Strengthening New Zealand's legislative response to family violence

A public discussion document

MINISTRY OF JUSTICE
Tāhū o te Ture

How to have your say

Submissions

Your submission will help government to develop policy that may be put into law. After the consultation period, Ministry of Justice officials will provide policy options to the Justice Minister, based on your submissions and other evidence. The Justice Minister may then seek Cabinet's agreement to her preferred options. If Cabinet agrees, law (a Bill) will be drafted.

The Bill will be introduced to Parliament. You will then have an opportunity to comment on the specific proposals to a parliamentary Select Committee.

You can give your feedback online **consultations.justice.govt.nz**

You can make a written submission by emailing us at **familyviolencelaw@justice.govt.nz** or writing to:

Family Violence Law Review
Ministry of Justice
DX SX10088
Wellington
New Zealand

Please provide your views by Friday 18 September 2015.

PERSONAL INFORMATION AND CONFIDENTIALITY

The Ministry of Justice will hold your personal information in accordance with the Privacy Act 1993.

We will accept submissions made in confidence or anonymously. Please clearly indicate if you would like your submission to be treated as confidential.

We may be asked to release submissions in accordance with the Official Information Act 1982 and the Privacy Act 1993. These laws have provisions designed to protect sensitive information given in confidence, but we cannot guarantee the information can be withheld. We will not release individuals' contact details.

We may alert Police or another agency about any submissions that raise safety concerns, and provide them with contact information.

FURTHER INFORMATION

If you have any questions or would like more information about the review or the process for making submissions, please email familyviolencelaw@justice.govt.nz

A fresh look at our family violence laws

The rate of family violence in New Zealand is horrific.

Last year alone, more than 100,000 incidents of abuse were reported to Police – that's around one every 5 minutes. Worse still, nearly half of all homicides and reported violent crimes are family-violence related. We have the highest reported rate of intimate partner violence in the developed world and the fifth highest reported rate of child abuse.

Clearly something isn't working. We can, and must, do better.

It's true that we're dealing with a complex issue. A single action or change won't make this problem go away. That's why Prime Minister John Key launched a cross-government package of family violence measures last year and why we've established a Ministerial Group on Family and Sexual Violence to make sure government agencies are working effectively together. As part of that, the Government signalled its intention to review the Domestic Violence Act 1995. I've extended the scope of the review to look at surrounding legislation in order to get a more comprehensive view – rather than looking at individual laws in isolation.

Laws are not the whole picture. We can't legislate our way out of this. But they are a cornerstone element in how we respond to confronting family violence.

When it was passed in 1995, the Domestic Violence Act was world-leading. For the first time, it set out a clear response to family violence and distinguished it from other forms of crime. Over the years, successive Governments have modified it. But it's time for an overhaul.

We want to undertake a comprehensive re-think of the way our system of law deals with family violence to ensure the legal framework supports and guides best practice in preventing and responding to family violence, keeping victims safe and holding perpetrators to account.

This document highlights key parts of our laws, and raises ideas for how they could be improved. They are ideas to begin a discussion, not detailed proposals. But this review won't shy away from taking a hard look at our laws and raising some challenging questions. The reality is if we want different outcomes, we have to be prepared to do things differently.

As a Government, we are committed to reducing family violence and keeping victims safe, particularly women and children. We're working hard to play our part in breaking the cycle of violence within families and across generations. To do this we need world-leading, agile laws that work as part of an integrated approach across the government and non-government sectors.

Thank you for taking the time to be part of the solution. Your input and ideas are essential if we're going to get our laws working the best and start bucking the trend of family violence.

HON AMY ADAMS
MINISTER OF JUSTICE

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Safety concerns

Your safety is important. If the issues raised in this document are personal for you and you would like to talk to someone, you can contact any of the following for information or help. They are all free.

NEW ZEALAND POLICE

111

If you have immediate safety concerns for yourself or anyone else, dial 111 and ask for Police.

CHILD, YOUTH AND FAMILY

0508 FAMILY 0508 326 459

If you are worried about a child or young person, you can call the freephone number to talk to a social worker, 24 hours a day, 7 days a week.

ARE YOU OK? HELPLINE

0800 456 450

The helpline can provide you with information and put you in touch with services in your own region for those experiencing or witnessing violence, or who want help to stop being violent. The helpline operates every day of the year and is open from 9am to 11pm.

WOMEN'S REFUGE

0800 REFUGE
0800 733 843

If you're a victim or are concerned about someone you know, you can call Women's Refuge helpline for information, advice and support about family violence. The helpline is available 24 hours a day, 7 days a week.

SHINE

0508 744 633

If you're a victim of family violence or concerned about someone else, you can call Shine's domestic abuse helpline from 9am to 11pm, 7 days a week.

SHAKTI

0800 SHAKTI
0800 742 584

Shakti provides culturally specialist services for women of African, Asian and Middle Eastern descent, and their children. They can discuss safety options in other languages if English is not your first language. Their crisis line can be reached 24 hours a day, 7 days a week.

FAMILY VIOLENCE INFORMATION LINE

0800 456 450

The Family Violence Information Line can connect you with the right services to help you or just provide you with information relevant to your needs. It is available 7 days a week, from 9am to 11pm.

Introduction

Family violence in New Zealand

The high rate of family violence in New Zealand is unacceptable. We have to find better ways to reduce the incidence and impact of family violence. This discussion document seeks your views on a range of ideas, including:

- giving better guidance in law about family violence and the expectations about how government will respond
- giving more visibility in law to the population groups affected by family violence
- creating an additional pathway for victims, perpetrators and whānau who seek help to stop violence escalating, without having to go to court
- improving protection orders, including how applications are funded
- creating a new framework of family violence offences
- supporting improvements to the whole of government response to family violence.

The trauma experienced by victims can lead to long term effects for the victim, their families and society. In addition to the human and social cost, family violence has a significant economic cost – from the impact on the healthcare system through to the cost of lost productivity. These severe impacts are felt throughout society and across generations.

While much has done over many years to address this situation, family violence remains one of New Zealand's most significant social issues.

In July 2014 the Prime Minister announced a package of initiatives aimed at supporting agencies to work together to build an integrated, coordinated system for responding to family violence. The Minister of Justice and the Minister for Social Development, as co-chairs of the Ministerial Group on Family Violence and Sexual Violence, are leading this cross-government work and have initiated further work to improve the coordination of responses.

The review of family violence legislation is a central part of this work. The law underpins our response to family violence, so we need to make sure it has kept pace with local and international advances in understanding of family violence and how to address it. We need to ensure the broad set of laws that apply in this area are effective and work well together.

In this discussion document we describe the current law and some of the problems raised with it, suggest ideas for addressing these problems, and seek your views. They are not the only ideas we will consider: we want to hear all your ideas about how to ensure the law effectively supports work to address family violence. They are preliminary ideas, not a proposed package of reforms.

KEY FIGURES

We know family violence is underreported. It is estimated that just 20 percent of cases are reported to Police. It is therefore difficult to accurately identify the prevalence of family violence in New Zealand. However, figures show that:

These notes relate to the letter next to each infographic

[A] L. Turquet, Seck, P., Azcona, G., Menon, R., Boyce, C. Perron, N. & Harbour, E. (2011). Progress of the World's Women: In Pursuit of Justice. New York, NY: UN Women.

[B] New Zealand Police. (2015). Family Violence Investigations 2010–2014.

[C] Statistics. (n.d.). Retrieved from http://areyouok.org.nz/family-violence/statistics.

[D] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

[E] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

[F] Child Youth and Family. (2014). Retrieved from www.cyf.govt.nz/about-us/key-statistics/care-and-protection-notifications.html

[G] New Zealand Police. (2014). New Zealand Recorded Crime Tables: Annual Recorded Offences for the latest Calendar Years. Retrieved from http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE7405.

B

IN 2014
POLICE
responded to
>100,000
family violence incidents

C

ON AVERAGE, EVERY YEAR | **14 women, 7 men and 8 children are killed by a family member**

NEARLY HALF of all homicides & reported violent crime **are related to family violence**

D

2009–2012

Māori were 2.8 times
MORE LIKELY TO BE KILLED BY
an intimate partner THAN NON-MĀORI

E

IN 2014

child, youth and family
A service of the Ministry of Social Development

received 146,657 notifications about care & protection of children

57,889 of those were referred by POLICE

F

IN 2013
children
WERE PRESENT AT
over 63%
OF ALL **family violence incidents**
ATTENDED BY
POLICE

G

What is family violence?

Family violence is physical, sexual or psychological abuse against any person by someone with whom they have a close and personal relationship.[1] Psychological abuse includes economic and financial abuse, threats of violence, property damage and causing children to witness violence.

A large proportion of family violence is perpetrated by intimate partners, and by adults abusing and neglecting children. A distinguishing characteristic of intimate partner violence and child abuse is that the violence can be a pattern of harmful behaviours occurring over time, that can result in the victim's life being controlled by the perpetrator.

Family violence also includes abuse of parents by their children and covers abuse between siblings, and of older people by intimate partners and others. The definition can also include violence by others who may share accommodation, such as flatmates.

Appropriate and proportionate responses

Families turn to a wide range of agencies when family violence occurs. These agencies need the tools, powers and expertise to respond appropriately and proportionately to the harm victims are experiencing, achieve the outcomes they seek, and reduce the risk of violence recurring.

Many people stay in relationships where family violence has occurred. Other victims separate from the perpetrator but continue to stay in contact, particularly those who have children together. Victims may also want to stop having any contact with the violent person.

The victim or the perpetrator might seek help to prevent the violence recurring. They may also seek support from service providers in healthcare, social housing, immigration, income support, or from family violence specialists.

[1] See definition of 'domestic violence' in the Domestic Violence Act 1995, reproduced in Appendix 2.

Through the Family Court, victims can apply for protection orders to help stop violence within a continuing relationship or after separation. Victims and their families can also turn to Police, who are responsible for responding to reports of family violence offending including breaches of protection orders and other offences, such as property damage or assault.

But some people feel unable to address the violence in the relationship or to stop contact with the violent person. Barriers can include the perpetrator's coercive behaviours, such as threats of further violence if the victim stops contact, control of access to money, and isolation from support networks. Family and cultural expectations, immigration status, and lack of understanding about family violence can also constrain a victim's choices.

In any of these situations, we need to identify opportunities to support victims, perpetrators and whānau to prevent the violence recurring and prevent a pattern of violence being established. We also need to be able to identify when to take stronger action to intervene, for example where the risk of violence is high or a victim is experiencing severe harm due to an established pattern of violence.

The government's work programme on family violence

In July 2014 the Prime Minister announced a package of initiatives aimed at reducing the incidence of family violence, breaking the cycle of violence within families and across generations, keeping victims safe, and holding perpetrators to account for their behaviours.

Government progress on these initiatives includes:

- the Ministry of Justice has established a national home safety service to help victims feel safe in their homes
- the role of a Chief Victims Advisor to Government has been established
- the Ministry of Justice is leading a test of improvements to the timeliness of criminal prosecutions

- Police are leading work with other agencies to design and test a case management approach to support victims of family violence who are at highest risk of serious harm or death
- updated victim safety alarms using modern technologies have been identified for testing by Police.

Additionally, Police and the Ministry of Justice have been working with the Chief District Court Judge on how Police can provide better information to support the judiciary and assist with improved bail decisions based on offender histories and incident reporting. A draft family violence judicial summary report will provide basic information to the judiciary on: times, dates, numbers of previous family violence incidents and protection order issues and breaches.

The Justice Minister and the Social Development Minister, as co-chairs of the Ministerial Group on Family Violence and Sexual Violence (the Ministerial Group), are leading this work programme. They have also initiated further work to ensure government agencies work together in a coordinated way to deliver the right services to those affected by family violence and sexual violence.

In November 2014, to better understand current family violence and sexual violence systems, the Ministerial Group asked for a stocktake of family and sexual violence services provided by government. This stocktake showed a wide range of agencies are involved in providing family violence and sexual violence services. It also showed the direct cost to Government of these services is around $1.4 billion per annum. Most of this expenditure was on general services delivered to address the immediate impact of a violent incident. Only a small proportion is directed at specialist family violence and sexual violence services.

