

# **Family Protection Act 2008**

*Commencement: 2 March 2009*

## **REPUBLIC OF VANUATU**

### **THE FAMILY PROTECTION ACT NO. 28 OF 2008**

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### **REPUBLIC OF VANUATU**

Assent: 22/12/2008

Commencement: 02/03/2009

### **THE FAMILY PROTECTION ACT NO. 28 OF 2008**

An Act to provide for an offence of domestic violence and family protection orders in cases of domestic violence, and for related purposes

Be it enacted by the President and Parliament as follows-

#### **PART 1 – PRELIMINARY MATTERS**

##### **1 Purpose**

(1) The purpose of this Act is:

- (a) to preserve and promote harmonious family relationships; and
- (b) to prevent domestic violence in all levels of society in Vanuatu.

(2) This Act is based on traditional values of Vanuatu and on Christian principles and:

- (a) recognizes that domestic violence of any kind is not acceptable behavior; and
- (b) ensures there is effective legal protection for the victims of domestic violence; and
- (c) provides for punishment of all persons who commit acts of domestic violence.

## **2 Interpretation**

In this Act, unless the contrary intention appears:

**authorised person** means:

- (a) a magistrate; or
- (b) a justice of an Island Court; or
- (c) a person appointed to be an authorised person under section 7;

**child** of a person means an individual under the age of 18 who is:

- (a) a biological, adopted, step or foster child of the person; or
- (b) in the care or custody of the person;

whether or not the child is a child of another person;

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

**court** means:

- (a) a Magistrates Court; or
- (b) an Island Court;

**defendant** means a person against whom a family protection order is in force, is sought or may be sought, under this Act;

**domestic violence** has the meaning given by section 4;

**domestic violence offence** means an offence under section 10;

**family protection order** means:

- (a) a protection order; or
- (b) a temporary protection order;

**family member** has the meaning given by section 3;

**local government region** has the same meaning as in the [Decentralization Act](#) No. 1 of 1994;

**Minister** means the Minister responsible for women's affairs;

**property** has the meaning given by section 6;

**protection order** means an order made under section 11;

**registered counsellor** means a person declared to be a registered counsellor under section 8;

**spouse** has the meaning given by section 5;

**temporary protection order** means an order made under section 17 or 18;

**weapon** means:

- (a) a firearm of any kind; or
  - (b) any thing used for causing injury to, or incapacitating, an individual; or
  - (c) a thing stated in the regulations to be a weapon;
- and includes a part of such a firearm or thing.

### **3 Meaning of family member**

Each of the following is a member of a person's family:

- (a) the spouse of the person;
- (b) a child of the person and/or the person's spouse;
- (c) a parent of the person or the person's spouse;
- (d) a brother or sister of the person or the person's spouse;
- (e) any other person who is treated by the person as a family member.

### **4 Meaning of domestic violence**

(1) A person commits an act of domestic violence if he or she intentionally does any of the following acts against a member of his or her family:

- (a) assaults the family member (whether or not there is evidence of a physical injury);
- (b) psychologically abuses, harasses or intimidates the family member;

- (c) sexually abuses the family member;
- (d) stalks the family member so as to cause him or her apprehension or fear;
- (e) behaves in an indecent or offensive manner to the family member;
- (f) damages or causes damage to the family member's property;
- (g) threatens to do any of the acts in paragraphs (a) to (f).

(2) Without limiting paragraph (1)(d), a person may stalk another person by:

- (a) following the person; or
- (b) watching the person; or
- (c) loitering outside premises where the person lives, works or frequents for the purposes of any social or leisure activity; or
- (d) making persistent telephone calls to the person or to premises where the person lives or works.

(3) For the purposes of this Act, if a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act.

(4) To avoid doubt:

- (a) a single act may amount to an act of domestic violence; and
- (b) a number of acts that form part of a pattern of behaviour may amount to domestic violence even though some or all of those acts when viewed in isolation may appear to be minor or trivial.

## **5 Meaning of spouse**

Spouse of a person means an individual of the opposite sex to the person who:

- (a) is or has been married to the person; or
- (b) although not married to the person, is living with the person in a marriage-like relationship or has lived with the person in such a relationship; or
- (c) is a biological parent of a child with the person (whether or not they are or have been married or are living or have lived together)

## **6 Meaning of property**

Property of a person means property that:

- (a) the person owns; or
- (b) the person does not own, but:

- (i) is used and enjoyed by the person; or
- (ii) is available for the person's use or enjoyment; or
- (iii) is in the person's care or custody.

