



**BERMUDA  
1997 : 1**

**DOMESTIC VIOLENCE (PROTECTION ORDERS) ACT 1997**

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WHEREAS it is expedient to provide greater protection from domestic violence:

[3 October 1997]

## **DOMESTIC VIOLENCE (PROTECTION ORDERS) ACT 1997**

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*[Words of enactment omitted]*

### **Short title**

1 This Act may be cited as the Domestic Violence (Protection Orders) Act 1997.

### **Interpretation**

2 In this Act,—

"applicant" means—

- (a) a person who applies for a protection order under this Act; or
- (b) a person on whose behalf an application for such an order is made under section 7, 8 or 9;

"child" means a person under the age of 18 years;

"children's officer" means a children's officer under the Children Act 1998 [*title 27 item 26*];

"clerk" means clerk to the court;

"court" means—

- (a) in sections 28 and 29, any competent court;
- (b) otherwise, a court of summary jurisdiction;

"domestic relationship" means one of the relationships described in section 4;

"domestic violence" and "violence" have the meanings given in section 3;

"family member", in relation to a person, means—

- (a) another person who is related to him by blood, marriage or adoption;
- (b) in the case of partners who are not married, another person who would be a family member of his under paragraph (a) if the partners were, or were able to be, married to each other;

"to harass" a person means—

- (a) to follow him about from place to place; or
- (b) to watch or beset his place of residence, work or education, or the place where he happens to be, or the approaches to any such place; or
- (c) to intimidate him by—

- (i) persistently abusing him verbally; or
- (ii) making persistent telephone calls to him; or
- (iii) threatening him with physical harm; or
- (iv) maliciously damaging his property; or
- (v) any other means;

"partner", in relation to a person, means—

- (a) another person to whom he is married; or
- (b) another person with whom he lives in a relationship in the nature of marriage; or
- (c) another person with whom he has a biological child in common;

"prescribed form" means form prescribed by rules of court;

"protected person", in relation to a respondent, means a person with whom the respondent is or has been in a domestic relationship;

"protection order" means an order made under section 11, including a temporary order;

"representative"—

- (a) in relation to a child, means a person appointed pursuant to rules of court to act under sections 6(2) and 7(2) on the child's behalf;
- (b) in relation to a person to whom section 8 applies, means a person appointed pursuant to rules of court to act under sections 6(3) and 8(2) on the first-mentioned person's behalf;
- (c) in relation to a person to whom section 9 applies, means a person appointed under that section to act under sections 6(3) and 9 on the first-mentioned person's behalf;

"respondent" means a person in respect of whom a protection order, or an application for such an order, has been made;

"temporary order" means a protection order of a kind described in section 16.

*[Section 2 amended by 1998:38 effective 1 January 2000; "court" amended on consolidation in consequence of repeal of s.26 by 2005:24 s.15(1) & Sch 3]*

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### **Meaning of "domestic violence"**

3 (1) In this Act, "domestic violence" means violence by one person against another person with whom that first-mentioned person is, or has been, in a domestic relationship.

(2) In this Act, "violence" means—

- (a) physical abuse; or
- (b) sexual abuse; or
- (c) psychological abuse including, but not limited to—
  - (i) harassment; or
  - (ii) in relation to a child, abuse of the kind set out in subsection (4); or
- (d) threats of abuse of a kind specified in paragraphs (a) to (c).

(3) Without prejudice to the generality of subsection (2)—

- (a) a single act may amount to abuse for the purposes of that subsection;
- (b) a number of acts that form part of a pattern of conduct may amount to abuse for those purposes even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

(4) Without prejudice to the generality of subsection (2), a person abuses a child psychologically if he—

- (a) causes or allows the child to see or hear the physical, sexual or psychological abuse of a person with whom the child has a domestic relationship; or
- (b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring;

but a person who suffers such abuse has not, for the purposes of this subsection, caused or allowed the child to see or hear the abuse, or, as the case may be, put the child, or allowed the child to be put, at risk of seeing or hearing the abuse.

(5) Conduct may amount to psychological abuse for the purposes of subsection (2)(c) even though it does not involve actual physical or sexual abuse or threats of physical or sexual abuse.