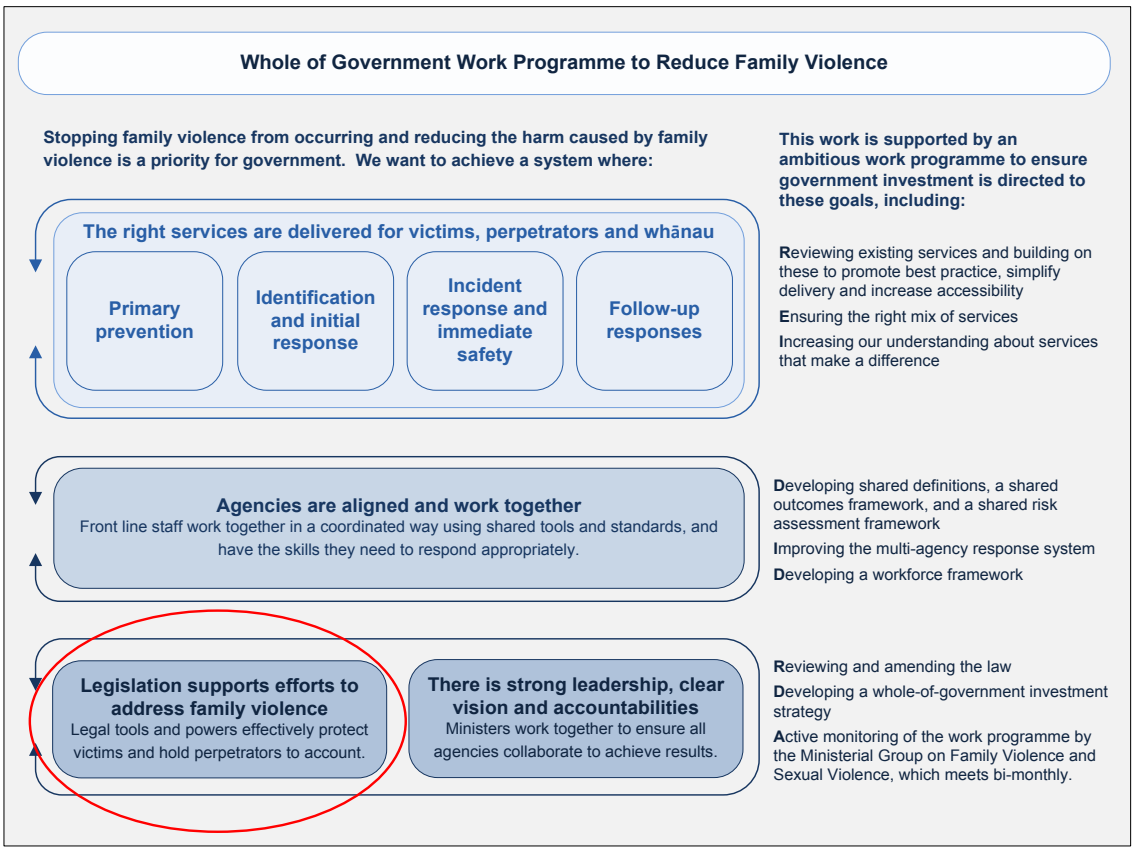
The stocktake also highlighted areas where services could be made more efficient and effective. The Ministerial Group has asked for more work to eliminate unnecessary duplication and inconsistencies in the type and quality of help available. This includes identifying, where appropriate, single agency leads for different service areas to promote best practice, and to make sure the right services are delivered to victims, perpetrators and their families and whānau.

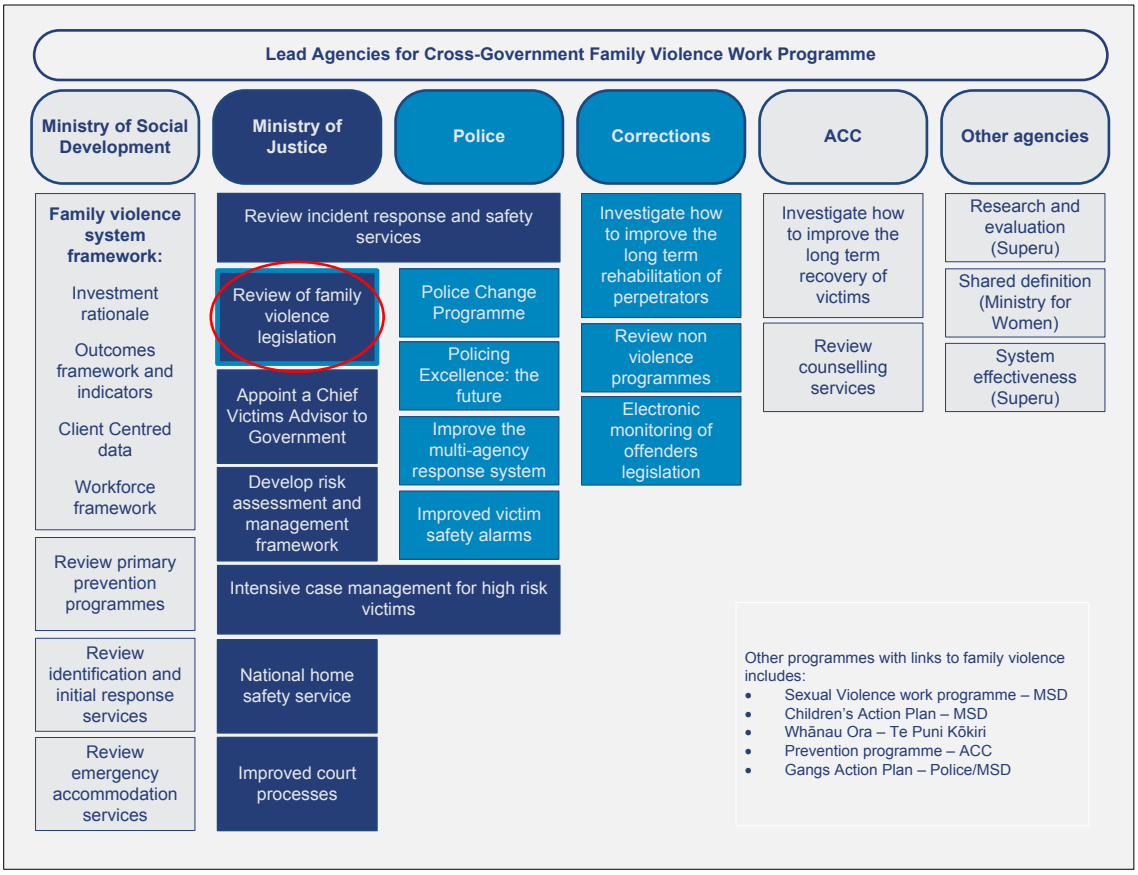
This new work is complemented by the existing wider work programme, in particular initiatives aimed at ensuring agencies have a consistent and coordinated approach to family and sexual violence. This wider work includes:

- improving local, multi-agency efforts to get better outcomes for victims, perpetrators and their families and whānau following from Police family violence reports – led by Police
- developing shared understandings of what the problems are, what outcomes we want and how we measure these – led by the Ministries for Women and Social Development
- a risk assessment framework across all services, outlining a consistent and safe approach to assessing and managing risk – led by the Ministry of Justice
- a framework to ensure service providers have the tools and competencies they need to be able to respond appropriately to those affected by family violence and sexual violence – led by the Ministry of Social Development.

The Ministerial Group is meeting every 2 months to assess progress across government agencies and to identify further opportunities to improve our family violence response system.

The diagram on the next page illustrates the Ministerial Group's approach to reducing family violence. It is looking at how to improve the whole response system, from primary prevention to longer term follow-up responses. It is also looking at how agencies delivering services can work together better.


Whole of Government Work Programme to Reduce Family Violence
Stopping family violence from occurring and reducing the harm caused by family violence is a priority for government. We want to achieve a system where:
This work is supported by an ambitious work programme to ensure government investment is directed to these goals, including:
The right services are delivered for victims, perpetrators and whānau
Primary prevention
Identification and initial response
Incident response and immediate safety
Follow-up responses
Reviewing existing services and building on these to promote best practice, simplify delivery and increase accessibility
Ensuring the right mix of services
Increasing our understanding about services that make a difference
Agencies are aligned and work together
Front line staff work together in a coordinated way using shared tools and standards, and have the skills they need to respond appropriately.
Developing shared definitions, a shared outcomes framework, and a shared risk assessment framework
Improving the multi-agency response system
Developing a workforce framework
Legislation supports efforts to address family violence
Legal tools and powers effectively protect victims and hold perpetrators to account.
There is strong leadership, clear vision and accountabilities
Ministers work together to ensure all agencies collaborate to achieve results.
Reviewing and amending the law
Developing a whole-of-government investment strategy
Active monitoring of the work programme by the Ministerial Group on Family Violence and Sexual Violence, which meets bi-monthly.


Lead Agencies for Cross-Government Family Violence Work Programme
Ministry of Social Development
Ministry of Justice
Police
Corrections
ACC
Other agencies
Family violence system framework:
Investment rationale
Outcomes framework and indicators
Client Centred data
Workforce framework
Review primary prevention programmes
Review identification and initial response services
Review emergency accommodation services
Review incident response and safety services
Review of family violence legislation
Appoint a Chief Victims Advisor to Government
Develop risk assessment and management framework
National home safety service
Improved court processes
Police Change Programme
Policing Excellence: the future
Improve the multi-agency response system
Improved victim safety alarms
Intensive case management for high risk victims
Investigate how to improve the long term rehabilitation of perpetrators
Review non violence programmes
Electronic monitoring of offenders legislation
Investigate how to improve the long term recovery of victims
Review counselling services
Research and evaluation (Superu)
Shared definition (Ministry for Women)
System effectiveness (Superu)
Other programmes with links to family violence includes:
Sexual Violence work programme – MSD
Children's Action Plan – MSD
Whānau Ora – Te Puni Kōkiri
Prevention programme – ACC
Gangs Action Plan – Police/MSD

Review of family violence legislation

The review of family violence legislation is one part of this broader family violence work programme, and is the area addressed by this document.

For this review, 'family violence legislation' includes:

- **Domestic Violence Act 1995**
  This is the key Act about family violence. The Act provides for protection orders, property orders, Police safety orders, and programmes for both victims and perpetrators of family violence.
- **Care of Children Act 2004**
  This Act supports parents to make decisions about care of their children after they have separated, including situations where family violence is occurring. The children's welfare and best interests are the first and paramount consideration in all decisions under the Act.
- **Crimes Act 1961, the Bail Act 2000 and the Sentencing Act 2002**
  These Acts and other criminal legislation set out criminal offences and their consequences, including those that may relate to family violence.

Family violence law influences and reflects society's expectations about behaviour that is considered unacceptable and how the state and communities should respond. The law also provides victims with legal tools to stop perpetrators being violent, and gives Police, courts and Corrections the powers and responsibilities to take action to ensure the tools are effective.

The Domestic Violence Act was ground-breaking when enacted in 1995. It emphasised the safety of victims, gave Police the ability to arrest for breaches of protection orders without a warrant or a complaint from the victim, focused on re-education for perpetrators and safety support for victims, and included psychological violence in the definition of 'domestic violence.'[2]

The Act has been amended several times since enactment in 1995. Social norms and expectations continue to change and new evidence about how to stop violence occurring continues to emerge. The amendments have gone some way to keeping the law up to date with these developments.

A review of the Act in 2007 largely focused on improving and expanding the existing set of tools and powers. The Domestic Violence (Enhancing Safety) Act 2009, which followed the review, gave Police the power to issue Police safety orders, removed 2 tiers of penalty for breaching a protection order, and empowered judges to issue a protection order on sentencing for family violence offences in the criminal court.

Further amendments in 2011 focused on keeping children safe, while an amendment Act in 2013 added financial and economic abuse to the definition of domestic violence, increased the maximum penalty for breaches of protection orders, and improved court-ordered family violence programmes.

The Domestic Violence Act is generally considered to be sound. However, after 20 years it is time to look more broadly at the legal response to family violence, and to assess whether it has kept up to date with developments in the understanding of family violence. There is also an opportunity to review the legislation in light of the aims of the wider work programme, such as developing a more coordinated system for responding to family violence.

The current review therefore builds on the earlier work, with the aim of assessing whether the legislative framework for family violence provides effective legal tools and powers to keep people safe and stop perpetrators being violent.

