

Family and Whānau Violence Legislation Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill introduced under Standing Order 263(a). The amendments in the Bill deal with an interrelated topic that can be regarded as implementing a single broad policy. That policy is to ensure that legislation that relates to family violence—

- (a) is more complete and fit for purpose; and
- (b) supports better a co-ordinated and effective response to family violence.

The Bill is an important part of building a new way of dealing with family violence. It implements the decisions announced by the Government in September 2016 aimed at breaking the pattern of family violence and reducing the harm and cost inflicted on those who suffer violence and wider New Zealand society.

The Bill amends the criminal and civil law to contribute to a legislative framework that—

- keeps victims of family violence safe; and
- holds perpetrators of family violence to account for their behaviours and reduces family violence; and
- ensures adequate responses to family violence in all its forms; and
- promotes consistent and collaborative practices.

To create an integrated system, the Bill includes specific changes to promote proactive and coordinated responses. System-focused changes include: increasing access to risk and needs assessments and services, more accurately recording family violence offending in the criminal justice system, enabling the introduction of codes of practice, and new information sharing provisions.

Enabling information sharing will allow people in the sector to see the bigger picture necessary to help identify and prevent family violence. Increasing access to risk and

needs assessments and targeted services will be achieved by making changes to Police safety orders and protection orders. Better recognition of family violence offending will be achieved by more accurately recording family violence offending in the criminal justice system. This change will also enhance decision making and data in the wider system. The creation of 3 new offences, including strangulation or suffocation, will more accurately reflect family violence in the criminal system.

Legislation is only part of the solution, but the law provides the levers and tools that help protect victims and hold perpetrators to account. The law also plays an important role in encouraging everyone who is involved in the system to work together, and to intervene earlier and more effectively to get people the help they need. The reforms in this Bill will help to support and drive the wider work programme of the Ministerial Group on Family Violence and Sexual Violence. To complement these changes, the work programme will continue to focus on improving and coordinating services to ensure they lead to lasting change, and help make sure that people get the right services at the right time.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=247>.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 3 August 2016 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://justice.govt.nz/assets/Documents/Publications/ris-review-fv-legislation.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on **1 July 2018**. However, the following provisions come into force on a later date or dates set by Order in Council (and their deferred commencement is required for the following reasons):

- *Part 1 and Schedules 1 and 2* (amendments to Domestic Violence Act 1995)—deferred commencement is required because the changes in *Part 1 and Sched-*

ules 1 and 2 are numerous and complex, affect the jurisdiction of the Family Court and its procedural rules, and involve services, and operational processes, yet to be developed, approved, or both:

- *subpart 2 of Part 2* (amendments to Care of Children Act 2004)—deferred commencement is required because this subpart is closely related and similar in nature to, and so requires deferred commencement for the same reasons as, *Part 1 and Schedules 1 and 2*:
- *subpart 4 of Part 2* (amendments to Criminal Procedure Act 2011)—deferred commencement is required because implementing this subpart requires changes to charging documents and the development of operational procedures for no-contact conditions:
- *subpart 5 of Part 2* (amendments to Evidence Act 2006)—deferred commencement is required because implementing this subpart involves changes to regulations.

Any part of the Act that is not already in force on **1 July 2020** comes into force then.

Part 1

Amendments to Domestic Violence Act 1995

Clause 3 provides that *Part 1* amends the Domestic Violence Act 1995 (the **principal Act**).

Title

Clause 4 renames the principal Act the Family and Whānau Violence Act 1995.

Clause 5 repeals the Long Title.

Clause 6 amends section 1 to reflect the renaming of the principal Act.

Preliminary provisions (Part 1)

Clause 7 inserts *new sections 1A and 1B*.

New section 1A, which re-enacts and adjusts section 5 (object), states the purpose of the Act. *New section 1A* also—

- specifies how the Act aims to achieve its purpose; and
- requires a court that, or a person who, exercises a power conferred by or under the Act to be guided in the exercise of the power by the purpose of this Act.

New section 1B specifies principles that are to guide the achievement of the purpose of the Act.

Clause 8 amends section 2, which relates to interpretation. The amendments relate to the following terms:

- approved organisation—this new definition is about an organisation that the Secretary (the chief executive of the Ministry of Justice) has approved under *new section 12B* (inserted by *clause 14*) so that the organisation may be ap-

pointed as a representative and may, under *new sections 9, 11, and 12* (inserted by *clause 14*), make an application for a protection order:

- child—under the current definition, a child means a person who is under the age of 17 years and who is not or has not been married or in a civil union or a de facto relationship. Under the replacement definition, a child will mean instead a person aged under 18 years (regardless of whether the person is or has been married or in a civil union or a de facto relationship):
- child of the applicant’s family—this definition is replaced so that, for an applicant and at any time, it covers a child who at that time ordinarily or periodically resides with the applicant, whether or not, for a protection order, the child resided ordinarily or periodically with the applicant at, or was born only after, the time when that order was made:
- constable—this new definition of the term constable (as that term is used in sections 21 and 25, and in *new section 50*) reflects the effect of sections 4 and 117 of the Policing Act 2008, and fits with the definitions of constable and qualified constable in section 124A and for the purposes of Part 6A (Police safety order):
- contact—this replacement definition is part of a protection order’s standard no-contact condition under *new section 19(b)* (inserted by *clause 19*), and expressly includes specified types of indirect contact:
- digital communication—this new definition, by reference to section 4 of the Harmful Digital Communications Act 2015, is used in the section 2 definition of contact with the protected person as used in *new section 19(b)* (inserted by *clause 19*), in *new section 20(3)(d) and (5)* (which are about contact that may occur with the consent of the protected person), and in the example in *new section 124E(2)(b)* of contact (with a person at risk) prohibited by a Police safety order:
- domestic relationship and domestic violence—these definitions are repealed, because they are replaced by the new definitions of family violence and family relationship (*see clauses 9 and 10*):
- family member—this replacement definition macronises a word (whānau) in the Māori language (te reo Māori), to reflect current orthographic conventions, and updates punctuation:
- government organisation—this new term is related to the re-enacted or new definitions, discussed below, of assessment, assessor, prescribed service, prescribed non-standard service, and prescribed standard service. This is because the people and organisations who can be approved as assessors (approved to undertake assessments) or approved as service providers (approved to provide programmes, prescribed services, or both) will include government organisations (*see new sections 51A and 51B* inserted by *clause 31*):

- ill-treat—this new definition, in relation to an animal, uses the definition of ill-treat in section 2(1) of the Animal Welfare Act 1999—see the reference to ill-treatment of animals in *new section 3B(1)(d)* (inserted by *clause 9*):
- inflict family violence—this new definition replaces the definition of use domestic violence, which is repealed:
- partner, in the phrase “spouse or partner”, and in related contexts—this definition is replaced so that *paragraph (c)* can make clearer that a person’s (P’s) partner includes, if P is a biological parent of a person, any other biological parent of that person:
- perpetrator—this is a new definition (used, for example, in *new sections 1A(1)(b) and 1B(e) and (f)*, which state the principal Act’s purpose, and principles, and are inserted by *clause 7*). It makes clear that a perpetrator of family violence means a person who has inflicted, or is inflicting, family violence (even if no offence involving the violence was, is, or is to be, admitted or prosecuted). In *new Part 6B*, however, perpetrator has the broader meaning given in *new section 124U* (inserted by *clause 69*):
- prescribed non-standard service, prescribed service, and prescribed standard service—these new definitions are used especially in or for *new Part 2A* (programmes and prescribed services), and are related to *new Schedule 2* (inserted by *clause 71*). *New Schedule 2* specifies no services, because they are to be prescribed later (however, see also *clause 8 of new Schedule 1*):
- representative—this definition is amended to align or update terms (“minor aged 16 or under” is replaced by child (defined as set out in *clause 8(3)*), and so meaning a person who is under the age of 18 years), and guardian ad litem is replaced with litigation guardian—see also *clauses 14 and 44*). It is also amended to recognise *new sections 9 and 11* inserted by *clause 14*, and to recognise approved organisations authorised by *new section 12C* to act as representatives:
- tikanga—this definition is needed given the reference to this term in the principle stated in *new section 1B(i)* (inserted by *clause 7*):
- use domestic violence—this definition is repealed, because it is replaced by the new definition of inflict family violence.

Clause 9 replaces section 3 (meaning of domestic violence) with *new sections 3, 3A, and 3B*.

New section 3, which defines family violence,—

- updates the terminology used (“family violence”, “violence inflicted”, and “family relationship”):
- re-enacts, as *new section 3(2)*, the existing definition of violence and its subcategories:
- illustrates that definition with *new section 3(3)*.

New section 3(3) provides that violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts that (in line with *new section 3A(2)*) are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:

- it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):
- it causes the person, or may cause the person, cumulative harm.

New section 3A, on what may amount to abuse, re-enacts section 3(4).

New section 3B, on psychological abuse, modernises section 3(2)(c)(i) to (v), (3), and (5), and ensures psychological abuse includes ill-treatment of 1 or both of the following: (i) household pets and (ii) other animals whose welfare affects significantly, or is likely to affect significantly, a person's well-being (*new section 3B(1)(d)*). *New section 3B(1)(b)* also gives examples, based on a protection order's standard conditions in section 19(2)(a) to (c), of intimidation and harassment. *New section 3B(1)(e)* re-enacts the example in section 3(2)(c)(iva), but adjusts it so that it is expressly confined to *unreasonably* denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education.

Clause 10 amends section 4 (meaning of domestic relationship). The amendments change the term defined to family relationship.

Clause 11 replaces sections 5 (object) and 6 (Act to bind the Crown) with *new sections 5A, 5B, and 6*.

Section 5 (object) is not re-enacted because it is replaced by *new section 1A* (purpose of this Act), inserted by *clause 7*.

New section 5A relates to the status of examples. An example provided in the principal Act of the operation of a provision of an enactment—

- does not limit the provision; and
- may extend the operation of the provision.

New section 5A follows closely section 15AD of the Acts Interpretation Act 1901 (Aust), section 5(2) of the Parliamentary Privilege Act 2014, and section 5A of the Sale and Supply of Alcohol Act 2012 (inserted on 1 September 2015). *New section 5A* ensures that examples in the legislation will not be exhaustive, and will also be capable of extending a provision's operation. This is also the position for the Commonwealth of Australia, Australian Capital Territory, South Australia, and Victoria (see D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (8th ed, 2014), at 4.58; section 132 of the Legislation Act 2001 (ACT); section 19A of the Acts Interpretation Act 1915 (SA); and section 36A of the Interpretation of Legislation Act 1984 (Vict)).

New section 5B is about the transitional, savings, and related provisions—

- related to this Bill; and

- set out in *new Schedule 1* (inserted by *clause 71*).

New section 6 ensures not only that the Act continues to bind the Crown, but also that the express provision to this effect reflects current legislative drafting practice.

Protection orders (Part 2)

Clause 12 amends section 7, which is about applications for a protection order. Section 7(1) is amended to replace a reference to domestic relationship with one to a family relationship. *New section 7(2)* reflects *new section 9(2)* (inserted by *clause 14*). Section 7(3) is amended to reflect *new section 11* (inserted by *clause 14*). A drafting change is made to section 7(4), which is also amended for alignment with *new section 12* (inserted by *clause 14*).

Clause 13 amends section 8, which is about an application for a protection order. The amendments—

- replace a reference to a domestic relationship with one to a family relationship; and
- replace a reference to domestic violence with one to family violence.

Clause 14 replaces sections 9 to 12 with *new sections 9 to 12C*.

Section 9, which is about applications by minors, is replaced with *new sections 9 and 9A* which are about applications by a child. (*Clause 8(3)* amends section 2 so that child means a person who is under the age of 18 years, regardless of whether the person is or has been married or in a civil union or a de facto relationship). (*New section 71*, which is about applications for property orders by children, and inserted by *clause 44*, is to similar effect.)

New section 9 adjusts and simplifies section 9, which is about an application for a protection order by a minor (person aged under 20 years). *New section 9(2)* replaces section 9(2) and (2A) about an application by a minor aged 16 years or under. *New section 9(2)* provides, instead, that a child (defined as set out in *clause 8(3)*) may make the application—

- by a representative (for example, an approved organisation that is authorised by *new section 12C* to take proceedings under the principal Act on behalf of the child); or
- if authorised under rules of court to do so without a representative.

New section 9(2) fits with rules 90 and 90A of the Family Court Rules 2002. (The section 81(1)(b)(i) reference to section 9(2) is amended consequentially by *clause 45*.)

New section 9(3) makes it clear that *new section 9* does not limit or affect the making or operation of rules of court (for example, the Family Court Rules 2002) that—

- prevent an incapacitated child from taking part in, or from taking a step in, all or any specified proceedings under the Family and Whānau Violence Act 1995 without a litigation guardian:

- provide for a representative to make all or any specified applications under the Family and Whānau Violence Act 1995 on behalf of a child prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally.

Section 9(4) requires a minor aged 17 years or over who wishes to make the application to do so on the minor's own behalf, without a representative (and provides that orders may be made on the application, and enforced, as if the minor were of full age). Section 9(4) is not re-enacted for a person aged 18 or 19 years because rules of court enable a minor aged 18 years or older to take part in proceedings without a representative.

New section 9A re-enacts section 9(3), which is about views of a minor aged 16 years or under on whose behalf an application is made by a representative. *New section 9A* relates, however, to views of a child on whose behalf an application is made by a representative.

Section 10, which is about applications against minors, is replaced by *new section 10*. *New section 10* relates to applications against children (defined as set out in *clause 8(3)*). *New section 10(1)* prevents the court from making a protection order against a child unless satisfied that the order is justified by special circumstances. *New section 10(2)* prevents the court from making a direction under section 17 (protection from respondent's associates) that a protection order apply against a child unless satisfied that the direction is justified by special circumstances.

Section 11 (applications on behalf of persons lacking capacity) and section 12 (applications on behalf of certain other persons) are replaced with *new sections 10A, 11, 12, 12A, 12B, and 12C*.

New section 10A defines person lacking capacity for the purposes of *new section 11*. A person lacking capacity must be aged 18 years old or over, so excludes a child.

New section 11 re-enacts and amends section 11(1) and (2), which is about applications for a person lacking capacity (**P**). *New section 11(2)* requires the protection order to be applied for, on P's behalf, and in accordance with rules of court, by a representative (for example, an approved organisation that is authorised by *new section 12C* to take proceedings under Family and Whānau Violence Act 1995 on behalf of P). *New section 11(3)* is a requirement for appointing, under rules of court, a representative to make an application for a protection order on behalf of a person lacking capacity (**P**). The court or Registrar making the appointment must be satisfied—

- that the representative is not, and is not acting for, an approved organisation (which can be authorised to act as a representative under *new section 11* only under *new section 12C*); and
- that reasonable steps have been taken to ascertain P's wishes in relation to the appointment; and
- if P's wishes have been able to be ascertained,—
 - that P does not object to the appointment; or

- that P’s objection is not freely made.

New section 11(4) applies to a representative who, under *new section 11*, makes an application for a protection order on behalf of a person lacking capacity (**P**). *New section 11(4)* requires the representative to—

- take reasonable steps to ascertain P’s views in relation to the matter; and
- take reasonable steps to ascertain P’s welfare guardian’s views in relation to the matter, if P has a welfare guardian appointed under the Protection of Personal and Property Rights Act 1988, and no good reason exists not to ascertain those views; and
- include in the application any views ascertained; and
- take reasonable steps to inform P’s welfare guardian of the progress of the application (for example, of any order made on it), if P has a welfare guardian appointed under the Protection of Personal and Property Rights Act 1988 and no good reason exists not to do so.

New section 11(5) ensures that *new section 11(3) and (4)* does not require reasonable steps to be, or to have been, taken to ascertain P’s views in relation to an appointment or a matter if P wholly lacks the capacity to communicate decisions in respect of matters relating to P’s personal care and welfare.

Section 11(3) is re-enacted in the Protection of Personal and Property Rights Act 1988, as *new section 10(2A)* of that Act, by *Schedule 2*.

New section 12 re-enacts and amends section 12(1) to (3), which is about applications for people prevented from applying by physical incapacity, fear of harm, or another sufficient cause. The amendments—

- ensure *new section 12* applies only to a person aged 18 years old or over, and so does not apply to a child;
- reword the heading to section 12 (which refers to applications on behalf of “certain other persons”) to make it more informative;
- repeal the requirement in section 12(1)(c) (that it is desirable that the protection order be sought on an application without notice). By contrast, *new section 12(2)* refers to an application (made with or without notice) for a protection order;
- give, as an example of a representative who may make the application on behalf of the person prevented from making it personally, an approved organisation authorised by *new section 12C* to take proceedings;
- ensure *new section 12(4)(a) and (b)* require the ascertainment and consideration of the “views” (not “wishes”) of the person prevented from making personally the application for a protection order;
- ensure the court or a Registrar cannot appoint as a representative under *new section 12(3) and (4)* a person who is, or who is acting for, an approved organ-

isation (which can be authorised to act as a representative under *new section 12* only under *new section 12C*):

- require the proposed appointee (*see new section 12(3) and (4)*) to file in the court an undertaking specified in *new section 12(4)(f)* (compare rule 90B of the Family Court Rules 2002).

New section 12A re-enacts section 12(4), which is about the views of a person on whose behalf an application is made under section 12 by a representative. Section 12(5), which is about the views of a person of that kind, is not re-enacted because it is regarded as unnecessary.

New section 12B is about approved organisations. An organisation approved under *new section 12B* by the Minister of Justice may be authorised under *new section 12C* to take proceedings as a representative (defined as set out in *clause 8(3)*)—

- under *new section 9*, on behalf of a child (defined as set out in *clause 8(3)*); or
- under *new section 11*, on behalf of a person lacking capacity; or
- under *new section 12*, on behalf of a person prevented by physical incapacity, fear of harm, or other sufficient cause from applying personally.

New section 12C(1) authorises an approved organisation that complies with *new section 12C(2)* to make and prosecute under *new section 9, 11, or 12*, on behalf of a child or person (P), an application (made with or without notice) for an order. To comply with *new section 12C(2)*, the organisation must, without making an application to be appointed or to act as a representative for P, complete and file in the court an application form for the order, and that shows or includes the matters and undertaking specified in *new section 12C(2)(a) to (e)* (compare rule 90B of the Family Court Rules 2002). *New section 12C(3)* ensures that *new section 12C(2)* does not require reasonable steps to be, or to have been, taken to ascertain P's views in relation to the organisation acting as a representative for P if P wholly lacks the capacity to communicate decisions in respect of matters relating to P's personal care and welfare.

Clause 15 amends section 14, which is about the making of a protection order. The amendments replace references to domestic violence used with ones to family violence inflicted.

Clause 16 amends section 15, which makes it clear that a court must not decline to make a protection order merely because of the existence of other proceedings between or relating to the parties, whether or not those proceedings also relate to any other person. The amendment involves the example given—of proceedings relating to the role of providing day-to-day care, or contact, or custody. It replaces a reference, in that example, to a minor, with a more apt reference to a child (defined as set out in *clause 8(3)*).

Clause 17 amends section 16, which is about protection of persons other than the applicant for a protection order. References in section 16(1B) and (5)(a), to a child of the applicant's family attaining the age of 17 years, are altered in line with the changes to the definition of child in section 2 (*see clause 8*). *New section 16(2), (2A), (3), and (4)* re-enacts, but also extends and updates, section 16(2), (3), and (4).

New section 16(2)(a) relates to a child of the applicant who, because the child does not ordinarily or periodically reside with the applicant, is not a child of the applicant's family (as defined in section 2). *New section 16(2)(a)* enables the court in or after making a protection order (and subject to the test in *new section 16(2A)*) to direct that the order also apply for the child's benefit.

New section 16(2)(b) enables the court in or after making a protection order (and subject to the requirements in *new section 16(3)*) to direct that the order also apply for the benefit of any particular person with whom the applicant has a family relationship, and who is not a child of the kind specified in *new section 16(2)(a)*.

New section 16(4) replaces section 16(4) with an updated provision that reflects *new section 16(2)(a) and (b)*.

Clause 18 amends section 17, which is about protection from a respondent's associates. The amendments replace references to domestic violence with ones to family violence.

Clause 19 replaces—

- section 19 (standard conditions of a protection order); and
- section 20 (which states exceptions to the standard no-contact condition in section 19(2), and applies only when the protected person and the respondent are *not*, with the express consent of the protected person, living in the same dwellinghouse).

Sections 19 and 20 are replaced with *new sections 19, 20, 20A, 20B, and 20C*.

New section 19 replaces the many detailed standard conditions in section 19 with 3 standard conditions: that the respondent (the person against whom a protection order is made) must not—

- engage in behaviour that amounts to any form of family violence against the protected person (*see new sections 3, 3A, and 3B*);
- make any contact (as defined in section 2) with the protected person that is not contact authorised under or by *new section 20 or 20B* (which describe the condition in *new section 19(b)* as the standard no-contact condition);
- encourage a person to engage in behaviour against or make contact with a protected person, if the behaviour or contact, if engaged in or made by the respondent, would be prohibited by the order.

New section 19(b), like section 19(2)(e), prohibits the respondent from making contact with the protected person. Whether the respondent has made contact with the protected person depends on the circumstances of each particular case. The respondent does not necessarily make contact with the protected person simply by being on or in the same land or building as the protected person. Coincidental proximity may occur without the respondent intending to make, or being reckless about making, contact (for example, it may occur even though the respondent has taken all reasonable steps to avoid making contact).

New section 20 specifies exceptions, which apply only with the protected person's consent, to the standard no-contact condition (in *new section 19(b)*).

New section 20(1) and (2) ensures the condition is suspended, and reinstated, when the protected person gives or cancels consent to the contact involved.

New section 20(3) and (4) illustrates and limits the contact to which the protected person may give or cancel consent. No consent under the section can authorise contact that is inconsistent with—

- an order for supervised contact in relation to a child;
- no-contact conditions imposed by a direction under *new section 168B* of the Criminal Procedure Act 2011 (inserted by *clause 109*).

New section 20(5) ensures no consent to contact is valid unless in writing or in a digital communication (for example, in a text message, email, letter, or standard form). Consent to contact is therefore ineffective if not given in writing or in a digital communication. Writing means words, figures, or symbols in a visible and tangible form and medium (*see* section 29 of the Interpretation Act 1999). Digital communication is defined in section 2 (as amended by *clause 8*). However, a cancelling of consent to contact may take any form (for example, words spoken face to face, or by telephone). *New section 20*, unlike sections 19, 20, and 28, does not refer to or require “express consent”. Any giving or cancelling of consent to contact will anyway be practically ineffective if it does not make it reasonably clear that the protected person consents, or cancels consent to, the making of the contact involved. (A giving or cancelling, before the changeover (*see clause 1 of new Schedule 1*), of a person's express consent to contact is anyway continued by the saving in *clause 4(4) of new Schedule 1*, inserted by *clause 71*.)

New section 20(7) ensures the condition can be suspended, and reinstated, under *new section 20(1) and (2)*, any number of times.

New section 20A re-enacts section 20(6), which applies if a protection order has a special condition imposed under section 27(3) that specifies that a person (other than the respondent or the associated respondent) is entitled to consent, on the protected person's behalf, in relation to contact with the protected person. *New section 20A* ensures that references in *new section 20* to the giving or cancelling of the consent of a protected person include, as the case requires, the giving of the consent of the specified person, or the cancelling of consent by the specified person.

New section 20B states other exceptions, based on those in section 19(2)(e), to the standard no-contact condition in *new section 19(b)* (*see also* the parallel exceptions, for a Police safety order, under *new section 124E(2)(b) and (2A)*, inserted by *clause 58*). Examples are cases where the respondent's contacting the protected person, or entering or remaining on or in land or a building on or in which the protected person is present,—

- is reasonably necessary in any emergency; or
- is permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of,—

- any child (within the meaning of section 8 of the Care of Children Act 2004); or
- any child or young person (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or
- is necessary to attend any court proceeding, or to attend any other matter that is associated with a court proceeding and that is a matter that the parties to the court proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).

New section 20C re-enacts section 19(3) and ensures that *new sections 19 to 20B* apply to an associated respondent to whom the protection order applies under a direction made under section 17.

Clause 20 amends section 21, which is about the standard condition relating to weapons. The amendment updates expression (replacing “pursuant to” with “under”).

Clause 21 amends section 23, which contains further provisions relating to powers conferred by section 22. (Section 22 authorises the court to dispense with, modify, discharge, or re-impose the standard condition relating to weapons.) The amendments replace references to domestic violence with ones to family violence.

Clause 22 replaces section 27(1), which is about special conditions of protection orders. *New section 27(1)* extends section 27(1) by enabling the court, in or after making a protection order, to impose any conditions that are reasonably necessary, in the opinion of the court, not only—

- to protect the protected person from further domestic violence by the respondent, or the associated respondent, or both; but also (instead, or as well)
- to address the inflicting of family violence against protected people who are particularly vulnerable (for example, due to age, disability, or health condition).

Clause 23 replaces section 28, which relates to special conditions that are inconsistent with parties living in the same dwellinghouse. *New section 28* is reworded, and simplified, for consistency with *new sections 20 to 20C* (inserted by *clause 19*).

Clause 24 amends section 28B, which applies (*see* section 28B(1)) when an application is made to the Family Court for a protection order and there is a child of the applicant’s family. Section 28B(2) enables the Family Court to make an interim order or orders about the role of providing day-to-day care for, or about contact with, a child of the applicant’s family. *New section 28B(4)* requires the interim order to be taken to be an interim parenting order made under section 48(1) of the Care of Children Act 2004 (so that, for example,—

- section 49A of that Act applies to it; and
- it may be varied or discharged under section 56 of that Act).

Clause 25 repeals section 28C (because it is made unnecessary by *new section 28B(4)* inserted by *clause 24*).

Clause 26 replaces section 28D. *New section 28D* re-enacts section 28D(2), which ensures special provisions about conditions on grants of legal aid apply to proceedings under the Care of Children Act 2004 in respect of an interim order made under section 28B(2). *New section 28D* does not, however, re-enact section 28D(1), because it is made unnecessary by *new section 28B(4)* (inserted by *clause 24*).

Clause 27 amends section 47, which gives power to discharge a protection order. *New section 47(1A)* prohibits the court from discharging the order unless satisfied that the order is no longer necessary for the protection of any protected person. *New section 47(1B)* specifies matters to which the court must, to the extent that the matters are relevant in the particular case, have regard when determining whether to discharge a protection order. These specified mandatory relevant considerations are drawn from case law (for example, *SPPRS v PLS* [2012] NZFC 6555 at 11–13, per Judge E Smith). *New section 47(1B)* does not limit other matters to which the court may have regard (see *new section 47(1C)*). Other amendments update expression (replacing “pursuant to” with “under”).

Clause 28 replaces section 48, which is about applications, on behalf of a protected person, for variation or discharge of a protection order. *New section 48* re-enacts section 48, redrafting it in line with current legislative drafting practice.

Clause 29 amends section 49 (which makes it an offence, punishable by imprisonment for a term not exceeding 3 years, to breach a protection order). *New section 49(1)* extends section 49(1) so that it covers breaching a protection order by not only—

- doing any act in contravention of the protection order; or
- failing to comply with any condition of the protection order; but also
- contravening, or failing to comply with a term and condition of, a related occupation order (for example, by failing to leave the dwellinghouse to which the order relates); or
- contravening a related tenancy order (for example, by failing to leave the dwellinghouse to which the order relates); or
- contravening, or failing to comply with a term and condition of, a related ancillary furniture order (for example, by preventing the applicant from getting possession and use of all or any items to which the order relates); or
- contravening, or failing to comply with a term and condition of, a related furniture order (for example, by preventing the applicant from getting possession and use of all or any items to which the order relates).

A furniture order’s terms and conditions (which are imposed under section 67(5)) will include terms and conditions of the kinds specified in *new section 67(5A)* (inserted by *clause 42*).

Clause 30 replaces section 50, which is a power for a constable to arrest, without warrant, a person who the constable has good cause to suspect has contravened, or failed to comply with a condition of, a protection order. *New section 50* extends this power

so it also covers contraventions of, or failures to comply with terms and conditions of, a related order that are breaches of the protection order, and offences, under *new section 49(1)* (inserted by *clause 29*).

Programmes (Part 2A)

Clause 31 replaces Part 2A with *new Part 2A*. *New Part 2A* re-enacts Part 2A but—

- covers not only programmes, but also prescribed services:
- requires approved assessors (not service providers) to undertake assessments (for non-violence programmes, prescribed services, or both):
- rationalises and reorders existing provisions on procedures and powers.

New section 51A defines terms for *new Part 2A*.

The replacement definition of approval reflects that separate approvals under *new section 51B* will be required for assessors and for service providers.

The new definition of assessment includes adjustments to recognise that an assessment will be undertaken by an approved assessor and may be either an assessment for a non-violence programme or an assessment for prescribed services. An assessment for prescribed services is to determine, among other things, what, if any, prescribed services (whether prescribed non-standard services or prescribed standard services) may be appropriate for and may benefit the respondent.

