



FAMILY PROTECTION BILL 2014

(NO. 13 OF 2014)





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A

BILL

Entitled

AN ACT TO PROVIDE FOR THE PROTECTION OF FAMILIES FROM DOMESTIC VIOLENCE AND TO PROMOTE THE SAFETY, HEALTH AND WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE AND FOR RELATED PURPOSES.

ENACTED by the National Parliament of Solomon Islands.

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FAMILY PROTECTION BILL 2014**PART 1 – PRELIMINARY**

Short title and commencement

1. This Act may be cited as the Family Protection Act 2014 and commences on a date appointed by the Minister responsible for justice, in consultation with the Minister responsible for women's affairs, by notice in the Gazette.

Objects of the Act

2. (1) The objects of the Act are—
- (a) to ensure the safety and protection of all persons who experience or witness domestic violence; and
 - (b) to provide support and redress for all victims of domestic violence; and
 - (c) to facilitate programs for victims of domestic violence to assist their recovery and ensure that they are able to lead a safe and healthy life; and
 - (d) to facilitate the issue and enforcement of police safety notices and protection orders to stop domestic violence; and
 - (e) to implement certain principles underlying the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child; and
 - (f) to create offences in relation to domestic violence and provide for increased sentences for persons convicted of such offences where certain aggravating factors are present.
- (2) In enacting this Act, Parliament recognises—
- (a) that domestic violence in all its forms is unlawful; and

- (b) that domestic violence occurs in and impacts on all sectors of the community; and
- (c) that domestic violence may involve the exploitation of power imbalances or patterns of abuse over many years; and
- (d) the particularly vulnerable position of vulnerable persons who are exposed to domestic violence as victims or witnesses, and the impact that such exposure can have on their current and future psychological, physical and emotional well-being; and
- (e) that domestic violence is best addressed through a coordinated legal and social response of assistance to victims and measures to prevent violence and, in certain cases, by appropriate intervention by the Court.

(3) A court or a person that exercises any power conferred by this Act must implement the objects of, and follow the guidance provided by, this section.

3. In this Act, unless the context otherwise requires—

Interpretation

- “affected person” has the meaning set out in section 7;
- “authorised justice” has the meaning set out in section 9;
- “child” means a person under 18 years of age;
- “Clerk of Court” has the meaning set out in section 2 of the Magistrates’ Court Act (Cap. 20);
- “Council” means the Family Protection Advisory Council established by section 49;
- “Court” means the Magistrates’ Court established by section 3 of the Magistrates’ Courts Act (Cap. 20);
- “domestic relationship” has the meaning set out in section 5;

“domestic violence” has the meaning set out in section 4

“economic abuse”, of a person, means any of the following—

- (a) unreasonably controlling behaviour which denies the person financial autonomy or prevents them from taking part in decisions over household expenditures or the disposition of joint property;
- (b) withholding financial support reasonably necessary for the maintenance of the person or of the person’s household;
- (c) the unreasonable and unilateral disposal, retention or subtraction of moveable or immovable property in which the person has a material interest, or damage to or destruction of their personal property, so as to interfere with their use of such property;

“family law proceedings” mean proceedings—

- (a) under the Affiliation, Separation and Maintenance Act (Cap. 1); or
- (b) under the Islanders’ Divorce Act (Cap. 170); or
- (c) otherwise related to family law;

“family member” has the meaning set out in section 6;

“final protection order” means a protection order made under section 29;

“firearm” has the meaning set out in section 2 of the Firearms and Ammunition Act (Cap. 80);

“harassment” means engaging in a pattern of conduct that induces the fear of harm in a person, including any of the following—

- (a) watching, or loitering outside of or near, a place where the person lives, works, studies or happens to be;
- (b) making unwarranted phone calls or inducing another to make such phone calls to the person, whether or not conversation ensues;
- (c) sending or delivering unwanted letters, packages, other objects, facsimiles, text messages or other electronic mail to the person;

“health care provider” means a doctor, nurse or health worker engaged in any facility that provides medical services;

“High Court” means the High Court established by section 77 of the Constitution;

“interim protection order” means a protection order made under section 23;

“intimidate”, a person, means to intimidate the person within the meaning of section 231(2) of the Penal Code (Cap. 26);

“Local Court” means a Local Court established under section 2 of the Local Courts Act (Cap. 19);

“officer in command” has the meaning set out in section 2 of the Police Act 2013;

“physical abuse”, of a person, means—

- (a) conduct causing bodily pain or harm to the person or danger to the person’s life or health; and
- (b) includes assault;

“police safety notice” means a notice issued under section 12;

“police station” includes police post;

“possess” includes control;

“protection order” means an interim or final protection order;

“psychological abuse” means conduct that degrades or humiliates a person, including any of the following—

- (a) insults, ridicule or name calling;
- (b) obsessive possessiveness or jealousy, which constitutes a serious invasion of the person’s privacy, liberty, integrity or security;
- (c) harassment;
- (d) stalking;
- (e) intimidation;

“registered counsellor” means a domestic violence counsellor registered under section 54;

“respondent” has the meaning set out in section 8;

“sexual abuse”, of a person, means conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the person;

“social welfare officer” means a person holding a position of that designation in the Ministry responsible for social welfare;

“stalk”, a person, means to engage in a pattern of conduct consisting of following or pursuing the person in an unwanted and unwelcome manner, whether in person or by telephone calls, text messages or other means of communication;

“victim”, in relation to an offence—

- (a) against section 58 – means the person against whom the act of domestic violence was committed; and
- (b) against section 59 – means the affected person for the protection order or police safety notice;

“vulnerable person” means—

- (a) a child; or
- (b) a person with a cognitive impairment that results in substantially reduced capacity in any of the following—
 - (i) self-care or management;
 - (ii) decision making or problem solving;
 - (iii) communication or social functioning;

“weapon” has the meaning set out in section 84(6) of the Penal Code (Cap. 26).

4. (1) “Domestic violence” is conduct committed by a person (the “offender”) against another person with whom the offender is in a domestic relationship, or the threat of such conduct, that constitutes any of the following—

Meaning of
“domestic
violence”

- (a) physical abuse;
- (b) sexual abuse;
- (c) psychological abuse;
- (d) economic abuse.

(2) Domestic violence may consist of a single act or a number of acts that form part of a pattern of behaviour, even though some or all of those acts when viewed in isolation appear to be minor or trivial.

5. A person is in a “domestic relationship” with another person if—

Meaning of
“domestic
relationship”

- (a) they are or have been family members; or
- (b) they are the parents of a child or are persons who have or have had parental responsibility together for a child; or
- (c) they are or were in an engagement, courtship or customary relationship, including an actual or perceived intimate or sexual relationship of any duration; or
- (d) one person is a domestic worker in the other person's household.

Meaning of
"family
member"

6. (1) A "family member", of a person, is a member of the person's family, whether related by blood, adoption, marriage or custom.

(2) Without limiting subsection (1), each of the following is a member of a person's family—

- (a) the person's spouse or de facto spouse;
- (b) the person's child, grandchild, step-child or child-in-law;
- (c) the person's parent, grandparent, step-parent or parent-in-law;
- (d) the person's sibling, half-sibling, step-sibling or sibling in-law;
- (e) the person's uncle or aunt or uncle-in-law or aunt-in-law;
- (f) the person's nephew or niece;
- (g) the person's cousin;
- (h) any other person who is treated by the person as a member of the person's family or a member of the person's household.

7. (1) An “affected person”, for a police safety notice or protection order, is a person for whose protection the notice or order is in force or is sought.

Meaning of
“affected person”

(2) More than one person may be named as an affected person in—

- (a) an application for a protection order; or
- (b) a police safety notice or protection order.

