

SECTION

Act 4 of 2000

FAMILY VIOLENCE (PROTECTION OF VICTIMS)

[17th April, 2000]

ARRANGEMENT OF SECTIONS

SECTIONS

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Short title This Act may be cited as the Family Violence (Protection of Victims) Act and come into operation on the 1st May, 2000.

Interpretation. 2.(1) In this Act -

"Director of Social Services" means the person performing the functions of this office in the Ministry responsible for Social Affairs;

"family violence" means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or another member of the person's family to fear for or to be apprehensive about, the personal safety or well being of that or the other member of the person's family;

"member of a person's family" or "family member of a person" means -

(a) a spouse or former spouse of the person;

(b) a son, daughter, grandson or granddaughter of the person or of the spouse or of a former spouse of the person;

(c) a brother, sister, parent or grandparent of the person or of the spouse or of a former spouse of the person;

(d) a member of the household of the person or of the spouse or of a former spouse of the person;

"protection order" means a protection order under this Act;

"respondent" means the person against whom a protection order is sought or is in force;

"spouse" includes -

(a) a person of the opposite sex who is cohabiting with another person as the de facto husband or wife of that other person;

(b) a person of the opposite sex, whether living with another person or not, who with the other person are the parents of a common child;

“Tribunal” means the Family Tribunal established under the Children Act.

Application 3.(1) The Tribunal may, on an application, grant a protection order.

for protection

order (2) An application for a protection order may be made-

(a) by a family member who has been or may be subjected to family violence;

(b) where the family member referred to in paragraph (a) is an adult and is unable to make the application, by the Director of Social Services;

(c) where the family member referred to in paragraph (a) is a child -

(i) by a parent or guardian of the child;

(ii) by a person with whom the child normally or regularly resides;

(iii) by the Director of Social Services;

(iv) by the child, with leave of the Tribunal, if the child has attained the Age of 14 years.

(3) An application for a protection order shall set out the scope of the order prayed for by the applicant.

(4) Subject to subsection(7), where an application for a protection order is received by the Tribunal, the Tribunal shall cause a notice of the application to be served on the respondent and shall summon the respondent to appear before the Tribunal on such day as may be fixed by the Tribunal to show cause why the protection' order shall not be made.

(5) Where the respondent fails to appear on the day fixe in the summons to appear under subsection (4) and the Tribunal is satisfied that the summons has been served on the respondent, the Tribunal may proceed to hear the application in the absence of the respondent.

(6) Where the Tribunal makes a protection order in the absence of the respondent, the protection order shall, unless the Tribunal orders otherwise, be served on the respondent personally and is not binding until it is so served.

(7) Where on an application for a protection order the Tribunal is satisfied that there is a serious risk of harm being caused to a family member before summoning and hearing the respondent and that it is appropriate to do so, the Tribunal may issue an interim protection order and the order shall remain in force until the determination of the application, unless the Tribunal determines otherwise.

(8) A party in a proceeding in respect of an application for a protection order may call witnesses in support of the party's case.

(9) Where the Tribunal is of the opinion that it is necessary for the protection of the privacy of a person concerned in the proceeding in respect of an application for a protection order, the Tribunal may hold the proceeding in private and for this purpose may exclude any person from the proceeding, other than persons directly concerned with the proceeding, the legal representatives of the persons and where appropriate, the Director, Social Services.

(10) In considering an application for a protection order and the terms of the order the Tribunal shall have regard to -

(a) the need to ensure that family members are protected against violence;

(b) the welfare of any child affected or likely to be affected by the conduct of the respondent;

(c) the accommodation need of the family member;

(d) any hardship that may be caused to the family members including the respondent;

(e) the income, assets and liabilities of the respondent and the other family members when considering whether to direct the respondent to return any property to a family member or allow a family member to recover or have access to or make use of any property;

(f) any other legal proceedings between the respondent and a family member;

(g) any other matter that the Tribunal may consider relevant including the prayer contained in the application.

