

Domestic Violence (Enhancing Safety) Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Domestic Violence (Enhancing Safety) Bill and recommends that it be passed with the amendments shown.

Introduction

This bill amends the Domestic Violence Act 1995, the Sentencing Act 2002, and the Bail Act 2000 to strengthen the criminal justice response to family violence in order to protect victims.

The bill proposes a number of key amendments to the Domestic Violence Act to strengthen the police's response to domestic violence:

- giving the police the ability to issue “on-the-spot” Police orders
- removing the statutory criteria that the police must take into account when considering whether to arrest, without warrant, a person who they have good cause to suspect has committed a breach of a protection order

- reforming the structures and penalties for contravening a protection order.

This commentary covers the major amendments that we recommend. We also recommend various minor and technical amendments to clarify the intent of the bill, which are not discussed in this commentary. We were pleased to receive advice from Ministry of Justice officials that we should see further domestic violence legislation by the end of July.

Commencement

Clause 2 of the bill as introduced provides that the bill will come into force on a date to be appointed by the Governor-General by Order in Council. We recommend amending clause 2 to provide that all the provisions in the bill, excluding clause 7 and new Part 2, will come into force when the bill is enacted.

We were advised that a provision allowing legislation to commence by Order in Council should not be included in a bill unless it is clearly justifiable. We consider that in order to allow time for preparatory work to be undertaken such as modifications to computer information systems and extra training for the police, and for amendments to be made to the Sentencing Act Regulations 2002 and the Domestic Violence (General) Regulations 1996, it is justifiable for the remaining provisions to come into force on 1 July 2010 and not by Order in Council as proposed by the bill as introduced.

Police orders

New Part 6A introduces a regime relating to Police orders. Such orders are intended to protect victims of domestic violence.

We recommend a number of amendments to new Part 6A to improve the effectiveness of the new enforcement initiative.

Interpretation

We recommend replacing the term “Police order” with “Police safety order”, to reflect more clearly the purpose of the order, and to distinguish these new orders from protection orders issued by the Family Courts and District Courts.

Qualified constable may issue order

As introduced, new section 124B(1) would allow an order to be issued where there is insufficient evidence to arrest a person for an offence but where a constable has reasonable grounds to believe that the order is necessary to ensure the safety of another person.

We recommend amending new section 124B to make it clear that where a person was arrested for an offence that was not an offence involving domestic violence, an order could still be issued against that person. This would ensure that where a constable was responding to a domestic violence incident and had found evidence of another offence, the constable could make an arrest for that offence and would not be precluded from issuing the order.

The circumstances in which an order can be issued are specified in new section 124B(1). As introduced this section provides that an order may be issued against person A only when person A is in a domestic relationship with person B. Section 7 of the Domestic Violence Act allows any person who is or has been in a domestic relationship with another person to apply for a protection order in respect of that other person. To ensure consistency with section 7 of the Domestic Violence Act we recommend amending new section 124B(1) to include partners from previous relationships.

We recommend removing the condition that an order can be issued only if it is necessary to safeguard the “immediate” safety of a person. This would ensure that the decision whether to issue the order took into consideration the safety of that person over the next few hours or days, and not just at the time that the police were called to the domestic violence incident.

New section 124B(2) sets out the matters to which the constable must have regard when considering whether to issue an order; one is whether there is a serious likelihood that domestic violence might be used. Because of its imprecision, we recommend that “serious” be deleted.

We recommend amending new section 124B(3) to clarify that a constable who is not a “qualified constable” must receive authorisation from a “qualified constable” for each order the constable believes should be issued.

Consent to issue order not required

We heard evidence on new section 124C, which would allow an order to be issued without the consent of the person for whose safety the order was proposed. We consider that as the victim's decision might be influenced by the other person's presence at the scene of the incident, and to avoid the person at risk being seen by the alleged violent person as responsible for the order being issued, the safety of the victim would be better safeguarded by not requiring the victim to consent to the order being issued.

Effect of order

We recommend amending new section 124E(1) to require the person against whom the order is issued to immediately surrender any firearms licence held by him or her. As introduced, new section 124E(1) only requires that this person surrender any firearms or weapon in his or her possession or control and to vacate any land or building occupied by the person at risk. We also recommend inserting new section 124EA to provide that any firearms licence held by the person against whom an order is issued is deemed to be suspended for the duration of the order and that person is deemed to not be the holder of a firearms licence.

We note that our recommended new section 124EA differs from sections 21 and 24 of the Domestic Violence Act on which it was modelled. Section 21 provides that once a respondent has been served with a protection order, any firearms licence that the respondent holds must be surrendered to the police as soon as practicable, but no later than 24 hours after being served with the order. We were advised that this difference reflects the different circumstances in which protection orders and Police safety orders are to be served. When the Family Court or the District Court have issued a protection order this would subsequently be served on the respondent; on the other hand it is envisaged that a Police safety order would be issued and served while the alleged violent person was present at the scene of the domestic violence incident. Therefore it is not necessary for new section 124E(1) to include a period within which a firearms licence must be surrendered. We also note that as the duration of the order is not to exceed five days, a firearms licence needs to be surrendered without delay in order to secure the safety of the at-risk person.