(3) If more than one person is an affected person for a police safety notice or protection order, a reference in this Act to “the affected person” includes a reference to any of the affected persons.

8. (1) A “respondent”, for a police safety notice or protection order, is a person against whom the notice or order is in force or is sought.

Meaning of
“respondent”

(2) Only one person may be named as a respondent in—

- (a) an application for a protection order; or
- (b) a police safety notice or protection order.

9. An “authorised justice” is—

Meaning of
“authorised
justice”

- (a) a Justice of a Local Court; or
- (b) a prescribed person or a person belonging to a prescribed class of persons.

10. A reference in this act to a Form by number is a reference to the Form of that number in the Schedule.

Forms

11. (1) The Minister responsible for women’s affairs is responsible for administering Parts 4 and 5 of this Act.

Administration
of Act

(2) The Minister responsible for justice is responsible for administering the remaining provisions of this Act.

PART 2— POLICE SAFETY NOTICES

Issue of police
safety notice

12. (1) A police officer may issue a police safety notice for the protection of an affected person if the police officer believes on reasonable grounds that—

- (a) the affected person is in a domestic relationship with the respondent; and
- (b) the respondent has committed or is likely to commit domestic violence against the affected person; and
- (c) the notice is necessary—
 - (i) because of urgent circumstances; or
 - (ii) because it is not otherwise practicable in the circumstances to obtain a protection order.

(2) In addition, if the affected person is a vulnerable person, the police officer may issue a police safety notice if the police officer believes on reasonable grounds that—

- (a) the respondent has committed or is likely to commit domestic violence against a person with whom the vulnerable person is in a domestic relationship; and
- (b) the notice is necessary to protect the vulnerable person from exposure to the domestic violence; and
- (c) the notice is necessary—
 - (i) because of urgent circumstances; or
 - (ii) because it is not otherwise practicable in the circumstances to obtain a protection order; and

(d) the notice is in the best interests of the vulnerable person.

(3) The notice must be issued on Form 1.

(4) The notice may be issued without the consent of the affected person.

(5) The issue of the notice does not limit the duty of the police officer to investigate whether the respondent has committed an offence related to domestic violence under this or any other written law.

13. (1) A police officer must—

Service of police
safety notice

(a) give a copy of the police safety notice to the affected person; and

(b) personally serve the notice on the respondent; and

(c) complete and file with the Court an affidavit of service on Form 6.

(2) The police officer must explain to the respondent—

(a) the purpose, duration and effect of the notice; and

(b) the consequences of breaching the notice.

(3) Failure to comply with subsection (2) does not invalidate or otherwise affect the notice.

14. (1) A police safety notice has effect from the time it is served until the earlier of the following—

Duration of
police safety
notice

(a) the Court or an authorised justice makes a decision on the affected person's application for a protection order (including an application for an interim protection order);

(b) the notice expires.

(2) The notice expires 21 days after it is served unless, before that time, a police officer extends it for a single further period not exceeding 21 days.

(3) A police officer may only extend the notice if the officer is satisfied that it is not possible for the affected person to obtain an interim protection order within 21 days due to exceptional circumstances.

Conditions of
police safety
notice

15. (1) It is a condition of every police safety notice that the respondent—

(a) must not commit domestic violence—

(i) against the affected person; or

(ii) if an affected person is a vulnerable person – in the presence of the vulnerable person; and

(b) must not possess a firearm.

(2) If the police officer issuing the notice believes on reasonable grounds that it is necessary for the safety of the affected person, the police officer may include in the notice a condition that prohibits the respondent from doing any of the following—

(a) entering or remaining at a specified place, or approaching within a specified distance of the place;

(b) approaching within a specified distance of the affected person;

(c) contacting the affected person;

(d) attempting to do anything mentioned in paragraphs (a) to (c);

(e) engaging in stated behaviour that is likely to lead to domestic violence against the affected person;

- (f) possessing a weapon other than a firearm.

16. A police officer who issues a police safety notice must, as soon as practicable but within 21 days after issuing the notice, assist the affected person to make an application for a protection order.

Duty to assist
affected
person

PART 3— PROTECTION ORDERS

Division 1 – Jurisdiction to make protection orders

17. (1) The Magistrates' Court has jurisdiction to—
- (a) make a protection order; and
 - (b) vary or revoke a protection order.
- (2) An authorised justice has jurisdiction to—
- (a) make an interim protection order; and
 - (b) vary or revoke an interim protection order.
18. (1) This section applies if—
- (a) the affected person and respondent are parties to family law proceedings before a court; or
 - (b) the respondent is the defendant in criminal proceedings before a court for the commission of an offence that involves domestic violence.
- (2) The court may, of its own motion or on an application by or on behalf of an affected person—
- (a) make a protection order for the protection of the affected person; or
 - (b) vary or revoke a protection order for the protection of the affected person made by—
 - (i) a court with the same or an inferior level of jurisdiction; or
 - (ii) an authorised justice.

Jurisdiction of
Magistrates'
Court and
authorised
justice

Protection order
in family or
criminal
proceedings

(3) If the court makes, revokes or varies a final protection order, any application for a protection order for the protection of the affected person before another court or an authorised justice is taken to be withdrawn.

(4) Sections 19, 20, 21, 23, 29, 30 and 41 apply in relation to a protection order sought or made under this section.

Division 2 – Applications for protection orders

Who may apply
for protection
order

19. An application for a protection order may be made by or on behalf of—

- (a) a person against another person with whom he or she has or has had a domestic relationship; or
- (b) 2 or more persons against another person with whom at least one of those persons has or has had a domestic relationship.

Application for
vulnerable
person

20. (1) If the affected person is a vulnerable person, only the following persons may apply for a protection order—

- (a) the vulnerable person;
- (b) a parent or legal guardian of the vulnerable person;
- (c) a person over the age of 18 years who cares for the vulnerable person;
- (d) a social welfare officer;
- (e) a police officer.

(2) A police officer or social welfare officer must apply for a protection order for a vulnerable person if the officer has reasonable cause to believe—

- (a) the respondent has committed or is likely to commit domestic violence against the vulnerable person or a person with whom the vulnerable person is in a domestic relationship; and
- (b) the vulnerable person's wellbeing has or is likely to be adversely affected by the violence; and
- (c) that insufficient other action has been taken to protect the vulnerable person's wellbeing, and it is unlikely that sufficient action will be taken; and
- (d) the application is in the best interests of the vulnerable person.

to— **21.** (1) An application for a protection order may be made

Form of
application

- (a) the Court; or
 - (b) if, as part of the application, the applicant is seeking an interim protection order – an authorised justice.
- (2) The application may be made—
- (a) on Form 2, including by email or facsimile; or
 - (b) if the applicant is unable to transmit a written application on Form 2 to the Court or authorised justice – orally or in another written form, including by telephone or similar national facility approved by the Court or authorised justice.
- (3) If an application is made orally or in a written form other than on Form 2—
- (a) it must be reduced to writing on Form 2—

- (i) if the application is made to the Court – by the Clerk of Court; or
 - (ii) if the application is made to an authorised justice – by the authorised justice; and
- (b) the Clerk or authorised justice may sign the form on behalf of the applicant.

Service of
application

22. (1) On receiving an application for a protection order, including an application filed under section 25, the Court or authorised justice must give the officer in command of the police station nearest to where the respondent lives or was last known to live—

- (a) a notice to attend on Form 7; and
 - (b) a copy of the application.
- (2) A police officer must—
- (a) personally serve the notice and application on the respondent; and
 - (b) complete and file with the Court an affidavit of service on Form 6.