[2] A Review of the Domestic Violence Act 1995 and Related Legislation – A Discussion Document, Ministry of Justice, December 2007

Your views

This discussion document seeks your views on:

- **understanding family violence**
  Whether the legal definition of 'domestic violence' is up to date and whether principles could more clearly guide how the law is implemented
- **victim safety**
  Whether existing legal tools and powers are sufficient and effective to keep victims safe from the harm they are experiencing
- **prosecuting family violence**
  Whether existing criminal offences adequately cover family violence behaviours, whether sentencing is proportionate to the harm caused, and how victim safety should be considered at bail and sentencing
- **better services for victims, perpetrators and whānau**
  Supporting a coordinated approach to ensuring legal tools and powers are effective and responses are appropriate and proportionate.

Each part of this document discusses issues with the law's current response to family violence. These issues were identified through discussion with both government and non-government agencies in the preparation of this document. We have included some ideas for addressing these issues. These ideas do not necessarily reflect the Ministry's views but are provided to encourage discussion about options.

We are interested in your feedback on these ideas and would also like to hear any further suggestions you may have to improve the legal response to family violence. We have asked questions to guide your submission, and also invite you to comment on any other matters relating to legal tools and powers to address family violence. A list of the questions in the discussion document can be found in Appendix 1.

Matters not covered in the discussion document

The Law Commission is currently progressing work on 3 projects related to family violence:

- alternative pre-trial and trial processes to identify options for improving the court experience of complainants, including victims of family violence
- whether or how the law might address non-fatal strangulation
- whether or how changes should be made to the law of self-defence, or a partial defence introduced, for victims of family violence who are facing homicide charges.[3]

These issues are therefore not discussed in this document. If the Law Commission recommends law changes, we will consider whether those changes should be incorporated into any legislation that results from this review.

Other matters that are out of the scope of the review include the recent family justice reforms, eligibility for legal aid, the Solicitor-General's Prosecution Guidelines and funding for the organisations that provide programmes or other services.

Technical and legal drafting matters have also been omitted from this document, but may be considered during the policy development process.

[3] More information on these projects can be found at www.lawcom.govt.nz

Terminology used in this document

The family violence sector uses many different terms for different types of family violence, and the people affected by the violence. We use a common set of terms throughout the discussion document. We recognise these terms can have different meanings and the most appropriate term may change according to the circumstance.

- **Family violence** refers to the broad range of violent behaviours that can occur in a family or domestic relationship. The term 'domestic violence' is used only when referring specifically to the legal definition of domestic violence in the Domestic Violence Act.
- **Victim** refers to anyone who has been subjected to family violence. This includes applicants for protection orders, persons at risk under a Police safety order, survivors of family violence and 'primary victims'.
- **Perpetrator** refers to anyone who has acted, or is alleged to have acted, violently against someone with whom they have a domestic relationship. This includes respondents to protection orders, bound persons under a Police safety order, a person charged with or convicted of family violence offences, and 'predominant aggressors'.
- **Predominant aggressor/primary victim** The distinction between a victim and perpetrator is not always clear. Victims of ongoing abuse use a range of strategies to cope that can include violence in retaliation to the abuse. The primary victim is the person who (in the abuse history of the relationship) is experiencing ongoing coercive and controlling behaviours from their intimate partner. The predominant aggressor is the person who is the most significant or principal aggressor in an intimate partner violence relationship, and who has a pattern of using violence to exercise coercive control.[4]

[4] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee

We also acknowledge that many of the ideas in the document apply mainly to intimate partner violence, as it makes up the substantial majority of family violence. We welcome views on how the law could better address violence in other relationships.

Current family violence legal tools and powers

Existing legislation aims to give victims options: to stay in their relationship without violence, to safely end their relationship, or to end their relationship but continue to have contact in relation to children. Protection orders, property orders, Police safety orders and parenting orders are key legal tools for keeping victims and their children safe. Legal aid is available to eligible applicants under the Legal Services Act 2011.

In addition, the criminal law aims to hold perpetrators to account and provides consequences for offending.

Under the Domestic Violence Act 1995, victims of family violence can apply to the Family Court for a protection order, which requires the perpetrator to stop being violent toward them. The order also includes non-contact conditions, which the victim can suspend if they wish.

When a protection order is made, the perpetrator is usually required to go to a non-violence programme and the victim is offered safety services. The perpetrator also has to surrender any firearms.

The courts can add other conditions to a protection order, such as how contact with children will work.

If a perpetrator breaches any condition of their protection order, Police can arrest them without a warrant and without a complaint by the victim. If arrested, a perpetrator must be held for at least 24 hours before they can be granted bail, and Police can set bail conditions under the Bail Act 2000. When a court considers bail for someone who has breached a protection order, the most important consideration is the protection of the victim.

The penalty for breaching a protection order is up to 3 years in prison. Police can prosecute a perpetrator for other general crimes in the Crimes Act 1961, such as common assault, male assaults female or property damage. Judges in eight New Zealand District Courts have implemented streamlined processes in Family Violence Courts for criminal cases involving family violence.

Victims are also supported by property orders, which say who can live in the family home. If a perpetrator breaches a property order, they can be arrested for trespass.

When Police think a person is at risk, they can issue a Police safety order, which requires the perpetrator to comply with non-violence and non-contact conditions like those in a protection order and which lasts up to five days. Police can ask a court to issue a protection order if the perpetrator breaches a Police safety order.

If parents are separating, decisions about care and contact with children are usually made under the Care of Children Act 2004. The children's welfare and interests are the most important consideration in all decisions under the Act. In deciding what is in the child's welfare and interests, the Family Court must consider a number of principles, including that the child must be protected from violence. The Court must take into account any existing protection order, and can specify that contact with the perpetrator must be supervised.

The Children, Young Persons, and Their Families Act 1989 also protects children who are suffering harm, including harm by family members. Ill-treatment and failure to protect a vulnerable child or adult are offences under the Crimes Act 1961.[5] A Family Court that is hearing care of children or protection order proceedings can notify Child, Youth and Family if they consider a child may be in need of care and protection.

LEGISLATIVE FRAMEWORK: OVERVIEW

What changes to legal tools and powers would ensure the law keeps pace with advances in understanding of family violence and how to address it?

[5] Sections 195 and 195A, Crimes Act 1961

1. Understanding family violence

Understanding the nature and dynamics of family violence is vital to providing effective services to victims, perpetrators and whānau

1.1. This section seeks your views on whether the legal definition of 'domestic violence' is up to date and whether principles could more clearly guide how agencies use the legal tools and powers to protect victims and hold perpetrators to account.

1.2. It focuses in particular on patterns of abuse and coercive control, and the dynamics of family violence in different population groups.

Coercive control and patterns of abuse

1.3. Family violence, particularly against intimate partners, is often a pattern of abuse underpinned by the dynamics of power and control. Termed 'coercive control', perpetrators use controlling or intimidating behaviours to undermine the autonomy of the victim and make them fear for their safety. Coercive control can be physical, sexual and/or psychological. The behaviours may appear minor and trivial when considered in isolation, but have a cumulative effect that causes significant harm.

1.4. Coercive control is a risk factor for violence that escalates to severe injury or death. It commonly escalates over the course of the relationship, and can escalate through the subsequent relationships of a single perpetrator.

1.5. Effective responses need to identify when a single episode, that might appear trivial on its own, is part of a coercive pattern of abuse.

The nature and dynamics of family violence across population groups

1.6. People across all age groups, economic levels, ethnic backgrounds and across all kinds of relationships experience family violence. However, some people's characteristics, socio-economic status or environments may increase the risk, incidence and severity of family violence. Effective responses to family violence must consider the particular risks and needs of the people concerned, and the need for culturally responsive initiatives and services.

WOMEN AND CHILDREN

1.7. Gender is a significant risk factor for victimisation and harm across all forms of family violence. The substantial majority of intimate partner violence involving coercive control occurs against women. Young women are particularly vulnerable, and the risk of victimisation is increased further when young women have children.

1.8. Women and men experience intimate partner violence differently. Female victims are more likely than male victims to experience severe physical and psychological harm. Female victims are far more likely to report experiencing severe harm as a result of intimate partner violence, and report being significantly affected at twice the rate of male victims.[6] Women who live with gangs are at greater risk of more frequent and severe violence.[7]

[6] Morrison, B., Smith, M. & Gregg, L. (2010). The New Zealand Crime and Safety Survey: 2009. Wellington, New Zealand: Ministry of Justice.

[7] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

1.9. Girls who are victims of violence are far more likely to be re-victimised later in their lives than those who were not victims. A substantial number of women in abusive relationships experience repeat and multiple forms of violence throughout their lives.

1.10. Intimate partner violence and child maltreatment are closely linked. Children can be both the direct victims of violence and witnesses of violence against others, most likely a parent. Both forms of abuse have serious negative psychological and developmental consequences for children.[8] Children who are victims of family violence are at greater risk of becoming perpetrators of family violence themselves.[9]

1.11. An increasing number of countries have developed strategies specifically aimed at reducing violence against women and children. The strategies typically include measures to address a range of forms of violence against women and children, including intimate partner violence and sexual violence. They emphasise the need for responses to recognise the gendered nature of these forms of violence and the influence of social attitudes about the status of women on the incidence and nature of violence.

MEN

1.12. Men's experiences as victims of family violence are often different from the experiences of women. Male victims of intimate partner violence tend to report that they are not living in an ongoing state of fear from the perpetrator, and experience violence that is far less severe than in male-to-female violence. Men more frequently experience other forms of violence, such as sibling violence. Men may face particular social and cultural barriers to reporting the violence and a lack of services tailored to their needs.[10]

MĀORI

1.13. Māori are disproportionately represented as both victims and perpetrators. Māori women are twice as likely as other women to experience family violence. The rates per year of Māori victims and offenders in intimate partner violence, and child abuse and neglect homicides were significantly higher than those of non-Māori.[11]

1.14. The causes of family violence within whānau Māori are complex and difficult to isolate. Compounded disadvantage rather than individual risk factors may underlie the risks of wāhine and tamariki Māori being victims of family violence and tāne Māori being apprehended and convicted of a family violence offence. These may include poverty, social marginalisation, racism, historical trauma and unemployment.[12]

1.15. Taking a holistic approach is important for addressing family violence in whānau Māori. Providing members of the whānau with support, education and advice that enables restoration of the mana in whānau rather than solely focusing on an individual or a couple may be most effective for whānau.[13] A stable whānau is an important protective factor in the prevention of tamariki and wāhine Māori maltreatment.[14] Services for Māori should recognise cultural needs and continue to shift to a whānau-based delivery model grounded in tikanga.

[8] Bagshaw, D. & Brown, T. (2010). Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006, (2). Canberra, ACT: Attorney-General's Department.

[9] Kitzmann, K.M., Gaylord, N.K., Holt, A.R. & Kenny, E.D. (2003). Child Witnesses to Domestic Violence: A Meta-Analytic Review. Journal of Consulting and Clinical Psychology, 71(2), 339-352.

[10] Mulroney, J. & Chan, C. (2005). Men as Victims of Domestic Violence. Sydney, NSW: Australian Family and Domestic Violence Clearinghouse.

[11] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee; Herbert, R. & Mackenzie, D. (2014). The way forward: An integrated system for intimate partner violence and abuse and neglect in New Zealand

[12] Ministry of Social Development. (2002). Te Rito: New Zealand Family Violence Strategy. Wellington, New Zealand: Ministry of Social Development.

[13] For more, see E Tu Whānau Programme of Action for Addressing Family Violence 2013-2018, Māori Reference Group, MSD. 2013.

[14] Dobbs, T. & Eruera, M. (2014). Kaupapa Māori wellbeing framework: The basis for whānau violence prevention and intervention. Auckland, New Zealand: New Zealand Family Violence Clearinghouse.

PACIFIC AND ETHNIC MIGRANT COMMUNITIES

1.16. Pacific peoples[15] and ethnic migrant communities also experience higher rates of family violence than the general population. These groups can face distinct socio-economic, cultural and practical barriers that may make it more difficult to seek help.

1.17. For example, migrants may feel trapped in abusive relationships by cultural expectations, if their residency status is connected to their spouse, or if they face language barriers. Victims from migrant families may also lack access to finances and be isolated from the community. Immigration New Zealand has a special category for victims of family violence whose partner is a New Zealand citizen or resident visa holder. A victim of domestic violence may be granted legal immigration status independently from their partner's, if the applicant intended to seek residence on the basis of the partnership, and the partnership ended through domestic violence.

