

**Victims' Orders Against Violent
Offenders Bill**

Government Bill

As reported from the committee of the whole
House

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Offenders Bill**

Key to symbols used in reprinted bill

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House**

text inserted

text deleted

Hon Judith Collins

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Contents

		Page
1	Title	3
2	Commencement	3
Part 1		
Preliminary provisions		
3	Purpose	3
4	Interpretation	3
5	Meaning of violent offender or offender	5
6	Act binds the Crown	6
Part 2		
Non-contact orders		
<i>Applications</i>		
7	Application for non-contact order	6
8	Disclosure of offender's address	6
<i>Making non-contact orders</i>		
9	Power to make non-contact order	7
<i>Effect of non-contact orders</i>		
11	Effect of temporary non-contact order	8
11A	Effect of final non-contact order	8

**Victims' Orders Against Violent
Offenders' Bill**

	<i>Direction that final non-contact order apply to other persons</i>	
11B	Application for direction that final non-contact order apply against other persons	9
	<i>Commencement of non-contact orders</i>	
12	Commencement of non-contact order	10
	<i>Duration, variation, and discharge of non-contact orders</i>	
13	Duration of final non-contact order	10
13A	Variation of temporary non-contact order	11
14	Variation of final non-contact order	11
15	Discharge of non-contact order on application	11
15A	Discharge of non-contact order by operation of law	12
	<i>Procedure after temporary non-contact order made</i>	
15B	Offender may require hearing	12
15C	Procedure where offender does not require hearing	13
15D	Court may require hearing before order becomes final	13
15E	Procedure where hearing required	14
	<i>Enforcement of non-contact orders</i>	
17	Copies of orders to be sent to Police	14
18	Offence to breach non-contact order	15
	<i>Miscellaneous matters</i>	
18A	Admission of evidence	15
18B	Vexatious proceedings	15
18C	Explanation of orders	16
	<i>Rules</i>	
20	Rules of court	16
	<i>Sharing of information relating to criminal proceedings</i>	
21	Amendment to Criminal Procedure Act 2011	17
	<i>Sharing of information about non-contact orders</i>	
22	Amendment to Privacy Act 1993	17

The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Victims' Orders Against Violent Offenders Act
2013.

2 Commencement 5
This Act comes into force on the day that is 6 months after the
date on which it receives the Royal assent.

Part 1
Preliminary provisions

3 Purpose 10
This Act—
(a) acknowledges the ongoing effects of serious violent of-
fending for victims; and
(b) with a view to lessening those effects, empowers the
court, on the application of a victim, to make a non- 15
contact order prohibiting the offender from having any
form of contact with the victim.

4 Interpretation
In this Act, unless the context otherwise requires,—
associate means a person against whom a final non-contact 20
order applies pursuant to a direction made under **section 11B**
child means a boy or girl under the age of 14 years
court means a District Court, and includes a District Court
Judge
encourage includes to incite, counsel, or procure 25
final non-contact order means a non-contact order referred
to in **section 9(4)**
immediate family, in relation to a victim,—
(a) means a member of the victim's family, whānau, or 30
other culturally recognised family group, who is in a
close relationship with the victim at the time of the vio-
lent offence; and
(b) to avoid doubt, includes a person who is—

- (i) the victim's spouse, civil union partner, or de facto partner; or
 - (ii) the victim's child or stepchild; or
 - (iii) the victim's brother or sister or stepbrother or stepsister; or 5
 - (iv) a parent or step-parent of the victim; or
 - (v) a grandparent of the victim
- incapable**, in relation to a person,—
- (a) means that the person—
 - (i) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or 10
 - (ii) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of matters of that kind; and 15
 - (b) includes the person being in a state of continuing unconsciousness 20
- non-contact order** means—
- (a) a temporary non-contact order:
 - (b) a final non-contact order
- temporary non-contact order** means a non-contact order referred to in **section 9(3)** 25
- victim**—
- (a) means—
 - (i) a person against whom a violent offence is committed by another person; and 30
 - (ii) a person who, through or by means of a violent offence committed by another person, suffers physical injury, or loss of, or damage to, property; and
 - (iii) a parent or legal guardian of a child, or of a young person, who falls within **subparagraph (i)** or **(ii)**, unless that parent or guardian is charged with the commission of, or convicted or found guilty 35

of, or pleads guilty to, the violent offence concerned; and

- (iv) a member of the immediate family of a person who, as a result of a violent offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the violent offence concerned; but
- (b) despite **paragraph (a)**, if a violent offence is committed by a person, does not include any other person who (whether as a principal or party or accessory after the fact or otherwise)—
 - (i) is charged with the commission of, or convicted or found guilty of, that offence; or
 - (ii) is charged with the commission of, or convicted or found guilty of, an offence relating to the same incident or series of incidents as that offence

violent offence has the meaning given to serious violent offence by section 86A of the Sentencing Act 2002

violent offender or **offender** has the meaning given to it by **section 5**

young person means a boy or girl of or over the age of 14 years but under 17 years, but does not include a person who is or has been married or is in a civil union.