Division 3 – Interim protection orders

When interim
protection order
may be made

23. (1) In response to an application for a protection order, the Court or authorised justice may make an interim protection order if satisfied that, if the order were not made immediately—

- (a) the respondent is likely to commit domestic violence against the affected person; or
 - (b) the affected person may be prevented or deterred from pursuing the application for the final protection order.
- (2) In addition, if the affected person is a vulnerable person, the Court or authorised justice may make an

interim protection order if satisfied that, if the order were not made immediately—

- (a) the respondent is likely to commit domestic violence against a person with whom the vulnerable person is in a domestic relationship; and
- (b) the order is necessary to protect the vulnerable person from exposure to the domestic violence; and
- (c) the order is in the best interests of the vulnerable person.

(3) An interim protection order may be made—

- (a) even if the respondent has not been served with the application for the order; and
- (b) in the absence of the respondent; and
- (c) outside ordinary sitting or business hours.

(4) An interim protection order need only be supported by the evidence that the Court or authorised justice considers sufficient and appropriate having regard to the temporary nature of the order.

(5) An interim protection order must be made on Form 3.

24. (1) After making an interim protection order, the Court or authorised justice must give a copy of—

- (a) the order to the affected person; and
- (b) the following to the officer in command of the police station nearest to where the respondent lives or was last known to live, for service on the respondent—

Service of interim
protection order

- (i) if the respondent has not already been served with the application for the order – the application for the order;
 - (ii) the order.
- (2) A police officer must—
- (a) personally serve the application and order on the respondent; and
 - (b) complete and file with the Court an affidavit of service on Form 6.
- (3) The police officer must explain to the respondent—
- (a) the purpose, duration and effect of the order; and
 - (b) the consequences of breaching the order.
- (4) Failure to comply with subsection (3) does not invalidate or otherwise affect the order.
- (5) Subsections (2) and (3) do not apply if the respondent is before the authorised justice or Court when the order is made.

Filing of interim protection order made by authorised justice

25. (1) This section applies if an authorised justice makes an interim protection order.

- (2) After receiving them from the authorised justice, a police officer must file the following in the nearest Local Court and the Magistrates' Court—
- (a) the application for the order;
 - (b) the order.

Duration of interim protection order

26. An interim protection order comes into force as soon as it is served on the respondent and remains in force until the earliest of the following—

- (a) a final protection order is made;

- (b) the interim protection order is revoked;
- (c) the affected person withdraws the application for the final protection order.

27. An application for a final protection order is not discontinued merely because the Court or authorised justice makes, or refuses to make, an interim protection order in relation to the application.

Application for
final protection
order continues

Division 4 – Final protection orders

28. (1) When the Court receives an application for a protection order, including an application filed under section 25, the Court must inform the affected person that he or she may elect to seek mediation with the respondent.

Voluntary
mediation

- (2) If the affected person elects to seek mediation—
 - (a) a court officer must assist the affected person to arrange mediation facilitated by a registered counsellor; and
 - (b) the hearing of the application for the final protection order must not proceed until the mediation has taken place; and
 - (c) if the application for the final protection order proceeds, in addition to the matters mentioned in section 29(3), the Court must take into account the outcome of the mediation in deciding the application.
- (3) This section does not—
 - (a) require the affected person to seek mediation; and
 - (b) does not prevent the Court from making or varying an interim protection order before the mediation has taken place.

29. (1) In response to an application for a final protection order, the Court may make the order if satisfied on the balance of probabilities that—

- (a) the respondent has committed or is likely to commit domestic violence against the affected person; and
- (b) the making of an order is necessary to protect the affected person from domestic violence.

(2) In addition, if the affected person is a vulnerable person, the Court may make the final protection order if satisfied on the balance of probabilities that—

- (a) the respondent has committed or is likely to commit domestic violence against a person with whom the vulnerable person is in a domestic relationship; and
- (b) the order is necessary to protect the vulnerable person from exposure to the domestic violence; and
- (c) the order is in the best interests of the vulnerable person.

(3) Before making the order, the Court must take into account the following—

- (a) the need to ensure that the affected person is protected from domestic violence;
- (b) the opinion of the affected person of the nature and seriousness of the behaviour of the respondent;
- (c) the effect of that behaviour on the affected person; and
- (d) the well-being and accommodation needs of the affected person.

- (4) A final protection order must be made on Form 3.
- (5) If the Court refuses an application for a final protection order, it must give written reasons for doing so.

30. (1) This section applies if—

- (a) a respondent fails to appear before the Court for the hearing of an application for a final protection order; and
- (b) the Court is satisfied that the respondent has been served with a copy of the application.

Hearing of
application in
absence of
respondent

(2) The Court may—

- (a) hear and decide the application in the absence of the respondent; or
- (b) adjourn the proceedings.

(3) Before adjourning the proceedings, the Court may make an interim protection order (if one is not already in force), whether or not the application for the final protection order includes an application for an interim protection order.

(4) Section 23 applies to the making of an interim protection order under this section as if the order were made on application.

31. (1) After making a final protection order, the Court must give a copy of the order to—

- (a) the affected person; and
- (b) the officer in command of the police station nearest to where the respondent lives or was last known to live, for service on the respondent.

Service of final
protection order

(2) A police officer must—

- (a) personally serve the order on the respondent;
and
 - (b) complete and file in the Court an affidavit of
service on Form 6.
- (3) The police officer must explain to the respondent—
- (a) the purpose, duration and effect of the order;
and
 - (b) the consequences of breaching the order.
- (4) Failure to comply with subsection (3) does not
invalidate or otherwise affect the order.
- (5) Subsections (2) and (3) do not apply if the
respondent is before the Court when the order is made.

Duration of final
protection order

32. A final protection order comes into force as soon as it is
served on the respondent and remains in force until the earliest of the
following—

- (a) the expiry of the period, not exceeding 5 years,
set out in the order;
- (b) the order is revoked under section 41;
- (c) the order is revoked on appeal under
section 45.

Withdrawal of
application

33. (1) An affected person for an application for a
protection order may withdraw the application at any time before the
order is made, by filing a notice on Form 8.

- (2) If more than one affected person is named in an
application for a protection order, withdrawal of the
application by one of the affected persons does not
withdraw the application in relation to the other affected
persons.

Conduct of
proceedings

34. (1) The only persons who may be present during the
hearing of an application for a protection order are the following—

- (a) the affected person and the respondent;
- (b) if the hearing is before a court – court officers;
- (c) legal or other representatives of the affected person and the respondent;
- (d) witnesses;
- (e) any other person permitted by the Court or authorised justice to be present.

(2) The affected person is entitled to have a person with her or him throughout the proceedings to provide support and other assistance.

Division 5 – Conditions of protection orders

35. (1) It is a condition of every protection order that the respondent—

Standard conditions

- (a) must not commit domestic violence—
 - (i) against the affected person; or
 - (ii) if an affected person is a vulnerable person – in the presence of the vulnerable person; and
- (b) must not possess a firearm.

(2) The Court or authorised justice may also impose other conditions and orders on the respondent in accordance with sections 36 to 38 if it considers the conditions are necessary or desirable for protecting the affected person.

36. The Court or authorised justice may include in the protection order a condition that prohibits the respondent from doing any of the following—

Conditions relating to behaviour of respondent

- (a) entering or remaining at a specified place, or approaching within a specified distance of the place;
- (b) approaching within a specified distance of the affected person;
- (c) contacting the affected person;
- (d) attempting to do anything mentioned in paragraphs (a) to (c);
- (e) engaging in stated behaviour that is likely to lead to domestic violence against the affected person;
- (f) possessing a weapon other than a firearm;
- (g) encouraging another person to engage in behaviour in relation to the affected person that, if engaged in by the respondent, would be prohibited under the order.