As surrendering firearms licences is a condition of every order, our recommended amendments to new section 124I make it clear that it would be a breach of a condition of the order if the person against whom the order was issued did not comply with this condition. Some of us are concerned with the consequences of requiring a person against whom an order is issued to surrender his or her firearms licence, as there might be situations where the person is legitimately unable to surrender the firearms licence and as a consequence may have proceedings brought against them under new section 124I.

New section 124E also sets out the conditions of an order. As introduced new section 124E(2)(i) prohibits the person against whom the order is issued from contacting the person at risk. We recommend amending new section 124E(2)(i) to clarify that contact by emails and text messages would be included in the prohibition. As new section 124E(2)(i) is similar to section 19(2)(e) of the Domestic Violence Act, which relates to conditions for protection orders, we recommend the inclusion of new clause 3A to also amend section 19(2)(e).

Order to be served and explained

We recommend inserting new section 124FB to include an offence provision to cover situations where a person against whom an order is to be issued fails to remain where directed by the constable, so that arrangements can be made for the order to be issued and served. The maximum penalty for this offence would be a \$500 fine. As introduced the bill would not allow the police to take action against a person who left the scene of a domestic violence incident in order to avoid being served with an order.

Ordinarily the police cannot arrest a person without a warrant if the offence only results in a fine; we recommend that new section 124FB be accompanied by a provision to allow the police to arrest, without warrant, a person who commits this offence.

We also recommend new section 124FB clarify that the period of time that a constable is allowed to detain a person in order for arrangements to be made for the order to be issued and served would include the time it took for a constable who is not a qualified constable to obtain authorisation to issue the order.

We do not recommend that this two-hour detention period be extended. We consider that this period is sufficient and note that similar

provisions in the Bail Act, relating to the preparation and signature of a bail bond, and in the Sentencing Act, relating to the preparation and service of a sentencing order, also provide for a two-hour detention period.

We recommend inserting new section 124FA to clarify that an order must be served within 48 hours of issue; if it had not been served after 48 hours the order would lapse.

Duration of order

New section 124H provides that an order will come into force immediately after it has been served and will continue in force for up to five days. We examined whether the duration of the order should be shortened or extended and concluded that the duration of the order should not be changed. We considered that extending the duration of the order would make the constable's considerations, of matters relating to hardship and to the welfare of children, when deciding whether to issue an order more complex. The duration of the order does not need to be shortened as new section 124H of the bill as introduced gives the police the discretion to decide whether a shorter-length order may be more appropriate and allows them to factor in weekends, public holidays, and an individual's ability to access the courts if necessary.

Failure or refusal to comply with order

We recommend replacing new section 124I of the bill as introduced with new sections 124I to 124IF to clarify how the police and the District Court would deal with a person who had failed or refused to comply with an order.

New section 124I of the bill as introduced provides that if a person served with an order fails or refuses to comply with the order, that person may be taken into custody and brought before the District Court. The court could direct that the order be extended for up to five days, direct that another order be issued, or make a temporary protection order.

As the bill does not make a breach of an order an offence, there is uncertainty as to how a hearing for a failure or refusal to comply with an order might be referred to the District Court. To clarify this we recommend inserting new section 124I(3) to allow the police to make an application to the District Court by way of a complaint.

Where a person cannot be brought before a District Court within 24 hours that person must be released and served with a summons to appear at a later time. Our recommended new section 124IA would provide that if a person served with a summons does not appear at the court at the time and place specified in the summons, he or she may be arrested and brought before the court.

We recommend inserting new section 124IB to distinguish between the jurisdiction of a District Court that is presided over by one or more Justices, by one or more Community Magistrates, or by a District Court Judge. This section clarifies that when the court is not presided over by a District Court Judge and the court is satisfied that a person has failed or refused to comply with an order to the extent that it may be appropriate for a temporary protection order be issued, the court may adjourn proceedings and direct that the order continue in force or that a new order be issued. We consider that the expertise and skill of a District Court Judge is required to determine whether a temporary protection order should be issued.

The bill as introduced does not address how the police should respond to a person who has failed or refused to comply with the order. We recommend inserting new section 124IC to include a provision similar to section 36 of the Bail Act. This would allow the District Court to issue a warrant to allow a constable to arrest a person who had failed or refused to comply with the order, or who failed to attend the court at the time and place the court proceedings had been adjourned to under new section 124IB(1)(c)(i). The constable executing the warrant may enter at any time on to any premises, by force if necessary, if the constable has reasonable grounds to believe that the person against whom it is issued is on those premises.