## **7 Declaration of authorised persons**

(1) The President acting on the advice of the Judicial Service Commission is, by declaration in writing, to appoint authorised persons.

(2) The Minister is to recommend to the Judicial Services Commission persons for appointment under subsection (1). A person is to be recommended only if:

(a) the person has undertaken training approved by the Minister for the purposes of this section; and

(b) the person has a good knowledge of this Act and understands how it works; and

(c) the person understands the social and cultural environment within which domestic violence takes place; and

(d) the person:

(i) is the principal chief of a village; or

(ii) is an assistant chief of a village, a church leader, a community leader, a teacher, or a village health worker nominated by the principal chief of the relevant village; or

(iii) is a member of the Vanuatu Police Force of or above the rank of inspector; or

(iv) has applied in writing to the Minister to be recommended for appointment.

(3) The Minister must:

(a) consult with the President of the National Council of Chiefs and the Director of the Department of Women's Affairs and the Director General of the Prime Minister's Department before making a recommendation; and

(b) ensure so far as practicable that recommendations are made in respect of an equal number of men and women in each local government region of Vanuatu.

(4) A person who is appointed as an authorised person is not to be paid any remuneration or allowances for performing any functions or exercising any powers under this Act.

(5) A copy of each declaration must be published in the Gazette as soon as practicable after it is made.

(6) An authorized person may claim from the Director General of the Prime Minister's Department reimbursement of any expenses that the authorized person incurs in performing any functions or exercising any powers under this Act. (reimbursement of telephone calls to the court or transport costs to take a victim to a hospital, for example).

## **8 Registered counselors**

- (1) The Minister may declare persons to be registered counsellors for the purposes of this Act.
- (2) The Minister may declare a person to be a registered counsellor only if he or she has appropriate qualifications or experience in counselling or mediation in relation to domestic violence.
- (3) A person who in accordance with the rules of custom conducts counselling or mediation in relation to domestic violence may be considered to have appropriate experience.
- (4) In making declarations, the Minister must:
  - (a) consult with the President of the National Council of Chiefs and the Director of the Department of Women's Affairs and the Director General of the Prime Minister's Department; and
  - (b) ensure so far as practicable that there are registered counsellors in each local government region.
- (5) A declaration must be in writing and a copy of it must be published in the Gazette as soon as practicable after it is made.

## **9 Registers**

- (1) The Director of the Department of Women's Affairs must:
  - (a) establish a register of persons in respect of whom declarations have been made under section 7; and
  - (b) establish a register of persons in respect of whom declarations have been made under section 8; and
  - (c) keep both registers up to date.
- (2) Each register is to be located at the offices of the Department in Port Vila. However, a copy of each register is also to be kept at the office of each local government council and municipal council.
- (3) Any person may inspect the register or a copy of it free of charge during normal office hours.
- (4) A register may be kept wholly or partly by computer.
- (5) In this section:

**local government council** has the same meaning as in the [Decentralization Act](#) No. 1 of 1994; and

**municipal council** means a municipal council referred to in section 3 of the Municipal Councils Act [CAP 126].

## **PART 2 - DOMESTIC VIOLENCE OFFENCE**



## **10 Domestic Violence Offence**

(1) A person who commits an act of domestic violence is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 5 years or a fine not exceeding 100,000Vatu, or both.

(2) It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.

(3) An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.

(4) If a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be an act of domestic violence, then the instigator is taken to have committed the act and subsection (1) applies in relation to the instigator.

(5) If a person is convicted of an offence against this section, a court may, in determining the penalty to be imposed on the person, take into account any compensation or reparation made or due by the person under custom.

(6) If under custom such compensation or reparation has not been determined and a court is satisfied that a determination is likely to be made without undue delay, the court may postpone sentencing pending the determination.

## **PART 3 –FAMILY PROTECTION ORDERS**

### **Division 1 – Power of court to make protection orders**

#### **11 Court may make protection order**

(1) A court may, on an application made under section 28, make a protection order against a defendant if the court is satisfied that:

- (a) the defendant has committed an act of domestic violence against the complainant; or
- (b) the defendant is likely to commit an act of domestic violence against the complainant.

