



Tuvalu

**FAMILY PROTECTION AND DOMESTIC  
VIOLENCE ACT 2014**





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# FAMILY PROTECTION AND DOMESTIC VIOLENCE ACT 2014

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Tuvalu

# FAMILY PROTECTION AND DOMESTIC VIOLENCE ACT 2014

## AN ACT TO PROVIDE FOR GREATER PROTECTION FROM VIOLENCE WITHIN DOMESTIC RELATIONSHIPS AND TO PROVIDE FOR RELATED MATTERS

Commencement [18th December, 2014]

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### PART 1 – PRELIMINARY

#### 1 Short Title

This Act may be cited as the Family Protection and Domestic Violence Act 2014.

#### 2 Commencement

This Act commences at the time of publication by exhibition.

#### 3 Interpretation

In this Act, unless the context otherwise requires –

“**applicant**” means a person who applies for a protection order under this Act, or a person on whose behalf an application is made, or a person who is granted a protection order;

“**CEDAW**” means the United Nations Convention on the Elimination of All Forms of Discrimination against Women;

“**child**” means a person under the age of 18 years;

“**child abuse**” includes a person who causes or subjects a child to physical, sexual, psychological or economic abuse;

“**complainant**” means the person for whose benefit a protection order is in force, or may be made, under this Act;

“**Court**” means the courts referred to in section 5;

“**counsellor**” means a counsellor registered under section 34;

“**defendant**” means a person:

- (a) who is or was in a domestic relationship with the complainant and committed or allegedly committed an act of violence against the complainant; or
- (b) against whom an order is sought or made under this Act;

“**domestic relationship**” means relationship of persons:

- (a) who are, or were, married to each other; or
- (b) who are or were living together in a de facto relationship; or
- (c) who normally or regularly resides in the same household; or
- (d) who are regarded as a family member under Tuvaluan tradition and social practices; or
- (e) who is a child who resides or previously resided in the same household; or
- (f) who is wholly or partially dependent upon ongoing care in the same household; or
- (g) who is a household helper in the same household.

“**domestic violence**” means violence within an existing or previous domestic relationship;

“**domestic violence offence**” means an offence under section 38;;

“**economic abuse**”-

- (a) means a behaviour that constitutes deprivation of economic or financial resources; and
- (b) includes the following:
  - (i) the disposition, retention or subtraction of moveable or immovable property in which a victim of domestic violence has a material interest and that results in hiding or hindering the use of property;
  - (ii) the damaging or destroying of personal property in which the victim of domestic violence has an interest;

“**exploitation**” has the same meaning as defined in section 3 of the *Counter Terrorism and Transnational Organised Crime Act 2009*

“**harassment**” means engaging in a pattern of conduct that induces the fear of harm to a complainant and includes the following-

- (a) repeatedly watching, or loitering outside of or near the building or place where the complainant resides, works, carries on business, studies or happens to be;
- (b) repeatedly making phone calls or inducing another to make phone calls to the complainant, whether or not conversation ensues;

(c) repeatedly sending, delivering or causing the delivery of letters, packages, facsimiles, electronic mail or other objects to the complainant;

(d) sexual harassment;

“**marital property**” means property acquired jointly or separately by parties to a marriage during the course of the marriage;

“**Minister**” means the Minister responsible for the Department of Women;

“**perpetrator**” means a person who perpetrates violence within a domestic relationship;

“**protection order**” means an emergency, temporary, consent, interim or final protection order made under this Act;

“**psychological abuse**” includes intimidation, harassment, or threats of physical, sexual, or economic abuse.

“**sexual abuse**” means -

(a) a sexual act or conduct that abuses, humiliates, degrades or violates the sexual integrity and autonomy of the complainant without the claimant’s consent, irrespective of the nature of the relationship between the complainant and the perpetrator in a domestic relationship; or

(b) a conduct that forces, coerces, blackmails, bribes or intimidates a person in a domestic relationship to engage in prostitution or sexual acts with another person in the domestic relationship;

“**sexual harassment**” means subjecting another to unwanted and offensive sexual advances, acts or remarks;

“**stalking**” means the act by a perpetrator of repeatedly following or pursuing the complainant;

“**standard rules**” means –

(a) in relation to proceedings in the High Court, the High Court Rules;

(b) in relation to proceedings in the Magistrates’ Court or the Island Court, the standard rules applied by the Magistrates’ Court or the Island Court;

“**trafficking in persons**” has the same meaning as defined in section 3 of the *Counter Terrorism and Transnational Organised Crime Act 2009*.

“**victim**” means a person subjected to domestic violence within a domestic relationship;

“**violence**” means a specific act or threat likely to result in any one or more of the following -

(a) physical abuse;

(b) sexual abuse;

(c) verbal abuse;

(d) economic abuse; or

(e) psychological abuse.

“**vulnerable person**” means a person who is vulnerable by reason of age, physical or mental disability.

