



**THE
IMPLEMENTATION
OF THE
DOMESTIC VIOLENCE
ACT 1995**

**A report from the
National Collective of
Independent Women's Refuges Inc**

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*Freedom from violence in the home,
and legal protection to prevent further violence,
are fundamental human rights.*

For 30 years in New Zealand, Women's Refuge has been raising awareness of the problem of domestic violence and working across the community and government sectors to bring violence in the home out into the public arena, encouraging collective responsibility for this social problem.

Domestic violence is a problem affecting families from all cultures, classes, backgrounds and socio-economic circumstances. The perpetrators of the most severe and lethal violence are predominantly men; the victims of the most severe and lethal violence are predominantly women and children.¹ There are significant overlaps between male violence against female partners and child abuse and neglect. Violence is often a deliberate strategy used by perpetrators as a means of asserting domination, power and control over others. The effects of domestic violence on individuals, whanau/families, communities and society as a whole are wide-ranging and multi-dimensional. Violence in the home contributes to the continuation of violence within whanau/families, and within society as a whole.²

Women seeking lives free from violence for themselves and their children have some basic needs. They need economic independence from their abuser; access to safe and affordable housing and health services; work, education and/or training opportunities; and affordable quality childcare. They also need safety and protection.

Women's Refuge sees one of its roles as providing a systemic analysis of the barriers to freedom from violence for women and children, working with others to create systems that are more responsive to the needs of victim/survivors (which includes assisting violent perpetrators to change and providing consequences for those who do not).

In the years prior to 1995, other agencies and groups joined with Women's Refuge to voice their growing concern that not enough was being done through the legal and justice sector to protect the lives of women and children who were the victims of domestic violence.

In a report released in 1992, Ruth Busch, Neville Robertson, and Hilary Lapsley identified several concerning practices and attitudes around the provisions of the Domestic Protection Act 1982 and argued that the justice sector was failing to protect battered women and children.³

Busch *et al* claimed that protection orders were denied by judges because the orders were seen as antagonistic to reconciliation between partners. They also found that breaches of

¹ See Kimmel, M. 2002. '“Gender Symmetry” in Domestic Violence; A Substantive and Methodological Research Review'. *Violence Against Women* 8(11).

² Quoted from the Draft Terms of Reference for the Steering Committee on Family Safety Teams. July 2004. Statements similar to this are also made in *Te Rito: New Zealand Family Violence Prevention Strategy*. 2002. Ministry of Social Development: Wellington and *Family Violence Intervention Guidelines for Child and Partner Abuse*. 2002. Ministry of Health: Wellington.

³ Busch, R. Robertson, N. and Lapsley, H. 1992. *Protection From Family Violence; A Study of Breaches of Protection Orders*. Victims Task Force: Wellington. p1.

court orders involving psychological abuse were viewed as ‘technical’ and unimportant ignoring the fear, intimidation and threats experienced by women. Furthermore, domestic violence was not taken into account by judges in custody and access decisions. The links between partner and child abuse were ignored and there ‘was a view among many judges that one could be a violent spouse (even a spouse killer) but still be a good parent’.⁴ Busch *et al* claimed that there was little understanding of domestic violence within the justice sector, especially a lack of understanding about separation violence (the fact that violence can escalate and be on-going *after* the victim has left).

For women experiencing violence in the home at this time, the orders granted under the Domestic Protection Act were thought not to be worth the paper they were written on due to ‘police inaction and judicial approaches to domestic violence that commonly gave men who breached protection order no meaningful consequences’.⁵

These findings echoed the concerns of Women’s Refuge advocates at the time who lobbied for the ‘victim blaming’ discourses within the justice and legal system to change; for domestic violence to be regarded as a serious crime; and for legal protection for victims to be extended. The Department of Justice report on the 1982 Domestic Protection Act laid out many of the options for extending and strengthening domestic violence legislation.⁶ An inquiry into the murder of Tiffany, Holly and Claudia Bristol by their father (who had custody of the children despite being violent to the family), also made strong suggestions for changes to the legislation with respect to increased penalties for breaches of non-violence orders and limiting a violent parent’s unsupervised access or custody of children.⁷

The outcome of this research and advocacy was the celebrated implementation of the Domestic Violence Act in 1995.

As Robertson claimed, the Domestic Violence Act

incorporated most of our recommendations for statutory change, widened the definition of domestic violence, broadened the categories of people eligible to obtain protection orders, simplified the process of getting protection orders, increased the penalties for breaching the orders, and provided more meaningful consequences for respondents (mandated referral to stopping violence programmes). Above all, in certain areas, judicial discretion has been significantly reduced (e.g. requiring judges to take a contextualised view of domestic violence; requiring them to consider violence towards a spouse or child relevant to custody and access determinations).⁸

The object of the Domestic Violence Act, outlined in the legislation is

To reduce and prevent violence in domestic relationships by –

- Recognising that domestic violence, in all its forms, is unacceptable behaviour; and
- Ensuring that, where domestic violence occurs, there is effective legal protection for its victims.

⁴ Ibid, p2.

⁵ Ibid.

⁶ Report on the 1982 Domestic Protection Act quoted in Robertson, N. 1999. *Reforming Intuition Responses to Violence Against Women*. Unpublished PhD thesis. Waikato University: Hamilton.

⁷ Davison, R. 1994. Report of inquiry into Family Court proceedings involving Christine Madeline Bristol and Alan Robert Bristol. Department of Justice: Wellington.

⁸ Robertson, N. 1999. p 186.

The Implementation of the Domestic Violence Act

The Act aims to achieve the above by

- Empowering the court to make certain orders to protect victims of domestic violence:
- Ensuring that access to the court is as speedy, inexpensive, and simple as is consistent with justice:
- Providing, for persons who are victims of domestic violence, appropriate programmes:
- Requiring respondents and associated respondents to attend programmes that have the primary objective of stopping or preventing domestic violence:
- Providing more effective sanctions and enforcement in the event that a protection order is breached.⁹

Today, those working in the family/domestic violence sector, from both community and government sectors, still overwhelmingly support the Domestic Violence Act,¹⁰ maintaining that it is a thorough and progressive piece of legislation providing for legal protection and prioritising safety for victims, and seeking to hold violent offenders accountable while offering steps to help change their violent behaviour.

When the Act was first passed, there were many supporting initiatives such as domestic violence training and seminars for the justice and community sector, public awareness campaigns, and strong advocacy and critique that ensured there was a focus on trying to get the Act working well for victims of violence.

However, nearly 10 years on from the passing of the Domestic Violence Act, advocates are concerned that the Act is still not operating to its full potential, and implementation of the Act may have actually declined over the last few years. Some domestic violence advocates believe that the response from parts of the legal/justice sector is reminiscent of pre-1995.

Women who are victims of violence have increasingly been reporting concerns about the effectiveness of the legislation to advocates. These concerns stem from the way the Act is operating in practice and undermine women's faith in the law that was designed to protect them. It is these practice issues that are the focus of this paper.¹¹

By looking at the Object of the Act, this report will outline the issues around operation and implementation. Women's Refuge believes these concerns deserve immediate and urgent attention in order to allow the Domestic Violence Act to work to its full potential to address the epidemic of domestic violence in Aotearoa / New Zealand.

It is vital that the Domestic Violence Act is working effectively for the success of other government policies and initiatives, many of which fall under Te Rito Family Violence Prevention Strategy.

This paper centrally draws upon conversations with, and letters from, domestic violence advocates and victims, and includes recent statistics from government departments and community agencies, as well as media releases and reports from those working in the field of domestic violence. It also draws upon a survey of member Refuges carried out by the

⁹ Domestic Violence Act 1995.

¹⁰ Also reported in Barwick, H. Gray, A. and Macky, R. 2000. *Domestic Violence Act 1995: Process Evaluation*. Ministry of Justice: Wellington. p56.

¹¹ This report focuses on the Domestic Violence Act 1995 but does not cover the issues of custody and guardianship under related legislation. This will be the focus of a future report.

The Implementation of the Domestic Violence Act

National Office of the National Collective of Independent Women's Refuges in 2004. The survey (n=24) focused on protection orders, and asked Refuge advocates to provide their views based on their discussions with women and experiences of advocating for women and children seeking protection under the Act.

It must be noted that this report focuses on concerns with the Domestic Violence Act and not upon good practice, of which there are also examples provided by women and by domestic violence advocates. It is not the intention of this report to undermine the collaborative responses to domestic violence that are already having successes, but to point to areas where action is needed.