We recommend inserting new section 124ID to allow the District Court, after it has determined that a temporary protection order is to be issued, to detain the person for a period not exceeding two hours for the purpose of issuing and serving the temporary protection order. We recommend inserting new section 124IE to provide that immediately after the District Court has issued a temporary protection order the order should be referred to the Family Court nearest to where the protected person resides. This amendment is consistent with new section 123F of the bill as introduced, which relates to protection orders issued at the time an offender is sentenced in the criminal courts for a domestic violence offence.

For consistency with new section 123F of the bill as introduced we also recommend inserting new sections 124IE and 124IF to provide that once a temporary protection order issued by the District Court has been received by the Family Court, this order should be entered into the records of the Family Court and then treated as if it were an order made by the Family Court.

Amendments to the Sentencing Act

Part 2 of the bill as introduced amends the Sentencing Act to enable the criminal courts when sentencing an offender convicted of an offence involving domestic violence to issue a protection order if the court is satisfied that the order is necessary for the victim's protection and the victim does not object to the order being made.

Protection orders

As introduced, new section 123B(1)(c) provides that a court may not make a protection order against an offender if the victim of the offence has made an application for a protection order and that application is awaiting determination in a Family Court or District Court. We recommend deleting new section 123B(1)(c) and inserting new section 123B(4) to provide that the courts may issue a protection order against an offender in such cases. We also recommend inserting new section 123B(5) to provide that the proceedings in the Family Court or District Court for a protection order would then end. We consider that a sentencing court should not be precluded from making a protection order if it considers that the protection order is necessary for the protection of the victim of the offence.

Explanation of protection orders

As introduced, new section 123D requires that after the issue of a protection order the Judge or Registrar must explain to the offender the effect of the order and the consequences of failing to comply with the order. We recommend amending new section 123D to require that the Judge or Registrar also explain to the offender the effect of a court's direction to attend a stopping violence programme and the consequences of failing to attend any session of a programme. We consider that this amendment would help offenders to understand the importance of attending stopping violence programmes.

Consent for the protection order

We considered whether the requirement for the victim to not object to the making of the protection order, new section 123B(2)(b), should be removed. We concluded that it is important for victims to be involved in the process for issuing protection orders and do not recommend removing new section 123B(2)(b).

Amendments to the Bail Act

Part 3 of the bill as introduced would amend the Bail Act to allow the police, when considering whether to grant bail to a person who has been charged with a domestic violence offence, to impose any conditions considered reasonably necessary to protect any child who is in a domestic relationship with that person.

To ensure that other family members of the victim of the alleged offence, such as new partners or elderly parents, would be protected, we recommend amending clause 11 to allow the police to impose any conditions considered reasonably necessary to protect any particular person who lives with the victim.

New Zealand Labour view

We note that the Domestic Violence Reform Bill (introduced by the previous Labour government, and on the Order Paper), in addition to Police safety orders, includes a number of amendments which provide a more comprehensive and enhanced approach to addressing domestic violence and providing better protection for domestic violence victims.

These include increasing the age at which protection orders applied to minors from under 17 years to under 18 years of age, empowering the Court to make interim orders to protect the welfare of the child in cases where an applicant with a child applies for a protection order, requiring the judge considering a “without notice” application for a protection order to provide written reasons (if it is not granted), providing for applicants to attend information sessions on protection orders and advice on social assistance, providing the power to direct attendance at an addiction treatment programme, and amending the Care of Children Act 2004 to include psychological abuse.

The Domestic Violence Reform Bill was the culmination of extensive community consultation over a considerable time-frame and the

views of the public were included in the bill. Indeed many submitters argued that the amendments should be incorporated in the Domestic Violence (Enhancing Safety) Bill.

Regrettably the amendments fall outside the narrow scope of the Domestic Violence (Enhancing Safety) Bill. Whilst Police safety orders address one aspect of domestic violence, victims of domestic violence have been denied protection by the limited scope of this bill.

Progression of the Domestic Violence Reform Bill would have addressed many of the concerns raised by victims rights organisations, Women's Refuges and the community, and would have provided greater protection and enhanced services for victims of crime.

We urge the Government to progress without delay the amendments as outlined in the Domestic Violence Reform Bill. Despite an assurance from the Minister of Justice that new legislation would be before the House in June we note that this is yet to happen.

Appendix

Committee process

The Domestic Violence (Enhancing Safety) Bill was referred to us on 16 December 2008. The closing date for submissions was 27 February 2009. We received and considered 66 submissions from interested groups and individuals. We heard 22 submissions.

We received advice from the Ministry of Justice and the New Zealand Police. The Regulations Review Committee reported to us on clause 2.

Committee membership

Chester Borrows (Chairperson)

Jacinda Ardern

Kanwaljit Singh Bakshi

Simon Bridges

Dr Kennedy Graham

Hon Nathan Guy (from 24 June 2009)

Hon David Parker

Lynne Pillay

Paul Quinn

Dr Richard Worth (until 16 June 2009)

Domestic Violence (Enhancing Safety) Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Domestic Violence (Enhancing Safety) Act **2008**.