(2) In deciding whether to make a protection order, the court must take into account the following:

- (a) the need to ensure that the complainant is protected from domestic violence;
- (b) the well being and accommodation needs of the complainant and the complainant's children;
- (c) the well being and accommodation needs of other family members;
- (d) any other matter that the court considers relevant.

(3) The court must give most importance to the matters in paragraphs (2)(a) and (b).

(4) In deciding whether to make a protection order, the court must not have any regard to whether the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.

(5) The court may include the name of another family member in a protection order made for the benefit of the complainant if the court is satisfied that the defendant has committed, or is likely to commit, an act of domestic violence against that family member.

(6) The court must not refuse to make a protection order merely because of the existence of other legal proceedings involving the defendant and the complainant.

## **12 Conditions of a protection order**

(1) If a court makes a protection order, the court must make each of the following a condition of the order:

- (a) the defendant must be of good behaviour towards the complainant and any other family member named in the order; and
- (b) the defendant must not commit acts of domestic violence.

(2) A court may also impose other conditions on the defendant in accordance with sections 13, 14, 15 and 16 if it considers the conditions are:

- (a) necessary in the circumstances; and
- (b) desirable in the interests of the complainant or any other family member.

## **13 Conditions relating to individual protection and harmonious family relationships**

A court may include all or any of the following conditions in a protection order:

- (a) prohibiting the defendant or complainant from approaching each other; or
- (b) prohibiting the defendant or complainant from approaching each other while under the influence of kava, alcohol or non-prescription drugs;
- (c) prohibiting the defendant or complainant from contacting each other;
- (d) prohibiting the defendant or complainant from being in or near specified premises, including

premises where the other lives, works or frequents, even though he or she has a legal or equitable interest in the premises;

(e) prohibiting the defendant or complainant from communicating with each other;

(f) prohibiting the defendant or complainant from doing any act that does not promote, encourage or facilitate harmonious family relationships;

(g) prohibiting the defendant or complainant from causing another person to engage in conduct referred to in paragraphs (a) to (f).

#### **14 Conditions relating to weapons**

A court may include all or any of the following conditions in a protection order:

(a) prohibiting the defendant from possessing any weapon;

(b) directing that the defendant dispose of any weapon or that it be forfeited to the court for disposal by a police officer in accordance with the order.

#### **15 Conditions relating to property**

(1) A court may include all or any of the following conditions in a protection order:

(a) prohibiting the defendant from damaging property of the complainant;

(b) directing the defendant:

(i) to return any specified personal property of the complainant; or

(ii) to allow the complainant to recover, have access to or make use of any specified personal property;

(c) granting the complainant exclusive occupancy to a residence or specified part of a residence whether or not the residence is solely owned or leased by the defendant.

(2) A person other than the defendant is not to be ejected from any premises by reason of any condition included in an order made under this section.

#### **16 Conditions relating to counselling and/or mediation**

(1) A court may direct either or both the defendant and the complainant to participate in:

(a) counselling; or

(b) mediation; or

(c) both counselling and mediation;

to be conducted by a registered counsellor.

(2) A court may make an order for a person who is not a registered counsellor to conduct counselling and/or mediation if the defendant and the complainant agree that he or she conducts the counselling and/or mediation.

## **Division 2 – Temporary protection orders**

### **17 Authorised person may make temporary protection order**

(1) An authorised person to whom an application is made under section 29 may make a temporary protection order if the authorised person is satisfied that:

- (a) the complainant is in danger of personal injury; and
- (b) because of distance, time or other circumstance of the case, it is not practicable to apply to a court for a protection order or a temporary protection order, and for it to be heard and determined quickly by the court.

(2) A temporary protection order made under subsection (1) may be in the same terms as a protection order under Division 1 of this Part and sections 12 to 16 apply accordingly.

(3) An authorised person may make a temporary protection order:

- (a) whether or not the defendant or complainant is present when the order is made; and
- (b) at any time of the day or night.

(4) A temporary protection order made under this section can remain in force for not more than a period of 14 days, and may be renewed only once for a further period of 14 days.

### **18 Court may make temporary protection order**

(1) On an application being made under section 28, a court may make a temporary protection order if the court is satisfied that the complainant is in danger of personal injury.

