

## V Family Law and Family Violence Law

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## 1. Family Protection and Support Act 2017: Civil jurisdiction

### 1.1 Relevance of human rights to family violence law

Constitutional rights and human rights apply equally to cases arising under the civil law jurisdiction which also often involve protection of fundamental human rights. Principles of non-discrimination, especially relating to women, and people with disabilities, as well as the 'best interests of the child' principle, are some of the most important human rights principles applicable.

Art 64(1) of the Constitution of the Cook Islands recognises the right of all people to equality before the law and equal protection of the law, without discrimination including due to their race, national origin, colour, religion belief or sex. This 'list' is not exhaustive and should be read to include other social groups prone to unlawful discrimination, such as people with disabilities. Further, the Cook Islands have obligations under the [CRC](#), [CEDAW](#) and the [CRPD](#), which all prohibit discrimination against women, children, and people with disabilities in all aspects of life, and require that particular attention be paid to their protection from abuse and violence and their right to access justice to obtain remedies where their rights are breached.

One of the purposes of the [Family Protection and Support Act 2017](#) is to ensure the law is applied consistently with the Cook Islands' commitment to the CRC, CEDAW and the CRPD (s [3\(f\)](#)). Key provisions of the three Conventions are set out below, but you should be familiar with all articles provided in the attached summaries, and your interpretation of the Act should be consistent with all three Conventions.

#### 1.1.1 Convention on Rights of the Child (CRC)

Key principles from [the Convention on the Rights of the Child](#) (CRC) are:

- Art [3\(1\)](#): the best interests of the child should be a primary consideration in all actions concerning children.
- Art [9](#): child should not be separated from parents against their will, except when competent authorities decide that it is necessary for the best interests of the child. If the child is separated, the child has the right to maintain personal relations and direct contact with both parents on a regular basis, providing it is in the best interests of the child.
- Art [12](#): children have the right to be heard and to have their views considered within any proceeding which affects them, based on their age and maturity.
- Art [18](#): parents have common responsibilities for the upbringing and development of the child and should have access to appropriate assistance from the state to fulfil their responsibilities. The best interests of the child should be the basic concern.
- Art [19](#): children have a right to be protected from all forms of physical or mental violence, injury, abuse or neglect while in the care of parents, legal guardians or others.
- Art [20](#): where children cannot be with their parents, the state has an obligation to provide special protection and assistance, and alternative care arrangements taking into account the need for continuity in a child's upbringing, and to the child's ethnic, religious, cultural and linguistic background.

- Art [21](#): adoption must always be in the best interests of the child. Inter-country adoption should only be considered where no other suitable care arrangements can be made for the child in their own country, such as through being placed in foster care or with an adoptive family. It must not be for financial gain and must be accompanied by safeguards and standards equivalent to those available for national adoptions.
- Art [23](#): a child with a mental or physical disability is entitled to special care and protection to ensure their full participation and maximum social integration in the community, including access to education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities and promotion of their self-reliance and dignity.
- Art [24](#): a child has the right to the highest attainable standard of health and access to facilities for the treatment of illness and rehabilitation of health.
- Art [25](#): right of the child to mental health support.
- Art [26](#): right of the child to benefit from social security.
- Art [28](#): right to free and compulsory primary school education and maximum support for secondary school and beyond.
- Art [32](#): right to be free from exploitative and harmful forms of work.
- Art [34](#): protection from all forms of sexual exploitation and sexual abuse.

#### 1.1.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Under the [CEDAW](#) women and girls are entitled to:

- Art [2](#): Protection from all forms of discrimination, including gender-based violence as a recognised form of discrimination against women, see CEDAW Committee General Recommendation 19: Violence Against Women.
- Art [15](#): Equality before the law.
- Art [16](#): Equality in marriage, divorce, family relations, right to custody of children and to own marital property.

#### 1.1.3 Convention on the Rights of People with Disabilities (CRPD)

The [CRPD](#) contains important rights and obligations to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. This includes rights to:

- Art [5](#): The equal protection and equal benefit of the law. There is a duty upon states to make 'reasonable accommodations' for people with disabilities so that they are able to participate in all aspects of life, without discrimination, on the same basis as others.
- Art [6](#): Recognises the multiple layers of discrimination faced by women and girls with disabilities, as they often face even greater discrimination due to both their gender and their disabilities
- Art [12](#): Recognition as persons before the law, and to enjoy legal capacity on an equal basis with others in all aspects of life. States should take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

- Art [16](#): Freedom from exploitation, violence or abuse including gender-based violence in or outside of the home.
- Art [23](#): Respect for home and family including the right to marry, found a family and to support and bring up children.

#### 1.1.4 Family Protection and Support Act 2017 (FPSA)

Section [138](#) sets out your powers or civil jurisdiction to make different orders under the relevant sections of the FPSA, as set out in the table below.

Every question of fact arising in any proceedings under this Act (other than criminal proceedings) must be decided on the **balance of probabilities**.

Civil jurisdiction under the Family Protection and Support Act	
<b>Domestic and child support orders</b>	
<ol style="list-style-type: none"> <li>1. Divorce order, s <a href="#">10</a></li> <li>2. Variation or discharge of support order, s <a href="#">15</a></li> <li>3. Domestic support order, s <a href="#">17</a></li> <li>4. Childbearing expenses order, s <a href="#">19</a></li> </ol>	<ul style="list-style-type: none"> <li>➤ Child support order, s <a href="#">21</a></li> <li>➤ Child support order for adult child, s <a href="#">23</a></li> <li>➤ Support enforcement order, s <a href="#">24</a></li> <li>➤ Paternity order, s <a href="#">27</a></li> <li>➤ DNA parentage testing, s <a href="#">29</a></li> </ul>
<b>Parenting orders</b>	
<ul style="list-style-type: none"> <li>➤ Parenting order, s <a href="#">40</a></li> <li>➤ Vary or discharge parenting order, s <a href="#">42</a></li> <li>➤ Parenting enforcement order, s <a href="#">44</a></li> </ul>	<ul style="list-style-type: none"> <li>➤ Registration and review of parenting plan, ss <a href="#">37–38</a></li> <li>➤ Major long-term issues order, s <a href="#">35</a></li> </ul>
<b>Care and protection orders</b>	
<ul style="list-style-type: none"> <li>➤ Warrant for return of child, s <a href="#">45</a></li> <li>➤ Safety warrant and extension ss <a href="#">54(1)</a>, <a href="#">55(4)(c)</a></li> <li>➤ Supervision order, s <a href="#">57</a></li> <li>➤ Variation or discharge of supervision order, s <a href="#">61</a></li> </ul>	<ul style="list-style-type: none"> <li>➤ Care order, s <a href="#">63</a></li> <li>➤ Variation or discharge of care order, s <a href="#">64</a></li> <li>➤ Contact order, s <a href="#">68</a></li> <li>➤ Preventing removal of child, s <a href="#">132</a></li> </ul>
<b>Domestic violence protection orders</b>	
<ul style="list-style-type: none"> <li>➤ Temporary protection order, s <a href="#">99</a></li> <li>➤ Variation and discharge of protection order, ss <a href="#">106–107</a></li> <li>➤ Conditions relating to weapons, s <a href="#">103</a></li> <li>➤ Conditions relating to occupation of shared residence, s <a href="#">104</a></li> </ul>	<ul style="list-style-type: none"> <li>➤ Compensation for injuries and losses, s <a href="#">119</a></li> <li>➤ Compensation for expenses, s <a href="#">120</a></li> <li>➤ Direction to organise hearing, s <a href="#">100</a></li> </ul>

