

REPUBLIC OF NAURU
DOMESTIC VIOLENCE AND FAMILY PROTECTION BILL 2017
EXPLANATORY MEMORANDUM

The *Domestic Violence and Family Protection Bill* is a Bill for the *Domestic Violence and Family Protection Act 2017*.

EXPLANATION OF CLAUSES

Part 1 - Preliminary

Clause 1 provides that, once enacted, the short title of the Bill will be the *Domestic Violence and Family Protection Act 2017*.

Clause 2 sets out when the Bill's provisions will commence. The commencement date is stated as 1 June 2017 to allow for the training and capacity building of Police officers and other relevant people who have duties and obligations provided for in the Act. Proper and sufficient capacity building will ensure that the law is suitably implemented.

Clause 3 provides the objects of the Act. The Act is meant to address issues of domestic violence and to provide protection for people who experience violence in the context of a domestic relationship. The Act will introduce measures which ensure that not only will the relevant institutions within Nauru give full effect to the provisions of the Act, but the message is conveyed that Nauru is fully committed to addressing domestic violence.

The Act also seeks to give full effect to Nauru's commitment and obligations under the United Nations Convention on the Elimination of all Forms of Discrimination against Women and the United Nations Convention on the Rights of the Child.

In interpreting the Act, due consideration must be given to the objects of the Act as set out.

Clause 4 is the definitions clause. This Clause defines terms used as well as drawing on particular definitions that are already provided for in other legislation such as the Crimes Act 2016 which is a law with an important link to this Act. It is also important that this legislation uses existing definitions so that there is consistency achieved across the board with other legislation.

Clause 5 provides a definition of 'domestic relationship' to provide the context in which domestic violence may be committed. It is important to note that a domestic relationship is not always necessarily consisting of only a husband, wife and children. Due to Nauru being very communal, there may often be times that other non-family members are living in a household but are considered to be a part of the family. This clause therefore takes this

aspect into consideration and includes those in de facto relationships, biological children, persons who are dependent on that person for regular support due to disability or illness and other persons who have close personal relationships with other persons in the household.

Persons are not considered as sharing a household with other persons by virtue of the fact that the relationships are that of landlord and tenant and employer and employee. A close relationship also does not mean that of landlord and tenant and employer and employee. The Court in determining whether certain persons have a close relationship, must have regard to the duration of the relationship and the nature and intensity of the relationship, and in particular, the time the persons spend together; the place or places that time is ordinarily spent; and, the manner in which that time is ordinarily spent.

Clause 6 sets out the meaning of the term 'domestic violence'. This definition is linked to the definition of 'domestic relationship' in Clause 5. Domestic violence as defined may come in many different forms such as:

- assault – this is even if there is no evidence of a physical injury;
- coercive control – means a pattern of behavior which seeks to take away the victim's liberty or freedom, strip away their sense of self. It is not just the woman's bodily integrity that is violated but also human rights;
- economic and financial abuse - not allowing or having access to money or economic resources to fulfil a person's needs and wants which diminishes the person's capacity to support himself or herself;
- sexual violence;
- stalking;
- damage to property.

A person commits the act of domestic violence if the person engages or incites another person to carry out any of the conduct outlined above.

Domestic violence comprises of either a single act or a number of acts that form a pattern of behaviour although some of those acts when viewed in isolation appear minor or trivial.

The offence of stalking is further provided for through cyberstalking (through the use of the internet) and telephone calls. This is to allow courts to consider the change in technology that allows persons to commit offences without actually being in physical contact with the victim. Domestic violence also does not have to be a series of acts for it to

be termed as such under this Act. It may be a single act or it may consist of a number of acts forming a pattern of behaviour.

Part 2 – Family Protection Coordination Committee

Clause 7 establishes the Family Protection Coordination Committee.

Clause 8 sets out the membership of the Family Protection Coordination Committee. The Committee shall consist of representatives appointed by the Cabinet from time to time from the following:

- the Director of Women as the Chairperson;
- the Department of Home Affairs;
- the Department of Justice and Border Control;
- the Department of Health;
- the Nauru Police Force who hold the rank of Sergeant or above;
- civil society organisations;
- faith based organisation; and
- the community.

