



*Tonga*

# **FAMILY PROTECTION ACT 2013**

**Act 19 of 2013**





## FAMILY PROTECTION ACT 2013

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## **FAMILY PROTECTION ACT 2013**

**Act 19 of 2013**

**AN ACT TO PROVIDE FOR GREATER PROTECTION FROM DOMESTIC VIOLENCE, TO INTRODUCE PROTECTION ORDERS, CLARIFY THE DUTIES OF THE POLICE AND PROMOTE THE HEALTH, SAFETY AND WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE AND RELATED MATTERS**

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I assent,

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

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### **PART 1 - PRELIMINARY**

#### **1 Short title, commencement**

- (1) This Act may be cited as the Family Protection Act 2013.
- (2) This Act shall come into force on such date as is specified by Notice made by the Minister, with the consent of Cabinet, and published in the Gazette.

#### **2 Interpretation**

- (1) In this Act, unless the context otherwise requires —

“**access order**” means an order issued pursuant to section 18 of this Act granting access to any child or children;

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

“**assault**” means an action of bodily contact without consent that causes bodily harm from physical pain, injury, illness or any impairment of physical condition;

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

“**complainant**” means a person who applies for or for whose benefit a protection order or other order under this Act is applied for;

“**Court**” means the Magistrate’s Court or the Supreme Court;

“**counsellor**” means a counsellor registered under section 6 of this Act;

“**custody order**” means an order issued pursuant to section 18 of this Act granting custody of any child or children;

“**respondent**” means a person against whom a protection order or other order under this Act is applied for or is in force;

“**domestic relationship**” has the meaning assigned by section 5;

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

“**domestic violence offence**” means an offence provided for in section 28;

“**economic abuse**” means actions by a person (the “perpetrator”) that are intentional, unjustified and beyond the reasonable expectations and acceptances of family and domestic life; and that cause a person with whom he has a domestic relationship (the “victim”) —

- (a) deprivation of all or any economic or financial resources to which the victim is entitled or which the victim or other person at risk requires out of necessity including, but not limited to, household necessities for the victim or person at risk, property, jointly or separately owned by the victim or other person at risk, payment of rent related to the shared household and maintenance;
- (b) loss or withholding of household effects or valuables in which the victim or other person at risk has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the victim or other person at risk;
- (c) prohibition to, or restriction on, continued access to resources or facilities which the victim or other person at risk is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household;
- (d) damage to or destruction of personal property in which the victim or other person at risk has an interest;



“**emergency protection order**” means an order made in situations of urgency as provided for in section 13;

“**family proceedings**” includes proceedings under the Divorce Act;

“**final order**” means a final protection order made under section 15 of this Act that deals with a substantive matter in issue in proceedings on a final basis;

“**harassment**” means engaging in a pattern of conduct that induces psychological abuse or the fear of harm in a person including —

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

“**health practitioner**” means a doctor, nurse or other health practitioner as defined in the Health Practitioners Review Act 2001 providing medical services to members of the public;

“**mental abuse**” includes verbal abuse, emotional abuse and psychological abuse and means a pattern of degrading, humiliating, aggressive or intimidating conduct towards a victim, including —

- (a) repeated insults, ridicule or name calling;
- (b) repeated threats to cause physical and emotional pain; or
- (c) the repeated exhibition of obsessive possessiveness, domination or jealousy, which is such as to constitute a serious invasion of the victim’s privacy, liberty, integrity or security;

“**Minister**” means the Minister responsible for internal affairs or such other Minister who is assigned responsibility for the administration of this Act; and “**Ministry**” has a corresponding meaning;

“**person at risk**” means, as the context requires, the complainant and any child or family member residing in the complainant’s household, and any person at risk from domestic violence;

“**physical abuse**” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life or health, or impair the health or development of the complainant or person at risk and includes assault, criminal intimidation and force;

“**Police officer**” means a member of Tonga Police appointed under the Tonga Police Act 2010;

“**Police Safety Order**” means an on-the-spot order issued by a police officer under section 22;

“**protection order**” means an emergency, temporary or final protection order made under Part 2 of this Act;

“**sexual abuse**” includes any conduct of a sexual nature without consent that abuses, humiliates, degrades or otherwise violates the dignity of a person;

“**social service provider**” means a person approved as such by the Minister.

- (2) Notes and examples included in this Act are provided to aid in interpretation only and do not form part of this Act.

### 3 Objects of the Act

The objects of this Act are to —

- (a) ensure the safety and protection of all persons, including children, who experience or witness domestic violence;
- (b) provide support and redress for all victims of domestic violence and economic abuse;
- (c) implement programmes for victims of domestic violence to assist their recovery to lead a safe and healthy life;
- (d) facilitate the making and enforcement of court orders and Police Safety Orders issued to stop acts of domestic violence.

### 4 Meaning of domestic violence

For the purposes of this Act, a person (the “perpetrator”) causes domestic violence to another person (the “victim”) if —

- (a) the perpetrator and the victim are in a domestic relationship; and
- (b) beyond the reasonable expectations and acceptances of family and domestic life, an act or omission or threat thereof by the perpetrator —
  - (i) causes physical abuse, sexual abuse, or mental abuse to the victim or other person at risk; or
  - (ii) otherwise harms or endangers the health, safety or well-being of the victim or other person at risk.