### **Meaning of "domestic relationship"**

4 (1) For the purposes of this Act, a person is in a domestic relationship with another person if—

- (a) he is a partner of that other person; or

- (b) he is a family member of that other person; or
- (c) he ordinarily shares a household with that other person;  
or
- (d) a court determines that he has a close personal relationship with that other person.

(2) For the purposes of subsection (1)(c), a person does not share a household with another person by reason only of the fact that—

- (a) he has—
  - (i) a landlord-tenant relationship; or
  - (ii) an employer-employee relationship; or
  - (iii) an employee-employee relationship—  
with that other person; and
- (b) they occupy a common place of residence (whether or not other people also occupy that place of residence).

(3) For the purposes of subsection (1)(d), a person does not have a close personal relationship with another person by reason only of the fact that he has—

- (a) an employer-employee relationship; or
- (b) an employee-employee relationship—

with that other person.

(4) Without prejudice to the generality of the matters to which a court may have regard in determining, for the purposes of subsection (1)(d), whether a person has a close personal relationship with another person, the court must have regard to—

- (a) the nature and intensity of the relationship and, in particular—
  - (i) the amount of time the persons spend together;  
and
  - (ii) the place or places where that time is ordinarily spent; and
  - (iii) the manner in which that time is ordinarily spent; and
- (b) the duration of the relationship;

but it is not necessary for there to be a sexual relationship between the persons in question.

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### **Object of this Act**

5 (1) The object of this Act is, as far as possible, to prevent domestic violence by making effective legal protection available for persons who have suffered such violence or are threatened by it.

(2) A person who exercises a power conferred upon him by or under this Act must be guided in the exercise of that power by the above-stated object of this Act.

### **Application for a protection order**

6 (1) A person who is or has been in a domestic relationship with another person may apply to the court in the prescribed form for a protection order in respect of that person.

(2) Where the person who is eligible to apply for a protection order is a child, the application must be made by a representative in accordance with section 7.

(3) Where the person who is eligible to apply for a protection order is not a child but is a person in relation to whom section 8 or 9 applies, the application must be made by a representative in accordance with whichever of those sections applies.

(4) In addition to the persons mentioned in subsections (1) to (3), the following may make an application for a protection order—

- (a) the Commissioner of Police;
- (b) a children's officer;
- (c) with the leave of the court, any other person whom the court considers to have a sufficient interest, having regard to the special circumstances of the case;
- (d) the Registrar of Senior Abuse appointed under section 4(1) of the Senior Abuse Register Act 2008.

*[Section 6 amended by 2008:19 s.14 effective 26 March 2008]*

### **Applications by minors**

7 (1) Subject to subsections (2) and (4), a minor may make an application for a protection order under this Act.

(2) A child must make the application by a representative in the prescribed form.

(3) Subsection (2) does not prevent a child on whose behalf an application for a protection order is made by a representative from being heard in the proceedings; and where the child expresses views on the need for or the outcome of the proceedings, the court must take account of those views to the extent that it thinks fit, having regard to the age and maturity of the child.

- (4) Subject to section 8, a minor who—
  - (a) is or has been married or has attained the age of 18 years; and
  - (b) wishes to apply for a protection order—

must make the application on his own behalf, without a next friend or guardian *ad litem*; and orders may be made on the application, and enforced, as if he were of full age.

**Applications by persons lacking capacity**

8 (1) This section applies to any person, including a minor, (not being a child) who—

- (a) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his personal care and welfare; or
- (b) has that capacity, but wholly lacks the capacity to communicate decisions in respect of such matters.

(2) Where a person to whom this section applies is eligible to apply for a protection order, the application must be made on his behalf by a representative in the prescribed form.

**Applications by certain other persons**

9 (1) This section applies where—

- (a) a person other than a child or a person to whom section 8 applies is eligible to apply for a protection order; and
- (b) that person is unable, whether by reason of physical incapacity or fear of harm or other sufficient cause, to make the application personally.

(2) Where this section applies, the court may, on an application made by an adult person who is not under disability, appoint an adult person to be a representative of another person for the purpose of making and prosecuting, on behalf of that other person, an application for a protection order.

