

DOMESTIC VIOLENCE BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to empower Family Courts and District Courts to make certain orders and thus to mitigate the effects of domestic violence.

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on the 1st day of November 1982.

Clause 2 defines terms used in the Bill.

Clause 3 provides that the Act shall bind the Crown.

Clause 4 provides that where a man and a woman are, or have been, living together in the same household with any child of the household, either the man or the woman may apply to the Court for an accommodation order granting the applicant the right to live in the household dwelling. The Court may make such an order only where it is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the household, and is likely to do so again.

Clause 5 sets out the general effect of an accommodation order. Where such an order is in force—

- (a) The respondent shall not molest the applicant or any child of the household by watching or besetting the household dwelling or by making persistent telephone calls to the household dwelling; and
- (b) The respondent shall not enter or remain in the household dwelling except in circumstances specified by the Court on an application made by either party at the time of making the accommodation order or at any subsequent time.

Clause 6 makes it an offence to contravene an accommodation order.

Clause 7 sets out the effect of an accommodation order on a tenancy. Where an accommodation order applies to a dwellinghouse the general effect of the order is to vest the tenancy in the applicant for the duration of the order if—

- (a) The respondent is or was either the sole tenant of the dwellinghouse or a tenant holding the dwellinghouse jointly or in common with the applicant; and
- (b) The applicant or the respondent resides in the dwellinghouse.

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Clause 8 provides that where a man and a woman are, or have been, living together in the same household, either the man or the woman may apply to the Court for an order restraining the other party from using violence against, or causing bodily harm to, the applicant or a child of the household, and from threatening to do so.

The grounds for the making of a non-violence order under this clause are the same as the grounds for making an accommodation order under *clause 4*.

Clause 9 confers on the Police a power of arrest for breach of a non-violence order. A person so arrested may be detained in Police custody for a period of 24 hours. If, at any time during the period of 24 hours, the arrested person asks to be brought before a Judge, or a member of the Police considers that the arrested person should be brought before a Judge, the arrested person is required to be brought, as soon as practicable, before a Judge or, if a Judge is not available, before a Justice.

The Judge or Justice may direct either—

- (a) That the arrested person be released forthwith or at any specified time within the period of 24 hours; or
- (b) That the arrested person continue to be detained in Police custody until the expiry of the period of 24 hours.

Where, between 11 o'clock at night and 6 o'clock in the following morning, an arrested person makes a request to be brought before a Judge, or a member of the Police considers that the arrested person should be brought before a Judge, that person shall, unless the contrary is proved, be deemed to have been brought before a Judge as soon as practicable if he is brought before a Judge, or, if a Judge is not available, a Justice, by 11 o'clock on that following morning.

The Judge or Justice may direct either—

- (a) That the arrested person be released forthwith or at any specified time within the period of 24 hours; or
- (b) That the arrested person continue to be detained in Police custody until the expiry of the period of 24 hours.

Clause 10 deals with the making of interim accommodation orders and interim non-violence orders.

Clause 11: Subclause (1) provides that, on the making of an accommodation order or a non-violence order, the Court may recommend either party or both of them to undergo counselling of a nature specified by the Court.

Subclause (2) provides that in any subsequent proceedings under the Act involving a party who has been recommended to undergo counselling, evidence may be given of the omission of that party to undergo counselling of the kind specified.

Subclause (3) provides that, subject to the right of the party who has omitted to undergo counselling as recommended by the Court to explain the reasons for that party's omission, and to call evidence, the Court may draw such inferences (if any) from the fact of omission as appear to it to be proper in the circumstances.

Clause 12 relates to the making and application of rules of Court.

Hon. Mr McLay

DOMESTIC VIOLENCE

ANALYSIS

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A BILL INTITULED

An Act to mitigate the effects of domestic violence

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Domestic Violence Act 1981.

(2) This Act shall come into force on the 1st day of November 1982.

