

*A Protection Order is a legal order designed to protect you and your children from further violence.*

*It tells the abuser that they cannot abuse you, and they cannot contact you if you are not living together. The abuser will also have to go to a Stopping Violence programme.*

Getting a Protection Order is one step you can take to give the abuser a clear message that you want the violence to stop. Police will also take the violence more seriously if you have a Protection Order.

At the same time you apply for a Protection Order you can also apply for court orders that allow you to keep on living in the house you owned or rented with the abuser, and/or take some of the furniture to use.

Sometimes it may not be safe to apply for a Protection Order. You will know for yourself if there is a risk that you will be in more danger. A Refuge advocate can help you work out what will be safest for you and your children.

### Who can apply for a Protection Order?

- Anyone in a domestic relationship.
- Children can apply with the help of an adult.
- A third party can apply for a Protection Order on behalf of another person.
- You can apply even if you have used violence yourself.

### What is family violence according to the law?

The law says no-one can physically, sexually, or psychologically abuse another person with whom they are in a domestic relationship.

**Physical violence** or abuse is hitting, punching, kicking, assaulting etc. **Sexual violence** or abuse is rape, unwanted

sexual touching, incest, unwanted exposure to pornography etc. **Psychological violence** or abuse is intimidation, threats, harassment, stalking, controlling behaviour, damaging property, allowing children to witness violence.

### What is a "domestic relationship" according to the law?

It's a 'domestic relationship' if they are your:

- Current or ex-spouse
- Current or ex-partner/ lover/ boyfriend/ girlfriend (same sex or different sex relationship)
- Parent or grandparent
- Brother or sister
- Flatmate/ roommate (anyone you share a household with)
- Other whanau/family member
- Child's parent
- Child
- Close personal friend (even if you don't live together).

### What happens if it's not a "domestic relationship"?

Someone from work, or a friend of a friend is stalking me and making me scared, what can I do?

If you are threatened or feel scared, call the Police. If you are not in a domestic relationship with the person who is stalking or harassing you, you may be able to apply for a Restraining Order, under the Harassment Act. This is similar to a Protection Order. Your lawyer or Community Law Centre will be able to help you.

### What does a Protection Order say?

The Protection Order will have non-violence conditions that say the abuser **MUST NOT**:

- Physically, psychologically, or sexually abuse or threaten to abuse anyone protected by the Order
- Damage or threaten to damage your property
- Encourage anyone else to abuse or threaten any of you

If you are not living together, there are also non-contact conditions that say the abuser **MUST NOT**:

- Go to your home, workplace, or property unless you consent
- Intimidate or harass you or your children
- Hang around your neighbourhood or workplace
- Follow you
- Stop you or your children from coming and going
- Contact you by phone, letter, fax or any way (including email) unless there is an emergency

If you **CHOOSE** to live with the abuser, the non-contact conditions won't apply. The non-violence conditions will remain. If you don't want to live with the abuser anymore, and you ask them to leave, the non-contact conditions come into effect again automatically. The abuser also has to go to a Stopping Violence programme.

Any children who usually live with you are included in your Protection Order. (The only time children might not be included is if they don't live with you and you don't see them regularly).

You can also name other people on your Protection Order who you want the Court to give protection to. These can be people who you have a domestic relationship with, such as your mother, father, new partner, or flatmate, who are also being abused or threatened by the abuser.

The Protection Order can also say:

- The abuser must hand in any firearms and weapons to the Police, and their firearms licence will be cancelled unless Police can be assured that you are safe.
- Other Special Conditions, such as arrangements for access with the children.

In the Protection Order the abuser is called the "respondent". You are the "applicant" or the "protected person."

### What about somewhere to live?

When you get a Protection Order, there are other Orders available that allow you to live in the house you shared with the abuser, and/or have use of the furniture and appliances.

### Occupation and/or Tenancy Orders

These let you stay in the house/flat that you shared (rented or owned), even if you previously moved out. The abuser must move out, even if they own the place.

### Furniture Order

This lets you have some or all of the furniture and appliances from the home you shared. The abuser cannot take them away or smash them up. The Police can accompany you, when you go to get the furniture out. You do not have to have an Occupation or Tenancy Order to get a Furniture Order.

### What about custody and access for the children?

The lawyer will need to deal with protection of children issues at the same time as they deal with the family violence issues.