The Chairperson of the Committee is the Director of Women and in his or her absence, his or her nominated representative will Chair the Committee.

The Cabinet may terminate the appointment of any Committee member at any time.

Clause 9 outlines the functions of the Committee which include advising and making recommendations to the Minister concerning:

- the implementation, effectiveness of and proposals for amendments to the Act;
- efficient collaboration of community and government support services to victims of domestic violence;
- training, education and public awareness programmes;
- national survey on the prevalence of domestic violence on a periodic basis as directed by the Minister;
- the development of a national plan of action for the prevention of domestic violence and assistance to victims of domestic violence;
- implementation of Government policies regarding integrated prevention measures and assistance to victims of domestic violence;

- any research undertaken and recommendations made on the prevalence of violence and any other matter relating to the implementation and preventive measures under the Act; and
- any other directions given by the Minister.

Clause 10 meetings of the Committee are to be convened by the Chairperson or the Chairperson's nominated representative in his or her absence.

Minutes of meetings of the Committee shall be kept and maintained by the Director of Women.

Clause 11 The Committee must prepare a report and submit it to the Minister no later than October of every year and the report must include:

- recommendations on the issues of domestic violence;
- the prevalence of violence and other related matters;
- the implementation of the Act;
- the work undertaken by the Committee.

The Minister must then table the report at the next sitting of Parliament.

Part 3 –Safety Orders

Clause 12 explains the purpose of a safety order and why it is issued by the Police. A safety order in this case would be an immediate and necessary means to ensure that the victim is protected and it may even be issued without the victim's consent. The safety order is for the benefit not only of the victim but also for the benefit of other members of the family or household.

A safety order essentially prohibits the respondent from:

- entering or remaining at a specified place, or approaching within a specified distance of the place;
- approaching the victim within a specified distance;
- contacting the victim;
- engaging in behaviour that is likely to lead to domestic violence against the victim;
- possessing any or particular weapons; and
- engaging or inciting another person to engage in any conduct described above.

Clause 13 provides that to issue a safety order for the protection of a victim of domestic violence, the police officer must first believe on reasonable grounds that the:

- victim is in a domestic relationship with the respondent;
- respondent has committed or is likely to commit an act of domestic violence against the victim; and
- order is necessary due to urgency or for the immediate protection of the victim.

A police officer of the rank of Sergeant or above may issue a safety order. The safety order issued for the protection of a victim may include any other person in the domestic relationship if there is belief that that person is at risk of domestic violence. The order may be issued without the consent of the victim.

The duty of a police officer to investigate whether the respondent has committed an offence under the Crimes Act 2016 or any other law is not restricted once the safety order is issued.

Clause 14 provides that a copy of the safety order must be given to the complainant (where the complainant is not the victim) and the victim, and, the police officer must serve the order on the respondent. The police officer must explain the contents of the order to the respondent and the consequences of breaching the order.

Once served on the respondent and a copy given where applicable to the complainant or the victim, the police officer must prepare and compile an affidavit of service by using Form 6 in the Schedule to the Act.

Clause 15 sets out that a safety order has effect from the time it is served until the Court makes a decision on the victim's application for an interim protection order.

The complainant or victim must apply to the Court for an interim protection order within 5 days of the issuance of a safety order. 5 days is sufficient time for the complainant or victim to decide whether to apply to the Court for an interim protection order or, for the victim to decide whether to reconcile with the respondent.

A safety order is useful to obtain for an victim's safety at times when the Court is not sitting or on weekends or at odd hours of the night and, if the victim changes his or her mind about obtaining a protection order, there will be no need to involve the Court.

A safety order lapses 7 days after the date of service on the respondent.

Clause 16 provides conditions of the safety order. Essentially, the respondent must not commit domestic violence against the victim or the complainant during the term of the

safety order. If the respondent breaches this order, the Police may arrest and take the respondent into their custody for a period of 24 hours.