Conditions relating
to property and
accommodation

37. The Court or authorised justice may include in the protection order a condition that does any of the following—

- (a) prohibits the respondent from damaging property of the affected person;
- (b) directs the respondent—
 - (i) to return any specified personal property of the affected person; or
 - (ii) to allow the affected person to recover, have access to or make use of any specified personal property;
- (c) directs the respondent to vacate a residence or a specified part of a residence to enable the affected person to occupy it, whether or not the residence is solely owned or leased by the respondent.

38. (1) Subject to any order in force under the Affiliation, Separation and Maintenance Act (Cap. 1), the Court or authorised justice may include in a protection order any of the following—

- (a) an order for the temporary custody of or access to a child of the affected person;
 - (b) an order directing the temporary maintenance of the affected person or a child of the affected person.
- (2) An order under this section that relates to a child—
- (a) must be made in the best interests of the child; and
 - (b) does not affect the child's right to, inheritance of, or succession to, property.
- (3) An order under this section does not affect any proceedings under the Affiliation, Separation and Maintenance Act (Cap. 1).

Division 6 – Variation and revocation of protection order

39. (1) An affected person or a respondent for a protection order may apply for a variation or revocation of the order.

Application to
vary or revoke
protection order

- (2) The application may be made to—
- (a) the Magistrates' Court; or
 - (b) for an interim protection order— an authorised justice.
- (3) The application must be made on Form 4.

40. (1) After the Court or authorised justice receives an application for variation or revocation of a protection order from a party to the protection order, the Court or authorised justice must give the officer in command of the police station nearest to where the other party to the order lives or was last known to live—

Service of
application

- (a) a notice to attend on Form 7; and
- (b) a copy of the application.

(2) A police officer must—

- (a) personally serve the notice and application on the other party; and
- (b) complete and file with the Court an affidavit of service on Form 6.

Decision to vary
or revoke

41. order by—

(1) A Court or authorised justice may vary a protection

- (a) varying the conditions imposed by the order;
or
- (b) extending the period for which the order remains in force.

(2) Before revoking an order, the Court or authorised justice must—

- (a) if the application was made by the affected person – investigate the reasons for the application and be satisfied that the affected person made the application freely and voluntarily; and
- (b) be satisfied that the safety and well-being of the affected person will not be adversely affected by the revocation; and
- (c) be satisfied that there is no further risk of the respondent committing domestic violence—
 - (i) against the affected person; or
 - (ii) if the affected person is a vulnerable person – against a person with whom the vulnerable person is in a domestic relationship.

(3) The Court or authorised justice may only vary or revoke a protection order on application by the respondent if—

- (a) the affected person for the order is present for the hearing of the application; and
- (b) the Court or authorised justice is satisfied that there has been a substantial change in circumstances since the protection order was made or last varied.

42. (1) After deciding to vary or revoke a protection order, the Court or authorised justice must give notice of the variation or revocation on Form 5 to the officer in command of the police station nearest to where each of the affected person and the respondent lives or was last known to live, for service on the affected person and the respondent.

Service of
decision

(2) A police officer must—

- (a) personally serve notice of the variation or revocation on each of the affected person and the respondent; and
- (b) complete and file with the Court an affidavit of service on Form 6.

(3) The police officer must explain to the person served the effect of the variation or revocation.

(4) Failure to comply with subsection (3) does not invalidate or otherwise affect the variation or revocation.

(5) Subsections (2) and (3) do not apply in relation to a person who is before the Court or authorised justice at the time the decision is made.

43. The revocation or variation has effect as soon as it is served on both the affected person and the respondent.

Date of effect of
revocation or
variation

Division 7 – Appeals

Right to appeal

44. (1) The affected person or respondent for a protection order may appeal to the High Court against a decision of the Magistrates' Court—

- (a) to make a final protection order; or
- (b) to vary or revoke a final protection order; or
- (c) to refuse to make, vary or revoke a final protection order.

(2) The appeal must be made within 30 days after the appellant is served with notice of the decision.

Conduct of appeal

45. (1) The appeal is by way of rehearing.

(2) The appeal does not stay the operation of the protection order to which it relates.

(3) In deciding the appeal, the High Court may—

- (a) confirm, vary or revoke the protection order to which the appeal relates; and
- (b) make such order or decision as it considers should have been made by the original decision maker.

PART 4 – ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE

Duty of health care providers

46. If a patient notifies a health care provider that they have been a victim of domestic violence, the health care provider must—

- (a) refer the patient to an appropriate provider of support services to victims of domestic violence; and
- (b) give the patient the opportunity to be medically examined and refer them for

counselling or further medical treatment, as appropriate; and

- (c) advise the patient about filing a complaint with the police; and
- (d) if the health care provider medically examines the patient – apply any relevant policies or protocols for examining victims of domestic violence issued by the Ministry responsible for health; and
- (e) if the patient is a child – give a report in relation to the matter to a social welfare officer or police officer.

47. (1) A police officer who issues a police safety notice must assist the affected person in obtaining the following—

Duty of police officers

- (a) a place of safety in the community;
- (b) counselling and medical services;
- (c) legal services.

(2) A police officer who receives a report of domestic violence must—

- (a) investigate the report; and
- (b) inform the alleged victim about their rights under this Act.

48. (1) This section applies to a prosecution for an offence against section 58 or 59.

Assistance during prosecution

(2) The prosecutor must provide and explain all relevant information to the victim to enable the victim to understand the court proceedings.

(3) If the victim is female, the officer in command of the police station nearest to the court must ensure that a

female police officer is available, as far as practicable, to assist the victim in court.

PART 5 – ADVICE, COUNSELLING, PREVENTION AND AWARENESS OF DOMESTIC VIOLENCE

Division 1 – Family Protection Advisory Council

Establishment and functions

49. (1) The Family Protection Advisory Council is established.

(2) The Council must advise and make recommendations to the Minister, either on its own initiative or on request by the Minister or any other person, in relation to the following—

- (a) the implementation of this Act and any other written law relating to family law;
- (b) the availability of legal aid to affected persons and respondents;
- (c) any matter relating to domestic violence;
- (d) funding needed to support initiatives addressing domestic violence, including—
 - (i) material support for victims of domestic violence;
 - (ii) assistance to domestic violence victim support centres and shelters;
 - (iii) training, public awareness and education programs on domestic violence.

Membership

50. (1) The Council consists of the following members, appointed by the Minister—

- (a) three representatives of a national policy body dealing with eliminating violence against women, recommended by the chairperson, one

of whom must be a representative of civil society;

- (b) a representative of the Ministry responsible for women's affairs, recommended by the Permanent Secretary of that Ministry;
 - (c) a representative of the Ministry responsible for justice, recommended by the Permanent Secretary of that Ministry;
 - (d) a representative of the Police Force recommended by the Police Commissioner;
 - (e) a representative of the Ministry responsible for health, recommended by the Permanent Secretary of that Ministry.
- (2) The Minister must appoint—
- (a) one member of the Council to be the chairperson of the Council; and
 - (b) another member to be the deputy chairperson of the Council.
- (3) The Ministry responsible for administering this Act must provide secretariat services to the Council.

51. (1) A member of the Council holds office for the period, not exceeding 3 years, specified in the instrument of appointment, and is eligible for re-appointment.

- (2) A member may resign by writing to the Minister.
- (3) The Minister must terminate the appointment of a member who—
 - (a) is convicted of a criminal offence; or
 - (b) is physically or mentally incapable of performing their functions as a member; or

Tenure of office of members

Meetings and
procedures

(c) is absent from three consecutive meetings of the Council without a valid reason.

