



Family Violence (Amendments) Act 2018

Public Act 2018 No 47
Date of assent 12 November 2018
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Family Violence (Amendments) Act 2018.

2 Commencement

- (1) This Act comes into force on 1 July 2019.
- (2) However, the following provisions come into force on 3 December 2018:
 - (a) Part 1 of this Act (amendments to Bail Act 2000):
 - (b) Part 3 of this Act (amendments to Crimes Act 1961):
 - (c) Part 5 of this Act (amendments to Evidence Act 2006).

**Part 1
Amendments to Bail Act 2000**

3 Principal Act

This Part amends the Bail Act 2000 (the **principal Act**).

4 Section 3 amended (Interpretation)

In section 3, insert in their appropriate alphabetical order:

family relationship has the same meaning as in section 12 of the Family Violence Act 2018

family violence offence means an offence—

- (a) against any enactment (including the Family Violence Act 2018); and
- (b) involving family violence (as defined in section 9 of that Act)

protected person, in relation to a protection order, has the same meaning as in section 8 of the Family Violence Act 2018

5 New section 3AA inserted (References to Family Violence Act 2018)

- (1) After section 3, insert:

3AA References to Family Violence Act 2018

A reference in this Act to the whole or a provision of the Family Violence Act 2018 is, until 1 July 2019, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995.

- (2) Repeal section 3AA on 1 July 2019.

6 Section 7 amended (Rules as to granting bail)

Replace section 7(2) with:

- (2) A defendant is bailable as of right who is charged with an offence for which the maximum punishment is less than 3 years' imprisonment, unless the offence is one against—
- (a) section 194 of the Crimes Act 1961 (which relates to assault on a child, or by a male on a female); or
 - (b) section 194A of the Crimes Act 1961 (which relates to assault on a person with whom the defendant is, or has been, in a family relationship).

7 Section 8 amended (Consideration of just cause for continued detention)

- (1) Before section 8(4), insert:

- (3A) In deciding, in relation to a defendant charged with a family violence offence, whether or not to grant bail to the defendant or to allow the defendant to go at large, the court's primary consideration is the need to protect—
- (a) the victim of the alleged offence; and
 - (b) any particular person or people in a family relationship with the victim.
- (3B) Subsection (3A) is subject to subsection (3C).
- (3C) In deciding, in relation to a defendant charged with an offence against section 112 of the Family Violence Act 2018, whether or not to grant bail to the defendant or allow the defendant to go at large, the court's paramount consideration is the need to protect every person who, in relation to the protection order, is a protected person.

- (2) Repeal section 8(5).

8 Section 21 amended (Police employee may grant bail)

Replace section 21(3) with:

- (2A) In determining whether it is prudent to grant Police bail to a defendant charged with a family violence offence, the Police employee must make the primary consideration the need to protect—
- (a) the victim of the alleged offence; and
 - (b) any particular person or people in a family relationship with the victim.
- (2B) Subsection (2A) is subject to subsection (3).
- (3) In determining whether it is prudent to grant Police bail to a defendant charged with an offence against section 112 of the Family Violence Act 2018, the Police employee must make the paramount consideration the need to protect every person who, in relation to the protection order, is a protected person.

9 Section 22 replaced (Conditions of Police bail granted to defendant charged with domestic violence offence)

Replace section 22 with:

22 Conditions of Police bail granted to defendant charged with family violence offence

A Police employee who grants Police bail to a defendant charged with a family violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 21B) any condition that the employee considers reasonably necessary to protect—

- (a) the victim of the alleged offence; and
- (b) any particular person residing, or in a family relationship, with the victim.

10 Section 23 amended (Bail and breach of protection order)

- (1) In section 23(1), replace “section 50 of the Domestic Violence Act 1995 and charged with an offence against section 49 of that Act” with “section 113 of the Family Violence Act 2018 and charged with an offence against section 112 of that Act”.
- (2) In section 23(4), replace “section 49 of the Domestic Violence Act 1995” with “section 112 of the Family Violence Act 2018”.

11 New section 30AAA inserted (Conditions of bail granted to defendant charged with family violence offence)

After section 30AA, insert:

30AAA Conditions of bail granted to defendant charged with family violence offence

A judicial officer or Registrar who grants bail to a defendant charged with a family violence offence may impose as a condition of the bail (in addition to the condition or conditions imposed under section 30) any condition that the judicial officer or Registrar considers reasonably necessary to protect—

- (a) the victim of the alleged offence; and
- (b) any particular person residing, or in a family relationship, with the victim.