Making Orders To Protect Victims Of Domestic Violence

The provision of protection, tenancy, occupation and furniture orders under the Domestic Violence Act made a significant improvement on the previous legislation. Those who had advocated for the protection of victims of violence welcomed the 1995 Act, seeing it as making advances in 'closing the gap' between women's experiences of violence and the state response to violence.¹² More people were afforded legal protection, with same-sex couples, whanau and other culturally recognised family group members, and elders included in the wider definition of a 'domestic relationship'. Psychological abuse (including allowing a child to witness violence) was explicitly recognised as domestic violence; and there was a 'contextualised approach to domestic violence' where courts were 'mandated to take into account the perception of the applicant about the nature and seriousness of that violence and its effects on her when deciding whether to grant a protection order.'¹³

Around 5000 people a year access orders under the Domestic Violence Act. Many women have successfully gained orders that have worked to protect themselves and their children under the Act. However, some advocates have identified that, in practice, gaining court orders for protection is becoming more difficult.

Despite an increase in domestic violence-related crime¹⁴, an increase in the number of women and children accessing Women's Refuge services¹⁵, and an increased public awareness about domestic violence (all of which would make applications for protection seem more likely), the number of applications for protection orders has been decreasing. From July 1998 to June 1999, there were 6970 applications filed in the Family Court, this has fallen by 25% to 5218 applications in the 2002-03 period.

We believe there are several factors influencing this decline in the number of applications under the Domestic Violence Act, most notably: victim's lack of confidence in the system; the increased numbers of protection order applications being put 'on notice'; and the increased burden of proof on victims of violence.

Victim's Lack Of Confidence In The Justice System

Women's Refuge advocates have identified that there are a number of women who do not want to get a protection order.

Eleven of the Refuges surveyed said that even though they were encouraging women to apply, many women thought the orders were worthless or the women had lost faith in the justice system from past experience and from hearing other women's stories.

¹² Busch, R. and Robertson, N. 1997. 'The Gap Goes On: An Analysis of Issues Under the Domestic Violence Act 1995'. *New Zealand Universities Law Review*, 17. p337-378.

¹³ Ibid. *ref.* Domestic Violence Act, sections 3(4) and 14(5).

¹⁴ Police Violence Related Statistics 1997-2001

¹⁵ NCIWR statistics show increased numbers of women and children using Refuge services.

A community network of people working with domestic violence in Hamilton (consisting of Police, Women's Refuge, Stopping Violence Services, Corrections, Courts, and CYFS etc.) reported that women

seem to be increasingly distrustful of the system and electing not to obtain protection orders because of their perceived ineffectiveness. This contrasts with the early days of HAIP [Hamilton Abuse Intervention Project] when, anecdotally, Hamilton had a reputation for an effective response such that women moved to the city and perpetrators moved out.¹⁶

The main reasons given for lack of confidence are: police not responding; judges not taking violence seriously and letting abuser get away with it; the danger involved in reporting violence; and the financial cost of justice. All these issues will be dealt with below.

Protection Order Applications Being Put 'On Notice'

There are two ways to get a protection order.

If there is risk of harm or undue hardship, the applicant can apply for a protection order to be granted straight away before the other person is told that they have an order against them. This is temporary order, which is then served on the respondent who has 3 months to tell the court if he wishes to file a defence. If there has been no "notice of intention to appear" or no application to discharge the temporary protection order, the temporary order automatically becomes final after 3 months. If the respondent does file a defence or apply to have the temporary protection order discharged the Family Court must set the matter down for a hearing within 42 days of the defence being filed. At the conclusion of the hearing the Family Court Judge will decide whether to grant a final protection order. This the process referred to in this report as 'without notice' application (it is also called 'ex-parte').

The applicant can also apply for a protection order 'on notice'. This means that the respondent is first served with papers telling him that a person is applying for a protection order against him. The respondent can then inform the court that he wishes to file a defence, which then means a hearing date will be set for a judge to decide about whether a final protection order is to be granted. If the respondent does nothing, the judge will still hear the case, and it is likely that a final protection order will be made on a "formal proof" basis.

The ability to get quick protection using a without notice application is vital to women's and children's safety. A temporary order provides women with immediate legal protection from physical, sexual and psychological abuse, and if the respondent files a defence, she still has that protection while waiting for the hearing.

Those who apply without notice do so because of a fear that they will be further harmed or their lives will be at risk. An application for protection under the Act directly challenges the abuser's control, publicises the violence that is most often kept private within the home, and involves the state in what are often seen as 'family affairs'. For all of these reasons, applying for an order is often a dangerous time for women and children. Research has

¹⁶ Minutes of HAIP meeting, May 2003.

shown that violence often increases with separation and/or when victims 'fight back' in some way.¹⁷ Many women are rightly fearful of the respondent's reaction should he learn that she is applying for a protection order against him, before that order is granted.¹⁸

Importantly, a temporary order also gives women greater confidence about their own ability to take some control over their own lives and safety. Applying for the protection order is a major step for women who have decided they will no longer put up with abuse. It could be the first time that they have openly challenged the power and control of the abuser. They are often battling their own fears and lack of confidence and they are almost always hearing from the abuser that no one will ever believe her, that it's her fault, and that she can't stop him. When a woman and her children need a protection, a temporary protection order tells them that their right to safety is paramount.

When the Domestic Violence Act was first implemented most applications for protection orders were made without notice. In 1998-99 period 91% of applications were made without notice, but this has fallen to 85% in 2002-03. The number of applications for on notice orders has nearly doubled from 8% to 15%.¹⁹

An area of great concern for domestic violence advocates is the dramatic increase in without notice applications being put on notice by judges. In the year from July 1998 to June 1999, 12% of without notice applications were put on notice. By 2001-2002 this had doubled to 25%, while for the 2002-03 period the figure remained high at 22%. In practical terms, one in four or five applicants are having their without notice applications put on notice. In total one third of applications are proceeding on notice.²⁰

Advocates claim that many women do not proceed with applications when lawyers suggest an on-notice application. The Ministry of Justice have noted that more than half of the applicants whose applications are put on notice withdraw.²¹ Advocates say that women who do not withdraw can live in a constant state of fear until the hearing to decide whether they get a protection order. Women often want to get an order straight away, but due to advice from lawyers or decisions made by judges, they are forced to wait for weeks or months for a protection order.

The increased number of applications on notice then, is largely not a result of more women feeling safe enough to wait for a protection order. Rather, many women have no option other than to agree to the on notice process even though they feel vulnerable and fearful without legal protection during this time.

¹⁷ "Separation may *increase* the level of violence as the batterer attempts to reassert his authority (Carlin, 1998; Hart, 1996; Liss and Stahly, 1993). For wives, separation increases the risk of being killed by their husbands by a factor of four (Wilson & Daly, 1993) and 50% of all women murdered in the United States are killed during the process of leaving or after they have left a relationship (Hart, 1993; Walker, 1993)" excerpt from Robertson, N. 1999. p.55.

¹⁸ An application that proceeds without notice will only result in a temporary protection order and the respondent will be given the opportunity to be heard before the order becomes final.

¹⁹ Statistics from Ministry of Justice Family Court Database.

²⁰ Ibid.

²¹ *Domestic Violence Act 1995: Process Evaluation*, p 56.

The increased number of applications on notice means that:

- Less women apply for protection orders
- More women withdraw applications and thus have no legal protection
- More women and children are at risk of violence while they wait for the orders
- Ultimately, there is a barrier to women's access to justice.

The Increased Burden Of Proof

Refuge advocates, along with others in the family violence sector, are extremely concerned that it is becoming more difficult to get a protection order particularly when the past violence has been mostly psychological.

One advocate claims that 'women in the community have more difficulty [getting orders] and orders tend to go on notice particularly when there is no physical abuse even though they are stalked, harassed and intimidated'.²²

There is a heightened caution within the justice sector around granting protection orders that is impacting on women's access to justice. While advocates accept that there must be careful consideration about whether there is a 'risk of harm or undue hardship'²³ in order to grant a temporary order, many believe that there is now excessive caution and the pendulum of justice has swung away from a focus on safety for victims and more towards allowing natural justice processes for the respondent.

Judges, lawyers, police and the Legal Services Agency seem to be more disbelieving of women's realities of violence and require much more proof of violence.

Lawyers are warning women that their application will not be accepted if they do not have hard evidence such as pictures, police reports and doctors notes. This is especially true for without notice applications or where there has not been a recent assault. This perhaps overly cautious approach means that many applications do not even make it to the Family Court, and may be directly contributing to the decline in the number of applications filed.

The police themselves admit that only 10% of domestic violence is ever reported. It is also likely that any violence reported to Police or Child Youth and Family or noted by professionals and colleagues is only physical violence. Most common forms of abuse are hidden and do not leave physical scars. Even with physical violence, abusers are often careful about where they leave bruises so that other people will not notice. Thus it is common that women find it difficult to provide a lot of independent evidence that violence has occurred, but there will usually some supporting information (perhaps from whanau/family or friends) that women can furnish to the court.