- 52.** (1) A meeting of the Council is presided over by—
- (a) the chairperson; or
 - (b) in the absence of the chairperson, the deputy chairperson; or
 - (c) in the absence of the chairperson and deputy chairperson, another member nominated by the members present.
- (2) The quorum for a meeting of the Council is 4 members.
- (3) The Council must keep records of its meetings.
- (4) Subject to this Division, the Council may determine its own procedures.

Annual report

53. The Council must, as soon as practicable after 31 December in each year, prepare and submit to the Minister a report of its operations during the previous year.

Division 2 – Registered counsellors

Registration of
counsellors

- 54.** (1) On application by a person, the Minister, in consultation with the Council, may register the person to be a domestic violence counsellor.
- (2) The Minister must not register a person unless the person—
- (a) is trained in counselling methodology approved by the Minister; and
 - (b) has at least 2 years of experience in domestic violence counselling.
- (3) The Minister may, following consultation with the Council, deregister a person as a registered counsellor if

the Minister believes on reasonable grounds that the person has contravened a code of ethics or practice standards approved by the Minister.

55. (1) The Permanent Secretary of the Ministry responsible for the administration of this Act must keep a current register of counsellors.

Register of counsellors

(2) The register may be kept electronically.

(3) A person may inspect the register free of charge during normal office hours at—

- (a) at least one place in Honiara; and
- (b) each office of a provincial government.

Division 3 – Other duties of the Minister

56. The Minister, in collaboration with civil society organisations, other Ministries and any other relevant stakeholders, must establish and support public awareness programs aimed at preventing domestic violence.

Domestic violence awareness and prevention programs

57. (1) For each calendar year, the Minister must table in Parliament—

Reporting requirements

(a) a report on public awareness programs conducted under section 56 during the year; and

(b) a copy of the report of the Council given under section 53 for the year.

(2) The Minister must table the report—

(a) within 3 months after the end of the calendar year; or

(b) if Parliament does not sit within 3 months after the end of the calendar year— at the first sitting of Parliament after the end of the calendar year.

PART 6 – OFFENCES

Domestic
violence
offence

58. (1) A person commits an offence if the person commits domestic violence.

(2) The penalty for an offence under subsection (1) is a fine of 30,000 penalty units or imprisonment for 3 years, both.

(3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for committing the act of domestic violence.

Breach of
order or
notice

59. (1) A respondent for a protection order or police safety notice commits an offence if the respondent breaches the order or notice.

(2) The penalty for an offence under subsection (1) is a fine of 30,000 penalty units or imprisonment for 3 years, both.

(3) It is not a defence to an offence under subsection (1) that the defendant paid an amount of money as customary compensation for engaging in the conduct that resulted in the breach.

Obstruction of
service
provider

60. (1) A person commits an offence if the person obstructs, threatens or intimidates a registered counsellor, health care provider or other support worker providing services to an affected person.

(2) The penalty for an offence under subsection (1) is a fine of 10,000 penalty units or imprisonment for 1 year, both.

Proceedings for
offences

61. Section 35 of the Magistrates' Court Act (Cap.20) does not apply in relation to an offence under section 58 or 59.

Aggravating
circumstances

62. In sentencing an offender for an offence under section 58 or 59, the court must consider the following as aggravating circumstances—

- (a) the offence was committed against a child or in the presence of a child;

- (b) the offence was committed against a person with a disability;
- (c) the offence was committed against a pregnant woman;
- (d) the offence was committed at night;
- (e) a weapon was used in the commission of the offence;
- (f) a drug or alcohol were contributing factors to the commission of the offence;
- (g) the conduct constituting the offence was repeated.

63. (1) This section applies if the victim of an offence against subsection 58 or 59 suffers personal injury, damage to property or financial loss as a result of the offence.

Compensation

(2) In sentencing the offender for the offence, the court may order the offender to pay reasonable and fair compensation to the victim.

(3) In considering whether to make an order for compensation, the court must take into account the following—

- (a) the pain and suffering of the victim, including psychological harm, shame and humiliation suffered;
- (b) the value of any property of the victim that has been taken, damaged or destroyed;
- (c) any loss of earnings suffered by the victim;
- (d) any necessary and reasonable expenses incurred by the victim as a result of separation from the offender.

- (4) In considering the amount of compensation to be awarded, the court must have regard to the following—
- (a) the financial position of the offender and victim and the ability of the offender to pay the compensation;
 - (b) the relationship between the offender and the victim;
 - (c) any other order of a court relating to maintenance or compensation;
 - (d) the time elapsed since the commission of the offence;
 - (e) any other legal proceedings involving the parties.

PART 7 – MISCELLANEOUS MATTERS

Time for giving
and serving
documents

- 64.** (1) This section applies if—
- (a) a court, authorised justice or police officer is required to give, serve or file a document under this Act; and
 - (b) no time is specified for doing so.
- (2) The court, authorised justice or police officer must give, service or file the document as soon as practicable.

Withholding
address of affected
person

- 65.** (1) This section applies to an application of any kind by an affected person under this Act that is required to be served on the respondent.
- (2) If the affected person wishes to withhold his or her address from the respondent, the affected person may leave the address field on the application blank and instead provide the address to the relevant court or authorised justice on a separate document.

(3) The copy of the application served on the respondent must not include the affected person's address.

66. A person is not civilly or criminally liable for—

Protection from liability

- (a) applying in good faith for a protection order on behalf of another person; or
- (b) complying with an obligation under section 46.

67. Within 3 years after the commencement of this Act, the Minister must—

Review of Act

- (a) ensure an independent review of the operation of this Act is undertaken; and
- (b) table a report of the review in Parliament.

68. To avoid doubt, the Minister responsible for the administration of the Public Financial Management Act 2013 may establish a targeted balance under section 28 of that Act for the purpose of administering and meeting the objects of this Act.

Funds to administer Act

69. The Minister responsible for administering a provision of this Act may make regulations that are necessary or convenient for the administration of the provision.

Regulations

SCHEDULE

Section 10

FORM 1

POLICE SAFETY NOTICE

Affected person(s)

Respondent

Conditions of notice

1. [*name of respondent*] must not commit domestic violence against [*name of each affected person*]

*or in the presence of [*name of each affected person who is a vulnerable person*].

2. [*name of respondent*] must not possess a firearm.

(*insert any additional conditions*)

Duration of notice

This notice remains in force until the earlier of the following events—

- a decision is made on the affected person's application for a protection order; or
- the expiry of 21 days.

Effect of notice

It is an offence to breach any condition of this notice. The penalty for the offence is 30,000 penalty units or imprisonment for 3 years, or both.

Date of notice

Signature of issuing police officer

*delete if inapplicable

What is domestic violence?

Domestic violence includes physical abuse, sexual abuse, psychological abuse and economic abuse or the threat of any such abuse.

Physical abuse means—

- (a) conduct causing bodily pain or harm to a person or danger to a person's life or health; and
- (b) includes assault.

Economic abuse means any of the following—

- (a) unreasonably controlling behaviour which denies a person financial autonomy or prevents them from taking part in decisions over household expenditures or the disposition of joint property;
- (b) withholding financial support reasonably necessary for the maintenance of a person or of the person's household;
- (c) the unreasonable and unilateral disposal, retention or subtraction of moveable or immovable property in which a person has a material interest, or damage to or destruction of their personal property, so as to interfere with their use of such property.

Psychological abuse means conduct that degrades or humiliates a person, including any of the following—

- (a) insults, ridicule or name calling;
- (b) obsessive possessiveness or jealousy that constitutes a serious invasion of the person's privacy, liberty, integrity or security;
- (c) harassment;
- (d) stalking;
- (e) intimidation.