### 5 Meaning of domestic relationship

A person has a domestic relationship with another person if any of the following apply —

- (a) they were or are married to each other;

- (b) they live or have lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child;
- (d) they are family members living in the same household and including those related by legal or customary adoption;
- (e) they are or were in an engagement, courtship, including an actual or perceived intimate or sexual relationship;
- (f) they share or recently shared the same residence;
- (g) one person is wholly or partially dependent upon on-going care by the other person residing in the same household;
- (h) one person is a housekeeper in the same household.

## 6 Registered counsellors

- (1) For the better implementation of this Act, the Minister in consultation with the Family Protection Advisory Council shall appoint a panel of counsellors consisting of persons approved by the Minister as —
  - (a) qualified counsellors;
  - (b) community workers experienced in family and domestic violence counselling;
  - (c) counsellors in voluntary organisations,to be registered on a panel of counsellors and who shall carry out the duties of family and anti-domestic violence counselling and addressing the causes of domestic violence under this Act.
- (2) Subsection (1) does not limit the right of any complainant or respondent to obtain counselling from any person other than those on the counselling panel.
- (3) A registered counsellor shall have the following functions —
  - (a) counselling and advising on the problems in personal relationships that are likely or have led to the use of domestic violence;
  - (b) carrying out, upon the directions of a Court, any counselling, assessment or investigation relating to the children and the family of the parties and providing reports accordingly;
  - (c) facilitating arrangements for accommodation of the complainant and other persons at risk, as necessary;
  - (d) facilitating immediate arrangements for medical or other examination of a child of the household;
  - (e) performing any other function which the Minister may assign for the purposes of this Act.

- (4) Any counsellor may, in carrying out his duties, seek the assistance of any police officer.

## **7 Register**

- (1) The Chief Executive Officer of the Ministry shall —
  - (a) establish a register of persons appointed under section 6(1); and
  - (b) keep the register up to date.
- (2) The register is to be located at —
  - (a) the offices of the Ministry; and
  - (b) a copy of the register is also to be kept at the office of each District and Town Office.
- (3) The register may be kept wholly or partly by computer.
- (4) Any person may inspect the register or a copy of it free of charge during normal office hours.

## **PART 2 - PROTECTION ORDERS**

### **8 Objects of this Part**

The objects of this Part are —

- (a) to prevent domestic violence and economic abuse between family members and others in a domestic relationship; and
- (b) to facilitate and maximise the safety and protection of persons who experience or fear domestic violence.

### **DIVISION 1- APPLICATION FOR A PROTECTION ORDER**

### **9 Who can apply**

- (1) An application for a protection order may be made to a Court by or on behalf of a person in respect of domestic violence or economic abuse.
- (2) If a complainant is unable to make an application personally due to physical incapacity, immature age, fear of harm or for any other reasonable cause, the following persons may apply to the Court on behalf of such a person —
  - (a) a family member, guardian or friend;
  - (b) a registered counsellor;
  - (c) a law practitioner;
  - (d) a health practitioner;

- (e) a head of school; or
  - (f) a police officer.
- (3) Where a person is unable to give oral or written consent due to immature age, or mental or any other form of incapacity or disability to the filing of an application for a protection order, any person making an application on behalf of such a person in such a situation is authorised to act in the best interests of that person.
  - (4) No person who in good faith makes an application for a protection order or provides to a Court any evidence or information in support of such an application, shall incur any civil or criminal liability in respect of the application or the giving of such information.
  - (5) An application under subsection (1) may be made by or on behalf of more than one person.
  - (6) An application for a protection order may be made *ex parte*, unless the Court otherwise orders it to be on notice.
  - (7) A Court shall give priority to applications for protection orders.

## 10 Form of application for protection order

- (1) An application to a Court for a protection order may be made —
  - (a) in person orally;
  - (b) in writing;
  - (c) by telephone, radio or similar facility; or
  - (d) by facsimile or e-mail or similar facility.
- (2) A written application shall comply with Form 1 in the Schedule.
- (3) If the application is made orally under subsection (1)(a) or (c), the court clerk shall reduce the application to writing on Form 1 in the Schedule.
- (4) A written application made by other persons on behalf of the complainant shall comply with Form 2 in the Schedule.
- (5) A Court shall keep a written register of —
  - (a) all applications for protection orders made to it;
  - (b) all protection orders granted by it; and
  - (c) all application for protection orders that have been refused, and record the reasons for refusing to make a protection order.
- (6) An application for a protection order may be brought outside ordinary court hours or on a day which is not an ordinary court sitting day, if the Court is satisfied that the complainant or other person at risk may suffer undue hardship if the application is not dealt with immediately.

- (7) The Court shall explain the effects of any protection order made or refused to the parties to the proceedings.

