



SUBMISSION ON
ECONOMIC ABUSE AND THE DOMESTIC VIOLENCE ACT 1995
MINISTRY OF JUSTICE CONSULTATION PAPER

INTRODUCTION

The Family Law Section (the Section) is grateful for the opportunity to comment on the Ministry's consultation paper regarding the possibility of economic abuse being incorporated into the Domestic Violence Act 1995 (DVA). The Section believes it is unnecessary to amend the definition of domestic violence in the DVA to incorporate economic abuse as a separate ground from psychological abuse.

SPECIFIC QUESTIONS

- 1. Are your members aware of cases of economic abuse in which protection orders provided under the DVA would be useful? Can you give examples of particular client groups or circumstances?**

The Section does not support a protection order being available to an applicant if the sole form of abuse within the relationship is economic.

Economic abuse within a domestic relationship is not uncommon and it would rarely be the only type of domestic violence experienced. It is already accepted as a form of psychological abuse by the courts.

The remedy under the DVA is the issue of a protection order, which limits the contact the respondent can have with the applicant and members of the applicant's family. Protection orders can exist in the context of existing and past relationships.

If a protection order were to be granted in situations of economic abuse, it is unclear whether the remedy would be an order that the respondent should transfer a portion of their earnings to the applicant, or whether the applicant would be given control of the parties' finances. The Section

does not believe that such remedies would be enforceable or be fair. If the relationship has ended, then the remedy lies in the Property (Relationships) Act 1976.

If a protection order is made, the court already has the power under Part 3 of the DVA to make occupation, tenancy, and furniture orders. The occupation and ancillary furniture orders can be made on such terms as the court thinks fit. In relation to the tenancy order, the court has powers to discharge and re-vest tenancy.

These provisions, together with those that already exist in the Property (Relationships) Act 1976 (PRA) and the Family Proceedings Act 1980, can ameliorate those who suffer from economic abuse in conjunction with other forms of abuse, from the time the orders are made.

In the Section's experience, economic abuse is more prevalent where the (usually) female applicant is from a different country with language limitations and limited knowledge of New Zealand systems.

2. How difficult would it be to develop affidavits in support of protection order applications in cases where economic abuse is the primary or only form of domestic violence being experienced?

As discussed above, the Section does not support a protection order being available to an applicant if the sole form of abuse within the relationship is economic. Economic abuse is not usually the primary or only form of abuse exerted. It is usually only one aspect of behaviour that is intended to control or belittle a victim when psychological abuse is a feature of the relationship.

Although victims of economic abuse would be unlikely to have access to, or knowledge of, financial information, it would be no more difficult to draft an affidavit outlining instances of economic abuse than it would for any other form of psychological abuse.

3. Economic abuse would be incorporated into the DVA through an amendment to the definition of domestic violence (s3). Do you have a view on whether economic abuse should be:

- **added as a distinct form of domestic violence, alongside physical, sexual and psychological violence, versus**

- **being included as an example of psychological violence, along with intimidation and harassment?**

Amending the DVA to add a definition of economic abuse is unnecessary, and in the Section's view it should not be added as a distinct form of domestic violence. However, including economic abuse as an example of psychological abuse in s 3(2)(c) might be helpful in allowing the court to then address it specifically, which would give it more weight.

The concept of including economic abuse as a separate definition might undermine the concept of domestic violence and the purpose of the DVA, by complicating it and by potentially creating a new grievance industry. It might invite applications based on economic abuse to be used for tactical reasons in relationship property proceedings.

4. Would extending the definition of domestic violence be sufficient, or would associated provisions be required to address economic abuse. For example:

- **Would judges have enough flexibility under the DVA to specify appropriate protections/remedies for financial abuse?**

Examination of the law surrounding interim distribution under the Property (Relationships) Act 1976 and strengthening the interim maintenance provisions to afford protection and remedies to applicants, would be preferable to amending the DVA. This would protect applicant spouses and partners against respondent spouses and partners who controlled access to the couple's assets and funds, and who use that to control and/or wear down applicants to settle for less than their entitlement.

Where parties remain together, court directions to assist a party in obtaining access to financial information may be of assistance.

It is not difficult to think of examples where the disabled or elderly could be subjected to economic abuse. Again, the DVA offers no remedy and nor should it. Such an applicant would have to seek a different type of order to a protection order. Broadening the scope of the Protection of Personal and Property Rights Act 1988 (PPPR Act) would be preferable and more appropriate.

- **Would domestic violence programmes be useful for people causing economic abuse and the people seeking protection, and would any special tailoring of programmes would be required to accommodate different target groups?**

Domestic violence programmes should help the attendees to identify the various forms of psychological abuse, including economic abuse.

SUMMARY

1. It is unnecessary to amend the definition of domestic violence in the DVA to incorporate economic abuse as a separate ground from psychological abuse.
2. Economic abuse is already accepted as a form of psychological abuse by the courts.
3. Naming economic abuse as an example of psychological abuse in s 3(2)(c) might be helpful in allowing the courts to address it specifically, and to give it more weight.
4. The Section does not support a protection order being available to an applicant if the sole form of abuse within the relationship is economic. Such an order would be an ineffective remedy and difficult to enforced.
5. It would be preferable to examine the law surrounding interim distribution under the Property (Relationships) Act 1976, and to strengthen the interim maintenance provisions, to afford protection and remedies to applicants.
6. If a legislative amendment is considered desirable to address a situation where the disabled or elderly might be subjected to economic abuse, the PPPR Act might be a more appropriate legislative vehicle.

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Chair

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