

About protection orders

Information for people applying
for a Protection Order



MINISTRY OF
JUSTICE
Te Kaitiaki



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Deciding to take action against someone who has been violent towards you takes courage. A Protection Order can help keep you and your children safe from domestic violence.

Remember that you are not alone. Thousands of New Zealanders have successfully applied for Protection Orders. When domestic violence stops, everyone is better off, including you, your children, your family/whānau and even the person who is being violent.

This booklet tells you how to apply for a Protection Order in the Family Court and what a Protection Order will mean for you and your family. It also tells you where you can go for further help and support as you work your way through the court process.

Remember, if you feel you are in danger call the Police (dial 111) and they will respond quickly.

Domestic violence may be:

- **physical abuse**, such as behaviour like punching, slapping or kicking
- **sexual abuse**, which means any sexual contact or touching you do not want
- **psychological abuse**, such as damaging property, threatening violence or abuse, or harassing, scaring or intimidating a person. It can include trying to control your life by constantly humiliating you or controlling your money, time, car or contact with friends and family as a way of having power over you. If the respondent has allowed any children to witness the domestic violence this is psychological abuse against them
- **financial or economic abuse**, such as denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education.



What is a Protection Order?

A Protection Order is made by a judge to protect you from domestic violence.

A judge can make the Order if they are satisfied that:

- there has been domestic violence, and
- the Order is needed to protect you and any children who usually live with you from the person who has been violent.

Who will the Protection Order protect?

A Protection Order is made to protect you (the protected person) and any children under 17 who usually live with you from:

- the person who is being violent (the respondent)
- if necessary, any person who the respondent encourages to be violent towards you or your children (the associated respondent).

A Protection Order can also be made to protect other people who are at risk of violence from the respondent or associated respondent. This can include older children, a new partner or a flatmate. You need to name these people in your Protection Order application.



Applying for a Protection Order

WHO CAN APPLY FOR A PROTECTION ORDER?

To apply for a Protection Order you need to be in a domestic relationship with the person being violent. Domestic relationships include:

- married couples
- de facto couples
- gay and lesbian couples
- couples in civil unions
- parents and children
- members of the same family/whānau
- flatmates or other people who live in the same house or flat
- people in a close personal relationship, whether or not they live together.

APPLYING FOR A PROTECTION ORDER

To apply for a Protection Order you need to file an application with the nearest Family Court. It is a good idea to get a lawyer or your local Community Law Centre to help you fill out the application forms and write your affidavit. An affidavit is a sworn statement that says why you need a Protection Order.

You can get the application forms and detailed information on how to complete the forms directly from your local Family Court or from justice.govt.nz/family/domestic-violence/apply-for-a-protection-order



WHAT SHOULD I DO IF I NEED A PROTECTION ORDER URGENTLY?

If you need protection right away, you can apply for a Protection Order without notice. This means that the respondent isn't told that you've applied for a Protection Order until after a temporary Protection Order has been made by the Family Court.

The Family Court can usually make a temporary Protection Order on the same day you apply for it. The judge will not need to see you in court and will make their decision based on the information provided in your application. The judge will make a temporary Protection Order if they are satisfied that you or your children may be at risk of 'undue hardship' if they don't make an Order straight away.

There may be occasions where, based on the information provided, a judge does not make a temporary Protection Order. You will be told if this happens and can ask to withdraw the application or to go forward with an 'on notice' Protection Order instead.

The respondent will be served (given) a copy of the temporary Protection Order after it has been made. The Police will also be given a copy of the Protection Order by the court.

Respondents have the right to defend or oppose a temporary Protection Order if they want to. If they don't defend the temporary Protection Order after it has been served, the temporary Protection Order will automatically become a final Protection Order after three months. A final Protection Order remains in force permanently, unless either you or the respondent asks the court to discharge (cancel) it and the court agrees to this.



WHAT IF I WANT A FINAL PROTECTION ORDER OR MY NEED FOR A PROTECTION ORDER IS NOT URGENT?

If you decide that your application for a Protection Order isn't urgent, you can make an 'on notice' application. This means that the respondent is told that you've applied for a Protection Order before the judge decides whether to make the Order.

