

REPRINT

FAMILY PROTECTION ACT 2014

As in force at: 1 April 2016

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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.

FAMILY PROTECTION ACT 2014

Table of provisions

PART 1	PRELIMINARY	1
1	Short title and commencement	1
2	Objects of the Act	1
3	Interpretation	2
4	Meaning of “domestic violence”	6
5	Meaning of “domestic relationship”	6
6	Meaning of “family member”	7
7	Meaning of “affected person”	7
8	Meaning of “respondent”	8
9	Meaning of “authorised justice”	8
10	Forms	8
11	Administration of Act	8
PART 2	POLICE SAFETY NOTICES.....	8
12	Issue of police safety notice	8
13	Service of police safety notice	9
14	Duration of police safety notice	10
15	Conditions of police safety notice	10
16	Duty to assist affected person	11
PART 3	PROTECTION ORDERS	11
Division 1	Jurisdiction to make protection orders	11
17	Jurisdiction of Magistrates’ Court and authorised justice	11
18	Protection order in family or criminal proceedings	12
Division 2	Applications for protection orders	12
19	Who may apply for protection order	12
20	Application for vulnerable person	13
21	Form of application	13
22	Service of application	14

Division 3	Interim protection orders	15
23	When interim protection order may be made	15
24	Service of interim protection order	16
25	Filing of interim protection order made by authorised justice	16
26	Duration of interim protection order	17
27	Application for final protection order continues	17
Division 4	Final protection orders	17
28	Voluntary mediation	17
29	When final protection order may be made	18
30	Hearing of application in absence of respondent	19
31	Service of final protection order	19
32	Duration of final protection order	20
33	Withdrawal of application	20
34	Conduct of proceedings	21
Division 5	Conditions of protection orders	21
35	Standard conditions	21
36	Conditions relating to behaviour of respondent	21
37	Conditions relating to property and accommodation	22
38	Orders relating to custody, access and maintenance	23
Division 6	Variation and revocation of protection order	23
39	Application to vary or revoke protection order	23
40	Service of application	23
41	Decision to vary or revoke	24
42	Service of decision	25
43	Date of effect of revocation or variation	25
Division 7	Appeals	26
44	Right to appeal	26
45	Conduct of appeal	26
PART 4	ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE	26
46	Duty of health care providers	26
47	Duty of police officers	27

48	Assistance during prosecution	27
PART 5	ADVICE, COUNSELLING, PREVENTION AND AWARENESS OF DOMESTIC VIOLENCE	28
Division 1	Family Protection Advisory Council	28
49	Establishment and functions	28
50	Membership	28
51	Tenure of office of members	29
52	Meetings and procedures	29
53	Annual report	30
Division 2	Registered counsellors	30
54	Registration of counsellors	30
55	Register of counsellors	31
Division 3	Other duties of the Minister	31
56	Domestic violence awareness and prevention programs	31
57	Reporting requirements	31
PART 6	OFFENCES	32
58	Domestic violence offence	32
59	Breach of order or notice	32
60	Obstruction of service provider	32
61	Proceedings for offences	32
62	Aggravating circumstances	32
63	Compensation	33
PART 7	MISCELLANEOUS MATTERS	34
64	Time for giving and serving documents	34
65	Withholding address of affected person	34
66	Protection from liability	34
67	Review of Act	35
68	Funds to administer Act	35
69	Regulations	35

FAMILY PROTECTION ACT 2014

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PART 1 PRELIMINARY

1 Short title and commencement

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*.

2 Objects of the Act

(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 Interpretation

In this Act, unless the context otherwise requires:

“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 Meaning of “domestic violence”

- (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:
 - (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 Meaning of “domestic relationship”

A person is in a **“domestic relationship”** with another person if:

- (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.

6 **Meaning of “family member”**

- (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 **Meaning of “affected person”**

- (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.
- (2) More than one person may be named as an affected person in:
 - (a) an application for a protection order; or
 - (b) 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 Meaning of “respondent”

- (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.
- (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 Meaning of “authorised justice”

An “**authorised justice**” is:

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

10 Forms

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

11 Administration of Act

- (1) The Minister responsible for women’s affairs is responsible for administering Parts 4 and 5 of this Act.
- (2) The Minister responsible for justice is responsible for administering the remaining provisions of this Act.

PART 2 POLICE SAFETY NOTICES

12 Issue of police safety notice

- (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 Service of police safety notice

- (1) A police officer must:
 - (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 Duration of police safety notice

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

15 Conditions of police safety notice

- (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 Duty to assist affected person

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.

PART 3 PROTECTION ORDERS

Division 1 Jurisdiction to make protection orders

17 Jurisdiction of Magistrates' Court and authorised justice

- (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 Protection order in family or criminal proceedings

- (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.
- (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

19 Who may apply for protection order

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.

20 Application for vulnerable person

- (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.

21 Form of application

- (1) An application for a protection order may be made to:
 - (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.

22 Service of application

- (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

23 When interim protection order may be made

- (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 Service of interim protection order

- (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:
 - (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.

25 Filing of interim protection order made by authorised justice

- (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.

26 Duration of interim protection order

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 Application for final protection order continues

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.

Division 4 Final protection orders

28 Voluntary mediation

- (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.
- (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 When final protection order may be made

- (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 Hearing of application in absence of respondent

- (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.
- (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 Service of final protection order

- (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.

- (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.

32 Duration of final protection order

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.

33 Withdrawal of application

- (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.

34 Conduct of proceedings

- (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 Standard conditions

- (1) It is a condition of every protection order 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) 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 Conditions relating to behaviour of respondent

The Court or authorised justice may include in the protection order 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;
- (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.

37 Conditions relating to property and accommodation

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 Orders relating to custody, access and maintenance

- (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 Application to vary or revoke protection order

- (1) An affected person or a respondent for a protection order may apply for a variation or revocation of the 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 Service of application

- (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:

- (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.

41 Decision to vary or revoke

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

- (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 Service of decision

- (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.
- (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 Date of effect of revocation or variation

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

Division 7 Appeals

44 Right to appeal

- (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.

45 Conduct of appeal

- (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

46 Duty of health care providers

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 Duty of police officers

- (1) A police officer who issues a police safety notice must assist the affected person in obtaining the following:
 - (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 Assistance during prosecution

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

49 Establishment and functions

- (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.

50 Membership

- (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 Tenure of office of members

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

52 Meetings and procedures

- (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.

53 Annual report

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

54 Registration of counsellors

- (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 Register of counsellors

- (1) The Permanent Secretary of the Ministry responsible for the administration of this Act must keep a current 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 Domestic violence awareness and prevention programs

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.

57 Reporting requirements

- (1) For each calendar year, the Minister must table in Parliament:
 - (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

58 Domestic violence offence

- (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, or 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.

59 Breach of order or notice

- (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, or 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.

60 Obstruction of service provider

- (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, or both.

61 Proceedings for offences

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

62 Aggravating circumstances

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 Compensation

- (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.
- (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

64 Time for giving and serving documents

- (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.

65 Withholding address of affected person

- (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 Protection from liability

A person is not civilly or criminally liable for:

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

67 Review of Act

Within 3 years after the commencement of this Act, the Minister must:

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

68 Funds to administer Act

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.

69 Regulations

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

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

36

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

37

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/REVOCATION 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)

ENDNOTES

1

KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

2

LIST OF LEGISLATION

Family Protection Act 2014 (No. 15 of 2014)

Assent date	22 September 2014
Gazetted	22 September 2014
Commenced	1 April 2016

3

LIST OF AMENDMENTS