(3) Where an application for the appointment of a representative is made under subsection (2), the court must make the appointment if it is satisfied—

- (a) that reasonable steps have been taken to ascertain the wishes of the person to whom the application relates in relation to the matter; and
- (b) where his wishes have been able to be ascertained—

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- (i) that he does not object to the appointment; or
  - (ii) if he objects, that his objection is not freely made; and
- (c) that it is in his best interests that the appointment should be made; and
- (d) that the proposed representative—
- (i) has consented in writing to the appointment; and
  - (ii) is not under a disability; and
- (e) that there is unlikely to be a conflict between the interests of the proposed representative and the interests of the person to whom the application relates.
- (4) The fact that an application for a protection order is made on a person's behalf by a representative appointed under this section does not prevent that first-mentioned person from being heard in the proceedings.
- (5) Without prejudice to the generality of paragraph (b) of subsection (3), where—
- (a) a representative appointed under this section applies on another person's behalf for a protection order; and
  - (b) at any time before the application is determined, the other person objects to the continuation of the proceedings,

then, unless the court is satisfied that the objection is not freely made, no further steps may be taken in the proceedings.

### **Procedure on an application**

10 (1) Subject to sections 9 and 16, where an application for a protection order has been made, the court shall issue a summons in the prescribed form summoning the respondent to a hearing.

(2) The summons, together with a copy of the application, must be served on the respondent personally.

### **Power to make protection order**

11 (1) The court may make a protection order if it is satisfied that—

- (a) the respondent is using, or has used, domestic violence against a protected person; and
- (b) the making of the order is necessary for the protection of such a person.



(2) Without prejudice to the generality of section 3(3)(b), or the matters that the court may consider in determining, for the purposes of subsection (1)(b) of this section, whether the making of a protection order is necessary for the protection of a protected person, where some or all of the conduct in respect of which the application is made appears to be minor or trivial, the court must nevertheless consider whether the conduct forms part of a pattern of conduct in respect of which a protected person needs protection.

(3) For the avoidance of doubt, an order may be made under subsection (1) where the need for protection arises from the risk of domestic violence of a different type from the conduct found to have occurred for the purposes of paragraph (a) of that subsection.

**Content of protection order**

12 (1) A protection order may, subject to this Act, make provision as specified in subsections (2) to (4).

(2) A protection order may prohibit the respondent—

- (a) from using violence against a protected person, but so that the order identifies the kind or kinds of violence in terms of the definition of "violence" in subsection (2) of section 3; or
- (b) from entering or remaining in the place of residence of a protected person; or
- (c) from entering or remaining in an area specified in the order, being an area in which the place of residence of a protected person is located; or
- (d) from entering the place of work or education of a protected person; or
- (e) from entering or remaining in a particular place; or
- (f) from harassing a protected person.

(3) A protection order may also—

- (a) require the respondent to—
  - (i) allow a protected person to enter and remain on premises specified in the order; or
  - (ii) leave premises specified in the order; or
  - (iii) continue any legal or other obligation the respondent may have to make payments in respect of rent or a mortgage or public utilities or taxes, being payments for the benefit of

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- premises which the respondent has been so required to leave; or
- (iv) make to, or on behalf of, a protected person payments in respect of that person's need for food, housing or medical, psychological or other care, being a need directly arising from the domestic violence;
- (b) specify conditions subject to which the respondent may be on premises or in a locality specified in the order.
- (4) A protection order may also include a provision—
- (a) prohibiting the respondent from taking possession of personal property of either the applicant or the respondent, being property that is reasonably needed by a protected person; or
  - (b) directing the respondent to give to a particular person possession of so much of the property of either the applicant or the respondent as is specified in the order; or
  - (c) prohibiting the respondent from damaging property of a protected person or the respondent; or
  - (d) prohibiting the respondent from causing another person to engage in conduct described in paragraph (a) or (c).

### **Matters to be taken into account**

- 13 (1) In considering an application for a protection order, the court shall have regard to—
- (a) the need to ensure that persons are protected from domestic violence; and
  - (b) the welfare of any child who is a protected person; and
  - (c) the accommodation needs of a protected person; and
  - (d) any hardship that will be caused to the respondent or to any other person as a result of the making of the order; and
  - (e) any other matter that in the circumstances of the case the court considers relevant.
- (2) In considering whether to include in a protection order a requirement or condition mentioned in subsection (3), or a provision mentioned in subsection (4), of section 12, the court shall take into account the property, income and financial resources, and the financial obligations, of the applicant and the respondent.

(3) Of the matters specified in subsection (1) of this section, the court shall give the greatest weight to those specified in paragraphs (a) and (b).