**Procedural orders**

- Registration of overseas order, s [130](#)
- Social welfare report, s [70](#)
- Medical and psychological report, s [71](#)
- Non-disclosure of report, s [77](#)
- Legal representation for child, s [128](#)
- Representative for child, s [129](#)
- Uipaanga Kopu Tangata, s [69](#)

Justices of the peace are officers of the High Court. Accordingly, the [Code of Civil Procedure of the High Court Act 1972](#) (the Code) applies to FPSA cases. Applications, such as an application for divorce, are originating applications under the Code.

## 2. Care and protection of children

### 2.1 Introduction

Convention on the Rights of the Child, CRC: Arts [3](#), [9](#), [12](#), [18](#), [19](#), [20](#), [21](#), [23](#), [24](#), [32](#), [34](#).

Convention on the Rights of Persons with Disabilities, CRPD: Art [3\(h\)](#) (child development, Art [5](#) (non-discrimination), Art [7](#) (children with disabilities: best interests of the child and right of children with disabilities to be heard, participate and have their views taken into account in any cases that affect them).

Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW: Art [2](#) (non-discrimination), Art [15](#) (equality before the law), Art [16](#), (equality in marriage, divorce, family relations, right to custody of children and to own marital property).

Family Protection and Support Act 2017 (FPSA): ss [3](#), [46](#), [47](#).

One of the overall purposes of the Act is to ensure the safety and protection of adults and children in domestic relationships: s [3](#) FPSA.

For [Part 5](#) (Care and Protection) the purposes are to ensure:

- (a) the best interests of the child are the paramount factor in all matters relating to the care and protection of the child;
- (b) an Uipaanga Kopu Tangata (family group conference) is held where appropriate to:
  - encourage family to take part in decisions affecting the child;
  - increase the support for the child by family and others;
  - make agreed arrangements for the care and protection of the child;
- (c) parents/caregivers are helped to exercise their responsibilities to prevent children from experiencing harm, abuse, neglect, or deprivation;
- (d) children receive care and protection if they have experienced harm, abuse, neglect, or deprivation;
- (e) a child is removed from their home only if they may be at serious risk of harm;
- (f) if a child is removed from home, the child, wherever practicable, lives in an appropriate family-like setting nearby and keeps links with family members and others: s [46](#).

These purposes should guide you when exercising any of your powers under [Part 5](#). The overall question that comes before all other considerations is whether care and protection is in the **best interests of the child**: s [47](#).

## 2.2 Definition of a child in need of care and protection

s [48](#) FPSA.

A child is in need of care and protection if any of the following apply:

- the child is being, or is likely to be, harmed (this may be physical, emotional or sexual harm), ill-treated, abused, or seriously deprived;
- the child's development, physical, mental, or emotional well-being is being, or is likely to be, seriously impaired or neglected and this could be avoided;
- serious differences exist between the child and their parents/caregivers so that the child's physical, mental, or emotional well-being is seriously impaired;
- the child has behaved, or is behaving, in a manner that:
  - is, or is likely to be, harmful to the physical, mental, or emotional well-being of the child or to others; and
  - the parents or caregivers of the child are unable or unwilling to control or to care for the child;
- the parents/caregivers of the child have abandoned the child;
- serious differences exist between a child's parent/caregiver and the other parent so that the child's physical, mental, or emotional well-being is seriously impaired.

## 2.3 Notice of abuse

ss [50–51](#) FPSA.

Any person who suspects a child is in need of care and protection may notify the Ministry of Internal Affairs (the Ministry) and provide the child's name, description, and the reasons for their belief: s 50. It is an offence to fail to notify of abuse without a reasonable excuse: ss 50-51.

## 2.4 Temporary care arrangements

ss [52–53](#), [65](#) FPSA.

Any person who is currently providing day-to-day care of the child may request or agree to temporary care arrangements for the child. The Secretary of the Ministry of Internal Affairs (the Secretary) may also do so themselves if that person cannot be found after making reasonable inquiries, or is incapable of requesting or agreeing to the arrangement: s [52\(2\)](#).

The Secretary may make temporary care arrangements to provide day-to-day care arrangements for children placed in the care of the Ministry for up to 3 months: s [52\(1\)](#).

Any temporary care arrangement that is agreed to must be in writing and set out:

- the term of the arrangement;
- that the Secretary or applicant may end the agreement on 7 days' notice in writing;



- provisions relating to the care of the child during the term of the arrangement, including, but not limited to:
  - educational, social and religious needs of child;
  - a programme for the provision of services and assistance for the benefit of the child;
  - the responsibilities of the parents, caregivers, or any other person who was providing day-to-day care immediately before the arrangement began;
  - contact times (or when contact is not allowed), venue, duration: s 53.

The Secretary also has various duties and power when a child is placed in the care of the Ministry that are set out in s [65](#).

At the end of the temporary care arrangement, the Secretary must convene an Uipaanga Kopu Tangata, unless a person who requested the temporary care arrangement is able and willing to resume providing day-to-day care of the child: s [52\(3\)](#).

## 2.5 Uipaanga Kopu Tangata meetings (family group conferences)

ss [49](#), [52–54](#), [69](#), [79–80](#) FPSA.