12 Section 31 amended (Release of defendant granted bail)

In section 31(1), after “section 30”, insert “or 30AAA”.

Part 2

Amendments to Care of Children Act 2004

13 Principal Act

This Part amends the Care of Children Act 2004 (the **principal Act**).

14 Section 5 amended (Principles relating to child’s welfare and best interests)

In section 5(a), replace “section 3(2) to (5) of the Domestic Violence Act 1995” with “sections 9(2), 10, and 11 of the Family Violence Act 2018”.

15 Section 5A replaced (Domestic violence to be taken into account)

Replace section 5A with:

5A Family violence to be taken into account

- (1) This section applies if—
 - (a) an application is made to the court for—
 - (i) a guardianship order under section 19 or 27; or
 - (ii) a direction under section 46R in relation to a guardianship dispute; or
 - (iii) a parenting order under section 48 (whether an interim parenting order or a final parenting order); or
 - (iv) a variation of a parenting order, under section 56; and
 - (b) 1 or both of the following kinds of orders made under section 79 of the Family Violence Act 2018 is or are, or at any time has or have been, in force against 1 or more parties to the application:
 - (i) a temporary protection order;
 - (ii) a final protection order.
- (2) In taking into account the principle in section 5(a), the court must have regard in particular to the following matters:
 - (a) whether a temporary protection order, or final protection order, is still in force;
 - (b) the circumstances in which that order was made;
 - (c) any written reasons, given by the Judge who made that order, for that Judge’s decision to make that order.
- (3) In taking into account the principle in section 5(a), the court must, if practicable, have regard in particular to—
 - (a) all relevant convictions (if any), of 1 or more parties to the application, for an offence against section 112 of the Family Violence Act 2018

(breaching a protection order or related property order), or for any other family violence offence:

- (b) all relevant safety concerns (if any) that an assessor or a service provider has notified or advised under section 185 or 204 of the Family Violence Act 2018.

(4) In this section, **family violence offence** means an offence—

- (a) against any enactment (including the Family Violence Act 2018); and
- (b) involving family violence (as defined in section 9 of that Act).

16 Section 22 amended (Restrictions on making appointments under section 23)

In section 22(1)(d) and (2)(d), replace “Domestic Violence Act 1995” with “Family Violence Act 2018”.

17 Section 23 amended (Appointment of eligible spouse or partner of parent as additional guardian)

- (1) In section 23(2)(c), replace “Domestic Violence Act 1995” with “Family Violence Act 2018”.
- (2) In section 23(2)(d)(i), replace “violence (that is, physical abuse or sexual abuse),” with “family violence (as defined in section 9 of the Family Violence Act 2018).”.

18 Section 46E amended (Family dispute resolution mandatory before commencement of proceedings)

In section 46E(4)(f)(ii), replace “domestic violence” with “family violence”.

19 Section 51 amended (Court must consider protective conditions in certain cases)

In section 51(1)(b), replace “physically or sexually abused” with “inflicted family violence (as defined in section 9 of the Family Violence Act 2018) against”.

20 New section 57A and cross-heading inserted

After section 57, insert:

Incidental temporary protection orders

57A Power to make incidental temporary protection order

- (1) This section applies if—
 - (a) an application has been made to the court for any of the following in respect of a child:
 - (i) a guardianship order under section 19 or 27:

- (ii) a direction under section 46R in relation to a guardianship dispute;
- (iii) a parenting order under section 48 (whether an interim parenting order or a final parenting order);
- (iv) a variation of a parenting order, under section 56; and
- (b) no application has been made to the court for, but the court is satisfied that had an application been made to it for the purpose the court would have made, a protection order (whether a temporary protection order or a final protection order) made under the Family Violence Act 2018 in respect of all or any of—
 - (i) the child, or a parent or any other person who has the role of providing day-to-day care for, or who may have contact with, the child; and
 - (ii) a party to the application (in paragraph (a)) for the order or direction under this Act.
- (2) The court may make a temporary protection order under section 79 of the Family Violence Act 2018 if satisfied that any orders or directions made under this Act will not, by themselves, provide enough protection for all or any of the people specified in subsection (1)(b).
- (3) Sections 76 to 78 of the Family Violence Act 2018 apply to a temporary protection order made under this section as if the order were one made on an application without notice, and with all other necessary modifications.