The respondent can choose to go to court and tell the judge why they should not make the Protection Order. If the judge does make the Order, it will immediately be a final Protection Order and will remain in force permanently, unless either you or the respondent asks the court to discharge it and the court agrees to this.

WILL I HAVE TO APPEAR IN COURT?

You are unlikely to have to appear in court when you apply for a 'without notice' temporary Protection Order.

You may have to appear in court if you apply for an 'on notice' or final Protection Order or if the respondent goes on to defend a temporary Protection Order.

When you arrive at court on the day of your hearing, speak to court staff if you have any questions about the Family Court process. Court staff can't give you any legal advice but they are friendly, helpful and understand how stressful appearing in court can be. If you are worried about your safety while you are at the court, tell court staff when you arrive and they will make sure you stay safe.

WHO WILL BE AT COURT?

Usually only court officials, the judge, the respondent and your lawyers will be in the courtroom. There is no jury and members of the public are not allowed to attend.

A friend, family member or other person can come to the hearing to support you if the judge agrees.

Sometimes reporters attend Family Court hearings. They are not allowed to publish any information that could identify you or your children.



What does a Protection Order mean for me?

The Protection Order will establish conditions (rules) that the respondent must not breach (break).

NON-VIOLENCE CONDITIONS

Every Protection Order contains non-violence conditions. These are rules that stop the respondent being violent or abusive towards you. The non-violence conditions say that the respondent must not:

- abuse you or your children in any way – physically, sexually or psychologically, which includes financial and economic abuse, such as denying or limiting access to financial resources
- threaten to physically or sexually abuse you or your children
- damage, or threaten to damage, your property
- encourage anyone else to abuse or threaten you or your children.

NON-CONTACT CONDITIONS

The respondent must not:

- go to your home or workplace or go onto your property, unless you say they can
- hang around where you go often or regularly, like where you work, your neighbourhood or where you study
- follow you
- try to stop you coming or going
- phone, text, email, send letters or faxes, or contact you in any other way.

The non-contact conditions do not apply if you agree to live with the respondent.

If they do one of the things listed above, then they are breaching the Protection Order and they can be arrested and charged with a criminal offence.



EXCEPTIONS

The respondent can contact you if:

- there is an emergency and the contact is reasonably necessary
- the contact is allowed under any Court Order or written agreement relating to the day-to-day care of your children
- the contact is allowed under a special condition of the Protection Order
- you are asked to go to a family group conference under the Children, Young Persons and Their Families Act 1989
- the contact is necessary so you can attend a settlement conference convened under section 46Q of the Care of Children Act 2004.

SPECIAL CONDITIONS

The Protection Order may contain special conditions to deal with your particular case, like when and where the respondent can have contact with your children. Talk to your lawyer about what special conditions you may want to apply for.

WEAPONS ARE BANNED

When a temporary Protection Order is made, the respondent must give to the Police any firearms licence they hold, and any weapons they have. Weapons means any firearm, airgun, pistol, restricted weapon, ammunition or explosive.

If the Protection Order is made final, the respondent's firearms licence will be automatically cancelled.

If you know that the respondent has access to weapons you should tell the Police, Family Court staff or your lawyer.



Non-violence programmes

The respondent will usually have to attend a non-violence programme about living without violence. The non-violence programme will give them the chance to learn about:

- domestic violence and how it affects victims
- how the Domestic Violence Act 1995 works
- skills for living without violence and for dealing with future arguments or conflict in better ways.

What should I do if any of the conditions are breached by the respondent?

You should ring the Police (dial 111) straight away if you think you are in danger. Otherwise, talk to your local community Police or your lawyer.

It is a criminal offence for the respondent to breach any of the Protection Order conditions. If the Police arrest and charge the respondent they will have to appear in a criminal court. If they are convicted, they can be sent to prison for up to three years.

WHAT HAPPENS IF THE RESPONDENT HASSLES OR STALKS ME (IS PSYCHOLOGICALLY VIOLENT) BUT ISN'T PHYSICALLY VIOLENT?