5 Meaning of violent offender or offender 25

- (1) In this Act, **violent offender** or **offender**, in relation to a victim, means a person who at any time—
 - (a) has been convicted of a violent offence that affected the victim; and
 - (b) has been sentenced to a term of imprisonment of more than 2 years in respect of that offence. 30
- (2) For the purposes of **subsection (1)(b)**, it does not matter if,—
 - (a) at the time the sentence of imprisonment was imposed, the person was already subject to a term of imprisonment for 1 or more other offences; or 35
 - (b) the sentence of imprisonment was imposed concurrently with another sentence of imprisonment for 1 or more other offences.

- 6 Act binds the Crown**
This Act binds the Crown.

Part 2

Non-contact orders

Applications 5

- 7 Application for non-contact order**
- (1) A victim of a violent offence may make an application to the court for a non-contact order against a violent offender at any time after the offender has been sentenced in respect of the offence. 10
- (2) However, a victim may not make an application under **subsection (1)** if—
- (a) there is in force a protection order against the offender made under the Domestic Violence Act 1995 and the victim is a protected person under that order; or 15
- (b) there is in force a restraining order against the offender made under the Harassment Act 1997 for the protection of the victim.
- (2A) An application under **subsection (1)** may be made—
- (a) without notice, if the court is satisfied that the delay that would be caused by proceeding on notice would or might entail undue hardship for the victim; or 20
- (b) on notice.
- (3) For the purposes of **subsection (2)**, **protected person** has the meaning given to it by section 2 of the Domestic Violence Act 1995. 25
- 8 Disclosure of offender's address**
- (1) This section applies if—
- (a) an application for a non-contact order is made on notice by a victim; and 30
- (b) the victim does not know the full name and address of the offender; and
- (c) the Registrar of the court in which the application is made has good reason to believe that the full name and address of the offender is known to— 35
- (i) the Commissioner of Police:

- (ii) the chief executive of the Department of Corrections.
- (2) If this section applies, the Registrar may request either or both of the persons specified in **subsection (1)(c)(i) and (ii)** to supply to the Registrar the full name and address of the offender. 5
- (3) As soon as practicable after receiving a request under **subsection (2)**, a person must—
 - (a) respond to that request; and
 - (b) supply to the Registrar the information requested if that information is known. 10
- (4) If information is supplied to the Registrar under **subsection (3)**, court staff—
 - (a) must treat that information as confidential; and
 - (b) must not disclose the information other than to— 15
 - (i) effect service of the application on the offender; and
 - (ii) enable the court to consider the victim's application; and
 - (iii) effect service of any order made under **section 9** on the offender. 20

Making non-contact orders

9 Power to make non-contact order

- (1) The court may make a non-contact order if it is satisfied that—
 - (a) there are ongoing effects of the offending for the victim; 25 and
 - (b) the possibility of contact between the victim and the violent offender will be detrimental to the victim's ability to manage those effects; and
 - (c) the making of the order is reasonably necessary to avoid 30 contact between the victim and the violent offender; and
 - (d) taking into account all of the circumstances, the making of the order is justified.
- (2) The court may make a non-contact order under **subsection (1)** in respect of a violent offender, even if there has previously 35 been a non-contact order in force against the offender, on the application of the same, or any other, victim.

- (3) A non-contact order made on an application without notice is a temporary order.
- (4) A non-contact order made on an application on notice is a final order.