2 Commencement

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(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

(2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions and for different purposes.

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2 Commencement

(1) The following provisions come into force on 1 July 2010:

(a) **section 7**;

(b) **Part 2**.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

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Part 1

**Amendments to Domestic Violence Act
1995**

3 Principal Act amended

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This Part amends the Domestic Violence Act 1995.

3A Standard conditions of protection order

Section 19(2)(e) is amended by inserting “electronic message,” after “telephone,”.

4 Power to direct respondent or associated respondent to attend programme

Section 32(3) is repealed.

5 New sections 49 and 49A substituted

- (1) Section 49 is repealed and the following sections are substituted: 5

“49 Offence to contravene protection order

- “(1) Every person commits an offence who, without reasonable excuse,—

- “(a) does any act in contravention of a protection order; or 10
“(b) fails to comply with any conditions of a protection order.

- “(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 2 years. 15

“49A Offence to fail to comply with direction

- “(1) Every person commits an offence who, without reasonable excuse, fails on any occasion to comply with a direction made under section 32(1) or (2) to attend a specified programme.

- “(2) Every person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.” 20

- (2) The second column of the item relating to the Domestic Violence Act 1995 in Part 2 of Schedule 1 of the Summary Proceedings Act 1957 is consequentially amended by omitting “49(3)” and substituting “**49(2)**”. 25

6 New section 50 substituted

Section 50 is repealed and the following section substituted:

“50 Power to arrest for breach of protection order

Where a protection order is in force, any constable may arrest, without warrant, any person ~~whom~~ who the constable has good cause to suspect has committed a breach of the order (other than a breach that constitutes an offence against **section 49A**).” 30

7 **New Part 6A inserted**

The following Part is inserted after section 124:

“Part 6A**“Police safety orders****“124A Interpretation**

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In this Part, unless the context otherwise requires,—

“**constable** has the meaning given to it by section 4 of the Policing Act 2008

“**Police safety order or order** means an on-the-spot order issued by a qualified constable under **section 124B** in the prescribed form

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“**qualified constable** means a constable who is of or above the level of position of sergeant.

“124B Qualified constable may issue Police safety order

“(1) A qualified constable may issue a Police an order against a person (**person A**) who is, or has been, in a domestic relationship with another person (**person B**) if the constable—

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“(a) does not arrest person A for an offence against any enactment involving the use of violence against person B;
but

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“(b) has reasonable grounds to believe, having regard to the matters specified in **subsection (2)**, that the issue of a Police an order is necessary to ensure the ~~immediate~~ safety of person B.

“(2) When considering whether to issue a Police an order against person A, the constable must have regard to the following matters:

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“(a) whether, in the circumstances, he or she considers it is likely that—

“(i) person A has used, or is using, domestic violence against person B:

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“(ii) person A has used, or is using, domestic violence against any other person with whom he or she has a domestic relationship:

“(b) whether there is a ~~serious~~ likelihood that person A will use, or again use, domestic violence against person B:

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“(c) the welfare of any children residing with person B:

- “(d) the hardship that may be caused if the order is issued:
“(e) any other matter the constable considers relevant.
- “(3) A constable who is not a qualified constable may issue a ~~Police~~ Police an order under this section only if he or she is specifically authorised by a qualified constable to ~~do so~~ issue that order. 5
- “**124C Consent to issue of Police safety order not required**
A ~~Police~~ An order may be issued without the consent of the person for whose safety the order is proposed to be issued.
- “**124D Police safety order not to be issued against child**
A ~~Police~~ An order may not be issued against a child. 10
- “**124E Effect of Police safety order**
- “(1) A person against whom a ~~Police~~ an order is issued must immediately—
- “(a) ~~surrender to a constable any firearm or other weapon in his or her possession or control;~~ 15
surrender to a constable—
“(i) any weapon in his or her possession or control;
and
“(ii) any firearms licence held by him or her;
- “(b) vacate any land or building occupied by a person at risk, whether or not he or she has a legal or equitable interest in the land or building. 20
- “(2) It is a condition of every ~~Police~~ order that the person against whom the order is issued must not—
- “(a) physically or sexually abuse a person at risk; or 25
“(b) threaten to physically or sexually abuse a person at risk; or
“(c) damage, or threaten to damage, property of a person at risk; or
“(d) engage, or threaten to engage, in other behaviour, 30
including intimidation or harassment, that amounts to psychological abuse of a person at risk; or
“(e) encourage any person to engage in behaviour against a person at risk, where the behaviour, if engaged in by the person against whom the order is issued, would be 35
prohibited by the order; or

- “(f) watch, loiter near, or prevent or hinder access to or from the place of residence, business, or employment of a person at risk, or an educational institution attended by a person at risk, or any other place that a person at risk visits often; or 5
- “(g) follow a person at risk about or stop or accost a person at risk in any place; or
- “(h) where a person at risk is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or 10
- “(i) make any other contact with a person at risk (whether by telephone, electronic message, correspondence, or otherwise), except such contact as is reasonably necessary in any emergency.
- “(3) In this section, **person at risk** means— 15
- “(a) the person named in the ~~Police~~ order for whose safety the order is issued; and
- “(b) any child residing with that person.