1.18. Living arrangements in some migrant communities where the household is made up of intergenerational family groups (for example a married couple living with the husband's parents) may create additional elements of coercion that may result in family violence.

[15] For a cultural framework for addressing family violence in seven Pacific communities in New Zealand, see Nga Vaka o Kāiga Tapu The Pacific Conceptual Framework, Pacific Advisory Group, MSD, 2012.

OLDER PEOPLE

1.19. Older people may rely on others for day-to-day care, creating a potential for abuse and neglect. Older people may be at risk of financial abuse by family members, while the perpetrator may also be financially and emotionally dependent on the older person.[16] Older men and older women are at risk of being abused, although older women are at greater risk from intimate partner violence. It is estimated around 17,500 cases of elder abuse and neglect will occur in New Zealand each year.[17]

1.20. The ethnic composition of our population aged 65 years and over is changing with significant increases forecast for Asian, Māori and Pacific populations. By 2038 the Asian share will be 13 percent, Māori share will be 10 percent and Pacific share will be four percent.[18] This will have significant implications for effectively reducing elder abuse.

DISABLED PEOPLE

1.21. Like older people, disabled people can be vulnerable and may rely on others for day-to-day care, increasing the risk of family violence. Where the perpetrator is a carer with whom they do not have a family relationship, a disabled person might not have protections under family violence law.[19]

1.22. Māori have the highest disability rate by ethnicity (age adjusted) at 32%, compared with 26% for Pacific peoples, 24% for European, and 17% for Asian.[20] Any policy proposals will consider the specific needs of disabled people and by ethnicity.

[16] Glasgow, K. & Fanslow, J.L. (2006). Family Violence Intervention Guidelines: Elder Abuse and Neglect. Wellington, New Zealand: Ministry of Health.

[17] Based on 2.7% resident population 65+ as at 30 June 2014.

[18] Statistics New Zealand (2015, p. 10). National Ethnic Population Projections: 2013 (base)-2038

[19] Grammer, B., Russell, D. & Van Eden, K. (2013). Putting People First: A Review of Disability Support Services Performance and Quality Management Processes for Purchased Provider Services. Wellington, New Zealand: Ministry of Health.

[20] Statistics New Zealand (2014, p. 4). Disability Survey: 2013.

LGBTI ABUSE

1.23. Lesbian, gay, bisexual, transgender and intersex people may also be more vulnerable to intimate partner violence due to discrimination and the use of threats to 'out' individuals to control their behaviour.

THE NATURE AND DYNAMICS OF FAMILY VIOLENCE ACROSS POPULATION GROUPS

What changes could be made to address the barriers faced by each population group?

Does the current legal framework for family violence address the needs of vulnerable population groups, in particular disabled and elderly people? How could it be improved to better meet the needs of these groups?

What changes could be made to better support victims who are migrants, particularly when immigration status is a factor?

What other ideas do you suggest?

Updating the legal definition of 'domestic violence'

1.24. The legal definition of domestic violence is set out in the Domestic Violence Act (see Appendix 2). The definition has been amended a number of times since its introduction in 1995. Most recently, it was amended by the Domestic Violence Amendment Act 2013 to include financial and economic abuse within the meaning of psychological abuse.

1.25. We seek your views on how the legal definition could be changed to reflect developments in how we understand family violence.

1.26. In addition the Ministry for Women, as part of the whole of government work programme, is developing a shared definition of family violence, which will be used to ensure policy makers and service providers are consistently categorising family violence.

1.27. One idea is to more clearly explain the concept of 'coercive control'. While the current definition recognises patterns of abuse and psychological violence, it does not clearly explain coercive control. This may mean opportunities to intervene are being missed, because the significance of each episode is underestimated.

1.28. Another idea is to change the title of the Act and legal definition from 'domestic violence' to 'family violence'. This could address concerns that the general understanding of domestic violence is often limited to intimate partner violence. It could better recognise the multiple forms of family violence, including the impacts on children, bringing the terminology in line with accepted practice internationally. 'Family violence' could also respond to concerns raised by some Māori groups that the current term does not adequately acknowledge the role and dynamics of broader whānau relationships in family violence situations.

1.29. The definition of domestic violence could be extended to explicitly include the abuse of a family pet, where the abuse or threat of abuse is intended to intimidate or harass a family member. This change would make it clear that psychological abuse of a person includes harm or the threat of harm to a family pet. Changing the law in this way would support a growing body of evidence that links abuse of animals to coercive or controlling behaviour.[21]

Including principles in the law

1.30. The Domestic Violence Act aims to reduce and prevent violence in domestic relationships by:

- 'recognising that domestic violence, in all its forms, is unacceptable behaviour; and
- ensuring that, where domestic violence occurs, there is effective legal protection for its victims.'[22]

1.31. The Act aims to achieve these objects by, for example, 'ensuring access to court is as speedy, inexpensive, and simple as is consistent with justice', and by providing for more effective sanctions for breaches of protection orders. Courts, Police or anyone else who makes decisions under the Act must be guided by the object. The object of the Domestic Violence Act has not been changed since its enactment. It contains high level statements that are limited to decisions under the Act.

1.32. Unlike other laws, such as the Care of Children Act 2004, the Act does not provide a comprehensive set of principles about how decisions should be made. Other countries have included principles in their family violence legislation. For example, the preamble to the Family Violence Protection Act 2008 in Victoria, Australia, recognises that:

- non-violence is a fundamental social value that must be promoted
- family violence is a fundamental violation of human rights and is unacceptable in any form
- family violence is not acceptable in any community or culture
- the justice system should treat the views of victims of family violence with respect.

1.33. One idea is to include principles in law that emphasise developments in the understanding of family violence. For example, principles could recognise:

- the harm caused by coercive control and the need to recognise episodes of family violence as part of a broader pattern of behaviours
- the different nature and dynamics of family violence across population groups
- the link between forms of violence, for example between intimate partner violence and child abuse and neglect.

1.34. Another idea is to include principles that guide how agencies respond to family violence. Including principles in law may also support judicial decision making in family violence cases. For example, principles could recognise:

- the need for agencies to recognise and be able to effectively respond to abusive power and control in family relationships
- the need for agencies to coordinate their responses to family violence and ensure their workforce is capable of responding appropriately
- the value of taking a holistic approach to ensure the impacts on the whole family and whānau are addressed
- the importance of culturally responsive initiatives and services
- the importance of working with perpetrators to stop the violence.

1.35. Any principles would need to align with the other legislative principles that apply in family violence cases, for example, under the Care of Children Act 2004.

[21] Roguski, M. (2012). Pets as Pawns: The Co-existence of Animal Cruelty and Family Violence. Wellington: Kaitiaki Research and Evaluation.

[22] Section 5, Domestic Violence Act 1995

DEFINITION OF 'FAMILY VIOLENCE'

What changes to the current definition of 'domestic violence' would ensure it supports understanding of family violence and improves responses?

For example:

- more clearly explain the concept of 'coercive control'
- use the term 'family violence' instead of 'domestic violence'
- include the abuse of a family pet, where the abuse or threat of abuse is intended to intimidate or harass a family member.

What other ideas do you suggest?

GUIDING PRINCIPLES

How would guiding principles affect how the Domestic Violence Act and other legislation is implemented? What principles would you suggest?

How could including principles in the law reflect the nature and dynamics of family violence?

For example:

- include principles emphasising developments in the understanding of family violence
- include principles that guide how agencies are expected to respond to family violence, including particular population groups.

What other ideas do you suggest?

CONSULTATIONS.JUSTICE.GOVT.NZ

2. Victim safety

Legal tools and powers should be effective at keeping victims safe, and suit their individual needs.

2.1. This section seeks views on whether existing legal tools and powers are sufficient and effective to keep victims safe. It covers:

- protection orders
- property orders
- Police safety orders
- keeping children and adult victims safe in parenting arrangements.

2.2. The effectiveness of these legal tools and powers will also be improved by initiatives in the wider work programme, particularly the coordination of agency responses.

Protection orders

2.3. Victims should face minimal barriers when applying for protection orders. They need enforcement of protection orders to be consistent and effective to stop perpetrators being violent.

PROTECTION ORDERS UNDER THE CURRENT LAW

2.4. A protection order is a victim's key legal tool to stop a perpetrator being violent. An order initiates non-violence programmes for perpetrators and safety programmes for victims. Police can arrest a perpetrator without a complaint from the victim and without a warrant if there is evidence a protection order has been breached.

2.5. Anyone who experiences violence in a domestic relationship can apply to a Family Court for a protection order, which gives them legal protection from further family violence. The person subject to the order (the respondent) must not be violent to the person who applied for the order (the protected person) and any children who live with them. Where the parties are living apart, the order prohibits the respondent from contacting the protected person without the latter's consent.

2.6. A court may make a protection order if it is satisfied that violence is being, or has been, used against the victim or a child, and the order is necessary for their protection.[23] If the situation is urgent, a victim can apply for a Family Court judge to make a temporary protection order. The court will not notify the perpetrator until the order has been made. The perpetrator then has three months to contest the order or it becomes a final order.

2.7. If the situation is not urgent, the victim can make an 'on notice' application for a final protection order. The perpetrator is informed and has the opportunity to go to court to make their case for why the judge should not make the order. Once an order is final, it never lapses.

2.8. When an order is granted, the respondent will also usually be required to attend a non-violence programme. Safety programmes are also available for victims and their children.[24]

2.9. As protection orders are civil orders, they will not appear on a record of criminal convictions. Police can refuse to issue a person with a firearms licence if a protection order has been issued, or there are grounds to issue an order against that person. The Environmental Protection Authority must consider any protection order issued against an applicant for a licence to possess hazardous substances.[25]

[23] Section 14, Domestic Violence Act 1995

[24] Safety programmes and non-violence programmes are not within the scope of the review, as amendments to these sections came into force recently. Minor and technical adjustments may be proposed as a result of this review. However the review will look at when and how referrals to services can be made.

[25] Clause 6B, Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001

CASE STUDY

Protection orders – Accessibility

Lisa has been living with her partner Todd for over a year. Lisa is becoming increasingly scared by Todd's behaviour towards her. He has a temper and is quick to yell and curse at Lisa, and has threatened to hurt her.

Lisa knows Todd's behaviour is wrong and that she is in a dangerous situation. She has looked at the protection order application forms online, but they are long and complicated. Lisa isn't confident about what information to put in her application, or whether she will be able to explain her fears to the judge. It seems like it will be an expensive and complicated process. She's not sure if she can afford a lawyer.

This example illustrates some of the barriers that victims may face when considering whether to apply for a protection order.

ACCESSIBILITY OF PROTECTION ORDERS

2.10. The cost of legal advice and representation can be a barrier to applying for a protection order. It is generally recommended that a victim use a lawyer to apply for a protection order. A lawyer can help the victim to provide the information judges need to make an informed decision, and may make it quicker for the victim to put together an application.

2.11. The complexity of the application forms may contribute to the cost of advice. The forms will be revised as part of this review.

2.12. Most people who apply for legal aid will receive support. Eligibility is based on the applicant's annual income and assets.[26] Applicants for a protection order do not usually need to repay legal aid.[27] In exceptional circumstances, the Legal Services Commissioner may require repayment. However, the Commissioner has the ability to decide not to recover debts, and can write off legal aid debts if circumstances change. If the case involves other Family Court proceedings, such as division of relationship property, repayments may be required for that part of the case. About 75% of all grants of legal aid have the debt waived.

2.13. One idea is to provide applicants with more assistance during the application process. This could include providing more assistance with filling out application forms, assistance from Police in gathering evidence, or increased access to funded legal advice. Increased access to funded legal advice could be provided in different ways. For example through:

- establishing a dedicated fund
- community legal advice services such as Community Law Centres
- the Family Legal Advice Service, which currently funds the provision of a discrete amount of initial legal advice to parties resolving parenting arrangements.

2.14. Another idea is to provide more opportunities for others to apply for a protection order on a victim's behalf. Some jurisdictions such as Victoria, Australia give Police a more significant role in protection order applications. Police may apply for an intervention order (equivalent to a protection order) either with or without the victim's consent. If the application is without victim consent, a smaller range of conditions can be included in the order. Applications by Police mean the victim does not need to go through the application process themselves and does not face costs.

