



FOLAU HE VAHANOA

LEGAL EDUCATION

4 - 5 MAY 2023



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FAMILY VIOLENCE ACT 2018

FAMILY VIOLENCE

The *Family Violence Act 2018* (the FV Act) provides the legal framework and rules by which the State attempts to keep victims, including children, safe from family violence.

Family violence includes physical, sexual or psychological abuse as well as exposing children to violence. Psychological abuse includes threats, intimidation, harassment, damage to property, mistreatment of pets and financial control.

The purpose of the FV Act is clearly stated in s 3, that is, to stop and prevent family violence by:

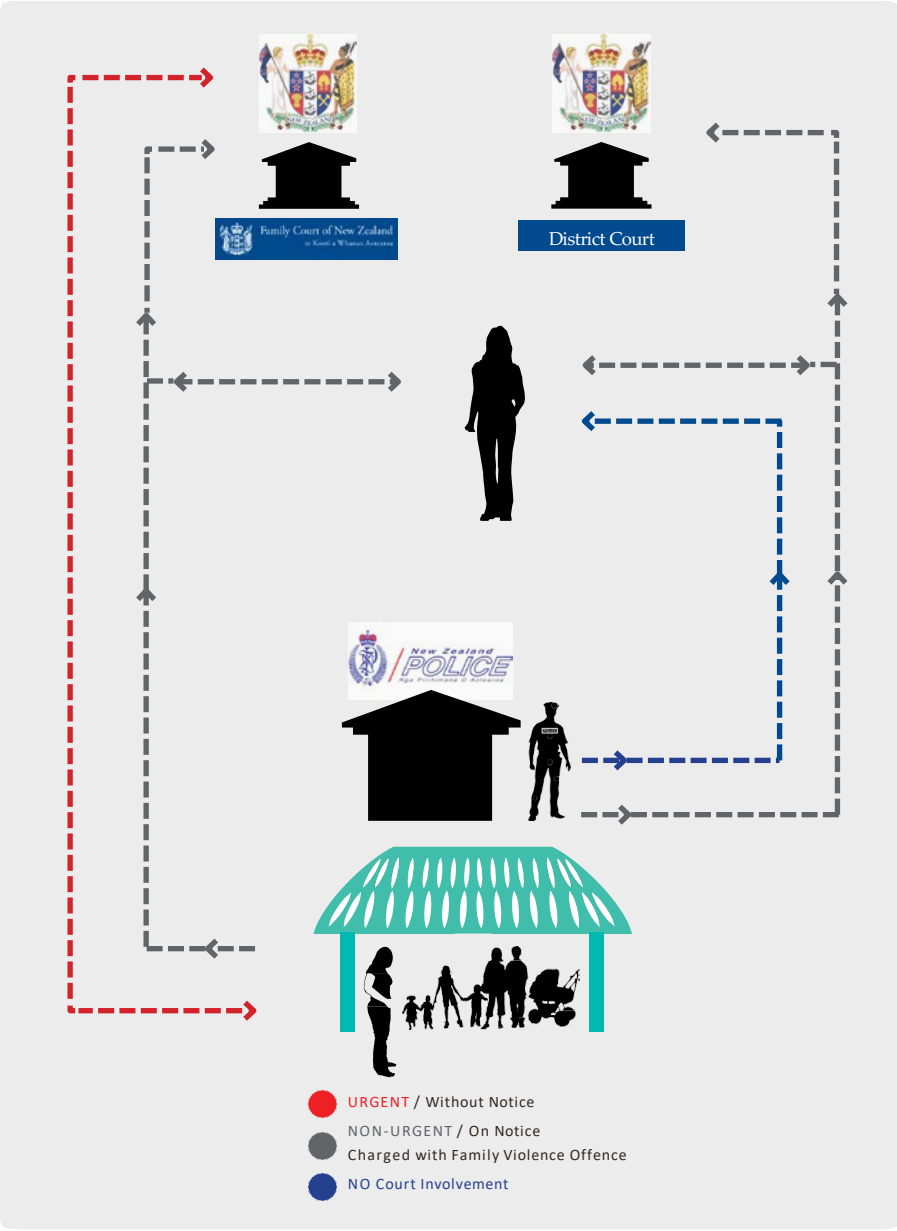
- (a) Recognising that family violence is unacceptable; and
- (b) Stopping and preventing perpetrators from inflicting family violence; and
- (c) Keeping victims safe.