When an application does proceed and there is a hearing, the victim needs to not only provide evidence of the abuse but also argue that legal protection is still necessary.

²² *Protection Order Survey* response. 2004. NCIWR: Wellington

²³ Domestic Violence Act 1995. section 13(1)

Several women said that they were refused protection orders because they had left the abuser and were considered by the judge to be safe (even though that is not how they felt).

One battered woman who was staying in the safe house with her two children had her application for a protection order denied. The judge claimed that although there had been violence, the woman was no longer at risk because she was in the Refuge safe house. The woman left the safe house and returned to the abuser so that she could reapply for a protection order.

Julie's story (below) shows how a judge discharged her protection order, against her wishes, because she could not provide evidence that she was still in danger.

In the Family Court situation judges are required not to look for evidence that violence has occurred 'beyond reasonable doubt' but must look at the 'balance of probabilities' that the respondent has used violence against the applicant. The Domestic Violence Act also requires that when deciding whether to grant a protection order, judges must take into account 'the perception of the applicant, or a child of the applicant' family, or both, of the nature and seriousness of the behaviour' and the 'effect of that behaviour on the applicant, or a child of the applicant's family, or both'.²⁴

Women's Refuge advocates believe however, that women's realities, especially their perceptions about the effect violence is having on their children, are not always being taken seriously by the court. In fact, there are still cases where the violence is being played down, women are still being blamed for violence, and are being seen as vindictive or manipulating. Women are also finding that they have to prove they are 'deserving' victims.

Women have reported that some judges have refused protection orders, questioning women's motivations for applying when they had already been putting up with the violence for so long. Women said they were told that if the violence were actually serious, she would have applied for protection before this.

One battered woman said that the Legal Services Agency also blamed her for not seeking safety sooner and denied her Legal Aid to seek a protection order. In her affidavit, the woman told how the physical and psychological violence was escalating and over the last few months had been happening at least once a week. She also described how the children were witnessing the violence. She felt that it was unsafe to leave before having a protection order as she feared the violence would get worse. However, when refusing her Legal Aid, the Legal Services Agency argued that by not leaving the violent situation this woman had put herself and her children at risk and because she was clearly not helping herself, they were not going to provide taxpayer's funds to help her.

The fact that a woman and her children have experienced violence over a long period of time should be seen as a greater risk factor, not a reason to deny them access to justice.

As well as proving the violence has occurred, and that protection is still needed, women are under another burden to prove, to show that they are 'deserving' victims – that they are not manipulating, vindictive women using the system to punish men.

²⁴ Domestic Violence Act 1995, section 14(5)

Victim-blaming discourses, a minimisation of violence, and the idea that women are manipulating the Domestic Violence Act have once again permeated the whole justice system,²⁵ making it confusing to women who do not know which judges, lawyers and police they can rely on to be focussed on the safety of victims.

These ideas are evident in the accusations, levelled by judges, lawyers, MPs and other groups, that women are using the Domestic Violence Act as ‘a sword not a shield’. This is most often referred to with respect to temporary protection orders. Judge Jan Doogue for example, claimed that women use temporary protection orders as ‘weapon’ against the father, denying or controlling the father’s access to their children.²⁶

The ‘sword and shield’ is in itself interesting phraseology – it refers to the idea that women should not fight back or try to equalise the power (meet the sword of violence with the sword of justice) but should only be cowering under a shield, unable to move, advance or act autonomously in the world. Under a shield women will always be on the defensive and passive.

What is missing from much of the discussion about women’s use of protection orders to limit men’s behaviours, is the recognition that if the men have been violent (which is why a temporary protection order has been issued) controlling their behaviour (stopping them having a gun, making them attend a programme, or restricting free access to the children) is *desirable* and may in fact be *vital* for other’s safety. The ability to apply for a protection order without notice is also designed to balance the power in a relationship of unequal and abusive use of power. The protection order is a one tool or tactic, provided by the state, that women can use to assert their right to safety and respect, when all their other avenues to autonomy and peace have been exhausted.

In his comments on Judge Doogue’s paper, Dr Ian Hassall (former Commissioner for Children) supports this view when he questions why it is not appropriate for a protection order to be used by a mother to control the access to the children by an abusive father. Dr Hassall asks, ‘Is that not the point of the legislation if it is done to make the child safe? What the non-custodial parent regards as unwarranted denial of access many well be regarded by the custodial parent as warranted and the onlooker may have difficulty deciding between the two’.²⁷

In their discussions with lawyers about domestic violence, Pond and Morgan raised concern about the way some lawyers talked about protection orders as being “weapons used by vindictive women, as having overly restrictive effects on men’s rights, and as being enforced inconsistently and selectively by women”. Pond and Morgan claim that these discourses

[a]ll divert attention away from women’s suffering or need for protection to the negative consequences protection orders have for male respondents. Furthermore, these discourses contrasted significantly with women’s representations of their ex-partners as perpetrators of violence, and themselves as victims/survivors of violence who use protection orders for their own and their children’s protection...Not only are women’s experiences of domestic

²⁵ These are the same stereotypes and myths that were identified and critiqued by researchers prior to the implementation of the Domestic Violence Act.

²⁶ *The Domestic Violence Act 1995 and s.16b of the Guardianship act 1968 – the effect on childrens’ relationships with their non-custodial parent.* Child and Youth Law conference, 2004.

²⁷ Notes on Judge Jan Doogue paper circulated by Dr Ian Hassall.

violence not validated or treated seriously, some women (and their children) could remain legally unprotected from domestic violence as a consequence.²⁸

The experience of Refuge advocates is that the vast majority of women do not use the Domestic Violence Act in a vindictive manner. The financial costs and time involved with making the application alone are enough to ensure this. Furthermore, as has been discussed, to get a court order victims of violence must provide statements and support for the fact that there has been violence. It would be very difficult to completely make up a history of abuse. Some women's actions are labelled as vindictive or manipulating by abusers, but these are most often the women who are desperate to keep their children safe and are living in fear.

However it is the experience of Refuge advocates that some men do use the justice system in an abusive manner to continue their violence. These men are often well-off with good jobs, who are articulate, well-presented and know their way around the system. When their other avenues for dominating women are taken away, these men use the legal/justice system to extend their control and to punish women, emotionally and financially. It is clear from the case studies included in this report, and from the advocates responses, that being abused through the legal system is not a rare experience for women in Aotearoa/ New Zealand. Abusers call police and accuse women of assault when there has been no violence or when women have defended themselves. Abusers apply for protection orders against women or against new partners, when they are in fact the aggressor. They file for custody, access, and relationship property then often do not turn up in court so as to drag the case out, and then file again if unsuccessful.

In one area, lawyers were advising women whose abusers were litigious to not apply for a protection order because this just gave the abuser more opportunities to keep harassing her through the court system.

Moreover, the abusers who use the court and Domestic Violence Act sometimes represent themselves, forcing women to face them in court. There has been some public concern around the fact that accused in rape cases have been able to defend themselves, which means they ask questions of and cross-examine their victim in the court. Many see this as a deplorable as it effectively allows the perpetrator to continue abusing their victim. Yet, this same situation happens daily in Family Courts. Within the small space of a Family Court mediation or hearing, the abuser can use intimidation tactics, the signals or cues that a woman has come to learn mean "back down now or else." Women are often very afraid and can be distracted by the fear of violence. As Karen's story (below) shows, women can feel unable to stand up for themselves and sometimes their lawyers are equally intimidated or unsure and so also do not defend women adequately.

²⁸ Pond, R and Morgan, M. paper in publication. *A Harmful Weapon? Empowering Protection? Or Just A Piece of Paper?: Discursive constructions of protection orders by New Zealand lawyers working with partner violence.* p1 & 23.

Ensuring That Access To The Court Is As Speedy, Inexpensive, And Simple

Speedy

One way the Domestic Violence Act intends to provide “speedy” protection to victims of violence is through a without notice application for a protection order, discussed above. A further way is to ensure that the time taken to get applications and breaches through the court is as short as possible.

Judge Recordon recently claimed that there are 8-12 week delays for defended hearings.²⁹ He said that more than 80% of victims retract their charges if they are faced with delays. While he believed that the retraction was because “time dulls the pain”, domestic violence advocates claim that women withdraw because they feel unsafe waiting for the hearing and because the wait allows the time for respondents to work on women, pressuring them to withdraw.