This 24 hour period complies with the requirements under the Constitution.

This Clause aims to maintain peace between the parties, to penalise the respondent by being taken into custody and, to possibly charge the respondent for breaching the conditions of a safety order.

Where a police officer fails to enforce a safety order, the victim or complainant may lodge a complaint with the Police Commissioner who must direct that the order be enforced by another police officer, and cause an investigation to be carried out and if necessary, discipline the police officer concerned. This is the practice in some jurisdictions around the Pacific region. This is primarily to ensure that the priority is the safety and protection of the victim and that police officers must perform their duties as law enforcers.

Part 4 – Protection Orders

Division 1 – Orders by the Court

Clause 17 sets out the protection orders the Court may grant. The Court may grant a protection order barring the respondent from:

- (a) approaching the victim and other family members included in the protection order;
- (b) contacting the victim and other family members included in the protection order;
- (c) being in or near specified premises, including premises where the victim and other family members included in the protection order live, work or frequent, even though the respondent has a legal or equitable interest in the premises;
- (d) communicating with the victim except to make arrangements for the children;
- (e) damaging property of the victim or complainant;
- (f) possessing any or a particular weapon; and
- (g) engaging or inciting another person to carry out conduct referred to in paragraphs (a) to (e).

The Court may also direct the respondent to:

- dispose into police custody any weapons for the duration of the order;
- return any specified personal property of the victim;

- allow the victim to recover, have access to or make use of any specified personal property;
- grant the victim exclusive occupancy to a residence or specified part of a residence whether or not the residence is solely owned or leased by the respondent; and
- not to coerce, eject or have the victim ejected from any premises by reason of any condition included in an order made under this section.

The Court also considers other family members and may include them in the protection order as well as granting custody if there is any dependent child and may even make conditions relating to the payment of maintenance by the respondent.

The Court may grant custody of a dependent child to the victim or another appropriate person if the Court is satisfied that it is in the best interest of the child in question.

Clause 18 gives the Court power to make an interim protection order. An interim protection order is granted before a permanent protection order is issued by the Court. Interim protection orders are issued by the Court if the Court is satisfied that there are risks that exist and there is a need to protect the victim and other persons in his or her family.

The victim may not be able to be present in court by virtue of either being hospitalised or simply being terrified of the respondent. The complainant however can still be present in court given that the complainant may not necessarily be the victim. If the respondent does not appear in court, he or she will be arrested since the order being reviewed is an order of the Court.

Applications for interim protection orders may be made orally or in writing. If made in writing then persons must use Form 2 included in the Schedule to the Act.

The Court must give the order on the same day it receives an application and it must not refuse to make an interim protection order merely because of the existence of other legal proceedings involving the respondent and complainant. The Court may review an interim protection order on a fortnightly basis and extend its duration from time to time as the Court deems fit and expedient. The rationale behind this is that the Court must have control over these matters especially given that these relate to family and domestic matters. The Court would also have access to information from mandatory counselling and mediation between the parties.

The power to determine an application for an interim protection order and to grant an interim protection order is also given to a lay magistrate. This is in the event that there is no Magistrate on the island and there are applications for interim protection orders to be

determined. Lay magistrates are members of the Family Court which deals with family related matters.

Clause 19 provides for permanent protection orders. The Court will make a protection order if the Court is satisfied that the respondent has habitually committed an act of domestic violence, or is likely to commit an act of domestic violence against the victim, has breached the safety or interim protection orders or the Court has received a report from a counsellor under Part 5 of the Act that the parties cannot reconcile.

The Court's primary concern is the safety of the victim and other members of the household and especially if the victim has children. The Court may include the name of another person in the domestic relationship in the protection order if the Court is satisfied that the respondent has committed or is likely to commit an act of domestic violence against that other person.

Protection orders may not be refused on the grounds that there are other legal proceedings existing which involve the victim and the respondent.

Permanent protection orders remain in force until they are varied or revoked by the Court.

