?

Sections 59(k) and 112 of the FVA make it a criminal offense to breach a protection order (or a related property order). A breach is punishable on conviction by imprisonment for a term not exceeding three years.[130]

## 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

**The FVA**

Section 32 on police safety orders: A constable who is issuing a police safety order under Section 28 of the FVA against any person may detain that person for a period of up to two hours if necessary for the constable to issue and serve the order. If the detained person refuses to remain in the location in which they are detained, they will have committed an offense and they may be penalized by a fine of NZD 500.

Part 4, Section 59(k) and Section 112 on protection orders: It a criminal offense to breach a protection order (or related property order). A breach is punishable on conviction by imprisonment for a term not exceeding three years.[131]

Part 7, Section 183(h) and Section 211 on programs and prescribed services: The failure to comply with a direction is a criminal offense punishable on conviction by a fine not exceeding NZD 5,000 or a term of imprisonment not exceeding six months.

## 5.6 Post-release restrictions

## 5.6.1 Does the law notify the victim of the offender's release from custody?

Yes, the victim will need to fill in the Victim Notification Register application form.[132]

# 6. Special issues

## 6.1 Battered woman syndrome

## 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Yes. New Zealand courts may admit expert evidence of battered woman syndrome as a defense. This expert evidence covers a range of issues concerning the psychological, social and economic aspects of domestic violence.[133]

## 6.2 Domestic violence in the workplace

## 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

Although there are no specific laws in relation to this question, an employer could potentially apply for a protection order on behalf of their employee under Section 69 to which the court will decide whether to make an order.[134]

Under Section 69, if a person aged 18 years old and over and who is (a) not a person lacking capacity, (b) eligible to apply for a protection order and (c) prevented by physical incapacity, fear of harm or another sufficient cause from making the application personally, then an application for a protection order may be made on behalf of the person by a "representative," for example, an "approved organization."[135]

Based on the above, an employer may apply for a protection order on behalf of their employee. The employer must also be an "approved organization" to act as their employee's representative.

To be qualified as an "approved organization," the organization must, without making an application to be appointed or to act as a representative for a person, complete and file in the court an application form (for the order) that does the following:

shows that reasonable steps have been taken to ascertain P's views in relation to the organization acting as a representative for P; and

if the views of P have been able to be ascertained, shows—

that P does not object to the organization acting as a representative for P; or

that P's objection is not freely made; and

shows that it is in P's best interests for the organization to act as a representative for P; and

shows that there is unlikely to be any conflict between the interests of the organization and P's interests; and

includes an undertaking to be responsible for any costs awarded against P in the proceedings.[136]

## 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

There are no special protections or entitlements for employees who leave their employment because they are experiencing domestic violence. However, persons affected by domestic violence have additional legal entitlements while they are at work and an employee is entitled to receive their full severance payment upon the termination of their employment regardless of the reason for their termination.[137]

**Additional employment entitlements for employees affected by family violence**

Recent amendments to the Domestic Violence — Victims' Protection Act 2018provide that persons affected by family violence have the right to the following:

to take up to 10 days of paid family violence leave per year[138]

to ask for short-term flexible working arrangements, lasting up to two months[139]

not to be treated adversely in the workplace because they might have experienced family violence[140]

For the purposes of these entitlements, "family violence" is defined to include violence inflicted against a person by any person with whom that person is or has been in a family relationship.[141] This can include, for example, violence inflicted by an intimate partner, a former intimate partner, a family member or whānau, or a roommate. The "violence" inflicted can be physical abuse, sexual abuse or psychological abuse, and it can include a pattern of behavior that is coercive or controlling (or is done to coerce or control) and causes cumulative harm.[142]

These additional workplace rights and entitlements are provided to persons affected by family violence even if the family violence occurred before the person began working for their current employer.[143]

**Severance pay**

Upon the termination of an employee's employment, the employee's severance payment must include the following:

payment for all unpaid work performed by the employee up to the termination date

payment for any accrued but untaken leave, including annual holidays, public holidays and alternative holidays[144]

any accrued but unpaid lump sum or other payments, such as those set out in an employee's employment agreement or negotiated as part of a separation arrangement

An employee's severance payment will only include a payment in lieu of notice if the employee provides the employer with the requisite period of notice. If the employee does not provide their employer with the requisite period of notice, the employer is not obliged to pay the employee after the last day actually worked by the employee. The legislation does not provide an exception to this requirement for circumstances in which an employee terminates their employment because they are experiencing domestic violence (or any other reason).