2.15. In New Zealand we could explore empowering Police, or an approved NGO or iwi service provider to apply for a protection order on a victim's behalf. This could be with the victim's consent, or where the victim does not object to the application. Applications made by third parties could help to shift the responsibility away from the victim, and may reduce pressure being applied to the victim by the perpetrator.

RESPONSES TO BREACHES OF PROTECTION ORDERS

2.16. Victims need to be confident that protection orders will help keep them safe. Perpetrators are more likely to stop being violent if they know breaches will result in an appropriate and consistent response, including arrest and successful prosecution.

2.17. Police are responsible for responding to breaches of protection orders. The Domestic Violence Act says Police may arrest, without warrant, anyone they have good cause to suspect has contravened, or failed to comply with, any condition of a protection order.[28] When a breach is reported, Police decide whether to arrest and prosecute. If convicted, the perpetrator can be imprisoned for up to three years (increased from two years in 2014).

2.18. Victims might delay applying for a protection order if they do not think it will be enforced, in particular in cases of psychological abuse such as intimidation or unwanted contact.

[26] Applicants for protection orders are more likely to receive legal aid than for other civil and family proceedings.

[27] Section 19, Legal Services Act 2011

[28] Section 50, Domestic Violence Act 1995

ARREST

2.19. We seek your views on ways to achieve more consistency in arrest practice.

2.20. One idea is that Police be required to arrest for all breaches of protection orders when there is sufficient evidence to arrest and charge. Removing Police discretion about whether to arrest when a protection order has been breached could lead to a more consistent response to breaches.

2.21. Police policy is to arrest and file charges for all breaches that meet the Solicitor-General's prosecution guidelines.[29] Making arrest mandatory by law would be a departure from longstanding principles of Police independence. In addition, mandatory arrest could discourage victims from calling the Police if they want the violence to stop, but do not want the perpetrator arrested and charges laid. It could also significantly reduce the use of Police safety orders, as these cannot be issued where an arrest has been made.

FILING CHARGES

2.22. Police are currently looking at how they can improve the prosecution of breaches of protection orders. For example, they are considering how they can improve the collection of evidence by using video statements recorded at the scene. Legislative amendments may be required to allow video footage to be used as evidence in prosecutions.

2.23. In the United Kingdom, Police in 2013 began trialling the use of visual and audio footage of an incident. When family violence incidents are captured on video, victims are no longer required to give a statement as evidence and it becomes harder for perpetrators to deny any wrongdoing. An initial trial showed that issuing officers with recording devices could be effective in increasing the proportion of incidents resulting in a criminal charge.[30]

[29] See Solicitor-General's Prosecution Guidelines 2013, www.crownlaw.govt.nz

[30] Owens, C. Mann, D. & Mckenna, R. (2014). The Essex Body Worn Video Trial: The impact of Body Worn Video on criminal justice outcomes of domestic abuse incidents. Essex: College of Policing.

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ACCESSIBILITY OF PROTECTION ORDERS

What changes would you suggest to improve access to protection orders?

For example:

- increase funding for applications for protection orders
- provide more opportunities for others to apply for protection orders on victims' behalf.

What other ideas do you suggest?

EFFECTIVENESS OF PROTECTION ORDERS

What changes could enhance the effectiveness, use and enforcement of protection orders?

For example:

- require Police to arrest for all breaches of protection orders, where there is sufficient evidence.

What other ideas do you suggest?

Property orders

2.24. The legal tools to address victims' immediate accommodation needs should be effective.

2.25. Services such as refuges can provide emergency housing to address victims' immediate housing needs. However, a victim's concerns about having somewhere to live in the long-term and maintaining stability of housing for children can be barriers to ending family violence. Victims can face financial hardship due to relocation costs, including replacing furniture and appliances.

2.26. The Government has recognised accommodation issues faced by victims by funding initiatives like the National Home Safety Service. The Service supports high risk victims to stay in their homes by ensuring the properties are secure.

PROPERTY ORDERS UNDER THE CURRENT LAW

2.27. Property orders are legal tools that address victims' needs for safe accommodation by excluding a perpetrator from a jointly-owned house or flat. They set out who can live in a particular jointly-owned or leased home and who keeps the furniture and appliances.[31]

2.28. A property order will be granted if the Family Court is satisfied it is necessary for the protection of the victim or it is in the best interests of the children. A temporary property order can be made without notice if the respondent has physically or sexually abused the victim or their children and if delay might lead to further abuse. Property orders can be made where there is no protection order in place.

2.29. The order allows the victim to exclude the perpetrator from the property. If the perpetrator does not leave, the victim can apply to the District Court to have them removed. Police can also charge the perpetrator with trespass.

EFFECTIVENESS OF PROPERTY ORDERS

2.30. Since they were introduced, little attention has been given to the effectiveness of property orders and whether they help stop family violence and keep victims safe. Breaches of property orders are rarely reported, but it is unclear whether this is due to a low breach rate or low reporting. The impact on the excluded perpetrator is also unclear, as they may not have suitable alternative accommodation. The court must take into account the reasonable accommodation needs of all the parties.[32]

2.31. The consequences of breaches are also unclear. Having to reapply to the District Court to enforce the order may be difficult for people who are in the process of leaving a violent relationship.

2.32. We seek your views on how property orders can be made more effective. One idea could be to require judges to consider accommodation needs when making protection orders and to make property orders proactively when they consider appropriate. The enforcement mechanisms could also be simplified.

PROPERTY ORDERS

What changes would enhance the effectiveness, use and enforcement of property orders?

For example:

- **require judges to consider accommodation needs when making protection orders and to make property orders more proactively**
- **simplify enforcement mechanisms.**

What other ideas do you suggest?

[31] Part 3 (sections 52-75), Domestic Violence Act 1995

[32] Section 53(4), Domestic Violence Act 1995

Police safety orders

2.33. Police safety orders should protect victims from the immediate risk of family violence.

POLICE SAFETY ORDERS UNDER THE CURRENT LAW

2.34. Police can issue a Police safety order at a family violence incident when they think removing the perpetrator is necessary for a victim's safety. A Police safety order requires the perpetrator to leave the property and mirrors the conditions of a protection order. A Police safety order lasts for a maximum of five days, with no right of appeal. The officer can issue the order without the consent of the victim. Roughly 1,000 Police safety orders are issued each month.

2.35. Police safety orders are intended to provide a cooling-down period to prevent further violence. They are also intended to create an opportunity to provide support to the victim and time for the victim to seek other types of protection, such as a protection order.

If the perpetrator does anything that is not permitted by the Police safety order, Police can take the person into custody and put them before the Court. The Court may:

- release the bound person without any further order
- direct Police to issue another Police safety order
- issue a Temporary Protection Order (if the person at risk does not object).

2.36. No criminal convictions result from the issue of a Police safety order. Police published an evaluation of Police safety orders in May 2015.[33] The evaluation shows that, in general, they have been well received by Police and the community and are increasing the immediate safety of victims and their children. However, it also shows that there are some areas that need improvement, for example:

- better access to support and services for both victims and perpetrators
- a more consistent approach to issuing the orders
- better identification of and response to breaches
- complete recording of all family violence investigations.

OPPORTUNITY TO ADDRESS THE RISK OF FURTHER VIOLENCE

2.37. We seek your views on how the law could address the issues identified by the evaluation, in particular, improving access to support and services for victims and perpetrators.

2.38. The likelihood of the perpetrator breaching a Police safety order may be reduced by providing the perpetrator with somewhere to live. Victims could be referred to safety services at the time the order is issued.

2.39. If the victim does not apply for a protection order, the perpetrator is entitled to return home once the Police safety order has expired. One idea to ensure continuity of protection is for Police or a third party to support the victim to apply for a protection order when a Police safety order is issued. Another idea is for Police to apply for a protection order on the victim's behalf (if the victim consents, or does not object). This would provide the victim with ongoing legal protection after the Police safety order ends, as well as access to safety programmes.

[33] Mossman, E., Kingi, V. & Wehipeihana, N. (2014). An Outcome Evaluation of Police Safety Orders. Wellington, New Zealand: New Zealand Police.

POLICE SAFETY ORDERS

What changes might enhance the effectiveness, use and enforcement of Police safety orders?

For example:

- require Police to refer a perpetrator to services, such as short-term housing
- empower Police or a third party to support the victim to apply for a protection order, or apply on behalf of a victim, when a Police safety order is issued (if the victim consents, or does not object).

What other ideas do you suggest?

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Keeping children and adult victims safe in parenting arrangements

2.40. Parenting arrangements should acknowledge risk to adult victims of family violence, while ensuring the interests of the child are paramount.

2.41. This section seeks views on how parenting arrangements could better reflect the risk of family violence to children and to adult victims. The law could be amended to address the safety needs of both the child and a parent who is escaping family violence by separating from a violent partner.

FAMILY VIOLENCE AND PARENTING ARRANGEMENTS UNDER CURRENT LAW

2.42. When parents separate, the whole family is affected. The recent family justice reforms encourage parents to focus on the needs of their child during separation, and assist parents to agree arrangements for parenting through services such as Parenting Through Separation and Family Dispute Resolution.

2.43. While this approach works for many parents, it may not be appropriate when there has been family violence, particularly when one parent feels unsafe around the other, or if one parent tries to control the other. Ensuring the safety of an adult victim who is the primary carer is one of the most important protective factors for a child.[34]

2.44. Controlling and coercive behaviours that often characterise violence between partners can continue or become worse after separation. There is a risk that perpetrators can use parenting arrangements to continue to abuse the adult victim.[35] For example, the risk for adult victims and the child is elevated during the hand-over of the child for contact.[36]

2.45. If either parent alleges family violence has occurred or is likely to occur, the Family Court can be asked to make a decision on parenting arrangements for a child.

2.46. The welfare and best interests of the child are the first and paramount consideration of the Family Court in all proceedings under the Care of Children Act.[37] As part of considering the welfare and best interests of the child, the Family Court must take into account principles including:

- a child's safety must be protected, in particular from all forms of violence,[38] including protecting the children from seeing or hearing violence against his or her parent[39]
- a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order
- a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened.

2.47. If the Family Court is not satisfied children will be safe with a parent or guardian, it can specify that contact between the children and that person be supervised.[40] It can also limit the nature, duration, and frequency of contact.[41]

2.48. When the Family Court assesses a child's safety needs, it must consider any relevant protection orders.[42] However, while the Court must consider the circumstances and reasons for a protection order, the Court can still set contact arrangements that are inconsistent with the terms of the protection order. For example, the Court can require an adult victim of family violence to be in contact with the perpetrator on a regular basis to facilitate the perpetrator's contact

[34] Campo, M., Kaspier, R., Moore, S. & Tayton, S. (2014). Children affected by domestic and family violence: A review of domestic and family violence prevention, early intervention and response services. Melbourne, VIC: Australian Institute of Family Studies.

[35] Laing, L. (2010). No way to live: women's experiences of negotiating the family law system in the context of domestic violence. Sydney, NSW: University of Sydney & Benevolent Society.

[36] Ibid.

[37] Section 3 Care of Children Act 2004.

[38] Section 5 Care of Children Act 2004.

[39] Section 3 Domestic Violence Act 1995.

[40] Section 59 Care of Children Act 2004.

[41] Section 48 Care of Children Act 2004.

[42] Section 5A Care of Children Act 2004.

with the child, despite the adult victim being protected by non-contact conditions in a protection order.

2.49. The Family Court must also consider whether it should make conditions to protect a parent who has day-to-day care of the children (protective conditions), while the perpetrator's contact with the child takes place. This includes considering when and how children are collected from or returned to a parent at risk of violence.[43]

2.50. However, this requirement on the Court to consider protective conditions is limited to situations where one parent or the child has been physically or sexually abused by the other parent.[44] It does not currently require consideration of psychological violence, including behaviour designed to intimidate, harass and control a victim, which can cause significant harm to the adult victim and the child.

IDEAS FOR IMPROVING PARENTING ARRANGEMENTS

2.51. The law could give clearer direction to courts to consider the potential for parenting arrangements to expose the child and adult victim to further violence. The wellbeing and best interests of the child would continue to be the paramount consideration.

2.52. One idea is to amend the law to clarify that a child's safety from all forms of violence is to be given greater weight and be a primary consideration. It could become a component of the paramount principle, so when the Court is considering the child's welfare, it must consider whether that child is safe from violence ahead of other considerations. The other considerations would become secondary.