Advocates said long delays in the court processes give men a chance to be on their best behaviour which makes it difficult for women to argue that there is still a safety issue. One advocate said that lawyers were telling the respondents to defend a temporary protection order

on the last possible day, attend a programme voluntarily, and leave the applicant alone. When the case finally gets to court, the applicant’s lawyer struggles to prove that the need for safety still exists, so the protection order is discharged and the respondent has the power again. The violence starts again. Women are reluctant to reapply as the first application was so difficult.³⁰

The delays when dealing with breaches of protection order are discussed below, and several survey respondents also highlighted the issue of long delays in the service of protection orders. One advocate claimed ‘there are huge delays in serving order with no clear process or high priority given to them’.

Inexpensive

Despite the objective of the Domestic Violence Act to make legal protection accessible and inexpensive, domestic violence advocates believe that the costs of applying for protection orders are prohibitive. The immediate or delayed costs stop women from accessing legal protection and thus are a barrier to women’s access to justice.

It is widely believed by members of the public and even those working in the legal/justice area that Legal Aid is available for those seeking protection orders, but the reality is that only some women are able to use Legal Aid. If a woman is working even part-time she is likely not to be eligible. Some Refuge advocates said that lawyers will not even accept applications for Legal Aid: They say “if you’re working don’t even bother applying.”

²⁹ “When violence hits home” *Weekend Herald* May 29-30 2004. pB12.

³⁰ *Protection Order Survey* response. 2004. NCIWR: Wellington

The *Domestic Violence Act Process Evaluation* interviewed 41 protected persons, seven of which did not get Legal Aid for their application and had to pay up to \$10,000 for their protection order. Recent figures show that that in 2002/2003 only 42% of applicants for protection orders under the Domestic Violence Act used Legal Aid.³¹ This means that 58% funded their own applications.

For the many women who are unable to access Legal Aid, the financial burdens can be so overwhelming that it is easier for them to return to an abusive relationship.

Refuge advocates have reported that it costs women anything from \$500 for a lawyer to help her get a protection order. But when the application is defended (as is happening more these days) then these legal costs skyrocket into the thousands of dollars.

Of the 24 Refuges surveyed, 15 said that cost was one of the main factors stopping women from applying for protection orders, and 17 said that the system was very unfair to women who were unable to get Legal Aid and had to pay hundreds or thousands of dollars for their safety and protection.

One Refuge advocate said that a number of women she had worked with did not continue with their application for a protection order once the lawyer had told them how much it would cost, despite being badly beaten. Another said that the initial cost does not seem too bad to some women, but when an order is defended, the costs escalate and it quickly becomes too expensive for women to manage. Many women can't afford the debt, and resent the costs when they are not the one who has been violent.

The current Legal Aid threshold is so low that many victims of violence are unable to access effective protection under the Domestic Violence Act. Many of applicants who are ineligible for Legal Aid will only be just over the threshold, in the low-income bracket of \$20,000 - \$30,000 a year. Others are denied Legal Aid because they own part of the family home.

However this policy of taking family income into account in Legal Aid applications for protection orders does not fit with the realities of domestic violence, where financial abuse often accompanies other forms of abuse and violence. Women whose income on paper may be higher, do not necessarily have access to their personal or family income due to the control that their abuser holds over their finances, or the level of debt incurred by abusers.

The answer to the costs for protection order applications however, is not simply to extend Legal Aid by removing the assets test for all applicants, because for those women who do receive Legal Aid, the legal process is still far from "free."

When victims of violence apply for an order under the Domestic Violence Act, they are meant to be exempt from the \$50 contribution required for other Civil Legal Aid applications. In practice however, some lawyers are charging this contribution. Sometimes this is due to the fact that applications for custody and access that often occur at the same, do require a \$50 contribution. However, Refuge advocates have reported women being charged \$50 when there was *only* an application for a protection order. For those on very

³¹ Statistics provided by Legal Services Agency.

low incomes who are eligible for Legal Aid, even \$50 is beyond their budget.³² Some women are able to access this money from Work and Income, but usually have to pay it back. There is no Special Needs Grant or other benefit for victims of violence needing to pay for Legal Aid. It is not common practice that women receive any financial assistance from Work and Income for legal fees, if any money is granted, it is at the discretion of Work and Income managers.

Furthermore, when women applying for protection orders also apply for Legal Aid to sort out custody and access issues, they have a charge put on their assets, meaning they have to pay back the legal costs when they sell their assets.

Often women who are escaping abusive relationships have to move house (sometimes several times due to harassment and stalking) and so must pay their legal bill from *their part* of the sale of their house.

Recently, the Domestic Violence Standing Committee of the Family Law Section part of the Law Society raised these very concerns.³³

The group of lawyers pointed out that Legal Aid applications for a protection order come under the Civil Legal Aid system, where the applicant's house, car and furniture are taken into account when assessing eligibility. However under the Criminal Legal Aid system (which the violent person could be eligible for if they have been charged with assault for example) this disposable capital is not taken into account.

The significant cost of engaging lawyers is not returned to women. Lawyers rarely ask for costs and judges rarely award costs to the victim, even in cases where highly litigious respondents take women to court several times.

Those women who are unable to afford protection orders have fallen back on other options, such as warning letters sent by lawyers, or undertakings. An 'undertaking' involves a signed agreement from the abuser claiming they will stop being violent. Undertakings are more common in some areas, although Refuge advocates say that they are mostly used by lawyers not experienced in family violence. Women are sometimes encouraged by the abuser's lawyers to agree to an undertaking instead of a protection order (encouraging women to withdraw their application) on the understanding that the abuser will not go for custody.

Advocates for women and children are concerned that undertakings do not provide safety and have little legal standing if the violence continues. A woman leaving a lawyer's with an undertaking is like Chamberlain returning to Great Britain with the "Peace In Our Time" agreement, said one advocate. Many abusers sign to placate the woman, divert the process of true justice, and have no intention of changing their behaviour. Moreover, the victim of violence is left on the back foot, having backed down from challenging the abuse, she may be more at risk from further violence, and she has also paid for legal services that have not provided her with protection.

³² Reported by Refuge advocates and also in Joanne Morris. *Women's Access to Legal Services: Women's Access to Justice: He Putanga Mo Nga Wahine Ki Te Tika*. 1999. Law Commission: Wellington. p55.

³³ 'Access to Justice and Protection For Victims of Domestic Violence' *The Family Advocate* 6(1).p10-11.

While the object of the Domestic Violence Act is to provide inexpensive access to legal protection, many women are paying for their victimisation again by facing a huge financial burden when they try to remove themselves from an abusive relationship. They often see the costs as further abuse leading to further hardship.³⁴ This is especially true when the abuser is able to access Legal Aid and the victim is not, or when abusers use Legal Aid to defend every charge or continue filing for court orders as a way of extending their control and intimidation. Women are being financially abused, stripped of their income and assets along with everything else that has been taken from them by the abuser, while trying to obtain their human right to safety.

Simple

Under the Domestic Violence Act, there is clearly the intention that the process for applying for an order should be an easy procedure of filing in a form and affidavit and personally lodging it at the court, with information being provided by court staff if needed.

In practice though, very few people do submit applications without the assistance of a lawyer. Ninety six percent of applications for protection orders are made through a lawyer.³⁵

Making an application without a lawyer may be seen by some as a way to avoid the costs of gaining a protection order, but domestic violence advocates claim the process is too complex and routinely advise women against making an application alone. Women's Refuge advocates report that when women apply themselves, they seem to be less likely to be granted the order, or if a without notice application does proceed it is more likely to be put on notice by the judge.

Advocate's perceptions that judges do not view applications without a lawyer favourably, is supported by judges themselves:

Judges interviewed [for the *Process Evaluation*] were opposed to the practice of applications being made without a lawyer on the basis that such applicants often provide insufficient evidence and may have their application turned down, put on 'notice', or if the temporary order is granted, challenged by the respondent.³⁶

Some Refuge advocates have sufficient legal training and experience to be able to assist women to apply for protection orders when they are unable to afford a lawyer, but this level of expertise is not available at all Refuges and due to heavy work loads and low funding, many Refuges struggle to find the time that this takes.

If an application is defended, women will nearly always have to engage a lawyer or withdraw the application. Understandably, very few women are in the position to be able to defend themselves against their abuser in court.

While the intention of the Domestic Violence Act may have been to enable applications under the Act without legal representation, this is not how the Act works in practice today. The recent trend noted by advocates and lawyers, of an increase in respondents defending

³⁴ Morris, *ibid.* p 55-56.

³⁵ *Domestic Violence Act 1995: Process Evaluation*, p48-49.

³⁶ *Domestic Violence Act 1995: Process Evaluation*, p11.