**Notice to respondent**

14 (1) Subject to this Act, the court shall not make a protection order unless the respondent—

- (a) has had actual notice in the prescribed form of the application for the order; and
- (b) has been given the opportunity to oppose, or otherwise make representations in relation to, the making of the order.

(2) Where a protection order is made or varied by the court, the clerk shall forthwith—

- (a) arrange for an order in the prescribed form to be formally drawn up and filed in the court; and
- (b) cause—
  - (i) a copy of the order to be served on the respondent; and
  - (ii) copies also to be sent to—
    - (aa) the Commissioner of Police; and
    - (bb) any other party to the proceedings.

**Power of arrest**

15 (1) The court may attach a power of arrest to a protection order if it is satisfied that the respondent—

- (a) in the past caused actual bodily harm, or threatened to cause bodily harm, to the applicant or a child of the applicant; and
- (b) is likely in the future to cause bodily harm to the applicant or a child of the applicant.

(2) Where a power of arrest is attached to a protection order, a police officer may arrest without warrant a person who he has reasonable cause to suspect is in breach of the order.

(3) Where a person is arrested without a warrant in reliance on subsection (2)—

- (a) he shall be brought before the court within the period of 48 hours beginning at the time of his arrest, or as soon

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as reasonably practicable thereafter, to be dealt with under section 23; and

- (b) he shall not be released within that period except on the direction of the court,

but nothing in this section authorises his detention at any time after the expiry of that period.

### **Temporary order**

16 (1) The court may make a protection order without subsection (1) of section 14 having been complied with if the court is satisfied that undue hardship, or the risk of harm, would be caused to a protected person otherwise.

(2) A protection order made by virtue of subsection (1) of this section is in this Act referred to as a temporary order; and a person in respect of whom an application for a protection order is made under this Act is a respondent to the application for the purposes of this Act even though a temporary order is made on the application and he may have had no prior knowledge of the making of the application.

(3) Without prejudice to the generality of subsection (1), a court, in considering whether to make a temporary order must have evidence—

- (a) that the respondent's conduct complained of by the applicant for the order is serious; and
- (b) that a protected person is in fear of a repetition of that conduct; and
- (c) that further such conduct is likely to be directed to a protected person.

### **Explanation to respondent**

17 Where the court proposes to make a protection order and the respondent is before the court, the court shall before making the order explain to him in language that he understands—

- (a) the terms, purpose and effect of the order; and
- (b) the consequences if he should fail to comply with it; and
- (c) the means by which it may be varied or revoked.

### **Criminal proceedings**

18 The court may make a protection order in respect of a person notwithstanding that he has been charged with an offence arising out of the same conduct as that out of which the application for the protection order arose.

**Duration of protection order**

19 (1) Subject to section 20, a protection order remains in force for such period, not exceeding 12 months, as the court specifies in the order.

(2) Where a protection order contains a number of requirements or prohibitions, the court may specify in the order different periods, being periods none of which exceeds 12 months, as the periods for which the several requirements or prohibitions are to remain in force.

**Duration of temporary order**

20 (1) A temporary order remains in force for such period, not exceeding 28 days, as the court specifies in the order.

(2) Notwithstanding subsection (1), where—

(a) the court adjourns the hearing of an application for a protection order; and

(b) a temporary order is in force,

the court may extend the period for which the temporary order is to remain in force until the date fixed for the further hearing of the application.

(3) Subject to subsections (1) and (2), where a temporary order has been made on an application for a protection order, the temporary order ceases to be in force—

(a) in the case where the respondent is present when a protection order is made, when the latter order is made;

(b) in the case where the respondent is not so present, when the protection order is served on him;

(c) when the application is dismissed.

**Protection of respondent in certain circumstances**

21 (1) Where an agreement, including a mortgage or a lease of premises, provides that, if a respondent ceases to reside in his place of residence, a person (an "affected person") may take action that would be prejudicial to the interests of the respondent or a protected person, the affected person is not entitled to take that action if the respondent ceases to reside in his place of residence in obedience to a protection order.

(2) Where the court is satisfied that an agreement referred to in subsection (1) exists in relation to a respondent, the court shall at the time of making a protection order direct the clerk to send a notice in the prescribed form to the affected person.

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### **Variation and revocation of protection orders**

22 (1) Where a protection order is in force, a party to the proceedings in which the order was made may make application to the court in the prescribed form for the order to be varied or revoked.