## PART 2 – MAIN PRINCIPLES

### 4 Principles

The Court or a person who exercises a power or performs a function under this Act must apply the following principles when exercising jurisdiction under this Act -

- (a) promotion of the objects of this Act;
- (b) ensuring that proceedings under this Act are as speedy, and simple as possible;
- (c) ensuring the safety and wellbeing of victims, and other vulnerable persons in a domestic relationship from further violence;
- (d) ensuring that victims of violence are not re-victimised by perpetrators or by any other person in the course of proceedings;
- (e) ensuring as far as possible that accommodation and maintenance needs of victims and any dependent children are given the highest priority;
- (f) ensuring that persons trafficked, irrespective of nationality –
  - (i) must not be prosecuted on any charge of trafficking, illegal immigration or prostitution; and
  - (ii) given every assistance and be fully informed when testifying in trafficking trials in which the victim has been involved;
- (g) ensuring that victims of violence are fully informed of Court processes and procedures and the consequences of any orders made;
- (h) ensuring that perpetrators –
  - (i) understand the terms and effects of all orders made under this Act which imposes obligations upon them; and
  - (ii) are encouraged to take responsibility for their violence and seek assistance through counselling and rehabilitation programmes to address the violence; and
  - (iii) contribute, where possible, to the rehabilitation of the victim and any dependent children.

### 5 Jurisdiction of Courts

- (1) The following Courts have jurisdiction to make protection orders under this Act –
- (a) Island Courts;
  - (b) Magistrates’ Court;
  - (c) Senior Magistrates’ Court;

(d) High Court;

(2) A Court may make a protection order when exercising jurisdiction under this Act or when exercising jurisdiction in family or criminal or other proceedings before the Court.

## **6 Transfer of proceedings**

- (1) A proceeding under this Act pending before the Island Court, the Magistrates' Court or the Senior Magistrates' Court may be transferred in accordance with the Court's standard rules and procedures.
- (2) When a Court is considering the transfer of proceedings to another Court, the Court must make an interim protection order for the safety and wellbeing of each person applying to be protected.
- (3) Where a Court orders the transfer of proceedings to another Court, the Court must request that the proceedings being transferred be listed as a matter of priority for the other Court to hear within a specified time.

## **7 Matters to be considered by Courts**

To promote reconciliation, the Court, in making any orders or decisions under this Act, must consider that the victims are not put at risk and the safety and wellbeing of the victims and any dependants within the household are of paramount importance and taken into account.

# **PART 3 - APPLICATIONS GENERALLY**

## **8 Who can apply for protection orders**

- (1) A complainant may apply to the Court for a protection order if the complainant lives or works temporarily or permanently with the defendant, or where the act of domestic violence occurred or is occurring
- (2) If the complainant is unable to apply personally due to physical incapacity, fear of harm or for any other sufficient cause, the following may apply on behalf of the complainant with the oral or written consent of the complainant –
  - (a) a family member, guardian or friend;
  - (b) a social welfare worker or community worker;
  - (c) a legal practitioner or a counsellor;
  - (d) a healthcare provider;
  - (e) a head of a school;
  - (f) a Police Officer as maybe necessary upon the expiry of the police order issued under section 42 of the *Police Powers and Duties Act 2009*.

- (3) An application may be made by or on behalf of more than one person.
- (4) An application for a protection order may be made *ex parte*, unless the Court orders it to be on notice.

## **9 Protection order in family or criminal proceedings**

- (1) A Court before which family proceedings or criminal proceedings are pending and considering the circumstances of the case, may on its own motion or on an application by the complainant, issue a protection order upon the terms the Court considers appropriate and in accordance with this Act.
- (2) In issuing a protection order, the Court may take into account the safety, health and wellbeing of the complainant and a dependent of the complainant.

## **10 Application to a Court**

- (1) An application for a protection order may be commenced in any Court under section 7 (1).
- (2) An application to a Court for a protection order may be made -
  - (a) orally; or
  - (b) by telephone, radiotelephone or other similar facility; or
  - (c) in writing in accordance with Form 1 or Form 2 in Schedule 1; or
  - (d) by facsimile or e-mail.
- (3) If the application is made orally, the Court must reduce the application to writing on Form 1 or Form 2 in Schedule 1.
- (4) The Court must keep record of –
  - (a) all applications for protection orders; and
  - (b) all protection orders refused or granted and the reasons for refusing or granting the protection order.
- (5) An application for a protection order under subsection (1) may be brought outside ordinary Court hours or on a day which is not an ordinary Court day, if the Court is satisfied that the complainant may suffer undue hardship if the application is not dealt with immediately.
- (6) The Court shall explain the effects of any protection order made or refused to the parties to the proceedings.

## **11 Filing a complaint with the police**

- (1) A complainant or another person with information about domestic violence may file a complaint of domestic violence with the Police.
- (2) A complainant child may be assisted by another person to file a complaint of domestic violence with the Police.