Sexual abuse means conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a person.

FORM 2**APPLICATION FOR PROTECTION ORDER****Affected person(s)**

[name and address for service]

Respondent

[name and address for service]

Applicant (if this is not an affected person)

[name and address for service]

Relationship between affected person and respondent**Grounds for application****Conditions sought to be imposed on respondent under order**

Are you seeking an interim protection order in addition to a final protection order?

No

Yes

If “Yes” – Grounds for seeking interim protection order

List and attach existing family law orders or protection orders

Date of application

Signature of applicant

***Court seal/Signature of authorised justice**

***delete whichever does not apply**

FORM 3**PROTECTION ORDER****Affected person(s)****Respondent****Applicant** (if this is not an affected person)**Conditions of order**

1. [*name of respondent*] must not commit domestic violence against [*name of each affected person*]

*or in the presence of [*name of each affected person who is a vulnerable person*].

2. [*name of respondent*] must not possess a firearm.

(*insert any additional conditions*)

Duration of order

This order remains in force until [*date or event*].

Effect of order

It is an offence to breach any condition of this notice. The penalty for the offence is 30,000 penalty units or imprisonment for 3 years, or both.

Date of order

***Court seal/Signature of authorised justice**

*delete whichever does not apply

What is domestic violence?

Domestic violence includes physical abuse, sexual abuse, psychological abuse and economic abuse or the threat of any such abuse.

Physical abuse means—

- (a) conduct causing bodily pain or harm to a person or danger to a person's life or health; and
- (b) includes assault.

Economic abuse means any of the following—

- (a) unreasonably controlling behaviour which denies a person financial autonomy or prevents them from taking part in decisions over household expenditures or the disposition of joint property;
- (b) withholding financial support reasonably necessary for the maintenance of a person or of the person's household;
- (c) the unreasonable and unilateral disposal, retention or subtraction of moveable or immovable property in which a person has a material interest, or damage to or destruction of their personal property, so as to interfere with their use of such property.

Psychological abuse means conduct that degrades or humiliates a person, including any of the following—

- (a) insults, ridicule or name calling;

- (b) obsessive possessiveness or jealousy that constitutes a serious invasion of the person's privacy, liberty, integrity or security;
- (c) harassment;
- (d) stalking;
- (e) intimidation.

Sexual abuse means conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a person.

FORM 4

**APPLICATION FOR VARIATION OR REVOCATION OF
PROTECTION ORDER**

Affected person(s)

[name and address for service]

Respondent

[name and address for service]

Details of order to be varied or revoked—

Grounds for application—

***Details of variation sought—**

Date of application

Signature of applicant

***Court seal/Signature of authorised justice**

***delete whichever does not apply**

FORM 5**NOTICE OF *VARIATION/REVOCAION
OF PROTECTION ORDER****Affected person(s)****Respondent**

The protection order made on [*insert date*] *has been revoked/has been varied as follows—

[*describe variation*]

*It is an offence to breach the order as varied. The penalty for the offence is 30,000 penalty units or imprisonment for 3 years, or both.

Date of notice***Court seal/Signature of authorised justice**

*delete whichever does not apply

FORM 6

AFFIDAVIT OF SERVICE

I, [*name of police officer*] of [*police station*] *state on oath/solemnly and sincerely affirm and declare—

1. At [*time*] on [*date*] at [*place of service*] I served [*name of person served*] with the following documents—

police safety notice

application for protection order

notice to attend

interim protection order

final protection order

application for variation or revocation of protection order

notice of variation or revocation of protection order

2. I served the document by [*state method of service e.g. personally handed to person*].

3. I identified the person by [*state method of identification*].

4. Exhibit A to this affidavit is a copy of the document served.

*Sworn/Affirmed by [*name*] on [*date*] at [*place*]

Signature of deponent

Before me

Signature of witness

*Judge/Magistrate/justice of the peace/Registrar of the High Court/Clerk of the Magistrates' Court/Commissioner for Oaths/officer in command

*delete whichever does not apply

FORM 7

NOTICE TO ATTEND

Affected person(s)

Respondent

Applicant (if this is not an affected person)

To [*name*] of [*address*]—

The attached application—

- for a protection order against you
- to vary a protection order in force in relation to you
- to revoke a protection order in force in relation to you

was made on [*date*]

You are required to attend [*place*] on [*date*] at [*time*] for the hearing of the application.

If you fail to attend at that time, the application may be heard in your absence.

Date

***Court seal/Signature of authorised justice**

*delete whichever does not apply

FORM 8
WITHDRAWAL OF APPLICATION
FOR PROTECTION ORDER

Affected person(s)—
(name and address for service)

Respondent—
(name and address for service)

I [*name of affected person*] withdraw my application for a protection order made against [*name of respondent*] on [*date*].

Signature of affected person

Date

Court seal (if application made to Magistrates' Court)

FAMILY PROTECTION BILL 2014

Objects and reasons

The objects of the Bill are—

- to ensure the safety and protection of all persons who experience or witness domestic violence;
- to provide support and redress for all victims of domestic violence;
- to facilitate programs for victims of domestic violence to assist their recovery and ensure that they are able to lead a safe and healthy life;
- to facilitate the issue and enforcement of police safety notices and protection orders to stop domestic violence;
- to implement certain principles underlying the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child; and
- to create offences in relation to domestic violence and provide for increased sentences for persons convicted of such offences where certain aggravating factors are present.

.....
MINISTER FOR JUSTICE AND LEGAL AFFAIRS

FAMILY PROTECTION BILL 2014

Explanatory Memorandum

PART 1 – PRELIMINARY MATTERS

Clause 1 provides for the short title and date of commencement of the Act. The Act will commence on the date appointed by the Minister responsible for justice, in consultation with the Minister responsible for women's affairs, by notice in the Gazette.

Clause 2 outlines the objects of the Act. The Act aims to protect people from experiencing or being exposed to domestic violence, provide support to victims of domestic violence, facilitate victim support programs, facilitate the issue and enforcement of police safety notices and protection orders to stop domestic violence, to implement principles of important Conventions for the protection of women and children and to create domestic violence related offences. Clause 10 also articulates the principles recognised by Parliament in enacting the Act. It also requires courts and other persons exercising powers under the Act (such as police officers) to do so in accordance with the objects and principles outlined in the clause.

Clause 3 defines terms used in the Bill. Clause 3 includes a number of signpost definitions to other clauses that define key concepts.

Clause 4 defines "domestic violence" very broadly. There are essentially two limbs to this definition – the conduct and the context in which the conduct is committed. Domestic violence is physical, sexual, psychological or economic abuse committed within a domestic relationship. The terms "economic abuse", "psychological abuse" and "sexual abuse" are defined in clause 3. The definition of "domestic violence" hinges on these definitions of the various types of abuse. "Domestic relationship" is defined in clause 5. Clause 4 also specifies that domestic violence may consist of a number of acts that form part of a pattern of behaviour, even though some of those acts when viewed in isolation appear to be minor.

Clause 5 defines "domestic relationship". This definition is key to the definition of "domestic violence". The term "domestic relationship" also has a very wide meaning. A person is in a domestic relationship with another person if—

- they are or have been family members;
- they are the parents of a child or are have had parental responsibility together for a child;
- they are or were in an engagement, courtship or customary relationship;
- one person is a domestic worker in the other person's household.

It is important to note that this definition ensures that people who have previously been family members or have been in a relationship are considered, for the purposes of the Bill, to be in a domestic relationship. This ensures that, for example, stalking a former partner would constitute domestic violence.