Clause 20 allows the Court to grant a protection order against a person, based on the Court's own initiative if the person is convicted of an offence under the Crimes Act 2016 or any other Act arising from domestic violence or within the context of a domestic relationship.

Clause 21 provides for the variation and revocation of protection orders. Applications to vary or revoke an order may be made by a complainant, victim, respondent or any other person to whom the order applies. The Court may also vary an order on its own initiative when it is dealing with a contravention of an order.

Applications must be made by using Form 4 in the Schedule to the Act. The Court must always consider the need to ensure that the victim is protected and that the welfare of the victim and the victim's children is taken care of. Other family members' needs may also be taken into account when a court is considering whether to vary a protection order.

It is important to note that the variation or revocation of a protection order may only be done after a hearing in which both parties are present. The variation or revocation of the order must be served on the victim and the respondent.

Division 2 - Applications

Clause 22 provides a list of persons who may apply for a protection order. A victim, complainant, any other interested person or, any other person prescribed by law may apply to the Court for a protection order. The definition and parameters of ‘any other person prescribed by law’ is to be prescribed by Regulations made under the Act.

Applications may be brought outside ordinary Court hours or on a day which is not an ordinary Court day if the Court is satisfied that the victim may suffer undue hardship if the application is not dealt with immediately.

If the victim makes the application, a safety order would already be in place for his or her protection. A victim can bypass going to the police for a safety order and go directly to the Court to apply for an interim protection order.

Clause 23 sets out the form of an application for a protection order. An application must be made in Form 2 in the Schedule to the Act. Applications may be made:

- in person;
- by telephone or other similar facility;
- in writing; or
- by electronic means.

If an application is made any other way apart from being a written application, then the person must reduce the application in writing by using Form 2 and to be accompanied by an affidavit using Form 9 in the Schedule. The accompanying affidavit is to provide verification of the information in the application for a protection order. Both documents must be served on the respondent.

Clause 24 deals with the standard of proof that is applicable under this Act. In proceedings under this Act the Court must decide questions of fact on the balance of probabilities which is a standard lower than the normal criminal standard of beyond reasonable doubt.

Proof based on the balance of probabilities applies when it concerns the applications for and granting of protection orders.

Division 3 – Matters related to orders of the Court

Clause 25 creates a power for the Court to make an order of compensation that would require the respondent to pay to the complainant compensation if the complainant has suffered damage to property or other financial loss. The loss should be a direct result of the domestic violence. Other issues that the Court may take into account when considering whether to make a compensation order are:

- the cost of any medical treatment incurred by the person;
- any loss of earnings suffered by the person;
- the value of any property of the person that has been taken, destroyed or damaged; and
- any necessary and reasonable expenses incurred as a result of separation which results from the act of domestic violence. This might include accommodation expenses, moving and transport expenses.

It is important that the Court before making orders under this Act, consider the financial position of both parties and other legal proceedings or orders that involve the parties. These may include proceedings in the Family Court which would involve custody and maintenance orders.

Part 5 –Counselling and Rehabilitation of Family and Domestic Relationships

Division 1 - Counselling

Clause 26 mandates that the Court when granting a protection order must make a supplementary order for the parties to jointly or severally attend mandatory counselling.

Any person who fails to attend counselling shall be held in contempt of court and will be liable for a term of imprisonment of not more than one month.

The intention of this Clause is to ensure that the parties resolve the underlying issues in the domestic relationship which resulted in the commission of a domestic violence offence. This ensures the parties make the effort to repair as best as possible in the circumstances the domestic relationship with a view to keeping the family together. Only where it is apparent that there is no hope of salvaging the relationship, that a counsellor may make the appropriate recommendations to the Court.

Clause 27 provides that the Counsellor must take into account the following factors when providing counselling services to the parties:

- (a) the collective unity and family values;
- (b) traditions and culture;
- (c) the welfare and best interests of the children;
- (d) relationship with other relatives and members of the society;

(e) good order and peace of the family; and

(f) any special counselling, psychological or medical needs of the parties.