- (3) Where a complainant is, for any reason, unable to file a complaint personally, a member of the complainant's family or friend, with the oral or written consent of the complainant, may file a complaint on behalf of the complainant.
- (4) A social welfare worker, community worker, legal practitioner, counsellor, health care provider, or head of a school may file a complaint about domestic violence where the intervention is in the best interest of the complainant and the complainant provides a written or oral consent.
- (6) A complaint is to be filed at the police station on the island where -
  - (a) the complainant resides; or
  - (b) the perpetrator resides; or
  - (c) the domestic violence occurred or is occurring.
- (7) A person who gives information under this section in good faith does not incur any civil or criminal liability in respect of the giving of the information.

## 12 Role of the Police

A police officer shall upon the receipt of a complaint or suspects that an act of domestic violence is being, has been, or is likely to be committed shall act in accordance with the Division 2.9.3 of the *Police Powers and Duties Act 2009* relating to domestic violence.

## PART 4 – PROTECTION ORDERS

### 13 Types of protection orders

A Court may make the following types of protection orders in accordance with this Act:

- (a) Emergency protection order;
- (b) Temporary protection order;
- (c) Consent protection order;
- (d) Interim protection order; or
- (e) Final protection order.

### 14 Emergency protection orders

- (1) A Court may make an emergency protection order in accordance with this section if an *ex parte* application for a protection order is made orally or in the prescribed form and manner.

- (2) In determining whether to grant an order, the Court must be satisfied of the following –
  - (a) there is evidence that the perpetrator is committing, about to commit or has committed domestic violence on the victim;
  - (b) there is a risk or threat of harm to the safety, wellbeing and health of the victim if a protection order is not made immediately;
  - (c) the existence of immediate danger to the victim or to a person within the domestic relationship or to the complainant's personal property or marital property;
  - (d) it is likely the victim will be prevented or deterred from pursuing the application if the order is not made immediately.
- (3) An emergency protection order may contain conditions, including directives for the victim or perpetrator or both to attend counselling or rehabilitation programmes.
- (4) A copy of the emergency protection order including conditions and directives made under the order must, within the prescribed period of the emergency protection order, be served on the perpetrator.
- (5) A copy of the emergency protection order must be immediately sent by the Court to the Police in the area where the order is made.

## **15 Duration of emergency protection orders**

- (1) An emergency protection order shall be effective for a period of no more than 72 hours notwithstanding the fact that the perpetrator has not been given notice of the application nor an opportunity to be heard.
- (2) An emergency protection order may be renewed only once for a further 72 hours before the expiry of the first order on the application of the complainant or any person on behalf of the complainant and with the complainant's oral or written consent.

## **16 Temporary protection orders**

- (1) A complainant may make an ex parte application for a temporary protection order and the Court may grant such order if it considers it to be in the best interest of the complainant.
- (2) In determining whether it is in the best interest of the complainant to issue a temporary protection order, the Court shall consider whether there is risk of harm to the complainant if the order is not made immediately.

- (3) The Court shall order immediate service by the police of the application for temporary protection order together with the notice of the date of hearing on the defendant in accordance with Form 3 in Schedule 1.
- (4) Where the defendant, without reasonable cause, fails to appear before the Court in accordance with subsection (3) and the Court being satisfied on the evidence that the defendant has been served, the Court may –
  - (a) give further directions; or
  - (b) make a temporary protection order and include any conditions listed in sections 32, 35 and 36 of this Act; or
  - (c) make any other order the Court thinks fit.

### **17 Temporary protection order in relation to cross applications**

- (1) Cross applications occur when a defendant also alleges domestic violence and applies for a protection order.
- (2) The Court must adjourn the hearing of the cross application and set a date for the cross application to be served on the original complainant named in the original application, unless the original complainant consents to the Court hearing the cross application before hearing the original application or together with the original application.
- (3) The Court may make a temporary protection order if it is satisfied that the complainants are in need of protection.

### **18 Duration of temporary protection order**

- (1) Temporary protection orders shall be effective for 30 days.
- (2) The Court shall list the case for hearing before the expiry of the temporary protection order.

### **19 Consent protection order**

- (1) An application for a consent protection order may be granted by the Court upon the consent of the parties to the proceedings.
- (2) The Court in considering a consent protection order –
  - (a) may not make an order after taking into account the circumstances of the parties; and
  - (b) may adjourn the hearing to allow parties to seek legal representation or counselling.

**20 Duration of consent protection orders**

A consent order remains in force until a further order of the Court or the order is cancelled.