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protection orders is making the process for gaining legal protection more complex and inaccessible for victims of violence. Urgent attention is needed to the process for gaining protection because the already complex process is alienating many women.

Providing Programmes For Persons Who Are Victims Of Domestic Violence

Many Refuges and Stopping Violence Services provide programmes for women and children who have experienced family violence. Some of these programmes are court-approved and thus free to any woman or child with a protection order. The experience of domestic violence advocates is that these programmes are extremely beneficial to women and children, enabling them to understand the effects of violence and learn how to keep themselves safe.

This is the one area of the Act where the justice sector, particularly the Family Court, has focussed on improving their response to victims of violence. Refuges report that the approval process for programmes has improved. However, there are still concerns about the low up-take of programmes. Domestic violence advocates would like to see the majority of applicants and their children attending programmes. One of the main reasons is that this is where they learn about how protection orders work.

Advocates believe the up-take of these programmes could be improved by four initiatives:

- Changes in way funding is allocated
- Providing funding for non-mandated persons
- Improvements in the referral process
- More availability of programmes to meet particular needs

The present funding system means that mandated persons carry with them funding for attendance at an education programme on a session by session basis. While the provider has to organise and run an entire education programme, there may not be regular funding if clients do not attend some sessions. Funding for an entire programme would give providers more certainty, and mean more programmes could be available.

Most Refuges will find ways for women and children to attend programmes, even if they are not mandated by the courts. Some agencies have been able to access funding for non-mandated programme participants under the Te Rito project.

Earlier access to education and stopping violence programmes would play an important preventative role in reducing the harmful effects of family violence, and reducing the number of whanau/families needing to use the Domestic Violence Act. This has an impact not just on individuals but has a wider social benefit. Seen as a preventative measure, non-violence programmes should be available in the same way that relationship counselling is currently.

Generally, Refuges that run education programmes for women and children do not receive many referrals from courts, although in some areas, referrals are increasing after cultivating a closer working relationship between Refuge and Family Court staff.

Domestic violence advocates said that there are not enough programmes available to meet the needs of the diverse population, and called for the provision of more education and stopping violence programmes for Maori, lesbians, migrants, and Asian and Pacifica women and children.

Requiring Respondents To Attend Stopping Violence Programmes

Groups providing programmes for respondents and perpetrators of domestic violence have raised concerns that the numbers of referrals to these programmes is dropping. Statistics from the Ministry of Justice show that the numbers of respondents and associated respondents directed to attend programmes has declined by 32% in the years from 1998-99 to 2002-03 (4410 to 2997). The National Network of Stopping Violence Services have experienced a significant decline in referrals to respondent programmes, and have claimed this threatens the viability of many programmes around the country.³⁷

Advocates are also concerned about the lack of action when respondents are directed to attend a stopping violence programme but do not turn up for all the sessions. Non-attendance is a breach of the protection order. Programme facilitators and the women protected by the protection orders routinely inform the police and courts that respondents are not attending, but this is not followed up and there are often no consequences for respondents who fail to follow the court direction.³⁸

A community meeting of domestic violence agencies in Hamilton claimed that '[i]n the absence of timely and effective enforcement, respondents are increasingly treating attendance at programmes as voluntary and rarely complete all sessions.' They said that many men were finding excuses for non-attendance.³⁹

The requirement that respondents attend a stopping violence programme is one of the central motivations for women taking out protection orders. Many women want the violence stop but they still care for their abusive partner or family/whanau member, or are concerned that the abuser changes their violent behaviour to become a safe parent.

When abusers are not directed to programmes by the court or when they do not attend, the safety and protection of women and children is put at risk. Abusers avoid having to face up to their own behaviour, and so will more than likely carry on being violent. This means men miss a vital opportunity to become safe and respectful family members, and to live without other people being afraid of them.

Allowing respondents to avoid stopping violence programmes sends the message to the abusers and to the victims, that the violent actions were not serious and/or do not need to cease. It is definitely antithetical to the message (outlined in the object of the Act) that domestic violence is unacceptable and victims should be afforded protection.

³⁷ Personal correspondence with NNSVS National Manager.

³⁸ This issue is also discussed in the *Process Evaluation* which found that only a third of respondents who are referred to a programme actually complete the programme, and claimed that the most likely explanation for respondents not attending was that prosecutions for non-attendance were not pursued. p129.

³⁹ HAIP minutes May 2003.

Providing More Effective Sanctions and Enforcement Of Breaches

The sanctions provided by the Act against those who use domestic violence are one of the most pressing concerns raised in this report. Of the 24 Refuges surveyed for this research 20 identified that the justice sector response (from police, courts and judges) to breaches of protection order was inadequate to protect the safety of women and children.

Before outlining these concerns, it must be noted that nearly all Refuges report that response from the police has improved over the years and now there are many officers and police districts committed to women and children's safety.

However, advocates and women who had experienced violence, identified several areas where there concerns that not enough action was being taken to hold abusers accountable for on-going violence.

The central concerns are:

- Reported breaches of a protection order are not always followed up.
- Police often do not arrest for breaches even though women feel that their safety is at risk. They sometimes give a warning to the abuser.
- Breaches of protection orders are treated as being in the past (not something that needs to be actioned urgently, or not relevant to current safety of women and children).
- In taking the case to court, prosecutions rely on solely on women's testimony and, contrary to police family violence policy, they do not collect independent evidence to support the case.
- When charges for breaches are laid, the case can take months to go to court.
- There are bargains made with the respondent, and charges are dropped or reduced.
- Breaches are not always viewed as serious crimes.
- Women are blamed for being complicit in breaches when they have any contact with the respondent.

When one local Refuge asked women who used their services what they thought about protection orders, many commented that the orders were not worth the paper they were written on, a view mostly based on their own or friend's experiences that protection orders were not followed up. The women made some of the following comments:

“They are f*** useless. What a waste of time getting this order.”

“I wouldn't go anywhere near a protection order. I've seen them (the police) with my sister and my friend who both have protection order and custody orders. No one is willing to do a bloody thing when these men breach, not even the courts”.

“I would rather put up with the on-going abuse than get a protection order. I don't trust the police or the other powerful agencies.”

“Why do I feel like I'm in the wrong when he breaches. The police really play it down, and I'm wasting their time.”

“No, I’m not getting a protection order. Do I have the word stupid written across my forehead. Read my lips “No way”. All those men know they don’t have to listen. What a joke.”

“I rang the police and told them my partner had breached. The police said they had more urgent things to do. However, they did ring back three times to see how I was, but 5 days later they still haven’t breached him.”

Battered women spoken to for this research said that they said that they had the impression that judges and police were not taking the violence seriously especially when it was violence other than a beating. Some women said police often told them there was nothing they could do; and often would not turn up when women reported breaches.

Several women said that police seemed to assume that because the abuser was no longer there, the woman was safe and it wouldn’t be worth following up as the Police might not be able to get much evidence.

One woman said she was told by police that they would not follow up breaches until there had been three breaches reported (a misunderstanding of the law based on out-dated legislation).⁴⁰ Several other women said to the contrary, police would not respond to repeat calls from the same address when it was not physical violence.

Karen’s story (below) shows that police did not take her reports of breaches seriously (telling her that he “hadn’t done much”). They did not attend her call and advised her that she had to go to the station to make a written report.

Pat’s story (below) shows police not responding to serious breaches of a protection order, and allowing children to remain with their father who had directly assaulted them and allowed them to witness his violence, because they claim they have no power to uplift children under a protection order.

Under the Domestic Violence Act, if a respondent breaches the conditions of the protection order, he can be arrested (section 50) and charged with the offence of contravening the protection order (section 49) as well as any other offence committed at that time (assault, misuse of a phone, theft etc). If he is arrested then the Act requires that the respondent be held for 24 hours, or until he goes to court (previously section 51 of Domestic Violence Act, now section 23 of the Bail Act 2000).

The numbers of breaches of protection orders and other Domestic Violence Act offences have been increasing. From 1996-97 to 2002-03 there was a 48% increase in recorded offences under the Domestic Violence Act. However during this time the number of applications for protection orders has been declining.

Police statistics from 2002-03 show that only 59% of recorded Domestic Violence Act breaches result in the arrest of the offender, while 14% were cautioned. The remainder received no sanctions from police.

⁴⁰ The issue of mistakes around “3 breaches needed” was also reported in the *Domestic Violence Act 1995: Process Evaluation*.

In 2002-03, 14% of recorded offences for breach of protection order remained unresolved by police.⁴¹ While it might seem acceptable to have an 86% resolution rate of reported crime, it must be remembered that, unlike many other crimes, this is a crime where the offender is known.⁴²

Some women spoken to for this research said they were concerned about inconsistent police policy and lack of understanding about the dynamics of domestic violence. They said they were treated differently depending on the police officer they talked to. Some officers were judgmental of women who did not leave the violent person, or made assumptions that the violence was “mutual” that women were somehow to blame for what had happened. Some police pressured, and were disdainful of, women who withdrew their statements.