(11) Where there is a protection order in force, either party or the person for whose benefit the order was made may apply to the Tribunal for a variation or revocation of the order and subsection (2) (b) to (c) shall have effect for the purposes of an application under this subsection.

(12) The person applying for the variation or revocation of a protection order shall cause a copy of the application to be served on the other party and the Tribunal shall, before varying or revoking the order, allow all the parties affected by the order a reasonable opportunity to be heard and shall have regard to the matters specified in subsection (10).

(13) Notwithstanding any other written law, where the Tribunal is satisfied that it is not reasonably possible to serve a summons or any other document under this Act personally on any person, the Tribunal may make an order for substituted service.

(14) An application for a protection order shall be deemed to be a matter of urgent nature and shall be dealt with accordingly.

(15) The Minister may, after consultation with the Chairman of the Tribunal, prescribe the forms for the making of an application for a protection order.

Protection Order 4.(1)A protection order made under this Act-

(a) may impose such restraints on the respondent as are necessary or desirable to prevent the respondent acting in an apprehended manner or engaging in any conduct which may constitute family violence;

(b) may apply for the benefit of-

(i) the member of the respondent's family who made the application for the order or on whose behalf the application was made or for whose protection the application was made; or

(ii) any other member of the family specified in the order.

(2) Without limiting the effect of subsection (1), a protection order may -

(a) prohibit the respondent from being on premises at which a family member resides, works, is studying or is undergoing vocational training or an apprenticeship;

(b) prohibit the respondent from being on premises specified in the order frequented by a family member;

(c) prohibit the respondent from being in a locality specified in the order;

(d) prohibit the respondent from approaching within a distance specified in the order of a family member,

(e) prohibit the respondent from contacting, harassing, threatening or intimidating a family member, or any other person at a place where a family member resides, works, is studying or is undergoing vocational training or an apprenticeship;

(f) prohibit the respondent from damaging property of a family member or property, including furniture and household effects, used by, a family member;

(g) prohibit the respondent from taking possession of movable property, including furniture and household effects, used by a family member;

(h) prohibit the respondent from causing or allowing another person to engage in a conduct referred to in paragraphs (e) to (g);

(i) direct the respondent to return any movable property specified in the order to a family member or to allow a family member to recover or have access to or make use of movable property specified in the order;

(j) direct the respondent to attend such counselling or rehabilitation programmes as may be specified in the order;

(k) specify conditions subject to which a respondent may-

(i) be on or in a locality specified in the order;

(ii) approach or contact a family member or any other person at a place where a family member works, resides, is studying or is undergoing vocational training or an apprenticeship;

(l) contain any other condition which the Tribunal considers necessary in the circumstances.

(3) A protection order may be made against a respondent in relation to premises or property despite the fact that the respondent has a legal or equitable interest in the premises or property.

(4) Where the Tribunal makes an order which-

(a) prohibits the respondent from being on any premises; or

(b) limits the access of the respondent to the premises,

and. the premises are rental premises or premises in respect of which the respondent is or the spouses are repaying any instalments in respect of a mortgage or charge, the Tribunal may, when making the order prohibiting or limiting the access of the respondent, also order the respondent to pay the rent or the instalments during the currency of the-order.

(5) A protection order-

(a) shall be valid for the period specified in the order,

(b) shall not, in any event, be for a period of more than 24 months.

Costs. **5.** Notwithstanding any other written law, no costs shall be allowed in Proceedings under this Act.

Offence. **6.** A person who intentionally contravenes an interim protection order or a protection order shall be guilty of an offence and liable on conviction before the Tribunal to a fine of R30,000 or to imprisonment for 3 years or to both such fine and imprisonment.

Regulations **7.** The Minister may make regulations for carrying out the purposes and provisions of this Act.

Savings **8.** The provisions of this Act shall be in addition to and not in derogation of, the provisions of any other written law relating to conduct constituting family violence.