The FV Act sets out the purpose and principles that must guide the court, or any person who exercises power under the FV Act. The principles are set out in s 4.

s 4 Principles to guide achievement of the purposes ...

- family violence is unacceptable
- decision makers should recognise that family violence may appear minor or trivial when viewed in isolation, but can form a pattern of behaviour that causes cumulative harm.
- decision makers should recognise that family violence includes coercive or controlling behaviour.
- decision makers should recognise that children are particularly vulnerable to family violence including seeing or hearing family violence.
- decision makers should recognise that children are at risk of lasting harm.
- decision makers should recognise other factors (health, disability, age) that may make people vulnerable to family violence.
- decisions makers should recognise that early intervention helps to stop and prevent family violence.
- perpetrators of family violence should have access to, and may be required to attend, services to help them stop and prevent family violence.
- victims should have access to services to help secure their safety.
- arrangements that support the victim's ongoing safety and well-being should be maintained (eg. employment, education, housing).
- responses to family violence should be culturally appropriate.
- responses involving Māori should reflect tikanga Māori.
- decision makers should consider the views of victims and respect those views unless there are good reasons for not doing so.
- decision makers should collaborate whenever appropriate.
- access to the court should be speedy, inexpensive and simple.

In providing guidance to decision makers, the FV Act provides several ways in which victim/s can get protection from a violent person (perpetrator). In short, the police can issue a Police Safety Order (PSO). A protection order may also be granted in the District Court and the Family Court.



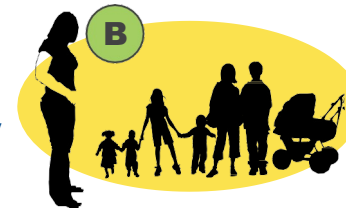
POLICE SAFETY ORDER

The first option for legal protection under the FV Act is a PSO, which can be issued by police when attending family violence call outs. They are a short-term solution that can be effective in resolving family violence situations.

A PSO can be issued when a police officer believes that a person has been violent or is likely to be violent to another family member. If there are children present, the police officer will also consider their welfare and safety.

A PSO can be put in place for a period of up to 10 days and, if it is breached, can be extended or a new PSO made for a period of up to 10 days.

A police safety order may be issued against person A
if the constable
has reasonable grounds to believe that the order is necessary
to help make person B safe.



POLICE SAFETY ORDER

To:
..... Street
.....
D.O.B:

This Police safety order is issued against you.

- Purpose of order**
The purpose of this order is to help make safe from family violence the following persons (the person(s) at risk):
 - the person(s) named in this order with whom you are, or have been, in a family relationship; and
 - each protected child named in this order, and every other protected child (if any).
- Person(s) at risk**
This order protects the following person(s) at risk:
.....
Children:

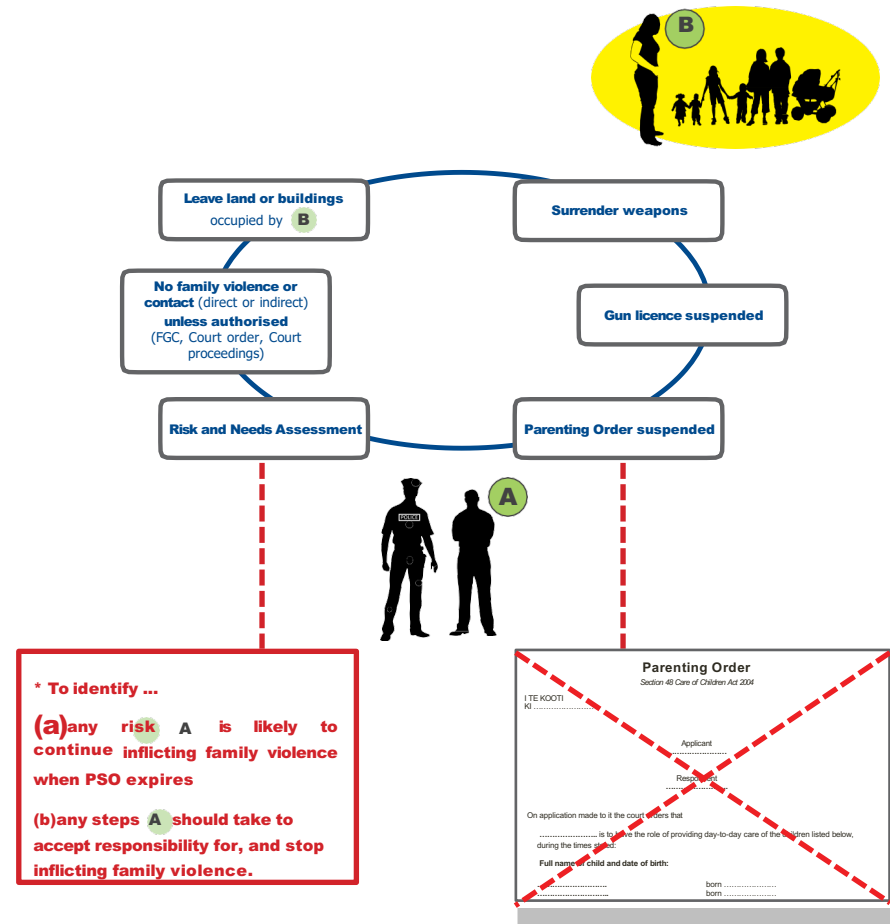
- Has A inflicted, inflicting or likely to inflict family violence against B
- Welfare of any children?
- Hardship?
- Any other matter?