## 11 Protection order in family or criminal proceedings

- (1) If family or criminal proceedings are pending, a Court may on its own motion or on an application by or on behalf of the complainant, issue a protection order upon such terms and conditions as the Court considers appropriate.
- (2) In considering whether to grant a protection order, the Court shall take into account the safety, health and well-being of the complainant, the matters set out in section 12(3) and the interests of any other person at risk.

*Note: Domestic violence may be raised in family or criminal law proceedings, although this may not be the principal reason why the parties are before the Court. Section 11 enables the Court to issue protection orders in such proceedings.*

## DIVISION 2 - POWER TO MAKE PROTECTION ORDERS

### 12 Court may make protection order

- (1) The Court may, on an application made under section 10, make a protection order if it is satisfied that —
- (a) the respondent and the complainant are in a domestic relationship;
  - (b) the respondent has committed or in the opinion of the Court is a risk to commit, domestic violence against the complainant, or other person at risk; and
  - (c) the making of an order is necessary or desirable for the protection of the complainant, or other person at risk.
- (2) The Court may also, on an application made under section 10, make a protection order if it is satisfied that —
- (a) the respondent and the complainant are in a domestic relationship;
  - (b) the respondent uses or has used economic abuse against the complainant or other person at risk; and
  - (c) the making of an order is necessary or desirable for the protection of the complainant, or other person at risk.
- (3) In deciding whether to make a protection order, the Court shall take into account the following —
- (a) the need to ensure that the complainant or other person at risk is protected from domestic violence or economic abuse;
  - (b) the well-being and the accommodation needs of the complainant or other person at risk; and

- (c) any other matter that the Court considers relevant.
- (4) The Court may include in the protection order the names of other family members, if the Court is satisfied the respondent has committed or is likely to commit an act of domestic violence or economic abuse against other family members.
- (5) Without limiting subsections (1)(b) or (2)(b), the Court may consider whether the behaviour of the respondent forms part of a pattern of behaviour in respect of which the complainant or other person at risk need protection.
- (6) Without limiting the matters that the Court may consider when determining whether to grant a protection order, the Court shall have regard to —
  - (a) the opinion of the complainant, or other person at risk, of the nature and seriousness of the behaviour in respect of which the application is made; and
  - (b) the effect of that behaviour on the complainant or other person at risk.

### DIVISION 3 - TYPES OF PROTECTION ORDERS

#### 13 Emergency protection order

- (1) A Court may make an emergency protection order where an *ex parte* application for a protection order is made orally or in writing on Form 1 or Form 2 in the Schedule of this Act.
- (2) In determining whether to grant an emergency protection order, the Court shall consider and be satisfied that there are reasonable grounds for believing that if an emergency protection order is not made —
  - (a) the respondent may commit domestic violence against the complainant or other person at risk;
  - (b) the respondent may cause economic abuse or damage to or removal of the property of the complainant or child or any other member of the family or person at risk living in the same household; or
  - (c) the complainant will be prevented or deterred from pursuing the application if the order is not made immediately.
- (3) An emergency protection order may contain any conditions set out in Division 4 of this Part of the Act.
- (4) A copy of the emergency protection order shall be immediately sent by the Court to the Police in the area nearest to where the complainant is currently residing, whether temporarily or permanently, and the Police shall try to effect service of the order as soon as possible upon the respondent.
- (5) An emergency protection order shall be in Form 4 of the Schedule to this Act and shall be effective for the period specified in the order (not exceeding 28 days).

- (6) A Court shall determine an application for an emergency protection order on the same day on which the application is made unless there are exceptional circumstances.

#### 14 Court may make temporary protection order

- (1) The Court may grant a temporary protection order and include any conditions listed in Division 4 of this Part of the Act if it considers it to be in the best interest of the complainant or other person at risk.
- (2) In determining whether it is in the best interest of the complainant or other person at risk to issue a temporary protection order, the Court shall consider whether there is risk of domestic violence or economic abuse to the complainant or other person at risk if the order is not granted immediately.
- (3) If the Court makes a temporary protection order under this Act, the Court shall order immediate service on the respondent by the police of the temporary protection order together with —
  - (a) the notice of the date of hearing in accordance with Form 3 in the Schedule to this Act; and
  - (b) a notice to the respondent that clearly states that if the respondent does not take any steps in the proceedings, the temporary protection order will become final.
- (4) Where the respondent fails to appear before the Court in accordance with subsection (3)(a) and the Court is satisfied on the evidence that the respondent has been served with a temporary protection order, the Court may —
  - (a) give further directions; or
  - (b) order that the temporary protection order becomes final.
- (5) Where a temporary protection order becomes a final order pursuant to subsection (4)(b), the final order comes into effect immediately.
- (6) Temporary protection orders shall be in Form 4 of the Schedule to this Act and shall be effective for such period (not exceeding 90 days) that the Court orders.
- (7) A temporary protection order may be made by the Court on an *ex parte* basis.

#### 15 Final Order

- (1) Where an application is made on notice to a Court for a protection order and the Court is satisfied on the evidence that notice has been served on the respondent in accordance with Form 3 in the Schedule of this Act, the Court may —
  - (a) give further directions as to the hearing of the application or generally;  
or



- (b) make any order that it considers appropriate, including a final order, and include any condition set out in Division 4 of this Part of the Act as it considers appropriate, on Form 4 in the Schedule.
- (2) A final protection order shall remain in force unless varied or cancelled by the Court on an application by a party, if there is good cause.
- (3) In considering the application, the Court shall take into account the best interest of the complainant and any other person at risk.