Part 3

Amendments to Crimes Act 1961

Amendments to principal Act

21 Principal Act

This Part amends the Crimes Act 1961 (the **principal Act**).

22 Section 7A amended (Extraterritorial jurisdiction in respect of certain offences with transnational aspects)

In section 7A(1), after “section 117,”, insert “section 207A,”.

23 Section 7B amended (Attorney-General’s consent required where jurisdiction claimed under section 7A)

In section 7B(1), after “section 117,”, insert “section 207A,”.

24 New section 189A inserted (Strangulation or suffocation)

After section 189, insert:

189A Strangulation or suffocation

Everyone is liable to imprisonment for a term not exceeding 7 years who intentionally or recklessly impedes another person's normal breathing, blood circulation, or both, by doing (manually, or using any aid) all or any of the following:

- (a) blocking that other person's nose, mouth, or both:
- (b) applying pressure on, or to, that other person's throat, neck, or both.

25 New section 194A inserted (Assault on person in family relationship)

- (1) After section 194, insert:

194A Assault on person in family relationship

- (1) Everyone is liable to imprisonment for a term not exceeding 2 years who—
- (a) assaults another person; and
 - (b) is, or has been, in a family relationship with that other person.
- (2) In subsection (1), **family relationship** has the same meaning as in section 12 of the Family Violence Act 2018.
- (3) The reference in subsection (2) to the meaning of family relationship in section 12 of the Family Violence Act 2018 is, until 1 July 2019, a reference to the meaning of domestic relationship in section 4 of the Domestic Violence Act 1995.
- (2) Repeal section 194A(3) on 1 July 2019.

26 Cross-heading above section 205 amended

In the cross-heading above section 205, replace "*feigned marriage*", with "*and feigned or coerced marriage or civil union*".

27 Section 207 amended (Feigned marriage or feigned civil union)

In the heading to section 207, replace "**feigned civil union**" with "**civil union**".

28 New section 207A inserted (Coerced marriage or civil union)

After section 207, insert:

207A Coerced marriage or civil union

- (1) Everyone is liable to imprisonment for a term not exceeding 5 years who, with intent to cause another person to enter into a marriage or civil union, uses coercion (for example, intimidation, threats, or violence) against that other person.
- (2) Subsection (1) applies even if the marriage or civil union—
- (a) is not governed by New Zealand law:
 - (b) is an arrangement or a relationship (however described, and even if not legally binding) in the form of a marriage or civil union:

- (c) is not solemnised or otherwise completed:
- (d) is, or if solemnised or otherwise completed would be, void or not legally binding (for example, for lack of consent, absence of formality, or non-compliance with a legal requirement).

29 Section 208 replaced (Abduction for purposes of marriage or sexual connection)

Replace section 208 with:

208 Abduction for purposes of marriage or civil union or sexual connection

Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person (**P**) without P's consent or with P's consent obtained by fraud or duress,—

- (a) with intent to go through a form of marriage or civil union with P; or
- (b) with intent to have sexual connection with P; or
- (c) with intent to cause P to go through a form of marriage or civil union, or to have sexual connection, with some other person.

Compare: 1908 No 32 s 226

Consequential amendments to Aviation Crimes Act 1972

30 Principal Act

Section 31 amends the Aviation Crimes Act 1972.

31 Section 2 amended (Interpretation)

- (1) In section 2(1), definition of **act of violence**, paragraph (a), after “194,”, insert “194A,”.
- (2) In section 2(1), definition of **act of violence**, paragraph (b), after “189,”, insert “189A,”.

Consequential amendments to Births, Deaths, Marriages, and Relationships Registration Act 1995

32 Principal Act

Sections 33 and 34 amend the Births, Deaths, Marriages, and Relationships Registration Act 1995.

33 Section 60 replaced (Convictions for bigamy to be recorded)

Replace section 60 with:

60 Convictions for bigamy, and for coerced marriage, to be recorded

- (1) This section applies if a person who is a party to a marriage is convicted of bigamy or coerced marriage because the marriage is a bigamous or coerced marriage.
- (2) The Registrar of the court in which the conviction was entered must immediately send to the Registrar-General a certificate of the conviction specifying—
 - (a) the names of the parties to the bigamous or coerced marriage; and
 - (b) the date and place of the bigamous or coerced marriage; and
 - (c) the date of the conviction.
- (3) Subsection (4) applies if—
 - (a) information relating to the bigamous or coerced marriage has been recorded under this Act or a former Act; and
 - (b) information relating to the bigamous or coerced marriage is sent to the Registrar-General under subsection (2).
- (4) The Registrar-General must record, as part of the information relating to the bigamous or coerced marriage, the information sent under subsection (2).