Effect of Police Safety Order

There are a number of consequences if the police issue a PSO. The violent person:

- must leave the property occupied by the protected person;
- must surrender their weapons;
- their gun licence is suspended;
- they must not be violent or have any contact with the protected person and children;
- if there is a parenting order, then it is suspended. There will be no contact with the children identified in the parenting order as they are protected by the PSO;
- the person may have to complete a risk and needs assessment. This is to identify any risk to the whānau when the PSO expires.



Breach of Police Safety Order

If the PSO is breached, the person can be taken into custody and must appear in the District Court within 24 hours. The person may be seen by a community magistrate or a judge. When the person appears, another PSO can be made.

If the person appears before a community magistrate then the breach can be referred to a District Court judge to consider whether a temporary protection order should be made.

If the police safety order is breached then . . .

If **A** refuses or fails to comply with the Police Safety Order or any condition of the order, they can be taken into custody.

They must appear in the District Court within 24 hours.

- The Community Magistrate may:
- make another Police Safety Order
 - refer to District Court judge

District Court Judge may make a **temporary protection order**.



TEMPORARY PROTECTION ORDER

Family Violence Act 2018

I TE KOORI

Ki

Applicant

.....

Respondent

.....

The Court makes a temporary protection order against, the Respondent.

PERSONS PROTECTED BY THE ORDER (PROTECTED PERSONS)

This order protects the following

.....

Children's names and date of birth:

..... born

..... born

PROTECTION ORDER

If the victim of family violence believes that they and their family need ongoing protection, and a protection order was not made in the District Court, they can apply to the Family Court for a protection order.

An application for a protection order can be made urgently, without notice to the violent person and dealt with by a Family Court Judge on the same day. If the protection order is made by the judge, the violent person will not know about the application or what is said until after the protection order is made.

A protection order that is made without notice to the violent person is a temporary protection order. The temporary order will automatically become final after 3 months if it is served on the violent person and they take no legal steps to oppose it.

There are three requirements for a protection order:

- There must be (or have been) a family relationship between the people involved.
- There must have been violence or a real threat of violence. Violence includes physical, sexual, psychological, financial, and other sorts of behaviour including restricting a person's contact with friends or family.
- The person applying must show that the order is necessary for their ongoing protection.

When a protection order is made it automatically covers the children who regularly live with the protected person. This is to prevent contact between the violent person and the children until safe contact arrangements can be made and approved by the Family Court.



PROTECTION ORDER
Section 79 Family Violence Act 2018

I TE KOOTI
KI

Applicant
.....

Respondent
.....

The Court makes a temporary protection order against the Respondent.

PERSONS PROTECTED BY THE ORDER (PROTECTED PERSONS)

This order protects the following

.....