## DIVISION 4 - CONDITIONS IN PROTECTION ORDERS

### 16 Standard conditions in a protection order

- (1) Every protection order granted under this Act shall be deemed to include the following conditions, namely that the respondent shall not —
  - (a) commit domestic violence or physically or sexually abuse the complainant, or other person at risk;
  - (b) encourage any other person to engage in behaviour against a complainant or other person at risk where the behaviour, if engaged in by the respondent, would be prohibited by the order;
  - (c) approach the complainant while under the influence of alcohol or non-prescription drugs, and likewise neither shall the complainant so approach the respondent;
  - (d) be in possession of any firearm, and the respondent shall surrender any weapon to the nearest police station or dispose of any weapon that has been used or threatened to be used to commit domestic violence.
- (2) Without limiting subsection (1), it is a condition of every protection order that at any time other than when the complainant and the respondent are living in the same dwelling house, the respondent shall not —
  - (a) watch, loiter near, or prevent or hinder access to or from, the complainant's place of residence, business, employment, educational institution, or any other place that the complainant visits often;
  - (b) follow the complainant about or stop or accost the complainant in any place;
  - (c) where the complainant is known to be present on any land or building, enters or remains on that land or building without the complainant's express consent; and
  - (d) make any other contact with the complainant (whether by telephone, electronic message, correspondence, or otherwise), except such contact —
    - (i) as is reasonably necessary in any emergency; or

- (ii) as is permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of or access to any children.
- (3) The Court may order that any condition referred to in subsection (2) extends also to any other person at risk.

## **17 Conditions relating to property and accommodation**

A Court may include any or all of the following conditions in a protection order —

- (a) prohibit the respondent from taking, damaging, destroying, burning, selling or giving away any property of the complainant or other person at risk;
- (b) direct the respondent —
  - (i) to return through a third party any specific personal property of the complainant or other person at risk; or
  - (ii) to allow the complainant or other person at risk to recover, have access to, or make use of any specified personal property;
- (c) grant the complainant or other person at risk temporary occupancy to a residence or specified part of it whether or not the residence is solely owned or leased by the respondent.

## **18 Custody, access and maintenance orders**

A protection order may include, where appropriate, all or any of the following conditions —

- (a) a custody order granting temporary or final custody of any dependent child to the complainant or to another appropriate person if the Court is satisfied that it is in the best interests of the child and for the safety and welfare of the child in question;
- (b) an access order to the respondent under such terms and conditions the Court considers appropriate and in the best interests of the child;
- (c) a maintenance order directing the respondent to pay maintenance in cash or kind or both to the complainant and any dependent children.

## **19 Urgent maintenance order**

- (1) Where the Court makes a protection order, it may also make an order for urgent maintenance where it appears that the party is in need of immediate financial assistance, until further orders of the Court are made.
- (2) The Court may order payment of a weekly, monthly or other periodic amount as the Court considers reasonable.

## DIVISION 5 - VARIATION AND CANCELLATION OF PROTECTION ORDER

### 20 Application by either party

- (1) A complainant or respondent may, upon written notice to the other party and the Court on Form 3 in the Schedule, apply for the variation or cancellation of a protection order.
- (2) If the Court is satisfied that good cause has been shown for the variation 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 the Schedule of this Act.
- (3) The Registrar or clerk of the Court as the case may be shall forward the order and any variations made to the original protection order to the complainant and the respondent.

## PART 3 - PREVENTION

### 21 Public awareness, education, training, research

- (1) The Minister shall promote the introduction of public awareness campaigns and other programmes on the prevention, causes and consequences of domestic violence in the family and in the community.
- (2) Programmes for preventing and reducing the prevalence of domestic violence may include, but are not be limited to —
  - (a) sensitisation and training in human rights, gender equality, and causes and consequences of domestic violence for judicial officers, police officers, health practitioners, community workers, counsellors, other personnel in relevant Government agencies, youth groups, media personnel and civil society organisations;
  - (b) educating officials about the importance of human rights and gender equality in the curricula of all levels of education;
  - (c) promoting and conducting educative campaigns regarding the National Action Plan on violence against women and on sexual and gender based violence;
  - (d) government officials promoting national plans of action and strategy, policies and public awareness programmes to reduce, prevent and eliminate domestic violence;
  - (e) the Minister presenting a report to the Legislative Assembly on measures taken under this section; and

- (f) encouraging civil society organizations to support Government Ministries and Departments in any awareness raising campaigns.

