

# **Non-violence programmes and prescribed services**

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## Introduction

Unless there is good reason not to, the court must direct respondents of protection orders to undertake an assessment for and attend a non-violence programme or prescribed service when a protection order is made (ss188 and 198).

Failing to comply with a direction to undertake an assessment for and attend a non-violence programme or prescribed service, without a reasonable excuse, is an offence that is liable on conviction to:

- a fine not exceeding \$5000, or
- a term of imprisonment not exceeding six months (s211).

The Ministry of Justice and Police have an agreement that a registrar will refer such a matter to Police for determination as to prosecution.

This topic sets out the relevant legislation and the process that Police must follow **when investigating and prosecuting** an offence for failing to comply with a direction to undertake an assessment for and attend a non-violence programme or prescribed service under the Family Violence Act.

## Related information

For related information, see:

- [Family harm policy and procedures](#)
- [Protection and related property orders](#)
- [Prosecuting family violence](#)

## Details in legislation

The relevant provisions are contained in the following legislation:

- [Family Violence Act 2018](#)
- [Family Courts Rules 2002](#)

## Objection process

If a direction to undertake an assessment and attend a non-violence programme/prescribed service under section 188 and/or 198 is made on application without notice the respondent may notify the court that they object (s 189). After considering an objection the court can confirm, vary or discharge the direction. When confirming or varying a direction the Judge must warn the respondent that non-compliance is an offence punishable by imprisonment (s190).

## Assessment and determination

After the court has made a direction the registrar arranges for the respondent to be referred to an assessor (s191). The assessor must arrange to meet with the respondent as soon as possible to undertake the assessment and determine whether there is an appropriate non-violence programme or prescribed service available (s192).

The assessor can decide not to undertake an assessment if they consider there is good reason not to (s192). The assessor can also decide if the respondent's attendance at a non-violence programme or prescribed service should be delayed to enable other matters to be addressed first (s194).

If the assessor makes a determination of an appropriate non-violence programme or prescribed service this is notified to the respondent, service providers and registrar (s197). The court can also direct the respondent to attend a prescribed non-standard service where an assessment indicates this would be beneficial. The judge will decide in what order the respondent should attend the various programmes and services (s198).

## Terms of attendance or engagement with non-violence programme or prescribed service

After an assessment has occurred and a respondent referred to a non-violence programme/prescribed service, the service provider must settle in writing with the respondent the terms of attendance of a non-violence programme which must include:

- the number of programme sessions and details/arrangements regarding times and venues
- terms of engagement with a prescribed service (s201).

## Assessors and service providers must be approved

All assessors and service providers must be approved by the Chief Executive of the Ministry of Justice (the Secretary).

(An **assessor** is a person or organisation that has been granted an approval to undertake assessments for non-violence programmes, prescribed services or both. A **service provider** is a person or organisation that has been granted an approval to provide programmes, prescribed services or both.)

The Secretary must publish a list of approved assessors and service providers on the Ministry of Justice website (s14).

## Assessor or service provider to notify safety concerns

If a service provider or assessor has concerns about the safety of a protected person (that there is risk that is imminent, escalating or grave and adds to the concerns that supported making the protection order) they must notify the registrar, the District Commander at the appropriate Police district headquarters, and if there is a perceived risk to any child, the chief executive. The registrar must inform the protected person and follow the procedure outlined below (s186).

## Referral back to court if continued provision no longer appropriate or practicable or affected significantly by non-compliance

At any time during the provision of a non-violence programme or prescribed service the service provider must notify the registrar if they consider:

- it is no longer appropriate or practicable for them to provide the programme/prescribed service to the respondent
- the respondent is not fully participating in the programme/prescribed service and this is significantly affecting the respondent's ability to benefit fully.

The registrar is able to make a new referral to a different service provider or bring the matter to the attention of a judge (s203).

## Report and notice of completion and outcome of programme/service

On completion of a non-violence programme or prescribed service, the service provider must provide a report to the registrar that:

- states whether the service provider thinks the respondent has met the objectives of the non-violence programme/prescribed service
- advises of any concerns the service provider has about the safety of any protected person (that there is risk that is imminent, escalating or grave and adds to the concerns that supported making the protection order) (s204).

## Notice of non-compliance with direction

If one or more of the following events happen the assessor or service provider must notify the registrar:

- the respondent fails to undertake an assessment or attend a non-violence programme or prescribed service
- the service provider determines the respondent is not fully participating in a non-violence programme or prescribed service and this is significantly affecting their ability to benefit fully (s207).