### How do I apply for a Protection Order?

Women's Refuge can help with information, support and finding a good lawyer.

- Most women use a lawyer to help them. It's best to get a Family lawyer who knows the Family Court system.
- Protection Orders are dealt with in the Family Court which is private. It's not open to the public and other people won't get to know about it.
- You will need to give a statement (affidavit) about why you feel unsafe. The statement you make should include not only what has happened, but what effect the psychological, physical, and sexual violence has had on you, your children and whanau/family. This is so the Judge can tell how serious the violence is. The abuser will get to read the statement later.

- Make sure you tell the lawyer about any firearms the abuser has access to.
- Also tell the lawyer any of your concerns so that these can be worked out.
- We don't recommend that you get an "undertaking" instead of a Protection Order. An undertaking is when the abuser agrees not to be violent. However, the Police won't take it as seriously as a Protection Order, and you can't press criminal charges for breaking an undertaking.

### Can I apply for a Protection Order without a lawyer?

It is possible to go to the Court and get the documents to make your own application for a Protection Order, although we recommend that you use a lawyer if possible. We have found that women aren't always able to get Protection Orders or good access decisions if they apply without a lawyer.

Your local Women's Refuge, Community Law Centre or Court staff can give you more information about applying for a Protection Order and may be able to help you do it yourself.

You may want to get a copy of a helpful booklet "A Guide to Applying For A Protection Order". It's available from Whitireia Community Law Centre, 3rd Floor Pember House, Hagley Street, Porirua. Phone: 04 237-6811 Fax: 04 237-6816 email: [commlaw@wnc.quik.co.nz](mailto:commlaw@wnc.quik.co.nz)

### How much does it cost to get a Protection Order?

If you are on a benefit or low income you may be eligible for Legal Aid and the Protection Order will not cost you.

If you have to pay, lawyers charge anything from \$500 and up for a Protection Order. It will cost more if the abuser defends the Order, or if there are custody and access arrangements that need to be worked out.

### How long does it take to get a Protection Order?

If the Order is granted "without notice", it is possible to get the temporary order within 24 hours. Sometimes it takes longer, a few days. In emergency cases, you can get a Protection Order granted at the weekend and during holiday times.

When you get a Protection Order, keep a copy of it with you at all times, and leave copies at your friend's or whanau/family member's place. Ring your local Police station to make sure they have been sent a copy of the Order from the Court.

### When will the abuser find out that I've taken out a Protection Order against them?

You can ask for the Protection Order to be without notice if any delay will put you or your children at risk of harm or hardship. This is often the safest way to get a Protection Order. The abuser will not be told about the temporary Order until it has been granted to you. You will be issued with a temporary Order immediately. A bailiff or the Police will take a copy of the Protection Order around to the abuser's place, and will explain to them what the Order means.

If the Order is "on notice", the abuser is told that you have applied for it. They will be given time (it could be 24 hours, or it can be up to 2 weeks or longer) to put in a written defence against what you have said. A Judge will hear each side of the case, and decide whether or not to issue you with a Protection Order. So it could be a few days or sometimes a few weeks before you get the Protection Order.

A Protection Order without notice is usually safer, but a few women have found recently that some Judges are not accepting their applications for an immediate Protection Order and are saying the Protection Order should be on notice. If you have no choice but to get a Protection Order on notice, we recommend you talk to Women's Refuge and your lawyer about options for

your safety, and think about a safe place to stay, perhaps at Women's Refuge, while waiting for the Protection Order. You may decide that it would not be safe at all to go ahead with the Protection Order. Talk to your lawyer about this immediately.

*IMPORTANT: To keep your address confidential, so that the abuser does not find it out, make sure that your lawyer completes a "DV4 - Request for Confidentiality Form"*

### Can the abuser challenge the Protection Order?

- If the Protection Order has been given "without notice" it is temporary for 3 months.

In this time, if the abuser wants to defend the Order, a hearing date will be set by the Court, and a Judge will consider both sides and then decide whether to make the Protection Order final.

If the abuser does not put in a defence against the Protection Order, it becomes permanent automatically after 3 months.

- If the Protection Order is "with notice" the abuser is given some time (it could be 24 hours, or it can be up to 2 weeks or longer) to challenge your application for a Protection Order. The Court will then set a date for a hearing. A Judge will consider both sides and then decide whether to grant you a Protection Order.