**21 Interim protection orders**

- (1) Where the application is made *ex parte* to the Court for a protection order, the Court shall grant an interim protection order if it considers the order to be in the best interest of the complainant, and pending the consideration of the application of the order.
- (2) In determining whether it is in the best interest of the complainant to issue an interim protection order, the Court shall consider -
  - (a) whether there is risk of harm to the complainant if the order is not made immediately; or
  - (b) whether it is likely the complainant will be prevented or deterred from pursuing the application if the order is not made immediately.
- (3) Interim protection order shall be effective until a further order of the Court.
- (4) Where the defendant is not already before the Court when making an interim protection order, the Court shall list the case for hearing and shall order immediate service by the Police of the application for protection order together with notice of the date of hearing on the defendant in accordance with Form 3 in Schedule 1.
- (5) Where the defendant without reasonable cause fails to appear before the Court in accordance with subsection (4) and the Court being satisfied on the evidence that the defendant has been served, the Court may –
  - (a) give further directions; or
  - (b) make an interim protection order and include any condition set out in sections 32, 35 and 36 as considered appropriate on Form 4 in Schedule 1.
  - (c) make any other order the Court thinks fit.

**22 Duration of interim protection orders**

- (1) An interim order ends -
  - (a) on a further order of the Court; or
  - (b) if cancelled; or
  - (c) where the application for an extensions of interim order is dismissed; or
  - (d) if a final order is made.
- (2) An interim order must not be in force for more than 2 years.

**23 Final protection order**

- (1) Where an application is made on notice to the Court for a protection order and the Court being satisfied on the evidence that notice has been served on the defendant in accordance with Form 3 in Schedule 1, the Court may –
- (a) adjourn the case and order a social enquiry report from the social welfare worker or a registered counsellor to be submitted to the Court before the date fixed for the hearing of the application; or
  - (b) adjourn the case and make directions for the complainant or the defendant to attend counselling with a Court appointed counsellor for such periods as may be required; or
  - (c) adjourn the case and make directions for the complainant and defendant to attend a conciliation conference as provided for under section 24 with the Court Registrar and a registered counsellor or social welfare worker appointed by the Court.
- (2) Persons appointed in subsection (1) shall have the duty to:
- (a) explain to the parties the process involved when there is an order made for a social enquiry report, or to attend counselling, or to attend a conciliation conference, whichever is relevant;
  - (b) comply with the relevant court order; and
  - (c) provide a report to the court before the next date of hearing.
- (3) The Court must make a final order and include any condition set out in sections 32, 35 and 36 as considered appropriate on Form 4 in Schedule 1.
- (4) If the defendant is not present for the issue of the final order, the final order must be served on the defendant.

**24 Conciliation conference**

Where a conciliation conference is ordered, the following matters must be considered :

- (a) child custody of and access arrangements;
- (b) safety of victim and children and risk management;
- (c) accommodation and living arrangements of members of the household;
- (d) maintenance for victim and children;
- (e) safety of property and arrangements for personal property;
- (f) reconciliation;
- (g) counselling and intervention programmes provided by relevant registered institutions, registered counsellors, church groups, or traditional mediators;
- (h) counselling programmes to assist the defendant;
- (i) other support service requirements for the victim and children;

- (j) separation or dissolution of marriage; and
- (k) the respondent's participation, where possible, in the rehabilitation of the victim.

## **25 Duration of a final protection order**

A final protection order issued by the Court shall remain in force unless extended, varied or cancelled by the Court on a motion by a party to the original proceedings if there is good cause. In considering the application, the Court must take the best interest of the complainant to the original proceedings into account.

## **26 Grant of protection order**

- (1) The Court in performing functions under this Act must grant a protection order if it is satisfied that –
  - (a) the perpetrator is using, has used, or is likely to engage in violence against the complainant; and
  - (b) the issuance of the protection order is necessary for the protection, safety, health and wellbeing of the complainant and any dependant; and
- (2) Where a protection order contains any condition of the kind specified in sections 32, 35 and 36, the Court may specify different periods as the period for which each condition is to remain in force.

## **27 Extension of a protection order to other persons**

A Court may extend a protection order to a person in the domestic relationship specified in the order other than the complainant if the Court is satisfied that –

- (a) the perpetrator is engaging in or has engaged in behaviour which would amount to domestic violence against the person other than the complainant as specified in the order; and
- (b) the extension of the protection order is necessary for the protection of the specified person.

## **28 Warrant of arrest upon issuing of protection order**

- (1) Whenever a Court issues a protection order, the Court may in exceptional circumstances make an order –
  - (a) authorising the issue of a warrant for arrest of the perpetrator, in the prescribed form; and
  - (b) where necessary suspend the execution of such warrant subject to compliance with prohibitions, conditions, obligations or orders imposed in terms of sections 32, 35 and 36.

- (2) The warrant referred to in subsection (1)(a) remains in force unless the protection order is breached, suspended or cancelled.

### **29 Automatic protection of child**

A protection order granted by a Court automatically protects any child of the victim's family.

### **30 When orders become effective**

A protection order issued by a Court becomes effective immediately upon the signature of the judicial officer and seal by the Court.