10 **2. Interpretation**—In this Act, unless the context otherwise requires,—

“Child” means a person under the age of 16 years:

“Child of the household”—

15 (a) Means a child of a man and a woman who are living together in the same household; and

(b) Includes a child (whether or not a child of the man and the woman) who was a member of the household of the man and the woman at the earlier of—

(i) The time when the man and the woman 5
ceased to live together; or

(ii) The time immediately preceding the institution of proceedings under this Act:

“Court” means a Family Court or a District Court; and

“Judge” has a corresponding meaning: 10

“Dwellinghouse” includes any flat or town house, whether or not occupied pursuant to a licence to occupy within the meaning of the Companies Amendment Act 1964:

“Household dwelling” means the dwellinghouse used by a man and a woman who are, or have been, living together in the same household as the residence of the household, together with any land, buildings, or improvements appurtenant to any such dwellinghouse and used wholly or principally for the purposes of the household. 15
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3. Act to bind the Crown—This Act shall bind the Crown.

4. Accommodation order—(1) Where a man and a woman are, or have been, living together in the same household with any child of the household, either the man or the woman may apply to the Court for an accommodation order granting the applicant the right to live in the household dwelling. 25

(2) Where the Court is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the household, and is likely to do so again, the Court may make an order granting to the applicant, for such 30
period as the Court specifies, and on such terms and subject to such conditions as the Court thinks fit, the right personally to live in the household dwelling.

(3) Where an accommodation order is made under subsection (2) of this section, the applicant shall be entitled, to the exclusion of the respondent, personally to live in the household dwelling with any child of the household for the period specified by the Court. 35

(4) The period specified pursuant to subsection (3) of this section may be extended or reduced on the application of either party. 40

5. **General effect of accommodation order**—(1) Where an accommodation order is in force, the respondent shall not molest the applicant or any child of the household by watching or besetting the household dwelling or by making persistent telephone calls to the household dwelling.

(2) Where an accommodation order is in force, the respondent shall not enter or remain in the household dwelling except in circumstances specified by the Court on an application made by either party at the time of making the accommodation order or at any subsequent time.

6. **Offence**—Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$500, who does any act in contravention of any accommodation order made under section 4 of this Act (including an interim order made under that section in accordance with section 10 of this Act).

7. **Effect of accommodation order on tenancy**—

(1) Where—

(a) The Court makes an accommodation order that applies to a dwellinghouse within the meaning of the Tenancy Act 1955; and

(b) At the time of the making of the order—

(i) The respondent is or was either the sole tenant of the dwellinghouse or a tenant holding the dwellinghouse jointly or in common with the applicant; and

(ii) The applicant or the respondent resides in the dwellinghouse;—
the accommodation order shall have the effect of vesting the tenancy in the applicant.

(2) On the taking effect of an order to which subsection (1) of this section applies, unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwellinghouse for the period specified by the Court under section 4 (3) of this Act, but otherwise upon and subject to the terms and conditions of the tenancy in force at the time of the making of that order, and the respondent shall cease to be the tenant for that period. Every such order shall have effect and may be enforced as if it were an order of the Court for possession of the land granted in favour of the applicant.

(3) Nothing in this section or in any order made under this section shall be construed to limit or affect the operation of any enactment or rule of law for the time being applicable

to any tenancy to which this section applies or to the dwelling-house held under the tenancy, or to authorise the Court to vary, except by vesting or re-vesting the tenancy pursuant to this section, any express or implied term or condition of the tenancy.

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(4) At the conclusion of the period specified by the Court under section 4 (3) of this Act, or the period as varied by the Court under section 4 (4) of this Act, the tenancy shall revert in the respondent.

(5) On the application of the respondent or his personal representative, the Court may, if it thinks fit, make an order discharging the order made under section 4 of this Act and re-vesting the tenancy accordingly.

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(6) On the re-vesting of any tenancy under subsection (4) or subsection (5) of this section, unless the tenancy is sooner lawfully determined, the respondent shall become the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the re-vesting order.

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(7) For the purposes of this section, the term “tenant”, in relation to any dwellinghouse, includes any person whose tenancy has expired or been determined, and who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwellinghouse; and the term “tenancy” has a corresponding meaning.

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8. Power to make non-violence order—(1) Where a man and a woman are, or have been, living together in the same household, either the man or the woman may apply to the Court for an order restraining the other party from using violence against, or causing bodily harm to, the applicant or a child of the household, and from threatening to do so.