“124EA Suspension of firearms licence on issue of Police safety order 20

On the issue of an order, and for the period that the order is in force,—

- “(a) any firearms licence held by the person against whom the order is issued is deemed to be suspended; and
- “(b) the person against whom the order is issued is deemed, for all purposes, not to be the holder of a firearms licence. 25

“124F Suspension of parenting orders, etc

- “(1) This section applies where— 30
- “(a) ~~a Police an~~ order is issued; and
- “(b) a child is residing with a person named in the ~~Police~~ order for whose protection the order is issued (a **protected child**); and
- “(c) a parenting order or day-to-day care or contact agreement is in force in respect of a protected child; and 35
- “(d) the person against whom the ~~Police~~ order is issued is a party to that parenting order or agreement.

“(2) While a ~~Police~~ an order continues in force against any person, the provisions of a parenting order or an agreement affording to that person the day-to-day care of, or contact with, a protected child are suspended.

“**124FA Prompt service of Police safety order required** 5

“(1) An order must be served by a constable as soon as practicable on the person against whom the order is issued.

“(2) If an order has not been served within 48 hours from the time of issue, the order lapses.

“**124FB Detention by constable** 10

“(1) A constable who is proposing to issue a Police safety order against any person may detain that person for a period, not exceeding 2 hours, that may be necessary to enable the constable to do 1 or more of the following:

“(a) obtain authorisation under **section 124B(3)** to issue the order; 15

“(b) issue the order;

“(c) serve the order.

“(2) If a person who is detained under **subsection (1)** fails or refuses to remain at the place where he or she is detained, that person— 20

“(a) commits an offence and is liable on summary conviction to the penalty specified in **subsection (4)**; and

“(b) may be arrested without warrant.

“(3) To avoid doubt, **subsection (2)** applies in respect of a person detained under **subsection (1)(a)** regardless of whether an order is issued. 25

“(4) The maximum penalty for an offence against **subsection (2)(a)** is a fine not exceeding \$500.

“(5) In this section, **detain** includes move the person to a Police station. 30

“**124G Police safety order to be served and explained**

“(1) A constable who issues a Police order must arrange for the order to be served on the person against whom the order is issued. 35

- ~~“(2) For the purpose of **subsection (1)**, the constable may detain the person against whom the order is to be issued for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and served.~~
- “(1) A constable who issues a Police an order must, if and to the extent that it is reasonably practicable to do so in the circumstances, either at the time of issue or service of the order, explain to the person against whom the order is issued—
- “(a) the purpose, duration, and effect of the order; and
- “(b) the consequences that may follow if the person against whom the order is issued contravenes the order.
- “(2) A constable who issues a Police an order must also, either before or after issue and service of the order, explain to the person for whose safety the order is issued the matters set out in **subsection (1)(a) and (b)**.
- “124H Duration of Police safety order**
- “(1) ~~A~~ Police An order comes into force immediately on being served on the person against whom the order is issued.
- “(2) ~~A~~ Police An order continues in force for the period specified in the order, but that period must not exceed 5 days.
- “(3) In considering the period to be specified in the order, the qualified constable must have regard to the matters set out in **section 124B(2)**.
- ~~“124I Failure to comply with Police order~~
- “(1) In this section,—
- “**person A** means a person against whom a Police order is issued
- “**person B** means the person named in a Police order for whose safety the order is issued.
- “(2) If a person A refuses or fails to comply with a Police order, a constable may, using such force as is reasonably necessary, take person A into custody.
- “(3) A person A who is taken into custody under **subsection (2)** must be brought before a District Court as soon as possible.

- ~~“(4) Where the District Court is satisfied that a person A has refused or failed to comply with a Police order, the District Court may,—~~
- ~~“(a) if the Police order has not expired, direct that the Police order continue in force for a further period not exceeding 5 days from that time; or~~ 5
 - ~~“(b) if the Police order has expired, direct that another Police order be issued in the same terms as the expired order and served in accordance with **section 124G**; or~~
 - ~~“(c) if person B does not object and without an application from any person, issue a temporary protection order under section 14 against person A for the protection of person B.~~ 10
- ~~“(5) However, the District Court may not issue an order referred to in **subsection (4)(c)** if person B has made an application for a protection order against person A that is currently pending determination by a Court.~~ 15