Children's names and date of birth:

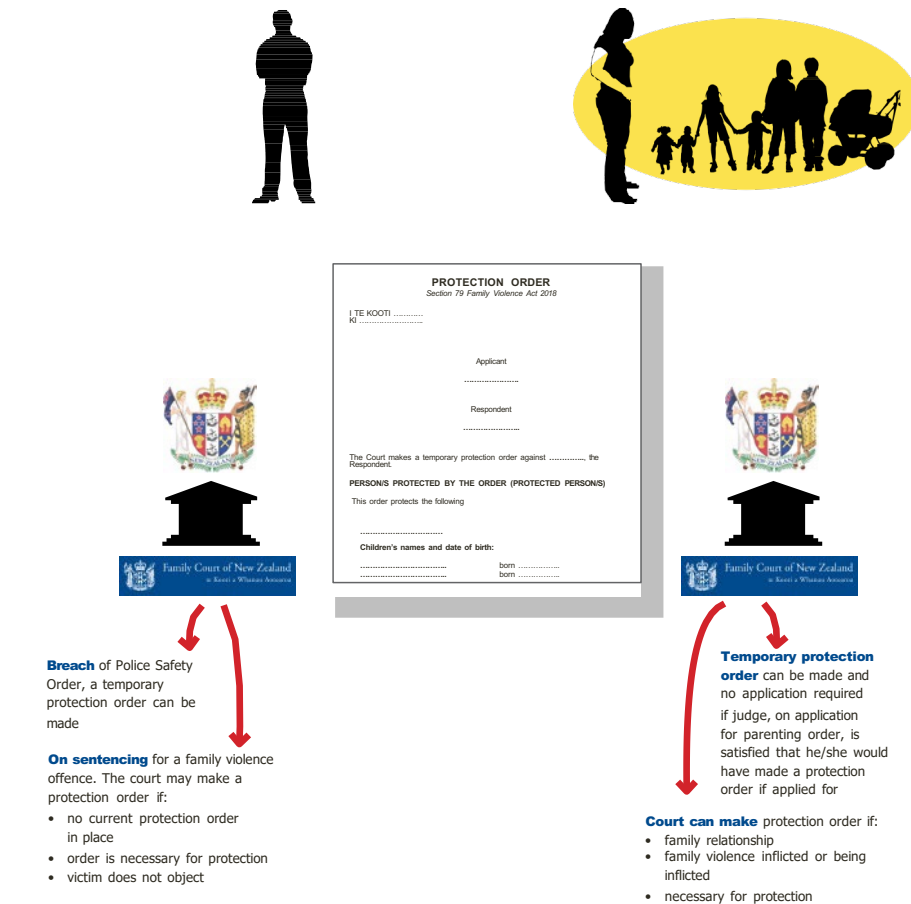
..... born
..... born

Four Pathways

With the focus being on the safety of victims of family violence, including children, there are four possible pathways to obtaining a protection order:

- Breach
- On sentencing
- Temporary protection order
- Court can make

Once final, a protection order stays in place until one of the parties applies to the Family Court to have it discharged.