If you have a Protection Order, the respondent cannot threaten, harass, scare or intimidate you, whether you're living together or not. A Protection Order protects you from psychological violence, as well as physical violence.

If the respondent behaves like this, it is a breach of the Protection Order conditions and you should call the Police.



Can I get a Protection Order if I'm still living with the respondent?

You can still get a Protection Order if you want to continue living with the respondent. In this case, the non-contact conditions do not apply.

If you later decide you don't want the respondent to live with you, you just have to tell the respondent that the non-contact conditions are now in place. This means the respondent must immediately move out of the house and leave you alone.

If they don't leave, you should call the Police as they are breaching the conditions of your Protection Order.

If I have a Protection Order, who gets to care for or contact my children?

Because of the non-contact conditions in a Protection Order, the respondent usually can't have any contact with children who live with you. This means that if you and the respondent have children together, you will usually be in charge of their day-to-day care for as long as the Protection Order is in force.

The respondent can have contact with the children if:

- this is allowed under a Court Order, or under a written parenting agreement between you and the respondent, or
- you agree to live with the respondent.

If you have a good reason to think the respondent will take the children away or harm them, talk to the Police and your lawyer about this as soon as possible.



Other Orders

Parenting Orders

When you apply for a Protection Order, you can also apply to the Family Court for a Parenting Order. A Parenting Order can decide who has day-to-day care of the children and who can have contact with them. The respondent can also apply for a Parenting Order.

To allow a respondent access to or contact with the children the judge will have to be satisfied that the children will be safe with the respondent. The judge may say the respondent can only have contact if they are supervised by another adult. The Parenting Order will also say when the respondent can have contact with the children.

The court can review the Order, especially if a temporary Protection Order is made. This means you and the respondent may both have to go to court.

Property Orders

If you want to keep living in your home or leave and take furniture with you, you can apply for a Property Order.

Property Orders say who can live in a particular house or flat and who can keep the furniture and appliances, such as the tv or stereo. The furniture covered by the Property Order will be listed in the Order.

A judge will make a Property Order if it is needed to protect you, or if it is in the best interests of your children.

You usually apply for a Property Order at the same time as the Protection Order. The Property Order can be made by a judge without notice or on notice to the respondent.



Orders dealing with who lives in the home

An Occupation Order gives you the right to live in the house or flat where you are now living. The Order stops the respondent from living there without your consent.

A Tenancy Order says that the respondent is no longer the tenant of a house that they have been renting with you. You can continue living there and the Order stops the respondent from living there.

If you have an Occupation or Tenancy Order, the respondent must leave the property named on the Order. If the respondent stays in the property tell the Police. The District Court can issue a warrant for their arrest and the Police can remove the respondent. The respondent can also be charged with trespassing. If they are convicted of this offence they may be sent to prison for up to three months.

Orders dealing with furniture

If you want to stay in the home, you can apply to the Family Court for an Ancillary Furniture Order to let you keep the furniture and appliances in the home.

If you want to move out, you can apply for a Furniture Order to let you take all or some the furniture and appliances to your new home.

It doesn't matter if the respondent owns the furniture.



How can I keep safe

It's important to have a plan for keeping yourself and your children safe, and to find out what else you can do to stop the violence. In the phonebook and in the Family Services Directory at familyservices.govt.nz/directory you will find a list of agencies that can help you develop a safety plan.

You can also get help from:

- **Victim Support**

Victim Support provides 24-hour practical help and emotional support to victims of crime. Victim Support can tell you about your safety options, Protection Orders, how the court process works, and what services and support they can provide (including financial assistance). Victim Support is available in most areas. Call 0800 VICTIM (0800 842 846) or visit victimsupport.org.nz for help and support.

- **National network of non-violence services**

The Network provides education and support programmes for adults and children who are victims of violence. The programmes cover the Domestic Violence Act 1995 and how Protection Orders work. Non-violence programmes are for respondents. For contact details for an organisation in your area, go to nnsvs.org.nz

- **Work and Income**

Work and Income can help you with benefits and other kinds of income support. For more information, go to workandincome.govt.nz or your local Work and Income office.