A new definition of assessor is inserted to reflect that assessments (as defined in *new section 51A*) will be undertaken by approved assessors and will no longer be undertaken by service providers. However, *clause 6 of new Schedule 1* (inserted by *clause 71*) is a transitional provision about service providers who, on the changeover (see *clause 1 of new Schedule 1*), have in-force (not cancelled, even if suspended) approvals under section 51B as service providers to undertake assessments. Approval as a service provider will no longer authorise them to undertake assessments under *new Part 2A*, but they will be taken to have been granted, under *new section 51B*, and on the changeover, an approval as an assessor to undertake assessments for non-violence programmes (but not also assessments for prescribed services).

The replacement definition of service provider ensures that this term no longer covers the undertaking of assessments, but does cover providing prescribed services (instead of, or as well as, programmes).

The rest of the amendments replace references to domestic violence with ones to family violence.

New section 51B(1) and (5) refers expressly to amendments of approvals of service providers. *New section 51B(5)* also ensures the approval criteria to be applied are those prescribed for the purposes of *new section 51B* by regulations made under *new section 127(a)(ii)* (as inserted by *clause 70(1)*). An example is criteria for when a person or an organisation may under *new section 51B(4)* be granted or hold both an approval to undertake assessments for, and an approval to provide, prescribed services.

New section 51B(4) makes it clear that a person or an organisation may (subject to, and to the prescribed criteria referred to in, *new section 51B(5)*) seek, be granted, or hold both—

- an approval as an assessor (for non-violence programmes, prescribed services, or both); and
- an approval as a service provider.

New section 51B(6) ensures that an approval, or an amendment, suspension, or cancellation of an approval, under *new section 51B* must be by written notice copied to the person or organisation.

New section 51B(7) aligns with *new section 12B(7)* (inserted by *clause 14*). *New section 51B(7)* requires the Secretary to publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice—

- an up-to-date list of assessors approved under *new section 51B*;
- an up-to-date list of service providers approved under *new section 51B*.

New section 51C replaces section 51I, which applies if a service provider, during or after undertaking an assessment of the respondent, or during the provision of a non-violence programme to a respondent, has concerns about the safety of a protected person. Section 51I requires the provider, without delay, to notify the Registrar of those safety concerns. *New section 51C* re-enacts section 51I, but also contains amendments to—

- require notification as well of safety concerns that a service provider has during or after the provision by the provider to a protected person of a safety programme;
- require an approved assessor to notify safety concerns the assessor has during or after undertaking an assessment of the respondent;
- require notification as well of such safety concerns a service provider has during or after the provision by the provider to the respondent of (not just a non-violence programme, but also) a prescribed service;
- define the concerns to be reported as ones about a risk that is imminent, escalating, or grave and that adds to the concerns that supported the making of the protection order;
- require notification to be given not only to the Registrar, but also to the District Commander at the appropriate Police District Headquarters and, if there is a perceived risk to any child, to the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for administration of the Children, Young Persons, and Their Families Act 1989.

New section 51D is about safety programmes for protected persons.

New section 51D(1)(b) enables a child of the applicant's family, on the child's own behalf, to request the Registrar to authorise the provision of a safety programme to

that child (if no request to do that has been made to the Registrar under *new section 51D(1)(a)(ii)* by the applicant or the applicant's representative).

New section 51D(2) re-enacts, with an amendment, section 51C(2). *New section 51D(2)* applies if, at the time the protection order is made, the applicant has not made a request that the Registrar authorise provision of a safety programme, and the applicant is not legally represented. The amendment is that the Judge or Registrar must inform the applicant of (rather than cause the applicant to be informed of) the applicant's right to make such a request.

New section 51D(3) re-enacts section 51C(3), but makes it clear that 1 or more requests may be made under all or any of *new section 51D(1)(a)*, *(b)*, and *(c)*, in respect of the same person or different people, at any time while the protection order remains in force.

New section 51D(4) re-enacts section 51C(4), but also adjusts it so that the Registrar—

- must arrange for the matter to be referred to a service provider without delay, if the request is the first one made by or on behalf of the applicant, child of the applicant's family, or specified person; and
- may do so, if the request is a later one made by or on behalf of the applicant, child of the applicant's family, or specified person.

Section 51C(5) applies if a referral is made under section 51C(4) to a service provider. It requires the Registrar to determine, following discussion with the service provider, the number of safety programme sessions that the service provider is to provide to a protected person. This level of rigid operational detail is considered unnecessary and unhelpful. Section 51C(5) is thus not re-enacted in *new section 51D*.

New section 51E is about directions for assessments, non-violence programmes, and prescribed services.

New section 51E(1) requires the court, on making a protection order, to direct the respondent to—

- undertake an assessment for a non-violence programme; and
- attend a non-violence programme, provided by a service provider, that an assessor determines is an appropriate non-violence programme for the respondent to attend.

New section 51E(2) ensures that the court need not make a direction under *new section 51E(1)* if the court considers that there is a good reason for not making a direction.

New section 51E(3) permits the court, on making a protection order, to direct the respondent to—

- undertake an assessment for prescribed services; and

- engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the respondent.

New sections 51F and 51G re-enact sections 51E and 51F. Those sections apply if a direction to attend an assessment and a non-violence programme is made on an application without notice. They provide for the respondent to make an objection, and for suspension of the direction until the court, after considering any objection made by the respondent, confirms or discharges the direction.

New section 51H, which is based on section 51G, is about referral to an assessor. *New section 51H* ensures that the respondent is referred, and a direction made under *new section 51E* by the court is notified, to an assessor (instead of to a service provider). *New section 51H* also requires the assessor to be one who has been granted an approval to undertake an assessment of the kind required by the direction.

New section 51I is about the functions of the assessor. *New section 51I* replaces section 51H, which requires the service provider, as soon as possible after receiving a notification under section 51G (of a direction under section 51D), to arrange to meet with the respondent to—

- undertake an assessment of the respondent; and
- determine whether there is an appropriate non-violence programme for the respondent to attend.

New section 51I imposes those duties instead on an approved assessor. *New section 51I(1)(b) and (c)* requires the assessor, in and through the required arranged meeting with the respondent,—

- to determine, if the direction in the notification is that the respondent undertake an assessment for a non-violence programme, whether there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend; and
- to determine, if the direction in the notification is that the respondent undertake an assessment for prescribed services, whether (and, if so, which of) the types of services specified in *Schedule 2* (if any) may be appropriate for and may benefit the respondent.

The types of services specified in *new Schedule 2* (inserted by *clause 71*) are a key component of the definition of prescribed services (in section 2, as amended by *clause 8*).

New section 51I(2) ensures that the assessor need not undertake or complete an assessment, or make a determination, under *new section 51I(1)* if the assessor considers that there is a good reason for not doing so.

On making a decision under *new section 51I(2)* not to undertake or complete an assessment, or not to make a determination, under *new section 51I(1)*, the assessor must notify, and send a copy of the decision to, the Registrar (*see new section 51I(3)*). The

Registrar must bring the matter to the attention of a Judge (*see section 51S and new section 51I(4)*).

New section 51I(6) applies to the assessor making 1 or more determinations that a non-violence programme or prescribed standard service is appropriate for the respondent to attend or engage with (unless the assessor also determines under *new section 51I(1)(c)* that a prescribed non-standard service, provided by a service provider, may be appropriate for and may benefit the respondent, in which case *new section 51L* applies). *New section 51I(6)* requires the assessor to decide (jointly with any other assessor referred under *new section 51H* a direction made under *new section 51E* on the making of the protection order) in what order the respondent must attend a non-violence programme or engage with a prescribed standard service, and whether the respondent's attendance at the programme, or engagement with the prescribed standard service, or both, should be delayed to enable other matters to be addressed first.

On making a decision under *new section 51I(6)* that the respondent's attendance at the programme, or engagement with the prescribed standard service, or both, should be delayed to enable other matters to be addressed first, the assessor must notify the Registrar, and the Registrar must bring the matter to the attention of a Judge (*see section 51S and new section 51I(7)*).

New section 51J requires the assessor to refer the respondent back to the court if the assessor determines under *new section 51I(1)(b) or (c)* that there is no appropriate non-violence programme or prescribed standard service for the respondent to attend or engage with. The Registrar must arrange for the protected person to be notified of the 1 or more determinations, and bring the matter to the attention of a Judge (*see new section 51S*).

New section 51K is about the assessor referring the respondent to the service provider. *New section 51K*, which re-enacts but amends section 51G, applies if the assessor determines under *new section 51I(1)(b) or (c)* that there is an appropriate non-violence programme or prescribed standard service for the respondent to attend or engage with. *New section 51K* requires the assessor, without delay, to—

- notify, and copy the 1 or more determinations to, the respondent, and otherwise arrange for the respondent to be referred to the service provider; and
- notify the service provider of the relevant direction or directions made under *new section 51E* and of the 1 or more determinations; and
- notify, and copy the 1 or more determinations to, the Registrar and the respondent.

New section 51L enables the court to direct the respondent to engage with a prescribed non-standard service, if the assessor determines under *new section 51I(1)(c)* that the service may be appropriate for and may benefit the respondent. *New section 51L(2)* obliges the assessor promptly to notify the Registrar, and to send the Registrar the result of the assessment of the respondent undertaken by the assessor, and all information related to the assessor's determination that the assessor considers may help

a Judge to determine whether to make a direction. *New section 51L(3)* requires the Registrar, after receiving the notification, to bring the matter to the attention of a Judge. When a matter is brought to the attention of a Judge under *new section 51L(3)*, the Judge may, if the Judge thinks fit, by written direction copied promptly to the respondent, to the assessor, and to the service provider, require the respondent to engage with the prescribed non-standard service as provided by a service provider (*new section 51L(4)*). *New section 51L(5)* enables the Judge, in making the direction, to decide in what order the respondent must attend a non-violence programme or engage with the prescribed non-standard service (or with any prescribed standard services with which the respondent is required to engage), and whether the respondent's attendance at the programme, or engagement with all or any prescribed services, or both, should be delayed to enable other matters to be addressed first, and to make any other order or direction that may be made under *new section 51S*.

New section 51M is about referral to a different service provider. *New section 51M* re-enacts, with amendments, section 51J. The amendments recognise that service providers no longer undertake assessments, and that directions about programmes and prescribed services are notified or copied to service providers under *new sections 51K and 51L*. If the service provider is not able to provide the programme or prescribed service, the service provider must notify and provide specified information to (not the Registrar, but) the assessor referred to in *new section 51K or 51L*. That assessor then either—

- notifies or copies the direction about the programme or prescribed service and the respondent to a service provider that is able to provide that programme or service to the respondent (under *new section 51K or 51L(4)*, which apply with the necessary modifications), and notifies the Registrar of the respondent's referral to a different service provider; or
- notifies the Registrar, who must then bring the matter to the attention of a Judge (*see new section 51S*).

New section 51N re-enacts and amends section 51K (Judge may discharge direction to attend non-violence programme in certain cases).

New section 51N applies if the service provider, after being notified of, or copied, under *new section 51K or 51L*, a direction about a non-violence programme or prescribed service and a respondent, determines that—

- the respondent's attendance at the programme, or engagement with the service, or both, should be delayed to enable other matters to be addressed first; or
- it would not be appropriate for the respondent to attend the programme, engage with the service, or both.

New section 51N requires the service provider to notify the Registrar, and also requires the Registrar to bring the matter to the attention of a Judge (*see new section 51S*).

New section 51O re-enacts but amends section 51L, which requires the service provider and the respondent to settle the terms of the respondent's attendance at a non-violence programme. The amendments—

- require terms of the respondent's attendance at a non-violence programme to include only more general details and arrangements about the programme venue, sessions, and times (*new section 51O(1)(b)*);
- require the service provider, before providing a prescribed service to a respondent directed under *new section 51E(3)(b)* or *51L* to engage with the service, to settle in writing with the respondent the terms of the respondent's engagement with the service (*new section 51O(2)*);
- ensure, if a service provider is not able to settle with a respondent the terms of attendance or (as the case requires) the terms of engagement, that the Registrar must either settle those terms or bring the matter to the attention of a Judge (*see section 51S*).

New section 51P re-enacts but amends section 51M, which applies if, at any time during the provision of a non-violence programme, the service provider considers that—

- it is no longer appropriate or practicable for the service provider to provide the programme to the respondent; or
- the respondent is not participating fully in the programme, and that this is significantly affecting the respondent's ability to benefit fully from the programme.

Section 51M requires the service provider to notify the Registrar, and send to the Registrar all information relating to the respondent that is held by the service provider. After receiving the notification and information sent, the Registrar must make a new referral under section 51G or bring the matter to the attention of a Judge. *New section 51P*—

- extends to provision, by a service provider, of a prescribed service;
- clarifies the information that must be sent to the Registrar;
- ensures that service provider determinations about continued provision of the programme or prescribed service require the Registrar to make a new referral under *new section 51M* to a different service provider, or to bring the matter to the attention of a Judge (*see new section 51S*);
- indicates that service provider determinations about the respondent's non-compliance must also be the subject of written notice to the Registrar under *new section 51T* (so that the non-compliance provisions in *new sections 51V, 51W, and 51X* apply accordingly).

New section 51Q re-enacts and amends section 51R (notice of completion and outcome of non-violence programme). *New section 51Q(1)* ensures the service provider's reporting duty—

- arises when a respondent has completed engagement with a prescribed service; and

- includes advising of any concerns that the service provider has about the safety of any protected person (as those concerns are defined in *new section 51C(2)*).

New section 51Q(2) alters section 51R(2) so that, on receiving the report, the Registrar—

- forwards a copy to a Judge not in every case, but only if—
 - the report advises of safety concerns; or
 - the respondent has failed to meet the objectives of the programme or of the engagement with the prescribed service; and
- arranges for the protected person to be notified of each report of the service provider that the respondent has completed engagement with a prescribed service, and of any concerns that the service provider has about the safety of the protected person advised in that report.

New section 51R replaces section 51S, which is about confidentiality of information disclosed to a service provider in the course of providing a programme. Section 51S prohibits disclosure of the information (except as specified in section 51S(3)) and the information being admitted as evidence. *New section 51R* applies to information (for example, a statement or an admission) received—

- by an assessor or a service provider (for example, by a government organisation approved under *new section 51B* as a service provider); and
- for the purposes of, or in the course of, undertaking an assessment, or providing a programme or prescribed service.

New section 51R(2) prohibits the information from being admitted as evidence—

- in any court; or
- before any person acting judicially.

However, *new section 51R(3)* ensures that *new section 51R(2)* does not prohibit the information from being disclosed for the purposes of all or any of the following:

- giving a notification (for example, to a Registrar) under the principal Act;
- making a referral (for example, to a service provider) under the principal Act;
- proceedings under *new section 51U or 51V* (which are proceedings about the respondent's non-compliance with a direction);
- investigating or prosecuting an offence against *new section 51X*;
- investigating or prosecuting an offence committed, or alleged to have been committed, during the provision of a programme, a prescribed service, or both;
- an inquiry that may be or is opened, ordered, or conducted into a death (including any related inquest that may be or is held) under the Coroners Act 2006.

New section 51R(4) applies if the information is court information of the District Court (within the meaning of section 236(4) and Schedule 1 of the District Court Act 2016). *New section 51R(4)* prohibits the information from being used or disclosed except with authorisation given by a court or the Registrar or under rules of court.

New section 51S applies if the Registrar, under specified sections, brings a matter to the attention of a Judge. The Judge may make any order or direction (for example, under *new section 51E, 51J, 51L, 51P, or 51Q*) the Judge thinks fit in the circumstances. In particular, the Judge may, without limitation, do all or any of the things specified in *new section 51S(3)*. Those specified things include making, or varying or discharging terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent.

New section 51T re-enacts and amends section 51N (notice of non-compliance with direction). *New section 51T* requires the assessor or service provider concerned to notify the Registrar if, after the court makes a direction under *new section 51E or 51L*, 1 or more of the following events happen:

- the respondent fails to undertake an assessment with the assessor to whom notice of the direction has been given under *new section 51H*;
- the respondent fails to attend a non-violence programme in accordance with a direction made under *new section 51E(1)(b)* and with the terms of attendance settled under *new section 51O*;
- the respondent fails to engage with a prescribed service in accordance with a direction made under *new section 51E(3)(b) or 51L* and with the terms of engagement settled under *new section 51O*;
- during the provision of a non-violence programme, the service provider determines under *new section 51P(1)(b)* that the respondent is not participating fully in the programme and that this is significantly affecting the respondent's ability to benefit fully from the programme;
- during the provision of a prescribed service (whether a prescribed standard service, or a prescribed non-standard service), the service provider determines under *new section 51P(2)(b)* that the respondent is not engaging fully with the service and that this is significantly affecting the respondent's ability to benefit fully from the service.

New section 51U re-enacts and amends section 51O, which is about the Registrar's powers on receipt of a notice of a respondent's non-compliance with a direction (*see new section 51T*). *New section 51U* ensures the Registrar's powers also apply on the Registrar receiving—

- a notification under *new section 51C(3)(a)* of an assessor's or a service provider's concerns about the safety of a protected person; or
- a non-violence programme completion or prescribed service engagement completion report under *new section 51Q(1)*—
 - that advises that the respondent has failed to meet the objectives of the programme or of the engagement with the prescribed service; or
 - that advises of concerns that the service provider has about the safety of any protected person.

New section 51V re-enacts section 51P (Judge may call respondent before court). *New section 51V* applies if a Registrar, in response to notice of safety concerns or non-compliance, and under *new section 51U(2)(b)*, brings a matter to the attention of a Judge. *New section 51V* enables the Judge to exercise the powers under section 82 to call the respondent before the court.

New section 51W re-enacts and amends section 51Q, which enables the court to confirm, vary, or discharge a direction or change the terms of attendance at the programme. If the court confirms or varies a direction, the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment. *New section 51W(1)* extends the powers available if a respondent appears before the court after the Registrar receives a non-compliance or safety concerns notification, notice, or report referred to in *new section 51U(1)*. The powers will enable the court, after hearing from the respondent, to do all or any of the following:

- admonish the respondent:
- confirm, vary, or discharge the direction (under *new section 51E or 51L*) or change the terms of attendance at or engagement with the programme or prescribed service under *new section 51O*:
- make a replacement direction (under *new section 51E or 51L*) that requires the respondent to attend or engage with a further, or different, assessment, programme, or prescribed service:
- make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent:
- make any order or direction the court thinks fit in the circumstances.

New section 51X re-enacts and amends section 51T, which makes it an offence for a respondent to fail, without reasonable excuse, to comply with a direction—to undertake an assessment and attend a non-violence programme—made under section 51D. The offence is punishable by a fine not exceeding \$5,000 or a term of imprisonment not exceeding 6 months. The amendment ensures the offence covers as well a failure, without reasonable excuse, to comply with any of the following:

- a direction, under *new section 51E(3)(b)* (for example, as applied by *new section 51S or 51W*), to engage with a prescribed standard service:
- a direction, under *new section 51L* (for example, as applied by *new section 51S or 51W*), to engage with a prescribed non-standard service.

Orders relating to property (Part 3)

Clause 32 replaces section 52, which is about applications for an occupation order. *New section 52*—

- requires applications for an occupation order to be associated with an application for a protection order yet to be determined, or with a resulting protection order that is in force:

- ensures that an occupation order grants the applicant the right to live in a dwellinghouse owned by either party to the proceedings, or in which either party to the proceedings has a legal interest (for example, a tenancy), both—
 - during all or any of the period of existence of the family relationship in respect of which the protection order is sought or was made; and
 - when the occupation order is made.

Clause 33 amends section 53, which is about the court's power to make an occupation order. *New section 53(1)* prevents the making of an occupation order unless a protection order is sought at the same time, or has already been made. *New section 53(2)(a)* replaces the ground in section 53(2)(a) (that the order "is necessary for the protection of the applicant") with the new ground that the order is reasonably necessary for 1 or both of the following purposes:

- to meet the accommodation needs of the applicant, a child of the applicant's family, or both (and *clause 33* also adjusts section 53(4) so that it requires the court to have regard to the reasonable accommodation needs of "any other persons" affected by the order);
- to enable the applicant to continue existing childcare, education, training, or employment arrangements for that person, a child of the applicant's family, or both.

New section 53(2)(b) also continues the section 53(2)(b) ground (that the order "is in the best interests of a child of the applicant's family").

New section 53(2) does not limit the matters to which the court may have regard in determining whether to make the order: *new section 53(2A)*.

Clause 34 repeals section 54(2), which makes an occupation order enforceable as if it were an order for the recovery of land (made under section 79(2)(c) of the District Court Act 2016). Enforcement as an order for the recovery of land is to end because other remedies (for example, trespass) are available and because contravening an occupation order will be a breach of the related protection order and an offence under *new section 49(1)* (inserted by *clause 29*).

Clause 35 amends section 56, which is about applications for a tenancy order.

New section 56(1) and (1A)—

- requires applications for a tenancy order to be associated with an application for a protection order yet to be determined, or with a resulting protection order that is in force;
- ensures that a tenancy order vests in the applicant the tenancy of any dwellinghouse of which either party to the proceedings is the sole tenant, or a tenant holding jointly, or in common, with the applicant, both—
 - during all or any of the period of existence of the family relationship in respect of which the protection order is sought or was made; and
 - when the occupation order is made.

Clause 36 amends section 57, which is about the court's power to make a tenancy order.

New section 57(1) prevents the making of a tenancy order unless a protection order is sought at the same time, or has already been made. *New section 57(2)(a)* replaces the ground in section 57(2)(a) (that the order “is necessary for the protection of the applicant”) with the new ground that the order is reasonably necessary for 1 or both of the following purposes:

- to meet the accommodation needs of the applicant, a child of the applicant, or both (and *clause 36* also adjusts section 57(3) so it requires the court to have regard to the reasonable accommodation needs of any other persons affected by the order);
- to enable the applicant to continue existing childcare, education, training, or employment arrangements for that person, a child of the applicant, or both.

New section 57(2)(b) also continues the section 57(2)(b) ground (that the order is in the best interests of a child of the applicant's family).

New section 57(2) does not limit the matters to which the court may have regard in determining whether to make the order (*new section 57(2A)*).

Clause 37 repeals section 58(2), which makes a tenancy order enforceable as if it were an order of the court for possession of the land granted in favour of the applicant. Enforcement as an order for possession of the land is to end because other remedies (for example, trespass) are available and because contravening a tenancy order will be a breach of the related protection order and an offence under *new section 49(1)* (inserted by *clause 29*).

Clause 38 repeals section 60(3), which prevents the making of an occupation order or a tenancy order on an application without notice unless the court—

- has made or, at the same time makes, a protection order; or
- considers that there are special reasons for not making a protection order.

Section 60(3) is repealed because an occupation order or tenancy order is to be able to be made (whether on an application with, or without, notice) only if the court has made or, at the same time makes, a protection order. Contravening an occupation order or a tenancy order will be a breach of the related protection order (*see new section 49(1)*, inserted by *clause 29*).

Clause 39 amends section 61, which is about the procedure for making occupation orders and tenancy orders. Section 61(1) and (2) empowers the court to treat an application for one of those kinds of orders as an application for the other kind of those orders (or as an application for both kinds of those orders), and to make 1 or both of those kinds of orders. *New section 61(1)(d) and (2)(d)* makes clear that the court cannot, however, make 1 or both of those kinds of orders unless it is satisfied that a protection order has been made, or that it will at the same time make a protection order.

Clause 40 repeals section 64(2), which makes an ancillary furniture order enforceable as if it were an order of the court for delivery of chattels granted in favour of the per-

son for whose benefit the ancillary furniture order is made. Enforcement as an order for delivery of chattels is to end because contravening an ancillary furniture order will be a breach of the related protection order and an offence under *new section 49(1)* (inserted by *clause 29*).

Clause 41 amends section 66, which is about applications for a furniture order. One amendment deletes wording about the applicant being aged 16 years or over. The other amendment replaces a reference to a domestic relationship with one to a family relationship.

Clause 42 amends section 67, which gives power to make a furniture order. *New section 67(1) and (1A)* re-enact section 67(1) in a redrafted form (in line with sections 53 and 57 as amended by *clauses 33 and 36*). *New section 67(5A)* gives examples of the kinds of terms and conditions of a furniture order that may be imposed by the court under section 67(5) on or after making the order. Failing to comply with a term and condition of a furniture order (for example, by preventing collection of the items to which it relates) will be a breach of a related protection order and an offence under *new section 49(1)* (as inserted by *clause 29*).

Clause 43 repeals section 68(2), which makes a furniture order enforceable as if it were an order of the court for delivery of chattels granted in favour of the person for whose benefit the furniture order is made. Enforcement as an order for delivery of chattels is to end because contravening a furniture order will be a breach of the related protection order and an offence under *new section 49(1)* (inserted by *clause 29*).

Clause 44 replaces sections 71 to 73, which are about applications for property orders—

- by and against minors; or
- on behalf of people other than children.

New section 71 is about applications for property orders by a child. (Child, defined as set out in *clause 8(3)*, means a person who is under the age of 18 years, regardless of whether the person is or has been married or in a civil union or a de facto relationship). (*New section 9*, which is about applications for protection orders by children, and inserted by *clause 14*, is to similar effect.)

New section 71 adjusts and simplifies section 71, which is about an application for a property order by a minor (person aged under 20 years). *New section 71(2)* replaces section 71(2), on an application by a minor aged 16 years. *New section 71(2)* provides, instead, that a child (defined as set out in *clause 8(3)*) may make the application—

- by a representative (for example, an approved organisation that is authorised by *new section 12C* to take proceedings under the principal Act on behalf of the child); or
- if authorised under rules of court to do so without a representative.

New section 71(2) fits with rules 90 and 90A of the Family Court Rules 2002.

New section 71(3) makes it clear that *new section 71* does not limit or affect the making or operation of rules of court (for example, the Family Court Rules 2002) that—

- prevent an incapacitated child from taking part in, or from taking a step in, all or any specified proceedings under Family and Whānau Violence Act 1995 without a litigation guardian;
- provide for a representative to make all or any specified applications under Family and Whānau Violence Act 1995 on behalf of a child prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally.

Section 71(1) requires a minor aged 17 years or over who wishes to make the application to do so on the minor's own behalf, without a representative (and orders may be made on the application, and enforced, as if the minor were of full age). Section 71(1) is not re-enacted for a person aged 18 or 19 years because rules of court enable a minor aged 18 years or older to take part in proceedings without a representative.

Section 72, which is about property orders against minors, is replaced by *new section 72*. *New section 72* is about property orders against a child (defined as set out in *clause 8(3)*). (*New section 10*, which is about applications for protection orders against minors, and is inserted by *clause 14*, is to similar effect.) *New section 72* prevents the court from making a property order against a child unless satisfied that the order is justified by special circumstances.

Section 73 enables an application for a property order to be made by a representative on behalf of a person who is not a child, but is a person lacking capacity or a person prevented from applying personally. *New section 73* re-enacts section 73 in updated form and with appropriate references to *new sections 11 and 12* (inserted by *clause 14*).

Procedure (Part 4)

Clause 45 amends section 81 (court may appoint lawyer). The first amendment is consequential on *new section 9(2)(b)* (inserted by *clause 14*). The second amendment is to simplify slightly section 81(1)(c).

Clause 46 amends section 83, which relates to who may attend a hearing of proceedings under the principal Act. The amendment macronises a word (whānau) in the Māori language (te reo Māori), to reflect current orthographic conventions.

Clause 47 amends section 88. It requires the Registrar of the court in which an order is made to send a copy to the Police. *New section 88(4)* requires the Registrar, when making a copy of an order available to a District Commander under section 88(1), also to make available to that District Commander at the same time, in a way specified in section 88(3), information supplied—

- to the Registrar, by or on behalf of the applicant for the order; and
- to help the Police assess risks, or needs, arising from family violence.

New section 88(5) provides that risk factor information made available under *new section 88(4)* may be disclosed by the Police under *new section 124V* (inserted by *clause 69*), under any other enactment that authorises or requires the Police to disclose that information, or in any other way that is not an interference with the privacy of an individual (within the meaning of section 66 of the Privacy Act 1993).

Clause 48 amends section 90(4), which applies if a copy (or a copy of a copy) of an order is made available under section 88(2) by a Police District Commander to the officer in charge of a Police station, and requires that officer in charge to consider the exercise of powers under (repealed) section 60A (search of suspected persons and seizure of firearms in cases of domestic violence) of the Arms Act 1983. The amendment replaces the reference to that repealed section with a reference to the corresponding new section 18 (warrantless searches associated with arms) of the Search and Surveillance Act 2012.

Clause 49 amends section 92, which relates to appeals under section 91 or 93. The amendment replaces a reference in the section heading to minors with a reference to children. The amendment is consequential on *new section 9* (inserted by *clause 14*).

*Enforcement of protection orders overseas and foreign protection orders
(Part 5)*

Clause 50 replaces sections 96 and 97 with *new sections 96, 96A, 96B, and 97*.

New section 96 re-enacts but amends section 96 (except section 96(4) and (5)), which is about enforcement of New Zealand orders overseas. A person seeking enforcement in a foreign country of a protection order made by a New Zealand court (and that is enforcement by way of a request sent by the Secretary) must under section 96(2) in the first instance make a written request to the Registrar of the court in which the protection order was made. Section 96(3) obliges the Registrar, if satisfied that specified preconditions are met, to send the request to the Secretary for sending to the foreign country. *New section 96(1) and (4)* re-enacts the section 96(1) and (3) duties, but imposes them only on the Registrar, and without the section 96(3)(d) precondition that there are reasonable grounds for believing that enforcement of the order in the foreign country is necessary for the protection of the protected person.