34 Section 62F replaced (Convictions for bigamy to be recorded)

Replace section 62F with:

62F Convictions for bigamy, and for coerced civil union, to be recorded

- (1) This section applies if a person who is a party to a civil union is convicted of bigamy or coerced civil union because the civil union is a bigamous or coerced civil union.
- (2) The Registrar of the court in which the conviction was entered must immediately send to the Registrar-General a certificate of the conviction specifying—
 - (a) the names of the parties to the bigamous or coerced civil union; and
 - (b) the date and place of the bigamous or coerced civil union; and
 - (c) the date of the conviction.
- (3) Subsection (4) applies if—
 - (a) information relating to the bigamous or coerced civil union has been recorded under this Act or a former Act; and
 - (b) information relating to the bigamous or coerced civil union is sent to the Registrar-General under subsection (2).
- (4) The Registrar-General must record, as part of the information relating to the bigamous or coerced civil union, the information sent under subsection (2).

*Consequential amendments to Births, Deaths, Marriages, and Relationships
Registration (Prescribed Information) Regulations 1995*

35 Principal regulations

Sections 36 and 37 amend the Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995.

36 Regulation 8 amended (Marriage certificates)

In regulation 8(a)(x), after “bigamy”, insert “or coerced marriage”.

37 Regulation 8A amended (Civil union certificates)

In regulation 8A(a)(xi), after “bigamy”, insert “or coerced civil union”.

Consequential amendments to Criminal Records (Clean Slate) Act 2004

38 Principal Act

Section 39 amends the Criminal Records (Clean Slate) Act 2004.

39 Section 4 amended (Interpretation)

- (1) In section 4, definition of **criminal record**, replace “**criminal record** means,—” with “**criminal record,—**”.
- (2) In section 4, definition of **criminal record**, paragraph (a), before “any—,” insert “means”.
- (3) In section 4, definition of **criminal record**, paragraph (b)(i), before “any public record” insert “means”.
- (4) In section 4, definition of **criminal record**, paragraph (b)(ii), after “bigamy”, insert “or coerced marriage or civil union”.

Consequential amendments to Maritime Crimes Act 1999

40 Principal Act

Section 41 amends the Maritime Crimes Act 1999.

41 Section 2 amended (Interpretation)

- (1) In section 2, definition of **act of violence**, paragraph (a), after “194,”, insert “194A,”.
- (2) In section 2, definition of **act of violence**, paragraph (b), after “189,”, insert “189A,”.

Part 4 Criminal Procedure Act 2011

Amendments to principal Act

42 Principal Act

This Part amends the Criminal Procedure Act 2011 (the **principal Act**).

43 New section 16A inserted (Specifying that offence charged is, or that conviction entered is for, family violence offence)

After section 16, insert:

16A Specifying that offence charged is, or that conviction entered is for, family violence offence

- (1) The charging document may specify that the offence charged is a family violence offence.
- (2) The court may, at any time after a charging document is filed and before the delivery of the verdict or decision of the court, amend the document to add, confirm, or remove a specification that the offence charged is a family violence offence.
- (3) The power in subsection (2)—
 - (a) is exercisable on the court's own motion or on the application of the defendant or the prosecutor;
 - (b) is exercisable by the Registrar, if both the defendant and the prosecutor agree;
 - (c) does not limit the powers in section 133.
- (4) If the defendant is convicted (even if the charging document does not specify that the offence charged is a family violence offence), the court may enter in the permanent court record of the proceeding a specification that the conviction is for a family violence offence.
- (5) In this section, **family violence offence** means an offence—
 - (a) against any enactment (including the Family Violence Act 2018); and
 - (b) involving family violence (as defined in section 9 of that Act).