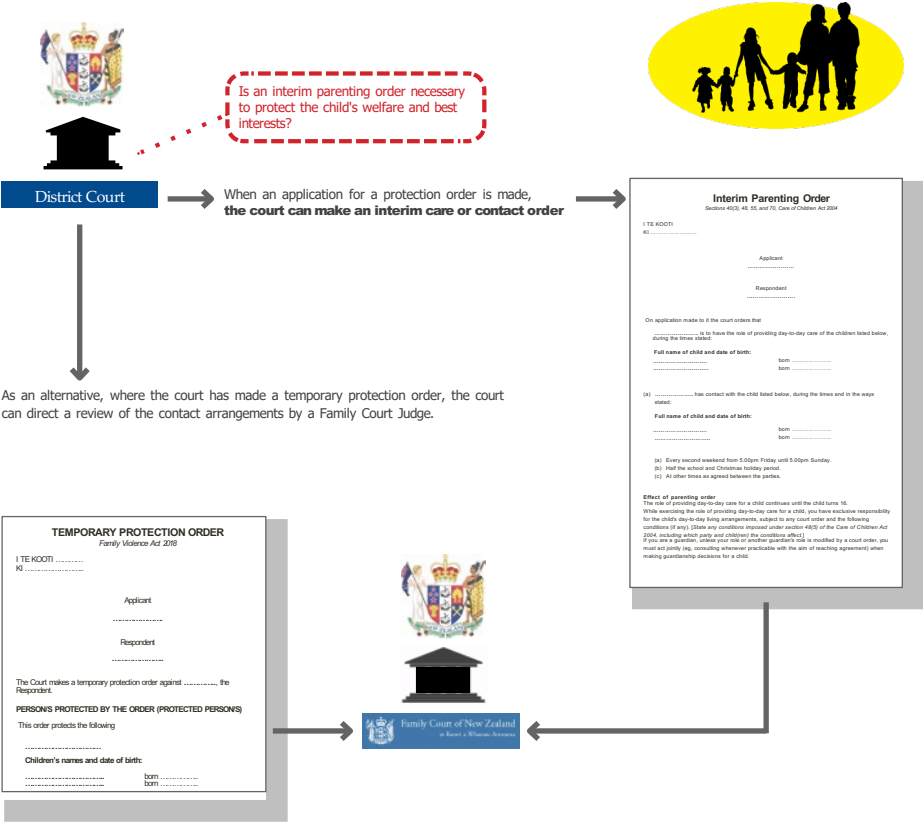


Interim Parenting Order – Care or Contact

When a protection order is made, it automatically covers children who live with the protected person. When this happens, care or contact with children often becomes an important issue as contact with the violent person (described as the respondent in the Family Court) and wider family is often suspended/ stopped.

When a protection order is made, a District Court Judge or a Family Court Judge can also make an interim (temporary) Parenting Order. The focus for the judge is the welfare and best interests of the children.

Children must be protected from all forms of violence. It is likely that if contact is ordered, it will be supervised, at least until a Family Court Judge has had an opportunity to hear from everyone and assess the risks in allowing unsupervised contact.



Children's Views

Children who are covered by a protection order can request a safety programme. A safety programme provides education, information and support to promote the protection of children from family violence.

In most cases when a protection order is made, the violent person must be assessed regarding attendance at an appropriate non-violence programme. Unless it is unsafe or inappropriate, the assessor must take reasonable steps to get the children's views. The person who provides the programme must do the same.

Children may also be appointed a lawyer. Children can have the opportunity to express their view directly to the judge or through their lawyer. Children do not have to express a view.



- **A child may request a safety programme**
- Unless unsafe or inappropriate, the assessor **must take all reasonable steps to obtain the views of the child, B** and specified person when assessing whether to complete a non-violence programme.
- Unless unsafe or inappropriate, a service provider **must take all reasonable steps to obtain and take account of views of the child, B** and specified person.
- If a lawyer is appointed for the child, the lawyer must ensure that any views expressed by the child are communicated to the court.



TEMPORARY PROTECTION ORDER <i>Family Violence Act 2018</i>	
I TE KOOTI Ki	
	Applicant
	Respondent
The Court makes a temporary protection order against, the Respondent.	
PERSON/S PROTECTED BY THE ORDER (PROTECTED PERSON/S)	
This order protects the following 	
Children's names and date of birth:	
.....	born born



ON SHARING

The purpose of the information sharing law in the FV Act is to encourage agencies and practitioners to work together to identify, stop, prevent and respond to family violence.

A family violence agency or social service practitioner can request or disclose personal information about children or families if the information will be used to:

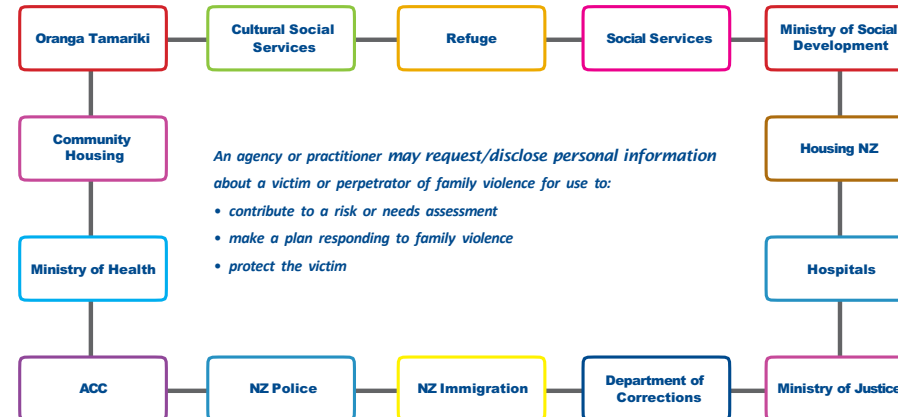
- Contribute to a risk or needs assessment;
- Make a plan responding to family violence;
- Protect the victim/s.

