

Urgent Property Order more accessible under new Family Violence legislation.

The current Domestic Violence Act 1995 provides for urgent property orders, but only in limited circumstances. The new Family Violence Act 2018 widens the grounds on which urgent property orders can be made, and better reflects the realities of domestic violence.

Protection orders are the most common application made under the Domestic Violence Act 1995 ("the DVA"). Protection orders are often filed on an urgent, or 'without notice' basis. When a without notice application is made the Court has the ability to make a Temporary Protection Order on the basis of the applicant's evidence alone and a Judge decides whether to make an order or not within hours of the application documents being filed. If an application is made on notice, or if a without notice application is placed on notice by the Court, it can take months for a Judge to make a final decision on whether a protection order should be made.

When a Protection Order has been made, the conditions of the order requires the respondent to keep away from a property while it is occupied by a protected person. However having a protection order does not ensure the protected person a secure place to live, especially when the respondent is the legal owner or occupier of the property when the protected person is staying. Many victims of domestic violence will choose to relocate, however many wish to keep themselves and their children in a familiar environment and community. While a protection order may prevent the respondent from coming to the property, it does not stop them from evicting the protected person, or giving notice to end a tenancy.

Addressing this issue in the DVA are the four types of property orders, provided for in sections 52 to 75 of the DVA. The four types of order are occupation orders, tenancy orders, furniture orders, and ancillary furniture orders. While these orders does not change the legal ownership of any property, they determine who has the right to occupy a property or possess chattels.

Occupation Orders have the effect of giving the victim the right to exclusively occupy the property. This means that the abuser cannot enter the property at all, even if they are the sole legal owner of the property. Tenancy Orders are similar, in that they vest the tenancy of a property in the protected person and removes the respondent from any tenancy agreement that is in place. As such the respondent cannot attack the protected person via the tenancy mechanisms.

Furniture Orders and Ancillary Furniture Orders give the victim the exclusive right to retain and use any furniture named in the order. Ancillary Furniture Orders are made in combination with a Tenancy or Occupation Order, while a Furniture Orders are made by itself. When there is a Furniture or Ancillary Furniture Order in place the Police are empowered take steps in the event that the abuser removes any furniture named in the order. Otherwise the respondent may argue that they have a legal interest in the furniture.

Under the DVA, an applicant can only get a without notice property order if there has been physical or sexual violence against themselves or a child. Restricting urgent property orders to cases where there has been physical or sexual violence falsely assumes that the absence of physical or sexual violence indicates a lower ongoing risk to the victim. While physical and sexual violence are common in abusive relationships, they are not universal. The absence of physical and/or sexual abuse does not mean that the ongoing risk to the victim and any children is reduced once the relationship has ended. Two thirds of murder victims killed by an abusive domestic partner are killed

when leaving the relationship, or in the period after they had left the relationship.¹ Past violence does not predict future risk, with many abusers who kill their partners never using physical violence before they killed their victims.² As such, the DVA has a gap in the legislation, whereby victims who need the additional protections offered by property order cannot get them on an urgent basis simply because their abusers have not engaged in physical or sexual violence.

This gap in the legislation is addressed in the Family Violence Act 2018, which comes into force on 1 July 2019. The Family Violence Act replaces the DVA, and while it retains many of the features of the old legislation, it includes many significant changes to New Zealand's domestic abuse framework. One of these changes is to widen the grounds on which a without notice application for property orders can be made.

Under the Family Violence Act the Courts are now empowered to make urgent property orders when there is evidence of domestic violence of any kind. This expanded provision means that the Court is empowered to make property orders upon consideration of all the circumstances, rather than being restricted to cases where physical and/or sexual abuse is present. By expanding the scope of Property Orders the legislature has created legislation that better reflects the reality of domestic violence, and offers better protection to victims and their children.

¹ Family Violence Death Review Committee; 5th data report: January 2009 to December 2015

² Ruthe Fleury, Cris Cullivan, Deborah Bybee "When ending the relationship doesn't end the violence: women's experiences of violence by former partners" (2000) *Violence Against women* 1364