The purposes of this meeting include the following:

- decide if the child is in need of care and protection;
- encourage family members to be part of the decision-making for the child;
- increase the support for the child’s family members and other relevant persons;
- make agreed arrangements or a kaveinga a te kopu tangata (plan) for the care and protection of the child.

You may also direct the Secretary to convene an Uipaanga Kopu Tangata meeting and adjourn any hearing (to apply for any orders under Part 5) until the Uipaanga Kopu Tangata has been held: s [69\(1\)](#).

If an Uipaanga Kopu Tangata makes a kaveinga a te kopu tangata in accordance with ss [81](#) and [82](#), you may stop hearing any application for an order: s [69\(2\)](#).

This meeting about a child is to give the relevant Uipaanga Kopu Tangata participants an opportunity to:

- determine whether the child is in need of care and protection;
- make a kaveinga a te kopu tangata specifying agreed arrangements for the care and protection of the child;
- review the kaveinga if one is already in force in relation to the child: s [80](#).

At the Uipaanga Kopu Tangata the participants must:

- specify a caregiver or caregivers for the child; or
- apply to the court for a care order; or
- renew the temporary care arrangement for a further period not exceeding 3 months: s [52\(4\)](#).

A further Uipaanga Kopu Tangata is held at the end of the extension (if this applies) and the participants must either:

- specify a caregiver or caregivers for the child; or
- apply to the court for a care order: s [52\(5\)](#).

## 2.6 Process for the Uipaanga Kopu Tangata meeting

ss [83–88](#) FPSA.

### 2.6.1 Appointment of chairperson

The Secretary must appoint at least an equal number of women as men as registered chairpersons in each Vaka and each of the outer islands of the Cook Islands. These chairpersons must undertake approved training in chairing an Uipaanga Kopu Tangata, be experienced in care and protection matters, understand gender equality and meet other criteria for appointment (in the regulations): s [84](#).

### 2.6.2 Convening the Uipaanga Kopu Tangata

If you direct the Secretary or they wish to convene an Uipaanga Kopu Tangata, the Secretary must appoint a registered chairperson to do so. The chairperson must within a reasonable time set a suitable time, date, and place for holding the Uipaanga Kopu Tangata so that each person who is entitled to attend may do so, and request them to attend (by post, email, text message, orally): s [85](#). People who may attend an Uipaanga Kopu Tangata are:

- the child, unless the chairperson thinks it would not be in their best interests to attend, or may negatively impact on the child, or in any other way not be suitable for them; or they are too young or immature to understand the proceedings;
- the parents/caregivers/any proposed caregivers of the child;
- someone from the Ministry of Internal Affairs;
- any other family member, if the chairperson is satisfied it is in the best interests of the child for them to attend: s [86](#).

The chairperson, after consulting with the Secretary, may also request, allow, or refuse attendance of:

- anyone from the child's community that the child requests;
- a social welfare worker or police officer who is working with the child or the family, or both;
- a lawyer or lay advocate or any other support person the child requests: s [88\(1\)](#).

If a child does not take part in the Uipaanga Kopu Tangata, the chairperson must take all reasonable steps to obtain and include the child's view and ensure those views are both known and taken into account when making the kaveinga a te kopu tangata: s [83](#). This is crucial due to the child's right to participate in proceedings which affect them and for their views to be given the maximum weight possible, taking into account their age and understanding.

Others who are entitled to attend but unable to do so may also be able to provide their views to the chairperson where they have been notified. s [87\(3\)](#).

### 2.6.3 Functions of registered chairperson

The chairperson must:

- hear the child's view and other participants' views on whether the child is in need of care and protection and, if so, what is an appropriate arrangement for the care and protection of the child;
- assist the participants to make a written kaveinga a te kopu tangata;
- provide a written copy to either the court if the meeting was convened under s [69\(1\)\(a\)](#); or to the Secretary if it was convened under ss [50\(5\)\(a\)](#), [52\(3\)](#), or [55\(1\)\(b\)](#): s [87\(1\)](#).

If the participants of an Uipaanga Kopu Tangata can't reach agreement the chairperson must inform the Secretary (if convened under ss [50\(5\)\(a\)](#), [52\(3\)](#), or [55\(1\)\(b\)](#)) or the court (if convened under s [69\(1\)\(a\)](#)) that no agreement was reached and the reasons why, if appropriate: s [87\(2\)](#).

### 2.6.4 Sexual or physical abuse issues

If, at any time before or during an Uipaanga Kopu Tangata, the chairperson believes there has been sexual or physical abuse of the child by a parent, family member, or caregiver, they must:

- immediately stop the Uipaanga Kopu Tangata; and
- apply to the court for a supervision order or a care order: s [88\(2\)](#).

## 2.7 Contents of a kaveinga a te kopu tangata (agreed plan)

ss [81–82](#) FPSA.

A kaveinga a te kopu tangata is an agreement between the Ministry of Internal Affairs and the relevant Uipaanga Kopu Tangata participants and must:

- specify the arrangements agreed to by the participants for the care and protection of a child; and
- be in writing and signed by:
  - the chairperson; and
  - the relevant participants; and
  - a representative of the Ministry of Internal Affairs.

It may also include a requirement for the chairperson to fix a date by which a review of the kaveinga a te kopu tangata is to be carried out: s [81](#).

Every kaveinga a te kopu tangata prepared in respect of a child must specify:

- the caregiver(s) of the child;
- anyone who may have contact with the child and conditions that apply to that contact (how long, when, where and so on);
- who has parental responsibilities for a child, and if shared, how they should consult in any decision making;
- the aims and timeframes to achieve goals relating to the child;
- any organisation(s) or people who will provide services and support for the child and their caregiver(s);
- the responsibilities of the child and their caregiver(s);
- any other relevant details of the child's education, employment, recreation, and welfare;
- how to resolve disputes about the terms or how the kaveinga a te kopu tangata operates: s [82](#).

## 2.8 Different types of care and protection orders

ss [45](#), [54-68](#), [132-133](#), [138](#) FPSA.

You may make any of the following warrants or orders if a child is in need of care and protection.

### 2.8.1 Warrant for return of a child

A warrant for the police to immediately uplift a child and return them to the caregiver under a parenting order if a parenting order has been breached: ss [45](#), [138\(1\)\(p\)](#).