When requests are made, the FV Act authorises agencies and social services to release information, but it does not say that they must (NB there are exceptions). Keeping victims safe from family violence should take precedence over any obligation of confidentiality and any limits under the Privacy Act.

Overall, the law authorises the sharing of information where it is intended to identify, stop, prevent and respond to family violence.



'purpose – to encourage agencies and practitioners to work together to identify, stop, prevent and respond to family violence.'



A. Standard conditions: no family violence, no contact, no having others breach order

The respondent, and any associated respondent, must not-

- (a) engage in behaviour that amounts to any form of family violence against the protected person, (whether physical abuse, sexual abuse, or psychological abuse); or
- (b) make any unauthorised contact with the protected person; or
- (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 this protection order.

B. Exceptions to standard no-contact conditions, with consent

The protected person can suspend or reinstate the no-contact condition by giving or cancelling consent to contact.

The protected person's consent is only valid if given in writing or in a digital communication but the protected person may withdraw consent at any time and in any way.

The protected person cannot consent to any contact inconsistent with-

- (a) any order for supervised contact in relation to a child; or
- (b) No contact conditions imposed by a direction under section 168A of the Criminal Procedure Act 2011;

C. Other exceptions to no-contact conditions

Contact by the respondent, or associated respondent, with the protected person is authorised, and not in breach of the standard no-contact condition, if the contact is-

- (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
 - (ii) any child or young person (within the meaning of section 2 of the Oranga Tamariki Act 1989); or
- (c) permitted under any special condition of this protection order; or
- (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Oranga Tamariki Act 1989); or
- (e) necessary to attend any proceeding (of any kind) in or before any court or person acting judicially, or to attend any other matter that is associated with such a proceeding and that is a matter that the parties to the proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).

D. Standard conditions about weapons

The respondent and any associated respondent-

- (a) must not possess or have under their control, any weapon; and
- (b) must not hold a firearms licence; and
- (c) must, as soon as practicable after being served with a copy of this order, but in any case no later than 24 hours after such service; and on demand made, at any time, by any constable, surrender to a constable-
 - (i) any weapon in their possession or under their control, whether or not any such weapon is lawfully in their possession or under their control; and
 - (ii) any firearms licence held by them.

On the making of this temporary protection order, any firearms licence held by the respondent, and any associated respondent, is deemed to be suspended.

Note: The Family Violence Act 2018 defines a weapon as any firearm, airgun, pistol, restricted weapon, ammunition, or explosive, as those terms are defined in the Arms Act 1983.

RULES TO THE PROTECTION ORDER

- ☐ **Do not contact the Protected person** or anyone covered by the protection order in **any** way.
- ☐ This includes calls, texts, face to face, Facebook, Snapchat or other social media, letters, email or any other way.
- ☐ **Do not be violent** to them, abuse or threaten them in **any** way.
- ☐ Do not do anything that makes the Protected person feel afraid that they might get hurt or have their property damaged.
- ☐ **Do not go near** where the Protected person lives, works or goes to school, or go near them in any place they may be.
- ☐ If the person lives at the same address as the protected person, they cannot go there. Contact the Police or a Lawyer if you need to get their things.
- ☐ **Do not ask someone else** to do any of these things.
- ☐ **Main rules: No contact and No violence**
- ☐ **Breaking these rules is a crime. The person can be arrested and could go to prison.**



C. Other exceptions to no-contact conditions

Contact by the respondent, or associated respondent, with the protected person is authorised, and not in breach of the standard no-contact condition, if the contact is-

- (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
 - (ii) any child or young person (within the meaning of section 2 of the Oranga Tamariki Act 1989); or
- (c) permitted under any special condition of this protection order; or
- (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Oranga Tamariki Act 1989); or
- (e) necessary to attend any proceeding (of any kind) in or before any court or person acting judicially, or to attend any other matter that is associated with such a proceeding and that is a matter that the parties to the proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).

RULES TO THE PROTECTION ORDER CONTD.