(2) The court may make a temporary protection order in the same terms as a protection order under Division 1 of this Part and sections 12 to 16 apply accordingly.

(3) A court may make a temporary protection order whether or not the defendant or complainant is in court.

(4) A temporary protection order made under this section can remain in force for not more than a period of 30 days, and may be renewed only once for a further period of 30 days.

(5) To avoid doubt, a court may make a temporary protection order even though an application was made under section 28 for a protection order.

## **19 Further hearing by court**

- (1) If a temporary protection order is made by a court in the absence of the defendant, the court may issue:
- (a) a summons for the defendant to appear at a specified date and time for a further hearing; or
  - (b) a warrant for the arrest of the defendant.
- (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) At a further hearing, the court may confirm, vary or revoke the temporary protection order.

## **20 Temporary protection orders – evidence and matters to consider**

- (1) A court or an authorised person may make a temporary protection order on such evidence as the court or authorised person considers sufficient and appropriate having regard to the temporary nature of the order.
- (2) Without limiting subsection (1), if the complainant is unable to attend the court or appear before the authorised person because of his or her injuries, the court or authorised person may accept affidavit or hearsay evidence on behalf of the complainant.
- (3) In deciding whether to make a temporary protection order, a court or an authorised person must give most importance to ensuring that the complainant and the complainant's children are protected from domestic violence.
- (4) In deciding whether to make a temporary protection order, a court or an authorised person must not have any regard to whether the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.
- (5) An authorised person or a court may include the name of another family member in a temporary protection order made for the benefit of the complainant if the authorised person or court is satisfied that family member is in danger of personal injury.
- (6) An authorised person or a court must not refuse to make a temporary protection order merely because of the existence of other legal proceedings involving the defendant and the complainant.

## **Division 3 – Offence and compensation**

### **21 Offence to breach family protection order**

(1) A person who breaches a family protection order is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 2 years or a fine not exceeding 50,000 Vatu, or both.

(2) It is not a defence to an offence under subsection (1) that the defendant has paid an amount of money or given other valuable consideration in relation to his or her custom marriage to the complainant.

(3) An offence under subsection (1) is in addition to and not in substitution for any other offence constituted by an act of domestic violence.

(4) If a person (in this subsection called "the instigator") counsels or procures another person to commit an act that, if done by the instigator, would be a breach of a family protection order, then the instigator is taken to have committed the act and subsection (1) applies in relation to the instigator.

## **22 Compensation**

(1) A court may make an order that the defendant pay compensation according to custom or otherwise 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 may take into account the following in making an order for compensation for a person:

- (a) any pain and suffering of the person;
- (b) any physical or mental injury of the person;
- (c) the cost of any medical treatment incurred by the person;
- (d) any loss of earnings suffered by the person;
- (e) the value of any property of the person that has been taken, destroyed or damaged;
- (f) any necessary and reasonable expenses incurred as a result of separation which results from the act of the domestic violence, including:
  - (i) accommodation expenses; and
  - (ii) moving and transport expenses; and
  - (iii) expenses of setting up a separate household, including housing loan repayments or rent for as long as the court considers reasonably necessary.

(3) The court in considering any necessary and reasonable expenses under paragraph (2)(f) must have regard to:

- (a) the financial position of the parties; and
- (b) the relationship between the parties; and
- (c) any other legal proceedings involving the parties.

#### **Division 4 – Other matters**

##### **23 Order to be explained**

- (1) If a court or an authorised person proposes to make a family protection order against a person and the person is present, the court or authorised person must, before making the order, explain the order to the person in a language that he or she understands.
- (2) Without limiting subsection (1), the court or authorised person must explain:
  - (a) the purpose, terms and effect of the order; and
  - (b) what may happen if the person fails to comply with the order; and
  - (c) how the order can be varied or revoked.

##### **24 Consent orders**

- (1) A court or an authorised person may make a family protection order if the parties consent to the order even if the court or authorised person is not satisfied that an order could be made under this Act.
- (2) A consent order may be made even if the defendant does not admit to any of the allegations on which the application for the order is based.
- (3) A consent order cannot be used in any other legal proceedings.