## 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

Although there is no specific leave that entitles family members of domestic violence victims to take leave for the purpose of helping the victim seek treatment or obtain help and services, they may take "domestic violence leave" if they are "affected by domestic violence."[145]

The definition of a "person affected by domestic violence" means a person who is one or both of the following:

a person against whom any other person is inflicting or has inflicted domestic violence

a person with whom there ordinarily or periodically resides a child against whom any other person is inflicting or has inflicted domestic violence[146]

## 6.3 Immigration

## 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

While there are currently no specific laws in this regard, victims of family violence may apply for the Victims of Family Violence Resident Visa if they are a partner of a New Zealand citizen or residence class visa holder and the relationship ended due to family violence.[147] The victim must show that they were unable to return to their home country. In their visa application, they may include dependent children aged 24 years old and under. They will not have to pay for the application costs.

## 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

Reporting the violence does not mean that the victim of domestic violence will be able to get a visa and stay in New Zealand. Immigration New Zealand has established two special visa categories for migrants who have experienced family violence:

Victims of Family Violence Work Visa[148]

Victims of Family Violence Resident Visa[149]

Victims of domestic violence can apply under these categories if their immigration status in New Zealand depends on their abusive partner who is a New Zealand citizen or resident. In these cases, they may be granted a work visa for six months and, in some cases, they can be granted a resident visa. They cannot obtain a visa under those special categories if their abusive partner is not a New Zealand citizen or resident and only has a work visa.

## 6.3.3 Does domestic violence law discuss asylum accessibility?

See above in Section 6.3.2.

## 6.4 Armed forces

## 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

There are no specific protection orders available to victims of abuse perpetrated by an active member of the military.

## 6.5 Child custody and child/spousal support

## 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

The Care of Children Act 2004 and the FVAgovern the arrangements for the care of children in domestic violence cases in New Zealand.

**Definitions**

The terms "custody" and "parental responsibility" are not defined in the Care of Children Act 2004 or the FVA. However, the terms "day-to-day care"[150] and "guardianship"[151] are defined in the Care of Children Act 2004 in a manner that closely resembles the meaning given to "custody" and "parental responsibility" in other jurisdictions.

The Care of Children Act 2004 and the FVA define "family violence" to include physical abuse, sexual abuse and psychological abuse.[152] Violence can also include a pattern of behavior that is made up of various acts of physical abuse, sexual abuse and psychological abuse.[153]

**Care of Children Act 2004**

Under the Care of Children Act 2004, the welfare and best interests of the child are always the paramount considerations (except in proceedings invoking the Hague Child Abduction Convention).[154] In proceedings involving the guardianship of a child, the role of providing day-to-day care for a child or contact with a child, the Care of Children Act 2004 provides that a child must be given reasonable opportunities to express their views on matters affecting them and that any views expressed by the child must be considered by the court.[155]

**Parenting orders**

In most cases, a child's parents will be their guardian. Where there is a breakdown in the relationship between a child's parents or guardians, neither the parent nor the guardian has a prevailing right to have access to, contact with, the care of or visitation rights in relation to the child unless a parenting order is imposed.

A parenting order can be made in relation to a child who is 16 years old or younger (unless special circumstances apply).[156] A parenting order can specify the following:

that a person will have the role of providing day-to-day care for a child

that a person may have contact with a child

the nature, duration and frequency of the day-to-day care of or contact with a child

any conditions of care or contact[157]

**Application for the care of children**

When an application is made under the Care of Children Act 2004 for a parenting order (or a guardianship order) in relation to a child, and a protection order is or has been in force against one or more parties to the application under the FVA, then the court must consider the following factors in determining whether to grant the parenting order:

whether the protection order is still in force[158]

the circumstances in which the order was made[159]

any written reasons given by the judge for the order being imposed[160]

all relevant convictions of the parties to the application under the FVA[161]

all relevant safety concerns that an assessor or a service provider has noted under the FVA[162]

**Protective conditions for child visitation arrangements**

The Care of Children Act 2004 empowers judges to impose protective conditions for childcare and visitation arrangements if there has been family violence.[163]

When a parenting order or guardianship order is made and the order enables a person to have contact with a child in circumstances where the person (person A) has inflicted family violence against either the child or a person who has the role of providing the day-to-day care for the child (person B), the court must consider whether the order should be subject to special conditions for the purpose of protecting the safety of person B while person A's contact with the child takes place.[164]

**Temporary protection orders**

The Care of Children Act 2004 empowers judges considering applications for a parenting order or guardianship order to make temporary protection orders where they have concerns about the safety of a child.[165]