Effect of non-contact orders 5

11 Effect of temporary non-contact order

- (1) A temporary non-contact order prohibits the offender against whom it is made from—
 - (a) doing, or threatening to do, any of the following:
 - (i) watching, loitering near, or preventing or hindering access to or from the victim's place of residence, business, employment, educational institution, or any other place that the offender knows the victim visits often: 10
 - (ii) following, stopping, or accosting the victim: 15
 - (iii) making contact with the victim (whether by telephone, electronic message, correspondence, or in any other way):
 - (iv) giving offensive material to the victim, or leaving offensive material where it will be found by, given to, or brought to the attention of the victim; and 20
 - (b) encouraging any other person to do any of the acts specified in **paragraph (a)** to the victim, where those acts, if done by the offender, would be prohibited by the order. 25
- (2) When making a temporary non-contact order, the court may, in relation to any of the prohibitions in **subsection (1)**, impose any conditions or make any directions that it considers reasonably necessary in the circumstances. 30

11A Effect of final non-contact order

- (1) A final non-contact order prohibits the offender against whom it is made from—
 - (a) doing, or threatening to do, any of the following:
 - (i) watching, loitering near, or preventing or hindering access to or from the victim's place of resi- 35

- dence, business, employment, educational institution, or any other place that the offender knows the victim visits often:
- (ii) following, stopping, or accosting the victim:
 - (iii) making contact with the victim (whether by telephone, electronic message, correspondence, or in any other way): 5
 - (iv) giving offensive material to the victim, or leaving offensive material where it will be found by, given to, or brought to the attention of the victim; and 10
- (b) encouraging any other person to do any of the acts specified in **paragraph (a)** to the victim, where those acts, if done by the offender, would be prohibited by the order; and 15
 - (c) entering any area that may be specified by the court; and
 - (d) residing within any area that may be specified by the court; and
 - (e) engaging in employment in any area that may be specified by the court. 20
- (2) When making a non-contact order, the court may, in relation to any of the prohibitions in **subsection (1)**, impose any conditions or make any directions that it considers reasonably necessary in the circumstances.
- Direction that final non-contact order apply to other persons* 25
- 11B Application for direction that final non-contact order apply against other persons**
- (1) A victim may apply to the court for a direction that a final non-contact order against the offender also apply against any other person named in the application on the grounds that— 30
 - (a) the person—
 - (i) has been encouraged by the offender to engage in behaviour of the kind described in **section 11A(1)(a)**; and 35
 - (ii) has engaged in any of those kinds of behaviour; and

- (b) the person's behaviour has been, and continues to be, detrimental to the victim's ability to manage the effects of the offending.
- (2) An application may be made under **subsection (1)**—
 - (a) at the same time as making the application on notice for a final non-contact order; or 5
 - (b) at any subsequent time while the final non-contact order continues in force.
- (3) On hearing an application made under **subsection (1)**, the court may direct that the final non-contact order apply against any other person named in the application if the court is satisfied that—
 - (a) the grounds in that subsection have been established; and 10
 - (b) the person engaged in the behaviour without a lawful purpose. 15
- (4) Where, pursuant to **subsection (3)**, a final non-contact order applies against any person, that person is prohibited from engaging in behaviour of the kind described in **section 11A(1)(a)**. 20

Commencement of non-contact orders

12 Commencement of non-contact order

- (1) In relation to an offender against whom a non-contact order is made, the order commences on the day on which it is served on the offender. 25
- (2) In relation to an associate against whom a final non-contact order is directed to apply, the order commences on the day on which it is served on the associate.

Duration, variation, and discharge of non-contact orders

30

13 Duration of final non-contact order

- (1) A final non-contact order may be made for such period (whether longer or shorter than 2 years) as the court may specify.
- (2) A final non-contact order continues in force until— 35
 - (a) it is discharged under **section 15 or 15A**; or

- (b) the expiry of the period specified by the court; or
- (c) if no period is specified by the court, the expiry of 2 years from the date on which the order commences.

13A Variation of temporary non-contact order

- (1) The victim or the offender may at any time make an application to have varied any conditions or directions imposed under **section 11(2)** in respect of a temporary non-contact order. 5
- (2) On the hearing of an application made under **subsection (1)**, the court may, if it thinks fit, vary any condition or direction imposed under section 11(2) in respect of a temporary non-contact order. 10

14 Variation of final non-contact order

- (1) The victim or the offender may at any time make an application to have a final non-contact order varied.
- (2) On the hearing of an application made under **subsection (1)**, the court may, if it thinks fit,— 15
 - (a) vary or discharge a prohibition specified in 1 or more of the following:
 - (i) **section 11A(1)(c):**
 - (ii) **section 11A(1)(d):** 20
 - (iii) **section 11A(1)(e):**
 - (ab) vary or discharge a condition or direction imposed under **section 11A(2)**:
 - (b) reduce or extend the duration of the order, whether by specifying a period under **section 13(1)** or by reducing or extending any such specified period. 25
- (3) The court must not extend the duration of a final non-contact order under this section unless the court is satisfied that the extension is, in all of the circumstances, justified.