“124I Contravention of Police safety order

- ~~“(1) **Subsection (2)** applies where a person against whom an order is issued refuses or fails to comply with—~~ 20
- ~~“(a) the order; or~~
 - ~~“(b) any condition of the order.~~
- ~~“(2) If this subsection applies, a constable may take the person into custody by—~~
- ~~“(a) using such force as is reasonably necessary; or~~ 25
 - ~~“(b) executing a warrant to arrest issued in respect of that person under **section 124IC(1)(a)**.~~
- ~~“(3) Where a person has been taken into custody under **subsection (2)**, the constable may apply to a District Court, by making a complaint in the prescribed form, for a direction or an order under **section 124IB**.~~ 30
- ~~“(4) A person who is taken into custody under **subsection (2)(a)** must be brought before a District Court within 24 hours.~~

“124IA Issue of summons where person cannot be brought before District Court within 24 hours

- “(1) If a person who is taken into custody under **section 124I(2)(a)** is not brought before a District Court within 24 hours, that person must, at or before the expiry of that period,—** 5
- “(a) be released; and**
- “(b) be served by a constable with a summons requiring him or her to appear before a District Court at the place and time specified in the summons.** 10
- “(2) A summons served under **subsection (1)(b)** must be in the prescribed form.**
- “(3) If a person who has been served with a summons under **subsection (1)(b)** does not attend personally at the place and time specified in the summons, the District Court may issue a warrant, in the prescribed form, to—** 15
- “(a) arrest him or her; and**
- “(b) bring him or her before the Court.**

“124IB Jurisdiction of District Court

- “(1) If a District Court presided over by 1 or more Justices, or 1 or more Community Magistrates, is satisfied that a person has refused or failed to comply with a Police safety order, the Court may,—** 20
- “(a) if the order has not expired, direct that another order, which is to continue in force for a period not exceeding 5 days specified by the Court, be—** 25
- “(i) issued against the person in substitution of the earlier order for the safety of the person named in the earlier order; and**
- “(ii) served in accordance with **section 124FA**; or** 30
- “(b) if the order has expired, direct that another order, which is to continue in force for a period not exceeding 5 days specified by the Court, be—**
- “(i) issued against the person for the safety of the person named in the earlier order; and** 35
- “(ii) served in accordance with **section 124FA**; or**
- “(c) if it considers it appropriate in the circumstances to do so,—**

- “(i) adjourn the proceedings to a specified time and place to enable a District Court Judge to consider whether a temporary protection order should be issued under **subsection (2)(b)**; and
- “(ii) make a direction of the kind specified in **paragraph (a) or (b)**, as the case may require. 5
- “(2) If a District Court presided over by a District Court Judge is satisfied that a person has refused or failed to comply with a Police safety order, the Judge may—
- “(a) make a direction of the kind specified in **subsection (1)(a) or (b)**; or 10
- “(b) issue, without application from any person, a temporary protection order under section 14 as if—
- “(i) every reference in that section to the respondent were a reference to the person who the Judge is satisfied has refused or failed to comply with the Police safety order (**person R**); and 15
- “(ii) every reference in that section to the applicant were a reference to the person named in the Police safety order for whose safety the order was issued (**person S**). 20
- “(3) A District Court Judge may issue a temporary protection order under **subsection (2)(b)** in the absence of person R, person S, or both.
- “(4) **Subsection (2)(b)** is subject to **subsection (5)**. 25
- “(5) A District Court Judge may only issue an order of the kind referred to in **subsection (2)(b)** if person S—
- “(a) does not object; and
- “(b) has not made an application for a protection order against person R that is currently pending determination by a Court. 30
- “(6) Where the Court makes a direction of the kind specified in **subsection (1)(a) or (b)**, the Court may direct that the person against whom the order is to be issued be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and served on that person. 35

**“124IC Issue of warrant to arrest person who contravenes
Police safety order or fails to attend adjourned
proceedings**

- “(1) Subsection (2) applies if—**
- “(a) a person against whom a Police safety order is issued
refuses or fails to comply with the order, or any condi-
tion of the order; or** 5
- “(b) a person who the District Court is satisfied has re-
fused or failed to comply with a Police safety order
does not attend personally at the time and place to
which proceedings have been adjourned under **section
124IB(1)(c)(i).**** 10
- “(2) The District Court may issue a warrant in the prescribed form.**
- “(3) A warrant to arrest a person under this section—**
- “(a) must be directed either—** 15
- “(i) specifically to a constable; or**
- “(ii) generally to every constable; but**
- “(b) may be executed by any constable.**
- “(4) For the purpose of executing a warrant issued under this sec-
tion, the constable executing it may at any time enter on to any
premises, by force if necessary, if the constable has reasonable
grounds to believe that the person against whom it is issued is
on those premises.** 20
- “(5) The constable executing the warrant—**
- “(a) must have the warrant with him or her; and** 25
- “(b) must produce it on initial entry and, if requested, at any
subsequent time; and**
- “(c) if he or she is not in uniform, produce evidence that he
or she is a constable.**
- “(6) A person who is arrested under this section must, as soon as
possible, be brought before a District Court to enable it to ex-
ercise its jurisdiction under **section 124IB.**** 30

“124ID Protection order to be issued and served

- “(1) Where a District Court makes a temporary protection order
under **section 124IB(2)(b)**, the Registrar of that Court
must—** 35
- “(a) immediately issue the order; and**

“(b) wherever practicable, serve a copy of the order on the person against whom the order is made before that person leaves the Court.