44 New sections 168A and 168B inserted

After section 168, insert:

168A No-contact conditions if family violence offence defendant remanded in custody

- (1) This section applies to a defendant—

- (a) who is charged with an offence that is (even if the charging document does not under section 16A specify that the offence is) a family violence offence; and
 - (b) who is, or is to be, remanded in custody under section 168(1)(c) (dealing with a defendant on an adjournment).
- (2) A judicial officer may give a direction imposing on the defendant 1 or more conditions requiring the defendant, while remanded in custody under section 168(1)(c), to have no contact (except as the judicial officer specifies) with the victim of the offence, any other person specified by the judicial officer, or both.
- (3) The power in subsection (2) is exercisable—
- (a) on the judicial officer’s own motion or on the application of the defendant or the prosecutor;
 - (b) by the Registrar, if the prosecutor agrees.
- (4) In this section and section 168B,—
- contact**, by a defendant with a person, means contact or communication that is—
- (a) direct (that is, face-to-face), or indirect (regardless of the means of contact or communication used); and
 - (b) initiated, or brought about, by the defendant; and
 - (c) with the person
- family violence offence** means an offence—
- (a) against any enactment (including the Family Violence Act 2018); and
 - (b) involving family violence (as defined in section 9 of that Act).

168B Provisions about compliance with no-contact conditions

- (1) A direction given under section 168A must be copied to the defendant and to the manager of the prison in which the defendant is held in custody on remand, and overrides any entitlement of the defendant under enactments in, or made under, the Corrections Act 2004 (for example, under the following sections of that Act:
- (a) section 73 (entitlement to private visitors);
 - (b) section 76 (prisoners may send and receive mail);
 - (c) section 77 (outgoing telephone calls)).
- (2) The manager of the prison in which the defendant is held in custody on remand, or any other person, may use relevant powers of that manager or person under sections 103A to 110C (about opening and reading of mail and withholding of correspondence) of the Corrections Act 2004, or under sections 111 to 122 (about monitoring of telephone calls) of that Act, to detect and prevent non-compliance by the defendant with conditions imposed by the direction.

- (3) After becoming aware of a breach of those conditions, the manager of the prison in which the defendant is held in custody on remand, or the Police, must take all reasonable steps to notify it promptly to the Registrar.
- (4) The Registrar, on being notified, must bring the matter to the attention of a judicial officer, who may reconsider the conditions of remand and any exceptions specified under section 168A(2), and must direct the Registrar that the nature of the condition and the breach be entered in the permanent court record.
- (5) Despite subsection (4), the judicial officer may decide not to direct that those matters be entered in the permanent court record if satisfied that—
 - (a) the defendant had a reasonable excuse for the breach; or
 - (b) the breach is so minor in nature that it should not be recorded and able to be considered in a later application for bail made by that defendant.
- (6) A breach entered under this section in the permanent court record may be considered in a later application for bail made by that defendant over his or her lifetime (whether or not the defendant is charged with a family violence offence).
- (7) A direction given under this section by a judicial officer that the breach of the condition be entered in the permanent court record may be appealed against by the defendant under sections 51 and 52 of the Bail Act 2000 (which apply with all necessary modifications).

45 Section 170 replaced (Defendant in custody may be brought up before expiry of period of adjournment)

Replace section 170 with:

170 Defendant in custody may be brought up before expiry of period of adjournment

- (1) This section applies to a defendant who has been remanded in custody on any charge, even if the period for which the defendant was remanded in custody has not expired.
- (2) The defendant may at any time be brought before—
 - (a) a judicial officer, for the consideration or giving of a direction under section 168A (no-contact conditions if family violence offence defendant remanded in custody);
 - (b) a court, to be dealt with on that charge.

Compare: 1957 No 87 s 59

46 Section 386 amended (Rules)

After section 386(2)(v), insert:

- (va) if a protection order is made under section 123B of the Sentencing Act 2002 on sentencing or otherwise dealing with an offender for a fam-

ily violence offence, authorise disclosure to, or sharing with, an assessor or a service provider (as those terms are defined in section 184 of the Family Violence Act 2018)—

- (i) of specified court documents relating to the offender, every protected person for the order, or both; and
- (ii) for the purposes of all or stated provisions of that Act; and
- (iii) by the court concerned or under its authority or direction:

47 Section 387 amended (Regulations)

In section 387(1)(h), replace “Domestic Violence Act 1995,” with “Care of Children Act 2004, the Family Violence Act 2018,”.

Consequential amendments to Corrections Act 2004

48 Principal Act

Sections 49 to 53 amend the Corrections Act 2004.

49 Section 73 amended (Entitlement to private visitors)

In section 73(2), after “prisoners”, insert “, and to directions given under section 168A (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011”.