One woman rung the author of this report, concerned that the local Police Family Violence Coordinator had threatened to apply to the court to have her protection orders discharged because she had made a complaint about a breach of protection order but did not want to provide any more statements or go to court. The woman was upset because she had to see the abuser when he came to get the children. She wanted to keep the protection order, and she wanted the violence to stop. But she felt that she would be hassled and harassed and her children would be unsafe if the abuser thought she was ‘dobbing him in’ to the police.

The *Domestic Violence Act Process Evaluation*⁴³ found that there were a mixture of responses from police to breaches of protection orders from good (where police acted quickly, taking it seriously, and there was a whole justice system response), to poor responses where there was no action because the case was not seen as serious or the Act was not understood.

In the *Domestic Violence Act Process Evaluation* police officers interviewed said that they did not know how to deal with some of the complaints about breaches laid by protected persons. One officer was quoted as saying:

There’s a few things, the phone call aspect of it, if its not persistent phone calls. It’s a lower threshold. From a cop’s perspective it’s a training issue. If there are breaches, we tend to say ‘get a life’, rather than really dealing with it cleverly. We need to have more appropriate training. It’s hard to understand the issues involved if a guy looks like he’s trying to win his partner back.⁴⁴

While one can understand that police must feel frustration at not having full cooperation from victims, one must also understand that for victims their safety and peace is often at risk. It was explicitly recognised by police and those drafting the Domestic Violence Act the compromised and unsafe position women are in when they report domestic violence. Most victims of crime do not have to have continual day-to-day contact with the offender nor do victim and offender usually share an intimate history or on-going personal relationships that tie them together (like both parenting the same children).

The concerns around Police not following up and arresting for reported breaches of protection order centre around the interpretation of sections 49 and 50 of the Domestic

⁴¹ Statistics provided by National Police Headquarters.

⁴² Police policy requires that police investigate domestic violence crime without relying on the witnesses’ statements.

⁴³ *Domestic Violence Act Process Evaluation*. p88-89.

⁴⁴ *Domestic Violence Act 1995: Process Evaluation*, p 107.

Violence Act which outlines offences and the power to arrest. Section 50 says that Police must take into account the risk to the safety of any protected person if an arrest is not made; the seriousness of the breach; the length of time since the breach; and the restraining effect of other people and circumstances on the respondent.

Advocates claim that if a woman has a protection order, and the respondent breaches conditions of the order (for example by being violent or threatening (section 19) or by making unwanted contact (section 20)) then there should be an arrest. No breach is trivial or 'technical' because the breach occurs in a context of other acts of violence and control (that is why an order was issued). Any time a protection order is breached there is a risk to the safety of the protected person. Even if the breach occurred a few days or weeks ago, breaches are still relevant to women's and children's current safety and protection and should not be dismissed as historical. Often the time delays between the breach and the police investigation are due to the police, not the protected person, failing to take immediate action.

Some Police districts have developed policies or practice notes for police that support this interpretation of the Act and encourage treating all breaches seriously thus arresting. However, the way that this part of the Act is interpreted by police varies from district to district and from officer to officer which means women routinely encounter police not willing to make an arrest for a breach of a protection order.

As well as issues around arrests for breaches, the Family Violence Network of Wairarapa recently raised their concerns about effective prosecution of breaches of protection orders. In a letter to judges and Police prosecutions, representatives of Stopping Violence Services, Community Corrections, Women's Refuge, Relationship Services, Safe and Healthy Community Council, Kokiritia Violence Free Wairarapa, Sedgley Family Centre along with the local Police Family Violence Coordinator, said that they were concerned about

instances where offenders have been arrested and charged with serious offences, MAF [Male Assaults Female] or Breaches of protection orders, these matters have been minimized both at Status Hearings by the Judiciary and the Prosecuting Officer during the court process. Assault charges have been reduced to Common Assault, whilst there has been a withdrawal of Breach of protection order, in order to facilitate the matter through court.'⁴⁵

The group also said that the minimization of violence means protection orders are becoming ineffective and the community is receiving a message that the impact of violence on victims is not taken seriously and that perpetrators will not be made accountable.

The reduced charges mentioned by the Family Violence Network of Wairarapa is one example of the unacceptable "trade off" around protection orders that have been raised by many victims and advocates.

Furthermore, advocates have also raised concerns about the length of time that it takes for breaches to be heard in court. A letter from the South Auckland Family Violence Prevention Network⁴⁶ claimed that breaches were taking up to 5 months to be heard. The following example is outlined in the letter:

⁴⁵ Letter dated 23 July 2004 from Family Violence Network Wairarapa, signed by the groups listed.

⁴⁶ Letter titled protection order Breach Delays. Dated April 2003, signed by Chislane Theodore.

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There is a domestic dispute, the victim gets a protection order and goes into refuge for 6 weeks. Returns home or re-locates. Her ex-partner arrives. She beaches him [reports the breach to the police]. He gets locked up for the night and goes to court and pleads not guilty. The safety factor for the victim is at risk again, especially if the defendant does not care or is familiar with the judicial system, the client knows that every time she breaches the defendant, she is committing herself and her children to another 5 months of danger and disruption at home and at work. Therefore she considers her alternatives. The victim is required to give evidence in court at the defendant hearing which is scheduled some 5 months later. Within 5 months is the client supposed to relocate again? Go to refuge again? Financially and emotionally this is not a feasible decision. After exhausting all her resources the first time she probably remains [in her house], knowing that she may encounter another visit from her ex.

There are several significant problems that arise from a lack of response to breaches of protection orders.

There are serious outcomes if respondents are not arrested the first time they breach the order; or if they are discharged; or if the case takes months to come to court. Abusers will think that they can get away with anything- that the law can not stop him from what he believes is his right to dominate or punish his family.

Just the threat of legal sanctions is enough to stop some respondents contacting or continuing to abuse women. As a broad generalization (based on advocacy experience and an analysis of domestic violence) there is a group of men who have not had much to do with the justice system before. Commonly, these are men who are better-off and have good jobs. These men will try to watch their actions because they do not want to be arrested or go to court. However, when they first have the protection order taken out against them (perhaps before they have completed a stopping violence programme and looked at the behaviour), many of these men do not accept that their actions are wrong and unwanted. They believe that they have the right to control partners and children, and to dish out punishment. They think that's what men do as the 'head of the household'. They minimize the violence they have perpetrated, especially when it is psychological and sexual violence, blame the women and children, and do not think about the fear and the hurt they cause. These men also often believe that women should forgive them, and so they try to 'win' women back with presents or promises. They usually believe they have the right to see their children and have a say over what their children do, even if they have been violent to the children themselves.

For men in this group, it is essential that the conditions of the protection order are explained well to them, but then if they breach the order, they must be arrested. It is important that they know there are consequences for continuing to abuse, and they need to get the message that they must address their attitude and behaviour. A warning will have no effect. If the breaches are ignored, this will only convince them that they are in the right, that their violence isn't serious and that the victims were just overreacting ('they don't really mean it').

Looking at it from this way shows how vital it is that police act on even small breaches (like sending letter and ringing up). To the victim, apologies and presents are all part of the abuse and his minimization of his violence and domination. The abuser's actions instill fear and convey the message that he can do what ever he likes – he is still in charge. It could be one short step from this to a serious assault or threat on her and her children's lives. To the

abuser, continuing to ring and write shows he does not care about the fear and harm he has caused and does not respect the victim's wishes. If the police fail to act, he believes he's justified and he can carry on as he always has. If the police fail to act, she believes she is not safe.

However, there are abusers who do not seem to be so worried about being involved with police and courts. For these men again though, it is clear that when there is no or little response to their breach of a protection order, it makes them more cynical about the system and surer about their ability to do what they want and get away with it. For them the protection order may mean little, thus it has to be backed up with the weight of the justice system, by acting on every breach.

If action is not taken on improving the enforcement of protection orders, more women and children will be murdered (as Wendy Mercer and her baby were recently) and many more will be hurt, threatened, and harassed.

Wendy Mercer had a protection order against her ex-partner, Kelvin Mercer. He had come to the house and there were disputes about custody and property. Wendy called the police and reported it. The police took no action. It was reported in the media that police claimed the breaches were 'minor' and not 'violent'.⁴⁷

However Wendy's actions do not support the view that his actions were trivial and non-violent. She called the police. She had an alarm installed. She told people she was fearful for her safety. She organised an escape plan for the children.