“(2) For the purpose of **subsection (1)**, the Court may direct that the person against whom the order is made be detained in the custody of the Court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and a copy served on that person. 5

“124IE Protection order to be sent to Family Court

“(1) Immediately after the issue of a protection order under **section 124IB**, the District Court must send a copy of the order to the Family Court nearest to the residence of the person for whose safety the Police safety order and temporary protection order were issued. 10

“(2) On receipt of a copy of an order under **subsection (1)**, the Registrar of the Family Court must enter the order in the records of the Family Court. 15

“124IF Protection order treated as if made by Family Court

As soon as an order has been entered in the records of the Family Court under **section 124IE(2)**, the order is to be treated as if it were a temporary protection order made by that Court. 20

“124J District Court summons

“(1) If a person to whom **section 124I(3)** applies is not brought before a District Court within 24 hours of being taken into custody, the person must, at the expiry of that period, be released and may be summoned to appear before a District Court. 25

“(2) Where a person is summoned under **subsection (1)**, **section 124I(4) and (5)** applies.

“124K Police employees, etc, protected from proceedings

No action or proceedings may be brought against the Crown or any constable in respect of any thing done, or omitted to be done, for the purpose of carrying out the provisions of this Part, where the Crown or the constable acted in good faith and with reasonable care.” 30

7A Consequential amendments to other enactments

The regulations listed in the **Schedule** are amended in the manner indicated in that schedule.

Part 2**Amendments to Sentencing Act 2002**

5

8 Principal Act amended

This Part amends the Sentencing Act 2002.

9 New heading and sections 123A to 123G inserted

The following heading and sections are inserted after section 123:

10

“Protection orders

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

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

15

“**child** has the meaning given to it by section 2 of the Domestic Violence Act 1995

“**domestic relationship** has the meaning given to it by section 4 of the Domestic Violence Act 1995

“**domestic violence offence** means an offence against any enactment (other than the Domestic Violence Act 1995) involving the use of violence against a person, other than a child, with whom the offender is, or has been, in a domestic relationship

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“**domestic violence proceedings** means proceedings in a Family Court or a District Court under the Domestic Violence Act 1995 that relate wholly or partly to an application for a protection order

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

“**violence** has the meaning given to it by section 3(2), (4) and (5) of the Domestic Violence Act 1995.

30

“123B Protection order

“(1) This section applies if—

- “(a) ~~the~~ an offender is convicted of a domestic violence offence; and
- “(b) there is not currently in force a protection order against the offender made under the Domestic Violence Act 1995 for the protection of the victim of the offence. 5
- “(c) ~~the victim of the offence has not made an application under the Domestic Violence Act 1995 for a protection order against the offender that is currently pending determination by a Family Court or District Court.~~
- “(2) The court may ~~issue~~ make a protection order against the offender if— 10
- “(a) it is satisfied that the making of the order is necessary for the protection of the victim of the offence; and
- “(b) the victim of the offence does not object to the making of the order. 15
- “(3) A protection order may be made under this section in addition to imposing a sentence or making any other order.
- “(4) An order may be made under **subsection (2)** even though domestic violence proceedings have been filed by the victim of the offence against the offender, and those proceedings have not yet been determined. 20
- “(5) If an order is made under **subsection (2)** in the circumstances described in **subsection (4)**, the domestic violence proceedings, in so far as they relate to an application for a protection order against the offender, end. 25
- “**123C Provisions applying to protection order made under section 123B**
- “(1) Subject to the modifications set out in **subsection (2)**, the following provisions apply so far as applicable to a protection order made under **section 123B** as if that order were a final protection order made under the Domestic Violence Act 1995: 30
- “(a) sections 16(1) ~~and (5)~~, 19 (except subsection (3)), 20 (except subsection (5)), 21 (except subsections (2)(a), (4), and (5)), 24(3), 25(1) (except paragraph (a)), 26(1), 28 (except subsection (6)), 32(1) and (4), and 33 of the Domestic Violence Act 1995; and 35