2.53. Other ideas to reduce the risk of exposing the child and adult victim to further violence include:

- Requiring parenting orders to be consistent with any existing protection order. In Australia judges are required to ensure parenting orders are consistent with any existing protection order and they do not expose non-abusive parents to an unacceptable risk of family violence.[45]
- Giving courts broader discretion to consider risk to the safety of the child and to an adult victim when deciding parenting arrangements. This would include cases where no protection order is in place, and when the violence has not been physical or sexual. For example, in Australia, in addition to being in a child's welfare or best interests, parenting arrangements must also be 'reasonably practicable' to both parents involved. One view is it is not 'reasonably practicable' for children to spend substantial periods of time with both parents in circumstances where one parent is fearful of the other, or where parents' interactions are characterised by family violence.[46]

2.54. These ideas may raise some discussion about the extent to which the safety of a parent is taken into account when considering what is in the best interests of a child. There may also be concerns raised about the risk that protection orders will be used for tactical advantage, and re-litigation of protection orders through Care of Children Act 2004 proceedings.

2.55. The extent to which the focus of the child's safety and well-being is linked to a parent's safety may also raise questions about what role Child Youth and Family should play in cases where the risk of violence to a non-violent parent increases the risk to a child.

[43] Section 51 Care of Children Act 2004.

[44] Section 51 Care of Children Act 2004.

[45] The National Council to Reduce Violence against Women and their Children. (2009) Domestic Violence Laws in Australia. Canberra, ACT: Attorney-General's Department.

[46] The National Council to Reduce Violence against Women and their Children. (2009) Domestic Violence Laws in Australia. Canberra, ACT: Attorney-General's Department.

CASE STUDY

Safety and parenting arrangements for children

After months of criticising and threatening to hurt her, Olivia's husband Nathan grabs her throat and tries to strangle her. The next day, while Nathan is out visiting friends, she leaves with their two sons and moves in with her parents. She applies for and is granted a protection order, which prevents Nathan from having any contact with her.

Nathan applies to the Family Court under the Care of Children Act 2004 for joint day-to-day care of the boys. He sends her text messages saying 'she will regret it' if she opposes his application. She is worried that if he is granted joint day-to-day care she will be forced to meet him regularly to exchange the children, and that he will use the opportunity to continue to scare and abuse her, despite the protection order.

During the settlement conference Olivia feels pressured to agree to Nathan having joint care of the children because it's clear other people think it's important that the children see their father who has never physically harmed them. She agrees to Nathan having joint day-to-day care, despite her fears for her own safety.

FAMILY VIOLENCE AND PARENTING ARRANGEMENTS

How should risks to children and to adult victims be reflected in parenting arrangements under the Care of Children Act 2004? How could parenting orders and protection orders be better aligned?

For example:

- clarify that a child's safety from all forms of violence is to be given greater weight and be a primary consideration
- require parenting orders to be consistent with any existing protection order
- courts could be given broader discretion to consider risk to the safety of the child and to an adult victim when deciding parenting arrangements.

What other ideas do you suggest?

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3. Prosecuting family violence perpetrators

The criminal law should respond effectively to family violence behaviours and hold perpetrators to account.

3.1. The criminal law is an important element of stopping perpetrators being violent. It emphasises that society considers family violence behaviours to be unacceptable and provides consequences for the behaviours.

3.2. Like other legal tools and powers, however, criminal law on its own will not keep victims safe. The wider work programme therefore includes consideration of engaging better with perpetrators, and their families and whānau, to stop the violence.

3.3. This section seeks your views on whether existing criminal offences adequately describe and categorise the behaviours of family violence perpetrators, whether sentencing is proportionate to the harm caused, and how victim safety should be considered at bail and sentencing.

Prosecuting family violence under the current criminal law

3.4. Police can prosecute most physical and sexual family violence through existing criminal offences. For example, a family violence perpetrator may be charged with offences under the Crimes Act 1961 and other criminal legislation, including homicide, common assault, or male assaults female. Psychological violence can also be prosecuted to some extent, for example property damage and criminal harassment.[47] In addition, it is an offence for a perpetrator to breach a protection order or fail to comply with a Court's direction to attend a specific programme.[48]

3.5. The relationship between the perpetrator and victim may also be taken into account as an aggravating factor at sentencing. For example, a sentence can be increased if there has been a breach of trust or violence against a child. A judge may also make a protection order against a person convicted of a 'domestic violence offence,'[49] if the victim does not object.

3.6. The criminal law typically responds to single incidents, however, with the exception of representative charges. These allow Police to file a single charge to represent multiple offences of the same type over a period of time.[50]

3.7. As a result, the criminal law cannot always respond effectively to the ongoing pattern of abuse that often characterises family violence. Incidents of criminal behaviour that appear minor or trivial on their own might not meet the threshold for prosecution under the Solicitor-General's guidelines.[51] If charges are filed and a conviction results, the resulting sentence will reflect only the seriousness of the individual incident and not necessarily the impact of the offence on the victim.

3.8. In addition, it can be difficult for the criminal law to address the cumulative psychological harm caused by a pattern of different forms of family violence behaviours, only some of which might be offences.

[47] See: Summary Proceedings Act 1957; Harassment Act 1997.

[48] Section 49, Domestic Violence Act 1995.

[49] Defined as 'an offence involving the use of violence against a person, other than a child, with whom the offender is, or has been, in a domestic relationship'. See: Section 123A-123G, Sentencing Act 2002.

[50] Section 20, Criminal Procedure Act 2011

[51] Solicitor-General's Prosecution Guidelines 2013, www.crownlaw.govt.nz/

CASE STUDY

Prosecuting psychological violence

Yuki and Sefu have been together for six years. Yuki is a fulltime mum to their eighteen-month-old daughter Violet. Sefu is outgoing, charming and has many friends. Within a few months of moving in together he begins to criticise Yuki and lose his temper with her. He accuses her of lying to him about where she is going and who she is with. He often puts her down in public.

Yuki has stopped seeing her friends because Sefu always gets angry when she goes out. She speaks to her family, but has never mentioned what is going on. Sefu has taken away her mobile phone and has changed the password on their joint bank account and bank cards so she can't access any money.

Yuki can't remember a time when things weren't this way and sometimes thinks she cannot trust her memory of what's happened over time. She doesn't think she can call Police because Sefu has never physically hurt her or Violet, and she's pretty sure they won't arrest someone for being angry and controlling.

In this example, Sefu's behaviours towards Yuki are coercive, controlling and psychologically abusive. Police may not be able to intervene in this situation, so Sefu will not face criminal sanctions for his behaviour.

FRAMEWORK FOR FAMILY VIOLENCE OFFENCES

3.9. One idea for improving the way in which the dynamics of family violence are viewed in criminal offences is to create a stand-alone family violence offence, or class of family violence offences.

3.10. Creating an offence of family violence makes the existence of the family relationship central to the offending. It could help make the court aware of the relationship in decision-making and contribute to building a record of the offending behaviour. It would clearly identify family violence cases for other information-gathering purposes. Creating an offence of family violence would also send a clear message that family violence is a criminal offence.

3.11. Creating a generic offence of family violence could duplicate existing generic offences, with potential for inconsistent charging decisions and penalties. If so, prosecutors could be required to use the family violence offence when applicable, removing the discretion to apply the most relevant offence.

3.12. Another idea is to introduce a new offence that better reflects the experiences of family violence victims such as an offence of psychological violence. The United Kingdom has recently enacted an offence of 'coercive control' to criminalise 'sustained patterns of behaviour that stop short of serious physical violence, but amount to extreme psychological and emotional abuse.'[52]

3.13. Another idea could be an offence of repeat family violence offending. For example, Sweden has introduced an offence covering repeated criminal acts committed by a male against a female with whom they had an ongoing relationship.

3.14. Another approach is to require or empower a sentencing judge to assess the seriousness of the harm, by taking into account the pattern of behaviour. Additional aggravating factors could be added that require judges to consider, for example, the history of family violence by the perpetrator against the victim. In ACT, Australia and in South Australia, the court can consider at sentencing whether the offence forms part of 'a series of criminal acts of the same or a similar character'.[53] New Zealand judges must take into account a perpetrator's previous convictions at sentencing, but this is viewed as a general aggravating factor and does not explicitly target family violence offending.

3.15. Any changes to the criminal law will require consideration of their impact on the criminal justice system and fundamental legal principles. These principles include the perpetrator's right to a fair trial and the need to ensure the law is clear and certain. In addition, offences that require a pattern of abuse may be difficult to prove.

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FAMILY VIOLENCE IN CRIMINAL LAW

What changes, if any, could be made to the criminal law to better respond to family violence, including the cumulative harm caused by patterns of family violence?

For example:

- **create a standalone family violence offence or class of family violence offences**
- **create a new offence of psychological violence, coercive control or repeat family violence offending**
- **make repeated and serious family violence offending an aggravating factor at sentencing.**

What other ideas do you suggest?

[52] www.gov.uk/government/collections/serious-crime-bill#serious-crime-act

[53] Australian Law Reform Commission. ALRC Report 114: Family Violence – A National Legal Response. (2010). Sydney, NSW: ALRC.

Victim safety in criminal proceedings

3.16. Victim safety is not consistently addressed in the law about criminal proceedings. This section seeks your views about:

- more consistent consideration of victim safety in bail and sentencing decisions
- giving judges in criminal proceedings wider powers to vary or suspend civil orders
- improving the consistency and timeliness of family violence cases.

BAIL AND SENTENCING DECISIONS

3.17. The courts make most decisions about whether to grant bail and what conditions to impose. However, Police can grant 'Police bail' for up to seven days if a person who has been arrested and charged cannot be brought before a court immediately. If a perpetrator is charged with breaching a protection order, Police must not release them on bail for at least 24 hours. If bail is then considered, the paramount consideration is the need to protect the victim.

3.18. If a perpetrator is charged with a 'domestic violence offence',[54] Police may release them at any time, but can also impose bail conditions that they think necessary to protect the victim or any other person living with the victim.

3.19. When judges make bail decisions on a breach of a protection order, the paramount consideration is the need to protect the victim of the alleged offence. For charges of assault on a child or assault by a male on a female, judges cannot grant bail by right even though the penalty is less than the usual three year threshold. The general principles apply to the bail decision, but no other safety consideration.

3.20. For any other family violence offence no special considerations apply. However, judges must still consider general principles, such as the risk the perpetrator may interfere with witnesses or evidence, or offend while on bail.

3.21. Ideas for ensuring consistent consideration of victim safety in bail decisions in family violence cases include:

- requiring judges to make victim safety the paramount consideration for bail decisions in all family violence offences, or for specific charges such as male assaults female
- empowering judges to place additional conditions on people on bail or remanded in custody for any family violence offence
- improvements to bail.

3.22. A judge may consider a range of principles at sentencing. Some of these principles may consider victim safety, for example, the court must consider the effect of the offending on the victim. However, there is no specific principle of victim safety. One idea is to introduce a new principle that the court must or may consider victim safety at sentencing. This could better align the principles in the Sentencing Act 2002 with the focus on victim safety.

3.23. Most of the ideas raised in this section would require judges to have access to adequate information to make informed decisions about victim safety. Improving access to information is discussed later in this document.

[54] Defined in section 22(2) of the Bail Act as an 'offence [that] involves the use of violence against a person with whom the offender is, or has been, in a domestic relationship'

VICTIM SAFETY IN BAIL AND SENTENCING

What changes would ensure victim safety is considered in bail decisions and sentencing decisions?

For example:

- require judges to make victim safety the paramount consideration in bail decisions in all family violence offences or for specific charges such as male assaults female
- empower judges to place additional conditions on people on bail or remanded in custody for any family violence offence
- improvements to bail.

What other ideas do you suggest?

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GIVING JUDGES IN CRIMINAL PROCEEDINGS WIDER POWERS TO VARY CIVIL ORDERS

3.24. A judge in criminal proceedings can already make a protection order at sentencing, if there is none in place. But the judge is not currently able to vary an existing protection order, for example to add additional conditions to address safety needs identified during the criminal proceedings.

3.25. One idea is to give judges in criminal proceedings greater powers to vary protection orders on the basis of information they hear during trials. Judges in criminal cases could also be empowered to vary or suspend parenting orders based on the evidence heard. For example, where a parenting order provides for contact with the perpetrator, the court could consider varying, revoking, or suspending the order in the best interests of the child, and the safety of the adult victim.