Kelvin broke into her home and stabbed her and her baby to death and tried to murder her two other children before setting himself alight.

As with all family violence deaths, these three deaths were preventable.

Along with stopping violence programmes, support for victims, and communities that regard violence as unacceptable, there also has to be effective sanctions against those who continue to abuse if we are to address the epidemic of violence in Aotearoa/New Zealand.

⁴⁷ Reported in 'Father sought hospital help before killings' *Sunday Star Times*, May 23 2004. p3.

CONCLUSIONS

The Domestic Violence Act is one of the most important tools we have available to prioritise protection, safety and societal intolerance of violence. When we fail in our efforts to provide these things, women and children are revictimised and abused, this time by a system's failure to respond quickly to their right to safety and understand their fears and concerns.

The consequence of time delays, lack of awareness, prohibitive costs, and lack of action is that women and their children become less and less likely to seek legal and police protection, and so their lives are at greater risk.

Overseas research has shown that when the justice system is working well in response to victims, it is not only women and children's lives that are saved. Fewer men die too. New partners of battered women are at less risk of being assaulted or killed, and as battered women have a greater range of options, they do not think that killing their abuser is the only way to end the violence.⁴⁸

Women's Refuge wishes to promote a return to the intent of the Domestic Violence Act. The Act established new benchmarks for the analysis of domestic violence as a crime against society, not a 'relationship problem'. The Act rightly focussed on victim's safety, and set up initiatives to change the behaviour of violent offenders.

Women's Refuge is keen to work with government agencies to look at practices and policies, and find ways of overcoming the barriers that prevent the full implementation of the Domestic Violence Act. Some initial recommendations are:

- That on going domestic violence training and education for the justice sector is implemented and that domestic violence advocates are involved in this training. Those people who work with whanau/families must have an understanding of the dynamics of domestic violence so that they can protect the most vulnerable in our society, that is children and women.
- That there is a commitment from both government and community agencies to working together so that there can be a whole system approach to safety, protection and accountability. Community agencies working with victims and perpetrators can play a vital role in analysing and providing feedback on the effectiveness of systems. The work to identify and reduce gaps where abusers can climb out and victims can fall in, is work that must be done collaboratively.
- That all agencies look at improving the consistency of response to domestic violence, so that safety and protection are not dependant upon where the victims live, or the particular police officer, lawyer or judge they come in contact with.

⁴⁸ Reported in Kimmel, M. 2002.

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It must be stated clearly that we are in no way calling for the legislation to be reformed or abolished, nor do we believe the Domestic Violence Act has failed women. The concerns raised by women and advocates in this report are around the implementation of the Act. The Domestic Violence Act allows opportunities for children, women, and men to live free from violence, but some current practice is not enabling the Act to be used to the full potential. Proper implementation of the Act is critical if people are to access these opportunities.

CASE STUDIES

PAT

Pat had been living with a violent man, Rick, for 10 years and has two children to him, Jamie 4 ½ and Peta 8. Rick had physically and sexually assaulted her on many occasions and used psychological abuse tactics to control, intimidate her, leaving her fearful and believing that she could not do any thing else. He had also physically assaulted the children and had allowed them to witness his violence. She separated from him a year ago and successfully applied for a protection order. She only remained apart from him for a while and reconciled with him after he pleaded for her to return with the children and he promised to treat her better. Very soon after they started living together she realized that his violence had not stopped but when she mentioned leaving again, he threatened to call CYFS and report her as a neglectful mother (which he did). She did however manage to leave and went to stay with a friend while she applied for a custody order and occupation order so she could return with the children to her house.

In the affidavit she supplied to the court she noted that she already had a protection order and that she urgently needed the custody and housing sorted out, as she was afraid for her safety when Rick found out she was applying. The judge however, put the application on notice, and made the comment that she should apply for a protection order (he had failed to read her affidavit properly). When Rick found out about the application he came to where Pat was staying and assaulted her, punching her while she was on the phone dialing 111. Both children were in the room. After he assaulted Pat, he took the children and fled to his house. The police arrived, and upon being told that Pat had a protection order against Rick, went to talk to him. He claimed that Pat had a drug and alcohol problem and CYF were investigating her. CYF had received a complaint about Pat, but this was a vexatious claim by Rick, motivated by his desire to continue to harass and intimidate Pat and hurt her by taking the children away. CYF was not following up the complaint against her, but had been told that Rick was physically violent towards the children (and had not acted on that). However, police listened to Rick's story and completely disregarded the fact that there was a protection order against him, and no custody order in his favour, thus he was not allowed to have sole custody of the children. Police also failed to arrest him for breaching the protection order and for assaulting her.

Pat was with the police outside the house when they went to talk to Rick. Jamie climbed out the window twice to see his mother, and came running over to her. Both times police picked Jamie up and took him back into the house to his father.

Pat is at a complete loss about what to do. She is desperately afraid for her children's safety and feels overwhelmed by the system that seemed to be supporting him and attacking her at every turn. Rick is a charming man, who is articulate, clever and always able to sound credible. Pat feels that she will never be able to stand up to him.

MERE

Mere had a long term relationship with Chris and they had 8 children together. Chris had physically assaulted Mere on several occasions and Mere had called the police. Most of the violence Chris used however was psychological- he constantly accused Mere of having affairs, he kept her locked in the house and took the car keys, threw things at her while she was asleep, cut up her clothes, and threatened her. Chris had also been in prison for dealing drugs.

One morning Mere woke up with Chris' fist hitting her face and she called the police and came into a Refuge safe house with her 8 children. The police did not charge him for this assault. When Mere went to a lawyer, she was advised that she did not have enough evidence against Chris and so she wouldn't be able to get a protection order. The lawyer suggested an undertaking instead and Mere got this. However the violence and harassment from Chris continued. He found out where the safe house was and drove past several times. He texted and emailed her abusive messages. He sent a friend to the safe house to leave bags full of Mere's broken possessions. The eldest child saw Chris outside the safe house and everyone inside was scared. They hid under beds and behind couches and another woman rang the police. Mere and the advocate both talked to police, but said that it was difficult to get the police to accept that there had been violence (because it was not physical) and because Chris alleged the violence was all mutual and that Mere had been having an affair. However, the police did suggest that she apply for a protection order and the Refuge advocate helped her gain an order without the support of the lawyer.

Mere wanted to move to another town a few hours away where she would have the support of her whanau to look after the children. The Court granted Mere interim custody and permission to leave the area, but Chris applied to the court to prevent her removing the children. With the support of the Counsel for Child, Chris was successful. Mere was not allowed to leave the area, and the judge told the refuge workers that if they helped her leave however, the police would come and arrest Mere at the safe house.

Mere ended up staying in the safe house for 6 months while the cases went through court. Chris successfully applied not to have to attend the stopping violence programme, but did not defend the protection order.

KAREN

After 13 years of physical, sexual and psychological violence from her husband, Darryl, and Karen left him, taking their three children, and sought a protection order against him and his brother. When she first left him, Darryl broke into her house, beat her up, raped her and slashed her with a knife. He continued to threaten to kill her. The brother, Wayne, had also verbally abused and threatened to kill her, and she was fearful of them both. Neither men contested the protection order when she applied for it.

Once she had left Darryl and had a protection order, Karen thought that life would be easier and safer, but what started was a year of hell that made her thinking that she just should have put up with the violence and never taken out the protection order.

Karen wanted no contact with Wayne (whom she knew was violent towards his own partner), but she did want Darryl to continue to see his children as she thought that that was what would be best for the children. She knew that this would mean that she would inevitably have to see or talk to Darryl about matters to do with the children, but at the same time she was concerned because Darryl manipulated the children, crying and telling them it was all Mum's fault, and encouraging them to get her to drop the protection order. He also yelled at Karen every time he saw her, in front of the children, and told the youngest daughter that he wasn't her real father, and he was going to kill Karen for having an affair.

Karen put up with Darryl's threats and harassment for the sake of her children being able to see their father. But she told Wayne, the Uncle, that she was not willing to him to be involved in the children's lives.

One night out with friends she ended up at a pub where Darryl and Wayne were drinking. Darryl 'had a fit' started yelling and had to be dragged outside by a few people. Karen rang the police about the breach of protection order and was told that she shouldn't have gone there and that 'he didn't really do anything.' She had to go down to the station to make a report. The police would not attend.

When Wayne turned up to one child's sports game, Karen immediately rang the police to report a breach of the protection order. The police said that she needed to come to the police station to make a report and there was nothing that they could do at the time, even though she felt intimidated and scared while he stared at her from the other side of the sports field. After the game she walked the long distance to the station to make the report. The next week he also turned up and she immediately rung the police again, and received the same message.