##### **25 Power of court to make order if person pleads guilty**

- (1) A court may, on its own initiative, make a family protection order against a person if:
  - (a) the person pleads guilty to, or is found guilty of, an offence under section 10 or an offence under any other Act that involves domestic violence; and
  - (b) the court is satisfied that the order could be made against the person under this Act.
- (2) If a family protection order is already in force, the court may vary the order.

##### **26 Form of family protection order**

- (1) A court must make a family protection order in the form in Schedule 2.

(2) An authorised person may make a temporary protection order orally or in writing. If the order is made in writing, it may be made in the form in Schedule 2.

## **PART 4 – APPLICATIONS FOR FAMILY PROTECTION ORDERS**

### **27 Who can apply for a family protection order?**

(1) An application for a family protection order may be made by:

- (a) the complainant; or
- (b) a friend or other family member on behalf of the complainant if the complainant has given his or her oral or written consent for that friend or family member to make the application; or
- (c) a qualified legal practitioner on behalf of the complainant if the complainant has given his or her oral or written consent for that practitioner to make the application; or
- (d) a police officer on behalf of the complainant if the complainant has given his or her oral or written consent for that officer to make the application.

(2) An authorised person may apply on behalf of the complainant to a court for a family protection order.

(3) If:

- (a) an authorised person has made a temporary protection order under section 17; and
- (b) the complainant requests that authorised person to make an application to a court under section 28;

that authorised person must make the application as soon as practicable.

(4) An application may be made by or on behalf of more than one person.

### **28 Application to a court for a family protection order**

(1) An application to a court for a family protection order may be made:

- (a) orally; or
- (b) by telephone, radio or other similar facility; or
- (c) in writing; or
- (d) by facsimile, telex or email.

(2) If the application is made orally, the court must reduce the application to writing.



(3) If the application is made in writing, it may be made in the form in Schedule 1.

(4) A court must keep a written register of:

- (a) all applications for family protection orders made to it; and
- (b) all family protection orders made by it.

## **29 Application to an authorised person for a temporary protection order**

(1) An application may be made to an authorised person for a temporary protection order if the applicant believes that because of distance, time or other circumstance of the case (for example, it is late at night) it is not practicable:

- (a) for an application under section 28 to be made to a court; and
- (b) for the court to hear and determine the matter quickly.

(2) The application may be made:

- (a) orally; or
- (b) by telephone, radio or other similar facility; or
- (c) in writing; or
- (d) by facsimile, telex or email.

(3) If the application is made in writing, it may be made in the form in Schedule 1.

(4) To avoid doubt, an application under this section does not in any way limit a person's right to apply for a family protection order under section 28.

(5) An authorised person must cause to be kept a written register of:

- (a) all applications for temporary protection orders made to him or her; and
- (b) all temporary protection orders made or refused by him or her; and
- (c) the reasons for making or refusing to make a temporary protection order.

## **PART 5 - PROCEDURAL MATTERS IN RELATION TO DOMESTIC VIOLENCE APPLICATIONS AND ORDERS**

### **Division 1 – Priority for applications and evidence**

#### **30 Absent defendant**

(1) Subject to subsection (2), a court may proceed to hear and determine an application for a protection order if the defendant is not present.

(2) The court must be satisfied that:

(a) the defendant has been served with a summons to appear at the hearing (see section 35(1)(a);  
or

(b) the defendant was required by conditions of bail to appear at the hearing (see section 35(1)(b); or

(c) having regard to the circumstances of the case all reasonable efforts have been made to give the defendant notice of the hearing.

### **31 Priority**

(1) A court must give priority to applications for family protection orders so far as is practicable.

(2) A court or an authorised person must determine an application for a temporary protection order on the same day on which the application is made unless there are exceptional circumstances.

### **32 Evidence**

In proceedings under this Act (other than proceedings for an offence), a court or authorised person may receive any evidence that the court or authorised person thinks fit, whether the evidence is otherwise admissible in a court or not.

### **33 Burden of proof**

In proceedings under this Act (other than proceedings for an offence), a court or an authorised person is to decide questions of fact on the balance of probabilities.

### **34 Spouse may give evidence**

If a person is charged with an offence under this Act:

(a) the person's spouse is a competent and compellable witness in any legal proceedings in connection with the offence; and

(b) the person's spouse may be called to give evidence without the consent of the person.