### 2.8.2 Safety warrant

If the matter is urgent, the police or the Secretary may apply for this warrant. You may issue a safety warrant if you are satisfied a child is urgently in need of care and protection. Under the warrant, the police may enter, search, remove and detain the child and, where necessary, place them in the care of the Ministry. The Secretary may, at any time, release a child placed in the care of the Ministry if satisfied the child is no longer in need of care and protection: ss [54](#), [138\(1\)\(q\)-\(r\)](#).

The Secretary must, within 7 days:

- release the child from the care of the Ministry if satisfied they are no longer in need of care and protection; or
- convene an Uipaanga Kopu Tangata (but not if the Secretary believes there has been sexual or physical abuse of the child by a parent, family member, or caregiver); or
- apply to the court for a care order (especially in the case of suspected sexual or physical abuse): ss [54-55\(1\)](#), [\(3\)](#).

If the parties cannot agree at an Uipaanga Kopu Tangata, the Secretary must:

- release the child from the care of the Ministry, if satisfied the child is no longer in need of care and protection; or

- make a temporary care arrangement for up to 3 months (see s [52](#)); or
- apply to the court for a care order: s [55\(2\)](#).

The child may be kept in the care of the Ministry:

- until an Uipaanga Kopu Tangata is held; or
- until they are brought before the court; or
- for such further period as you direct: s [55\(4\)](#).

### 2.8.3 Supervision order

If the Secretary applies, you may grant a supervision order for the child, if satisfied that the child is in need of care and protection and the order is in their best interests: ss [56–57](#), [138\(1\)\(s\)](#).

A supervision order may include any conditions that are in the best interests of the child. These may apply to the child, parent/caregiver, any person providing day-to-day care of the child, or anyone with whom the child is living, to comply with: s [58](#).

The Secretary must only appoint a person to supervise a child if satisfied that the person has suitably trained in supervision and is experienced in dealing with children in need of care and protection: s [59](#).

The supervisor's job is to advise and assist the child and to take such steps as are reasonably necessary to give effect to the supervision order. The supervisor may apply to the court to vary or discharge the supervision order if it is not wholly complied with; no longer necessary; or not in the best interests of the child: s [60](#).

A supervision order expires and ceases to have effect when a child turns 18, unless you vary or discharge the order earlier on application from the supervisor, the child, or, with leave of the court, any other person: s [61](#).

### 2.8.4 Care order

The Secretary may apply to the court for a care order if they believe on reasonable grounds that the child is, or is likely to be, in need of care and protection.

You may grant the order if satisfied that:

- the child is in need of care and protection; and
- it is in the best interests of the child to place the child in the care of the Ministry: ss [62–63](#), [138\(1\)\(u\)–\(v\)](#).

If granted, the Secretary has the parental responsibility for the child and must ensure the child receives adequate and appropriate care. The care order also allows the Secretary to decide:

- if the child's parents may also exercise parental responsibility;
- any restrictions on contact with the child as necessary;
- who will be the child's caregiver and have parental responsibilities and provide day-to-day care: ss [65–66](#).

Unless it is not in the best interests of a child, the Secretary must allow any child in their care reasonable contact with the child's parents or caregiver (who was providing day-to-day care immediately before the child was placed into care): s [67](#).

A care order expires and ceases to have effect when a child turns 18, unless you vary or discharge the order earlier (if the Secretary, the child, or, with the leave of the court, any other person, applies to do so).

You may vary a care order if satisfied that:

- it is in the best interests of the child to do so, and
- the circumstances of the child have changed and so the order should be changed to safeguard or promote the child's welfare: s [64](#).

### 2.8.5 Contact order

Where a child is in the care of the Ministry, the person seeking contact can apply for a contact order: s [68\(1\)–\(3\)](#). An application to prevent or restrict contact may be made by the Secretary, the child, or (with the leave of the court) any person: s [68\(4\)](#).

You may make a contact order with or without conditions to:

- allow contact (on application by the person seeking contact); or
- prevent or restrict contact (and impose any conditions) between the child and specified persons: ss [68\(1\)–\(2\)](#), [138\(1\)\(w\)](#).

The Secretary, child, or any person who is authorised to have contact under the contact order may apply to vary or discharge the contact order: s [68\(6\)](#).

You may vary or discharge a contact order if satisfied that the circumstances of the child have changed and the order requires variation, or is no longer necessary, to safeguard and promote the child's welfare, best interests, and development: s [68\(5\)](#).

### 2.8.6 Orders to prevent removal of child

You must take steps to prevent the removal of a child from the Cook Islands if you are satisfied on reasonable grounds that a person is about to remove a child from the Cook Islands and that this is likely to:

- breach an order made under this Act; or
- breach a kaveinga a te kopu tangata; or
- defeat the claim of a person who has applied for, or is about to apply for, an order under this Act: s [132\(1\)](#).

You may do either or both of the following:

- issue a warrant directing a police officer (or a named person) to take immediate custody of the child (using such reasonable force as may be necessary) and to place the child in the care of the Ministry until a further court order (within 28 days of the issue of the warrant the matter must be brought before you for determination under s [132\(3\)](#)): s [132\(1\)](#);

- order that any tickets or travel documents (including a passport) of the child or of a person believed to be about to remove the child from the Cook Islands, or both, be given to the police for any length of time and on any conditions you think necessary in the circumstances: ss [132\(2\)](#), [138\(1\)\(mm\)](#).

That person may later apply to you to discharge the order, and you may do so if satisfied that the order is no longer necessary: s [132\(4\)](#).

Within 28 days a hearing must be scheduled for you to decide the issue of any possible breaches against any order under this Act or a kaveinga a te kopu tangata, or any attempts to defeat a possible claim of a person who will apply for an order: s [132\(3\)](#).

It is an offence to remove or attempt to remove any child from the Cook Islands, without leave from the court if that person knows:

- another person has applied for, or is about to apply for, an order under this Act; or
- that a parenting order, a contact order, or a kaveinga a te kopu tangata is in force that makes another person the caregiver of, or authorises contact with, the child.

The penalty is a fine up to \$1,000, or imprisonment for a term up to 12 months, or both: s [133](#).

## 2.9 Social welfare, medical or psychological reports

ss [70–77](#) FPSA.

You may of your own accord or at the request of any party, adjourn a hearing to order a written report such as a social welfare report or a medical and psychological report (under Part 5) for up to 28 days: ss [70–71](#), [75](#).