New section 96A re-enacts section 96(4) and (5), which is about obtaining information necessary or desirable for either or both of the following purposes:

- to process a request made under *new section 96*:
- to secure enforcement in the foreign country of the protection order made by a New Zealand court.

New section 96B specifies ways in which, for the purposes of *new sections 96, 96A, and 97*,—

- requests may be made and sent; and
- copies, evidence, or information may be made available.

New section 97 re-enacts but amends section 97, which is about registration of foreign protection orders. *New section 97* removes the Secretary's involvement and does not re-enact section 97(4). *New section 97* therefore imposes duties only on the Registrar who receives documents for registration. *New section 97* also does not re-enact the section 97(2)(c) requirement that the documents for forwarding for registration must include written information tending to show that a person for whose protection the order was made—

- is present in New Zealand; or
- is proceeding to New Zealand; or
- is about to proceed to New Zealand.

Removing this requirement facilitates broader registration of foreign protection orders (for example, if the respondent who is the subject of the foreign protection order is in New Zealand, and is using attempted or actual electronic communications to abuse psychologically the protected person who is outside New Zealand).

Clause 51 amends section 106, which is about evidence of orders made in a foreign country. The amendment replaces a reference to domestic violence with one to family violence.

Non-publication of information relating to protected person on public registers (Part 6)

Clauses 52 and 53 amend the cross-heading above, and the heading to, section 122, which is about public register codes of practice issued by the Privacy Commissioner. The amendments distinguish those codes from the service delivery codes of practice to be issued by Order in Council under *new Part 6B* (inserted by *clause 69*).

Clause 54 amends section 123. The amendment ensures that the section applies the specified provisions of the Privacy Act 1993 only to public register codes issued under *Part 6*.

Police safety orders (Part 6A)

Clause 55 amends section 124A, which contains definitions, to insert a new definition. A bound person, in relation to a Police safety order, means the person against whom the order is issued. *Clauses 59 to 61, 65, and 68* amend provisions of Part 6A to replace the term person against whom the order is issued with the new term bound person.

Clause 56 amends section 124B, which is about qualified constables issuing Police safety orders. The amendments—

- make the test for issuing an order against a person (**person A**) only whether the order is necessary to help make another person (**person B**) safe from family violence (and so does not also require that the qualified constable does not arrest person A for an offence against any enactment involving the use of violence against person B); and

- replace references to a domestic relationship with ones to a family relationship; and
- replace references to domestic violence used with ones to family violence inflicted.

Clause 57 replaces section 124D, which prevents a qualified constable from issuing a Police safety order against a child. *New section 124D* prevents a qualified constable from issuing an order against a child (defined as set out in *clause 8(3)*) unless satisfied that the order is justified by special circumstances. (A protection order will also be able to be made against a child, under *new section 10*, inserted by *clause 14*, in special circumstances.)

Clause 58 amends section 124E, which is about the effect of a Police safety order.

New section 124E(1) re-enacts, with updated and clearer wording, section 124E(1), which requires a bound person to do the following:

- surrender to a constable any weapon in the bound person's possession or control, and any firearms licence held by the bound person;
- vacate any land or building occupied by a person at risk, whether or not the person at risk has a legal or equitable interest in the land or building.

New section 124E(2) simplifies a Police safety order's conditions and makes them almost exactly the same as a protection order's standard conditions (in *new section 19*, inserted by *clause 19*). It is a condition of every Police safety order that the bound person must not—

- engage in behaviour that amounts to any form of family violence (*see new sections 3, 3A, and 3B*) against a person at risk (which, under section 124E(3), means the person named in the Police safety order for whose safety the order is issued, and a child residing with that person);
- make any contact with a person at risk (whether by telephone, letters or other writing, or email, by communication on or via an Internet site or other digital communication, or in any other way) that is not contact authorised by *new section 124E(2A)*;
- encourage a person to engage in behaviour against, or to make contact with, a person at risk, if the behaviour or contact, if engaged in or made by the bound person, would be prohibited by the order.

Contact by the person bound with a person at risk is authorised, and not in breach of a Police safety order's no-contact condition (in *new section 124E(2)(b)*), if the contact is authorised by *new section 124E(2A)* (compare *new sections 19(b) and 20B*). But no other contact by the person bound, even if that other contact is consented to by a person at risk, is authorised. By contrast, for a protection order, contact can also be authorised (under *new sections 19(b) and 20*), and not in breach of the order, if that contact is made with the protected person's consent.

Clauses 59 to 61 amend sections 124F, 124G, and 124H to replace the term person against whom the order is issued with the new term bound person.

Clause 62 inserts a *new section 124HA*, which is about a risk and needs assessment of a person bound by a Police safety order. The assessment will be carried out by an assessor approved under *new section 124HB* (inserted by *clause 63*).

New section 124HA(1) states that an assessor carries out an assessment under the section to identify—

- any risk assessed by the assessor that the bound person is likely, after the expiry of a Police safety order, to continue inflicting family violence; and
- any steps that the assessor considers the bound person should take to help that person accept responsibility for, and stop, that person's inflicting of family violence.

New section 124HA(2) authorises a constable (even if not a qualified constable) or Police employee, while a Police safety order is in force, to issue to the bound person a written direction to—

- arrange, before the end of the 10th working day after the direction is served on the bound person, for an assessment on the bound person to be carried out promptly by an assessor; and
- attend the assessment at the arranged time and place.

New section 124HA(3) requires the constable or Police employee, as soon as practicable after issuing the direction to the bound person, to ensure that a copy of the direction is served on the bound person.

New section 124HA(4) ensures that a direction under *new section 124HA* lapses if—

- the order to which it relates lapses (because that order has not been served within 48 hours from the time of issue) under section 124H(2); or
- at or after the time that the direction is issued, a protection order is made against the bound person.

New section 124HA(5) provides that a refusal or failure, without reasonable excuse, to comply with the direction after it has been served on the person is taken for the purposes of section 124L to be a refusal or failure by the person to comply with an order served on the person.

New section 124HA(6) ensures that assessor, in *new section 124HA*, means a person or an organisation that has been granted an approval (to carry out assessments under *new section 124A*)—

- under *new section 124HB*; and
- that has not been suspended or cancelled.

Clause 63 inserts a *new section 124HB*, which is about approval of an assessor who may carry out a risk and needs assessment under *new section 124HA* (inserted by *clause 62*).

Clause 64 amends section 124J, which applies to a constable who issues a Police safety order. Section 124J requires the constable to explain to the bound person, if and to the extent that it is reasonably practicable to do so, either at the time of issue or

service of the order, the purpose, duration, and effect of the order, and the consequences that may follow if the bound person contravenes the order. *New section 124J(3)* requires a constable or Police employee who, while a Police safety order is in force, issues to the bound person a direction (to arrange and attend a risk and needs assessment) under *new section 124HA*, if and to the extent that it is reasonably practicable to do so, either at the time of issue or service of the direction, to explain to the bound person—

- the purpose and effect of the direction; and
- the consequences that may follow if the bound person fails or refuses to comply with the direction.

New section 124J(4) also requires a constable or Police employee who issues a direction (to arrange and attend a risk and needs assessment) under *new section 124HA* related to a Police safety order, either before or after issue and service of the direction, to explain to the person for whose safety the order is issued—

- the purpose, duration, and effect of the direction; and
- the consequences that may follow if the bound person fails or refuses to comply with the direction.

Clause 65 amends section 124K(1) to replace the term person against whom the order is issued with the new term bound person.

Clause 66 amends section 124L, which is about contravention of a Police safety order. *New section 124L(2)* re-enacts section 124L(2), but makes its power to take into custody a person served with a Police safety order available only to a constable who believes on reasonable grounds that the person has refused or failed to comply with the order or a condition of the order.

Clause 67 inserts *new section 124NA*, which is about the standard of proof in a proceeding in the District Court under—

- section 124N (which is about whether to make a direction or an order in response to a person's refusal or failure to comply with a Police safety order); or
- section 124O (which is about the issue of a warrant to arrest a person who contravenes a Police safety order or fails to attend adjourned proceedings).

New section 124NA ensures that questions of fact arising in proceedings under section 124N or 124O must (in accordance with, but without limiting, section 85) be decided on the balance of probabilities. That civil standard applies as well to the issuing of a protection order (under section 14) and to any issuing of a further Police safety order (under section 124B). However, the High Court has held that a proceeding under section 124N is similar to a criminal proceeding (rather than a civil proceeding), is not subject to section 85 (requiring the civil standard of proof), and is subject to Evidence Act 2006 provisions for a criminal proceeding: *Mark v Police* [2013] NZHC 1041; [2013] NZAR 897; [2013] NZFLR 710. *New section 124NA*—

- does not limit the generality of section 85 (which applies not only to section 124N proceedings, but also to any proceedings, other than criminal proceedings, under the principal Act); and
- does not affect section 12A of the Family Court Act 1980 (which applies under section 12A(3)(e) of that Act, and under which the court hearing the proceeding may receive any evidence, whether or not admissible under the Evidence Act 2006, that the court considers may assist it to determine the proceeding); and
- applies despite any contrary law (for example, every enactment or other law in the decision in *Mark v Police* [2013] NZHC 1041).

Clause 68 amends section 124O to replace the term person against whom the order is issued with the new term bound person.

New Part 6B inserted (information requests, use, and disclosure, and service delivery codes of practice)

Clause 69 inserts *new Part 6B*, which is about information requests, use, and disclosure, and service delivery codes of practice. *New Part 6B* contains *new sections 124T to 124Y*.

New section 124T states the purpose of *new Part 6B*. That purpose is to—

- enable family violence agencies and social services practitioners to request, use, or disclose personal information for purposes related to family violence; and
- require family violence agencies and social services practitioners, in certain circumstances, to consider disclosing personal information for those purposes; and
- provide for codes of practice to guide the delivery of services provided, to stop or prevent family violence, to victims or perpetrators of family violence.

New section 124U defines terms used in the Part, including family violence agency, social services practitioner, and a perpetrator or a victim of family violence.

New section 124V enables family violence agencies and social services practitioners to request from other such agencies and practitioners, and to use and disclose, for purposes related to family violence, personal information that they hold about a victim or perpetrator of family violence. In determining whether to disclose information under *new section 124V*, the holder agency or practitioner may act after, or without, receiving a request to do so, and must have regard to the principle that helping to ensure that a victim is protected from family violence should usually take precedence over both—

- any applicable confidentiality of the information; and
- any applicable limit under information privacy principle 11 in section 6 of the Privacy Act 1993 on disclosure of the information.

When requesting, using, or disclosing information under *new section 124V*, an agency or practitioner must comply with any applicable code issued under *new section 124Y*. Disclosure under *new section 124V* does not limit the right, under a privilege or right referred to in section 53(5), 54, 56, 57, 58, 59, 60, or 68 of the Evidence Act 2006, to refuse to disclose any communication or information sought by a requirement to provide information.

New section 124W requires the holder agency or practitioner to consider disclosing information under *new section 124V* to any, or to another, family violence agency or social services practitioner (the **recipient agency or practitioner**) if the holder agency or practitioner—

- believes on reasonable grounds that disclosure to the recipient agency or practitioner will or may help ensure that a victim is protected from family violence; or
- receives from the recipient agency or practitioner a request to disclose personal information about a victim or perpetrator of family violence to the recipient agency or practitioner for use for all or any of specified purposes related to family violence.

New section 124X stops proceedings from being commenced or continued against an agency or a practitioner who discloses information under *new section 124V*, unless that agency or practitioner disclosed the information concerned in bad faith.

New section 124Y authorises the issue of service delivery codes of practice. The codes are to guide delivery of services provided—

- to victims or perpetrators of family violence, or both; and
- to stop or prevent family violence.

A service delivery code of practice may contain provisions on all or any of the following:

- assessment and management of risk related to family violence;
- workforce competencies;
- information requests, use, and disclosure under *new Part 6B*;
- outcomes of assessments, programmes, or prescribed services.

A code of practice is issued by Order in Council. It is therefore also a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012, and an instrument required to be presented to the House of Representatives under section 41 of that Act.

Miscellaneous provisions (Part 7)

Clause 70 amends section 127, which is about regulations.

New section 127(a) authorises regulations prescribing approval processes and criteria for not only *new section 51B* (assessors for assessments, and service providers for programmes and prescribed services, under *new Part 2A*), but also for—

- *new section 12B* (approved organisations who may be appointed as representatives who may make applications) inserted by *clause 14*; and
- *new section 124HB* (assessors for risk and needs assessments under *new section 124HA*) inserted by *clause 62*.

An example is criteria for when a person or an organisation may under *new section 51B(4)* be granted or hold both an approval to undertake assessments for, and an approval to provide, prescribed services.

New section 127(b) re-enacts section 127(b), reworded so it covers only fees and expenses payable for all or any of the following:

- the provision by *assessors* of assessments under *new Part 2A*;
- the provision by *service providers* of programmes, *prescribed services*, or both, under *new Part 2A*.

New section 127(c) enables regulations to be made that provide for and authorise court information of the District Court, and court information of a senior court, to be (by the court concerned or under its authority or direction) disclosed to, or shared with, assessors and service providers (as defined in *new section 51A*), for the purposes of all or stated provisions of the principal Act.

New section 127(ga) authorises regulations amending or replacing either or both of *Parts 1 and 2 of new Schedule 2* (which is about specified types of prescribed services, and is inserted by *clause 71*) to add, amend, or delete items describing types of non-standard services, standard services, or both. These specified types of services form part of the definitions in section 2 (as amended by *clause 8*) of prescribed non-standard service, prescribed service, and prescribed standard service.

Schedules and consequential amendments

Clause 71 inserts *new Schedules 1 and 2*.

New Schedule 1 contains transitional, savings, and related provisions, and is related to *new section 5B* (inserted by *clause 11*).

New Schedule 2 will specify types of prescribed services for the definitions, in section 2, of prescribed non-standard service, prescribed service, and prescribed standard service (see *clause 8(1)*). See also the related power in *new section 127(ga)* (inserted by *clause 70(2)*). *New Schedule 2* specifies no services, because they will be prescribed later.

Clause 72 makes consequential amendments to the enactments in *Schedule 2*.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Bail Act 2000

Clause 73 provides that the subpart amends the Bail Act 2000.

Clause 74 amends section 3, which relates to interpretation. The amendments insert new definitions, linked to the Family and Whānau Violence Act 1995, of family relationship, family violence offence, and protected person.

Clause 75 inserts *new section 3A*, which is about references to the whole or a provision of the Family and Whānau Violence Act 1995. It ensures that, until the commencement of the relevant amendment in this Bill to the Domestic Violence Act 1995, the references are references to the whole or the corresponding provision of the Domestic Violence Act 1995.

Clause 76 replaces section 7(2), under which a defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one against specified provisions. *New section 7(2)* adjusts the specified provisions so that they—

- include *new section 194A* of the Crimes Act 1961 (which relates to assault on a person with whom the defendant is, or has been, in a family relationship) inserted by *clause 94*;
- exclude section 49 of the Domestic Violence Act 1995 (which relates to contravention of a protection order)—as the maximum punishment for an offence against this section is 3 years' imprisonment, so that a defendant charged with such an offence is (under section 7(2) of the Bail Act 2000) not bailable as of right anyway.

Clause 77 amends section 8, which states considerations the court must or must not take into account in determining whether there is just cause for continued detention, or when considering or determining whether or not to grant an application for bail. *Clause 77(1)* inserts *new section 8(3A) to (3C)*.

New section 8(3A) ensures that, in deciding, in relation to a defendant charged with a family violence offence, whether or not to grant bail to the defendant or to allow the defendant to go at large, the court's primary consideration is the need to protect—

- the victim of the alleged offence; and
- any particular person or people in a family relationship with the victim.

New section 8(3B) makes clear that *new section 8(3A)* is subject to *new section 8(3C)*.

New section 8(3C) relocates section 8(5) (repealed by *clause 77(2)*). It ensures that, in deciding, in relation to a defendant charged with an offence against section 49 (breaching protection order) of the Family and Whānau Violence Act 1995, whether or not to grant bail to the defendant or allow the defendant to go at large, the court's paramount consideration is the need to protect every person who, in relation to the protection order, is a protected person.

Clause 78 amends section 21, which is about Police bail. The amendment replaces section 21(3) with *new section 21(2A), (2B), and (3)*.

New section 21(2A) ensures that, in determining whether it is prudent to grant Police bail to a defendant charged with a family violence offence, the Police employee must make the primary consideration the need to protect—

- the victim of the alleged offence; and
- any particular person or people in a family relationship with the victim.

New section 21(2B) makes clear that *new section 21(2A)* is subject to *new section 21(3)*.

New section 21(3) ensures that, in determining whether it is prudent to grant Police bail to a defendant charged with an offence against section 49 (breaching protection order) of the Family and Whānau Violence Act 1995, the Police employee must make the paramount consideration the need to protect every person who, in relation to the protection order, is a protected person.

Clause 79 replaces section 22, which is about conditions of Police bail granted to a defendant charged with a domestic violence offence. *New section 22* re-enacts section 22 with references to a family violence offence and to conditions necessary to protect any particular person residing, or in a family relationship, with the victim of the alleged offence.

Clause 80 amends section 23, which applies if a person is arrested under section 50 (power to arrest for breach of protection order) of the Domestic Violence Act 1995 and charged with, or with a group of offences that include, an offence (of breaching a protection order) against section 49 of that Act. Section 23 prevents a Police employee, during the 24 hours immediately following the person's arrest, from releasing the person on Police bail (granted under section 21) in respect of the offence (or, if applicable, any of the group of offences). The amendments update references to the Family and Whānau Violence Act 1995.

Clause 81 inserts *new section 30AAA*, which is about conditions of court bail granted by a judicial officer or Registrar to a defendant charged with a family violence offence. *New section 30AAA* enables the imposition, as a condition of the bail (in addition to the condition or conditions imposed under section 30), of any condition that the judicial officer or Registrar considers reasonably necessary to protect—

- the victim of the alleged offence; and
- any particular person residing, or in a family relationship, with the victim.

Clause 82 amends section 31(1), which, if a defendant is granted bail, requires the Registrar to prepare a notice of bail or a bail bond setting out the conditions of bail. The amendment is consequential on *new section 30AAA* inserted by *clause 81*.

Subpart 2—Amendments to Care of Children Act 2004

Clause 83 provides that the subpart amends the Care of Children Act 2004 (the **principal Act**).

Clause 84 amends section 5, which states principles relating to a child's welfare and best interests. The amendment updates a cross-reference.

Clause 85 replaces section 5A, which applies if a specified application is made under the principal Act and a final protection order made under section 14 of the Domestic Violence Act 1995 is or has been in force against a party to the application. Sec-

tion 5A requires the court to have particular regard to domestic violence matters in taking into account the principle in section 5(a) (that a child's safety must be protected and, in particular, a child must be protected from all forms of violence). *New section 5A* updates terminology and the cross-reference to section 14 of the Domestic Violence Act 1995. *New section 5A(3)* requires the court, in taking into account the principle in section 5(a), and if practicable, to have regard in particular to—

- all relevant convictions (if any), of 1 or more parties to the application, for an offence against section 49 of the Family and Whānau Violence Act 1995 (breaching a protection order), or for any other family violence offence (as defined in *new section 5A(4)*);
- all relevant safety concerns (if any) that an assessor or a service provider has notified or advised under *new section 51C or 51Q* of the Family and Whānau Violence Act 1995 (inserted by *clause 31*).

Clause 86 amends section 22, which states restrictions on making appointments under section 23 (appointment of eligible spouse or partner of parent as additional guardian). The amendment updates a cross-reference.

Clause 87 amends section 23, which is about appointment of an eligible spouse or partner of a parent as an additional guardian. One amendment updates a cross-reference. Another aligns the examples of harm to a child with the definition of family violence in the Family and Whānau Violence Act 1995.

Clause 88 amends section 46E, which makes family dispute resolution (under the Family Dispute Resolution Act 2013) mandatory before commencement of proceedings in respect of an application under section 46R (disputes between guardians) or 48 (parenting orders). The amendment updates terminology in section 46E(4)(f)(ii). That section ensures that a family dispute resolution form is not required to accompany an application that is accompanied by an affidavit that provides evidence that a party, or a child of one of the parties, to the dispute, has been subject to domestic violence by one of the other parties.

Clause 89 amends section 51, which applies to a parenting order when—

- the order provides for a person (**person A**) to have contact with a child; and
- the court is satisfied that person A has physically or sexually abused the child or a person (**person B**) who has the role of providing day-to-day care for the child.

Section 51 requires the court to consider whether the order should be subject to conditions imposed for the purpose of protecting the safety of person B while person A's contact with the child takes place (including while the child is being collected from, or returned to, person B). The amendment ensures that section 51 applies if the court is satisfied that person A has inflicted family violence against, that is, has physically abused, sexually abused, or *psychologically abused*, the child or a person (**person B**) who has the role of providing day-to-day care for the child. The extension to cover also psychological abuse ensures not only more full coverage, but also alignment with

the definition of family violence in *new section 3* of the Family and Whānau Violence Act 1995.

Clause 90 inserts *new section 57A*, which gives the court power to make an incidental temporary protection order. *New section 57A* applies if—

- an application has been made to the court for any of the following in respect of a child:
 - a guardianship order under section 19 or 27;
 - a direction under section 46R in relation to a guardianship dispute;
 - a parenting order under section 48 (whether an interim parenting order or a final parenting order);
 - a variation of a parenting order, under section 56; and
- no application has been made to the court for, but the court is satisfied that had an application been made to it for the purpose the court would have made, a protection order (whether a temporary protection order or a final protection order) under the Family and Whānau Violence Act 1995 in respect of all or any of—
 - the child, or a parent or any other person who has the role of providing day-to-day care for, or who may have contact with, the child;
 - a party to the application (referred to in *section 57A(1)(a)*) for the order or direction made under the principal Act.

New section 57A enables the court to make a temporary protection order under section 14 of the Family and Whānau Violence Act 1995 if satisfied that any orders or directions made under the principal Act will not, by themselves, provide enough protection for all or any of the people specified in *new section 57A(1)(b)*.

A temporary protection order made under *new section 57A* is subject to section 13(3) to (5) of the Family and Whānau Violence Act 1995 as if the order were one made on an application without notice, and with all other necessary modifications. The temporary order therefore becomes final by operation of law 3 months after it is made. However, the order becoming final is subject to the following:

- the respondent, or an associated respondent (if the court directs that the order applies against another person), notifying the court under sections 76 to 80 of the Family and Whānau Violence Act 1995 of an intention to be heard on whether a final order should be substituted for the order; and
- the order being sooner varied or discharged under section 46 or 47 of that Act.

Subpart 3—Amendments to Crimes Act 1961

Amendments to principal Act

Clause 91 provides that the subpart amends the Crimes Act 1961.

Clause 92 amends section 7A(1), which is about extraterritorial jurisdiction in respect of certain offences with transnational aspects. The amendment inserts a reference to an offence (of coerced marriage or civil union) against *new section 207A* (inserted by *clause 97*). The effect of the amendment is that proceedings may be brought for the offence even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand—

- if the person to be charged—
 - is a New Zealand citizen; or
 - is ordinarily resident in New Zealand; or
 - has been found in New Zealand and has not been extradited; or
 - is a body corporate, or a corporation sole, incorporated under the law of New Zealand; or
- if any of the acts or omissions is alleged to have occurred—
 - on board a ship registered or required to be registered under the Ship Registration Act 1992; or
 - on board a ship used as a ship of the New Zealand Defence Force; or
 - on board a New Zealand aircraft; or
 - on board an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- if a person in respect of whom the offence is alleged to have been committed—
 - is a New Zealand citizen; or
 - is ordinarily resident in New Zealand.

Section 7B is designedly *not* amended to refer to an offence against *new section 207A* involving acts or omissions that occur wholly outside New Zealand (even though, under section 7A(1) and (3), neither section 8 nor 400 applies to, and requires the Attorney-General's consent for the bringing in a New Zealand court of proceedings for, the offence). Proceedings against a person for the offence are, if jurisdiction over the person is claimed by virtue of section 7A, to be able to be brought in a New Zealand court without the Attorney-General's consent.

Clause 93 inserts *new section 189A*, which is about strangulation or suffocation. This new offence, punishable by imprisonment for a term not exceeding 7 years, is committed if—

- a person intentionally or recklessly impedes another person's normal breathing, blood circulation, or both;
- the impediment is by doing (manually, or using any aid) all or any of the following:
 - blocking that other person's nose, mouth, or both;
 - applying pressure on, or to, that other person's throat, neck, or both.

The offence has been informed by, but varies designedly, the elements recommended by the Law Commission in its report *Strangulation: The case for a new offence* (NZLC R138, 2016) at 5.15 to 5.32. The offence, for example, involves intentional or reckless impeding of normal breathing or blood circulation (by doing all or any specified acts). The report envisaged instead intentional use of any means (for example, application of force on the neck) that had the result of impeding normal breathing or circulation: “[the prosecution] would not need to prove that the defendant intended to impede breathing or circulation, or even that he or she understood the risk of that and did it anyway”. However, neither the offence nor the report requires or envisages a consequence (for example, a specified effect, harm, or injury), to be intended to follow, or in fact to follow, from the required impeding of normal breathing or circulation.

The offence is drafted to avoid, as much as possible, capturing legitimate medical procedures. However, if relevant, medical professionals are protected by section 61 from criminal liability for any surgical operation performed reasonably and with reasonable care and skill. Further, the consent of the patient provides a defence in relation to other medical treatment (for example, under section 61A, for surgical operations, and under the common law, in relation to medical procedures other than operations). Section 11 of the New Zealand Bill of Rights Act 1990 provides that every person has the right (subject, under sections 4 and 5 of that Act, to justified limits and contrary enactments) to refuse to undergo medical treatment.

Absence of consent is not expressly a part of, nor presence of consent an express defence for, the offence. Questions of the victim’s express or implied consent are instead (as with most other offences against the person) left to the common law (as preserved by section 20). This is the approach recommended by the Law Commission in its report (NZLC R138, 2016) at 5.33 to 5.38. If a statute is silent in respect of consent, the common law holds that, generally, consent is a complete defence to any harm short of death unless the defendant was acting in reckless disregard for the safety of others or intended to cause grievous bodily harm, or there are public policy grounds to exclude a defence of consent: *see R v Lee* [2006] 3 NZLR 42 (CA). A judge who considers a question of consent is raised may exclude that question from the jury’s consideration if the judge considers that there are public policy grounds to do so (for example, no reasonable person in those circumstances would have believed that consent had been given). If consent is not excluded by the judge, it will be for the jury to consider whether the defendant intended to inflict grievous bodily harm or was acting in reckless disregard for the safety of the victim. A defence of consent will not stand if the jury finds one of those things existed.

Clause 94 inserts *new section 194A*, which is about assault on a person in a family relationship. This new offence, punishable by imprisonment for a term not exceeding 2 years, uses the definition of family relationship in section 4 of the Family and Whānau Violence Act 1995 (*see clause 10*).

Clause 95 amends the cross-heading above section 205. The amendment reflects *new section 207A* (inserted by *clause 97*).

Clause 96 amends the heading to section 207. The amendment aligns the heading with that of *new section 207A* (inserted by *clause 97*).

Clause 97 inserts *new section 207A*, which is about coercing a marriage or civil union. This new offence, punishable by imprisonment for a term not exceeding 5 years, is committed (*new section 207A(1)*) if a person, with intent to cause another person to enter into a marriage or civil union, uses coercion (for example, intimidation, threats, or violence) against that other person.

The offence applies (*new section 207A(2)*) even if the marriage or civil union—

- is not governed by New Zealand law:
- is an arrangement or a relationship (however described, and even if not legally binding) in the form of a marriage or civil union:
- is not solemnised or otherwise completed:
- is, or if solemnised or otherwise completed would be, void or not legally binding (for example, for lack of consent, absence of formality, or non-compliance with a legal requirement).

Clause 98 replaces section 208, which relates to abduction for the purposes of marriage or sexual connection. *New section 208* extends section 208 to civil unions.

Consequential amendments to Births, Deaths, Marriages, and Relationships Registration Act 1995

Clauses 99 to 101 make amendments to the Births, Deaths, Marriages, and Relationships Registration Act 1995 that are consequential on *new section 207A* of the Crimes Act 1961 (inserted by *clause 97*).

New sections 60 and 62F will require the recording of not only—

- convictions for bigamy (by a party to a marriage or to a civil union); but also
- convictions for coerced marriage or civil union.

A marriage or civil union governed by New Zealand law on capacity to marry is void from the start (*ab initio*) if, due to duress or for any other reason, there was at the relevant time an absence of consent, by one party, to marriage to or civil union with the other party (*see* section 31(1)(a)(ii) of the Family Proceedings Act 1980).