There are some exceptions to the No Contact Rule:

- If there is an emergency and contact is necessary.
- If contact is part of a court order (such as a Parenting Order) or a written parenting agreement.
- If contact is a special condition of the Temporary Protection Order.
- If they both need to attend a family group conference, restorative justice conference, settlement conference, or any court proceedings.



B. Exceptions to standard no-contact conditions, with consent

The protected person can suspend or reinstate the no-contact condition by giving or cancelling consent to contact.

The protected person's consent is only valid if given in writing or in a digital communication but the protected person may withdraw consent at any time and in any way.

The protected person cannot consent to any contact inconsistent with-

- (a) any order for supervised contact in relation to a child; or
- (b) No contact conditions imposed by a direction under section 168A of the Criminal Procedure Act 2011;

RULES TO THE PROTECTION ORDER CONTD.

With the protected person's consent, there are some exceptions to the No Contact Rule:

The Protected person can decide what contact is okay

If the order says that the Protected person wants to live at the same address, the Protected person can have contact and live with that person.

The Protected person can also agree to other types of contact (such as calls, texts, social media), but they must give permission in writing (such as a letter, email, or text).

The Protected person can decide not to allow contact at any time and tell the person to stop contact. If they do, then all of the no contact rules apply and the person must leave or stop contacting them. **If they don't leave or stop contacting the protected person, they are breaking the rules and can be arrested.**



D. Standard conditions about weapons

The respondent and any associated respondent-

- (a) must not possess or have under their control, any weapon; and
- (b) must not hold a firearms licence; and
- (c) must, as soon as practicable after being served with a copy of this order, but in any case no later than 24 hours after such service; and on demand made, at any time, by any constable, surrender to a constable-
 - (i) any weapon in their possession or under their control, whether or not any such weapon is lawfully in their possession or under their control; and
 - (ii) any firearms licence held by them.

On the making of this temporary protection order, any firearms licence held by the respondent, and any associated respondent, is deemed to be suspended.

Note: The Family Violence Act 2018 defines a **weapon** as any firearm, airgun, pistol, restricted weapon, ammunition, or explosive, as those terms are defined in the Arms Act 1983.

Any guns and gun licenses have to be given to the Police within 24 hours



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FAMILY VIOLENCE ACT 2018

NON-VIOLENCE PROGRAMME ASSESSMENT

ANOTHER IMPORTANT CONDITION TO THE PROTECTION ORDER

THE PERSON MUST GO TO A NON-VIOLENCE PROGRAMME

- In most cases the Court makes the referral to a **non-violence programme**. Check the Protection Order to make sure.
- This is free if the **Court has made the referral** and it runs over several weeks.
- The course will focus on the effects of family violence on others, and the skills needed to live without violence.



The Court directs **SIAOSI POUTASI**, (the **specified person**) to undertake an assessment and attend a non-violence programme, provided by a service provider, that an assessor determines is an appropriate non-violence programme for the specified person to attend.

The Registrar of the court will arrange for the specified person to be referred to an assessor, and the specified person must meet with the assessor so that the assessor may-

- (a) undertake an assessment of the specified person; and
- (b) determine, if the direction in the notification is that the specified person undertake an assessment for a non-violence programme, whether there is an appropriate non-violence programme, provided by a service provider, for the specified person to attend; and
- (c) determine, if the direction in the notification is that the specified person undertake an assessment for prescribed services, whether (and, if so, which of) the types of services specified in regulations made under section 249(a) of the Act (if any), provided by a service provider, may be appropriate for and may benefit the specified person.

If there is an appropriate non-violence programme for the specified person to attend, the service provider of that programme will settle in writing with the specified person the terms of attendance, which must include-

- (a) the number of programme sessions that the specified person must attend; and
- (b) details and arrangements about the programme venue, sessions, and times.

Before providing a prescribed service to a specified person directed to engage with the service, the service provider must settle in writing with the specified person the terms of the specified person's engagement with the service.

The Court directs: **SIAOSI POUTASI**

to attend the following programme: **Living Without Violence Programme – Friendship House**

THIS PROGRAMME IS PROVIDED BY:

Programme Provider: **Friendship House**

Programme Venue Address: **20 Putney Way, Manukau**

THE RESPONDENT **SIAOSI POUTASI**

(or Associated Respondent)

Must attend the programme:

For such number of sessions per month as programme provider specifies

THE RESPONDENT **SIAOSI POUTASI**

(or Associated Respondent)

Must attend the programme for the first time:

On a date and at a time to be advised by the programme provider as soon as practicable.