See s [70](#) for further details of what a social welfare report must include.

You may direct a parent/caregiver or proposed caregiver of the child (with their written consent) or the child (accompanied by an adult if too young or immature) to undergo a medical or psychological examination: ss [71–72](#).

You may make any relevant inferences (if any) if the person refused, but they must have had the opportunity to explain the reasons for that refusal: s [71](#).

There are further details and restrictions around the medical examination set out in s [73](#).

The registrar will provide a copy of every report to all the parties, the Secretary and any other person you think has a proper interest in receiving a copy of the report, no later than 1 working day before the sitting of the court: s [76](#).

However, you may direct that the whole or any part of a report must not be disclosed to a specified person if satisfied that it would or is likely to be detrimental to the physical, mental, or emotional well-being of a child or others in the report: s [77](#).

### 3. Parenting arrangements

#### 3.1 Introduction

ss 3, 33 Family Protection and Support Act 2017 (FPSA).

The relevant purposes of [Part 4](#) (Parenting arrangements) FPSA include:

- to ensure that parents/guardians are responsible for the care, welfare, best interests, and development of their children;
- the best interests of the child come first in any parenting, care and protection decisions made;
- to encourage parties to resolve any family relations issues by negotiation and agreement in the first instance where appropriate: s 3 FPSA.

#### 3.2 Key principles for parenting arrangements

The overall principle is that the **best interests of a child are the first and paramount consideration in all proceedings**. Everything else is of lesser importance.

The purposes of [Part 4](#) of the Act are to:

- ensure parents fulfil their duties and meet their responsibilities concerning the welfare, best interests, and development of their children;
- acknowledge the role that family members and other relevant persons may have in the care of children;
- encourage agreed parenting arrangements;
- provide for the resolution of disputes about the care of children; and
- provide mechanisms for the enforcement of parenting orders.

An important concept is that of “parental responsibility”. Parental responsibilities include (but are not limited too) all the rights, responsibilities, and duties of guardianship. This includes the responsibility of the parent or caregiver to:

- safeguard and promote the child’s welfare, best interests, and development;
- direct and guide the child, appropriately as per their stage of development;
- contribute to the child’s intellectual, emotional, physical, social, cultural, and other personal development;
- maintain personal relations and direct contact with the child on a regular basis if the child is not living with the parent, if appropriate;
- act as the child’s legal representative;
- decide questions about major long-term issues affecting the child for or with the child: s 34 FPSA.

These parental responsibilities carry on even if either or both parents/caregivers remarry or enter into a de facto relationship.



A caregiver of a child may perform parental responsibilities without the consent of the parent/caregiver, for issues that are not major long-term issues.

For comparison, New Zealand law (s 5 of the Care of Children Act 2004) sets out certain principles that may be helpful references in Cook Island circumstances (although they are not set out in the FPSA). These principles are all treated equally, although child safety is mandatory in New Zealand law. Those principles include:

- a child's safety must be protected, and they should be protected from all forms of violence (this is particularly relevant if there is family violence and there are any protection orders in place or parenting orders made);
- a child's care, development, and upbringing should be primarily the responsibility of their parents and guardians;
- parents, guardians, and any other person having a role in a child's care under a parenting or guardianship order, should continue to consult and co-operate over the child's care, development, and upbringing;
- a child should have continuity in their care, development, and upbringing;
- a child should continue to have a relationship with both of their parents, and their relationship with their family group, whānau, hapū, or iwi should be kept and strengthened;
- a child's identity (including, their culture, language, and religious identity and practice) should be kept and strengthened.

### 3.3 Contents of a parenting plan

s 36 FPSA.

A parenting plan is an agreement that states what the parental responsibilities and caregiving arrangements are for a child as between:

- the child's parents; or
- a parent or both parents and other persons involved in the child's care: s 36(1) FPSA.

This parenting plan must include:

- who the caregiver/s of the child are;
- the process for resolving disputes about the plan's terms or how the plan works;
- the process for changing the plan to account for changing wishes, needs or circumstances of the child or parties to the plan: s 36(2) FPSA.

A parenting plan may include:

- the time the child is to spend with any specified person;
- the parental responsibilities of each parent or caregiver;

- how the parents/caregivers should communicate when making any decisions about their parental responsibilities;
- any other people that the child may communicate with and how they do so; and
- any other issues relating to the child's welfare, best interests and development of the child: s [36\(3\)](#) FPSA.

### 3.4 Determining major long-term issues by agreement or an order

ss [4](#), [35](#) FPSA.

Major long-term issues are long-term issues about the care, welfare, and development of the child including (but not limited to):

- their name, education, health, religious and cultural upbringing;
- changes to the child's living arrangements that will make it significantly more difficult for the child to spend time with a parent/family member: s [4](#) FPSA.

For any major long-term issues, a parent/caregiver must, wherever practicable, consult with and try to act jointly with any other person who has parental responsibility for the child.

If they cannot agree, and a person with parental responsibility applies, you may make a major long-term issues order giving directions on the major long-term issue, on application from a person with parental responsibility: s [35](#) FPSA.

### 3.5 Registering a parenting plan

ss [37](#), [40](#) FPSA.

The parties to a parenting plan may apply to the court to register the plan, and you must do so, if you are satisfied that the plan is in the child's best interests: s [37\(1\)-\(2\)](#) FPSA.

If you are not satisfied that the plan is in the child's best interests, the registrar must set down the matter for a hearing and give the relevant parties notice of the date, time, and place of the hearing: s [37\(3\)](#) FPSA.

After the hearing, you may:

- vary the plan, with the agreement of the parties, and register it; or
- cancel the plan and make a parenting order under s [40](#): s [37\(4\)](#) FPSA.

A registered parenting plan has the same effect as a parenting order under s [40](#): s [37\(5\)](#) FPSA.

### 3.6 Reviewing a registered parenting plan

s [38](#) FPSA.

You may review a registered parenting plan if one or more parties to the parenting plan apply for review; each party must be given an opportunity to be heard and make submissions: s [38\(1\)-\(2\)](#) FPSA.

If you are satisfied that the child is of an age and maturity to understand the proceedings, you must give the child an opportunity to express any views on the application for review: s [38\(3\)](#) FPSA.