## **Division 2 – Service, duration, variation and revocation**

### **35 Service of application and issue of summons or warrant**

- (1) On application being made to a court under section 28 for a protection order, the court may issue:
- (a) a summons directing the defendant to appear at the time and place set out in the summons; or
  - (b) a warrant in accordance with subsection (2) for the arrest of the defendant.
- (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 2 copies of the application and any summons or warrant to the police officer in charge of the police station closest to where the defendant lives or was last known to live.
- (4) The police officer must cause the application and summons or warrant to be served personally on the defendant.
- (5) In the case of a warrant, the police officer must cause the defendant to be arrested and taken into custody using only such force as is reasonably necessary.
- (6) An application for a temporary protection order made to a court under section 28 or to an authorised person under section 29 is not required to be served on, or otherwise communicated to, the defendant.

### **36 Service of family protection orders**

- (1) If a family protection order is made by a court, the court must:
- (a) cause a copy of the order to be served personally on the complainant and on the defendant; and
  - (b) cause a copy of the order to be given or forwarded to the officer in charge of the police station closest to where the complainant lives.
- (2) If a temporary protection order is made by an authorised person, the authorised person must cause the order to be communicated by the most practical means available:
- (a) to the complainant and the defendant; and
  - (b) to the police officer in charge of the police station closest to where the complainant lives.
- (3) Without limiting subsection (2), a temporary protection order may be communicated:
- (a) orally; or
  - (b) by telephone, radio or other similar facility; or
  - (c) by personal service.

### **37 Duration of orders**

(1) A family protection order takes effect:

- (a) on the day it is made; or
- (b) if it is made while an existing family protection order is in force - at the end of the existing order.

(2) A protection order continues in force for the period specified in the order, unless it is revoked or the period of the order is varied.

(3) Subject to subsection (4), the period specified in a protection order must not exceed 2 years and is to be for such period as the court considers necessary to protect a person. If a period is not specified in an order, the order remains in force for 6 months.

(4) If the court is satisfied that there are special reasons for doing so, the court may specify a period that is longer than 2 years.

(5) A temporary protection order remains in force for the period specified in the order, unless:

- (a) it is revoked; or
- (b) the period of the order is varied; or
- (c) is replaced by a protection order.

### **38 Variation and revocation of orders**

(1) An application to vary or revoke a family protection order may be made by any person to whom the order applies.

(2) If:

- (a) a court made the order, the application must be made to the court; or
- (b) an authorised person made the order, the application must be made to:
  - (i) that authorised person; or
  - (ii) another authorised person if the authorised person who made the order is not available.

(3) A court may also vary a family protection order:

- (a) on its own initiative under section 25; or
- (b) when dealing with a contravention of the order.

(4) A family protection order may be varied by:

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

(5) Before a court or authorised person varies or revokes a family protection order:

- (a) in the case of a protection order - the court must have regard to subsections 11(2), (3) and (4); and
- (b) in the case of a temporary protection order – the authorised person or the court must consider whether the complainant is still in danger of personal injury.

(6) A court or authorised person must not vary or revoke a family protection order on the application of a person unless:

- (a) in the case of the court – it is satisfied that the other parties to the application have been personally served with the application; and
- (b) in the case of an authorised person – he or she is satisfied that the application has been communicated to the other parties by the most practical means available.

(7) A court that varies or revokes a family protection order must:

- (a) cause a copy of the variation or revocation to be served personally on the complainant and the defendant; and
- (b) cause a copy of the variation or revocation to be given or forwarded to the officer in charge of the police station closest to where the complainant lives.

(8) An authorised person who varies or revokes a temporary protection order must cause the variation or revocation to be communicated by the most practical means available:

- (a) to the complainant and the defendant; and
- (b) to the police officer in charge of the police station closest to where the complainant lives; and
- (c) if he or she is not the authorised person who originally made the order - to that authorised person.

(9) Without limiting paragraph (6)(b) and subsection (8), communication may be made:

- (a) orally; or
- (b) by telephone, radio or other similar facility; or
- (c) by personal service.

## **Division 3 – Other matters**

### **39 Proceedings for family protection orders not open to public**

(1) A court or an authorised person hearing an application for a family protection order is not to be 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) an officer of the court; or
- (b) a party to the application or the legal or other representative of the party; or
- (c) a witness; or
- (d) any other particular person whom the court or authorised person permits to be present.