Date:

Signature of Registrar:

GOING TO A NON-VIOLENCE PROGRAMME

- ❑ The aim is to teach the person about the effects of family violence, how the family violence laws work, and how they can find better ways to deal with future conflicts so that they can live without violence.
- ❑ The person will first have to be assessed by the organisation that provides the programme, to work out how much of a risk they pose to anyone protected by the Protection Order, and to work out what the most appropriate programme will be.
- ❑ If the person has particular needs, the Family Court can refer them to specific programmes or services – for example, a drug/alcohol programme.



OBJECTION TO GO TO A NON-VIOLENCE PROGRAMME

- If the person doesn't think they should have to go to a non-violence programme, **they have 10 working days** after being given the protection order to make an application to the Court that explains why.
- If the person is unable to go to a session and has a good reason, they will need to talk to the programme provider to see if they can attend at a different time.

If the person doesn't turn up to the programme the Court can send them to prison for up to 6 months or given a fine up to \$5,000.



WHAT IF THE PERSON WANTS TO BE HEARD

The person can apply to defend the temporary protection order becoming final

The person needs to decide if they want to oppose (challenge) the order. Defending an order means going to Court to ask to remove the order or change the special conditions. To do this, an application to the Court needs to be done **within 3 months**.

The person can oppose the order if they believe they have been able to make the positive changes needed to live without violence.

If the person does nothing, the Court can make a Final Protection Order after 3 months, meaning the rules and conditions become permanent.



CONTACT WITH CHILDREN

This Protection Order covers any children that:

- ☐ are named in the Order
 - ☐ live with the Protected person (all the time or some of the time), even if their names are not written in the Order. If a child is born after the Order was put in place, they are included in the Order.
-
- ☐ This means the person may not be allowed to have contact with their children unless:
 - there is a **Parenting Order** or parenting agreement with the protected person.
 - as part of the Protection Order, the Protected person has agreed to live with the person and so the no contact rules don't apply.



Property and Furniture Orders

(Information from MOJ website)

You can only apply for a **Property Order** and **Furniture Order** with a Protection Order. You can do this when you apply for a Protection Order or after a Protection Order has been granted. These orders are usually tied to your Protection Order. This means if your Protection Order is cancelled, the other orders will be cancelled.

A Property Order allows the protected person to stay in the place they live. There are two types of Property Orders you can apply for. Both orders mean the respondent won't be allowed to live with you without your agreement.

1. Occupation Order — this order says you can continue to live in a place that is owned by the respondent, or owned by you and the respondent. It means the respondent isn't allowed to live there without your agreement.

2. Tenancy Order — this order says the respondent is no longer the tenant of a house or flat they've been renting with you. You can still live there, but the respondent can't.

Once a Property Order is in place, the Police can remove or arrest the respondent if they won't leave, or if they come back.

Ending a tenancy - If you're renting, you can move out and end your tenancy early if you experience family violence. You can do this by giving your landlord two days written notice. There is no cost for you.

[End your tenancy when you're experiencing family violence\(external link\)](#)

(Information from MOJ website)

Withdrawal from a tenancy following family violence

(Information from Tenancy Services website)

A tenant who experiences family violence during a tenancy can remove themselves from the tenancy by giving the landlord at least 2 days' written notice in the approved form (with qualifying evidence of family violence) without financial penalty or the need for agreement from the landlord.

This applies to both fixed-term and periodic tenancy agreements. Victims of family violence do not need to apply to the Tenancy Tribunal to end their tenancy.

There are two kinds of **Furniture Orders** you can apply for:

- Furniture Order** – this order allows you to take all or some of the furniture if you decide to move out. It doesn't matter who owns the furniture.
- Ancillary Furniture Order** – this order allows you to keep all or some of the furniture if you want to stay in the place you live. To be granted this order, you also need to apply for an Occupation or Tenancy Order.

A Furniture Order allows the protected person to keep the furniture

A Furniture Order allows the protected person to keep the furniture that was in their house if they and the other person have lived in this same house at the same time.

Furniture includes appliances, like your fridge, and other items like your bed.

(Information from MOJ website)