You may vary, discharge or confirm the parenting plan after a review, if satisfied that it is in the best interests of the child to do so: s [38\(4\)](#) FPSA.

Any variation has the same effect as if it were the plan originally agreed to and registered by the parties: s [38\(5\)](#) FPSA.

### 3.7 Parenting orders and who may apply

s [39](#) FPSA.

An application for a parenting order may be made to the court by:

- either or both of the parents, or a representative of the child; or
- with the leave of the court, a family member, or any other person concerned about the welfare, best interests, and development of the child.

### 3.8 Your power to make a parenting order and the contents

ss [40–41](#), [43](#) FPSA.

You may make a parenting order if anyone applies under s [39](#) or as you see fit under s [37](#) (on application to register a parenting plan): s [40\(1\)](#) FPSA.

The best interests of the child is the first and main issue when deciding whether to make a parenting order and what its terms should be: s [40\(2\)](#) FPSA.

A parenting order must include the following contents:

1. The caregiver(s) of the child.
2. The time(s) when specified caregivers provide day-to-day care to the child.
3. Any person whose contact with the child must not be restricted.
4. Any person whose contact with the child is not allowed or restricted.
5. Directions on how questions relating to parental responsibility will be addressed.
6. An order that a parent/caregiver must obtain the consent of the court before taking any actions specified in the order.
7. If contact with a child is involved, any conditions to assist or restrict the contact (as required) such as:
  - the nature (for example, face to face or letters, phone calls, or email), place, duration and timing of the contact;
  - whether another person must or may be present during contact: s [41](#) FPSA.

If there is a conflict between a parenting order and a person's parental responsibility, the parenting order is more important and comes first: s [43](#) FPSA.

### 3.9 Expiry, variation and discharge of parenting orders

s [42](#) FPSA.

A parenting order expires and ceases to have effect when a child turns 18: s [42\(1\)](#) FPSA. An application to vary or discharge a parenting order may be made by:

- a party to the parenting order;
- a representative of the child; or
- the Secretary, if the child is in the care of the Ministry of Internal Affairs: s [42\(1\)](#) FPSA.

You may, on application, vary or discharge a parenting order if you are satisfied that all of the following factors have been met:

- it is in the best interests of the child to do so;
- each party to the parenting order, and if appropriate a representative of the child, has been given an opportunity to make submissions on the application: s [42\(3\)](#) FPSA.

### 3.10 Your power to make a parenting enforcement order

s [44](#) FPSA.

A party to a parenting order, or with the leave of the court anyone else concerned with the welfare, best interests, and development of a child, may apply for a parenting enforcement order: s [44\(1\)](#) FPSA.

You may make a parenting enforcement order, if satisfied that a party to a parenting order is in breach of the order, that does either or both of the following:

- varies, reduces, or prohibits contact between the child and the person who has breached the order;
- directs the person in breach of the order to deposit a bond not exceeding \$5,000 in the court, as an incentive not to breach the parenting order again: s [44\(2\)](#) FPSA.

If the person breaches the parenting order again after depositing a bond you may direct that:

- any costs incurred by the other party to the parenting order are paid from that bond; or
- some or all of the bond is paid to the Crown (forfeited): s [44\(3\)](#) FPSA.

Once a parenting order has been discharged or expires, any bond deposited is returned to the person who paid it, less any amount paid or forfeited for a breach: s [44\(4\)](#) FPSA.

### 3.11 Warrant for the return of a child

s [45](#) FPSA.

If you are satisfied that a party to a parenting order has breached the order by not returning a child, you may issue a warrant authorising a police officer (or another named person) to take the child and deliver them to their caregiver under the parenting order.

## 4. Divorce orders and family support orders

### 4.1 Introduction

CEDAW Art [2](#) (non-discrimination), Art [16](#) (gender equality in family law rights).

ss [3](#), [13](#) Family Protection Support Act (2017) (FPSA).

The relevant purpose of [Part 2](#) (divorce) FPSA is to provide for the fair and orderly settlement of the affairs of spouses and de facto partners when a marriage or de facto relationship breaks down: s [3](#) FPSA.

The relevant purposes of [Part 3](#) (domestic support) FPSA are to:

- provide for the payment of support by one spouse or partner to the other spouse or partner; and
- recognise equally the financial and non-financial contributions to a marriage or de facto relationship made by each spouse or partner; and
- recognise the economic advantages and disadvantages of a marriage or de facto relationship for each spouse or partner; and
- provide for the support of a child; and
- ensure that each parent contributes equitably to the financial support of their children; and
- ensure that a father makes an equitable contribution to the expenses of childbearing.

### 4.2 Divorce orders

#### 4.2.1 Application for a divorce order

s [9](#) FPSA.

Either party to a marriage or both parties together may apply for a divorce order if at least one of them has been domiciled in the Cook Islands for more than 2 years prior to the application. Generally, an affidavit from the applicant will state this.

A person has been “domiciled” in the Cook Islands if they have ever visited the Cook Islands with the intention of making it their permanent home and have retained that intention, even if later, on one or more occasions, they reside in another jurisdiction.

Justices of the peace are officers of the High Court. Accordingly, [Code of Civil Procedure of the High Court Act 1972](#) (the Code) applies to FPSA cases. Applications, such as an application for divorce, are originating applications under the Code.

When an application is filed, you should prescribe a date by which the respondent may file a defence. This might generally be 30 days after service but there will be some situations (for example, the respondent lives in a distant island or is resident outside the Cook Islands) where you may set a longer period. In such cases, the applicant should apply for an order fixing a time for filing a defence and provide evidence about the practicalities of service. You must ensure the respondent has a reasonable time within which to understand the application, to obtain legal advice and to file a defence (if they choose to defend).

#### 4.2.2 Power to make a divorce order after separation

ss [10–11](#), [138\(1\)\(a\)](#) FPSA.

You **must** make an order for divorce if the parties have been separated for at least 12 months at the time the application is made: ss [10\(1\)](#), [138\(1\)\(a\)](#).

You **may** make a divorce order if the parties have not been separated for at least 12 months at the time the application is made, and the following applies:

- it is made jointly by both parties; and
- neither party is living on a permanent basis with a child of the marriage: s [10\(2\)](#).

A separation period begins when:

- the parties to a marriage make a joint application for divorce; or
- notice of one party's application for divorce is served on the other party; or
- the parties cease living together: s [11\(1\)](#).