The counsellor is required to submit counselling reports to the Court in each separate matter on a fortnightly basis or as directed by the Court.

Division 2 - Counsellors

Clause 28 allows persons to be registered as domestic violence counsellors. A person seeking to be registered must apply to the Director of Women who may then register such person as a domestic violence counsellor.

Persons may only be registered if they:

- are trained in counselling methodology that is approved by the Minister; and
- have at least 2 years of experience in domestic violence counselling.

The Director following consultation with the Minister may deregister a person as a counsellor if it is proved that the person has contravened practice standards approved by the Minister.

Clause 29 creates a duty for the Director of Women to keep a register of counsellors registered under Clause 28. People may inspect the register free of charge during normal working hours.

Part 6 – DUTIES OF PUBLIC OFFICE HOLDERS

Division 1 – Health practitioners

Clause 30 sets out the duties of health practitioners when it concerns a situation where a patient notifies the health practitioner that they have been a victim of domestic violence.

The health practitioner must:

- examine the patient and refer him or her for counselling or further medical treatment, as appropriate;
- refer the patient, with the patient's consent, to an appropriate provider of support services to victims of domestic violence;
- apply any relevant medical policies or protocols for examining victims of domestic violence issued by the Minister responsible for health;

- give a report in relation to the matter to a child protection officer or police officer, if the patient is a child;
- with the consent of the patient, refer the matter to the police;
- provide to the Director of Women on a monthly basis statistic of domestic violence incidents. The provision of statistics will not include the personal or medical information of the victims to ensure that doctor-patient confidentiality remains intact.

To maintain doctor – patient confidentiality, a health practitioner may only provide a full written medical report of a particular victim of domestic violence:

- (a) with the consent of the particular victim;
- (b) by order of the Court; or
- (c) under any prescribed law.

Division 2 – Police officers

Clause 31 provides for the duties of Police officers in relation to domestic violence matters. Police officers are duty bound to prevent, investigate and apprehend and bring to justice domestic violence offenders. Police officers must render assistance to victims of domestic violence in a timely manner as he or she may deem fit and just in the circumstances.

On receipt of a domestic violence complaint, the Police officers must:

- (a) record it as a complaint under the Crimes Act 2016 or any other Act;
- (b) ensure and undertake to do all things necessary in order that a charge or information is laid in Court for prosecution; and
- (c) not to withdraw a charge or information laid or enter a motion for nolle prosequi under paragraph (b).

The purpose of this clause is to ensure that the Police must investigate and bring offenders to justice. It also ensures that the pressure and influence from third parties such as other family members for charges to be withdrawn against offenders are removed from the Police and prosecutors. The discretion to have the charges withdrawn rests squarely with the Court.

Clause 32 creates a duty for a Police officer to assist a victim in cases of domestic violence. The Police officer, in addition to issuing a safety order has a duty to also:

- inform victims of their rights under this Act and any other legislation in Nauru; and

- assist victims who request assistance with their application for a protection order;
- locating a place of safety in the community; or
- assist in locating adequate legal services from a legal officer appointed by the Government for the purposes of this Act or from the Office of the Public Legal Defender.

Division 3 – Child protection officers

Clause 33 provides for the duty of a child protection officer that where necessary for the protection and safety of a child, the Director of Child Protection may apply to the Court and intervene in a domestic violence proceedings to protect the interests of the child.

The Director of Child Protection acts ‘in place of the parents’ that is, the Director will take on the responsibility and functions of the parents in looking after the interests and welfare of the child on a temporary basis.

Part 7 – Offences and Penalties

Division 1 - Offences

Clause 34 imposes a penalty on any person who fails to comply with a protection order. Such persons are liable on conviction to a term of imprisonment not exceeding 12 months.

Clause 35 makes it an offence for any person to obstruct, threaten or intimidate a registered counsellor, health care provider or other support worker providing services to a victim.

Such persons will be liable to a term of imprisonment not exceeding 12 months.

Clause 36 makes it an offence for a person:

- to evade the service of safety and protection orders; and
- to wilfully withhold information, assist or conspire with the respondent to evade service.