## Registrar response to notice of safety concern or non-compliance

If there are safety concerns, as outlined above, or the respondent has failed to meet the objectives of the non-violence programme/prescribed service (and a notice has been received from an assessor or service provider) the registrar must call the respondent before court or bring the matter to the attention of a judge (s208).

## Respondent called before court due to safety concerns or non-compliance

If a respondent appears before the court, the court may, after hearing from the respondent, do any or all of the following:

- admonish the respondent
- confirm, vary or replace, or discharge the direction for assessment and attendance of a non-violence programme/prescribed service or change the terms of attendance or engagement
- make a replacement direction that requires the respondent to attend or engage with a further, or different, assessment, programme or prescribed service
- make, or vary or discharge terms or conditions of a parenting order (interim or final)
- make any order or direction the court thinks fit in the circumstances.

Where the court confirms or varies a direction the judge must warn the respondent that non-compliance with the direction is an offence punishable by imprisonment ([s210](#)).

## **Ministry of Justice role – the court**

The registrar will decide whether to refer a matter to Police for determination as to prosecution.

### **Information from the court**

Once the registrar has made the decision to refer the matter to police for prosecution, the court will assemble the following documentation for the file:

- letter requesting police review the file with a view to prosecution
- chronology of relevant details
- certified copies of:
  - the temporary and/or final protection order, including the direction for assessment and to attend a non-violence programme/prescribed service
  - proof of service of the direction, duly certified with times of service included, or, alternatively, an affidavit of service or other evidence to prove personal service
  - judge's minute regarding any action taken by the court (if applicable)
  - copy of any relevant letters, records of telephone conversations and file notes sent, received, or recorded by the court.

## **Police role - investigation**

### **File sent to nearest Family Violence Coordinator/Family Harm Specialist**

Court staff will send the above information to the local Family Violence Coordinator/Family Harm Specialist. These will be designated in a memorandum of understanding between Police and Ministry of Justice. Court staff should first ensure the Family Violence Coordinator/Family Harm Specialist is not on leave and if they are away for more than one week, the file should be sent directly to the OC of the relevant station.

The Family Violence Coordinator/Family Harm Specialist will add any relevant Police information (such as NIA printouts) and a NIA file cover sheet before passing the file to the OC station for actioning.

### **Enter an occurrence in the National Intelligence Application**

The file is entered into NIA, and allocated to an enquiry group/staff member. The usual procedure is followed when entering the relevant information into NIA:

- for 'start date' the date of the letter from the registrar is to be recorded
- for 'location of the incident or event' the street address where the assessment, non-violence programme or prescribed service was held is to be entered
- the 'family violence-related offence' box should say 'yes'
- the offence code is 3855.

### **Liaise with Family Violence Coordinator/Family Harm Specialist**

It is important the investigating officer continues to liaise with the Family Violence Coordinator/Family Harm Specialist to ensure they are kept informed about progress of the case.

## Interview the respondent

Normally it will be expected that police will need to interview the respondent. The offence is not committed if the respondent had a 'reasonable excuse' for non-compliance and therefore it is important to ask the respondent the reasons.

## Information being admitted as evidence or used without court's authorisation

Information (eg. a statement or an admission) received by an assessor or service provider is able to be disclosed for:

- proceedings in response to safety concerns or a respondents non-compliance with a direction
- investigating or prosecuting an offence against s211
- investigating or prosecuting an offence committed, or alleged to have been committed, during provision of a programme or prescribed service
- an inquiry that may be or is opened, ordered or conducted into a death (including any related inquest that may be or is held) under the Coroners Act 2006

This information must not be admitted as evidence in any court or before any person acting judicially ([s205\(2\)](#)).

## Use of Family Court records in criminal cases as part of the investigation

Rule [427](#) of the Family Court Rules allows certain Family Court records to be searched and copied by parties or persons having a genuine and proper interest in the proceedings (Rule [429](#)). This would include Police who seek to bring proceedings under s 211. Police can apply to have copies of the documents noted in Rule [426](#). Such documents include records of reasons noted by a judge but not a judge's personal notes. Police may put to the respondent the material sanctioned by Rule 426.