A separation period continues after an application for divorce is made even if the parties continue to live in the same house or provide domestic services to each other: s [11\(2\)](#).

If the parties reconcile during their separation but then separate again, this reconciliation period is not included in the separation period: s [11\(3\)](#). Any period of separation immediately before they reconcile must be included if the parties subsequently separate again: s [11\(4\)](#).

### 4.3 Domestic support orders

[Part 3](#) FPSA.

#### 4.3.1 Legal effect of separation

s [12](#) FPSA; s [5](#) FPSAA.

On application by either party, you may at any time during a separation period:

- make a support order under [Part 3](#) (for domestic support or child support);
- make a parenting order under [Part 4](#);

- determine which party may live in their joint residence.

#### 4.3.2 Definition of de facto relationship

s 5 FPSA.

A de facto relationship means a relationship between an adult man and woman (both over 18 years) who live together as a couple in a relationship as if they were married but are not married to each other: s [5\(1\)](#).

In deciding if the parties are in a de facto relationship you may look at all or any of the following:

- the length of the period during which the parties have been living together (or lived together);
- their arrangements for financial support and the degree of financial dependence or interdependence;
- the degree of mutual commitment to a shared life;
- the degree of shared care and support of children: s [5\(2\)](#).

However, none of these factors are necessary for you to find there is or has been a de facto relationship, and you may have regard to such matters, and attach such weight to any matter, as you think appropriate in their circumstances: s [5\(3\)–\(4\)](#).

#### 4.3.3 Granting domestic support orders

ss [14–18](#), [138\(1\)\(C\)](#) FPSA.

You may grant a domestic support order, if a spouse or de factor partner applies to the court, following their separation or divorce: ss [14\(1\)](#), [16](#), [138\(1\)\(C\)](#).

A support order may include providing:

- domestic support by one former spouse or partner to the other former spouse or partner;
- childbearing expenses;
- child support for 1 or more children, including adult children: s [14\(2\)](#).

This order requires domestic support payments be made to the applicant for a certain period and can be made in various forms:

- periodic payments for a specified period;
- a lump sum payment;
- property, land, or any other asset;
- valuable goods but only if the person paying does not earn or have sufficient money to pay the support ordered: ss [14\(3\)–\(4\)](#), [17](#).

Also, if one spouse or partner is excluded from a legal or equitable interest in native land and this leads to an unfair result, you may order other forms of support: s [14\(5\)](#).



#### 4.3.4 Factors to decide the amount of domestic support payments

s [18](#) FPSA.

The factors to decide the amount of the domestic support payments are:

- the age and health state of each spouse or de facto partner;
- the income, earning ability, property, and financial resources of each spouse or de facto partner;
- either party's parental responsibility for a child or dependants;
- each party's ability to support themselves, any child they have parental responsibility for or dependants;
- eligibility for and the rate a pension, allowance or benefit (within or outside of the Cook Islands) is being paid, or will be paid, to either spouse or partner;
- the extent to which these domestic support payments would increase the receiving spouses earning ability by supporting them to:
  - study or undertake further training;
  - establish a business;
  - gain an adequate income property;
- the extent to which the spouse applying for support has contributed to the other party's income, earning ability, property, or financial resources;
- how long their marriage or de facto relationship was, and the extent to which it impacted on the earning ability of the spouse applying for support;
- either party's access, use, or control over native lands, resources, and hunting and fishing grounds that results in material benefits to that party not equally shared by the other party;
- any other fact or circumstance you think necessary for justice in that case.

**Note:** A dependant is a person relying on material support from another person because of their age, disability, or physical or mental weakness.

#### 4.3.5 Childbearing expenses orders

ss [19](#), [27\(2\)](#), [138\(1\)\(d\)](#) FPSA.

An application for a childbearing expenses order may be made by the mother of the child or in respect of the deceased mother: s [19\(1\)](#).

You may grant a childbearing expenses order requiring the child's father to make a fair contribution towards the mother's:

- pregnancy support;

- reasonable pregnancy and birth medical expenses;
- reasonable funeral expenses if the child is stillborn or dies during birth;
- reasonable funeral expenses if she dies during pregnancy or birth: ss [19\(1\)](#), [138\(1\)\(d\)](#).

This application can be made even if the mother and father were not married: s [19\(2\)](#).

A paternity order is conclusive evidence for determining the issue of who is the father for childbearing expense orders: s [27\(2\)](#).

#### 4.4 Child support orders

##### 4.4.1 Applying for and granting a child support order

ss [4](#), [20–21](#), [138\(1\)\(e\)](#) FPSA; [FPSAA](#).

A child is any person under the age of 18 years: s [4](#).

Any of the child's parents, caregivers, or any other person with your leave who is concerned with the welfare, best interests, and development of a child, may apply for a child support order: s 20.

You may make a support order requiring either or both parents to pay child support to the applicant, as they are both liable for reasonable and necessary support: ss [21](#), [138\(1\)\(e\)](#).

A support order against one parent does not reduce the liability of the other parent to provide support for the child.

##### 4.4.2 Factors relevant to determining amount of child support

s [22](#) FPSA.

You must consider the child's needs in determining the amount of child support payable including:

- suitable accommodation;
- their age, health and any special needs;
- their educational or training needs;
- the financial circumstances of the child;
- the availability and cost of suitable child-care facilities or services;
- the needs and resources of the person from whom child support is sought;
- the needs and resources of any caregiver/s;
- the previous commitments of the person from whom child support is sought to pay support to any other child or person if relevant;
- any other fact or circumstance that you think the justice of the case requires.

##### 4.4.3 Child support for adult child (18 years and over)

s [23](#) FPSA.

You may make a child support order requiring either or both of the child's parents to pay child support for an adult child, if it is necessary for any of the following reasons:

- to enable the adult child to complete their education;
- because of a mental or physical disability of the adult child: s [23](#).

#### 4.4.4 Expiry, variation, or discharge of support order

s [15](#) FPSA.

Any party to a support order may apply to vary or discharge a support order. You may vary or discharge the order if satisfied this is justified because of a change in the circumstances of:

- a party to the order; or
- the subject of the order.

A child support order in respect of a child ends and ceases to have effect when the child turns 18, except for an adult child support order under s [23](#).

#### 4.4.5 Support enforcement orders

ss [24](#), [138\(1\)\(g\)](#).

You may grant a support enforcement order, if satisfied the terms of a support order have been breached, on the application of the person who the support order favours.