Consequential amendments to Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995

Clauses 102 to 104 make amendments to the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 that are consequential on *new section 207A* of the Crimes Act 1961 (inserted by *clause 97*). Regulations 8 and 8A prescribe information to be contained or included in marriage certificates and civil union certificates. The consequential amendments ensure that this prescribed information includes details—

- relating to any conviction for coerced marriage or civil union; and

- recorded under *new section 60 or 62F* of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (inserted by *clauses 100 and 101*).

Consequential amendments to Criminal Records (Clean Slate) Act 2004

Clauses 105 and 106 make amendments to the Criminal Records (Clean Slate) Act 2004 that are consequential on *new section 207A* of the Crimes Act 1961 (inserted by *clause 97*). Some of the amendments reword to enhance readability. The rest ensure that a criminal record, in relation to a request for disclosure or an obligation to conceal, does not include details—

- relating to any conviction for coerced marriage or civil union; and
- recorded under *new section 60 or 62F* of the Births, Deaths, Marriages, and Relationships Registration Act 1995 (inserted by *clauses 100 and 101*).

Subpart 4—Amendments to Criminal Procedure Act 2011

Amendments to principal Act

Clause 107 provides that the subpart amends the Criminal Procedure Act 2011.

Clause 108 inserts *new section 16A*, which is about specifying that an offence charged is, or that a conviction entered is for, a family violence offence.

Clause 109 inserts *new sections 168A and 168B*.

New section 168A is about no-contact conditions that may be imposed when or after a family violence offence defendant is remanded in custody.

New section 168B contains provisions about non-compliance with the conditions.

Clause 110 replaces and extends section 170, which is about a defendant who is remanded in custody on a charge (even if the period for which the defendant was remanded in custody has not expired). *New section 170*, like section 170, enables the defendant to at any time be brought before a court, to be dealt with on that charge. However, *new section 170* differs from, and extends, section 170, by also enabling the defendant to at any time be brought before a judicial officer for the consideration or giving of a direction under *new section 168A* (no-contact conditions if family violence offence defendant remanded in custody).

Clause 111 amends section 386, which contains powers to make criminal procedure rules. *New section 386(2)(va)* authorises new rules that apply if a protection order is made under section 123B of the Sentencing Act 2002 (as amended by *clause 129*) by the court on sentencing or otherwise dealing with an offender for a family violence offence. The rules will provide for and authorise specified court documents relating to the offender, every protected person for the order, or both, being disclosed to or shared with assessors and service providers (as defined in *new section 51A* of the Family and Whānau Violence Act 1995), for the purposes of all or stated provisions of that Act. The disclosure or sharing will be by the court concerned or under its authority or direction.

Clause 112 amends section 387(1)(h), which authorises the making of regulations providing for information about proceedings to be transferred between courts, where that information is relevant to proceedings under specified Acts. The amendment ensures that the specified Acts include not only the Care of Children Act 2004, but also the Domestic Violence Act 1995, as renamed by *clauses 4 and 6*.

Consequential amendments to Corrections Act 2004

Clauses 113 to 117 make amendments to the Corrections Act 2004 that are consequential on *new section 168A* (inserted by *clause 109*).

Subpart 5—Amendments to Evidence Act 2006

Clause 118 provides that the subpart amends the Evidence Act 2006.

Clause 119 amends section 4 (interpretation). The amendments repeal the definition of domestic violence, and insert new definitions of constable, family violence, family violence case, and family violence offence.

Clause 120 amends section 95, which imposes restrictions on cross-examination by parties in person. The amendments relate to section 95(1) (including section 95(1)(a) as to be amended on 1 July 2017, or on an earlier date appointed, under sections 2 and 26 of the Evidence Amendment Act 2016). The amendments replace references to domestic violence with ones to family violence.

Clause 121 amends section 102, which is about the effect of sections 103 to 106 (which provide for alternative ways of giving evidence). Section 102 makes sections 103 to 106 subject to listed provisions that deal with specific situations. The amendment adds to the listed provisions *new section 106A* (which relates to family violence complainants), inserted by *clause 124*.

Clause 122 repeals section 103(5), which contains an unnecessary reference.

Clause 123 amends section 106, which is about video record evidence. *New section 106(10)* is about references in section 106 to a person being given a video record. The references could be interpreted as covering only a video record contained on a medium that is a portable data storage device. *New section 106(10)* clarifies that the references include a reference to the person being given access to a video record. The example given is being given access to an electronic copy of the video record through an Internet site.

Clause 124 inserts *new sections 106A and 106B*.

New section 106A states that a family violence complainant is entitled to give his or her evidence in chief by a video record made before the hearing. A family violence complainant is a complainant in a family violence case who is not a child. The video record must be one recorded by a police employee and no later than 2 weeks after the incident in which the alleged family violence offence occurred.

If a video record is to be used as a complainant's evidence in chief, *new section 106A(4)* requires a Judge to give a direction about how the complainant will give the other parts of his or her evidence. This includes any further evidence in chief as

well as any cross-examination and re-examination required under section 84 of the Act. Section 106 applies to video records under *new section 106A*, and written notice must be given that a video record will be used as a complainant's evidence in chief by a specified time in the pretrial process.

New section 106B allows a defendant to apply to a Judge for a direction that the complainant give his or her evidence in the ordinary way (under section 83 of the Act) or a different alternative way (under section 105 of the Act) rather than by video record under *new section 106A*. The application must be made by a specified time in the pretrial process. The Judge must give each party an opportunity to be heard in chambers and may call for a report on the effect on the complainant of giving evidence in any particular way. *New section 106B(4)* requires the Judge to have regard to whether the interests of justice require a departure from the usual procedure under *new section 106A* in the particular case. The Judge must also have regard to the matters in section 103(3) and (4), which contains factors that must be considered in any case when a Judge is deciding whether to give a direction about evidence being given in an alternative way.

Subpart 6—Amendments to Sentencing Act 2002

Clause 125 provides that the subpart amends the Sentencing Act 2002.

Clause 126 inserts *new section 4A*, which is about references to the whole or a provision of the Family and Whānau Violence Act 1995. It ensures that, until the commencement of the relevant amendment in this Bill to the Domestic Violence Act 1995, the references are references to the whole or the corresponding provision of the Domestic Violence Act 1995.

Clause 127 amends section 9, which specifies aggravating and mitigating factors. In sentencing or otherwise dealing with an offender, the court must take those factors into account to the extent that they are applicable in the case. *New section 9(1)(ca)* specifies a new aggravating factor: that the offence was a family violence offence (as defined in *new section 123A*, inserted by *clause 128*) committed—

- while the offender was subject to a protection order (as defined in section 2 of the Family and Whānau Violence Act 1995, or that was made under section 123B of the Sentencing Act 2002); and
- against a person who, in relation to the protection order, was a protected person (as so defined).

Clause 128 replaces section 123A, which defines terms used in sections 123A to 123G (which relate to protection orders). *New section 123A* contains updated definitions related to the Family and Whānau Violence Act 1995.

Clause 129 amends section 123B, which relates to protection orders. The amendments replace references to domestic violence offences, the Domestic Violence Act 1995, and domestic violence proceedings.

Clause 130 replaces section 123C, which specifies provisions applying to a protection order made under section 123B, with *new sections 123C and 123CA*.

New section 123C contains updated references to provisions of the Family and Whānau Violence Act 1995.

New section 123CA applies to a court that makes a protection order under section 123B. *New section 123CA* requires the court also to consider making under that section and at the same time a direction requiring disclosure to or sharing with relevant assessors and service providers, to help those assessors and providers perform all or any of their functions under the Family and Whānau Violence Act 1995, of specified court documents relating to the offender, every protected person for the order, or both.

Clause 131 amends section 123D, which is about explanations of a protection order. The amendments—

- update a reference to section 51D of the Domestic Violence Act 1995; and
- ensure the required explanations cover the consequences that may follow if the offender fails to engage with any prescribed services that the offender has been directed to engage with.

Clause 132 replaces section 123G, which applies to a protection order as soon as it has been entered in the records of the Family Court under section 123F(2). Section 123G requires the order to be treated as if it were a final protection order made by that court under the Domestic Violence Act 1995. *New section 123G* contains updated references to, and to the applied provisions of, the Family and Whānau Violence Act 1995.

Hon Amy Adams

Family and Whānau Violence Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family and Whānau Violence Legislation Act **2017**.

2 Commencement

- (1) This Act comes into force on **1 July 2018**. 5
- (2) However, the following provisions come into force on a date or dates set by Order in Council:
- (a) **Part 1 and Schedules 1 and 2** (amendments to Domestic Violence Act 1995):
- (b) **subpart 2 of Part 2** (amendments to Care of Children Act 2004): 10
- (c) **subpart 4 of Part 2** (amendments to Criminal Procedure Act 2011):
- (d) **subpart 5 of Part 2** (amendments to Evidence Act 2006).
- (3) One or more orders may be made setting different dates for different provisions.
- (4) Any part of the Act that is not already in force on **1 July 2020** comes into force then. 15

Part 1

Amendments to Domestic Violence Act 1995

3 Principal Act

This Part amends the Domestic Violence Act 1995 (the **principal Act**). 20

Title

4 Name of principal Act changed

As from the commencement of this section,—

- (a) the Domestic Violence Act 1995 is called the **Family and Whānau Violence Act 1995**: 25
- (b) every reference in any enactment (other than an enactment amended or replaced by this **Part**), and in any document, to the Domestic Violence

Act 1995 must, unless the context otherwise requires, be read as a reference to the **Family and Whānau Violence Act 1995**.

5 Long Title repealed

Repeal the Long Title.

6 Section 1 amended (Short Title and commencement)

5

- (1) In the heading to section 1, delete “**Short**”.
- (2) In section 1(1), replace “may be cited as the Domestic Violence Act 1995” with “is the **Family and Whānau Violence Act 1995**”.

Preliminary provisions (Part 1)

7 New sections 1A and 1B inserted

10

Before section 2, insert:

1A Purpose of this Act

- (1) The purpose of this Act is to stop and prevent family violence by—
 - (a) recognising that family violence, in all its forms, is unacceptable; and
 - (b) stopping and preventing perpetrators from inflicting family violence; and
 - (c) keeping victims, including children, safe from family violence.
- (2) A court that, or a person who, exercises a power conferred by or under this Act must be guided in the exercise of that power by the purpose of this Act.

1B Principles

The following principles are to guide the achievement of the purpose of this Act:

- (a) family violence, in all its forms, is unacceptable:
- (b) decision makers should, whenever appropriate, recognise that family violence is often a pattern of behaviour that causes cumulative harm:
- (c) decision makers should, whenever appropriate, recognise that children are particularly vulnerable to family violence, including seeing or hearing violence against others:
- (d) decision makers should, whenever appropriate, recognise that children are at particular risk of lasting harm to their current and future wellbeing:
- (e) perpetrators who inflict family violence should face effective responses to, and sanctions for, family violence:
- (f) perpetrators of family violence should have access to, and in some cases be required to engage with, services to help them stop and prevent their family violence:

(g)	victims of family violence should have access to services to help secure their safety from family violence:	
(h)	arrangements that support the ongoing safety and wellbeing of a victim of family violence should whenever practicable be sustained (for example, employment, education, housing, or community involvement):	5
(i)	responses to family violence should be culturally appropriate and, in particular, responses involving Māori should reflect tikanga:	
(j)	decision makers should consider the views of victims of family violence, and respect those views unless doing so would or may compromise victims' safety:	10
(k)	decision makers should collaborate, whenever appropriate, to identify and respond to family violence:	
(l)	access to the court should be as speedy, inexpensive, and simple as is consistent with justice.	
8	Section 2 amended (Interpretation)	15
(1)	In section 2, insert in their appropriate alphabetical order:	
	approved organisation means an organisation approved under section 12B	
	constable has the meaning given in section 4 of the Policing Act 2008	
	digital communication has the same meaning as in section 4 of the Harmful Digital Communications Act 2015	20
	family relationship means one of the relationships set out in section 4(1)	
	family violence has the meaning set out in section 3	
	government organisation means—	
	(a) a department specified in Schedule 1 of the State Sector Act 1988; or	
	(b) a Crown entity (as defined in section 7 of the Crown Entities Act 2004)	25
	ill-treat , in relation to an animal, has the same meaning as in section 2(1) of the Animal Welfare Act 1999	
	inflict family violence , in relation to any person, means to engage in behaviour that amounts to family violence against that person	
	perpetrator , of family violence,—	30
	(a) means a person who has inflicted, or is inflicting, family violence (even if no offence involving the violence was, is, or is to be, admitted or prosecuted); but	
	(b) in Part 6B , has the meaning given in section 124U	
	prescribed non-standard service means a service that—	35
	(a) is, or is to be, provided to a respondent by a service provider (as defined in section 51A); and	

- (b) has the objective of stopping or preventing family violence, or helping the respondent to stop inflicting family violence; and
- (c) is a type of non-standard service specified in **Part 2 of Schedule 2**
- prescribed service** means a service that is—
- (a) a prescribed non-standard service; or 5
- (b) a prescribed standard service
- prescribed standard service** means a service that—
- (a) is, or is to be, provided to a respondent by a service provider (as defined in **section 51A**); and
- (b) has the objective of stopping or preventing family violence, or helping the respondent to stop inflicting family violence; and 10
- (c) is a type of standard service specified in **Part 1 of Schedule 2**
- tikanga** means customary values and practices
- (2) In section 2, repeal the definitions of **domestic relationship** and **domestic violence**. 15
- (3) In section 2, replace the definitions of **child**, **child of the applicant’s family**, **contact**, **family member**, **partner**, and **representative** with:
- child** means a person who is under the age of 18 years
- child of the applicant’s family**, for an applicant and at any time, means a child who at that time ordinarily or periodically resides with the applicant, whether or not— 20
- (a) the child is a child of the applicant, the respondent, or both; and
- (b) for a protection order, the child resided ordinarily or periodically with the applicant at, or was born only after, the time when that order was made 25
- contact**, by a respondent or other person, and with a child or protected person, means any form of 1 or both of the following:
- (a) direct (that is, face-to-face) interaction:
- (b) indirect interaction (including, without limitation, by telephone, letters or other writing, or email, or by communication on or via an Internet site or other digital communication, or in any other way) 30
- family member**, in relation to a person, means—
- (a) any other person who is or has been related to the person by blood or by or through marriage, a civil union, or a de facto relationship, or by adoption: 35
- (b) any other person who is a member of the person’s whānau or other culturally recognised family group

partner , in the phrase “spouse or partner” and in related contexts, means, in relation to a person (P),—	
(a) P’s civil union partner; or	
(b) P’s de facto partner; or	
(c) if P is a biological parent of a person, another biological parent of that person	5
representative ,—	
(a) in relation to a child, means a litigation guardian or next friend appointed under or recognised by rules of court, or an approved organisation authorised by section 12C , to take proceedings under this Act on behalf of that child:	10
(b) in relation to a person lacking capacity to whom section 11 applies, means a litigation guardian appointed under or recognised by rules of court, or an approved organisation authorised by section 12C , to take proceedings under this Act on behalf of that person:	15
(c) in relation to a person to whom section 12 applies, means a litigation guardian appointed under that section, or an approved organisation authorised by section 12C , to take proceedings under this Act on behalf of that person	
(4) In section 2, definition of protected person , paragraph (c), replace “pursuant to” with “under”.	20
(5) In section 2, definition of specified person , replace “pursuant to” with “under”.	
(6) In section 2, repeal the definition of use domestic violence .	
9 Section 3 replaced (Meaning of domestic violence)	25
Replace section 3 with:	
3 Meaning of family violence	
(1) In this Act, family violence , in relation to a person, means violence inflicted—	
(a) against that person; and	
(b) by any other person with whom that person is, or has been, in a family relationship.	30
(2) In this section, violence means all or any of the following:	
(a) physical abuse:	
(b) sexual abuse:	
(c) psychological abuse.	35
(3) Violence against a person includes a pattern of behaviour (done, for example, to isolate from family members or friends) that is made up of a number of acts	

- that are all or any of physical abuse, sexual abuse, and psychological abuse, and that may have 1 or both of the following features:
- (a) it is coercive or controlling (because it is done against the person to coerce or control, or with the effect of coercing or controlling, the person):
 - (b) it causes the person, or may cause the person, cumulative harm. 5
- (4) **Subsection (2)** is not limited by **subsection (3)**, and must be taken to include references to, and so must be read with, **sections 3A and 3B**.
- 3A Abuse for purposes of section 3(2)**
- (1) A single act may amount to abuse.
 - (2) A number of acts that form part of a pattern of behaviour (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial) may amount to abuse. 10
 - (3) This section does not limit **section 3(2)**.
- 3B Psychological abuse for purposes of section 3(2)(c)**
- (1) Psychological abuse includes— 15
 - (a) threats of physical abuse, of sexual abuse, or of abuse of a kind stated in **paragraphs (b) to (f)**:
 - (b) intimidation or harassment (for example, all or any of the following behaviour that is intimidation or harassment:
 - (i) watching, loitering near, or preventing or hindering access to or from, a person’s place of residence, business, or employment, or educational institution, or any other place that the person visits often: 20
 - (ii) following the person about or stopping or accosting a person in any place: 25
 - (iii) if a person is present on or in any land or building, entering or remaining on or in that land or building in circumstances that constitute a trespass):
 - (c) damage to property:
 - (d) ill-treatment of 1 or both of the following: 30
 - (i) household pets:
 - (ii) other animals whose welfare affects significantly, or is likely to affect significantly, a person’s well-being:
 - (e) financial or economic abuse (for example, unreasonably denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education): 35
 - (f) in relation to a child, abuse stated in **subsection (2)**.
 - (2) A person psychologically abuses a child if that person—

<p>(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 family relationship; or</p> <p>(b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring.</p> <p>(3) However, the person who suffers the abuse in subsection (2)(a) and (b) is not regarded, under subsection (2), as having (as the case may be)—</p> <p>(a) caused or allowed the child to see or hear that abuse; or</p> <p>(b) put the child, or allowed the child to be put, at risk of seeing or hearing that abuse.</p> <p>(4) Psychological abuse may be or include behaviour that does not involve actual or threatened physical or sexual abuse.</p> <p>(5) This section does not limit section 3(2)(c).</p>	<p>5</p> <p>10</p>
10 Section 4 amended (Meaning of domestic relationship)	
<p>(1) In the heading to section 4, replace “domestic relationship” with “family relationship”.</p> <p>(2) In section 4(1), replace “domestic relationship” with “family relationship”.</p>	<p>15</p>
11 Sections 5 and 6 replaced	
Replace sections 5 and 6 with:	
<p>5A Status of examples</p> <p>An example provided in this Act of the operation of a provision of an enactment—</p> <p>(a) does not limit the provision; and</p> <p>(b) may extend the operation of the provision.</p> <p>Compare: Acts Interpretation Act 1901 s 15AD (Aust); 2012 No 120 s 5A; 2014 No 58 s 5(2)</p>	<p>20</p> <p>25</p>
<p>5B Transitional, savings, and related provisions</p> <p>The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.</p>	
<p>6 Act binds the Crown</p> <p>This Act binds the Crown.</p>	<p>30</p>

Protection orders (Part 2)

12 Section 7 amended (Application for protection order)

- (1) In section 7(1), replace “domestic relationship” with “family relationship”.
- (2) Replace section 7(2) with:

(2)	Where the person who is eligible to apply for a protection order is a child, the child may under section 9(2) make the application only—	
(a)	by a representative (for example, an approved organisation that is authorised by section 12C to take proceedings under this Act on behalf of the child); or	5
(b)	if authorised under rules of court to do so without a representative.	
(3)	In section 7(3), after “a person”, insert “lacking capacity”.	
(4)	In section 7(4),—	
(a)	replace “older” with “over”; and	
(b)	replace “section 12(1)(b)” with “ section 12(1)(c) ”.	10
13	Section 8 amended (Contents of application)	
(1)	In section 8(a), replace “domestic relationship” with “family relationship”.	
(2)	In section 8(b), replace “domestic violence” with “family violence”.	
14	Sections 9 to 12 replaced	
	Replace sections 9 to 12 with:	15
9	Applications by children	
(1)	A child may, in accordance with this section, make an application for a protection order.	
(2)	A child may make the application only—	
(a)	by a representative (for example, an approved organisation that is authorised by section 12C to take proceedings under this Act on behalf of the child); or	20
(b)	if authorised under rules of court to do so without a representative.	
(3)	This section does not limit or affect the making or operation of rules of court (for example, rules made under section 16A(1) of the Family Courts Act 1980) that—	25
(a)	prevent an incapacitated child from taking part in, or from taking a step in, all or any specified proceedings under this Act without a litigation guardian:	
(b)	provide for a representative to make all or any specified applications under this Act on behalf of a child prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally.	30
9A	Views of child on whose behalf application made by representative	
(1)	This section applies if an application for a protection order is made, on behalf of a child, by a representative, under section 9(2)(a) .	35

- (2) The child may be heard in the proceedings, even though they arose from the application made by the representative, and despite **section 9(2)(a)**.
- (3) Where the child expresses views on any matters related to the proceedings, the court must take account of those views.
- 10 Applications against children** 5
- (1) The court must not make a protection order against a child unless satisfied that the order is justified by special circumstances.
- (2) The court must not make a direction under section 17 (protection from respondent's associates) that a protection order apply against a child unless satisfied that the direction is justified by special circumstances. 10
- 10A Meaning of person lacking capacity**
- For the purposes of **section 11**, **person lacking capacity** means a person who is aged 18 years old or over and who—
- (a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or 15
- (b) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of such matters. 20
- 11 Applications on behalf of people lacking capacity**
- (1) This subsection applies if a person lacking capacity (**P**) is eligible to apply for a protection order and—
- (a) no one has power, under an appointment made under the Protection of Personal and Property Rights Act 1988, to make such an application on P's behalf; or 25
- (b) a person has power, under such an appointment, to make such an application, but the person so appointed has refused or failed to do so.
- (2) If **subsection (1)** applies, the protection order must be applied for, on P's behalf, and in accordance with rules of court, by a representative (for example, an approved organisation that is authorised by **section 12C** to take proceedings under this Act on behalf of P). 30
- (3) No representative may be appointed under rules of court to make an application for a protection order on behalf of a person lacking capacity (**P**) unless, before making the appointment, the court or, as the case requires, the Registrar is satisfied— 35
- (a) that the representative is not, and is not acting for, an approved organisation (which can be authorised to act as a representative under this section only under **section 12C**); and

- (b) that reasonable steps have been taken to ascertain P’s views in relation to the appointment; and
- (c) if P’s views have been able to be ascertained,—
- (i) that P does not object to the appointment; or
- (ii) that P’s objection is not freely made. 5
- (4) A representative who under this section makes an application for a protection order on behalf of a person lacking capacity (**P**) must—
- (a) take reasonable steps to ascertain P’s views in relation to the matter; and
- (b) take reasonable steps to ascertain P’s welfare guardian’s views in relation to the matter, if P has a welfare guardian appointed under the Protection of Personal and Property Rights Act 1988 and no good reason exists not to ascertain those views; and 10
- (c) include in the application any views ascertained under **paragraphs (a) and (b)**; and
- (d) take reasonable steps to inform P’s welfare guardian of the progress of the application (for example, of any order made on it), if P has a welfare guardian appointed under the Protection of Personal and Property Rights Act 1988, and no good reason exists not to do so. 15
- (5) However, **subsections (3) and (4)** do not require reasonable steps to be, or to have been, taken to ascertain P’s views in relation to an appointment or a matter if P wholly lacks the capacity to communicate decisions in respect of matters relating to P’s personal care and welfare. 20
- 12 Applications on behalf of people prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally**
- (1) This section applies if a person aged 18 years old or over (**P**)— 25
- (a) is not a person lacking capacity to whom **section 11** applies; and
- (b) is eligible to apply for a protection order; and
- (c) is prevented by physical incapacity, fear of harm, or another sufficient cause from making the application personally.
- (2) An application (made with or without notice) for a protection order may be made on behalf of P by a representative (for example, an approved organisation authorised by **section 12C** to take proceedings under this Act on behalf of P). 30
- (3) The court or a Registrar may, on an application made under this subsection for the purpose, appoint a person as a representative of P for the purpose of making and prosecuting, on behalf of P, an application (made with or without notice) for a protection order, if the person— 35
- (a) is not, and is not acting for, an approved organisation (which can be authorised to act as a representative under this section only under **section 12C**); and

- (b) is 18 years old or over; and
- (c) is not incapacitated (as defined in **subsection (5)**).
- (4) If an application for the appointment of a representative is made under **subsection (2)**, the court or Registrar must make the appointment sought if satisfied— 5
- (a) that reasonable steps have been taken to ascertain P’s views in relation to the appointment; and
- (b) where the views of P have been able to be ascertained,—
- (i) that P does not object to the appointment; or
- (ii) that P’s objection is not freely made; and 10
- (c) that it is in P’s best interests to make the appointment; and
- (d) that the proposed appointee—
- (i) consents in writing to the appointment; and
- (ii) is not incapacitated; and
- (e) that there is unlikely to be any conflict between the interests of the proposed appointee and P’s interests; and 15
- (f) that the proposed appointee has filed in the court an undertaking to be responsible for any costs awarded against P in the proceedings.
- (5) In this section, a person is **incapacitated** if, by reason of physical, intellectual, or mental impairment, whether temporary or permanent, the person is— 20
- (a) not capable of understanding the issues on which the person’s decision would be required as a representative of a litigant conducting proceedings; or
- (b) otherwise unable to perform the duties of such a representative.
- 12A Views of person on whose behalf application made under section 12 by representative** 25
- (1) This section applies if an application for a protection order is made, on behalf of a person (**P**), by a representative appointed under **section 12**.
- (2) P may be heard in the proceedings, even though they arose from the application made by the representative. 30
- 12B Approved organisations**
- (1) An organisation approved under this section may be authorised by **section 12C** to take proceedings—
- (a) under **section 9** on behalf of a child (including that section as applied by section 22(6), **48**, or 92); or 35
- (b) under **section 11** on behalf of a person lacking capacity (including that section as applied by section 22(6), **48**, **73(2)**, or 92); or

- (c) under **section 12** on behalf of a person prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally (including that section as applied by section 22(6), **48, 73(2)**, or 92).
- (2) An organisation may be approved under this section by the Minister of Justice— 5
- (a) on an application made for the purpose by the organisation; or
- (b) on the Minister’s own motion, and with the organisation’s written consent.
- (3) An organisation seeking an approval under this section by way of an application, or an own-motion approval under this section, must follow the applicable process (if any) prescribed by regulations made under **section 127(a)(i)**. 10
- (4) The Minister may, at any time, amend, suspend, or cancel an approval under this section.
- (5) In deciding whether to grant, amend, suspend, or cancel an approval under this section, the Minister must apply the criteria (if any) prescribed for the purposes of this section by regulations made under **section 127(a)(ii)**. 15
- (6) An approval, or an amendment, suspension, or cancellation of an approval, under this section must be by written notice copied to the organisation.
- (7) The Secretary must publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice an up-to-date list of approved organisations. 20
- 12C Applications by approved organisation authorised to act as representative**
- (1) An approved organisation that complies with **subsection (2)** is authorised by this section to make and prosecute under **section 9, 11, or 12**, on behalf of a child or person (**P**), an application (made with or without notice) for an order.
- (2) To comply with this subsection, the organisation must, without making an application to be appointed or to act as a representative for P, complete and file in the court an application form for the order, and that shows or includes— 25
- (a) that reasonable steps have been taken to ascertain P’s views in relation to the organisation acting as a representative for P; and
- (b) where the views of P have been able to be ascertained,— 30
- (i) that P does not object to the organisation acting as a representative for P; or
- (ii) that P’s objection is not freely made; and
- (c) that it is in P’s best interests for the organisation to act as a representative for P; and 35
- (d) that there is unlikely to be any conflict between the interests of the organisation and P’s interests; and
- (e) an undertaking to be responsible for any costs awarded against P in the proceedings.

- (3) However, **subsection (2)** does not require reasonable steps to be, or to have been, taken to ascertain P’s views in relation to the organisation acting as a representative for P if P wholly lacks the capacity to communicate decisions in respect of matters relating to P’s personal care and welfare.
- 15 Section 14 amended (Power to make protection order) 5**
- (1) In section 14(1)(a), replace “is using, or has used, domestic violence” with “has inflicted, or is inflicting, family violence”.
- (2) In section 14(2) and (4), replace “domestic violence” with “family violence”.
- 16 Section 15 amended (Existence of other proceedings not to preclude granting of protection order) 10**
- In section 15, replace “minor” with “child”.
- 17 Section 16 amended (Protection of persons other than applicant)**
- (1) In section 16(1B), replace “17 years” with “18 years”.
- (2) Replace section 16(2), (3), and (4) with:
- (2) In or after making a protection order, the court may (subject to **subsections (2A) and (3)**) direct that the order also apply for the benefit of either or both of the following: 15
- (a) a particular child of the applicant who, because the child does not ordinarily or periodically reside with the applicant, is not a child of the applicant’s family (as defined in section 2): 20
- (b) any particular person with whom the applicant has a family relationship, and who is not a child of the kind specified in **paragraph (a)**.
- (2A) No direction may be made under **subsection (2)(a)** (in respect of a child of the applicant who is not a child of the applicant’s family) unless the court is satisfied that the making of the direction is necessary for the protection of the child. 25
- (3) No direction may be made under **subsection (2)(b)** (in respect of a person who is not a child of the kind specified in **subsection (2)(a)**) unless the court is satisfied that—
- (a) the respondent is engaging, or has engaged, in behaviour that, if the respondent and the person were or, as the case may be, had been in a family relationship, would amount to family violence against the person; and 30
- (b) the respondent’s behaviour towards the person is due, in whole or in part, to the applicant’s family relationship with the person; and
- (c) the making of a direction under this section is necessary for the protection of the person; and 35
- (d) where practicable, the person consents to the direction being made.