This power arises when a protection order has not already been imposed under the FVA. In these circumstances, if a person has made an application for a parenting order or a guardianship order and the court is satisfied that an application for a protection order had been made under the FVA and that it would have been imposed, then the court may make a temporary protection order under the FVAif the judge is satisfied that any other orders or directions it can make would not, by themselves, provide enough protection for any or all of the people affected by the application for a parenting order.[166]

## 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

**Views of the child**

In proceedings involving the guardianship of a child, the role of providing day-to-day care for a child or contact with a child, the Care of Children Act 2004 provides that a child must be given reasonable opportunities to express their views on matters affecting them and that any views expressed by the child must be considered by the court.[167]

**Views of the spouse making the application**

If a person makes an application for a parenting order under the Care of Children Act 2004, the application must include a statement by the applicant about whether and how the order can and should provide for any other person or persons to have the role of providing day-to-day care for a child or contact with a child.[168]

Under the Family Court Rules 2002, an application for a parenting order must be supported by an affidavit containing detailed evidence in support of the application.[169]

If the other party to an application for a parenting order opposes the application, that party may file a notice of response.[170] The response must also be accompanied by an affidavit that sets out all the evidence that the person will rely upon in opposing the application for a parenting order.[171] The judge must consider the application and the notice of response, and they may make whatever directions and order they think fit.[172]

**Views of others**

In making a guardianship order or parenting order, the court may request the following:

that a social worker report or provide advice on the application[173]

that a cultural report, medical report, psychological report or psychiatric report be prepared in relation to the child by a person who is qualified to prepare one[174]

The Family Proceedings Act 1980 provides that in any proceedings brought under it in relation to a child, the court may require a social worker to submit a report on the arrangements that have been proposed by the parties for the care of a child.[175] Where this report is provided, any party to the proceedings may tender evidence to the court on any matter referred to in that report.[176]

## 6.6 Housing rights of domestic violence victims

## 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

While there are currently no specific laws in this regard, new protections have been introduced for tenants generally. Landlords will not be able to terminate a periodic tenancy without a reason.[177] The Residential Tenancies Act 1986 sets out the specific reasons that a landlord may use to end a periodic tenancy.

## 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

Yes. Under Section 56B of the Residential Tenancies Act 1986, tenants under a fixed-term or periodic tenancy will be able to terminate their tenancy as follows:

by giving at least two days' notice to the landlord in accordance with the notice requirements set out in the tenancy agreement

the notice is accompanied by qualifying evidence that the tenant has been a victim of family violence

## 6.6.3 Can an order exclude the abuser from the residence?

Yes, an occupation or tenancy order can stop the abuser from living in the house where the victim and abuser are currently living. If the abuser does not leave, they may be arrested for breaching the protection order.[178]

## 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

No, not currently. In a divorce, New Zealand uses a no-fault settlement procedure that splits the assets evenly across the applicant and respondent without taking into account family violence or domestic abuse.[179] The Law Commission has recommended in a report that the New Zealand government should consider the relevance of family violence to the division of property; however, it has not progressed beyond this.[180]

# 7. Endnotes

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[9]   Section 26 of the FVA.

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[26]    Section 9 of the FVA.

[27]    Sections 10 and 11 of the FVA.

[28]    Community Law Centres o Aotearoa, *Harassment in the Community: Getting Protection Under the Harassment Act* (web page) <<https://communitylaw.org.nz/community-law-manual/chapter-28-harassment-and-bullying/harassment-in-the-community-getting-protection-under-the-harassment-act/>>.

[29]    Section 3 of the Harassment Act 1997.

[30]    Section 4 of the Harassment Act 1997.

[31]   Section 9 of the Harassment Act 1997.

[32]    Section 8 of the Harassment Act 1997.

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[35]    Sections 9-11 of the FVA.

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[94]   Section 189A of the Crimes Act 1961.

[95]    Section 128B of the Crimes Act 1961.

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[169]  Section 416F(4) of the Family Court Rules 2002.

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[171]    Section 416K(2)(b) of the Family Court Rules 2002.

[172]   Section 416S(2) and (3) of the Family Court Rules 2002.

[173]    Section 131A and 132 of the Care of Children Act 2004.

[174]   Section 133 of the Care of Children Act 2004.

[175]    Section 47 of the Family Proceedings Act 1980.

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[179]   NZ Herald, *Domestic abuse victims call for end to 'no-fault' divorce settlements* (web page) <<https://www.nzherald.co.nz/nz/domestic-abuse-victims-call-for-end-to-no-fault-divorce-settlements/CIHHLYIEWCU5YMK7D5A76O37MU/>>.

[180]   Ibid.

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