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(2) Where the Court is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the household, and is likely to do so again, the Court may make an order restraining the other party from using violence against, or causing bodily harm to, the applicant or a child of the household, and from threatening to do so.

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9. Power to arrest for breach of non-violence order—(1) Where an order made under section 8 (2) of this Act (including an interim order made under that section in accordance with section 10 of this Act) is in force, any member of the Police may arrest without warrant any person who has committed a breach of the order.

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(2) Any member of the Police is justified—

(a) In arresting without warrant; and

(b) Subject to subsections (4) to (7) of this section, in
5 detaining in accordance with subsection (3) of this
 section,—

any person whom he believes, on reasonable and probable
grounds, to have committed a breach of an order made
under section 8 (2) of this Act (including an interim
10 order made under that section in accordance with section 10
of this Act), whether or not the breach has in fact been
committed, and whether or not the arrested person committed
it.

(3) Where a person is arrested under subsection (1) of
this section he shall, subject to subsection (4) of this section,
15 be detained in Police custody for a period of 24 hours.

(4) If, at any time during the period of 24 hours referred
to in subsection (3) of this section, the arrested person asks to
be brought before a Judge, or a member of the Police considers
that the arrested person should be brought before a Judge,
20 the arrested person shall, as soon as practicable, be brought
before a Judge or, if a Judge is not available, before a Justice.

(5) The Judge or Justice may direct either—

(a) That the arrested person be released forthwith or at
any specified time within the period of 24 hours; or
25 (b) That the arrested person continue to be detained in
Police custody until the expiry of the period of 24
hours.

(6) Where, between 11 o'clock at night and 6 o'clock in
the following morning, an arrested person makes a request
30 under subsection (4) of this section, or a member of the
Police considers that the arrested person should be brought
before a Judge, that person shall, unless the contrary is proved,
be deemed to have been brought before a Judge as soon as
practicable if he is brought before a Judge, or, if a Judge is not
35 available, a Justice, by 11 o'clock on that following morning.

(7) Nothing in this section shall authorise the arrested
person's detention after the expiry of the period of 24 hours.

10. Interim accommodation order or non-violence order—

(1) Where an application for an accommodation order or a
40 non-violence order is made *ex parte*, any order made shall be
an interim order.

(2) Every interim order shall assign a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.

(3) The copy of the interim order served on the respondent shall notify the respondent that unless the respondent attends on the assigned date to show cause why an order should not be substituted for the interim order, the Court may discharge the interim order and make an order in its place. 5

(4) At the hearing referred to in subsection (2) of this section the Court may— 10

(a) Discharge the interim order; or

(b) Discharge the interim order and make an order in its place; or

(c) On good cause being shown, adjourn the hearing to a fixed time and place. 15

(5) Where a hearing is adjourned under subsection (4) (c) of this section to another day, the Court shall, at the adjourned hearing, exercise either the power conferred on it by subsection (4) (a) or the power conferred on it by subsection (4) (b) of this section. 20

(6) In this section—

“Interim order” means an interim accommodation order or an interim non-violence order, as the case may be:

“Order” means an accommodation order or a non-violence order, as the case may be, not being an interim order. 25

11. Counselling—(1) On making an order under this Act, the Court may recommend either party or both of them to undergo counselling of a nature specified by the Court. 30

(2) In any subsequent proceedings under this Act involving a party who has been recommended to undergo counselling, evidence may be given of the omission of that party to undergo counselling of the kind specified.

(3) Subject to the right of the party who has omitted to undergo counselling as recommended by the Court to explain the reasons for that party’s omission, and to call evidence, the Court may draw such inferences (if any) from the fact of omission as appear to it to be proper in the circumstances. 35

12. Rules of Court—(1) In addition to all other powers conferred by the District Courts Act 1947, the Governor- 40

General may from time to time, by Order in Council, make rules regulating the practice and procedure of Family Courts and District Courts in proceedings under this Act, and providing for such matters as are contemplated by or necessary
5 for giving full effect to the provisions of this Act and for the due administration thereof.

(2) In the absence of any rules under this section or in any situation not covered by any such rules, the District Courts Rules 1948 shall apply, with all necessary modifications, to
10 proceedings under this Act.