### **31 Relation to other Acts**

The provisions in these Parts do not replace other remedies that may be imposed for violations under other Acts and are in addition to, and not in substitution for, other remedies available under other Acts.

### **32 Conditions in protection orders**

The protection order may include any of the following conditions which prohibits the defendant from-

- (a) physically assaulting or threatening to assault the complainant or anyone in a domestic relationship with the applicant;
- (b) forcibly confining or detaining the applicant or anyone in a domestic relationship with the complainant;
- (c) depriving the complainant of adequate food, water, clothing, shelter and rest;
- (d) forcing the complainant to engage in sexual conduct which violates the complainant's sexual integrity and autonomy;
- (e) depriving or threatening to deprive the complainant of –
  - (i) financial resources;
  - (ii) medical and personal necessities required for health and wellbeing of the complainant;
- (f) contacting the complainant by any form of communication at work or other places;
- (g) destroying, hiding, hindering, disposing or threatening to dispose of property in which the complainant has material interest;
- (h) harassing and stalking the complainant;
- (i) entering the complainant's residence without consent, where the parties do not share the same residence;
- (j) emotionally, verbally or psychologically abusing the complainant;

- (k) coming within 30 meters of the complainant; or
- (l) doing an act which the Court considers is not in the best interests of the complainant or any other person in a domestic relationship.

### **33 Referrals to counselling or mediation**

If, at any time during the application for a non-emergency protection order, the Court is satisfied that the application is likely to be more effectively resolved by counselling or mediation than by a hearing, the Court may –

- (a) recommend to the parties to the application that they seek counselling or mediation; or
- (b) give the parties information on counselling and mediation services; or
- (c) adjourn the case until a stated date to allow for counselling or mediation.

### **34 Registration of counsellors**

- (1) A person may apply to the Minister for registration as a domestic violence counsellor.
- (2) The Minister, in consultation with the Attorney-General, the Commissioner of Police, the Director of the Department responsible for Women, the Director of the Department of Education, and the Chairperson of the CEDAW National Coordinating Committee, may approve an application under subsection (1) if satisfied that –
  - (a) the person engages in domestic violence counselling, mediation or marriage education and counselling or is concerned with the welfare of children; and
  - (b) the person is a qualified counsellor with appropriate qualifications; or
  - (c) the person has appropriate experience in counselling or mediation in relation to domestic violence.
- (3) Notice of approval of an application under this section must be published by exhibition
- (4) A domestic violence counsellor must, no later than October each year, provide a report on domestic violence, including the number of cases dealt with during the year to the Chairperson of the CEDAW National Coordinating Committee. Upon application by a domestic violence counsellor, the Minister, may extend the period of time for the submission of the report.
- (5) The Chairperson of the CEDAW National Coordinating Committee has a duty to send a copy of the report to the members of the said Committee.
- (6) The Office of the Attorney – General must establish a register of approved domestic violence counsellors.
  
- (7) A person may inspect the register during normal office hours

**35 Counselling and rehabilitation orders**

In deciding to make a protection order, the Court may direct either the complainant or defendant or both to participate in -

- (a) counselling; or
- (b) anger management; or
- (c) mediation; or
- (d) child care and parenting skills training programme; or
- (e) any other relevant programme.

**36 Supplementary orders**

A protection order may include all or any of the following supplementary conditions –

- (a) an accommodation order, which direct the defendant to pay for the complainant's accommodation if the complainant is required to move out of the residential home; or
- (b) a custody order, which grants temporary custody of any dependent child to the complainant or to another appropriate person if the Court is satisfied that it is reasonably necessary for the safety and welfare of the child in question; or
- (c) a maintenance order, which directs the defendant to pay maintenance in cash or kind or both to the complainant and any dependent children in the domestic relationship; or
- (d) a weapons order, which directs the defendant to surrender any weapon that has been used or threatened to be used to commit domestic violence.

**37 Variation, suspension, cancellation of protection order**

- (1) A complainant or defendant may, upon written notice to the other party and the Court concerned on Form 3 in Schedule 1, apply for the variation, suspension or cancellation of a protection order.
- (2) If the Court is satisfied that good cause has been shown for the variation, suspension or cancellation of the protection order and the application has been made freely and voluntarily, it may issue an order to this effect and set out the order on Form 5 in Schedule 1
- (3) The Registrar or clerk of the Court as the case maybe must forward the order and any variations made to the original order and set out in Form 5 in Schedule 1, to the complainant and the defendant.

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## PART 5 – GENERAL OFFENCES AND PENALTY

### 38 Domestic violence offence

- (1) A person who commits physical, sexual, verbal, psychological or economic abuse against another person in a domestic relationship commits an offence of domestic violence.
- (2) A person who commits a domestic violence offence is guilty of a criminal offence and liable on conviction to a term of imprisonment not exceeding 5 years or to a fine not exceeding \$1000, or both.
- (3) It is not a defence to an offence under subsection (1) that the defendant has paid compensation or reparation to the complainant or to the complainant's family.
- (4) If a person instigates, counsels or procures another person to commit an act of domestic violence that person is taken to have committed the act and subsection (1) applies.