3.26. These ideas are likely to raise some concerns, including whether the criminal jurisdiction is the appropriate forum to consider and make changes to protection and parenting orders. However, they could close gaps in protection and make court processes more seamless for victims of family violence.

3.27. Alternatively, a judge in criminal proceedings could refer the question of varying a protection or parenting order directly to the Family Court. The Family Court could be given the ability to reconsider an existing order without an application from either party, on the basis of new information heard in the criminal court.

JUDICIAL POWERS IN CRIMINAL PROCEEDINGS

What powers should criminal court judges have to vary or suspend orders usually made by the Family Court, or to make orders at different stages in proceedings?

For example:

- give judges in criminal proceedings greater powers to vary protection orders on the basis of information they hear during trials
- empower judges in criminal proceedings to refer the question of varying a protection or parenting order directly to the Family Court.

What other ideas do you suggest?

CONSISTENT AND TIMELY FAMILY VIOLENCE CRIMINAL CASES

3.28. The Family Violence Death Review Committee and others have suggested that the longer it takes to prosecute a case, the more likely victims are to be persuaded to retract their statement.

3.29. Judges in eight New Zealand District Courts have implemented streamlined processes in Family Violence Courts for criminal cases involving family violence. A Family Violence Court brings together cases to be heard in the same session so all the necessary court and community services can be in attendance. This might include judges, police prosecutors, community probation officers, victim advisors, court staff and a variety of community support service providers.

3.30. These courts are an initiative led by judges, operating under existing legislation. The Family Violence Courts are not available across the whole country, so perpetrators and victims have a different experience of criminal proceedings depending on where they live.

3.31. In addition to these Courts, the Ministry of Justice is working with judges, police prosecutors and lawyers in two courts to test additional ways to remove potential delays in family violence criminal cases. The project will identify ways to increase timeliness of proceedings so courts can more consistently achieve a rapid resolution. The goal of the test courts is to identify improvements that can be implemented across all District Courts nationally.

3.32. The Family Violence Death Review Committee also suggests that judicial education about family violence would assist in improving the justice sector response.[55] Other best practice approaches could include specially trained lawyers and court staff in family violence cases, and guidance materials to support practice changes in courts.

BEST PRACTICE

What changes would you suggest to court processes and structure to enable criminal courts to respond better to family violence?

[55] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

4. An additional pathway to safety

The response to family violence should include an accessible and effective process for supporting families who seek help to address violence.

4.1. This section seeks your views on creating an additional pathway for victims, perpetrators and whānau who wish to seek help with stopping family violence, but may not wish to, or be able to, enter the Justice system.

Access to services

4.2. Currently, in law, the main pathway for victims and perpetrators to access funded family violence services is through an application for a protection order: respondents are usually required to attend a non-violence programme and victims are offered safety programmes. Some funding is currently available for referrals to services by courts. The Ministry of Social Development also funds some relevant services.

4.3. Many people do not report violence to Police or seek a protection order until the situation has reached crisis point. Others might report violence, but Police may be unable to file charges due to a lack of evidence or because the threshold for prosecution has not been met.

4.4. Some people may not wish to engage with the justice system. This may be due to not wanting the perpetrator to face criminal charges or be removed from the family. For example, a disabled person may be left with no source of care. Services are provided through the courts to victim and perpetrator separately, which means families who wish to address the violence together cannot access appropriate services.

4.5. Families in these situations may nonetheless benefit from services to help stop the violence, for example when perpetrators seek access to non-violence programmes. Without going through the court system, families may need to pay for these services, and so some may not be getting the help they need.

4.6. One idea to address this apparent gap, and complement the legal response to family violence, is to provide access to services and programmes so victims, perpetrators and families can refer themselves rather than relying on a court process.

4.7. This idea would require further consideration of what services are appropriate in each case. Government is looking at the design and delivery of appropriate services as part of the wider work programme. Services might include support for perpetrators to change their behaviour, support for victims, services for children who have witnessed or experienced family violence, or services that support families and whānau to address the violence together.

4.8. Services could also include access to victim-centric resolution services such as restorative justice practices designed specifically for family violence, or mediation, where safe and appropriate. Resolution services could be provided on their own or in connection with non-violence programmes and safety programmes.

Police action

4.9. Another idea to clarify the link between the justice system and access to services is to set out in law the options Police have when responding to a report of family violence. In particular, this would include the ability to refer people to appropriate services that are linked into a wider family violence response system. Including Police referrals in law could help ensure consideration is given to which services are appropriate and how they will be funded.

4.10. For example in Victoria, Australia, when a family violence incident is reported to Police, Police must choose the most appropriate course of action from one or more of the following options:

- take criminal action
- take civil action either through issuing the equivalent of an NZ Police safety order or applying for a protection order on the victim's behalf
- make a referral to a service or services, including services for the victim, perpetrator or children.

4.11. In New Zealand, we could adopt a similar approach to make it clear in law that Police should take at least one of the following steps when responding to a report of family violence:

- file a criminal charge (or issue a warning)
- issue a Police safety order
- make a referral to a funded service or to an assessment of risk and need.

4.12. The decision about which of the three actions to take would be made by Police, following an assessement of the circumstances and level of risk, in order to ensure no pressure is put on victims.

4.13. This idea could give the public clarity and visibility of what will happen when a report of family violence is made to Police, and ensure any report of family violence (including self-referred) would result at minimum in a referral to services or assessment.

4.14. This additional pathway would have significant cost implications that would need to be carefully considered.

4.15. We are open to hearing other ideas for this additional pathway.

ADDITIONAL PATHWAY

What are your views on an additional pathway for families who seek help to stop violence escalating? Is such a pathway necessary or appropriate?

What are your views on the range and type of services that might be appropriate in the circumstances?

What are your views on clarifying in law that Police take at least one of the following steps when responding to family violence reports:

- file a criminal charge (or issue a warning)
- issue a Police safety order
- make a referral to a funded service or services or an assessment?

What other ideas do you suggest?

5. Better services for victims, perpetrators and whānau

Agencies need to work together to ensure legal tools and powers are effective and responses are appropriate and proportionate.

5.1. Delivering the right services to victims, perpetrators and whānau is a key theme of the wider work programme.

5.2. This section seeks your views on how law can support agencies to work together better to improve the effectiveness of legal tools and powers, keep victims safe and stop perpetrators being violent. This section covers:

- sharing information to identify family violence, assess risk and safety needs, and respond appropriately
- developing a safe and competent family violence workforce and service delivery.

Sharing information

INFORMATION SHARING BETWEEN AGENCIES

5.3. International and local best practice suggests that in order to deliver better services, government and non-government agencies need to be able to share information about their clients' circumstances and needs. Information sharing supports agencies to:

- identify family violence, assess risk and safety needs, and make decisions about what actions to take in response
- assess the risk of a perpetrator continuing their behaviour, and determine the appropriate response to hold them to account for their violence, and challenge them to change their behaviour.

5.4. The Privacy Act 1993 allows anyone to disclose personal information without consent in certain specified circumstances. In particular, anyone can disclose personal information if they believe it is necessary to prevent or lessen a serious threat to someone's life or health.[56]

5.5. The Act also allows government and non-government agencies to enter into approved information sharing agreements (AISAs). These agreements can allow parties to the agreement to share information more routinely.

5.6. However, some people holding relevant personal information may decide not to disclose it to others due to real and perceived barriers, including legal, operational and ethical limitations. For example, the information they hold may not on its own appear to reach the threshold of 'serious threat' set out in the Act. Also, the 'serious threat' requirement may not fit with the expectation that agencies will use information to assess risk and safety for the victim, so they can intervene before the threat becomes serious.

5.7. To address these reported constraints, the Family Violence Death Review Committee[57] has suggested creating a presumption of disclosing information where family violence concerns arise or stating that safety concerns 'trump' privacy concerns. This suggestion might clarify expectations about when information should be disclosed, but would be a departure from existing privacy principles.

5.8. This suggestion would need to be considered in terms of getting the balance right between the presumption of information being shared and factors such as the quality of information shared and the effect that the increased information sharing may have, for example on the willingness of victims to confide in professionals.

[56] Part 2 (Principle 11), Privacy Act 1993. Note: in 2013, the Privacy Act was amended to remove the requirement that the threat must also be 'imminent.'

[57] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

CASE STUDY

Information sharing

One of Dr Evan's patients, Mark, seems agitated. When Dr Evan asks Mark what's wrong, he says his partner Miriama 'needs to be taught a lesson' for going out to a movie with her friends. Dr Evan is worried about what Mark is thinking of doing. She knows that under the Privacy Act she can disclose personal information if she thinks it's necessary to prevent a serious threat to someone's life or health. But she's not sure whether Mark's comment on its own is serious enough, and she doesn't want to lose Mark's trust. In the end she decides it's better not to tell anyone.

This example demonstrates that although the Privacy Act 1993 allows information disclosure where there's a serious threat to life or health, it can be difficult to make a decision about what information to share in an individual situation and who to share it with.

INFORMATION TO SUPPORT JUDICIAL CONSIDERATION OF VICTIM SAFETY

5.9. Judges have noted the challenges they face when making decisions based on limited information about the risk posed by the perpetrator. These challenges arise in a range of decisions, including granting protection order applications, and making decisions about parenting arrangments in the Family Court and bail and sentencing decisions in the criminal court.[58]

5.10. The Family Violence Death Review Committee has also recommended strengthening the criminal court's ability to respond to family violence charges by giving judges the right information to inform decision making.[59]

Information that could assist judges includes:

- the history of Police involvement with a family
- related Family Court matters and civil orders in place
- the outcomes of regular meetings of local family violence inter-agency networks.

5.11. It would be important to ensure that any new information provided to judges is able to be tested.

INFORMATION ABOUT THE HISTORY OF POLICE INVOLVEMENT

5.12. One idea is to require that judges are provided with information held by Police and other justice sector agencies. This information could include previous family violence convictions, whether the perpetrator has been served with a Police safety order and any breaches of the orders, whether the perpetrator has received a pre-charge warning, and any history of Police calls in relation to family violence.

5.13. Police and the Ministry of Justice have recently developed a report for judges in bail decisions in family violence cases. The report will provide basic information about previous family violence occurrences (111 calls and arrests), and details of Police safety orders and protection orders, including breaches. Police prosecutors also regularly provide a summary of all convictions and the victim's view on whether bail should be granted.

5.14. One idea is for the law to place a positive obligation on Police to provide this information. This change could ensure the information is provided without relying on administrative decisions.

[58] Doogue, J. (2015, May 15). Family Violence a Focus for District Court Judges. Scoop Media. Retrieved from http://www.scoop.co.nz/stories/PO1505/S00176/family-violence-a-focus-for-district-court-judges.htm.

[59] Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee.

INFORMATION ABOUT OTHER COURT PROCEEDINGS

5.15. A victim of family violence may be involved in multiple criminal and family legal processes. Each of the processes is different, with different information collected for each case, and with different lawyers, judges, and other professionals involved. Each court may have no awareness of related cases.

5.16. Internationally a small number of courts are putting the criminal and related civil matters together (called an 'integrated court'). In some courts, the same judge will make decisions on all related civil and criminal matters at the same time. The intention is to ensure judges have access to information about both sets of proceedings and can make consistent decisions.

5.17. However, in 2014, a New Zealand review of the literature on international examples of these types of courts found little evidence of improved victim safety or perpetrator accountability. In addition, implementing an integrated court like this in New Zealand would pose significant operational challenges.

5.18. One idea to simplify the process and reduce duplication is to support the court system to adopt new practices that promote coordination and information sharing in multiple cases involving the same family.

5.19. Another idea is to place a positive duty on parties to inform the criminal court of any related Family Court proceedings or orders that may directly or indirectly affect the perpetrator or victim, including a child. This could include protection orders, parenting orders, relationship property orders, and matters under the Protection of Personal and Property Rights Act 1988. There could be a duty placed on parties to inform the Family Court of criminal proceedings and Police safety orders.

INFORMATION FROM INTER-AGENCY FAMILY VIOLENCE MEETINGS

5.20. Each region in New Zealand has a family violence network of agencies that meet regularly, usually weekly, to discuss family violence cases. These groups identify perpetrators at high risk of re-offending, and victims at high risk of being further victimised. The assessments of these inter-agency networks could be shared routinely with courts, perhaps initially through the Police Prosecutor.