## PART 4 – POLICE POWERS AND DUTIES

### DIVISION 1 - POLICE SAFETY ORDERS

#### 22 Police Safety Order

- (1) If a Police officer suspects on reasonable grounds that a person who is or has been in a domestic relationship with a person at risk —
- (a) has committed or is about to commit a domestic violence offence relating to that person at risk; or
  - (b) has breached a protection order,

the police officer may issue a Police Safety Order in Form 6 of the Schedule if the officer —

- (i) does not arrest that person for an offence against any enactment involving the use of violence;
  - (ii) but has reasonable grounds to believe, having regard to the matters specified in subsection (2), that the issue of a Police Safety Order is necessary to ensure the safety of any person at risk.
- (2) When considering whether to issue a Police Safety Order under subsection (1), the police officer shall have regard to the following matters —
- (a) whether there is a likelihood that the person will use, or again use domestic violence against the person at risk;
  - (b) the welfare of any children residing in the relevant household;
  - (c) the hardship that may be caused if the order is issued; and
  - (d) any other matter the police officer considers relevant.
- (3) A Police Safety Order comes into force immediately upon being served on the person against whom the order is issued.
- (4) A Police Safety Order continues in force for the period specified in the order, but that period shall not exceed 7 days.

*Note: A Police Safety Order is an on-the-spot-order issued on Form 6 in the Schedule.*

#### 23 Duty of police regarding Police Safety Orders

- (1) A Police Safety Order issued under section 22 shall be served as soon as practicable on the person against whom the Order is issued.

- (2) A Police Safety Order may be issued without the consent of a person at risk for whose safety the Order is proposed to be issued.
- (3) A police officer who issues a Police Safety Order shall explain to the person against whom the Order is issued —
  - (a) the purpose, duration and effect of the Order;
  - (b) the consequences that may follow if the person against whom the Order is issued contravenes the Order.
- (4) If a Police Safety Order has not been served within 48 hours from the time of issue, the order lapses.
- (5) A Police Safety Order may be issued by a police constable or any police officer above the rank of constable.
- (6) A police officer shall give priority to domestic violence cases.

## **24 Effect of Police Safety Order**

- (1) A person against whom a Police Safety Order is issued shall —
  - (a) immediately surrender any weapons in his possession or control, that could be used to commit domestic violence; and
  - (b) vacate any land or building occupied by a person at risk, whether or not he has a legal or equitable interest in the land or building.
- (2) It is a condition of every Police Safety Order that the person against whom the Order is issued shall not —
  - (a) physically or sexually abuse or threaten to abuse a person at risk;
  - (b) remove, damage or threaten to damage, property or any animal belonging to a person at risk;
  - (c) harass, stalk, intimidate, follow or verbally abuse a person at risk; or
  - (d) make any contact with a person at risk except where it is reasonably necessary in any emergency.

## **25 Contravention of Police Safety Order**

- (1) Where a person who has been served with a Police Safety Order fails to comply with the Order or any condition of the Order, a police officer shall —
  - (a) take the person into custody; and
  - (b) apply to the Magistrate's Court on behalf of the person at risk for an emergency protection order under section 13.
- (2) A person taken into custody shall, subject to subsection (3), be brought before the Magistrate's Court within 24 hours.
- (3) If a person is taken into custody under subsection (1) and it is not practicable to bring the person arrested before a Magistrate within 24 hours after he has

been taken into custody, a police officer of the rank of sergeant or above or the Police officer in charge of the police station shall inquire into the case and, at or before the expiry of that period —

- (a) grant or withhold bail in accordance with the Bail Act; or
  - (b) release the person and serve him with a summons requiring him to appear before the Magistrate's Court at the place and time specified in the summons.
- (4) If the person who has been served with the summons under subsection (3)(b) does not attend personally at the place and time specified in the summons, the Magistrate's Court may issue a warrant to arrest him and bring him before the Court.

## DIVISION 2 - POLICE DUTIES

### 26 Duty to prosecute and assist

- (1) Where there is a report of domestic violence and provided that there is sufficient evidence for doing so and either the complainant or the Attorney General supports the prosecution of the offence, every police officer handling the matter shall ensure and undertake to do all things necessary in order that a charge is laid with the Court to commence prosecution of the matter in Court.
- (2) In any incident that comes to their notice, the police shall where necessary make arrangements for persons at risk to find suitable shelter and obtain medical treatment or counselling services.
- (3) In every case prosecuted before the Court, it is the duty of the police —
  - (a) to provide information to the parties about court processes and procedures in a language that they understand, the remedies available under this Act and the right to have access to a lawyer and lodge an appeal;
  - (b) as far as practicable, to provide specialist female police officers to assist female victims and persons at risk of domestic violence; and
  - (c) where necessary, make arrangements for the complainant and persons at risk to find suitable shelter, and to obtain medical treatment or counselling services where needed.