One week later the police came to talk to Karen and she said that she wanted him arrested for the breaches, because he would keep on making contact with her, but the police said they would give him a warning.

Then, Karen received notice that Wayne had filed for access to his nephews and niece. Karen could not believe that he had the right to do this, when she had a protection order against him. The court case around access also addressed Darryl's breach of the protection order at the pub and both the brothers represented themselves in court.

In court, Wayne said that Karen was mental, that she was vindictive in not letting him see the children. He made the excuse that he thought the protection order was no longer valid after 3 months. He also said that she should have expected to be abused when she walked into 'our pub'.

Karen felt intimidated and confused by the fact that the brothers were allowed to say what they wanted, even swearing (e.g. saying "she's fucked in the head"), and calling her names, while the judge seemed to listen and take in what they said. The judge even asked Wayne "what would it take to make this alright for you?"

On the other hand, the judge never asked her what she thought and her lawyer hardly said a word, not challenging any thing that the brothers said. Karen felt that she could not have

spoken up, she was intimidated by the accusations and the manner of the two men who were her abusers. She felt like she was never allowed to put forward her story and defend herself.

The judge told the court that the situation was actually one of a “family feud” and treated it differently from family violence. Karen got the impression that because she was complaining about her brother-in-law, the court did not see this as domestic violence which is just about partners.

The judge ordered that the children talk to Counsel for Child, saying that the children were old enough to make up their own minds about who they saw. The Counsel for Child questioned Karen and the children about Karen’s new partner, which she did not see as being relevant but which she talked about because she felt she had to. Counsel for the Child also advised Karen to discharge the protection order because it was causing too much grief for the family.

Karen talked to a court counselor who also questioned her about her current relationships, and encouraged Karen to ‘get it all out in the open’ and tell Darryl that she was in a new relationship. Karen listened to this advice but found that this caused a whole lot of extra problems for her.

Darryl went ‘crazy’ and got very nasty, ringing her and threatening her. He then applied for a protection order against the new partner on behalf of the children, arguing that the new partner was violent to the children and should not be allowed to see them.

Once again, Karen was dragged into court by Darryl, and found herself having to engage a lawyer again, gather supporting information, organise childcare and time off work, and prepare to defend herself and now her new partner. Before the case, Darryl rung to say that he would drop the protection order against her new partner if she discharged the protection order she had against him, so Karen was sure that the whole case was just about Darryl finding *another* way to threaten and control her. Darryl failed to turn up to the court case, but the court told Karen that Darryl could reapply for a protection order whenever he liked.

After this last case, Karen gave up on trying to make the protection order work. She had tried to keep the children away from their violent Uncle, but Darryl was taking the children around to Wayne’s place anyway. One day he took off with the children and said that he wasn’t bringing them back. Karen had to go and get them from school during the day. In frustration, Karen said she would take the kids and move to another town to live with her mother. Darryl just replied that he would take her to court for access and get her back.

Karen was tired of going to court, and ringing the police, when Darryl and Wayne’s abusive behaviour was never punished and the situation always became more of a hassle for her. She said “there’s no light at the end of the tunnel. It’s getting worse and worse. It just isn’t working. I should have let him come round here and give me a hiding. Going to the Family Court is a waste of time.”

JULIE

Julie obtained a protection order against her violent partner, Mark, in November 1997. At the time, he did not contest the order and it was made final. She had experienced physical and psychological violence through out their four-year marriage. They had separated and tried to work it out, but Julie was finally driven to leave and seek a protection order after Mark attempted to strangle her for the second time when she was eight months pregnant.

Since taking out the protection order, Mark breached the order by physically assaulting her, verbally abusing and threatening her, and making unwanted contact. Despite this, Julie also allowed her son to ring Mark when he wanted, and let Mark sleep on the couch when he came from out of town to visit his child. She thought that she was doing all she possibly could not to alienate her child from his father. Julie did not realise that Mark's continued abuse and harassment was a breach of the protection order and she thought that she just had to put up with it, like she was used to doing throughout their relationship. She also didn't think that she should stop Mark seeing his son so she enabled this to happen.

When Julie first got the protection order, the court had offered to put her in touch with an education group, but she thought it would be just like the support groups she had previously attended which she didn't find helpful. It was not until she had contacted Women's Refuge a few years later, and attended a Stopping Violence women's education group, that she was told about how the protection order work and what constituted a breach. Once she realised what her rights were under the protection order, she told Mark not to make contact with her, and when he came to see their son, she told him he had to sleep in a tent at a neighbour's place. She complained to the police twice when Mark harassed her about dropping the protection order in letters and phone calls he made to their child. The police warned him but did not prosecute.

In 2002, Mark applied to the court to have the protection order discharged (removed). He admitted that he had breached the protection order with phone calls and verbal abuse over the previous 12 months, but told the court that the order was not necessary and it was getting in the way of his access with the child. Mark said that he had "moved on" from the previous violence. In his statement to the court, Mark also provided his explanations for his violence behaviour during their marriage and explained why he had tried to strangle Julie. Mark said that Julie was unfaithful

Julie did not want the protection order discharged. She still feared him and was still subject to abuse from him when he was in contact with their child. In court, Julie was not allowed a chance to reply to the assertions about her alleged unfaithfulness or the excuses for the violence that Mark had provided.

The judge said that despite the fact that Mark had not contested the protection order when it was granted, he accepted that now Mark had given a context for the previous violence and that both parties saw fault with each other. In his Judgment, the judge characterised that the relationship between Julie and Mark was 'volatile', 'mismatched' and 'mutually-destructive'. He said that Mark's assertion that Julie was "unfaithful" was a 'useful' explanation to why the violence occurred and that Mark's anger when her verbally abused Julie was 'explicable'.

Julie's lack of knowledge about her rights under the protection order and her efforts to keep a relationship going between father and son, worked against her in court. Because Julie had not reported the breaches of the protection order when Mark physically assaulted her, the judge concluded that it had not occurred as she said. Because she had had contact with Mark and allowed him to stay when he came to see their child, the judge found that Julie was complicit in breaching the protection order, and was clearly not living in fear of Mark. The judge said the only kind of breaches that had occurred were ones of the type that Julie had accepted on countless occasions.

The judge ordered the protection order to be discharged, against Julie's wishes, claiming that the protection order exposed Mark 'to a risk of behaviour on [Julie's behalf] which may almost be characterised as capricious. The intrusion on a citizen's rights when a protection order is made against him or her is significant, and should not continue in a context such as this.' The judge argued that 'there must come a time to create a working relationship without the artifice of an order upon which a party relied sometimes and not others'. In direct contradiction to this, the judge decided that the protection order should not be discharged for 4 months, because access arrangements had not been clearly sorted out. The judge said that the protection order was needed while trying to resolve access issues because this 'may lead to a break out in hostile behaviour which [Julie] so fears.'

ERENA

Twenty years ago, Erena was married to and living with a man who physically, sexually and psychologically abused her. At that time, she was told by authorities that there was nothing they could do to help her while she remained with him. In 1990, Erena took out a protection order against Manu, and still has one today. In 1996 Erena and her husband finally broke up.

In 1997, Manu broke into her home after stalking her for months, physically assaulted her and attempted to rape her. He was charged with sexual violation and physical assault (but not with the breach of the protection order) and served 4 ½ months of a 13 month sentence in jail.

In 1999, Manu went to court for custody of their 2 children. He failed to turn up for several mediation hearings set by the court and Erena questioned why he was allowed to continue with the case. However, the case did go ahead. He was not awarded custody but was granted supervised access.

During access visits, Manu continued to abuse and harass Erena and only turned up to see his children sporadically. His visits became more frequent in 2002 when he kept asking Erena for money every time she saw him. In 2002 he filed a Relationship Property case with the Family Court. In his statement about what each of them had received when the relationship broke up, Erena said Manu lied about the value of the car and musical equipment he had taken. Erena asked that the judge consider her case to have special circumstances, due to the violence, the debt that she has incurred on his behalf, and the fact she has raised their two daughters mostly alone. The judge however, did not accept any special circumstances and ordered that the house and other property be divided 50/50. Erena was ordered to pay an \$8,000 lump sum to Manu within 28 days, and then to give

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him a half share of the house (\$40,000) when the oldest child was 18. Erena wanted to challenge the decision but could not afford to, as she had already spend thousands of dollars on lawyers fees defending herself against in the custody and property cases her brought against her. She was not eligible for Legal Aid as she worked in a part-time job.

Since the relationship property case, Manu continues to contact her, threatening and harassing her through emails and phone calls. She has rung the local police, to ask them to follow up on the breaches of her protection order, but Manu has not been arrested.