Either person will be liable to a term of imprisonment not exceeding 1 month.

Division 2 – Sentencing

Clause 37 provides the aggravating circumstances to be considered by the Court in determining the appropriate sentence for a person who committed an offence under the Crimes Act 2016 or any other law relating to domestic violence within the context of a domestic relationship.

Aggravating factors include whether:

- the offence was committed against a child or in the presence of a child;
- the offence was committed against a person with a disability;
- the offence was committed against a pregnant woman;
- the offence was committed at night;
- a weapon was used in the commission of the offence;
- a drug or alcohol were contributing factors to the commission of the offence; and
- the conduct constituting the offence was repeated.

Part 8 – Procedures

Clause 38 provides that the Criminal Procedure Act 1972 applies to the proceedings under this Act.

Clause 39 deals with the service of summons and warrants under this Act. A summons must be as set out in Form 7 in the Schedule to the Act. A warrant of arrest is issued by the Court if the Court thinks that the complainant would be seriously threatened unless the respondent was immediately apprehended and brought into custody.

Every possible and reasonable effort must be made to personally serve the application and summons on the respondent. When service is completed, the police officer must fill out Form 6 in the Schedule to the Act and return the same to the Court for filing. Form 6 is also used if the police officer is unable to serve the summons. The officer must use Form 6 to set out the reasons for not being able to complete the service of documents.

When a warrant has been issued the police officer must arrest the respondent and take him or her into custody.

Clause 40 deals with absent respondents. The court may proceed to hear and determine an application for a protection order in the absence of the respondent but the Court must be satisfied that:

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

Clause 41 deals with the withdrawal of a complaint by a complainant. Withdrawal must be made by using Form 8 which is included in the Schedule to this Act. If the Court receives an application for withdrawal, the Court:

- shall enquire about the reasons for withdrawal;
- shall consider the safety and wellbeing of the complainant and any person at risk;
- may make further directions; and
- may either grant or refuse the application for withdrawal of a protection order.

Clause 42 allows the Court to receive evidence that it thinks fit whether or not it is otherwise admissible in a Court of law which the Court considers necessary for it to make a decision, determination or direction for the granting or refusal of a protection order.

Part 9 – Appeals

Clause 43 creates the right to appeal against a decision regarding a protection order. Appeals are made to the Supreme Court and must be made within 14 days from the day on which the Court delivers the decision appealed from.

A notice of appeal shall specify with particularity the grounds of appeal and the facts that are relied upon. Unless a stay is granted by the either the Court or Supreme Court, the order appealed against remains extant and in force.

Part 10 – Miscellaneous

Clause 44 provides that the hearing of an application for a protection order under this Act is not open to the public. This is an important provision as matters dealt with under this Act are sensitive matters and victims need to feel at ease when making their applications or giving evidence to the Court.

A person may not be present in the hearing of any application unless he or she is:

- an officer of the Court;
- a party to the application or the legal or other representative of the party;
- a witness; or
- any other particular person whom the Court permits to be present.

The Court will allow the complainant to have with him or her in Court someone to provide support and other assistance.

Clause 45 creates a restriction on the publication of proceedings. Proceedings may not be published by any person and this includes:

- any references to the names of the parties or actual account of proceedings; and
- any other personal information or details of parties including any description of parties.

The Court may permit publication only if the complainant and respondent have given their oral or written consent to the publication.

Any contravention of this clause makes a person liable on conviction:

- if the person is an individual, to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 12 months; or
- in any other case, to a fine not exceeding \$5,000.

The exception to the above is if the publication:

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

Clause 46 states that no fees or charges are payable to the Court in relation to any application made and filed for a protection order. This is to ensure that there are no restrictions placed on parties in their ability to seek the protection of the law against domestic violence.

Clause 47 gives the Minister the authority to make regulations to give effect to the objects and implementation of the Act.

Clause 48 gives the Chief Justice the authority to make Rules of the Court, in relation to forms and the form of applications, whether applications are made orally or through written means.