50 Section 76 amended (Prisoners may send and receive mail)

In section 76(2)(a), after “sections 105 and 108”, insert “of this Act, and directions given under section 168A (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011”.

51 Section 77 amended (Outgoing telephone calls)

After section 77(4), insert:

- (4A) The entitlement in subsection (3) is overridden by directions given under section 168A (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011.

52 Section 108 amended (Withholding mail)

In section 108(1)(d)(vi), after “any court”, insert “(for example, a direction given under section 168A (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011)”.

53 Section 112 amended (Purposes of monitoring prisoners’ calls)

After section 112(1)(c), insert:

- (ca) detect and prevent non-compliance with directions given under section 168A (no-contact conditions if family violence offence defendant remanded in custody) of the Criminal Procedure Act 2011; and

Part 5 Amendments to Evidence Act 2006

54 Principal Act

This Part amends the Evidence Act 2006 (the **principal Act**).

55 Section 4 amended (Interpretation)

- (1) In section 4(1), repeal the definition of **domestic violence**.
- (2) In section 4(1), insert in their appropriate alphabetical order:

family violence has the same meaning as in section 9 of the Family Violence Act 2018

family violence case—

- (a) means a criminal proceeding in which a person is charged with, or is waiting to be sentenced or otherwise dealt with for, a family violence offence; but
- (b) does not include a sexual case

family violence offence means an offence—

- (a) against any enactment (including the Family Violence Act 2018); and
- (b) involving family violence (as defined in section 9 of that Act)

Police employee has the same meaning as in section 4 of the Policing Act 2008

- (3) After section 4(2), insert:
 - (3) A reference in subsection (1) to the whole or a provision of the Family Violence Act 2018 is, until 1 July 2019, a reference to the whole or the corresponding provision of the Domestic Violence Act 1995.
- (4) Repeal section 4(3) on 1 July 2019.

56 Section 95 amended (Restrictions on cross-examination by parties in person)

In section 95(1), replace “domestic violence” with “family violence” in each place.

57 Section 102 amended (Application)

In section 102, before paragraph (a), insert:

- (aa) section 106A (which relates to family violence complainants):

58 Section 103 amended (Directions about alternative ways of giving evidence)

Repeal section 103(5).

59 Section 106 amended (Video record evidence)

After section 106(9), insert:

- (10) In this section, a reference to a person being given a video record includes a reference to the person being given access to the video record, for example, being given access to an electronic copy of the video record through an Internet site.

60 New sections 106A and 106B and cross-heading inserted

After section 106, insert:

Giving of evidence by family violence complainants

106A Giving of evidence by family violence complainants

- (1) This section applies to a complainant who is not a child and who is to give or is giving evidence in a family violence case (a **family violence complainant**).
- (2) A family violence complainant is entitled to give his or her evidence in chief by a video record made before the hearing.
- (3) The video record must be one recorded—
 - (a) by a Police employee; and
 - (b) no later than 2 weeks after the incident in which it is alleged a family violence offence occurred.
- (4) If a video record is to be or has been used as the complainant's evidence in chief, a Judge must give a direction under section 103 about how the complainant will give the other parts of his or her evidence, including any further evidence in chief.
- (5) To avoid doubt, section 106 applies to a video record offered as the complainant's evidence in chief under this section.
- (6) If the prosecution intends to use a video record as a complainant's evidence in chief, the prosecution must provide the defendant and the court with a written notice stating that intention to do so.
- (7) Unless a Judge permits otherwise, the notice must be given no later than when a case management memorandum (for a Judge-alone trial) or a trial callover memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.

106B Application by defendant for family violence complainant to give evidence in ordinary way or different alternative way

- (1) Despite section 106A, a defendant may apply to a Judge for a direction that a family violence complainant give evidence or any part of his or her evidence in the ordinary way under section 83 or in a different alternative way under section 105.

- (2) Unless a Judge permits otherwise, the application must be made no later than when a case management memorandum (for a Judge-alone trial) or a trial call-over memorandum (for a jury trial) is filed under the Criminal Procedure Act 2011.
- (3) Before giving a direction under this section, the Judge—
 - (a) must give each party an opportunity to be heard in chambers; and
 - (b) may call for and receive a report, from any person considered by the Judge to be qualified to advise, on the effect on the complainant of giving evidence in the ordinary way or any alternative way.
- (4) When considering whether to give a direction under this section, the Judge must have regard to—
 - (a) whether the interests of justice require a departure from the usual procedure under section 106A in the particular case; and
 - (b) the matters in section 103(3) and (4).