5.21. Currently these groups do not have a consistent method for assessing risk. The development of a common risk assessment framework is one of the initiatives in the broader work programme. The framework will outline how the risk of harm from family violence is best assessed, and the appropriate response for different levels of risk.

INFORMATION SHARING BETWEEN AGENCIES

What changes could enhance information sharing between agencies in family violence cases?

For example:

- creating a presumption of disclosing information where family violence concerns arise
- stating that safety concerns 'trump' privacy concerns.

INFORMATION SHARING WITH AND BETWEEN COURTS

What changes could enhance information sharing between courts and between courts and other agencies, in family violence cases?

For example:

- require that judges are provided with information held by Police and other justice sector agencies
- place a positive duty on parties to inform the criminal court of any related Family Court proceedings or orders.

What other ideas do you suggest?

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Safe and competent family violence workforce and service delivery

5.22. The family violence workforce is made up of paid employees and contractors of government and non-government organisations who work with victims and perpetrators of family violence. This includes, for example, non-violence programme workers, refuge workers, and frontline health, courts and Police staff.

5.23. Because of its constitutionally independent role, the judiciary's professional development is supported through the Insitute of Jucidical Studies. Part of the Institute's role is to enable judges to gain the skills and knowledge required to operate effectively and meet changing needs and circumstances.

5.24. Victims and perpetrators of family violence should be able to expect the family violence workforce to be responsive, well trained, safe and competent.[60] The workforce should be supported by organisational policies, systems and accountabilities that support safe practice.

5.25. One idea for supporting the family violence workforce to continue to develop its expertise is to establish minimum standards of workforce competence. For example frontline staff could be required to demonstrate competence at using risk assessment tools or sharing information appropriately.

5.26. While workforce standards could support consistent ways of working across the sector, there would need to be consideration of how minimum standards of competence for the family violence workforce would fit with existing professional standards (eg for social workers).

5.27. Agencies and service providers could also be required to put in place policies and systems that support the workforce to practise in a responsive, safe and competent way. This could include, for example, providing systems and processes for training, information sharing, documentation, referral and coordination with other services, as well as established case supervision, review and debrief practices, and the collection and consideration of feedback from service users including victims and perpetrators.

5.28. These kinds of requirements would likely be contained in delegated legislation, for example regulations or codes, so they could easily be kept up to date.

5.29. Consideration would need to be given to how agencies would be held to account for meeting these kinds of requirements. For example, government agencies could be held to account through public reporting, and the accountabilities of their chief executives, while service providers could be held to account through contractual arrangements.

[60] The Family Violence Death Review Committee defines the family violence workforce as 'all those working at all parts of the multi-agency family violence system who have the opportunity and responsibility to identify and respond to families experiencing family violence. This includes those working intensively with victims and family violence abusers, and also those who are likely to encounter various forms of family violence in the course of their work, such as teachers, psychologists or those delivering parenting programmes.' Family Violence Death Review Committee. (2014). Fourth Annual Report: January 2013 to December 2013. Wellington: Family Violence Death Review Committee. Page 13.

SAFE AND COMPETENT WORKFORCE

In your view, what impact would setting minimum workforce and service delivery standards have on the quality of services? What challenges do you see in implementing minimum statutory standards?

For example:

- establish minimum standards for workforce competence
- require agencies and service providers to put in place policies and systems that support the workforce to practise in a responsive, safe and competent way.

What other ideas do you suggest?

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How to have your say

Submissions

Your submission will help government to develop policy that may be put into law. After the consultation period, Ministry of Justice officials will provide policy options to the Justice Minister, based on your submissions and other evidence. The Justice Minister may then seek Cabinet's agreement to her preferred options. If Cabinet agrees, law (a Bill) will be drafted.

The Bill will be introduced to Parliament. You will then have an opportunity to comment on the specific proposals to a parliamentary Select Committee.

You can give your feedback online **consultations.justice.govt.nz**

You can make a written submission by emailing us at **familyviolencelaw@justice.govt.nz** or writing to:

Family Violence Law Review
Ministry of Justice
DX SX10088
Wellington
New Zealand

Please provide your views by Friday 18 September 2015.

PERSONAL INFORMATION AND CONFIDENTIALITY

The Ministry of Justice will hold your personal information in accordance with the Privacy Act 1993.

We will accept submissions made in confidence or anonymously. Please clearly indicate if you would like your submission to be treated as confidential.

We may be asked to release submissions in accordance with the Official Information Act 1982 and the Privacy Act 1993. These laws have provisions designed to protect sensitive information given in confidence, but we cannot guarantee the information can be withheld. We will not release individuals' contact details.

We may alert Police or another agency about any submissions that raise safety concerns, and provide them with contact information.

FURTHER INFORMATION

If you have any questions or would like more information about the review or the process for making submissions, please email familyviolencelaw@justice.govt.nz.

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Appendix 1: Questions in the discussion document

These questions are provided to guide your submission. We also invite you to comment on any other aspect of the legal tools and powers to address family violence.

Legislative framework: overview

What changes to legal tools and powers would ensure the law keeps pace with advances in understanding of family violence and how to address it?

The nature and dynamics of family violence across population groups

What changes could be made to address the barriers faced by each population group?

Does the current legal framework for family violence address the needs of vulnerable population groups, in particular disabled and elderly people? How could it be improved to better meet the needs of these groups?

What changes could be made to better support victims who are migrants, particularly when immigration status is a factor?

What other ideas do you suggest?

Definition of 'family violence'

What changes to the current definition of 'domestic violence' would ensure it supports understanding of family violence and improves responses? For example:

- more clearly explain the concept of 'coercive control'
- use the term 'family violence' instead of 'domestic violence'
- include the abuse of a family pet, where the abuse or threat of abuse is intended to intimidate or harass a family member.

What other ideas do you suggest?

Guiding principles

How would guiding principles affect how the Domestic Violence Act and other legislation is implemented? What principles would you suggest?

How could including principles in the law reflect the nature and dynamics of family violence? For example:

- include principles emphasising developments in the understanding of family violence
- include principles that guide how agencies are expected to respond to family violence, including particular population groups.

What other ideas do you suggest?

Accessibility of protection orders

What changes would you suggest to improve access to protection orders? For example:

- increase funding for applications for protection orders
- provide more opportunities for others to apply for protection orders on victims' behalf.

What other ideas do you suggest?

Effectiveness of protection orders

What changes could enhance the effectiveness, use and enforcement of protection orders? For example:

- require Police to arrest for all breaches of protection orders, where there is sufficient evidence.

What other ideas do you suggest?

Property orders

What changes would enhance the effectiveness, use and enforcement of property orders? For example:

- require judges to consider accommodation needs when making protection orders and to make property orders more proactively
- simplify enforcement mechanisms.

What other ideas do you suggest?

Police safety orders

What changes might enhance the effectiveness, use and enforcement of Police safety orders? For example:

- require Police to refer a perpetrator to services, such as short-term housing
- empower Police or a third party to support the victim to apply for a protection order, or apply on behalf of a victim, when a Police safety order is issued (if the victim consents, or does not object).

What other ideas do you suggest?

Family violence and parenting arrangements

How should risks to children and to adult victims be reflected in parenting arrangements under the Care of Children Act 2004? How could parenting orders and protection orders be better aligned? For example:

- clarify that a child's safety from all forms of violence is to be given greater weight and be a primary consideration
- require parenting orders to be consistent with any existing protection order
- courts could be given broader discretion to consider risk to the safety of the child and to an adult victim when deciding parenting arrangements.

What other ideas do you suggest?

Family violence in criminal law

What changes, if any, could be made to the criminal law to better respond to family violence, including the cumulative harm caused by patterns of family violence?
For example:

- create a standalone family violence offence or class of family violence offences
- create a new offence of psychological violence, coercive control or repeat family violence offending
- make repeated and serious family violence offending an aggravating factor at sentencing.

What other ideas do you suggest?

Victim safety in bail and sentencing

What changes would ensure victim safety is considered in bail decisions and sentencing decisions? For example:

- require judges to make victim safety the paramount consideration in bail decisions in all family violence offences or for specific charges such as male assaults female
- empower judges to place additional conditions on people on bail or remanded in custody for any family violence offence
- improvements to bail.

What other ideas do you suggest?

Judicial powers in criminal proceedings

What powers should criminal court judges have to vary or suspend orders usually made by the Family Court, or to make orders at different stages in proceedings?
For example:

- give judges in criminal proceedings greater powers to vary protection orders on the basis of information they hear during trials
- empower judges in criminal proceedings to refer the question of varying a protection or parenting order directly to the Family Court.

What other ideas do you suggest?

Best practice

What changes would you suggest to court processes and structure to enable criminal courts to respond better to family violence?

Additional pathway

What are your views on an additional pathway for families who seek help to stop violence escalating? Is such a pathway necessary or appropriate?

What are your views on the range and type of services that might be appropriate in the circumstances?

What are your views on clarifying in law that Police take at least one of the following steps when responding to family violence reports:

- file a criminal charge (or issue a warning)
- issue a Police safety order
- make a referral to a funded service or services or an assessment?

What other ideas do you suggest?

Information sharing between agencies

What changes could enhance information sharing between agencies in family violence cases? For example:

- creating a presumption of disclosing information where family violence concerns arise
- stating that safety concerns 'trump' privacy concerns.

Information sharing with and between courts

What changes could enhance information sharing between courts and between courts and other agencies, in family violence cases? For example:

- require that judges are provided with information held by Police and other justice sector agencies
- place a positive duty on parties to inform the criminal court of any related Family Court proceedings or orders.

What other ideas do you suggest?

Safe and competent workforce

In your view, what impact would setting minimum workforce and service delivery standards have on the quality of services? What challenges do you see in implementing minimum statutory standards? For example:

- establish minimum standards for workforce competence
- require agencies and service providers to put in place policies and systems that support the workforce to practice in a responsive, safe and competent way.

What other ideas do you suggest?

Appendix 2: Legal definition of domestic violence

Section 3, Domestic Violence Act 1995: Meaning of domestic violence

(1) In this Act, domestic violence, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.

(2) In this section, violence means—

(a) physical abuse:

(b) sexual abuse:

(c) psychological abuse, including, but not limited to,—

(i) intimidation:

(ii) harassment:

(iii) damage to property:

(iv) threats of physical abuse, sexual abuse, or psychological abuse:

(iva) financial or economic abuse (for example, denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education):

(v) in relation to a child, abuse of the kind set out in subsection (3).

(3) Without limiting subsection (2)(c), a person psychologically abuses a child if that person—

(a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship; or

(b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;—

but the person who suffers that abuse is not regarded, for the purposes of this subsection, as having caused or allowed the child to see or hear the abuse, or, as the case may be, as having put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(4) Without limiting subsection (2),—

(a) a single act may amount to abuse for the purposes of that subsection:

(b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

(5) Behaviour may be psychological abuse for the purposes of subsection (2)(c) which does not involve actual or threatened physical or sexual abuse.

Section 4: Meaning of domestic relationship

(1) For the purposes of this Act, a person is in a domestic relationship with another person if the person—

(a) is a spouse or partner of the other person; or

(b) is a family member of the other person; or

(c) ordinarily shares a household with the other person; or

(d) has a close personal relationship with the other person.

(2) For the purposes of subsection (1)(c), a person is not regarded as sharing a household with another person by reason only of the fact that—

(a) the person has—

(i) a landlord-tenant relationship; or

(ii) an employer-employee relationship; or

(iii) an employee-employee relationship—

with that other person; and

(b) they occupy a common dwellinghouse (whether or not other people also occupy that dwellinghouse).

(3) For the purposes of subsection (1)(d), a person is not regarded as having a close personal relationship with another person by reason only of the fact that the person has—

(a) an employer-employee relationship; or

(b) an employee-employee relationship—

with that other person.

(4) Without limiting the matters to which a court may have regard in determining, for the purposes of subsection (1)(d), whether a person has a close personal relationship with another person, the court must have regard to—

(a) the nature and intensity of the relationship, and in particular—

(i) the amount of time the persons spend together:

(ii) the place or places where that time is ordinarily spent:

(iii) the manner in which that time is ordinarily spent;—

but it is not necessary for there to be a sexual relationship between the persons:

(b) the duration of the relationship.

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