### 39 Relation of Act to *Penal Code*

The punishment provided for in this Act applies only to offences under which the *Penal Code 1965* are misdemeanours and the offence is committed in a domestic relationship. This Act does not apply to any offence that is aggravated or where the punishment under the *Penal Code* is more than 5 years imprisonment.

### 40 Criminal offence to breach protection order

Any person who, without lawful justification breaches a protection order commits a criminal offence and on conviction shall be liable to a fine not exceeding \$1000 or a term of imprisonment not more than 5 years or both.

### 41 Order for compensation

- (1) A Court on hearing a claim for compensation under this Act may make an order that the defendant pay compensation that is deemed reasonable and fair to the complainant if he or she as a result of an act of domestic violence suffered –
  - (a) personal injury; or
  - (b) damage to property; or
  - (c) financial loss.
- (2) The Court in considering whether to make an order for compensation, must take into account –
  - (a) any pain and suffering of the victim and other persons in the household including psychological harm, shame and humiliation suffered;

- (b) the value of any property of the victim that has been taken, destroyed or damaged.
  - (c) the loss of earnings suffered by the victim.
- (3) The Court in considering any necessary and reasonable expenses under subsection 2 must have regard to –
- (a) the time that has lapsed between the domestic violence occurring and the hearing of the application for compensation;
  - (b) the financial position of the parties;
  - (c) the ability of the person to pay compensation;
  - (d) the relationship between the parties;
  - (e) any other order made under this Act including any order that the defendant pay maintenance to the complainant and any dependent children;
  - (f) any other order the Court considers relevant to the issues to be determined in relation to the claim for compensation.

## **PART 6 - PROCEDURES GENERALLY**

### **42 Priority**

- (1) A Court must give priority to applications for protection orders.
- (2) A Court must determine an application for an emergency and temporary protection order on the same day on which the application is made unless there are exceptional circumstances.

### **43 Service**

- (1) Where an application is being made to the Court for a protection order, the Court must issue as soon as practicable after filing -
  - (a) A summons directing the defendant to appear at the time and place set out in the summons on Form 3 in Schedule 1; or
  - (b) A warrant subject to subsection (2) for the arrest of the respondent.
- (2) The Court must not issue a warrant unless the Court is satisfied that the personal safety of the complainant would be seriously threatened unless the defendant is apprehended and brought into custody.
- (3) The Court must give two copies of the application and any summons or warrants to the police officer in charge of the police station to where the defendant lives or was last known to live.
- (4) The police officer must personally serve the application and summons or warrant on the defendant.
- (5) Where service is completed by the police officer, an affidavit of service must be completed by the police officer who served the defendant and the affidavit is

promptly delivered, posted or transmitted by facsimile transmission to the Court registry in which the application was filed for the hearing of the matter.

- (6) In the case of a warrant, the police officer must arrest the defendant and take the defendant into custody.

#### **44 Absent defendant**

A Court may proceed to hear and determine an application for a protection order if the defendant is not present. The Court must be satisfied that-

- (a) the defendant has been served with a summons to appear at the hearing ; or
- (b) the defendant was required by conditions of bail to appear at the hearing; or
- (c) having regard to all the circumstances of the case all reasonable efforts have been made to give the defendant notice of hearing.

#### **45 Withdrawal of complaint**

Where a complainant makes an oral or written application for withdrawal of complaint against the defendant, the Court -

- (a) must investigate the reasons for withdrawal;
- (b) must ensure the safety and wellbeing of the complainant and any dependants;
- (c) make further directions; or
- (d) grant the application.

#### **46 Application of Criminal Procedure Code**

In criminal proceedings, where no provision is made under this Act or rules or regulations made under it, unless the Court directs otherwise, the practice and procedure required by the *Criminal Procedure Code 1963* followed in summary trials shall apply.

#### **47 Rights of complainant in domestic violence criminal proceedings**

In criminal proceedings for domestic violence, the prosecutor must consult with the complainant and fully explain proceedings in order –

- (a) to ensure that all relevant information has been obtained from the complainant, including relevant information on the release of the defendant on bail and the conditions that should be imposed that are necessary for the safety and wellbeing of the complainant, any dependent children or persons living within the family household.
- (b) to provide such information as are necessary to the complainant to lessen the impact of the trial on the complainant.

**48 Appeals from Court decisions**

- (1) Where in proceedings under this Act, a party may appeal to the Magistrates' Court, Senior Magistrate's Court or High Court if he or she has been -
- (a) refused an order; or
  - (b) is prejudicially affected by the decision.
- (2) The Magistrates Court Rules and the High Court Rules, with all necessary modifications, apply to an appeal under this section.