If the abuser does not challenge the application for a Protection Order within the time given, a Judge will go ahead and make the decision about whether to grant the Protection Order.

### Will I have to go to Court?

If you apply for a Protection Order "without notice", a Judge will usually grant a temporary Protection Order without seeing you.

If the abuser then challenges either the temporary Protection Order or your "on notice" application you will need to appear in the Family Court.

Family Court is closed (public are not allowed). The abuser will be there. Talk to your lawyer and the Family Court Coordinator if you are worried for your safety. You may be able to take a friend or advocate to awahi/support you in Court.

### What happens if I want to live with them again?

The non-contact conditions of the Protection Order can be put on hold by you, if you agree to live with the abuser, but the non-violence conditions will remain. You can live together but the abuser can't be violent to you.

If you want them to leave again at anytime, you just need to tell the abuser that you do not want to live together anymore, and the non-contact conditions will be back in place straight away. It is a good idea to put it in writing that you don't want to live together.

### Can I remove the Protection Order?

You can apply to the Court to have the Protection Order removed (discharged). However, we encourage you to keep it in place, even if you have got back together and things seem to be going well.

Despite what the abuser may tell you, you do not need to drop the Protection Order to prove that you love them, or want to work things out. The Protection Order was your choice, for your safety. It should stay to remind them that they can not be violent to you again.

The abuser can also apply to the Court to have the Protection Order removed. If you do not agree, there will be a defended hearing, where you both get to tell your side to the Judge and the Judge will decide whether the Protection Order should stay in place or be removed.

### Can I attend an Education and Support programme?

If you take out a Protection Order you and your children can attend a free education/support programme, which will help you understand about family violence, and help you to keep safe. You can go to a programme anytime within three years of getting the Protection Order.

Women have told us that they like the education and support groups because they get to meet others who have been through similar experiences. However, you can choose to have a one-on-one programme.

If you want to go to a programme, your lawyer can make a request for you when they apply for the Protection Order. The Family Court Coordinator can also refer you to someone who runs a programme in your area, or you can contact Women's Refuge.

If you do not have a Protection Order, you can still attend these programmes, usually for no cost.

### What happens if the abuser carries on being violent or keeps on contacting me?

The abuser breaches the Protection Order if they do any of the following things to you, your children or other people named on your Protection Order:

- Physically, psychologically or sexually abuse any of you
- Makes any threats
- Damages property
- Encourages others to abuse any of you
- Enters your property, hangs around, follows you
- Contacts you in any way (phone calls, emails, text messages, letters given to the children, coming to your work or a place you regularly go to, sending flowers and presents, waiting outside your house)

They will also be breaching their Protection Order if they don't attend a Stopping Violence Programme that they have been ordered to.

We encourage you to call the Police to tell them about every breach of the Protection Order even if it's minor. You will know if the 'small acts' are actually intended to play mind-games with you and make you feel afraid. Trust your instincts. You don't have to keep putting up with the violence.

- Tell the Police what happened and how it made you feel. They should take all breaches of Protection Orders seriously.
- Ask the Police to record the breach. You should also keep a note for yourself about every incident. Don't be afraid to ring 111 every time there is a breach. If you dial 111, the breach will be noted in the Police records.
- If there is a breach of a Protection Order, the Police should arrest the abuser, unless there are exceptional circumstances. The abuser cannot be bailed for 24 hours.
- The Police should also gather enough evidence to make a good case for the breach of the Protection Order to be taken to Court. It is not your responsibility to "press charges". The Police make an arrest because the violence is illegal and it is bad for everyone in our society.
- A breach of Protection Order will be dealt with in the District Court, not the Family Court.
- The maximum penalty for a breach of a Protection Order is six months in prison or a \$5000 fine, but if there are three offences in three years, the abuser can be given up to two years in prison.
- As well as being charged with breaching a Protection Order, the abuser can be also be charged with any other crime committed at the same time (e.g. assault).

If a Police Officer does not take the breach of Protection Order seriously, ask to speak to the Police Superintendent in Charge. If you have any problems with the Police or lawyers, please get in touch with Women's Refuge urgently.

You can make a complaint to the Police Complaints Authority.