Part 6

Amendments to Sentencing Act 2002

61 Principal Act

This Part amends the Sentencing Act 2002 (the **principal Act**).

62 Section 9 amended (Aggravating and mitigating factors)

After section 9(1)(c), insert:

- (ca) that the offence was a family violence offence (as defined in section 123A) committed—
 - (i) while the offender was subject to a protection order (as defined in section 8 of the Family Violence Act 2018, or that was made under section 123B of this Act); and
 - (ii) against a person who, in relation to the protection order, was a protected person (as so defined):

63 Section 123A replaced (Interpretation of terms used in this section and sections 123B to 123H)

Replace section 123A with:

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

In this section and sections 123B to 123H, unless the context otherwise requires,—

child has the meaning given to it by section 8 of the Family Violence Act 2018

family relationship has the meaning given to it by section 12 of the Family Violence Act 2018

family violence offence means an offence—

- (a) against any enactment (including the Family Violence Act 2018); and
- (b) involving family violence (as defined in section 9 of that Act)

family violence proceedings means proceedings in the Family Court under the Family Violence Act 2018 that relate wholly or partly to an application for a protection order

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

64 Section 123B amended (Protection order)

- (1) In section 123B(1)(a), replace “domestic violence offence” with “family violence offence”.
- (2) In section 123B(1)(b), replace “Domestic Violence Act 1995” with “Family Violence Act 2018”.
- (3) In section 123B(4), replace “domestic violence proceedings” with “family violence proceedings”.
- (4) In section 123B(5), replace “domestic violence proceedings” with “family violence proceedings”.

65 Section 123C replaced (Provisions applying to protection order made under section 123B)

Replace section 123C with:

123C Provisions applying to protection order made under section 123B

- (1) A protection order made under section 123B is subject to the following provisions of the Family Violence Act 2018, and those provisions apply (so far as applicable, and subject to the modifications in subsection (2)) to that order as if it were a final protection order made under the Family Violence Act 2018:
 - (a) section 86(1):
 - (b) sections 90 to 96:
 - (c) sections 98 to 100 (except section 99(1)(a)):
 - (d) section 103:
 - (e) section 104 (except for section 97 as applied by section 104(2)):
 - (f) section 163(3):
 - (g) section 164(1) (except paragraph (a)):
 - (h) section 165(1):
 - (i) Part 7 of that Act.
- (2) The modifications are—

- (a) every reference to a protection order or a 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;
- (c) every reference to the applicant or protected person must be read as a reference to the victim of the offence;
- (d) the court cannot impose a condition relating to the matters set out in section 103(2) of the Family Violence Act 2018.

123CA Disclosure of documents to assessor and service provider

- (1) This section applies to a court that makes—
 - (a) a protection order under section 123B; and
 - (b) a direction under section 188 (directions for assessments, non-violence programme, and prescribed standard services) or 198 (about a direction to engage with a prescribed non-standard service) of the Family Violence Act 2018 (as applied by section 123C(1)(i)).
- (2) The court, when it makes the order or direction, must consider making under this section a direction requiring disclosure or sharing—
 - (a) of specified court documents relating to the offender, every protected person for the order, or both (*see* section 123CB); and
 - (b) to or with relevant assessors and service providers (*see* section 123CC); and
 - (c) to help those assessors and service providers perform all or any of their functions under the Family Violence Act 2018.

123CB Court documents for section 123CA

- (1) For the purposes of section 123CA, the specified court documents relating to the offender may be or include copies of the following:
 - (a) the relevant charging document;
 - (b) the offender's contact details;
 - (c) the offender's criminal conviction history;
 - (d) the court's decision to make the protection order under section 123B;
 - (e) a copy of that order;
 - (f) any current notice of bail or bail bond document.
- (2) For the purposes of section 123CA, the specified court documents relating to every protected person for the order may be or include copies of the documents specified in subsection (1), except for the offender's contact details.