Clause 6 defines “family member”. A family member is a member of a person’s family, whether by blood, adoption, marriage or custom, and includes a member of the household who is not otherwise related. The definition of “family member” is important to the definition of “domestic relationship”, because current and former family members are considered to be in a domestic relationship.

Clause 7 defines “affected person”. An affected person is a person for whose protection a police safety notice or protection order is sought or in force. More than one person can be named as an affected person in a police safety notice or protection order. This means that, for example, a person and their children (and any other member of the household) can all be protected under a single notice or order.

Clause 8 defines “respondent”. A respondent is a person against whom a police safety notice or order is sought or in force.

Clause 9 defines “authorised justice”. An authorised justice is a single Justice of a Local Court, or a person who is prescribed by regulation. The regulations could prescribe specific person to be an authorised justice, or they could prescribe a class of persons.

Clause 10 provides that a reference to a form by number is a reference to the form of that number in the Schedule. The Bill requires a number of documents to comply with a particular form.

Clause 11 provides for Parts 4 and 5 to be administered by the Minister responsible for women’s affairs, and for the remainder of the Act to be administered by the Minister responsible for justice.

PART 2 – POLICE SAFETY NOTICES

Clause 12 empowers a police officer to issue a police safety notice if the police officer considers it necessary to do so to urgently protect a person from domestic violence. This notice can be issued without the consent of the affected person – the aim of issuing police safety notices is to stop violence that has occurred or is likely to occur if the notice is not issued. It is an offence under clause 59 to breach a police safety notice.

Clause 13 requires a police officer to personally serve a police safety notice on the respondent, and explain the effect and duration of the notice, and that it is an offence to breach it. In reality, the police officer will most likely be issuing the notice at the scene of alleged domestic violence, in response to a call for assistance. In many cases, the respondent will be present when the notice is issued and the police officer will simply hand the respondent the notice and explain its effect. Having served the notice, the police officer must complete an affidavit of service, so that service of the notice can be proved without the police officer attending court. The police officer is also required to give a copy of the notice to the affected person.

Clause 14 specifies the duration a police safety notice has effect. Because police safety notices are not issued by a court, they have a limited period of effect. A police safety notice expires after 21 days unless it is extended for a further single period of 21 days. If the affected person applies for an interim protection order and a decision is made on that application before the notice expires, the notice ceases to have effect when the decision is made.

Clause 15 outlines the conditions of a police safety notice. The basic conditions of all police safety notices are that the respondent must not commit domestic violence against the affected person and must not possess a firearm. Also, if an affected person is a child or a person with a significant cognitive impairment (defined in clause 3 as a “vulnerable person”), the respondent must not commit domestic violence against another person in the presence of the affected person. In addition to these basic conditions, the police officer can include additional conditions, such as a condition restricting the movements of the respondent, or possessing a weapon other than a firearm. The police officer can only include additional conditions if the officer believes on reasonable grounds that it is necessary to do so for the safety of the affected person.

Clause 16 requires the police officer who issues a police safety notice to assist the affected person to make an application for a protection order. The application should be made as soon as possible after the notice is issued to ensure an authorised justice can issue an interim protection order if necessary.

PART 3 – PROTECTION ORDERS

Division 1 – Jurisdiction to make protection orders

Clause 17 gives the Magistrates' Court jurisdiction to make, vary and revoke interim or final protection orders. It gives an authorised justice jurisdiction to make, vary and revoke interim protection orders only. This ensures that interim orders can be issued quickly to ensure the continued protection of the affected person, as an application to the Magistrates' Court could take considerable time.

Clause 18 gives other courts jurisdiction to make, vary and revoke protection orders in the course of dealing with family law or criminal proceedings for offences involving domestic violence. A court that makes an order under this clause must comply with the requirements for making protection orders specified elsewhere in Part 3.

Division 2 – Applications for protection orders

Clause 19 specifies who can apply for a protection order. An application may be made by the affected person or by another person acting on their behalf (for example, a police officer). The affected person and respondent must be in a domestic relationship. However, if there are two or more affected persons named in the application, only one of them need be in a domestic relationship with the respondent. For example, one affected person could have previously lived with the respondent. Since that time, that affected person could have had a child with a person other than the respondent. The child and the respondent are not in a domestic relationship, because the respondent is not a parent of the child and the child has never lived with the respondent. However, the child can be named as an affected person in the same application as the child's parent.

Clause 20 limits the range of people who can apply for a protection order on behalf of a vulnerable person. Only the person's parent, guardian or carer or a social welfare officer or police officer can make

the application. Clause 20 also requires a police officer or social welfare officer to apply for an order to protect a vulnerable person if they have reason to believe the person has been or is likely to be subjected or exposed to domestic violence that has or is likely to adversely affect the person's wellbeing, and that insufficient other action will be taken to protect the person.

Clause 21 provides for the form of the application for a protection order. An application may be made orally or in writing, but if it is made orally or in a written form other than the required form, it must be reduced to writing by the Clerk of the Court or the authorised justice to whom it is made.

Clause 22 requires a police officer to personally serve on the respondent an application for a protection order and a notice to attend before the Court or authorised justice for the hearing of the application. Having served the application and notice, the police officer must complete an affidavit of service, so that service of the notice can be proved without the police officer attending court.

Division 3 – Interim protection orders

Clause 23 empowers the Court or authorised justice to make an interim protection order if satisfied that, if the order were not made immediately, the respondent might commit domestic violence or the applicant might be prevented from pursuing the application for the final order. Clause 23 also allows an application for an interim protection order to be heard and decided in the absence of the respondent. It also specifies that the standard of proof required to justify making an interim order is simply sufficient evidence – the making of a final protection order, in contrast, requires the Court to be satisfied on the balance of probabilities that the test for making the order is met.

Clause 24 requires a police officer to personally serve an interim protection order on the respondent, explain the effect and duration of the order and that it is an offence to breach it. Having served the order, the police officer must complete an affidavit of service, so that service of the order can be proved without the police officer attending court. However, the requirement to serve a person with the order does not apply if the person was present when the decision on the application was made.

Clause 25 deals with the procedural requirements where an authorised justice makes a protection order. A police officer is required to file the order and the application for the order (which is also the application for a final protection order) with the Local Court and the Magistrates' Court. This ensures the Local Court has a record of the order and that the application for the final order can be dealt with by the Magistrates' Court.

Clause 26 provides that an interim protection order comes into force as soon as it is served on the respondent and remains in force until a final protection order is made, the interim order is revoked or the application for the final protection order is withdrawn.

Clause 27 clarifies that the decision on an application for an interim protection order does not affect the related application for a final protection order. That is, even if the authorised justice decides that an interim order is not justified (because there is no immediate risk) the application for the final order must still be heard.

Division 4 – Final protection orders

Clause 28 allows the affected person for an application for a final protection order to elect to seek mediation with the respondent. The affected person is not required to seek mediation and the Court can make an interim protection order before mediation has taken place. If the affected person chooses to seek mediation, the Court must provide assistance in facilitating the mediation.

Clause 29 allows the Court to make a final protection order if satisfied that the respondent has committed or is likely to commit domestic violence against the affected person and the order is necessary to protect the affected person. Further, if the affected person is a vulnerable person, the Court can make a final protection order if satisfied that the order is necessary to protect the person from exposure to domestic violence.

Clause 30 allows the Court to hear an application for a final protection order in the absence of the respondent if the respondent has been served with a notice to attend and has failed to do so. The Court also has the option of adjourning the proceedings and making or varying an interim protection order pending a further hearing.