(4) Section 14(2) to (5) applies, with the necessary modifications, to an application for a direction under **subsection (2)(a) or (b)** of this section.

(3) In section 16(5)(a), replace “17 years” with “18 years”.

18 Section 17 amended (Protection from respondent’s associates)

In section 17(1) and (2)(a), replace “domestic violence” with “family violence”.

19 Sections 19 and 20 replaced

Replace sections 19 and 20 with:

19 Standard conditions: no family violence, no contact, no having others breach order 10

A protection order has, as standard conditions, that the respondent must not—

(a) engage in behaviour that amounts to any form of family violence against the protected person (*see sections 3, 3A, and 3B*):

(b) make any contact with the protected person that is not contact authorised under or by **section 20 or 20B** (which describe the condition in this paragraph as the **standard no-contact condition**): 15

(c) encourage a person to engage in behaviour against, or to make contact with, a protected person, if the behaviour or contact, if engaged in or made by the respondent, would be prohibited by the protection order.

20 Standard no-contact condition: exceptions with consent 20

Protected person can suspend or reinstate condition by giving or cancelling consent to contact

(1) The protected person may suspend the standard no-contact condition by giving consent to contact.

(2) The protected person may reinstate the standard no-contact condition by cancelling consent to contact. 25

Contact to which protected person can give or cancel consent

(3) Contact to which the protected person may give or cancel consent under **subsection (1) or (2)** may be or include all or any of the following:

(a) contact made when the respondent and protected person are, with the protected person’s consent, living in the same dwellinghouse: 30

(b) contact made—

(i) if the protected person is present on or in any land or building; and

(ii) by or after the respondent entering or remaining on or in that land or building: 35

<ul style="list-style-type: none"> (c) contact made when the respondent is a prisoner and receives the protected person as a private visitor under section 73(1) of the Corrections Act 2004 and any regulations made under that Act that regulate the visiting of prisons: (d) contact made by telephone, letters or other writing, or email, or by communication on or via an Internet site, or by other digital communication. 	5
<ul style="list-style-type: none"> (4) No consent under this section can authorise contact inconsistent with— <ul style="list-style-type: none"> (a) an order for supervised contact in relation to a child: (b) no-contact conditions imposed by a direction under section 168B of the Criminal Procedure Act 2011. 	10
<i>Giving of consent must be in required form, but cancelling may take any form</i>	
<ul style="list-style-type: none"> (5) No consent to contact is valid unless in writing or in a digital communication (for example, in a text message, email, letter, or standard form). (6) However, a cancelling of consent to contact may take any form (for example, words spoken face to face, or by telephone). 	15
<i>No limit on number of times condition can be suspended and reinstated</i>	
<ul style="list-style-type: none"> (7) The standard no-contact condition may any number of times— <ul style="list-style-type: none"> (a) be suspended under subsection (1); and (b) be reinstated under subsection (2). 	
20A Standard no-contact condition: references to consent	20
<ul style="list-style-type: none"> (1) This section applies if a protection order has a special condition imposed under section 27(3) that specifies that a person (other than the respondent or the associated respondent) is entitled to consent, on the protected person’s behalf, in relation to contact with the protected person. (2) References in section 20 to the giving or cancelling of the consent of a protected person include, as the case requires,— <ul style="list-style-type: none"> (a) the giving of the consent of the specified person: (b) the cancelling of consent by the specified person. 	25
20B Standard no-contact condition: other exceptions	
<ul style="list-style-type: none"> (1) Contact by the respondent with the protected person is authorised, and not in breach of the standard no-contact condition, if the contact is— <ul style="list-style-type: none"> (a) reasonably necessary in any emergency; or (b) permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of,— <ul style="list-style-type: none"> (i) any child (within the meaning of section 8 of the Care of Children Act 2004); or 	30 35

- (ii) any child or young person (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or
- (c) permitted under any special condition of the protection order; or
- (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or 5
- (e) necessary to attend any court proceeding, or to attend any other matter that is associated with a court proceeding and that is a matter that the parties to the court proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004). 10
- (2) The contact authorised by **subsection (1)** may be contact made—
- (a) if the protected person is present on or in any land or building; and
- (b) by or after the respondent entering or remaining on or in that land or building. 15
- (3) **Subsection (2)** does not limit **subsection (1)**.
- 20C Standard conditions: associated respondents**
- (1) This section applies if, under a direction made under section 17, a protection order applies against an associated respondent.
- (2) **Sections 19 to 20B** apply, with the necessary modifications, in respect of the associated respondent. 20
- 20 Section 21 amended (Standard condition relating to weapons)**
In section 21(5), replace “pursuant to” with “under”.
- 21 Section 23 amended (Further provisions relating to powers conferred by section 22)** 25
In section 23(1), (3)(a) and (b), and (4)(a) and (b)(ii), replace “domestic violence” with “family violence” in each place.
- 22 Section 27 amended (Court may impose special conditions)**
- (1) Replace section 27(1) with:
- (1) In or after making a protection order, the court may impose any conditions that are reasonably necessary, in the opinion of the court, for either or both of the following purposes: 30
- (a) to protect the protected person from further family violence by the respondent, or the associated respondent, or both:
- (b) to address the inflicting of family violence against protected people who are particularly vulnerable (for example, due to age, disability, or health condition). 35

- (2) In section 27(3), replace “19(2), 20,” with “**19(b), 20, 20A,**”.
- 23 Section 28 replaced (Further provisions relating to certain special conditions)**
- Replace section 28 with:
- 28 Special conditions inconsistent with contact: exceptions with consent** 5
- (1) This section applies to a special condition of a protection order if the special condition requires the respondent not to make contact with the protected person.
- (2) **Sections 20, 20A, 20B, and 20C** apply to the special condition as if it were the standard no-contact condition specified in **section 19(b)**. 10
- 24 Section 28B amended (Interim orders in respect of child of applicant’s family)**
- After section 28B(3), insert:
- (4) An interim order made under subsection (2) must be taken to be an interim parenting order made under section 48(1) of the Care of Children Act 2004 (so that, for example,— 15
- (a) section 49A of that Act applies to it; and
- (b) it may be varied or discharged under section 56 of that Act).
- 25 Section 28C repealed (Duration of interim order)**
- Repeal section 28C. 20
- 26 Section 28D replaced (Application for parenting order under Care of Children Act 2004 must be made)**
- Replace section 28D with:
- 28D Proceedings about interim order in respect of child of applicant’s family: legal aid** 25
- (1) This section applies to proceedings under the Care of Children Act 2004 if—
- (a) section 28B applies, under section 28B(1), because an application has been made to the Family Court for a protection order, and there is a child of the applicant’s family; and
- (b) the Family Court makes under section 28B(2), and in respect of the child concerned, an interim order; and 30
- (c) **section 28B(4)** requires that interim order to be taken to be an interim parenting order made under section 48(1) of the Care of Children Act 2004; and

- (d) the proceedings under the Care of Children Act 2004 relate to that interim order being varied, or discharged, or replaced with a further interim parenting order or with a final parenting order.
- (2) For the purposes of section 19(1) of the Legal Services Act 2011 (which contains special provisions about conditions on grants of legal aid to persons involved in proceedings under this Act), proceedings to which this section applies are a kind of proceedings that relate to, or arise out of, an application for a protection order under Part 2 of the **Family and Whānau Violence Act 1995**. 5
- 27 Section 47 amended (Power to discharge protection order)** 10
- (1) After section 47(1), insert:
- (1A) However, the court must not discharge the order unless satisfied that the order is no longer necessary for the protection of any protected person.
- (1B) In determining whether to discharge a protection order, the court must have regard to the following matters to the extent that they are relevant in the particular case: 15
- (a) the length of the period since the order was made:
- (b) the behaviour that led to the making of the order (including its nature, its seriousness, and how often violence occurred):
- (c) whether, and if so how, the respondent acknowledges the respondent's past behaviour that led to the making of the order: 20
- (d) whether the respondent to the order complied with required attendance at or engagement with, and achieved objectives of, any assessment or programme or prescribed services:
- (e) any relevant safety concerns that an assessor or a service provider has notified or advised under **section 51C or 51Q**: 25
- (f) any family violence or breaches of the order since it was made:
- (g) the necessity for contact and the likelihood (if the order is discharged) of future contact:
- (h) the risk of future family violence: 30
- (i) whether areas of concern that led to the order are no longer evident:
- (j) any protected person's ascertained views on the application (whether it is made by, or on behalf of, the applicant or the respondent).
- (1C) **Subsection (1B)** does not limit the matters to which the court may have regard in determining whether to discharge a protection order. 35
- (2) In section 47(2)(a) and (b) and (4)(a) and (b), replace “pursuant to” with “under”.

28 Section 48 replaced (Variation or discharge on behalf of protected person)

Replace section 48 with:

48 Variation or discharge on behalf of protected person

- (1) This section applies in relation to—
- (a) any application on behalf of a protected person for the variation or discharge of a protection order under this Act; and 5
 - (b) the defending on behalf of a protected person of any such application made by the respondent or the associated respondent.
- (2) **Sections 9, 11, and 12** apply to those matters, so far as applicable and with the necessary modifications, as they apply in relation to the making of an application for a protection order. 10

29 Section 49 amended (Offence to breach protection order)

Replace section 49(1) with:

- (1) A person commits an offence if the person breaches a protection order by—
- (a) doing any act in contravention of the protection order; or 15
 - (b) failing to comply with any condition of the protection order; or
 - (c) contravening, or failing to comply with any term and condition of, a related occupation order (for example, by failing to leave the dwellinghouse to which the order relates); or
 - (d) contravening a related tenancy order (for example, by failing to leave the dwellinghouse to which the order relates); or 20
 - (e) contravening, or failing to comply with any term and condition of, a related ancillary furniture order (for example, by preventing possession and use of all or any items to which the order relates); or
 - (f) contravening, or failing to comply with any term and condition of, a related furniture order (for example, by preventing possession and use of all or any items to which the order relates). 25

30 Section 50 replaced (Power to arrest for breach of protection order)

Replace section 50 with:

50 Power to arrest for breach of protection order 30

Where a protection order is in force, any constable may arrest, without warrant, any person who the constable has good cause to suspect has—

- (a) contravened the protection order; or
- (b) failed to comply with any condition of the protection order; or
- (c) contravened, or failed to comply with a term and condition of, a related occupation order; or 35

- (d) contravened a related tenancy order; or
- (e) contravened, or failed to comply with a term and condition of, a related ancillary furniture order; or
- (f) contravened, or failed to comply with a term and condition of, a related furniture order.

5

Programmes (Part 2A)

31 Part 2A replaced

Replace Part 2A with:

Part 2A
Programmes and prescribed services

10

Interpretation

51A Interpretation

In this Part, unless the context otherwise requires,—

approval means an approval under **section 51B**, and that has not been suspended or cancelled, of 1 of the following kinds:

15

- (a) an approval of an assessor:
- (b) an approval of a service provider

assessment, in relation to a respondent, means an assessment of the respondent undertaken by an assessor to determine—

- (a) the extent to which the respondent poses a safety risk to any person or the public; and
- (b) if the assessment is an assessment for a non-violence programme, what, if any, non-violence programme is the most appropriate for the respondent to attend; and
- (c) if the assessment is an assessment for prescribed services, what, if any, prescribed services may be appropriate for and may benefit the respondent

20

25

assessor means a person or an organisation that has been granted an approval to undertake assessments (for non-violence programmes, prescribed services, or both)

30

non-violence programme means a programme that—

- (a) is provided by a service provider; and
- (b) is provided to a respondent; and
- (c) has the primary objective of stopping or preventing family violence on the part of the respondent

35

prescribed non-standard service has the meaning given to it by section 2	
prescribed service has the meaning given to it by section 2	
prescribed standard service has the meaning given to it by section 2	
programmes means—	
(a) safety programmes; and	5
(b) non-violence programmes	
respondent means the person against whom an application has been made for an order under this Act, and includes an associated respondent	
safety programme means a programme that—	
(a) is provided by a service provider; and	10
(b) is provided to a protected person; and	
(c) has the primary objective of promoting (whether by education, information, support, or otherwise) the protection of the protected person from family violence	
service provider means a person or an organisation that has been granted an approval to provide programmes, prescribed services, or both.	15
<i>Approval of assessors and service providers</i>	
51B Assessors and service providers	
(1) The Secretary may decide to grant, amend, suspend, or cancel—	
(a) an approval of a person or an organisation (for example, a government organisation) as an assessor (for non-violence programmes, prescribed services, or both):	20
(b) an approval of a person or an organisation (for example, a government organisation) as a service provider.	
(2) A person or an organisation may be approved under subsection (1) by the Secretary—	25
(a) on an application made for the purpose by the person or organisation; or	
(b) on the Secretary's own motion, and with the person's or organisation's written consent.	
(3) A person or an organisation seeking an approval under subsection (1) by way of an application, or an own-motion approval under subsection (1) , must follow the applicable process (if any) prescribed by regulations made under section 127(a)(i) .	30
(4) A person or an organisation may (subject to, and to the prescribed criteria referred to in, subsection (5)) seek, be granted, or hold, both—	35
(a) an approval as an assessor (for non-violence programmes, prescribed services, or both); and	

- (b) an approval as a service provider.
- (5) In deciding whether to grant, amend, suspend, or cancel an approval under **subsection (1)**, the Secretary must apply the criteria (if any) prescribed for the purposes of this section by regulations made under **section 127(a)(ii)**.
- (6) An approval, or an amendment, suspension, or cancellation of an approval, under this section must be by written notice copied to the person or organisation. 5
- (7) The Secretary must publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice—
 - (a) an up-to-date list of assessors approved under this section: 10
 - (b) an up-to-date list of service providers approved under this section.

Notification of safety concerns

51C Assessor or service provider to notify safety concerns

- (1) This section applies if,—
 - (a) a service provider has, during or after the provision by the provider to a protected person of a safety programme, concerns about the safety of a protected person (whether or not a protected person attending, or who attended, the safety programme); or 15
 - (b) an assessor has, during or after the undertaking by the assessor of an assessment of the respondent, concerns about the safety of a protected person; or 20
 - (c) a service provider has, during or after the provision by the provider to a respondent of a non-violence programme or a prescribed service, concerns about the safety of a protected person.
- (2) In **subsection (1)**, **concerns about the safety of a protected person** means concerns about a risk (to the safety of the protected person) that—
 - (a) is imminent, escalating, or grave; and
 - (b) adds to the concerns that supported the making of the protection order.
- (3) The assessor or service provider must, without delay, notify the following authorities of those concerns: 30
 - (a) the Registrar:
 - (b) the District Commander at the appropriate Police District Headquarters:
 - (c) if there is a perceived risk to any child, the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for administration of the Children, Young Persons, and Their Families Act 1989. 35
- (4) On receiving a notification under **subsection (3)(a)**, the Registrar must—

- (a) arrange for the protected person to be advised of the assessor's or service provider's concerns; and
- (b) comply with **section 51U** (Registrar's response to notice of safety concerns or non-compliance).

Safety programmes

5

51D Safety programmes for protected persons

- (1) If the court makes a protection order,—
 - (a) the applicant, or the applicant's representative, may request the Registrar to authorise the provision of a safety programme to all or any of the following persons:
 - (i) the applicant;
 - (ii) a child of the applicant's family;
 - (iii) a specified person; and
 - (b) a child of the applicant's family may request the Registrar to authorise the provision of a safety programme to that child if no request has been made under **paragraph (a)(ii)**; and
 - (c) a specified person (other than a child) may request the Registrar to authorise the provision of a safety programme to that specified person if no request has been made under **paragraph (a)(iii)**.
- (2) If, at the time the protection order is made, the applicant has not made a request under this section, and the applicant is not legally represented, the Judge or the Registrar must inform the applicant of the applicant's right to make such a request. 10
- (3) One or more requests may be made under all or any of **subsection (1)(a), (b), and (c)**, in respect of the same person or different people, at any time while the protection order remains in force. 15
- (4) If a request is made to a Registrar under **subsection (1)(a), (b), or (c)**, the Registrar—
 - (a) must arrange for the matter to be referred to a service provider without delay, if the request is the first one made by or on behalf of the applicant, child of the applicant's family, or specified person; and
 - (b) may do so, if the request is a later one made by or on behalf of the applicant, child of the applicant's family, or specified person.
- (5) Every lawyer acting for an applicant for a protection order must—
 - (a) ensure that the applicant is aware of the applicant's right to make a request under this section; and
 - (b) if the applicant wishes to exercise that right, take any further steps the lawyer considers necessary to enable the applicant to do so. 20 25 30 35

*Non-violence programmes and prescribed services***51E Directions for assessments, non-violence programme, and prescribed standard services***Court making protection order must make direction for non-violence programme*

5

- (1) On making a protection order, the court must direct the respondent to—
- (a) undertake an assessment for a non-violence programme; and
 - (b) attend a non-violence programme, provided by a service provider, that an assessor determines is an appropriate non-violence programme for the respondent to attend.

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- (2) However, the court need not make a direction under **subsection (1)** if the court considers that there is a good reason for not making a direction.

Court making protection order may make direction for prescribed services

- (3) On making a protection order, the court may direct the respondent to—
- (a) undertake an assessment for prescribed services; and
 - (b) engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the respondent.

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51F Objection process if direction made on application without notice

- (1) This section applies if the court makes a direction under **section 51E** on an application made without notice.

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- (2) If this section applies,—
- (a) the direction does not take effect until 10 working days after a copy of the direction is served on the respondent; and
 - (b) the respondent may, within those 10 working days, notify the court that the respondent objects to the direction.

25

- (3) If the respondent, under **subsection (2)(b)**, notifies the court that the respondent objects to the direction,—

- (a) the Registrar must, if the respondent wishes to be heard, assign a hearing date, which must be—
 - (i) as soon as practicable; and
 - (ii) unless there are special circumstances, in no case later than 42 days after receipt of the notice of objection; and

30

- (b) the direction is suspended from the date on which the court receives the notice of objection until the court, after considering the respondent's objection, confirms (whether with or without variation) or discharges the direction.

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- (4) Nothing in this section or **section 51G** gives the court power to review any order or decision other than the direction to which the notice relates, but nothing in this section limits section 76 or 79.
- 51G Court may confirm or discharge direction after considering objection**
- (1) After considering an objection, made under **section 51F**, to a direction, the court may— 5
- (a) confirm the direction; or
 - (b) vary the direction; or
 - (c) discharge the direction.
- (2) If the court under **subsection (1)** confirms or varies a direction and the respondent is before the court, the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment. 10
- (3) Failure to give the warning required by **subsection (2)** does not affect the validity of the direction confirmed or varied.
- 51H Referral of respondent to assessor** 15
- (1) After the court has made a direction under **section 51E**, the Registrar must, without delay,—
- (a) arrange for the respondent to be referred to an assessor who has been granted an approval to undertake an assessment of the kind required by the direction; and 20
 - (b) notify the assessor of the direction made under **section 51E**.
- (2) This section is subject to **section 51F** (objection process if direction made on application without notice).
- 51I Assessor meets with respondent, undertakes assessment, and makes determinations** 25
- Undertaking assessment and making determinations*
- (1) As soon as possible after receiving a notification under **section 51H**, the assessor must arrange to meet with the respondent to—
- (a) undertake an assessment of the respondent; and
 - (b) determine, if the direction in the notification is that the respondent undertake an assessment for a non-violence programme, whether there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend; and 30
 - (c) determine, if the direction in the notification is that the respondent undertake an assessment for prescribed services, whether (and, if so, which of) the types of services specified in **Schedule 2** (if any), provided by a service provider, may be appropriate for and may benefit the respondent. 35

When assessments or determinations need not be undertaken or made

- (2) However, the assessor need not undertake or complete an assessment, or make a determination, under **subsection (1)**, if the assessor considers that there is a good reason for not doing so.
- (3) On making a decision under **subsection (2)** not to undertake or complete an assessment, or not to make a determination, under **subsection (1)**, the assessor must notify, and send a copy of the decision to, the Registrar. 5
- (4) On receiving notification of, and a copy of, the assessor's decision under **subsection (2)**, the Registrar must bring the matter to the attention of a Judge (*see section 51S*). 10
- Order of, and delaying, respondent's attendance or engagement*
- (5) **Subsection (6)** applies to an assessor who makes all or any of the following (unless the assessor also determines under **subsection (1)(c)** that a prescribed non-standard service, provided by a service provider, may be appropriate for and may benefit the respondent, in which case **section 51L** applies): 15
- (a) a determination under **subsection (1)(b)** that there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend:
- (b) a determination under **subsection (1)(c)** that a prescribed standard service, provided by a service provider, may be appropriate for and may benefit the respondent. 20
- (6) The assessor must, in making the 1 or more determinations, decide (jointly with any other assessor referred under **section 51H** a direction made under **section 51E** on the making of the protection order) what order the respondent must attend a non-violence programme or engage with a prescribed standard service, and whether the respondent's attendance at the programme, or engagement with the prescribed standard service, or both, should be delayed to enable other matters to be addressed first. 25
- (7) On making a decision under **subsection (6)** that the respondent's attendance at the programme, or engagement with the prescribed standard service, or both, should be delayed to enable other matters to be addressed first, the assessor must notify the Registrar, and the Registrar must bring the matter to the attention of a Judge (*see section 51S*). 30

51J When assessor must refer respondent back to court

- (1) This section applies if, after undertaking an assessment of the respondent, the assessor makes 1 or both of the following: 35
- (a) a determination under **section 51I(1)(b)** that there is not an appropriate non-violence programme, provided by a service provider, for the respondent to attend:

- (b) a determination under **section 51I(1)(c)** that there is not a prescribed standard service, provided by a service provider, that may be appropriate for and may benefit the respondent.
- (2) The assessor must, without delay, notify, and copy the 1 or more determinations to, the respondent and the Registrar. 5
- (3) After receiving a notification under **subsection (2)**, the Registrar must—
- (a) arrange for the protected person to be notified of the 1 or more determinations; and
- (b) bring the matter to the attention of a Judge (*see section 51S*).
- 51K When assessor must refer respondent to service provider** 10
- (1) This section applies if, after undertaking an assessment of the respondent, the assessor makes 1 or both of the following:
- (a) a determination under **section 51I(1)(b)** that there is an appropriate non-violence programme, provided by a service provider, for the respondent to attend: 15
- (b) a determination under **section 51I(1)(c)** that a prescribed standard service, provided by a service provider, may be appropriate for and may benefit the respondent.
- (2) The assessor must, without delay,—
- (a) notify, and copy the 1 or more determinations to, the respondent, and otherwise arrange for the respondent to be referred to the service provider; and 20
- (b) notify the service provider of the relevant direction or directions made under **section 51E** and of the 1 or more determinations; and
- (c) notify, and copy the 1 or more determinations to, the Registrar. 25
- 51L Court may direct respondent to engage with prescribed non-standard service**
- (1) This section applies if the assessor determines under **section 51I(1)(c)** that a prescribed non-standard service, provided by a service provider, may be appropriate for and may benefit the respondent. 30
- (2) The assessor must promptly notify the Registrar, and send the Registrar—
- (a) the result of the assessment of the respondent undertaken by the assessor; and
- (b) all information related to the assessor's determination under **section 51I(1)(c)** that the assessor considers may help a Judge to determine whether to make a direction under **subsection (4)**. 35
- (3) After receiving a notification under **subsection (2)**, the Registrar must bring the matter to the attention of a Judge.

- (4) When a matter is brought to the attention of a Judge under **subsection (3)**, the Judge may, if the Judge thinks fit, by written direction copied promptly to the respondent, to the assessor, and to the service provider, require the respondent to engage with the prescribed non-standard service as provided by a service provider. 5
- (5) The Judge, in making the direction, may decide in what order the respondent must attend a non-violence programme or engage with the prescribed non-standard service (or with any prescribed standard services with which the respondent is required to engage), and whether the respondent's attendance at the programme, or engagement with all or any prescribed services, or both, should be delayed to enable other matters to be addressed first, and may make any other order or direction that may be made under **section 51S**. 10

51M Referral to different service provider

- (1) This section applies if the service provider—
- (a) is notified of, or copied, under **section 51K or 51L**, a direction about a programme or prescribed service and a respondent; but 15
 - (b) is not able to provide that programme or service to the respondent.
- (2) The service provider must—
- (a) notify the assessor referred to in **section 51K or 51L**; and
 - (b) send to that assessor the following information: 20
 - (i) the result of the assessment of the respondent undertaken by the assessor; and
 - (ii) any information that is held by the service provider and that relates to the assessment by the assessor of, or to the provision of the programme or service by the service provider to, the respondent. 25
- (3) After receiving a notification under **subsection (2)(a)** and the information referred to in **subsection (2)(b)**, the assessor must—
- (a) notify or copy under **section 51K or 51L(4)** (which apply with the necessary modifications) the direction about the programme or prescribed service and the respondent to a service provider that is able to provide that programme or service to the respondent, and notify the Registrar of the respondent's referral under this paragraph to a different service provider; or 30
 - (b) notify the Registrar. 35
- (4) After receiving a notification under **subsection (3)(b)**, the Registrar must bring the matter to the attention of a Judge (*see section 51S*).

51N	Referral back to court if programme or service to be delayed or inappropriate	
(1)	This section applies if the service provider, after being notified of, or copied, under section 51K or 51L , a direction about a non-violence programme or prescribed service and a respondent, determines that—	5
(a)	the respondent’s attendance at the programme, or engagement with the service, or both, should be delayed to enable other matters to be addressed first; or	
(b)	it would not be appropriate for the respondent to attend the programme, engage with the service, or both.	10
(2)	The service provider must notify the Registrar, and the Registrar must bring the matter to the attention of a Judge (<i>see section 51S</i>).	
51O	Terms of attendance at or engagement with non-violence programme or prescribed service	
(1)	Before providing a non-violence programme to a respondent (in line with the direction made under section 51E(1)(b) and the determination made under section 51I(1)(b)), the service provider must settle in writing with the respondent the terms of attendance, which must include—	15
(a)	the number of programme sessions that the respondent must attend; and	
(b)	details and arrangements about the programme venue, sessions, and times.	20
(2)	Before providing a prescribed service to a respondent directed under section 51E(3)(b) or 51L to engage with the service, the service provider must settle in writing with the respondent the terms of the respondent’s engagement with the service.	25
(3)	The service provider must provide to the Registrar a copy of the terms of attendance or (as the case requires) the terms of engagement that the service provider has settled with the respondent.	
(4)	If a service provider is not able to settle with a respondent the terms of attendance or (as the case requires) the terms of engagement, the service provider must notify the Registrar.	30
(5)	On receipt of a notice under subsection (4) , the Registrar must—	
(a)	settle the terms of attendance or (as the case requires) the terms of engagement with the respondent and the service provider; or	
(b)	bring the matter to the attention of a Judge (<i>see section 51S</i>).	35
51P	Referral back to court if continued provision no longer appropriate or practicable or affected significantly by non-compliance	
(1)	This section applies if, at any time during the provision of a non-violence programme, the service provider considers that—	

- (a) it is no longer appropriate or practicable for the service provider to provide the programme to the respondent; or
- (b) the respondent is not participating fully in the programme, and that this is significantly affecting the respondent's ability to benefit fully from the programme. 5
- (2) This section also applies if, at any time during the provision of a prescribed service, the service provider considers that—
- (a) it is no longer appropriate or practicable for the service provider to provide the service to the respondent; or
- (b) the respondent is not engaging fully with the service, and that this is significantly affecting the respondent's ability to benefit fully from the service. 10
- (3) The service provider must—
- (a) notify the Registrar; and
- (b) send to the Registrar all information that is held by the service provider and that relates to the provision of the non-violence programme or (as the case requires) to the provision of the prescribed service to the respondent. 15
- (4) After receiving a notification under **subsection (3)(a)** of a determination (about continued provision of the programme or the prescribed service) under **subsection (1)(a) or (2)(a)** and the information referred to in **subsection (3)(b)**, the Registrar must—
- (a) make a new referral under **section 51M** to a different service provider; or
- (b) bring the matter to the attention of a Judge (*see section 51S*). 25
- (5) A service provider who makes a determination (about the respondent's non-compliance) under **subsection (1)(b) or (2)(b)** is required by **section 51T** to give written notice to the Registrar of that determination (and **sections 51V, 51W, and 51X** apply accordingly).
- 51Q Report and notice of completion and outcome of programme or service** 30
- (1) When a respondent has completed a non-violence programme or has completed engagement with a prescribed service, the service provider must, without delay, provide to the Registrar a report that—
- (a) states whether, in the opinion of the service provider, the respondent has met the objectives of the non-violence programme or of the engagement with the prescribed service; and 35
- (b) advises of any concerns that the service provider has about the safety of any protected person (as those concerns are defined in **section 51C(2)**).
- (2) On receiving a report under **subsection (1)**, the Registrar must—

- (a) comply with **section 51U** if—
 - (i) the report advises that the respondent has failed to meet the objectives of the programme or of the engagement with the prescribed service; or
 - (ii) the report advises of any concerns that the service provider has about the safety of any protected person; and
- (b) arrange for the protected person to be notified—
 - (i) that the respondent has completed a non-violence programme or engagement with a prescribed service; and
 - (iii) of any concerns that the service provider has about the safety of the protected person, and that are advised in the report provided under **subsection (1)**.