123CC Assessors and service providers for section 123CA

For the purposes of section 123CA, the relevant assessors and service providers include any undertaking or providing all or any of the following assessments, programmes, or services:

- (a) a safety programme to a protected person (under section 187 of the Family Violence Act 2018, as applied by section 123C(1)(i));
- (b) an assessment undertaken of the offender (under a direction made under section 188(1)(a) or (3)(a) of the Family Violence Act 2018);
- (c) a non-violence programme to the offender (under a direction made under section 188(1)(b) of the Family Violence Act 2018);
- (d) a prescribed standard service to the offender (under a direction made under section 188(3)(b) of the Family Violence Act 2018, as so applied);
- (e) a prescribed non-standard service to the offender (under a direction made under section 198 of the Family Violence Act 2018, as so applied).

66 Section 123D amended (Explanation of protection order)

- (1) In section 123D(1)(a)(ii), replace “direction to attend a programme made under section 51D of the Domestic Violence Act 1995 (as applied by section 123C(1)(a))” with “direction to attend a programme or engage with prescribed services made under section 188(1)(b) or (3)(b) of the Family Violence Act 2018 (as applied by section 123C(1)(i))”.
- (2) In section 123D(1)(b)(ii), after “to attend”, insert “or engage with any prescribed services that he or she has been directed to engage with”.

67 Section 123G replaced (Protection order treated as if made by Family Court)

Replace section 123G with:

123G Protection order treated as if made by Family Court

- (1) This section applies to an order entered, as soon as it has been entered, in the records of the Family Court under section 123F(2).
- (2) The order is to be treated as if it were a final protection order made by that court under the Family Violence Act 2018 (except that an appeal against the order is, under section 123H of this Act, an appeal against a sentence).
- (3) The order is, accordingly, subject to the following provisions of the Family Violence Act 2018 (*see also* section 123H(7) and (8)):
 - (a) section 107(2);
 - (b) section 108(1);
 - (c) section 109(1);
 - (d) sections 111, 112, and 113:

- (e) section 157:
- (f) sections 160(1)(b) and 162:
- (g) section 169:
- (h) section 174:
- (i) section 175:
- (j) section 176:
- (k) sections 177 to 181:
- (l) Part 7.

123H Appeal against decision to make or refuse to make protection order under section 123B is appeal against sentence

- (1) An appeal against a decision to make or refuse to make a protection order under section 123B is an appeal under subpart 4 of Part 6 of the Criminal Procedure Act 2011 against the sentence imposed for an offence (and the decision cannot be appealed against under sections 177 to 181 of the Family Violence Act 2018).
- (2) If a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011 is filed in a court in respect of a protection order made under section 123B, the court must send a copy to the Family Court nearest to where the victim of the offence resides.
- (3) No protection order made under section 123B is suspended just because a person files a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011, unless the appeal court expressly directs that the protection order be suspended (*see* section 343 of that Act).
- (4) If, on an appeal under subpart 4 of Part 6 of the Criminal Procedure Act 2011, a court suspends, varies, or discharges, or makes, a protection order made under section 123B (or the appeal is withdrawn or otherwise finally determined), the court must send a copy of the order (or a notice of the withdrawal or other final determination of the appeal) to the Family Court nearest to where the victim of the offence resides.
- (5) Subsection (4) does not prevent the appeal court (whether the appeal is a first, or a further, appeal) remitting the sentence to the court that imposed it, and directing that court to take any action, under section 251(2)(c) and (3), 257(2), or 259(5)(b) of the Criminal Procedure Act 2011.
- (6) On receipt of a copy of an order or a notice under subsection (4), the Registrar of the Family Court must enter the order or notice in the records of the Family Court.
- (7) This section does not prevent a protection order made under section 123B from being varied, discharged, or enforced under any of sections 108(1), 109(1), 111, 112, and 113 of the Family Violence Act 2018 (as applied by section 123G(3) of this Act), or a decision made under any of those sections (as so applied)

from being appealed against under sections 177 to 181 of that Act (as so applied).

- (8) However, a court that varies or discharges under subsection (7) a protection order made under section 123B must copy the variation or discharge to the appeal court under the Criminal Procedure Act 2011 if—
- (a) the Family Court has been sent under this section a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011 in respect of the order; and
 - (b) the records of the Family Court contain no entry under this section of a notice of the withdrawal or final determination of the appeal under the Criminal Procedure Act 2011 against the order.

Legislative history

30 October 2018

Divided from Family and Whānau Violence Legislation Bill (Bill 247–2) as Bill 247–3B

6 November 2018

Third reading

12 November 2018

Royal assent

This Act is administered by the Ministry of Justice.