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

### **40 Restriction on publication of proceedings**

(1) This section applies to any proceedings before a court or an authorised person under this Act, other than proceedings for an offence under section 10 or 21.

(2) A person must not publish:

- (a) (otherwise than by the display of a notice in the premises of a court) a notification of the proceedings, identified by reference to the names of the parties to the proceedings; or
- (b) any account of the proceedings or of any part of those proceedings identified by reference to the name of the parties to the proceedings; or
- (c) personal details of the parties to the proceedings or any description of them by which they can be identified;

unless the court or authorised person expressly permits the publication and the complainant and defendant have given their oral or written consent to the publication.

(3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction:

- (a) if the person is an individual - by a fine not exceeding 50,000 Vatu or imprisonment for a term not exceeding 3 months, or both; or
- (b) in any other case - by a fine not exceeding 250,000 Vatu.

(4) Subsection (2) does not apply if the publication:

- (a) is of a technical nature that is intended primarily for circulation amongst members of the legal, medical, psychiatric, psychological or social welfare profession; or
- (b) is a transcript of the evidence used in relation to disciplinary proceedings against members of any such profession.

(5) In this section, **publishes** means:

- (a) publishes in a newspaper or periodical publication; or
- (b) publishes by radio broadcast or television or otherwise by any means to the public or a section of the public.

#### **41 No application fees**

Despite the provisions of any other Act or law, no fees or charges are payable to a court or an authorised person in relation to the making of an application for a family protection order (for example, there can not be any court filing fees for the application).

#### **42 Costs**

In proceedings under this Act a court, the Supreme Court and the Court of Appeal are not to award costs unless satisfied that the proceedings are based on a frivolous or vexatious claim.

#### **43 Bail**

In determining bail for an offence under section 10 or 21, a court must:

- (a) take account of the defendant's past history, including:
  - (i) previous offences under that section against the complainant or any other person; and
  - (ii) violence against the complainant or any other person; and
- (b) give primary consideration to protecting the complainant.

### **PART 6 – POWERS OF THE POLICE**

#### **44 Duty of police to act in relation to domestic violence**

(1) If a police officer suspects on reasonable grounds that a person:

- (a) has committed a domestic violence offence (see section 10); or
- (b) has breached a family protection order (see section 21);

the officer must investigate the alleged offence.

(2) If, after the investigation, the police officer believes on reasonable grounds that the person:

- (a) has committed a domestic violence offence; or
- (b) has breached a family protection order;

the officer must:

- (c) charge the person with a domestic violence offence; or
- (d) if the complainant is in danger of personal injury - arrest the person and take him or her into police custody.

(3) An arrest under this section can be made without a warrant.

#### **45 Duty of police to bring matter to court**

(1) A police officer must bring a person arrested under section 44 before a magistrate or a justice of an Island Court as soon as practicable and no later than 48 hours after being arrested.

(2) In working out the 48 hours, a period falling on a Sunday, Saturday or public holiday is not to be counted.

#### **46 Entry and search of premises**

(1) This section applies if a police officer believes on reasonable grounds that:

- (a) a person is committing, or has committed an act of domestic violence, on any premises; or
- (b) the person is breaching, or has breached, a family protection order on the premises.

(2) The police officer must:

- (a) enter the premises; and
- (b) take such action as the officer considers necessary, including removing one or more persons from the premises or remaining on the premises and seizing any weapons, to:
  - (i) stop the domestic violence or the breach of the family protection order; or
  - (ii) ensure that there is no immediate danger that an act of domestic violence or a breach of a family protection order will occur on the premises; and
- (c) give or arrange for such assistance as is reasonable in the circumstances to any person on the premises.

(3) A police officer entering premises and taking action under subsection (2) is to use only such force as is reasonably necessary in the circumstances.

(4) A police officer can enter premises and take action under subsection (2) without further or other authority than this section. To avoid doubt, an officer does not need a warrant nor the consent of the owner or occupier of the premises.

(5) If a police officer seizes a weapon, the police officer must deliver the weapon to the officer in charge of his or her police station who must retain the weapon in safe custody pending the outcome of any proceedings under this Act in relation to the domestic violence in question.



(6) Nothing in this section is to be taken to limit in any way the powers of a police officer under Part II of the [Criminal Procedure Code](#) [CAP 136].