**PART 7 - EVIDENCE****49 Evidence generally**

In proceedings under this Act, the Court may receive any evidence that it thinks fit, whether or not it is otherwise admissible in a Court of law.

**50 Evidence in criminal proceedings**

- (1) In criminal proceedings relating to sexual abuse, it is not necessary that evidence upon which a complainant relies be corroborated.
- (2) The evidence relating to the sexual reputation of the complainant is inadmissible. No evidence can be given and no question can be put to a complainant relating directly or indirectly to the sexual experience of the complainant with any person other than the accused.
- (3) A complainant need not show resistance for a proper prosecution under this Part.
- (4) In criminal proceedings at which an accused is charged with an offence of a sexual act or an offence of an indecent nature, the Court shall not draw any inference only from the length of the delay between the commission of the sexual or indecent act and the laying of the complaint.

**51 Standard of proof**

- (1) Subject to subsection (2), every question of fact arising in any proceedings under this Act, must be decided on the balance of probabilities;
- (2) Subsection (1) above does not apply to criminal proceedings and the standard rules apply.

**52 Competence and compellability**

- (1) The parties to a proceeding under this Act are competent and compellable witnesses.
- (2) In proceedings under this Act, the parties to a marriage are competent and compellable to disclose only those communications that are relevant to the proceedings under this Act.

**PART 8 - ENFORCEMENT OF CERTAIN ORDERS****53 Enforcement generally**

- (1) Subject to the rules and regulations made under this Act, the orders made may be enforced by any Court having jurisdiction under this Act.
- (2) A Court must not entertain a proceeding under this Act for the enforcement of an order made by another Court under this Act unless the order is registered by the Court in accordance with the standard rules of the Court.

**54 Enforcement of accommodation, maintenance and compensation orders**

An accommodation order, or a maintenance order, or a compensation order is to be enforced by a Court having jurisdiction under this Act.

**55 Police may arrest without a warrant**

A police officer may arrest without a warrant and charge any person whom the police officer has good cause to suspect is about to commit or committing or has committed an offence under this Act.

**PART 9 - CEDAW NATIONAL COORDINATING COMMITTEE****56 Establishment**

The Minister for Women shall establish the CEDAW National Coordinating Committee consisting of persons appointed by the Minister.

**57 Membership**

- (1) The Committee shall consist of CEDAW National Coordinating Committee members, a representative each from the Ministry for Women, the Judiciary, the

Department of Community Affairs/Social Welfare, the Police Department and to be chaired by the Secretary for the Ministry of Women.

- (2) A member of the Committee may hold office for such period, not exceeding 3 years, and is eligible for reappointment.
- (3) A member may resign by writing to the Minister.
- (4) The Minister may terminate the appointment of a member because of misbehaviour or mental incapacity or being absent from the Committee meetings for 3 consecutive meetings without notification to the chairperson of the Committee.

## 58 Functions

- (1) It is the function of the Committee to advise, inform and make recommendations to the Minister concerning –
  - (a) the implementation of the Act;
  - (b) any research and analysis undertaken on the prevalence of violence, and recommendations made;
  - (c) more efficient collaboration of community and government support services to victims of violence;
  - (d) improvements to reduce prevent and eliminate violence through education and public awareness programmes;
  - (e) proposals for specific amendments to the Act;
    - (f) developments of a national plan of action and strategy with the responsible Ministry for the prevention and reduction of violence within domestic relationships for circulation to the public and to be implemented through the various Government agencies, civil society organisations and other interested stakeholders;
    - (g) any other matter relating to the implementation and preventive measures under this Act.
- (2) Meetings of the Committee shall be convened by the Chairperson of the Committee;
- (3) The Department of Women must keep records of all meetings of the CEDAW National Coordinating Committee.
- (4) The Committee must, as soon as practicable no later than October in each year, prepare and furnish to the Minister a report including recommendations on the issues of domestic violence, the prevalence of violence and other related matters, the operations of the Act, the work undertaken by the Committee and a copy of the report must be tabled at the next sitting of Parliament. The report must be made available to the public after tabling in Parliament.

## PART 10 - FAMILY PROTECTION FUND

### 59 Establishment

There shall be established by this Act a Family Protection Fund.

### 60 Objectives of the Fund

The Fund shall be applied –

- (a) towards material support for victims' of violence;
- (b) towards construction of victim support centres and shelters;
- (c) for training and capacity building of members of the Judiciary, the Police, counsellors and persons managing support centres and shelters.

### 61 Sources for the Fund

The monies for the Fund include –

- (a) funds approved by Parliament;
- (b) funds from any other source approved by the Minister responsible for Finance;
- (c) voluntary contributions to the Fund from individuals, organisations, the private sector and development partners.

### 62 Management

- (1) The Fund shall be managed by the Ministry of Finance in accordance with the financial regulations.
- (2) Applications for funding shall be made to the Committee who shall then advise the Minister responsible in the allocation of funds.