Clause 31 requires a police officer to personally serve a final protection order on the respondent, explain the effect and duration of the order and that it is an offence to breach it. Having served the order, the police officer must complete an affidavit of service, so that service of the notice can be proved in the event of a breach without the police officer attending court. However, the requirement to serve a person with the order does not apply if the person was present when the decision on the application was made.

Clause 32 specifies that a final protection order comes into force as soon as it is served on the respondent and remains in force for the period specified in it (which must not exceed 5 years) unless it is earlier revoked on application or appeal.

Clause 33 provides for the procedure for the affected person for an application for a protection order to withdraw the application. If there is more than one affected person named in the application, the withdrawal by one does not affect the application of the others.

Clause 34 limits the range of people who can be present during the hearing of an application for a protection order. It also provides that the affected person is entitled to have a support person present in addition to legal representatives.

Division 5 – Conditions of protection orders

Clause 35 outlines the standard conditions of all protection orders respondent must not commit domestic violence against the affected person and must not possess a firearm. Also, if an affected person is a vulnerable person the respondent must not commit domestic violence in the presence of the vulnerable person. In addition to these basic conditions, other conditions can be specified as provided for under the following clauses.

Clause 36 provides that conditions restricting the behaviour of the respondent can be included in a protection order. For example, a condition prohibiting the respondent from approaching within a certain distance of the affected person could be included. The respondent can also be prohibited from engaging in specified behaviour that is likely to lead to domestic violence. For example, the respondent could be prevented from drinking alcohol.

Clause 37 provides that conditions relating to property and accommodation can be included in a protection order. For example, a condition directing the respondent to return property to the affected person could be included. Also, a condition requiring the respondent to vacate a residence could be included.

Clause 38 provides that temporary orders about the custody of children and maintenance of the affected person can be included in a protection order. However, the order cannot be inconsistent with an existing order made under the Affiliation, Separation and Maintenance Act and does not affect any ongoing proceedings under that Act.

Division 6 – Variation and revocation of protection orders

Clause 39 allows an affected person or a respondent for a protection order to apply for a variation to the order or for revocation of the order.

Clause 40 requires a police officer to personally serve on the other party to a protection order an application for a variation or revocation of the order and a notice to attend before the Court or authorised justice (in the case of variation or revocation of an interim protection order) for the hearing of the application. Having served the application and notice, the police officer must complete an affidavit of service, so that service of the notice can be proved without the police officer attending court.

Clause 41 empowers the Court or authorised justice to vary the conditions of a protection order or its duration. However, if the respondent is the applicant for the variation or revocation, the Court or authorised justice may only vary or revoke the order if the affected person is present at the hearing of the application and if the Court or authorised justice is satisfied that there has been a substantial change in circumstances since the protection order was made or last varied. If the affected person is the applicant for the variation or revocation, the Court or authorised justice may only vary or revoke the order if satisfied that the application was made freely, that the safety and wellbeing of the affected person will not be adversely affected by the revocation, and that there is no further risk of domestic violence by the respondent.

Clause 42 requires a police officer to personally serve a notice of variation or revocation on the affected person and the respondent and explain the effect and duration of the variation or revocation. Having served the notice, the police officer must complete an affidavit of service,

so that service of the notice can be proved without the police officer attending court. However, the requirement to serve a person with the notice does not apply if the person was present when the decision on the application was made.

Clause 43 provides that a variation or revocation of a protection order has effect as soon as it is served on both the affected person and the respondent.

Division 7 – Appeals

Clause 44 allows the affected person or respondent for a protection order to appeal against decisions to make a final protection order, vary or revoke a final protection order or refuse to make, vary or revoke a final protection order. The appeal is to the High Court and must be made within 30 days after the appellant is served with notice of the decision appealed against.

Clause 45 provides for the conduct of an appeal. An appeal is by way of rehearing and the Court may confirm, make, vary or revoke the protection order to which the appeal relates, or make any other order it considers should have been made by the original decision maker.

PART 4 – ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE

Clause 46 outlines the duties of health care providers if a patient notifies them that they have been the victim of domestic violence. These duties include the requirement to refer the patient to support services and advise the patient about filing a complaint with the police.

Clause 47 outlines the duties of a police officer who has issued a police safety notice. The officer is required to assist the affected person in finding a safe place in the community and obtaining counselling, medical and legal services. In addition, under clause 16, the police officer is required to assist the affected person to apply for a protection order. Clause 47 also required police officers to investigate reports of domestic violence and inform victims of domestic violence about their right to apply for a protection order.

Clause 48 outlines requirements for providing assistance to victims of domestic violence during prosecutions. The prosecutor must explain the proceedings to the victim and, if the victim is female, a female police officer must be provided to assist the victim.

PART 5 – ADVICE, COUNSELLING, PREVENTION AND AWARENESS OF DOMESTIC VIOLENCE

Division 1 – Family Protection Advisory Council

Clause 49 establishes the Family Protection Advisory Council to advise the Minister on the implementation of the Act.

Clause 50 provides for the membership of the Council. The Council consists of 7 members appointed to represent various bodies.

Clause 51 provides for the tenure of office of the members. Membership is for a period not exceeding 3 years, but a member may be reappointed on expiry of their term.

Clause 52 provides for the procedures of meetings of the Council. Aside from the matters specified in clause 52, the Council may regulate its own procedures.

Clause 53 requires the Council to submit an annual report of its operations to the Minister.

Division 2 – Registered counsellors

Clause 54 allows the Minister to register suitably qualified and experienced domestic violence counsellors.

Clause 55 provides for a register of counsellors to be kept that may be inspected by the public.

Division 3 – Other duties of the Minister

Clause 56 requires the Minister to establish and support public awareness programs aimed at preventing domestic violence, and table in Parliament an annual report of such awareness programs.

Clause 57 requires the Minister to report to Parliament annually on the public awareness programs conducted under clause 56, and to table the annual reports of the Council.

PART 6 – OFFENCES

Clause 58 creates the offence of committing domestic violence. The offence applies even if the defendant has paid customary compensation for the offence.

Clause 59 creates the offence of breaching a police safety notice or protection order. The offence applies even if the defendant has paid customary compensation for the offence.

Clause 60 creates the offence of obstructing, threatening or intimidating a person providing services to an affected person. The offence applies even if the defendant has paid customary compensation for the offence.

Clause 61 specifies that the ability for a Magistrate to promote reconciliation and settlement that exists under the Magistrates' Court Act does not apply to offences of domestic violence or breach of a police safety notice or protection order.

Clause 62 lists the aggravating circumstances to be considered in sentencing an offender for an offence of domestic violence or breach of a police safety notice or protection order.

Clause 63 allows the court to order that a person who commits an offence of domestic violence or breach of a police safety notice or protection order must pay the victim compensation for pain and suffering or economic loss.

PART 7 – MISCELLANEOUS MATTERS

Clause 64 provides that, where no time is specified for a police officer, authorised justice of court to do something under the Act (for example, serving a document or filing an affidavit of service) it must be done as soon as practicable.

Clause 65 provides for an affected person to elect to have their address withheld from the respondent when documents are served on the respondent.

Clause 66 protects from civil or criminal liability a person who, in good faith, applies for a protection order on behalf of another person or provides assistance to an affected person under clause 46.

Clause 67 requires the Act to be reviewed within 3 years after it commences.

Clause 68 is an avoidance of doubt provision to highlight the power of the Minister responsible for finance to establish a targeted balance under the Public Financial Management Act 2013 for the purpose of providing funds to administer the Family Protection Act.

Clause 69 allows the Minister to make regulations under the Act.

SCHEDULE

The Schedule includes the required forms for various documents used under the Act, such as applications, affidavits of service, protection orders and police safety notices.

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