15 Discharge of non-contact order on application 30

- (1) The victim or the offender may at any time make an application to have a non-contact order discharged.
- (2) An associate may at any time make an application to have a non-contact order discharged in so far as it relates to the associate. 35

- (3) On hearing an application made under **subsection (1)**, the court may, if it thinks fit, discharge the non-contact order, in which case the non-contact order also ceases to apply in respect of every associate.
- (4) On hearing an application made under **subsection (2)**, the court may, if it thinks fit, discharge the non-contact order in so far as it relates to the associate. 5

15A Discharge of non-contact order by operation of law

- (1) A non-contact order made against an offender is discharged by operation of law if— 10
- (a) the offender's conviction for the violent offence that affected the victim is quashed or otherwise set aside; or
- (b) the offender's sentence for the violent offence that affected the victim is— 15
- (i) quashed or otherwise set aside; or
- (ii) substituted with a non-custodial sentence; or
- (iii) substituted with a sentence of imprisonment for a term of 2 years or less.
- (2) A non-contact order that is discharged by operation of law ceases to have effect against every associate. 20

Procedure after temporary non-contact order made

15B Offender may require hearing

- (1) Where the court makes a temporary non-contact order, the offender is entitled to notify the court that he or she wishes to be heard on whether a final non-contact order should be substituted for the temporary non-contact order. 25
- (2) The temporary non-contact order must contain a notice to the offender that clearly states—
- (a) the offender's right under **subsection (1)**; and 30
- (b) that, subject to **section 15D**, if the offender does not take any steps in the proceedings, the temporary non-contact order becomes a final non-contact order by operation of law 3 months after the date on which it was made. 35

- (3) If, under **subsection (1)**, the offender notifies the court that he or she wishes to be heard, the Registrar of the court must assign a hearing date, which must be—
- (a) as soon as practicable; and
 - (b) unless there are special circumstances, not later than 42 5 days after receipt of the offender's notice.

15C Procedure where offender does not require hearing

- (1) If the offender does not notify the court under **section 15B** that he or she wishes to be heard then, unless the temporary non-contact order is earlier discharged, the order becomes a 10 final non-contact order by operation of law 3 months after the date on which it is made.
- (2) However, a temporary non-contact order does not become a final non-contact order under **subsection (1)** unless the offender has been served with a copy of the order at least 10 15 days before the 3-month period specified in **subsection (1)** elapses.
- (3) If, pursuant to **subsection (2)**, a temporary non-contact order does not become a final non-contact order, the court may from 20 time to time extend the period within which the temporary non-contact order may be served and the temporary non-contact order continues in force until the expiry of any such extensions.
- (4) Any extension or extensions under **subsection (3)** may not extend the period within which a temporary non-contact order 25 may be served by more than 3 months in total.
- (5) If the period for service of a temporary non-contact order has been extended under **subsection (3)** and at the expiry of that period the temporary non-contact order has not been served, 30 the order lapses.

15D Court may require hearing before order becomes final

- (1) If, on or after making a temporary non-contact order, the court considers that there is good reason why the order should not become final in accordance with **section 15C(1)** without a hearing at which the victim or the offender, or both, are present 35

or represented, the court, of its own motion, may direct that there be a hearing.

- (2) A direction made under **subsection (1)** may be made even though the offender does not wish to be heard.
- (3) If, pursuant to **subsection (1)**, the court directs that there be a hearing, the Registrar must assign a hearing date as soon as practicable. 5
- (4) If the court makes a direction under **subsection (1)**, it may issue a summons requiring the offender to attend the court at a place and time specified in the summons. 10

15E Procedure where hearing required

If, pursuant to **section 15B**, the offender notifies the court that he or she wishes to be heard, or in any other case where a hearing is required or held, the court may at the hearing—

- (a) discharge the temporary non-contact order; or 15
- (b) make the temporary non-contact order a final non-contact order (with or without variation).

Enforcement of non-contact orders

17 Copies of orders to be sent to Police

- (1) This section applies to the following orders: 20
 - (a) a non-contact order; and
 - (b) an order varying a non-contact order; and
 - (c) an order discharging a non-contact order.
- (2) On the making of an order to which this section applies, the Registrar of the court in which the order is made must ensure that a copy of the order is made available, without delay, to the constable in charge of the Police station nearest to where the victim resides. 25
- (3) For the purposes of this section, a copy of an order may be made available in any of the following ways: 30
 - (a) by sending the copy by means of electronic transmission (whether by fax, electronic message, or other similar means of communication):
 - (b) by entering the copy on a database maintained in electronic form, where that database may be accessed by 35

the constable to whom the copy is required to be made available:

- (c) by sending the order by ordinary post:
- (d) by making the copy available in such other manner as is appropriate in the circumstances. 5

18 Offence to breach non-contact order

- (1) An offender against whom a non-contact order is made commits an offence if the offender, without reasonable excuse, does anything prohibited by the order.
- (2) An associate against whom a final non-contact order is directed to apply commits an offence if the associate, without reasonable excuse, does anything prohibited by the order. 10
- (3) An offender or associate who is convicted of an offence against this section is liable to—
 - (a) imprisonment for a term not exceeding 2 years; or 15
 - (b) a fine not exceeding \$5,000.