## PART 11 – MISCELLANEOUS

### 63 Proceedings not open to public

- (1) A Court hearing an application for a protection order is not open to the public.
- (2) Subject to subsection (3), a person may not be present during the hearing of an application unless he or she is-
  - (a) a party to the proceedings; or
  - (b) is an officer of the Court; or
  - (c) a legal or other representative of the party; or
  - (d) a witness; or

(e) any other particular person whom the Court permits to be present.

(3) A complainant is entitled to have a person with him throughout the proceedings to provide support and other assistance.

#### **64 Power to make rules**

The Chief Justice may from time to time make rules providing for and in relation to –

- (a) forms and the use of forms as necessary for the purposes of this Act;
- (b) stamps in relation to a document issued by an authorised person;
- (c) applications for protection orders made by telephone and other similar facility;
- (d) partial or full remission of fees; and
- (e) any other relevant matter.

#### **65 Power to make regulations**

The Minister may make regulations not inconsistent with this Act for all matters required or necessary to give effect to this Act.

**SCHEDULE**

**FORM 1**

(Part 4)

**APPLICATION FOR EMERGENCY, TEMPORARY, PROTECTION ORDER**

*(Delete whichever inapplicable)*

Between  
A.B. of

Complainant

and  
C.D. of

Defendant

I.....of.....  
being in a domestic relationship with the Defendant as the Defendant's (*state relationship*).....hereby apply for a .....protection order against the Defendant on the grounds that:  
*(State grounds here)*

.....  
Complainant

Filed on this            day of            20....

(Signature).....  
Court Registrar/Court Clerk of Island Court

**FORM 2**

(Parts 4)

Hearing
Date:.....
.....
Time:.....
.....

APPLICATION FOR EMERGENCY, TEMPORARY PROTECTION ORDER

Between  
A.B. of

Applicant

and  
C.D. of

Defendant

I.....of.....applying on behalf and with the consent of .....(complainant) of..... (address) who is in a domestic relationship with..... (name of Defendant) of..... (address) as the Defendant's (state relationship).....hereby apply for a protection order against the Defendant on the grounds that:  
*(State grounds here)*

.....  
Signature of Applicant

.....  
Signature of Complainant

Filed on this                      day of                      20.....

.....  
Court Registrar/Court Clerk of Island Court

**FORM 3**

**NOTICE OF PROCEEDINGS AND SUMMONS**

No. of 20.....

Between  
A.B. of

Complainant

and  
C.D. of

Defendant

To the Defendant..... (Name).....at..... (address)  
An application under section ..... (include relevant section) for a protection order, variation, suspension, cancellation of protection order (delete where inapplicable) has been made by.....of..... (address) against you. A copy of the application is attached. The application has been set down for hearing on.....20.....at..... (place) at.....hours.

You are hereby summoned to appear at the Court at .....on the .....day of..... 20.....at the..... (time) to answer the complainant / applicant.

If you do not appear in person at the hearing of the complaint/ application, the Court may -

- (a) deal with the complaint/ application in your absence; or
- (b) issue a warrant for your arrest to be brought before the Court.

Dated..... 20... .

.....  
Court Registrar/Clerk of the Island Court

*(Note: Copy of Application attached)*

**FORM 4**

*(Part 4)*

**PROTECTION ORDER**

No.     of 20

Between  
A.B.   of

Complainant

and  
C.D. of

Defendant

The .....Court at.....having heard the complaint /application  
*(delete whichever inapplicable)* made by..... [name of  
complainant] of.....under section..... the *Family Protection and  
Domestic Violence Act, Cap.?* in respect of the conduct [*or threatened conduct*]  
of..... [name of defendant] towards  
..... [name of person(s) to be protected]:

Now the Court on this day orders that, for ..... [period]..... [name of  
defendant] not to engage in the following conduct and to comply with the following  
orders<sup>1</sup>:

**Dated this                    day of                    20**

.....  
**(Judge/Magistrate)**

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**1**

**FORM 5**

*(Part 4)*

**ORDER VARYING, SUSPENDING OR CANCELLING  
PROTECTION ORDER**

No. of 20

Between  
A.B. of

Complainant

and  
C.D. of

Defendant

The..... Court at.....having heard an application made by..... [name] of.....(address) under.....(section) of the *Family Protection and Domestic Violence Act Cap.?*and on .....[date of original order], issued the following orders against the defendant/complainant as specified on the attached order [*attach copy of original order*].

Now the Court, on the application of .....(name) of.....(address) and having heard the..... [complainant or defendant] this .....day of .....20.....orders that the Protection Order be (*Varied/ Suspended / Cancelled*)(*delete where inapplicable*) as follows<sup>2</sup>:  
[specify details of variation / suspension/cancellation here]

**Dated.....20....**

.....  
**Judge/Magistrate**