Free safety programmes through the court

You and your children can access free and confidential safety programmes from the Family Court.

These programmes can help you and your children feel more confident, and will help you to move forward in your life. Most importantly the programmes can teach you how to keep yourself safe from domestic violence in the future. The programmes will give you detailed information about domestic violence, its effects on families and how Protection Orders work.

Programmes developed specifically for children can help them understand and deal with the violence and its effects on them and the family. Although these programmes cover very serious issues they are designed to be interactive and fun so that children will enjoy the programme.

Programmes for you and your children are very different from programmes that the respondent must attend.

If you think you or your children could benefit from a programme, talk to either your lawyer or Family Court staff. They will make sure you get access to the nearest services to where you live.



How to get more information, support and advice

Family Court

Family Courts are in district courts. To find the nearest one look in the blue pages of the phonebook under 'Justice' or go to justice.govt.nz/contact-us/find-us

Lawyers

One of the best ways of finding a lawyer is by asking people who have been in similar situations. If you don't know anyone to ask, you can phone your local legal aid office, go to justice.govt.nz/courts/going-to-court/legal-aid/get-legal-aid/ or try the following organisations for suggestions:

- Citizens Advice Bureau
0800 FOR CAB (367 222), www.cab.org.nz
- Community Law Centre
communitylaw.org.nz
- Women's Refuge
womensrefuge.org.nz
- the family law section of the New Zealand Law Society
familylaw.org.nz

It's always a good idea to phone several lawyers before choosing one. Ask if they do legal aid and ask questions about their experience in the Family Court doing domestic violence work, and about their fees.



WHAT SHOULD I TAKE WHEN I GO TO SEE A LAWYER?

Going to a lawyer can be stressful. Write a list of things you want to cover, which should include:

- what you want to know about the process
- what you would like the lawyer to do for you
- why you need a protection order
- what has happened
- what effect it has had on you and any children involved
- the dates of any events you can remember.

You should also take along any relevant documents for your legal aid application, including:

- proof of income (for wages or salary); if you are on a benefit, take your Work and Income number
- your latest rates notice, if you own your own home or property.
- your latest set of annual accounts, if you are self-employed or have an interest in a business.
- your trust form, if you have an interest in a trust.

You may want to take an advocate or support person with you.



Legal aid

Anyone who needs a lawyer but can't afford one may be able to get legal aid. This is where the government pays some or all of lawyer's bills. Sometimes you may have to pay some or all of it back. In relation to Protection Orders, these costs do not have to be repaid to legal aid.

If your case involves other Family Court proceedings at the same time, such as division of relationship property, you may have to make payments for some or all of that part of the case.

If repayments are necessary, they may be made in regular instalments, or from the 'proceeds or proceedings', or you may have to register a charge over property. This means the aid will be repaid when the property is sold.

A repayment plan will be worked out with you based on the information that you have provided in your application.

Interest will be charged on your debt 6 months after your case has been finalised. If you pay off the debt within 6 months, interest will not apply.

If you have any problems meeting your arrangements, contact the Debt Management Group on 0800 600 090 as soon as possible. Your repayment plan may be changed, or in some case the commissioner may decide to write off some or all of your legal aid debt. If you do not repay or sort out your legal aid debt with the Debt Management Group, it may stop you getting legal aid in the future.



FINANCIAL CIRCUMSTANCES

There are financial thresholds for income and capital for civil and family legal aid. You can check to see if you are financially eligible by asking at a Community Law Centre or checking the Legal Services Regulations 2011 at the library.

You will have to give details of your partner's income and assets, even if you are not able to use or sell them. Your partner's resources may not be counted if the proceedings are against them. Your partner's resources will not be counted if you are considered to be living apart.

If there are special financial circumstances, aid may be granted by the commissioner even if you exceed the income or capital limits.

An example of a special circumstance is where an applicant for a protection order can't access savings that are controlled by their partner.'

MORE INFORMATION

For information about legal aid, contact your local legal aid office or go to the Ministry of Justice website justice.govt.nz/courts/going-to-court/legal-aid



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MORE INFORMATION justice.govt.nz/family
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