## **PART 5 – ROLE OF HEALTH PRACTITIONERS AND SOCIAL SERVICE PROVIDERS**

### **27 Duty of care and response to reports of domestic violence**

- (1) A duty of care is hereby placed on any health practitioner and social service provider who has been or is notified by a complainant or other person at risk that they have been a victim of domestic violence to —
  - (a) examine and refer the complainant or other person at risk to counselling or medical treatment as appropriate; and
  - (b) advise the complainant about filing a complaint with the police or refer any child victim for counselling or medical treatment and file a report with the police on their behalf.
- (2) In the event the police receive a report under subsection (1)(b), the police shall —
  - (a) start the processes required to investigate the incident and take action;
  - (b) ensure that the complainant or other person at risk is duly informed about the outcome of the investigations and of their rights and the remedies available under this Act.
- (3) The health practitioner shall examine the complainant or person at risk and, applying the protocol established by the Ministry of Health providing for professional standards and confidential treatment, further advise the victim of support options and medical treatment available.
- (4) Any social service provider who has been notified by a complainant or person at risk that he has been or is a victim of domestic violence shall —
  - (a) examine the causes of domestic violence and refer the victim or other persons at risk as appropriate;
  - (b) advise the person at risk of the support options available;
  - (c) refer the person at risk to counselling if required;
  - (d) refer the person at risk for medical treatment if required;
  - (e) advise the person at risk about filing a complaint with the police;
  - (f) advise the person at risk of their rights and the remedies available under this Act; and
  - (g) assist the person at risk, where necessary, by taking them to a shelter, where available or a house of a relative or friend and further liaise with the police in ensuring that protection orders are applied for and are obtained and enforced.
- (5) Any health practitioner or social service provider shall not, without the consent of the complainant or other person at risk, give to any other person, whether directly or indirectly, any information acquired by reason of

performing the duty of a health practitioner or social service provider under this Act.

## PART 6 – OFFENCES AND PENALTIES

### 28 Domestic violence offence and breach of protection order

- (1) A person who —
- (a) commits domestic violence;
  - (b) breaches a protection order;
  - (c) fails to comply with a Police Safety Order; or
  - (d) threatens, intimidates or assaults a health practitioner or social service provider who is acting in pursuance of a duty of care under section 27 of this Act,

commits a domestic violence offence.

- (2) A person who commits a domestic violence offence referred to in subsection (1) shall be liable on conviction —
- (a) for a first offence, a term of imprisonment not exceeding 12 months or a fine not exceeding \$2,000 or both;
  - (b) for a second or subsequent offence, a term of imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both,

and, in addition to any other penalty, the Court may make an order that the respondent pays compensation in accordance with section 30.

- (3) It is not a defence to a domestic violence offence that the respondent 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.
- (5) In relation to an act that constitutes domestic violence, the following circumstances shall be considered as aggravated circumstances, that the Court may take into account in ordering enhanced penalties for the offender, where —
- (a) domestic violence is committed against a child, or the action of domestic violence is performed in the presence of a child;
  - (b) domestic violence is committed against a person with special needs, a pregnant woman, or a woman who, due to whatever reason, is incapable of resisting;
  - (c) the violence is severe or life threatening;
  - (d) a weapon is used; or



- (e) the respondent has committed repeated incidents of domestic violence.
- (6) A person who makes a misleading or false application for a protection order commits an offence and shall be liable on conviction to a term of imprisonment not exceeding 12 months or a fine not exceeding \$4,000, or both.

## 29 Relationship with Criminal Offences Act and other laws

Subject to clause 12 of the Constitution, in addition to liability under this Act, a respondent may also be prosecuted under other criminal laws for the time being in force for his acts if the facts disclose the commission of a separate criminal offence under those provisions.

*Note: For example, (without limitation), assault, offences endangering life and health, grievous bodily harm, rape, other sexual offences, murder and manslaughter and sexual exploitation through people trafficking and smuggling.*

## 30 Order for compensation

- (1) A Court may make an order that the respondent pay reasonable and fair compensation if the victim as a result of an act of domestic violence suffered —
  - (a) personal injury;
  - (b) damage to property; or
  - (c) financial loss.
- (2) The Court, in considering whether to make an order for compensation, shall take into account —
  - (a) any pain and suffering of the victim or other person at risk, 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 expenses under subsection (2) shall have regard to —
  - (a) the time that has elapsed 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 respondent to pay compensation;
  - (d) the relationship between the parties;
  - (e) any other order made under this Act including any order that the respondent 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 7 – PROCEDURES

### 31 Service

- (1) Where an application is made to the Court for a protection order, the Court shall issue as soon as practicable after filing —
  - (a) a summons directing the respondent to appear at the time and place set out in the summons on Form 3 in the Schedule; or
  - (b) a warrant in accordance with subsection (2) for the arrest of the respondent.
- (2) Where an application is being made to the Court for a protection order the Court may issue a warrant of arrest if the Court is satisfied that the personal safety of the complainant would be seriously threatened unless the respondent is apprehended and brought into custody.
- (3) The Court shall give two copies of the application and any summons or warrants to the police officer in charge of the police station nearest to where the respondent lives or was last known to live.
- (4) A police officer shall personally serve the application and summons or warrant on the respondent.
- (5) Where service is completed by the police officer, an affidavit of service shall be completed by the police officer who served the respondent and the affidavit shall be promptly returned to the Court for filing.
- (6) In the case of a warrant, the Police officer shall arrest the respondent and take him into custody.

### 32 Withdrawal of complaint

Where a complainant makes an oral or written application for withdrawal of an application for a protection order against the respondent, the Court —

- (a) shall investigate the reasons for withdrawal;
- (b) shall consider the safety and wellbeing of the complainant and any person at risk;
- (c) may make further directions; or
- (d) may either grant or refuse the application.