Miscellaneous matters

18A Admission of evidence

In any proceedings under this Act (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, the court may receive any evidence, whether or not admissible under the Evidence Act 2006, if the court is satisfied that the admission of the evidence is in the interests of justice. 20

18B Vexatious proceedings 25

- (1) A court may dismiss any proceedings before it under **section 14 or 15** if it is satisfied that they are—
 - (a) frivolous; or
 - (b) vexatious; or
 - (c) an abuse of the procedure of the court. 30
- (2) If a court is satisfied that a person has persistently instituted vexatious proceedings under **section 14 or 15**, the court may, after giving the person an opportunity to be heard, make an order prohibiting the person from commencing any proceedings under those sections without the leave of the court. 35

18C Explanation of orders

- (1) Where, in any proceedings under this Act (other than criminal proceedings), the offender or associate, as the case may be, is before the court, then on making a non-contact order (other than an order discharging a non-contact order), the Judge must explain to that person—
- (a) the effect of the order; and
 - (b) the consequences that may follow if the person fails to comply with the terms of the order; and
 - (c) the means by which the order can be varied or discharged.
- (2) A Registrar may give the explanation required by **subsection (1)**.
- (3) Failure to give the explanation required by **subsection (1)** does not affect the validity of the order made.
- (4) Where the court makes an order under this Act, the copy of the order that is given to or served on the offender (and, where applicable, the associate) must include a notice stating—
- (a) the consequences that may follow if the person fails to comply with the terms of the order; and
 - (b) the means by which the order can be varied or discharged.
- (5) Failure to include in a copy of an order made under this Act the notice required by **subsection (4)** does not affect the validity of the order made.

*Rules***20 Rules of court**

- (1) In addition to all the other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules—
- (a) regulating the practice and procedure of District Courts in proceedings under this Act;
 - (b) providing for such matters as are contemplated by this Act or necessary for giving full effect to its provisions and for its due administration.
- (2) Without limiting **subsection (1)**, rules made under that subsection may—

-
- (a) prescribe such forms as are necessary for the purposes of this Act, or authorise any specified person or persons to prescribe or approve forms, and require the use of such forms:
- (b) apply, with or without modification, provisions of the District Courts Rules ~~2009~~ 2014. 5
- (3) In the absence of any rules under this section or in any situation not covered by such rules, the District Courts Rules ~~2009~~ 2014 apply, with all necessary modifications, to proceedings under this Act. 10

Sharing of information relating to criminal proceedings

21 Amendment to Criminal Procedure Act 2011

- (1) This section amends the Criminal Procedure Act 2011.
- (2) In section 387(1)(h), replace “or the Harassment Act 1997” with “, the Harassment Act 1997, or the Victims’ Orders Against Violent Offenders Act **2013**”. 15

Sharing of information about non-contact orders

22 Amendment to Privacy Act 1993

- (1) This section amends the Privacy Act 1993. 20
- (2) In Schedule 5, under the heading “*Police records*”, insert after the item relating to restraining orders:

Non-contact orders	Details of non-contact orders made under the Victims' Orders Against Violent Offenders Act 2013	<p>Department of Corrections (access is limited to obtaining information about any offender who is subject to a non-contact order while also subject to—</p> <ul style="list-style-type: none"> (a) a full-time custodial sentence (including while released on parole or subject to an extended supervision order made under section 107I of the Parole Act 2002 or to conditions imposed under section 93 of the Sentencing Act 2002); and (b) a sentence of intensive supervision, community detention, community work, or supervision; or (c) a non-association order; or (d) a sentence of home detention (including while subject to post-detention conditions). <p>Access is for the purpose of managing the offender's sentence and any post-sentence conditions in a manner consistent with any non-contact order.)</p>
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**Victims' Orders Against Violent
Offenders Bill**

Legislative history

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27 August 2013	First reading and referral to Law and Order Committee
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