Confidentiality of information

- 51R Information being admitted as evidence or used without court's authorisation**
- (1) This section applies to information (for example, a statement or an admission) received—
 - (a) by an assessor or a service provider; and
 - (b) for the purposes of, or in the course of, undertaking an assessment, or providing a programme or prescribed service.
 - (2) The information must not be admitted as evidence—
 - (a) in any court; or
 - (b) before any person acting judicially.
 - (3) However, **subsection (2)** does not prohibit the information from being disclosed for the purposes of all or any of the following:
 - (a) giving a notification (for example, to a Registrar) under this Act;
 - (b) making a referral (for example, to a service provider) under this Act;
 - (c) proceedings under **section 51U or 51V** (which are proceedings about the respondent's non-compliance with a direction);
 - (d) investigating or prosecuting an offence against **section 51X**;
 - (e) investigating or prosecuting an offence committed, or alleged to have been committed, during the provision of a programme, a prescribed service, or both;
 - (f) an inquiry that may be or is opened, ordered, or conducted into a death (including any related inquest that may be or is held) under the Coroners Act 2006.

- (4) If the information is court information of the District Court (within the meaning of section 236(4) and Schedule 1 of the District Court Act 2016), the information must not be disclosed except with authorisation given by a court or the Registrar or under rules of court.

Enforcement and powers when matter referred back to court 5

51S Powers if matter brought to attention of Judge

- (1) This section applies if the Registrar brings a matter to the attention of a Judge under—
- (a) **section 51I(4)** (which applies if an assessor decides under **section 51I(2)** not to undertake or complete an assessment, or not to make a determination, under **section 51I(1)**); or 10
 - (b) **section 51I(7)** (which applies if an assessor decides under **section 51I(6)** that the respondent's attendance at a non-violence programme, or engagement with a prescribed standard service, or both, should be delayed); or 15
 - (c) **section 51J(3)** (when assessor must refer respondent back to court); or
 - (d) **section 51M(4)** (referral to different service provider); or
 - (e) **section 51N(2)** (referral back to court if programme or service to be delayed or inappropriate); or
 - (f) **section 51O(5)(b)** (terms of attendance at or engagement with non-violence programme or prescribed service); or 20
 - (g) **section 51P(4)(b)** (which applies if the service provider considers that is no longer appropriate or practicable for the service provider to provide a non-violence programme or prescribed service to the respondent).
- (2) The Judge may make any order or direction (for example, under **section 51E, 51J, 51L, 51P, or 51Q**) the Judge thinks fit in the circumstances. 25
- (3) The Judge may under **subsection (2)** do all or any of the following:
- (a) make a direction under **section 51E(3)(a) and (b)** (that the respondent undertake an assessment for prescribed services, and engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the respondent): 30
 - (b) suspend, vary or replace, or discharge the direction (to attend a non-violence programme or engage with a prescribed standard service) made under **section 51E(1)(b) or (3)(b)**: 35
 - (c) suspend, vary or replace, or discharge a direction (to engage with a prescribed non-standard service) made under **section 51L**:
 - (d) make a direction (to engage with a prescribed non-standard service) under **section 51L** in respect of the respondent:

- (e) make under **section 51M** a referral to a different service provider that is able to provide a non-violence programme or prescribed service to the respondent:
- (f) settle the terms of attendance or (as the case requires) the terms of engagement with the respondent and the service provider under **section 51O**: 5
- (g) make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent.
- (4) **Subsection (3)** does not limit **subsection (2)**. 10
- 51T Notice of non-compliance with direction**
- (1) This section applies if, after the court makes a direction under **section 51E or 51L**, 1 or more of the following events happen:
- (a) the respondent fails to undertake an assessment with the assessor to whom notice of the direction has been given under **section 51H**: 15
- (b) the respondent fails to attend a non-violence programme in accordance with a direction made under **section 51E(1)(b)** and with the terms of attendance settled under **section 51O**:
- (c) the respondent fails to engage with a prescribed service in accordance with a direction made under **section 51E(3)(b) or 51L** and with the terms of engagement settled under **section 51O**: 20
- (d) during the provision of a non-violence programme, the service provider determines under **section 51P(1)(b)** that the respondent is not participating fully in the programme and that this is significantly affecting the respondent's ability to benefit fully from the programme: 25
- (e) during the provision of a prescribed service, the service provider determines under **section 51P(2)(b)** that the respondent is not engaging fully with the service and that this is significantly affecting the respondent's ability to benefit fully from the service.
- (2) The assessor or service provider concerned must give written notice to the Registrar of the 1 or more events that have happened. 30
- (3) Notice under **subsection (2)** of an event must be given before the end of the seventh day after the day that the event happened.
- 51U Registrar's response to notice of safety concerns or non-compliance**
- (1) This section applies if the Registrar receives any of the following: 35
- (a) a notification under **section 51C(3)(a)** of an assessor's or a service provider's concerns about the safety of a protected person:

- (b) a notice under **section 51T** of a respondent's non-compliance with a direction (for example, a direction made under **section 51E(3)(b) or 51L** that requires the respondent to engage with a prescribed service):
- (c) a non-violence programme completion or prescribed service engagement completion report under **section 51Q(1)**— 5
- (i) that advises that the respondent has failed to meet the objectives of the programme or of the engagement with the prescribed service; or
- (ii) that advises of concerns that the service provider has about the safety of any protected person. 10
- (2) The Registrar must, without delay,—
- (a) exercise the powers under section 82, as if the Registrar were the court referred to in that section, to call the respondent before the court; or
- (b) bring the matter to the attention of a Judge so that the Judge may consider whether to exercise the power conferred by **section 51V** in relation to the respondent. 15
- (3) If the Registrar exercises the powers under section 82 in the manner allowed by **subsection (2)(a)**, then, subject to any regulations made under this Act, section 82 applies, so far as applicable and with the necessary modifications, as if the respondent were a witness in proceedings. 20
- 51V Judge may call respondent before court**
- (1) This section applies if, under **section 51U(2)(b)**, a Registrar brings a matter to the attention of a Judge.
- (2) The Judge may exercise the powers under section 82 to call the respondent before the court. 25
- (3) If the Judge exercises those powers, section 82 applies, so far as applicable and with all necessary modifications, as if the respondent were a witness in proceedings.
- 51W Respondent called before court**
- (1) If a respondent appears before the court under **section 51U(2)(a) or 51V(2)**, the court may, after hearing from the respondent, do all or any of the following: 30
- (a) admonish the respondent:
- (b) confirm, vary or replace, or discharge the direction (under **section 51E or 51L**), or change the terms of attendance at or engagement with the programme or prescribed service under **section 51O**: 35
- (c) make a replacement direction (under **section 51E or 51L**) that requires the respondent to attend or engage with a further, or different, assessment, programme, or prescribed service:

(d)	make, or vary or discharge terms or conditions of, a parenting order (interim or final) under the Care of Children Act 2004 relating to or affecting the respondent:	
(e)	make any order or direction the court thinks fit in the circumstances.	
(2)	If the court confirms or varies a direction under subsection (1) , the Judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment.	5
(3)	Failure to give the warning required by subsection (2) does not affect the validity of the direction confirmed or varied.	
51X	Offence to fail to comply with direction	10
	A respondent who fails, without reasonable excuse, to comply with a direction made under section 51E or 51L commits an offence and is liable on conviction to—	
(a)	a fine not exceeding \$5,000; or	
(b)	a term of imprisonment not exceeding 6 months.	15

Orders relating to property (Part 3)

32 Section 52 replaced (Application for occupation order)

Replace section 52 with:

52	Application for occupation order	
(1)	A person who makes an application for a protection order may, at any of the following times, also apply for an occupation order:	20
(a)	when making the application for the protection order; or	
(b)	before the application for the protection order is determined; or	
(c)	while the protection order applied for, if it is made, is in force.	
(2)	An occupation order grants the applicant the right to live in a dwellinghouse owned by either party to the proceedings, or in which either party to the proceedings has a legal interest (for example, a tenancy), both—	25
(a)	during all or any of the period of existence of the family relationship in respect of which the protection order is sought or was made; and	
(b)	when the occupation order is made.	30
	Compare: 1982 No 120 s 19	

33 Section 53 amended (Power to make occupation order)

(1)	Replace section 53(1) and (2) with:	
(1)	On or after making a protection order and on an application for an occupation order, the court may make an order granting to the applicant the right to personally occupy a specified dwellinghouse.	35

- (1A) **Subsection (1)** is subject to **subsection (2)** and to section 74, but applies despite anything in the Property (Relationships) Act 1976.
- (2) The court may make an order under **subsection (1)** only if it is satisfied that the order—
- (a) is reasonably necessary for 1 or both of the following purposes:
 - (i) to meet the accommodation needs of the applicant, a child of the applicant’s family, or both: 5
 - (ii) to enable the applicant to continue existing childcare, education, training, or employment arrangements for that person, a child of the applicant’s family, or both; or 10
 - (b) is in the best interests of a child of the applicant’s family.
- (2A) **Subsection (2)** does not limit the matters to which the court may have regard in determining whether to make the order.
- (2) In section 53(4), replace “all persons” with “any other persons”.
- 34 Section 54 amended (Effect of occupation order)** 15
Repeal section 54(2).
- 35 Section 56 amended (Application for tenancy order)**
Replace section 56(1) with:
- (1) A person who makes an application for a protection order may, at any of the following times, also apply for a tenancy order: 20
- (a) when making the application for the protection order; or
 - (b) before the application for the protection order is determined; or
 - (c) while the protection order applied for, if it is made, is in force.
- (1A) A tenancy order vests in the applicant the tenancy of any dwellinghouse of which either party to the proceedings is the sole tenant, or a tenant holding jointly, or in common, with the applicant, both— 25
- (a) during all or any of the period of existence of the family relationship in respect of which the protection order is sought or was made; and
 - (b) at the time the tenancy order is made.
- 36 Section 57 amended (Power to make tenancy order)** 30
- (1) Replace section 57(1) and (2) with:
- (1) On or after making a protection order and on an application for a tenancy order, the court may make an order vesting in the applicant the tenancy of a specified dwellinghouse.
- (1A) **Subsection (1)** is subject to **subsection (2)** and to section 74, but applies despite anything in the Property (Relationships) Act 1976. 35

- (2) The court may make an order under **subsection (1)** only if it is satisfied that the order—
- (a) is reasonably necessary for 1 or both of the following purposes:
 - (i) to meet the accommodation needs of the applicant, a child of the applicant, or both: 5
 - (ii) to enable the applicant to continue existing childcare, education, training, or employment arrangements for that person, a child of the applicant, or both; or
 - (b) is in the best interests of a child of the applicant’s family.
- (2A) **Subsection (2)** does not limit the matters to which the court may have regard in determining whether to make the order. 10
- (2) In section 57(3), replace “all persons” with “any other persons”.
- 37 Section 58 amended (Effect of tenancy order)**
Repeal section 58(2).
- 38 Section 60 amended (Application without notice for occupation order or tenancy order)** 15
Repeal section 60(3).
- 39 Section 61 amended (Procedure for occupation orders and tenancy orders)**
- (1) Replace section 61(1)(c) with:
- (c) section 74 has been complied with in respect of the making of a tenancy order other than a temporary order; and 20
 - (d) a protection order has been made, or that it will at the same time make a protection order,—
- (2) Replace section 61(2)(c) with:
- (c) section 74 has been complied with in respect of the making of an occupation order other than a temporary order; and 25
 - (d) a protection order has been made, or that it will at the same time make a protection order,—
- 40 Section 64 amended (Effect of ancillary furniture order)**
Repeal section 64(2). 30
- 41 Section 66 amended (Application for furniture order)**
- (1) In section 66, delete “aged 16 years or over”.
- (2) In section 66(b)(i), replace “domestic relationship” with “family relationship”.
- 42 Section 67 amended (Power to make furniture order)**
- (1) Replace section 67(1) with: 35

- (1) On or after making a protection order, the court may also make an order granting to the applicant the possession and use of all or any of the furniture, household appliances, and household effects in the dwellinghouse in which the parties live or have lived.
- (1A) **Subsection (1)** is subject to subsections (2) and (6) and to section 74, but applies despite anything in the Property (Relationships) Act 1976. 5
- (2) After section 67(5), insert:
- (5A) Terms and conditions imposed under subsection (5) may, without limitation, require or relate to all or any of the following: 10
- (a) access to the dwellinghouse in which the parties live or have lived:
 - (b) the timing of collection of the items to which the order relates:
 - (c) the manner of collection of those items:
 - (d) the absence from that dwellinghouse, at the time or times of collection of those items, of a specified person or specified people.
- 43 Section 68 amended (Effect of furniture order)** 15
Repeal section 68(2).
- 44 Sections 71 to 73 replaced**
Replace sections 71 to 73 with:
- 71 Applications for property orders by children**
- (1) A child may, in accordance with this section, make an application for a property order. 20
- (2) A child may make the application only—
- (a) by a representative (for example, an approved organisation that is authorised by **section 12C** to take proceedings under this Act on behalf of the child); or 25
 - (b) if authorised under rules of court to do so without a representative.
- (3) This section does not limit or affect the making or operation of rules of court (for example, rules made under section 16A(1) of the Family Courts Act 1980) that—
- (a) prevent an incapacitated child from taking part in, or from taking a step in, all or any specified proceedings under this Act without a litigation guardian: 30
 - (b) provide for a representative to make all or any specified applications under this Act on behalf of a child prevented by physical incapacity, fear of harm, or another sufficient cause from applying personally. 35

- 72 Applications for property orders against children**
The court must not make a property order against a child unless satisfied that the order is justified by special circumstances.
- 73 Applications for property orders on behalf of people other than children**
- (1) This section applies to an application made under this Part by a person who is not a child. 5
- (2) **Sections 11 and 12** (applications on behalf of a person lacking capacity or prevented from applying personally) apply to the application, so far as applicable and with the necessary modifications, as if it were an application under Part 2 for a protection order. 10

Procedure (Part 4)

- 45 Section 81 amended (Court may appoint lawyer)**
- (1) In section 81(1)(b)(i), replace “section 9(2)” with “**section 9(2)(a)**”.
- (2) In section 81(1)(c), replace “any other person (being a person to whom section 11 applies)” with “a person lacking capacity to whom **section 11** applies”. 15
- 46 Section 83 amended (Conduct of proceedings)**
In section 83(2), replace “whanau” with “whānau”.
- 47 Section 88 amended (Copies of orders to be sent to Police)**
- (1) In the heading to section 88, after “**Copies of orders to be sent**”, insert “, **and risk factor information may be sent,**”. 20
- (2) After section 88(3), insert:
- (4) When making a copy of an order available to a District Commander under subsection (1), the Registrar must at the same time also make available to that District Commander, in a way specified in subsection (3), information supplied— 25
- (a) to the Registrar, by or on behalf of the applicant for the order; and
- (b) to help the Police assess risks, or needs, arising from family violence.
- (5) Risk factor information made available under this section may be disclosed by the Police under **section 124V**, under any other enactment that authorises or requires the Police to disclose that information, or in any other way that is not an interference with the privacy of an individual (within the meaning of section 66 of the Privacy Act 1993). 30
- 48 Section 90 amended (Police to consider exercise of powers under Arms Act 1983)**
In section 90(4), replace “section 60A of the Arms Act 1983 (which relates to the seizure of a firearm in cases of domestic violence)” with “section 18 (war- 35

rainless searches associated with arms, including in cases of family violence) of the Search and Surveillance Act 2012”.

49 Section 92 amended (Application of provisions relating to minors, etc)

In the heading to section 92, replace “minors” with “children”.

Enforcement of protection orders overseas and foreign protection orders 5
(Part 5)

50 Sections 96 and 97 replaced

Replace sections 96 and 97 and the cross-headings above sections 96 and 97 with:

	<i>Enforcement of New Zealand orders overseas</i>	10
96	Enforcement of New Zealand orders overseas	
(1)	The Registrar may request the appropriate court or authority in a foreign country to make arrangements for the enforcement in that country of a protection order made by a New Zealand court.	
(2)	Subsection (1) is subject to subsections (3) and (4) .	15
(3)	A person who wishes a request to be sent to a foreign country under subsection (1) must make a request in writing to the Registrar of the court in which the protection order was made.	
(4)	The Registrar must send to the foreign country under subsection (1) a request made under subsection (3) if, on receiving the request, the Registrar is satisfied that—	20
	(a) the request is made by or on behalf of a protected person; and	
	(b) the request relates to a protection order made by a New Zealand court; and	
	(c) orders of that nature may be enforced in the foreign country to which the request relates.	25
(5)	Nothing in this section prevents—	
	(a) a protected person from applying to a court or other appropriate authority in a foreign country for enforcement, in that country, of a protection order; or	30
	(b) the variation or discharge, under this Act, of a protection order that is enforced in a foreign country.	
(6)	In this section and section 96A , enforcement includes registration and enforcement, and enforced has a corresponding meaning.	
	Compare: 1968 No 63 ss 22L–22LA; 1979 No 52 s 2; 1991 No 19 s 34	35

96A Information necessary to process request or secure enforcement of order

- (1) This section applies if the Registrar receives a request under **section 96** for the sending of a protection order to a foreign country.
- (2) The Registrar may require the person by whom, or on whose behalf, the request is made to supply to the Registrar any information or evidence (including certified copies of the order) necessary or desirable for either or both of the following purposes:
- (a) to enable the Registrar to determine whether or not the request satisfies the requirements of **section 96(4)**; and
 - (b) to secure enforcement of the order in the foreign country.
- (3) After imposing a requirement under **subsection (2)** for a request made under **section 96**, the Registrar may refuse to take any action, or further action, in relation to the request, until the requirement is met.

Compare: 1968 No 63 ss 22L–22LA; 1979 No 52 s 2; 1991 No 19 s 34

*Making requests and making documents available***96B Ways requests may be made and documents may be made available**

For the purposes of **sections 96, 96A, and 97**, a request may be made to the Registrar, the Registrar may send the request to the foreign country, and copies, evidence, or information may be sent to the Registrar, and received and sent by the Registrar, in any of the following ways (none of which also requires a later hard copy):

- (a) sending a copy by means of electronic transmission (whether by way of facsimile transmission, electronic mail, or other similar means of communication);
- (b) making a copy available in any other manner appropriate in the circumstances.

*Enforcement of foreign protection orders***97 Registration of foreign protection orders**

- (1) The Registrar of a court must register in the court a foreign protection order if the Registrar receives, for the purposes of registration, the following documents:
- (a) a certified copy of the order; and
 - (b) a certificate that—
 - (i) is signed by an officer of a court in the foreign country in which the order was made; and
 - (ii) contains a statement that the order is, at the date of the certificate, enforceable in the foreign country.

- (2) The registration is done by filing in the court a certified copy of the order.
Compare: 1968 No 63 s 22A; 1979 No 52 s 2
- 51 Section 106 amended (Evidence of orders made in foreign country)**
In section 106, replace “domestic violence” with “family violence”.
- Non-publication of information relating to protected person on public registers (Part 6)* 5
- 52 Cross-heading above section 122 amended**
In the cross-heading above section 122, replace “Codes” with “Public register codes”.
- 53 Section 122 amended (Codes of practice)** 10
In the heading to section 122, replace “practice” with “practice: public registers”.
- 54 Section 123 amended (Application of certain provisions of Privacy Act 1993)**
In section 123, replace “under this Act” with “under this Part” in each place. 15
- Police safety orders (Part 6A)*
- 55 Section 124A amended (Interpretation)**
In section 124A, insert in its appropriate alphabetical order:
bound person, in relation to an order, means the person against whom the order is issued 20
- 56 Section 124B amended (Qualified constable may issue Police safety order)**
- (1) Replace section 124B(1) with:
- (1) A qualified constable may issue an order against a person (**person A**) who is, or has been, in a family relationship with another person (**person B**) if the constable has reasonable grounds to believe, having regard to the matters specified in subsection (2), that the issue of an order is necessary to help make person B safe from family violence. 25
- (2) In section 124B(2)(a)(i) and (ii), replace “has used, or is using, domestic violence” with “has inflicted, or is inflicting, family violence”.
- (3) In section 124B(2)(a)(ii), replace “domestic relationship” with “family relationship”. 30
- (4) In section 124B(2)(b), replace “will use, or again use, domestic violence” with “will inflict, or again inflict, family violence”.

57 Section 124D replaced (Police safety order not to be issued against child)

Replace section 124D with:

124D Police safety order against child

A qualified constable must not issue an order against a child unless satisfied that the order is justified by special circumstances.

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58 Section 124E amended (Effect of Police safety order)

Replace section 124E(1) and (2) with:

Duty to surrender weapons and firearms licence and vacate occupied land or building

(1) A bound person must immediately— 10

(a) surrender to a constable—

- (i) any weapon in the bound person's possession or control; and
- (ii) any firearms licence held by the bound person:

(b) vacate any land or building occupied by a person at risk, whether or not the person at risk has a legal or equitable interest in the land or building. 15

No family violence, no contact, no having others breach order

(2) It is a condition of every order that the bound person must not—

(a) engage in behaviour that amounts to any form of family violence against a person at risk (*see sections 3, 3A, and 3B*):

(b) make any contact with a person at risk (whether by telephone, letters or other writing, or email, by communication on or via an Internet site or other digital communication, or in any other way) that is not contact authorised by **subsection (2A)** (which describes the condition in this paragraph as an order's **no-contact condition**): 20

(c) encourage a person to engage in behaviour against, or to make contact with, a person at risk, if the behaviour or contact, if engaged in or made by the bound person, would be prohibited by the order. 25

Contact that is authorised, and not in breach of order's no-contact condition

(2A) Contact by the person bound with a person at risk is authorised, and not in breach of an order's no-contact condition, if the contact is— 30

(a) reasonably necessary in any emergency; or

(b) permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of,—

(i) any child (within the meaning of section 8 of the Care of Children Act 2004); or 35

(ii) any child or young person (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or

- (c) permitted under any special condition of any relevant protection order; or
- (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Children, Young Persons, and Their Families Act 1989); or 5
- (e) necessary to attend any court proceeding, or to attend any other matter that is associated with a court proceeding and that is a matter that the parties to the court proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004). 10

Meaning of person at risk

59 Section 124F amended (Suspension of firearms licence on issue of Police safety order)

In section 124F(a) and (b), replace “person against whom the order is issued” with “bound person”. 15

60 Section 124G amended (Suspension of parenting orders, etc)

In section 124G(1)(d), replace “person against whom the order is issued” with “bound person”.

61 Section 124H amended (Prompt service of Police safety order required)

In section 124H(1), replace “person against whom the order is issued” with “bound person”. 20

62 New section 124HA inserted (Police safety orders: risk and needs assessment of bound person)

After section 124H, insert:

124HA Police safety orders: risk and needs assessment of bound person 25

- (1) An assessor carries out an assessment under this section to identify—
- (a) any risk assessed by the assessor that the bound person is likely, after the expiry of a Police safety order, to continue inflicting family violence; and
- (b) any steps that the assessor considers the bound person should take to help that person accept responsibility for, and stop, that person’s inflicting of family violence. 30
- (2) A constable (even if not a qualified constable) or Police employee may, while a Police safety order is in force, issue to the bound person a written direction to— 35

- (a) arrange, before the end of the tenth working day after the direction is served on the bound person, for an assessment on the bound person to be carried out promptly by an assessor; and
- (b) attend the assessment at the arranged time and place.
- (3) The constable or Police employee must, as soon as practicable after issuing the direction to the bound person, ensure that a copy of the direction is served on the bound person. 5
- (4) The direction lapses if—
- (a) the order to which it relates lapses (because that order has not been served within 48 hours from the time of issue) under section 124H(2); or 10
- (b) at or after the time that the direction is issued, a protection order is made against the bound person.
- (5) A person's refusal or failure, without reasonable excuse, to comply with the direction after it has been served on the person, and if it has not lapsed, is taken for the purposes of section 124L to be a refusal or failure by the person to comply with an order served on the person. 15
- (6) In this section, **assessor** means a person or an organisation that has been granted an approval (to carry out assessments under this section)—
- (a) under **section 124HB**; and
- (b) that has not been suspended or cancelled. 20

63 New section 124HB inserted (Approvals of assessors for section 124HA)

Before section 124J, insert:

124HB Approvals of assessors for section 124HA

- (1) A person or an organisation approved to do so under this section may carry out assessments under **section 124HA**. 25
- (2) A person or an organisation (for example, a government organisation) may be approved under this section by the Secretary—
- (a) on an application made for the purpose by the person or organisation; or
- (b) on the Secretary's own motion, and with the person's or organisation's written consent. 30
- (3) A person or an organisation seeking an approval under this section by way of an application, or an own-motion approval under this section, must follow the applicable process (if any) prescribed by regulations made under **section 127(a)(i)**.
- (4) The Secretary may, at any time, amend, suspend, or cancel an approval under this section. 35

- (5) In deciding whether to grant, amend, suspend, or cancel an approval under this section, the Secretary must apply the criteria (if any) prescribed for the purposes of this section by regulations made under **section 127(a)(ii)**.
- (6) An approval, or an amendment, suspension, or cancellation of an approval, under this section must be by written notice copied to the person or organisation. 5
- (7) The Secretary must publish promptly on an Internet site maintained by or on behalf of the Ministry of Justice an up-to-date list of assessors approved under this section.
- 64 Section 124J amended (Police safety order to be explained) 10**
- (1) In the heading to section 124J, after “**Police safety order**”, insert “, **and direction to arrange and attend risk and needs assessment**”.
- (2) In section 124J(1), replace “person against whom the order is issued” with “bound person” in each place.
- (3) After section 124J(2), insert: 15
- (3) A constable or Police employee who, while a Police safety order is in force, issues to the bound person a direction under **section 124HA** must, if and to the extent that it is reasonably practicable to do so in the circumstances, either at the time of issue or service of the direction, explain to the bound person—
- (a) the purpose and effect of the direction; and 20
- (b) the consequences that may follow if the bound person fails or refuses to comply with the direction.
- (4) A constable or Police employee who issues a direction under **section 124HA** related to a Police safety order must also, either before or after issue and service of the direction, explain to the person for whose safety the order is issued the matters set out in **subsection (3)(a) and (b)**. 25
- 65 Section 124K amended (Duration of Police safety order)**
- In section 124K(1), replace “person against whom the order is issued” with “bound person”.
- 66 Section 124L amended (Contravention of Police safety order) 30**
- In section 124L(2), after “a constable”, insert “who believes on reasonable grounds that the person has refused or failed to comply with the order or a condition of the order”.
- 67 New section 124NA inserted (Standard of proof under section 124N or 124O) 35**
- After section 124N, insert:

124NA Standard of proof under section 124N or 124O

- (1) Every question of fact arising in any proceeding under section 124N or 124O must (in accordance with, but without limiting, section 85) be decided on the balance of probabilities.
- (2) This section—
- (a) does not affect the application to the proceeding of section 12A of the Family Court Act 1980 (which applies under section 12A(3)(e) of that Act, and under which the court hearing the proceeding may receive any evidence, whether or not admissible under the Evidence Act 2006, that the court considers may assist it to determine the proceeding); and
- (b) applies despite any contrary law (for example, every enactment or other law in the decision in *Mark v Police* [2013] NZHC 1041).

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68 Section 124O amended (Issue of warrant to arrest person who contravenes Police safety order or fails to attend adjourned proceedings)

Replace section 124O(1) with:

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- (1) Subsection (2) applies if—
- (a) the bound person refuses or fails to comply with a Police safety order, or any condition of the order; or
- (b) the District Court is satisfied that the bound person has refused or failed to comply with a Police safety order, and the bound person does not attend personally at the time and place to which proceedings have been adjourned under section 124N(1)(c)(i).