### 33 Rights of complainant in domestic violence proceedings

In proceedings for domestic violence, the prosecutor or any other person acting for the complainant, shall consult with the complainant and fully explain proceedings in order to ensure that the complainant fully understands his rights, the Court procedure and orders made, in order to lessen the impact of the Court hearing on the complainant and any other person at risk.

## PART 8 – APPEALS

### 34 Appeals

- (1) An appeal may be made to the Supreme Court against a decision of a Magistrate’s Court —
  - (a) to make a protection order;
  - (b) to revoke or vary a 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 respondent; and
  - (b) shall be instituted within 28 days after the day on which the Court’s decision is made.

### 35 Institution and nature of appeal

- (1) An appeal shall be instituted by —
  - (a) lodging a notice of appeal in writing with the Registrar of the Supreme Court;
  - (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 or his representative.
- (2) A notice of appeal shall 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 shall be in accordance with the rules of the Supreme Court.
- (4) An appeal against an order shall not stay the operation of that order, unless a Judge so orders.

**36 Decision on appeal**

- (1) If the Supreme Court allows an appeal, it may —
  - (a) confirm, dismiss or vary any order to which the appeal relates, as it considers appropriate; or
  - (b) 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 9 – FAMILY PROTECTION ADVISORY COUNCIL****37 Establishment, membership and functions**

- (1) The Minister may establish a Family Protection Advisory Council consisting of persons appointed by the Minister in accordance with subsection (3).
- (2) The purpose of the Council is to act in an advisory capacity to the Minister to assure the safety of victims of domestic violence and to carry out functions set out in subsection (4) and otherwise in this or any other Act.
- (3) The Council shall consist of representatives of the Ministry, the Division of Women's Affairs, the Attorney General's Office, Tonga Police, the Ministry of Education, the Forum of Church Leaders, and other relevant groups as the Minister thinks fit.
- (4) It is the function of the Council to advise and make recommendations to the Minister, either of its own motion or upon request made to it by the Minister, concerning —
  - (a) the effective operation of this Act and other legislation relating to domestic violence;
  - (b) the adequacy of preventative measures, responses, shelters, healthcare and counselling support services provided to victims and children of domestic violence; and
  - (c) any other matter relating to domestic violence and violence against women and children.
- (5) The members of the Council shall appoint a member to be Chairperson of the Council, and until such a Chairperson is elected, the representative of the Attorney General's Office shall be the interim Chairperson.

- (6) A member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (7) A member may resign by writing to the Minister.
- (8) The Minister may terminate the appointment of a member because of misbehaviour, or physical or mental incapacity of the member.
- (9) Meetings of the Council shall be convened by the Chairperson.
- (10) The Council shall keep records of its meetings.
- (11) The Council shall, as soon as practicable after 31st December in each year, prepare and furnish to the Minister a report of the operations of the Council during the year that ended on 31st December the previous year.
- (12) The Minister shall cause a copy of a report furnished under subsection (11) to be laid before the Legislative Assembly after the receipt of the report by the Minister.

## **PART 10 – FAMILY PROTECTION TRUST FUND**

### **38 Establishment of Family Protection Trust Fund**

- (1) This section hereby establishes the Family Protection Trust Fund.
- (2) The Fund shall be under the control and supervision of the Ministry responsible for finance and shall be administered in accordance with the Public Finance Management Act.
- (3) Directions for withdrawal of funds to assist shelters and safe houses for victims of domestic violence and dependent children, community awareness and education programmes, counselling and healthcare services, transportation services and for any other purpose under this Act shall be the responsibility of the Ministry acting in consultation with the Family Protection Advisory Council.
- (4) The Fund shall be subject to audit by the Auditor General.

## **PART 11 – MISCELLANEOUS**

### **39 Proceedings not open to public**

- (1) The 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 is —

- (a) a party to the proceedings;
  - (b) an officer of the Court;
  - (c) a legal or other representative of the party;
  - (d) a witness (if allowed by the Court); 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.

#### **40 Confidentiality**

Police officers shall not disclose the identity of any person who reports to the police the possible occurrence of domestic violence and, if it is necessary in court proceedings to disclose this information, the Court shall so far as possible respect the confidentiality of such person and their need for protection.

#### **41 Power to make rules**

The Lord Chief Justice may from time to time make rules providing for and in relation to procedures to be followed in domestic violence cases and —

- (a) forms and the use of forms as necessary for the purposes of this Act;
- (b) applications for protection orders made by telephone and other similar facilities.

#### **42 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.

Passed by the Legislative Assembly on this 4<sup>th</sup> day of September 2013.

**SCHEDULE**

**FORM 1 - APPLICATION FOR EMERGENCY/TEMPORARY/FINAL\*  
PROTECTION ORDER**

*(Sections 13,14)*

*[If respondent does not take steps in the proceedings for temporary protection order, the order becomes final]*

Between

A.B.

of

**Complainant**

and

C.D.

of

**Respondent**

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

*(State grounds here)*

.....