## Admissibility of Family Court records as evidence

The determination as to admissibility must be instructed by the Evidence Act. In particular, [s50\(1\)](#) of the Evidence Act states:

### *50 Civil judgment as evidence in civil or criminal proceedings*

*(1) Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was in issue in the proceeding in which the judgment was given.*

Section 50(1), thus, limits the admissibility of the evidence of a judgment or a finding of fact to prove the existence of a fact in a criminal proceeding that was at issue at a civil hearing.

Much of the material provided by the Family Court would be admissible as it would be relevant and not unfairly prejudicial to the defendant. However, judge's minutes or other material offered as evidence that the defendant admitted the charge, where this was not taken directly from the defendant, for example through a transcript of proceedings, would not be admissible.

Judgments and findings of fact from the Family Court are not admissible in the District Court to prove the existence of a fact that was at issue before the Family Court. Thus, where the Family Court has given a decision or finding of fact on whether a respondent failed to comply with a direction, this finding would be inadmissible.

This means a judge's minute or other material that includes such a finding would, in that form, be inadmissible. However, this only relates to judgments and 'findings of fact' not to documents on which a judge may have based that finding. Accordingly, documents such as 'certified copies of temporary and/or final protection orders' would be admissible.

## Police warnings

Given the seriousness of breaching a court order, if there is sufficient evidence, it is expected that in most cases there will be a prosecution.

However, all relevant factors should be considered, such as the family violence history of the respondent, including number of previous breaches of protection orders and related property orders; whether the respondent appeared to have

a reasonable excuse for non-compliance, and whether it is within the time frame for prosecution (see below).

If the officer considers prosecution is not warranted they should consult with the District Prosecution Manager and Family Violence Coordinator/Family Harm Specialist. In the event of a decision not to charge, the respondent should be warned that failure to comply with a direction in future will result in prosecution.

## Reporting back to the court

The investigating officer needs to keep court staff informed of any decision not to charge and the reasons for this (contact the person referred to in the covering letter sent from the court).

## Decision to charge

Once a decision has been made to charge, the charge is entered in NIA (use the occurrence ID from the one that has already been entered). This will create the charging document.

## Specimen charge and precedent code

See the Legislative Reference Table (LRT).

Act:	Family Violence Act 2018
Section Title:	Offence of failing to comply with a direction to undertake an assessment for and attend a non-violence programme or prescribed service
Section:	211
Charge Text:	(1) while a protection order was in force against him/her and having been directed to undertake an assessment for and attend a non-violence programme or prescribed services, failed to comply (2) without reasonable excuse (3) being an offence punishable by six months imprisonment or a \$5,000 fine.
Penalty:	S211 six months imprisonment, \$5000 fine
Category:	Two
Time Limit:	12 months
Act Information:	Fails to comply with a direction to undertake an assessment for and attend a non-violence programme or prescribed service (no firearm involved)
Justice Code:	<a href="#">3855</a>

## Time limit for bringing a prosecution

The charging document must be filed within 12 months of the date of a notice of non-compliance.

## Summons or warrant to arrest

It is expected that a summons would first be sought and served. If it cannot be served, or the person fails to attend, a warrant to arrest can be sought under section [34](#) of the Criminal Procedure Act.

## Victim Impact Statement

A victim impact statement is not required as there is no direct victim.

## Ingredients of the offence

The prosecutor must prove the following ingredients:

Ingredients to prove	Evidence (not exhaustive)
1 That a protection order has been issued naming the defendant as the respondent.	Usual identity issues to be covered. Certified copy of protection order
2 That the court properly made a direction for the respondent to undertake an assessment for and attend a non-violence programme or prescribed service under the Family Violence Act ( <a href="#">s188</a> ).	Copy of direction
3 That the respondent was served with the direction to undertake an assessment for and attend a non-violence programme or prescribed service.	As per Family Court rules of service - see below for summary. Documentation provided by Family Court.
4 That the respondent failed to comply with the direction	Notice under section <a href="#">207</a> .

### 'Reasonable excuse'

The offence is only committed if there was not a 'reasonable excuse'. Therefore, the defendant can try to establish that he/she had a 'reasonable excuse' for failing to comply with a direction.

### Service of protection orders

See Westlaw commentary regarding proof of service requirements.

### Closing the file

Once a case is finalised it should be filed following usual local processes.

### Reporting back to the court

The prosecutor should advise court staff of the outcome of the case. (Contact the person referred to in the covering letter sent from the court).

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