## **PART 7 - APPEALS**

### **47 Appeals**

- (1) An appeal may be made to the Supreme Court against a decision of a court:
  - (a) to make a family protection order; or
  - (b) to revoke or vary a family protection order (including a variation of the conditions imposed by the order); or
  - (c) to refuse to make, vary or revoke a protection order.
- (2) An appeal:
  - (a) may be made by the complainant or the defendant; and
  - (b) must be instituted within 28 days after the day on which the court's decision is made.

### **48 Institution and nature of appeal**

- (1) An appeal must be instituted by:
  - (a) lodging a notice of appeal in writing with the Registrar of the Supreme Court; and
  - (b) serving a copy of the notice of appeal on each person who is a party to the proceedings (other than the appellant); and
  - (c) giving a copy of the notice of appeal to the Commissioner of Police.
- (2) A notice of appeal must specify with particularity the grounds of appeal and the facts that are relied upon.
- (3) Unless a Judge of the Supreme Court orders otherwise, an appeal is to be by way of re-hearing, and must be in accordance with the rules of the Court.
- (4) An appeal against an order does not stay the operation of that order.

### **49 Decision on appeal**

- (1) If the Supreme Court allows an appeal:
  - (a) it may confirm, dismiss or vary any order to which the appeal relates, as it considers appropriate; and
  - (b) it may make such order or decision as it considers should have been made, and every such order or decision takes effect on and from the day on which it is made.
- (2) A person aggrieved by an order or decision of the Supreme Court may appeal to the Court of Appeal against that order or decision.

(3) Neither the Supreme Court nor the Court of Appeal is bound by the rules of evidence in determining an appeal.

## **PART 8 - MISCELLANEOUS**

### **50 Offence to interfere with authorised persons**

A person who improperly influences, hinders or obstructs an authorised person in the exercise of his or her duties under this Act is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 6 months or a fine not exceeding 20,000 Vatu, or both.

### **51 Regulations**

(1) The Minister may, by Order in writing, make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may provide for all or any of the following:

- (a) prescribing forms of any applications, orders or other document required under this Act;
- (b) prescribing things that are weapons for the purposes of this Act;
- (c) prescribing conditions to be accepted by a person before the person is released from custody under this Act;
- (d) prescribing training programs for magistrates, justices of Island Courts, authorised persons, registered counsellors and persons wanting to become authorised persons or registered counsellors;
- (e) prescribing education programs for the public.

### **52 Review of Act**

(1) The Minister must cause an independent review of the operation of this Act to be undertaken within 3 years after the commencement of this Act.

(2) The people who undertake the review must give the Minister a written report of the review.

(3) The Minister must cause a copy of the report to be tabled in the Parliament within 5 sitting days of the ordinary session after its receipt by the Minister.

(4) In this section:

**independent review** means a review undertaken by a team consisting of an equal number of women and men who possess appropriate qualifications and/or experience in domestic violence matters.

**53 Commencement**

This Act commences on the day on which it is published in the Gazette.

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Sections 28 and 29

***SCHEDULE 1 - FORM FOR APPLICATION FOR  
FAMILY PROTECTION ORDER***

**APPLICATION FOR PROTECTION ORDER OR TEMPORARY PROTECTION  
ORDER**

**TO COURT OR AUTHORISED PERSON:**

**COMPLAINANT and PERSON ACTING ON BEHALF OF COMPLAINANT (if  
applicable):**

**ADDRESS**

**DEFENDANT:**

**ADDRESS (if known)**

**DATE OF APPLICATION:**

**GROUNDS FOR MAKING APPLICATION:**

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Section 26

***SCHEDULE 2 - FORM FOR FAMILY PROTECTION ORDER***

**PROTECTION ORDER OR TEMPORARY PROTECTION ORDER**

**COURT OR AUTHORISED PERSON:**

**PARTIES TO APPLICATION:  
COMPLAINANT and PERSON ACTING ON BEHALF OF COMPLAINANT (if  
applicable):**

**DEFENDANT**

**GROUNDS FOR MAKING ORDER:**

**IT IS ORDERED THAT:**

**The defendant must be of good behaviour; and**

**The defendant must not commit acts of domestic violence; and**

**The defendant [other conditions of the order].**

**DATE OF ORDER:**

**SIGNED:**