(2) On an application under subsection (1), the court may vary or revoke the order.

(3) The clerk shall cause a copy of an application under subsection (1) to be served on each person, other than the party making the application, who was a party to the proceedings in which the original order was made.

(4) In considering whether to vary or revoke a protection order under subsection (2), the court shall have regard to the matters specified in section 13.

(5) A protection order shall not be varied without the respondent being given the opportunity to oppose, or otherwise make representations in relation to, the variation.

### **Offence**

23 Where a protection order is made or varied and—

(a) the respondent was present when the relevant order was made; or

(b) the respondent was not present at that time but a copy of the order has been served on him,

he is guilty of an offence if he contravenes the order, and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

### **Prosecution**

24 (1) The applicant for a protection order (including a person who applied under subsection (4) of section 6) may institute a prosecution under section 23 to enforce the order.

(2) Where such a prosecution is instituted against a person, the summons shall require him to appear to answer the information at a time not later than 72 hours after the time at which the summons is issued.

(3) Service of the summons referred to in subsection (2) shall be effected not later than 24 hours before the time appointed in the summons for the hearing of the information.

### **Evidence**

25 Notwithstanding any other law to the contrary, in any hearing of an application for a protection order made by a children's officer under

paragraph (b) of section 6(4) in the interests of a child, the spouse of the person in respect of whom the order is sought is a compellable witness.

*[Section 26 repealed by 2005:24 s.15(1) & Sch 3 effective 15 January 2006]*

**Power to enter premises**

27 A police officer may without warrant enter any premises for the purpose of giving assistance to any one present on the premises if he has reasonable grounds to suspect that a protection order is being contravened.

**Other enactments**

28 (1) Subject to this section, nothing in this Act restricts or limits any jurisdiction that any court has under any other enactment regulating matrimonial, family or domestic disputes.

(2) So long as—

- (a) there is in force under section 9A of the Matrimonial Proceedings (Magistrates' Courts) Act 1974 ("the 1974 Act") [*title 27 item 5*] an order made in proceedings under that section on the application of a complainant; or
- (b) an application has been made by a complainant in such proceedings for such an order and has not been withdrawn or otherwise finally disposed of,

an application cannot be made by him or on his behalf under section 6 or 7 or 8 or 9 of this Act in respect of the defendant in those proceedings.

(3) Where—

- (a) there is in force a protection order made under this Act in respect of a person as respondent; or
- (b) an application has been made under this Act for such an order in respect of a person as respondent but has not been withdrawn or otherwise finally disposed of,

the applicant at whose instance the order was made, or by or on behalf of whom the application was made, cannot make an application in proceedings under section 9A of the 1974 Act for an order under that section in respect of that same person as defendant in those proceedings.

**Restriction on publicity**

29 (1) It is an offence for a person to publish in a newspaper, or to disseminate by broadcast or otherwise to the public, the identity of a party to any court proceedings relating to a protection order, or any

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information from which the identity of such a party may readily be ascertained.

(2) A person guilty of an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) Except with the leave of the court, a person other than—

- (a) a party to court proceedings relating to a protection order; or
- (b) a person otherwise directly concerned in those proceedings; or
- (c) counsel; or
- (d) a children's officer,

shall not be present at those proceedings.

### **Appeal**

30 (1) Subject to subsection (3), a person aggrieved by a decision of a court in proceedings under this Act (not being proceedings under, or in respect of an offence against, section 23 or subsection (1) of section 29) may appeal to the Supreme Court against the decision.

(2) For the purposes of—

- (a) enforcing an order made by the Supreme Court on an appeal under subsection (1) of this section; or
- (b) varying or revoking under section 22 an order made by that Court on such an appeal,

such an order is deemed to be an order of the court from which the appeal was brought to the Supreme Court, and not the Supreme Court itself.

(3) An appeal does not lie by virtue of subsection (1) of this section from—

- (a) the making, variation or revocation of a temporary order; or
- (b) the refusal of the court to make a temporary order.

### **Ownership of property**

31 Nothing in this Act alters any right that a spouse may have to ownership of property.



**Commencement**

32 This Act comes into operation on such day as the Minister responsible for Legislative Affairs may appoint by notice published in the Gazette.

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[Amended by:

1998 : 38

2005 : 24

2008 : 19]