**Signature of Complainant**

Filed on this

day of

20....

.....

**Signature of Court Clerk at ---**

*\* (Delete whichever is inapplicable)*

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

**FORM 2 - APPLICATION FOR EMERGENCY/TEMPORARY/FINAL\*  
PROTECTION ORDER BY PERSONS ON BEHALF OF ANOTHER**

*(Section 10(4))*

*[If the respondent does not take steps in the proceedings for temporary protection order, the order becomes final]*

Between

A.B. of

**Applicant**

and

C.D. of

**Respondent**

1. I.....of.....applying on behalf and with the consent of.....(complainant) of.....(address) who is in a domestic relationship with.....(name of Respondent) of.....(address) as the Respondent's.....(state relationship).

2. Hereby apply for a protection order against the Respondent on the grounds that:

*(State grounds here)*

.....

**Signature of Applicant**

**(applying on behalf of Complainant)**

.....

**Signature of Complainant**

Filed on this day of 20....

.....

**Signature of Court clerk at-----**

*\* (Delete whichever is inapplicable)*



**FORM 3 - NOTICE OF PROCEEDINGS AND SUMMONS**

*(Section 31)*

No. of 20.....

Between

A.B. of

**Complainant**

and

C.D. of

**Respondent**

To the Respondent.....(name) at.....  
(address)

1. An application for a protection order\*, for a variation\*, or for a cancellation of protection order\* has been made against you by .....(name) of..... (address).
2. A copy of the application is attached. The application has been set down for hearing on..... 20.... at..... (place) at..... (time).
3. You are hereby summoned to appear at the Court at ..... (place) on the .....day of.....(month) 20..... at the..... (time) to answer the complainant / applicant.
4. If you do not attend 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... .

.....

**Signature of Court Clerk at-----**

*(Note: Copy of Application attached)*

\* *(delete whichever is inapplicable)*

**FORM 4 - EMERGENCY/TEMPORARY/FINAL\* PROTECTION ORDER**

*(Section 15)*

No. of 20.....

Between

A.B. of

**Complainant**

and

C.D. of

**Respondent**

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

Now the Court on this day orders that, for ..... [period]..... [name of respondent] not to engage in the following conduct:

.....  
.....

And to comply with the following conditions: (*here insert any conditions, including those from sections 17 or 18 of the Act*)

.....  
.....

And the Court further orders: (*here state any further orders of the Court*)

.....

Dated this                    day of                    20

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

\* (*delete whichever is inapplicable*)

**FORM 5 - ORDER VARYING OR CANCELLING PROTECTION ORDER**

(Section 20)

No. of 20.....

Between

A.B. of

**Complainant**

and

C.D. of

**Respondent**

1. The..... Court at.....having heard an application made by..... [name] of.....(address) under.....(section) of the Family Protection Act and on .....[date of original order], issued the following orders against the respondent as specified on the attached order [attach copy of original order].

2. Now the Court, on the application of ..... (name) of .....(address) and having heard the..... [complainant or respondent] this .....day of .....20.....orders that the Protection Order be (Varied/Cancelled )(delete where inapplicable) as follows\*:

3. [Specify details of variation/cancellation here]

Dated.....20... .

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

\* Add extra pages if necessary

**FORM 6 - POLICE SAFETY ORDER**

*(Section 23)*

To [full name, address, date of birth of person against whom the Police Safety Order is issued].

**This Police Safety Order is issued against you.**

**1. Purpose of Order**

The purpose of this order is to ensure the protection of a person or child with whom you are, or have been, in a domestic relationship.

**2. This order protects the following persons —**

[Full name of person to be protected and full name of each child residing with the person named above]

.....  
.....  
.....  
.....

**3. Commencement of order**

The order comes into force immediately after a copy is served on you.

**4. Duration of order**

This order continues in force for [number] days.\* It expires on [date and time].\*

\*Select one.

**5. Effect of order**

You shall immediately —

- (a) surrender to a constable any weapon in your possession or control used to threaten or commit domestic violence;
- (b) temporarily vacate for the duration of the order any land or building occupied by the protected person and children whether or not you have a legal or equitable interest in the land or building.

**6. Conditions of Order**

It is a condition of this Order that you shall not —

- (a) threaten to or physically or sexually abuse the protected person or children;
- (b) damage, or threaten to damage any property of the protected persons;
- (c) intimidate, harass or psychology abuse the protected persons or engage any person to engage in such behaviour against the protected persons;

- (d) watch, loiter near, prevent or hinder access of protected persons to and from the place of residence, business, employment or educational institution;
- (e) stop or accost a person protected by this order;
- (f) make any other contact with protected persons except such contact as is reasonably necessary in any emergency.

**7. Consequences of breach of order**

If you refuse or fail to comply with this order or any condition of this order, you may be taken into custody and brought before a Magistrate's Court.

An application may then be made to bring you before a Magistrate's Court.

A Magistrate's Court may —

- (a) direct that another Police Safety Order be issued against you; or
- (b) issue under section 14 a temporary protection order against you.

**Date:**

**Issued by:**

*[Print full name and sign]*