20

*New Part 6B inserted***69 New Part 6B inserted**

After Part 6A, insert:

25

Part 6B
Information requests, use, and disclosure, and service delivery codes of practice

*Purpose and interpretation***124T Purpose of this Part**

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The purpose of this Part is to—

- (a) enable family violence agencies and social services practitioners to request, use, or disclose personal information for purposes related to family violence; and

- (b) require family violence agencies and social services practitioners, in certain circumstances, to consider disclosing personal information for those purposes; and
- (c) provide for codes of practice to guide the delivery of services provided, to stop or prevent family violence, to victims or perpetrators of family violence. 5

124U Interpretation

In this Part, unless the context otherwise requires,—

DHB means an organisation established as a DHB (that is to say, as a district health board) by or under section 19 of the New Zealand Public Health and Disability Act 2000 10

family violence agency means any of the following:

- (a) a specified government agency (as defined in this section):
- (b) any non-governmental organisation that is funded wholly or in part by government, and that exercises powers, performs functions, or provides services, for 1 or both of the following purposes: 15
 - (i) to protect, or otherwise help, victims of family violence:
 - (ii) to help people to stop their inflicting of family violence:
- (c) any school board:
- (d) any licensed early childhood service 20

family violence risk or need assessment means an assessment of risk, or of need, arising from family violence

held includes deemed for the purposes of the Official Information Act 1982 to be held (*see*, for example, section 2(4) and (5) of that Act)

licensed early childhood service has the same meaning as in section 309 of the Education Act 1989 25

perpetrator, of family violence, means either of the following:

- (a) a person who has inflicted, or may have inflicted, family violence (even if no offence involving the violence was, is, or is to be, admitted or prosecuted): 30
- (b) a person who is inflicting, or may be inflicting, family violence (even if no offence involving the violence is, or is to be, admitted or prosecuted)

personal information has the same meaning as in section 2 of the Privacy Act 1993

school board means a board or body that is, or 1 or more managers who are,— 35

- (a) a board as defined in section 60, and for the purposes of Part 7 (control and management of State schools), of the Education Act 1989; or

- (b) a sponsor of a partnership school kura hourua (as those terms are defined in section 2 of that Act); or
- (c) the manager or managers of a private school that is registered under section 35A of that Act

social services practitioner means an individual who is providing education, health, or other social services as all or any of the following: 5

- (a) a holder of a teacher’s practising certificate, or a limited authority to teach, under the Education Act 1989:
- (b) a person who is, or is deemed to be, registered with an authority as a practitioner of a particular health profession under the Health Practitioners Competence Assurance Act 2003: 10
- (c) a registered social worker (as defined in section 4 of the Social Workers Registration Act 2003)

specified government agency means any of the following: 15

- (a) Accident Compensation Corporation: 15
- (b) Department of Corrections:
- (c) Ministry of Education:
- (d) Ministry of Health:
- (e) any DHB:
- (f) Housing New Zealand Corporation: 20
- (g) every registered community housing provider (as defined in section 2(1) of the Housing Restructuring and Tenancy Matters Act 1992):
- (h) the part of the Ministry of Business, Innovation, and Employment referred to as Immigration New Zealand:
- (i) Ministry of Justice: 25
- (j) New Zealand Police:
- (k) Ministry of Social Development:
- (l) any government agency established in substitution for, or set up to take over any relevant function of, the departments and agencies listed in **paragraphs (a) to (k)** 30

victim, of family violence, means a person who—

- (a) has experienced, is experiencing, or may experience, family violence; or
- (b) is, has been, or may be, affected by family violence.

Information requests, use, and disclosure

124V Agencies and practitioners may request, use, and disclose information 35

- (1) A family violence agency or social services practitioner may request personal information about a victim or perpetrator of family violence from any, or from

- another, family violence agency or social services practitioner, to use or disclose for all or any of the following purposes:
- (a) to make, or contribute to, a family violence risk or need assessment:
 - (b) to make, or contribute to the making or carrying out of, a decision or plan that is related to, or that arises from or responds to, family violence: 5
 - (c) to help ensure that a victim is protected from family violence.
- (2) The rest of this section applies to a family violence agency that, or social services practitioner who, holds personal information about a victim or perpetrator of family violence (the **holder agency or practitioner**).
- (3) The holder agency or practitioner may use the personal information for all or any of the purposes in **subsection (1)(a) to (c)**. 10
- (4) The holder agency or practitioner may disclose the personal information to any, or to another, family violence agency or social services practitioner (the **recipient agency or practitioner**)—
- (a) if the holder agency or practitioner believes on reasonable grounds that the disclosure will or may help the recipient agency or practitioner to use the personal information for all or any of the purposes specified in **subsection (1)(a) to (c)**; and 15
 - (b) after, or without, receiving from the recipient agency or practitioner a request to disclose personal information to the recipient agency or practitioner for use for all or any of those purposes. 20
- (5) In determining whether to disclose information under this section, the holder agency or practitioner must have regard to the principle that helping to ensure that a victim is protected from family violence should usually take precedence over both— 25
- (a) any applicable confidentiality of the information; and
 - (b) any applicable limit under information privacy principle 11 in section 6 of the Privacy Act 1993 on disclosure of the information.
- (6) When requesting, using, or disclosing information under this section, an agency or practitioner must comply with any applicable code issued under **section 124Y**. 30
- (7) Disclosure under this section does not limit the right, under a privilege or right referred to in section 53(5), 54, 56, 57, 58, 59, 60, or 68 of the Evidence Act 2006, to refuse to disclose any communication or information sought by a requirement to provide information. 35
- 124W Duty to consider information disclosure**
- (1) This section applies to a family violence agency that, or social services practitioner who, holds personal information about a victim or perpetrator of family violence (the **holder agency or practitioner**).

- (2) The holder agency or practitioner must consider disclosing that information under **section 124V** to any, or to another, family violence agency or social services practitioner (the **recipient agency or practitioner**) if the holder agency or practitioner—
- (a) believes on reasonable grounds that disclosure to the recipient agency or practitioner will or may help ensure that a victim is protected from family violence; or
 - (b) receives from the recipient agency or practitioner a request to disclose personal information of that kind or description to the recipient agency or practitioner for use for all or any of the purposes specified in **section 124V(1)(a) to (c)**.

124X Protection of agency or practitioner disclosing information under section 124V

- (1) This section applies to the disclosure by an agency or a practitioner, and in any manner, of information under **section 124V**.
- (2) No civil, criminal, or disciplinary proceedings lie against the agency or practitioner in respect of that disclosure, or the manner of that disclosure, by the agency or practitioner of that information.
- (3) However, **subsection (2)** does not apply if that information was disclosed in bad faith.

Compare: 1989 No 24 s 16; 1996 No 9 s 17; 2009 No 35 s 44

Service delivery codes of practice

124Y Codes of practice: service delivery

- (1) The Governor-General may from time to time, by Order in Council, issue codes of practice to guide delivery of services provided—
 - (a) to victims or perpetrators of family violence, or both; and
 - (b) to stop or prevent family violence.
- (2) A code of practice may contain provisions on all or any of the following:
 - (a) assessment and management of risk related to family violence:
 - (b) workforce competencies:
 - (c) information requests, use, and disclosure under this Part:
 - (d) outcomes of assessments, programmes, or prescribed services.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) A code of practice must not be inconsistent with this Act, public register codes of practice issued under Part 6, or regulations or rules of court made under or for the purposes of this Act.

- (5) In this section, **delivery of services** includes the delivery of services for the purposes of, or incidental to, the exercise of a power conferred by or under this Act.

Miscellaneous provisions (Part 7)

- 70 Section 127 amended (Regulations)** 5
- (1) Replace section 127(a) and (b) with:
- (a) prescribing for the purposes of all or any of **sections 12B, 51B, and 124HB**,—
- (i) the process to be followed by a person or an organisation seeking an approval by way of an application (*see* **section 12B(2)(a), 51B(2)(a), or 124HB(2)(a)**), the process to be followed for an own-motion approval (*see* **section 12B(2)(b), 51B(2)(b), or 124HB(2)(b)**), or both; and 10
- (ii) the criteria that the Minister of Justice or (as the case requires) the Secretary must apply when deciding whether to grant, amend, suspend, or cancel an approval (for example, criteria for when a person or an organisation may under **section 51B(4)** be granted or hold both an approval to undertake assessments for, and an approval to provide, prescribed services): 15
- (b) prescribing the amount of fees and expenses, or a method for calculating the amount of fees and expenses, payable for all or any of the following: 20
- (i) the provision by assessors of assessments under **Part 2A**;
- (ii) the provision by service providers of programmes, prescribed services, or both under **Part 2A**;
- (c) providing for and authorising disclosure to, or sharing with, assessors and service providers (as defined in **section 51A**), for the purposes of all or stated provisions of this Act, and by the court concerned or under its authority or direction, of— 25
- (i) court information of the District Court (within the meaning of section 236(4) and Schedule 1 of the District Court Act 2016): 30
- (ii) court information of a senior court (within the meaning of section 173(4) and Schedule 2 of the Senior Courts Act 2016):
- (2) After section 127(g), insert:
- (ga) amending or replacing either or both of **Parts 1 and 2 of Schedule 2** (specified types of prescribed services) to add, amend, or delete items describing types of non-standard services, standard services, or both: 35

Schedules and consequential amendments

- 71 New Schedules 1 and 2 inserted**
 Insert the **Schedules 1 and 2** set out in **Schedule 1** of this Act as the first schedules to appear after the last section of the principal Act.
- 72 Other enactments amended consequentially** 5
- (1) Amend the Acts listed in **Part 1 of Schedule 2** as indicated in that Part.
- (2) Amend the legislative instruments listed in **Part 2 of Schedule 2** as indicated in that Part.

Part 2**Amendments to other enactments** 10

Subpart 1—Amendments to Bail Act 2000

- 73 Principal Act**
 This subpart amends the Bail Act 2000 (the **principal Act**).
- 74 Section 3 amended (Interpretation)** 15
- In section 3, insert in their appropriate alphabetical order:
- family relationship** has the same meaning as in section 4 of the **Family and Whānau Violence Act 1995**
- family violence offence** means an offence—
- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and 20
- (b) involving family violence (as defined in **section 3** of that Act)
- protected person**, in relation to a protection order, has the same meaning as in section 2 of the **Family and Whānau Violence Act 1995**
- 75 New section 3A inserted (References to Family and Whānau Violence Act 1995)** 25
- (1) After section 3, insert:
- 3A References to Family and Whānau Violence Act 1995**
- A reference in this Act to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995. 30
- (2) Repeal **section 3A** on **1 July 2020**.

76 Section 7 amended (Rules as to granting bail)

Replace section 7(2) with:

- (2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one against—
- (a) section 194 of the Crimes Act 1961 (which relates to assault on a child, or by a male on a female); or
 - (b) **section 194A** of the Crimes Act 1961 (which relates to assault on a person with whom the defendant is, or has been, in a family relationship).

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77 Section 8 amended (Consideration of just cause for continued detention)

(1) Before section 8(4), insert:

- (3A) In deciding, in relation to a defendant charged with a family violence offence, whether or not to grant bail to the defendant or to allow the defendant to go at large, the court's primary consideration is the need to protect—
- (a) the victim of the alleged offence; and
 - (b) any particular person or people in a family relationship with the victim.
- (3B) **Subsection (3A)** is subject to **subsection (3C)**.
- (3C) In deciding, in relation to a defendant charged with an offence against section 49 of the **Family and Whānau Violence Act 1995**, whether or not to grant bail to the defendant or allow the defendant to go at large, the court's paramount consideration is the need to protect every person who, in relation to the protection order, is a protected person.

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(2) Repeal section 8(5).

78 Section 21 amended (Police employee may grant bail)

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Replace section 21(3) with:

- (2A) In determining whether it is prudent to grant Police bail to a defendant charged with a family violence offence, the Police employee must make the primary consideration the need to protect—
- (a) the victim of the alleged offence; and
 - (b) any particular person or people in a family relationship with the victim.
- (2B) **Subsection (2A)** is subject to **subsection (3)**.
- (3) In determining whether it is prudent to grant Police bail to a defendant charged with an offence against section 49 of the **Family and Whānau Violence Act 1995**, the Police employee must make the paramount consideration the need to protect every person who, in relation to the protection order, is a protected person.

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79 Section 22 replaced (Conditions of Police bail granted to defendant charged with domestic violence offence)

Replace section 22 with:

22 Conditions of Police bail granted to defendant charged with family violence offence

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A Police employee who grants Police bail to a defendant charged with a family violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 21B) any condition that the employee considers reasonably necessary to protect—

- (a) the victim of the alleged offence; and 10
- (b) any particular person residing, or in a family relationship, with the victim. 10

80 Section 23 amended (Bail and breach of protection order)

- (1) In section 23(1), replace “section 50 of the Domestic Violence Act 1995 and charged with an offence against section 49 of that Act” with “**section 50 of the Family and Whānau Violence Act 1995** and charged with an offence against section 49 of that Act”. 15
- (2) In section 23(4), replace “section 49 of the Domestic Violence Act 1995” with “section 49 of the **Family and Whānau Violence Act 1995**”. 15

81 New section 30AAA inserted (Conditions of bail granted to defendant charged with family violence offence)

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After section 30AA, insert:

30AAA Conditions of bail granted to defendant charged with family violence offence

A judicial officer or Registrar who grants bail to a defendant charged with a family violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 30) any condition that the judicial officer or Registrar considers reasonably necessary to protect— 25

- (a) the victim of the alleged offence; and
- (b) any particular person residing, or in a family relationship, with the victim. 30

82 Section 31 amended (Release of defendant granted bail)

In section 31(1), after “section 30”, insert “or **30AAA**”.

Subpart 2—Amendments to Care of Children Act 2004

83 Principal Act

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This subpart amends the Care of Children Act 2004 (the **principal Act**).

84 Section 5 amended (Principles relating to child’s welfare and best interests)

In section 5(a), replace “section 3(2) to (5) of the Domestic Violence Act 1995” with “**sections 3(2), 3A, and 3B of the Family and Whānau Violence Act 1995**”.

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85 Section 5A replaced (Domestic violence to be taken into account)

Replace section 5A with:

5A Family violence to be taken into account

- (1) This section applies if—
- (a) an application is made to the court for—
 - (i) a guardianship order under section 19 or 27; or
 - (ii) a direction under section 46R in relation to a guardianship dispute; or
 - (iii) a parenting order under section 48 (whether an interim parenting order or a final parenting order); or
 - (iv) a variation of a parenting order, under section 56; and
 - (b) 1 or both of the following kinds of orders made under section 14 of the **Family and Whānau Violence Act 1995** is or are, or at any time has or have been, in force against 1 or more parties to the application:
 - (i) a temporary protection order;
 - (ii) a final protection order.
- (2) In taking into account the principle in section 5(a), the court must have regard in particular to the following matters:
- (a) whether a temporary protection order, or final protection order, is still in force;
 - (b) the circumstances in which that order was made;
 - (c) any written reasons, given by the Judge who made that order, for that Judge’s decision to make that order.
- (3) In taking into account the principle in section 5(a), the court must, if practicable, have regard in particular to—
- (a) all relevant convictions (if any), of 1 or more parties to the application, for an offence against section 49 of the **Family and Whānau Violence Act 1995** (breaching a protection order), or for any other family violence offence;
 - (b) all relevant safety concerns (if any) that an assessor or a service provider has notified or advised under **section 51I or 51Q of the Family and Whānau Violence Act 1995**.
- (4) In this section, **family violence offence** means an offence—

	(a) against any enactment (including the Family and Whānau Violence Act 1995); and	
	(b) involving family violence (as defined in section 3 of that Act).	
86	Section 22 amended (Restrictions on making appointments under section 23)	5
	In section 22(1)(d) and (2)(d), replace “Domestic Violence Act 1995” with “ Family and Whānau Violence Act 1995 ”.	
87	Section 23 amended (Appointment of eligible spouse or partner of parent as additional guardian)	
(1)	In section 23(2)(c), replace “Domestic Violence Act 1995” with “ Family and Whānau Violence Act 1995 ”.	10
(2)	In section 23(2)(d)(i), replace “violence (that is, physical abuse or sexual abuse),” with “family violence (as defined in section 3 of the Family and Whānau Violence Act 1995),”.	
88	Section 46E amended (Family dispute resolution mandatory before commencement of proceedings)	15
	In section 46E(4)(f)(ii), replace “domestic violence” with “family violence”.	
89	Section 51 amended (Court must consider protective conditions in certain cases)	
	In section 51(1)(b), replace “physically or sexually abused” with “inflicted family violence (as defined in section 3 of the Family and Whānau Violence Act 1995) against”.	20
90	New section 57A and cross-heading inserted	
	After section 57, insert:	
	<i>Incidental temporary protection orders</i>	25
57A	Power to make incidental temporary protection order	
(1)	This section applies if—	
(a)	an application has been made to the court for any of the following in respect of a child:	
(i)	a guardianship order under section 19 or 27:	30
(ii)	a direction under section 46R in relation to a guardianship dispute:	
(iii)	a parenting order under section 48 (whether an interim parenting order or a final parenting order):	
(iv)	a variation of a parenting order, under section 56; and	

- (b) no application has been made to the court for, but the court is satisfied that had an application been made to it for the purpose the court would have made, a protection order (whether a temporary protection order or a final protection order) made under the **Family and Whānau Violence Act 1995** in respect of all or any of— 5
- (i) the child, or a parent or any other person who has the role of providing day-to-day care for, or who may have contact with, the child; and
- (ii) a party to the application (in **paragraph (a)**) for the order or direction under this Act. 10
- (2) The court may make a temporary protection order under section 14 of the **Family and Whānau Violence Act 1995** if satisfied that any orders or directions made under this Act will not, by themselves, provide enough protection for all or any of the people specified in **subsection (1)(b)**. 15
- (3) Section 13(3) to (5) of the **Family and Whānau Violence Act 1995** applies to a temporary protection order made under this section as if the order were one made on an application without notice, and with all other necessary modifications. 15

Subpart 3—Amendments to Crimes Act 1961

Amendments to principal Act 20

91 **Principal Act**

This subpart amends the Crimes Act 1961 (the **principal Act**).

92 **Section 7A amended (Extraterritorial jurisdiction in respect of certain offences with transnational aspects)**

In section 7A(1), after “section 117,”, insert “**section 207A**,”. 25

93 **New section 189A inserted (Strangulation or suffocation)**

After section 189, insert:

189A Strangulation or suffocation

Everyone is liable to imprisonment for a term not exceeding 7 years who intentionally or recklessly impedes another person’s normal breathing, blood circulation, or both, by doing (manually, or using any aid) all or any of the following: 30

- (a) blocking that other person’s nose, mouth, or both;
- (b) applying pressure on, or to, that other person’s throat, neck, or both.

94 **New section 194A inserted (Assault on person in family relationship)** 35

(1) After section 194, insert:

194A Assault on person in family relationship

- (1) Everyone is liable to imprisonment for a term not exceeding 2 years who—
- (a) assaults another person; and
 - (b) is, or has been, in a family relationship with that other person.
- (2) In **subsection (1)**, **family relationship** has the same meaning as in section 4 of the **Family and Whānau Violence Act 1995**. 5
- (3) The reference in **subsection (2)** to the meaning of family relationship in section 4 of the **Family and Whānau Violence Act 1995** is, until the commencement of **section 9 of the Family and Whānau Violence Legislation Act 2017**, a reference to the meaning of domestic relationship in section 4 of the Domestic Violence Act 1995. 10
- (2) Repeal **section 194A(3)** on the commencement of **section 9 of the Family and Whānau Violence Legislation Act 2017**.

95 Cross-heading above section 205 amended

In the cross-heading above section 205, replace “*feigned marriage*”, with “*and feigned or coerced marriage or civil union*”. 15

96 Section 207 amended (Feigned marriage or feigned civil union)

In the heading to section 207, replace “**feigned civil union**” with “**civil union**”.

97 New section 207A inserted (Coerced marriage or civil union)

After section 207, insert: 20

207A Coerced marriage or civil union

- (1) Everyone is liable to imprisonment for a term not exceeding 5 years who, with intent to cause another person to enter into a marriage or civil union, uses coercion (for example, intimidation, threats, or violence) against that other person.
- (2) **Subsection (1)** applies even if the marriage or civil union— 25
- (a) is not governed by New Zealand law;
 - (b) is an arrangement or a relationship (however described, and even if not legally binding) in the form of a marriage or civil union;
 - (c) is not solemnised or otherwise completed;
 - (d) is, or if solemnised or otherwise completed would be, void or not legally binding (for example, for lack of consent, absence of formality, or non-compliance with a legal requirement). 30

98 Section 208 replaced (Abduction for purposes of marriage or sexual connection)

Replace section 208 with: 35

208 Abduction for purposes of marriage or civil union or sexual connection

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person (**P**) without P's consent or with P's consent obtained by fraud or duress,—

- (a) with intent to go through a form of marriage or civil union with P; or 5
- (b) with intent to have sexual connection with P; or
- (c) with intent to cause P to go through a form of marriage or civil union, or to have sexual connection, with some other person.

Compare: 1908 No 32 s 226

*Consequential amendments to Births, Deaths, Marriages, and Relationships
Registration Act 1995* 10

99 Principal Act

Sections 100 and 101 amend the Births, Deaths, Marriages, and Relationships Registration Act 1995.

100 Section 60 replaced (Convictions for bigamy to be recorded) 15

Replace section 60 with:

60 Convictions for bigamy, and for coerced marriage, to be recorded

- (1) This section applies if a person who is a party to a marriage is convicted of bigamy or coerced marriage because the marriage is a bigamous or coerced marriage. 20
- (2) The Registrar of the court in which the conviction was entered must immediately send to the Registrar-General a certificate of the conviction specifying—
 - (a) the names of the parties to the bigamous or coerced marriage; and
 - (b) the date and place of the bigamous or coerced marriage; and
 - (c) the date of the conviction. 25
- (3) **Subsection (4)** applies if—
 - (a) information relating to the bigamous or coerced marriage has been recorded under this Act or a former Act; and
 - (b) information relating to the bigamous or coerced marriage is sent to the Registrar-General under **subsection (2)**. 30
- (4) The Registrar-General must record, as part of the information relating to the bigamous or coerced marriage, the information sent under **subsection (2)**.

101 Section 62F replaced (Convictions for bigamy to be recorded)

Replace section 62F with:

- 62F Convictions for bigamy, and for coerced civil union, to be recorded**
- (1) This section applies if a person who is a party to a civil union is convicted of bigamy or coerced civil union because the civil union is a bigamous or coerced civil union.
- (2) The Registrar of the court in which the conviction was entered must immediately send to the Registrar-General a certificate of the conviction specifying— 5
- (a) the names of the parties to the bigamous or coerced civil union; and
 - (b) the date and place of the bigamous or coerced civil union; and
 - (c) the date of the conviction.
- (3) **Subsection (4)** applies if— 10
- (a) information relating to the bigamous or coerced civil union has been recorded under this Act or a former Act; and
 - (b) information relating to the bigamous or coerced civil union is sent to the Registrar-General under **subsection (2)**.
- (4) The Registrar-General must record, as part of the information relating to the bigamous or coerced civil union, the information sent under **subsection (2)**. 15

Consequential amendments to Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995

- 102 Principal regulations**
- Sections 103 and 104** amend the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995. 20
- 103 Regulation 8 amended (Marriage certificates)**
- In regulation 8(a)(x), after “bigamy”, insert “or coerced marriage”.
- 104 Regulation 8A amended (Civil union certificates)**
- In regulation 8A(a)(xi), after “bigamy”, insert “or coerced civil union”. 25

Consequential amendments to Criminal Records (Clean Slate) Act 2004

- 105 Principal Act**
- Section 106** amends the Criminal Records (Clean Slate) Act 2004.
- 106 Section 4 amended (Interpretation)**
- (1) In section 4, definition of **criminal record**, replace “**criminal record** means,—” with “**criminal record,—**” 30
- (2) In section 4, definition of **criminal record**, paragraph (a), before “any—,” insert “means”.
- (3) In section 4, definition of **criminal record**, paragraph (b)(i), before “any official record” insert “means”. 35

- (4) In section 4, definition of **criminal record**, paragraph (b)(ii), after “bigamy”, insert “or coerced marriage or civil union”.

Subpart 4—Criminal Procedure Act 2011

Amendments to principal Act

- 107 Principal Act** 5
This subpart amends the Criminal Procedure Act 2011 (the **principal Act**).
- 108 New section 16A inserted (Specifying that offence charged is, or that conviction entered is for, family violence offence)**
- (1) After section 16, insert:
- 16A Specifying that offence charged is, or that conviction entered is for, family violence offence** 10
- (1) The charging document may specify that the offence charged is a family violence offence.
- (2) The court may, at any time after a charging document is filed and before the delivery of the verdict or decision of the court, amend the document to add, confirm, or remove a specification that the offence charged is a family violence offence. 15
- (3) The power in **subsection (2)**—
- (a) is exercisable on the court’s own motion or on the application of the defendant or the prosecutor: 20
- (b) is exercisable by the Registrar, if both the defendant and the prosecutor agree:
- (c) does not limit the powers in section 133.
- (4) If the defendant is convicted (even if the charging document does not specify that the offence charged is a family violence offence), the court may enter in the permanent court record of the proceeding a specification that the conviction is for a family violence offence. 25
- (5) In this section, **family violence offence** means an offence—
- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and 30
- (b) involving family violence (as defined in **section 3** of that Act).
- (6) A reference in this section to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995. 35
- (2) Repeal **section 16A(6)** on **1 July 2020**.

109 New sections 168A and 168B inserted

- (1) After section 168, insert:

168A No-contact conditions if family violence offence defendant remanded in custody

- (1) This section applies to a defendant— 5
- (a) who is charged with an offence that is (even if the charging document does not under **section 16A** specify that the offence is) a family violence offence; and
- (b) who is, or is to be, remanded in custody under section 168(1)(c) (dealing with a defendant on an adjournment). 10
- (2) A judicial officer may give a direction imposing on the defendant 1 or more conditions requiring the defendant, while remanded in custody under section 168(1)(c), to have no contact (except as the judicial officer specifies) with the victim of the offence, any other person specified by the judicial officer, or both. 15
- (3) The power in **subsection (2)** is exercisable—
- (a) on the judicial officer’s own motion or on the application of the defendant or the prosecutor:
- (b) by the Registrar, if the prosecutor agrees.
- (4) In this section and **section 168B**,— 20
- contact**, by a defendant with a person, means contact or communication that is—
- (a) direct (that is, face-to-face), or indirect (regardless of the means of contact or communication used); and
- (b) initiated, or brought about, by the defendant; and 25
- (c) with the person
- family violence offence** means an offence—
- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and
- (b) involving family violence (as defined in **section 3** of that Act). 30
- (5) A reference in this section to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995. 35

168B Provisions about compliance with no-contact conditions

- (1) A direction given under **section 168A** must be copied to the defendant and to the manager of the prison in which the defendant is held in custody on remand,

- and overrides any entitlement of the defendant under enactments in, or made under, the Corrections Act 2004 (for example, under the following sections of that Act:
- (a) section 73 (entitlement to private visitors):
 - (b) section 76 (prisoners may send and receive mail): 5
 - (c) section 77 (outgoing telephone calls)).
- (2) The manager of the prison in which the defendant is held in custody on remand must take all reasonable steps to ensure that the defendant complies with conditions imposed by the direction.
- (3) After becoming aware of a breach of those conditions, the manager of the prison in which the defendant is held in custody on remand, or the Police, must take all reasonable steps to notify it promptly to the Registrar. 10
- (4) The Registrar, on being notified, must bring the matter to the attention of a judicial officer, who may reconsider the conditions of remand and any exceptions specified under **section 168A(2)**, and must direct the Registrar that the nature of the condition and the breach be entered in the permanent court record. 15
- (5) Despite **subsection (4)**, the judicial officer may decide not to direct that those matters be entered in the permanent court record if satisfied that—
- (a) the defendant had a reasonable excuse for the breach; or
 - (b) the breach is so minor in nature that it should not be recorded and able to be considered in a later application for bail made by that defendant. 20
- (6) A breach entered under this section in the permanent court record may be considered in a later application for bail made by that defendant over his or her lifetime (whether or not the defendant is charged with a family violence offence). 25
- (7) A direction given under this section by a judicial officer that the breach of the condition be entered in the permanent court record may be appealed against by the defendant under sections 51 and 52 of the Bail Act 2000 (which apply with all necessary modifications).
- (2) Repeal **section 168A(5)** on **1 July 2020**. 30
- 110 Section 170 replaced (Defendant in custody may be brought up before expiry of period of adjournment)**
- Replace section 170 with:
- 170 Defendant in custody may be brought up before expiry of period of adjournment** 35
- (1) This section applies to a defendant who has been remanded in custody on any charge, even if the period for which the defendant was remanded in custody has not expired.
 - (2) The defendant may at any time be brought before—

- 117 Section 108 amended (Withholding mail)**
 In section 108(1)(d)(vi), after “any court”, insert “(for example, a direction given under **section 168A** (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011)”.
- Subpart 5—Amendments to Evidence Act 2006 5
- 118 Principal Act**
 This subpart amends the Evidence Act 2006 (the **principal Act**).
- 119 Section 4 amended (Interpretation)**
- (1) In section 4(1), repeal the definition of **domestic violence**.
- (2) In section 4(1), insert in their appropriate alphabetical order: 10
- family violence** has the same meaning as in **section 3 of the Family and Whānau Violence Act 1995**
- family violence case**—
- (a) means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for, a family violence offence; but 15
- (b) does not include a sexual case
- family violence offence** means an offence—
- (a) against any enactment (including the **Family and Whānau Violence Act 1995**); and 20
- (b) involving family violence (as defined in **section 3** of that Act)
- police employee** has the same meaning as in section 4 of the Policing Act 2008
- 120 Section 95 amended (Restrictions on cross-examination by parties in person)**
 In section 95(1), replace “domestic violence” with “family violence” in each place. 25
- 121 Section 102 amended (Application)**
 In section 102, before paragraph (a), insert:
- (aa) **section 106A** (which relates to family violence complainants):
- 122 Section 103 amended (Directions about alternative ways of giving evidence)** 30
 Repeal section 103(5).
- 123 Section 106 amended (Video record evidence)**
 After section 106(9), insert:

- (10) In this section, a reference to a person being given a video record includes a reference to the person being given access to the video record, for example, being given access to an electronic copy of the video record through an Internet site.