- “(b) section 27 of the Domestic Violence Act 1995, except that the court may not impose a condition relating to the matters set out in subsection (2) of that section.
- “(2) The modifications referred to in **subsection (1)** are as follows: 5
- “(a) every reference to protection order or final order must be read as a reference to an order made under **section 123B**:
- “(b) every reference to the respondent must be read as a reference to the offender: 10
- “(c) every reference to the applicant or protected person must be read as a reference to the victim of the offence.
- “**123D Explanation of protection order**
- “(1) On making a protection order, the Judge or Registrar must explain to the offender— 15
- “(a) ~~the effect of the order; and~~
- “(b) ~~the consequences that may follow if the offender fails to comply with the terms of the order; and~~
- “(a) the effect of—
- “(i) the order; and 20
- “(ii) any direction to attend a programme made under section 32 of the Domestic Violence Act 1995 (as applied by **section 123C(1)(a)**); and
- “(b) the consequences that may follow if the offender fails to— 25
- “(i) comply with the terms of the order; or
- “(ii) attend any session of a programme that he or she has been directed to attend; and
- “(c) the means by which the order can be varied or discharged. 30
- “(2) Failure to give the explanation required by **subsection (1)** does not affect the validity of the order made.
- “**123E Protection order to be issued and served on offender**
- “(1) Where the court ~~issues~~ makes a protection order under **section 123B**, the Registrar of that court must— 35
- “(a) immediately issue the order; and

“(b) wherever practicable, serve a copy of the order on the offender before he or she leaves the court.

“(2) For the purpose of **subsection (1)**, the court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and a copy served on the offender. 5

“123F Protection order to be sent to Family Court

“(1) Immediately after the issue of a protection order in accordance with **section 123E**, the court must send a copy of the order to the Family Court nearest to where the victim of the offence resides. 10

“(2) On receipt of a copy of an order under **subsection (1)**, the Registrar of the Family Court must enter the order in the records of the Family Court.

“123G Protection order treated as if made by Family Court 15

As soon as an order has been entered in the records of the Family Court under **section 123F(2)**,—

“(a) the order is to be treated as if it were a final protection order made by that court under the Domestic Violence Act 1995; and 20

“(b) sections ~~16(1A) and (1B)~~, 22(2)(b) and (6), 23, ~~28E, 28F~~, 29 to 31, 34, 35, 38 to 44, 45(2), 46(1), 47(1), ~~47A to 47C~~, 48, ~~49, 49A(1)(a) and (2)~~, 50 ~~48 to 50~~, 82, and 88 to ~~90~~ 95 of the Domestic Violence Act 1995 apply to the order accordingly.” 25

Part 3

Amendments to Bail Act 2000

10 Principal Act amended
This Part amends the Bail Act 2000.

10A Rules as to granting bail 30
Section 7(2) is amended by omitting “section 49(1)(a) or section 49(1)(b)” and substituting “**section 49**”.

10B Consideration of just cause for continued detention

Section 8(5) is amended by omitting “section 49(1)(a) or (b)” and substituting “**section 49**”.

11 Defendant admitted to bail by Police employee

(1AA) Section 21(2) is amended by omitting “section 49(1)(a) or section 49(1)(b)” and substituting “**section 49**”.

(1) Section 21 is amended by inserting the following subsections after subsection (4):

“(4A) If a person charged with a domestic violence offence is granted bail under this section, the Police employee who takes the bail bond of that person may, in addition to the conditions that may be imposed under subsections (3) and (4), also impose any condition that he or she considers reasonably necessary to protect any child who is in a domestic relationship with that person.”

“(4A) If a person charged with a domestic violence offence is granted bail under this section, the Police employee who takes the bail bond of that person may impose—

“(a) any condition that he or she considers reasonably necessary to protect—

“(i) the victim of the alleged offence; and

“(ii) any particular person residing with the victim;

“(b) any condition that may otherwise be imposed under subsections (3) and (4).”

“(4B) For the purposes of In this subsection and **subsection (4A)**,—

“**domestic relationship** has the ~~same~~ meaning given to it by section 4 of the Domestic Violence Act 1995

“**domestic violence offence** means an offence against any enactment involving the use of violence against a person with whom the offender is, or has been, in a domestic relationship

“**violence** has the meaning given to it by section 3(2), (4) and (5) of the Domestic Violence Act 1995.”

12 Bail and breach of protection order

Section 23(4) is amended by omitting “subsection (1)(a) or subsection (1)(b) of”.

Schedule
Regulations amended

s 7A

Domestic Violence Rules 1996 (SR 1996/148)

Schedule 1, form DV 16, the heading “(a) Standard conditions prohibiting domestic violence and contact”, paragraph 2(e): insert “electronic message,” after “telephone,”. 5

Schedule 1, form DV 17, the heading “(a) Standard conditions prohibiting domestic violence and contact”, paragraph 2(e): insert “electronic message,” after “telephone,”.

Family Courts Rules 2002 (SR 2002/261)

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Schedule 5, form DV 14, paragraph 1(b)(v): insert “electronic message,” after “telephone,”.

Schedule 5, form DV 15, paragraph 1(b)(v): insert “electronic message,” after “telephone,”.

Legislative history

16 December 2008
16 December 2008

Introduction
First reading and referral to Justice and Electoral
Committee

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