

September Legal Aid News

Domestic violence changes from 1 October

The Domestic Violence Amendment Act 2013 makes changes to Ministry-funded domestic violence programmes. These changes come into effect on 1 October and focus on the safety of children and vulnerable people affected by violence at home.

Other changes extend the maximum sentence for breaching a protection order from two to three years' imprisonment, and recognise financial or economic abuse as a form of psychological violence. The changes aim to improve the safety of victims and protected people and increase the accountability of respondents and defendants.

The Ministry funds non-violence programmes for respondents to protection orders and defendants referred from criminal courts, and safety services and programmes for protected people and their children. From 1 October, victims of domestic violence will also be able to access some safety services at the time charges are laid in the criminal court, or when they apply for a protection order. This significantly extends the availability of safety services to more victims and ensures they can be accessed at an earlier point in the process.

Safety services include an initial assessment by telephone within one working day of the referral and a much stronger focus on safety planning for adults and children.

Non-violence programmes aim to stop or prevent domestic violence by participants. Initially a Ministry-approved service provider will work through a structured risk and needs assessment with the defendant or respondent to ensure they are on a programme that will best address their individual needs.

The service provider and the participant settle the programme terms of attendance, including the number and timing of sessions required based on the assessment. The sessions will usually be in groups, but can be one-to-one depending on the person's particular needs. Providers are required to advise the court of any safety concerns they have during or at completion of the assessment or programme – to assist in keeping victims and protected people safe.

The Ministry has developed a Code of Practice to ensure all Ministry-funded domestic violence programmes reflect good practice and are safe and effective. The code sets standards that will apply to all programmes while allowing flexibility in the methods and approaches by service providers. It includes details about what providers need to do when they are concerned about the safety of protected people and when respondents don't comply with the terms of attendance for non-violence programmes.

The Provider and Community Services team in the Legal and Operational Services Group is responsible for contracts with service providers, and ensuring they operate according to the Code of Practice.

Responsibility for referring people to domestic violence programmes and managing their attendance rests with the Family Court Coordinators. They will work closely with the Victim Advisors in the criminal courts to support victims to access safety services.

More information will be available on the Ministry of Justice website from 1 October, or specific enquiries can be addressed to PCSRequests@justice.govt.nz.

Provider approvals of client eligibility for the Family Legal Advice Service (FLAS)

We recently carried out our first round of checks on FLAS providers' compliance with eligibility testing. The checks were to find out whether FLAS providers understood how to apply the client eligibility test correctly, and to identify anything that needed clarification.

While the majority of FLAS providers appeared to be comfortable with the new processes, we found a few things that needed further clarification. Most importantly providers need to remember to:

- black out the unique identifier on the copy of their client's proof of identity - a requirement of the Privacy Act 1993
- sign the Funding Declaration. This is important as it verifies that the provider has viewed the proof of identity and evidence of their client's eligibility for the service.

The checks looked at all parts of the eligibility test, including the financial eligibility assessment, identity verification, recording in the Resolution Management System and the provider's declaration. A response to general feedback, along with clarification about some of the FLAS processes, is available [here](#).

Final Decisions on Victims' Orders

Under the new legislation Victims' Orders Against Violent Offenders will be civil law matters. Existing Civil legal aid providers will automatically be approved to undertake Victims' Orders proceedings.

The Ministry will shortly also be inviting suitably experienced Family legal aid providers to seek a Civil approval limited to victims' orders proceedings. These providers will be able to represent both applicants and respondents. Family providers will need at least three years' experience in domestic violence cases, including protection orders in the Family Court. The application requirements will be more streamlined than those for full Civil approval.

The Ministry will also invite Criminal providers approved at PAL 2 or above to apply for a Civil approval limited to victims' orders proceedings to represent respondents. They will not have to meet any other criteria. Limiting the approvals to providers with Criminal PAL 2 will enable continuity of representation for clients and ensure that providers are experienced in working with violent offenders.

New Legal Aid Fixed Fees - Public Safety (Public Protection Orders)

The Public Safety Bill, which introduces public protection orders (PPO's) to detain the most high-risk individuals after they are released from jail, is expected to become law in early 2015.

It is most likely that respondents will turn to their Parole providers (who also need to have Civil provider approval) for assistance when defending a Public Protection Order application.

To prepare legal aid providers we've published the new Civil (PPO) Fixed Fees Schedule that will come into effect when the Bill comes into force. The new schedule is available [here](#).

PPOs will be Civil orders made in the High Court, and will only be sought against those with a serious sexual or violent history who have finished or are about to finish their sentence or placement. In a proceeding under this piece of legislation, Corrections will be the applicant while the respondent will be the person against whom the Order is sought.

We consulted on the fees between August and September 2014 with NZLS and ADLS Committees, NZLS members, and legal aid providers. A Wellington-based workshop was also held with Parole providers.

Vulnerable Children Act 2014 upcoming consultation on legal aid implications

The Vulnerable Children Act 2014 was given Royal Assent on 30 June this year. This Act and related amendments to the Children, Young Persons and Their Families 1989 bring in a range of changes to protect vulnerable children. The first tranche of changes come in on 1 July 2015. You can find out more about the changes and what they mean by clicking [here](#).

Among the changes introduced are new Special Guardianship Orders, Subsequent Children's Orders, appeals against decisions to deny financial or other assistance to permanent care-givers and appeals against decisions not to grant or to revoke a children's workforce exemption.

We do not expect large volumes of the new orders and appeals. For legal aid lawyers, these changes will require a few small changes to the existing fee schedules and potentially a new Family schedule of fixed fees to support Special Guardianship Orders and a new Civil schedule of fixed fees to support Appeals against Worker Safety Checking Exemptions.

Legal Aid intends to launch a short consultation in October on the proposed changes to fees and fee schedules to accommodate the new orders and appeals. We will set out the proposed new fees in *Lawpoints* in October, and invite you to respond by email or by phone call and we would also likely hold a workshop.