124 New sections 106A and 106B and cross-heading inserted

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After section 106, insert:

Giving of evidence by family violence complainants

106A Giving of evidence by family violence complainants

- (1) This section applies to a complainant who is not a child and who is to give or is giving evidence in a family violence case (a **family violence complainant**). 10
- (2) A family violence complainant is entitled to give his or her evidence in chief by a video record made before the hearing.
- (3) The video record must be one recorded—
- (a) by a police employee; and
- (b) no later than 2 weeks after the incident in which it is alleged a family violence offence occurred. 15
- (4) If a video record is to be or has been used as the complainant's evidence in chief, a Judge must give a direction under section 103 about how the complainant will give the other parts of his or her evidence, including any further evidence in chief. 20
- (5) To avoid doubt, section 106 applies to a video record offered as the complainant's evidence in chief under this section.
- (6) If the prosecution intends to use a video record as a complainant's evidence in chief, the prosecution must provide the defendant and the court with a written notice stating that intention to do so. 25
- (7) Unless a Judge permits otherwise, the notice must be given no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

106B Application by defendant for family violence complainant to give evidence in ordinary way or different alternative way

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- (1) Despite **section 106A**, a defendant may apply to a Judge for a direction that a family violence complainant give evidence or any part of his or her evidence in the ordinary way under section 83 or in a different alternative way under section 105.
- (2) Unless a Judge permits otherwise, the application must be made no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011. 35

- (3) Before giving a direction under this section, the Judge—
- (a) must give each party an opportunity to be heard in chambers; and
 - (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way. 5
- (4) When considering whether to give a direction under this section, the Judge must have regard to—
- (a) whether the interests of justice require a departure from the usual procedure under **section 106A** in the particular case; and
 - (b) the matters in section 103(3) and (4). 10

Subpart 6—Amendments to Sentencing Act 2002

125 Principal Act

This subpart amends the Sentencing Act 2002 (the **principal Act**).

126 New section 4A inserted (References to Family and Whānau Violence Act 1995) 15

- (1) After section 4, insert:

4A References to Family and Whānau Violence Act 1995

A reference in this Act to the whole or a provision of the **Family and Whānau Violence Act 1995** is, until the commencement of the relevant amendment in the **Family and Whānau Violence Legislation Act 2017**, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995. 20

- (2) Repeal **section 4A** on **1 July 2020**.

127 Section 9 amended (Aggravating and mitigating factors)

After section 9(1)(c), insert: 25

- (ca) that the offence was a family violence offence (as defined in **section 123A**) committed—
- (i) while the offender was subject to a protection order (as defined in section 2 of the **Family and Whānau Violence Act 1995**, or that was made under section 123B of this Act); and 30
 - (ii) against a person who, in relation to the protection order, was a protected person (as so defined):

128 Section 123A replaced (Interpretation of terms used in this section and sections 123B to 123G)

Replace section 123A with: 35

123A Interpretation of terms used in this section and sections 123B to 123G

In this section and sections 123B to 123G, unless the context otherwise requires,—

child has the meaning given to it by section 2 of the **Family and Whānau Violence Act 1995**

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family relationship has the meaning given to it by section 4 of the **Family and Whānau Violence Act 1995**

family violence offence means an offence—

(a) against any enactment (including the **Family and Whānau Violence Act 1995**); and

10

(b) involving family violence (as defined in **section 3** of that Act)

family violence proceedings means proceedings in the Family Court under the **Family and Whānau Violence Act 1995** that relate wholly or partly to an application for a protection order

victim of the offence means the person against whom the offence was committed by the offender.

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129 Section 123B amended (Protection order)

(1) In section 123B(1)(a), replace “domestic violence offence” with “family violence offence”.

(2) In section 123B(1)(b), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

20

(3) In section 123B(4), replace “domestic violence proceedings” with “family violence proceedings”.

(4) In section 123B(5), replace “domestic violence proceedings” with “family violence proceedings”.

25

130 Section 123C replaced (Provisions applying to protection order made under section 123B)

Replace section 123C with:

123C Provisions applying to protection order made under section 123B

(1) A protection order made under section 123B is subject to the following provisions of the **Family and Whānau Violence Act 1995**, and those provisions apply (so far as applicable, and subject to the modifications in **subsection (2)**) to that order as if it were a final protection order made under the **Family and Whānau Violence Act 1995**:

30

(a) section 16(1):

35

(b) **section 19**:

(c) **sections 20 to 20B**:

- (d) section 21 (except subsections (2)(a), (4), and (5)):
- (e) section 24(3):
- (f) section 25(1) (except paragraph (a)):
- (g) section 26(1):
- (h) section 27: 5
- (i) **section 28** (except for **section 20C** as applied by **section 28(2)**):
- (j) **Part 2A.**
- (2) The modifications are—
- (a) every reference to a protection order or a final order must be read as a reference to an order made under section 123B: 10
- (b) every reference to the respondent must be read as a reference to the offender:
- (c) every reference to the applicant or protected person must be read as a reference to the victim of the offence:
- (d) the court cannot impose a condition relating to the matters set out in section 27(2) of the **Family and Whānau Violence Act 1995**. 15
- 123CA Disclosure of documents to assessor and service provider**
- (1) This section applies to a court that makes—
- (a) a protection order under section 123B; and
- (b) a direction under **section 51E** (directions for assessments, non-violence programme, and prescribed standard services) or **51L** (about a direction to engage with a prescribed non-standard service) of the **Family and Whānau Violence Act 1995** (as applied by **section 123C(1)(j)**). 20
- (2) The court must consider making under this section and at the same time a direction requiring disclosure to or sharing with relevant assessors and service providers, to help those assessors and providers perform all or any of their functions under the **Family and Whānau Violence Act 1995**, of specified court documents relating to the offender, every protected person for the order, or both. 25
- (3) The relevant assessors and service providers include any undertaking or providing all or any of the following assessments, programmes, or services: 30
- (a) a safety programme to a protected person (under **section 51D** of the **Family and Whānau Violence Act 1995**, as applied by **section 123G(3)(g)**):
- (b) an assessment undertaken of the offender (under a direction made under **section 51E(1)(a) or (3)(a)** of the **Family and Whānau Violence Act 1995**): 35

<ul style="list-style-type: none"> (c) a non-violence programme to the offender (under a direction made under section 51E(1)(b) of the Family and Whānau Violence Act 1995): (d) a prescribed standard service to the offender (under a direction made under section 51E(3)(b) of the Family and Whānau Violence Act 1995, as so applied): (e) a prescribed non-standard service to the offender (under a direction made under section 51L of the Family and Whānau Violence Act 1995, as so applied). 	5
<ul style="list-style-type: none"> (4) The specified court documents relating to the offender may be or include copies of the following: <ul style="list-style-type: none"> (a) the relevant charging document: (b) the offender’s contact details: (c) the offender’s criminal conviction history: (d) the court’s decision to make the protection order under section 123B: (e) a copy of that order: (f) any current notice of bail or bail bond document. 	10
<ul style="list-style-type: none"> (5) The specified court documents relating to every protected person for the order may be or include copies of the documents specified in subsection (4), except for the offender’s contact details. 	15
<p>131 Section 123D amended (Explanation of protection order)</p>	20
<ul style="list-style-type: none"> (1) In section 123D(1)(a)(ii), replace “direction to attend a programme made under section 51D of the Domestic Violence Act 1995 (as applied by section 123C(1)(a))” with “direction to attend a programme or engage with prescribed services made under section 51E(1)(b) or (3)(b) or 51L of the Family and Whānau Violence Act 1995 (as applied by section 123C(1)(j))”. (2) In section 123D(1)(b)(ii), after “to attend”, insert “or engage with any prescribed services that he or she has been directed to engage with”. 	25
<p>132 Section 123G replaced (Protection order treated as if made by Family Court)</p> <p>Replace section 123G with:</p>	30
<p>123G Protection order treated as if made by Family Court</p> <ul style="list-style-type: none"> (1) This section applies to an order entered, as soon as it has been entered, in the records of the Family Court under section 123F(2). (2) The order is to be treated as if it were a final protection order made by that court under the Family and Whānau Violence Act 1995. (3) The order is, accordingly, subject to the following provisions of the Family and Whānau Violence Act 1995: 	35

- (a) section 22(2)(b) and (6):
- (b) section 23:
- (c) section 45(2):
- (d) section 46(1):
- (e) section 47(1):
- (f) sections **48**, 49, and **50**:
- (g) **Part 2A**:
- (h) section 82:
- (i) sections 88 to 95.

5

Schedule 1
New Schedules 1 and 2 of Family and Whānau Violence Act 1995
inserted

s 71

Schedule 1
Transitional, savings, and related provisions

5

s 5B

Part 1
Provisions relating to Family and Whānau Violence Legislation Act
2017

10

1 Changeover defined

In this **Part**, **changeover**, for an amending enactment in **Part 1 and Schedules 1 and 2 of the Family and Whānau Violence Legislation Amendment Act 2017**, means the enactment's commencement.

2 Application, request, or proceeding made or begun, but not determined or completed, before changeover

15

(1) This clause applies to any application, request, or proceeding made or begun under this Act, but not determined or completed, before the changeover.

(2) After the changeover, the application, request, or proceeding must be determined or completed under this Act as if the **Family and Whānau Violence Legislation Amendment Act 2017** had not been enacted.

20

Example

Property order enforcement proceedings begun under section 54(2), 58(2), 64(2), or 68(2), but not determined or completed, before the changeover must, after the changeover, be completed as if **section 34, 37, 40, or 43** of the **Family and Whānau Violence Legislation Amendment Act 2017** had not been enacted.

25

(3) However, if the determination or completion of the application, request, or proceeding includes the making of an order or a direction under this Act (other than an order or a direction made on an interlocutory application), **clauses 3 and 4** apply to the order or direction as if it were made under this Act before, and were in force on, the changeover.

30

3 Order or direction in force on changeover

(1) This clause applies to an order or a direction made under this Act before, and in force on, the changeover.

(2) After the changeover, the order or direction—

35

- (a) is not subject to this Act as in force immediately before the changeover; but
- (b) is subject to, continues in effect under, may be varied, discharged, or enforced under, and (if an interim order) may be replaced by a final order under, this Act as amended on the changeover. 5
- (3) This clause—
- (a) applies as if the order or direction were made under any power in this Act as amended on the changeover that, with or without modification, replaces, or that corresponds to, the power under which the order or direction was made; and 10
- (b) applies even if the order or direction can no longer be made (in the same way, or at all) under this Act as amended on the changeover; and
- (c) allows the order or direction to be enforced under this Act as amended on the changeover only in respect of breaches that occur after the changeover. 15
- 4 Protection order in force on changeover**
- (1) This clause applies to a protection order made under this Act before, and in force on, the changeover.
- (2) The order—
- (a) is not subject to the standard conditions and exceptions in sections 19 and 20 (as repealed on the changeover); but 20
- (b) is subject to the standard conditions and exceptions in **sections 19 to 20B** (as inserted on the changeover).
- (3) **Subclause (2)(b)** is subject to any contrary special conditions of the order.
- (4) A giving or withdrawal, before the changeover, of a person's express consent to contact that creates an exception to, suspends, or revives a standard condition or special condition of the order continues in force as if it were a giving or cancelling by that person of consent under **section 20** (as inserted on the changeover). 25
- (5) The order— 30
- (a) is not subject to the power to discharge in section 47 (as in force immediately before the changeover); but
- (b) is subject to the power to discharge in section 47 (as amended on the changeover).
- (6) This clause does not limit the generality of **clause 3**. 35
- 5 Property orders in force on changeover**
- (1) This clause applies to an order made under this Act before, and in force on, the changeover, that is—

- (a) an occupation order; or
- (b) a tenancy order; or
- (c) an ancillary furniture order.
- (2) The order may be enforced under section 49 (as amended on the changeover), in respect of breaches that occur after the changeover, as if the order had been made with or after a related protection order. 5
- (3) This clause does not limit the generality of **clause 3**.
- 6 Approvals under section 51B of service providers**
- (1) This clause applies to an approval— 10
- (a) of a person or an organisation as a service provider; and
- (b) granted under section 51B before the changeover; and
- (c) in force (that is, not cancelled, even if suspended) on the changeover.
- (2) After the changeover, the approval is no longer one to undertake assessments under **Part 2A**, but otherwise continues, and may be amended, suspended, or cancelled, as if it had been granted under **section 51B** (as inserted on the changeover). 15
- (3) However, the person or organisation is taken to have been granted, on the changeover, and under **section 51B** (as inserted on the changeover), an approval to undertake assessments under **Part 2A** for non-violence programmes, but not also assessments for prescribed services (and each deemed approval under this clause as an assessor may be amended, suspended, or cancelled under that section accordingly). 20
- 7 Notifications under section 51G to service providers**
- (1) This clause applies to a person or an organisation who is a service provider and receives a notification under section 51G (as in force before the changeover) but, on the changeover, has not completed the duties under section 51H(a) and (b) (as in force before the changeover) to— 25
- (a) undertake an assessment of the respondent; and
- (b) determine whether there is an appropriate non-violence programme for the respondent to attend. 30
- (2) After the changeover,—
- (a) the notification continues to have effect as if it were a notification given under **section 51H** (as in force after the changeover) to the person or organisation as an assessor (as taken to have been approved under **clause 6**); and 35
- (b) the person or organisation must complete the duties under **section 51I(1)(a), (b), and (c)** (as in force after the changeover) accordingly; and

(c) the rest of **Part 2A** (as in force after the changeover) applies accordingly.

8 Direction under section 51E(3) can be made only if prescribed services specified

No direction under **section 51E(3)** can be made if no type or types of services is or are specified in a Part of **Schedule 2**. 5

Schedule 2

Specified types of standard services and non-standard services

ss 2, 127(ga)

Part 1

Standard services

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Part 2

Non-standard services

Schedule 2

Consequential amendments

s 72

Part 1

Amendments to Acts

5

Arms Act 1983 (1983 No 44)

In the heading to section 27A, replace “**Domestic violence**” with “**Family violence**”.

In section 27A, replace “Without limiting the generality of sections 24 and 27, it is hereby declared that a commissioned officer of Police may, under either or both of those sections,” with “A commissioned officer of Police may, under either or both of sections 24 and 27,”. 10

In section 27A(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In section 27A, insert as subsection (2):

(2) **Subsection (1)** declares the effect of, and does not limit, sections 24 and 27. 15

Aviation Crimes Act 1972 (1972 No 137)

In section 2(1), definition of **act of violence**, paragraph (a), after “194,”, insert “**194A**,”.

In section 2(1), definition of **act of violence**, paragraph (b), after “189,”, insert “**189A**,”. 20

Child Support Act 1991 (1991 No 142)

In section 9(8), definition of **violence**, replace “section 3 of the Domestic Violence Act 1995” with “**section 3 of the Family and Whānau Violence Act 1995**”.

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

In section 158, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 25

In Schedule 1, clause 3A(a)(iii), replace “domestic violence” with “family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**)”.

District Court Act 2016 (2016 No 49)

In Schedule 1, Part B, column headed “**Description**”, paragraph (2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 30

Electoral Act 1993 (1993 No 87)

In section 115(2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Family Court Act 1980 (1980 No 161)

In section 11D(h), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Repeal section 12A(2)(e).

After section 12A(2)(f), insert:

(fa) **Family and Whānau Violence Act 1995:**

5

Repeal section 16A(4)(f).

After section 16A(4)(h), insert:

(ha) the **Family and Whānau Violence Act 1995:**

Repeal section 16D(1)(a)(iv).

10

After section 16D(1)(a)(v), insert:

(va) section 81(1)(b) of the **Family and Whānau Violence Act 1995:**

Repeal section 16D(1)(b)(iv).

After section 16D(1)(b)(v), insert:

(va) section 81(1)(a) of the **Family and Whānau Violence Act 1995:**

15

Family Dispute Resolution Act 2013 (2013 No 79)

In section 4, repeal the definition of **domestic violence**.

In section 4, insert in its appropriate alphabetical order:

family violence has the meaning given to it in **section 3** of the **Family and Whānau Violence Act 1995**

20

In section 12(1)(b), replace “domestic violence” with “family violence”.

Harassment Act 1997 (1997 No 92)

In section 6(2)(b), replace “domestic violence legislation” with “family violence legislation”.

25

In section 9(4), replace “domestic relationship” with “family relationship”.

In section 9(5), replace “**domestic relationship** has the same meaning as it has in the Domestic Violence Act 1995” with “**family relationship** has the same meaning as it has in the **Family and Whānau Violence Act 1995**”.

30

Income Tax Act 2007 (2007 No 97)

In section HC 36(1)(b)(iii), replace “section 2 of the Domestic Violence Act 1995” with “section 2 of the **Family and Whānau Violence Act 1995**”.

Land Transfer Act 1952 (1952 No 52)

In section 156F(3), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Legal Services Act 2011 (2011 No 4)

In section 4(1), definition of **civil proceedings**, paragraph (a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 5

In section 4(1), definition of **specified application**, paragraph (f)(i), replace “a protection order under Part 2 of the Domestic Violence Act 1995, or an order relating to property under Part 3 of that Act” with “a protection order under Part 2 of the **Family and Whānau Violence Act 1995**, or an order relating to property under Part 3 of that Act”. 10

In section 10(6)(b), replace “domestic violence” with “family violence (as defined in **section 3 of the Family and Whānau Violence Act 1995**)”.

In the heading to section 19, replace “**Domestic Violence Act 1995**” with “**Family and Whānau Violence Act 1995**”. 15

In section 19(1), replace “a protection order under Part 2, or an order relating to property under Part 3, of the Domestic Violence Act 1995” with “a protection order under Part 2, or an order relating to property under Part 3, of the **Family and Whānau Violence Act 1995**”.

In section 19(4), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 20

In Schedule 1, clause 4(6)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In Schedule 2, repeal the item relating to the Domestic Violence Act 1995.

In Schedule 2, insert in its appropriate alphabetical order: 25

Family and Whānau Violence Act 1995**Maritime Crimes Act 1999 (1999 No 56)**

In section 2, definition of **act of violence**, paragraph (a), after “194,”, insert “**194A**,”.

In section 2, definition of **act of violence**, paragraph (b), after “189,”, insert “**189A**,”.

Privacy Act 1993 (1993 No 28) 30

In Schedule 2A, item relating to the Approved Information Sharing Agreement for Improving Public Services for Vulnerable Children dated 25 June 2015, fifth column, paragraph (l), replace “domestic violence” with “or family violence”.

In Schedule 5, table relating to Police records, item relating to firearms licences, third column, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 35

Privacy Act 1993 (1993 No 28)—*continued*

In Schedule 5, table relating to Police records, item relating to protection orders, second column, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 10(1), delete “, subject to subsection (2),”.

5

In section 10(1)(i), after “the District Court”, insert “or the Family Court”.

After section 10(1), insert:

(1A) Subsection (1) is subject to subsections (2) and **(2B)**.

After section 10(2), insert:

(2A) No order under section 10(1)(i) may be applied for by any person, or made by the court, solely for the purpose of the commencement of proceedings under the **Family and Whānau Violence Act 1995**.

10

(2B) **Subsection (2A)** overrides any contrary provisions of this Act.

Search and Surveillance Act 2012 (2012 No 24)

In section 18(2)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

15

Senior Courts Act 2016 (2016 No 48)

In Schedule 2, Part B, column headed “**Description**”, paragraph (2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Social Security Act 1964 (1964 No 136)

20

Replace section 70A(9) with:

(9) For the purposes of this section, **violence** has the same meaning as in **sections 3(2), 3A, and 3B of the Family and Whānau Violence Act 1995**.

Summary Offences Act 1981 (1981 No 113)

In section 6A(3)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

25

In section 6A(3)(b)(i), replace “domestic relationship (as defined by section 4 of that Act)” with “family relationship (as defined by section 4 of that Act)”.

In section 6A(3)(b)(ii), replace “domestic relationship” with “family relationship”.

Victims’ Orders Against Violent Offenders Act 2014 (2014 No 45)

30

In section 7(2)(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In section 7(4), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Victims' Rights Act 2002 (2002 No 39)

In section 4, repeal the definition of **domestic violence**.

In section 4, insert in its appropriate alphabetical order:

family violence has the meaning given in **section 3 of the Family and Whānau Violence Act 1995**

5

In section 4, definition of **victim**, paragraph (b)(iii), replace “domestic violence” with “family violence”.

Part 2**Amendments to legislative instruments****Care of Children (Appointment of Additional Guardian by Parents) (Forms) Rules 2005 (SR 2005/97)** 10

In the Schedule, form 1, paragraphs 3(1) and (2) and 4, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Care of Children (Counselling) Regulations 2013 (SR 2013/432)

In regulation 6(f)(i), replace “domestic violence” with “family violence”. 15

Criminal Procedure (Transfer of Information) Regulations 2013 (SR 2013/177)

In regulation 3(1), definition of **associated respondent**, replace “domestic violence” with “family violence”.

In regulation 3(1), definition of **associated respondent**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 20

In regulation 3(1), revoke the definitions of **domestic violence**, **domestic violence offence**, and **domestic violence proceeding**.

In regulation 3(1), insert in their appropriate alphabetical order:

family violence has the same meaning as in **section 3 of the Family and Whānau Violence Act 1995**

25

family violence offence means an offence against any enactment (other than the **Family and Whānau Violence Act 1995**) in any case where—

(a) the offence is committed—

(i) by a person against whom a protection order is in force, or in respect of whom proceedings on an application for a protection order are pending, at the time the offence is committed; and 30

(ii) against any person who is a protected person (within the meaning of that Act) under that protection order, or whom that application seeks to make a protected person, as the case may be; and

(b) the offence consists of or includes conduct that is family violence 35

Criminal Procedure (Transfer of Information) Regulations 2013 (SR 2013/177)—
continued

family violence proceeding means a proceeding in the Family Court under the **Family and Whānau Violence Act 1995** in which an application for a protection order—

(a) is pending; or

(b) has been granted

5

In regulation 3(1), definition of **protection order**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In regulation 3(1), definition of **relevant court**, paragraph (a), replace “an offence against section 49 of the Domestic Violence Act 1995 or a domestic violence offence” with “an offence against section 49 of the **Family and Whānau Violence Act 1995** or a family violence offence”.

10

In regulation 3(1), definition of **respondent**, replace “domestic violence proceeding” with “family violence proceeding”.

In regulation 4(1), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

15

In the heading to regulation 5, replace “**domestic violence offences**” with “**family violence offences**”.

In regulation 5(1) and (2), replace “domestic violence offence” with “family violence offence”.

In the heading to regulation 7, replace “**domestic violence proceeding**” with “**family violence proceeding**”.

20

In regulation 7(1), replace the definition of **domestic relationship** with:

family relationship has the meaning given to it by **section 2 of the Family and Whānau Violence Act 1995**

In regulation 7(1), definition of **violence**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

25

In regulation 7(2), (3), and (4), replace “domestic violence proceeding” with “family violence proceeding”.

In regulation 7(2)(a)(i) and (b)(i), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

30

In the heading to regulation 7A, replace “**domestic violence proceeding**” with “**family violence proceeding**”.

In regulation 7A(1) and (2), replace “domestic violence proceeding” with “family violence proceeding”.

In the heading to regulation 7B, replace “**domestic violence proceeding**” with “**family violence proceeding**”.

35

Criminal Procedure (Transfer of Information) Regulations 2013 (SR 2013/177)—*continued*

In regulation 7B(1) and (2), replace “domestic violence proceeding” with “family violence proceeding”.

Domestic Violence (General) Regulations 1996 (SR 1996/150)

In regulation 1(1), replace “Domestic Violence” with “Family Violence”.

After regulation 1, insert:

5

1A Renaming of these regulations, and references to their previous name

(1) These regulations are the Domestic Violence (General) Regulations 1996 as renamed by the **Family and Whānau Violence Legislation Act 2017**.

(2) After the commencement of this regulation, a reference in an enactment or in a document to the Domestic Violence (General) Regulations 1996 must, unless the context otherwise requires, be read as a reference to the Family Violence (General) Regulations 1996.

10

In regulation 2(a), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 1, replace “*Sections 124A, 124B, Domestic Violence Act 1995*” with “*Sections 124A, 124B, **Family and Whānau Violence Act 1995***”.

15

In the Schedule, form 1, paragraph 9(b), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 2, replace “*Section 124O(1)(a) and (2), Domestic Violence Act 1995*” with “*Section 124O(1)(a) and (2), **Family and Whānau Violence Act 1995***”.

20

In the Schedule, form 3, replace “*Section 124L(3), Domestic Violence Act 1995*” with “*Section 124L(3), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 3, paragraph 3, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

25

In the Schedule, form 4, replace “*Section 124M(1)(b) and (2), Domestic Violence Act 1995*” with “*Section 124M(1)(b) and (2), **Family and Whānau Violence Act 1995***”.

In the Schedule, form 5, replace “*Section 124M(3), Domestic Violence Act 1995*” with “*Section 124M(3), **Family and Whānau Violence Act 1995***”.

30

In the Schedule, form 5, paragraph 2, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

In the Schedule, form 6, replace “*Section 124O(1)(b) and (2), Domestic Violence Act 1995*” with “*Section 124O(1)(b) and (2), **Family and Whānau Violence Act 1995***”.

35

Domestic Violence (General) Regulations 1996 (SR 1996/150)—continued

In the Schedule, form 7, replace “*Section 124N(2)(b), Domestic Violence Act 1995*” with “*Section 124N(2)(b), Family and Whānau Violence Act 1995*”.

In the Schedule, form 7, heading to paragraph 1, replace “**domestic violence**” with “**family violence**”.

In the Schedule, form 7, under the heading “**Conditions of order**”, in the note to paragraph 2, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 5

In the Schedule, form 7, under the heading “Important information for respondent”, and under the subheading “**Modification or discharge of this order**”, paragraph (a), replace “domestic violence” with “family violence”. 10

In the Schedule, form 7, under the heading “Important information for protected persons”, and under the subheading “**Modification or discharge of this order**”, paragraph (a), replace “domestic violence” with “family violence”.

Domestic Violence (Public Registers) Regulations 1998 (SR 1998/342)

In regulation 1(1), replace “Domestic Violence” with “Family Violence”. 15

After regulation 1, insert:

1A Renaming of these regulations, and references to their previous name

(1) These regulations are the Domestic Violence (Public Registers) Regulations 1998 as renamed by the **Family and Whānau Violence Legislation Act 2017**. 20

(2) After the commencement of this regulation, a reference in an enactment or in a document to the Domestic Violence (Public Registers) Regulations 1998 must, unless the context otherwise requires, be read as a reference to the Family Violence (Public Registers) Regulations 1998.

In regulation 2(1), definition of **the Act**, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 25

In Schedule 2, form 1, replace “*Section 110, Domestic Violence Act 1995*” with “*Section 110, Family and Whānau Violence Act 1995*”.

In Schedule 2, form 1, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 30

In Schedule 2, form 2, replace “*Section 110(2), Domestic Violence Act 1995*” with “*Section 110(2), Family and Whānau Violence Act 1995*”.

In Schedule 2, form 2, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Family Dispute Resolution Regulations 2013 (SR 2013/434) 35

In regulation 7(k)(i), replace “domestic violence” with “family violence”.

Hazardous Substances and New Organisms (Personnel Qualifications) Regulations 2001 (SR 2001/122)

In regulation 6B(1)(c), replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”.

Privacy (Information Sharing Agreement for Improving Public Services for Vulnerable Children) Order 2015 (LI 2015/162) 5

In clause 3(1), revoke the definition of **domestic violence**.

In clause 3(1), insert in its appropriate alphabetical order:

family violence has the same meaning as in **section 3 of the Family and Whānau Violence Act 1995** 10

In clause 11(1)(l), replace “domestic violence” with “family violence”.

Sentencing Regulations 2002 (SR 2002/178)

In the Schedule, form 11AA, under the heading “**Conditions of order**”, heading to paragraph 1, replace “**domestic violence**” with “**family violence**”.

In the Schedule, form 11AA, under the heading “**Conditions of order**”, notes to paragraph 2, in the first note, replace “Domestic Violence Act 1995” with “**Family and Whānau Violence Act 1995**”. 15

In the Schedule, form 11AA, under the heading “Important information for offender”, and under the subheading “**Modification or discharge of this order**”, in paragraph (a), replace “domestic violence” with “family violence”. 20

In the Schedule, form 11AA, under the heading “Important information for protected persons”, and under the subheading “**Modification or discharge of this order**”, in paragraph (a), replace “domestic violence” with “family violence”.

Social Security (Exemptions under Section 105) Regulations 1998 (SR 1998/270)

In regulation 2(1), definition of **family violence**, replace “domestic violence as that term is defined in section 3 of the Domestic Violence Act 1995” with “family violence as that term is defined in **section 3 of the Family and Whānau Violence Act 1995**”. 25