You may order the liable party to do one or more of the following:

- deduct an amount from their wages to be paid to the person with a support enforcement order;
- deduct a sum of money from their bank account with a support enforcement order.

You may also direct that a police officer:

- takes valuable goods owned by the liable person to the value you decide; and
- delivers them to the person with the support enforcement order.

The amounts can be a single or periodic deduction either weekly, fortnightly or monthly for the set period.

This does not prevent the person who has the support order from seeking a remedy based on the Code.

## 5. Temporary protection orders

### 5.1 Introduction

CEDAW, Art [2](#), (non-discrimination, which includes gender-based violence as a recognised form of discrimination against women, see CEDAW Committee General Recommendation [19](#): Violence Against Women), Art [15](#) (Equality before the law).

CRC, Art [19](#) (protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child).

CRPD, Art [16](#) (protection of people with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects), Art [6](#) (women with disabilities), Art [7](#) (children with disabilities), Art [12](#) (access to justice).

FPSA, ss [3](#), [89](#).

One of the overall purposes of the Family Protection and Support Act 2017 (FPSA) is to ensure the safety and protection of adults and children in domestic relationships: s [3](#).

For Part 6 (domestic violence protection orders) the purposes are to:

- ensure the safety and protection of all persons, including children, who experience, or are or may be exposed to, domestic violence;
- recognise that domestic violence in all its forms is unacceptable;
- prevent domestic violence: s [89](#).

These purposes should guide you when exercising any of your powers under [Part 6](#). The overall question is whether protection is necessary having regard to the purposes of the Act.

### 5.2 Definitions

ss [90–96](#) FPSA.

A **domestic relationship** between two people is where:

- they are or were previously married, in a de facto relationship, or in a close personal relationship;
- they have a child together (even if they were not otherwise in a relationship);
- they are a family member or domestic worker;
- one of them is dependent on the other person for help with an activity of daily living required because of disability, illness, or impairment;
- they share or recently shared the same home;
- one of them is a child who:
  - ordinarily lives or lived with the other person; or

- regularly lives or stays, or lived or stayed, with the other person: s 90.

**Domestic violence** means any of the following conduct (including threats to do so) by a person (A) against another person (B) where they are, or have been, in a domestic relationship:

- physical, sexual, economic, emotional, verbal, or psychological abuse and stalking;
- causing the death of, or injury to, an animal, even if the animal is not person B's property;
- any conduct that reasonably arouses in person B fear of personal injury, or damage to property;
- causing or allowing anyone else to do any such conduct above;
- any of the above conduct against a person in a domestic relationship with person B if that conduct or threat is intended to arouse fear in person B.

The conduct can be a single act or several acts that form a pattern of behaviour (no matter how trivial on their own): s 91.

**Physical abuse** includes any of the following acts:

- physical assault or any use of physical force,
- forcibly confining or detaining a person,
- withholding access to adequate food, water, clothing, shelter, or rest: s 92.

**Sexual abuse** of a person includes any of the following acts:

- engaging them in sexual contact without their free agreement,
- engaging in any sexual conduct or exposing them to sexual material that abuses, humiliates, or violates their sexual integrity: s 93.

**Economic abuse** includes any of the following acts:

- withholding or limiting money needed for their support (for example, for household items, mortgage repayments or rent if a shared home);
- forcing them to give up control over money, assets, or income;
- selling or transferring matrimonial property, or assets owned during a de facto relationship, without their full and free consent;
- preventing them from making decisions over household spending;
- preventing or limiting their job opportunities or access to education: s 94.

**Stalking** includes any of the following acts on 2 or more separate occasions:

- following a person, watching or waiting outside or near where they live, work, farm, fish, carry on a business, study, or any other place they go to;
- telephoning, text messaging, emailing, or using other electronic means to contact a person, or inducing someone else to do so;

- sending, or delivering, or causing the delivery of letters, packages, or suchlike to a person;
- entering or interfering with a person's property in their possession without their express consent;
- keeping a person under watch;
- acting in any other way towards a person that could arouse fear in a reasonable person: s [95](#).

**Emotional, verbal, or psychological abuse** means a pattern of degrading or humiliating conduct towards the person, including:

- repeatedly insulting, ridiculing, or name calling, threatening or showing obsessive possessiveness;
- jealousy that is a serious threat to their privacy, freedom, integrity, or security;
- if they have a child, this also includes any such abuse towards a person with whom the child has a domestic relationship: s [96](#).

### 5.3 Preliminary matters

#### 5.3.1 Role of the police

s [116](#) FPSA.

A police officer, if they receive a complaint of domestic violence and suspect that domestic violence has been, will be, or is likely to be committed, must:

- immediately investigate the matter;
- within 48 hours – if they don't make a police safety order and the person subject to domestic violence does not apply for a protection order – submit a written report detailing the reasons why not;
- immediately inform the person subject, or likely to be subject, to domestic violence of their right to apply for a protection order.

#### 5.3.2 Police safety orders

ss [108–115](#) FPSA.

A police officer may make a police safety order against a person (the respondent) who is in a domestic relationship with another person (person P) if the police officer is satisfied that:

- the respondent has committed an act of domestic violence against person P; or
- person P has reasonable grounds to fear the respondent will commit an act of domestic violence: s [108](#).

A police officer must make a police safety order for the protection of a child if the officer reasonably believes:

- domestic violence has been committed, is being committed, or is likely to be committed; and

- the child's welfare has been, or is likely to be, adversely affected by the domestic violence: s [110](#).

A police safety order must not be made against a child under 16 years of age: s [111](#).

At the time of the making the order or when serving the respondent, the police officer must, where reasonably practicable to do so in the circumstances, explain to the respondent:

- the purpose, duration, and effect of the order; and
- what happens if the respondent breaches the order: s [115](#).

Once a respondent has been personally served with a police safety order they must immediately:

- give the police officer any weapons they have; and
- leave the home of the protected person (whether or not they have a legal or equitable interest in the home): s [112](#).

The conditions that the respondent must comply with in the order are the same as the mandatory conditions in "[Temporary protection orders without notice](#)" (see below).

The order lapses if it is not personally served within 24 hours after it is made. It comes into force once served and continues for the period specified (to ensure the safety and protection of the protected person) up to 5 days from the date of service: s [114](#).

If a police safety order lapses because it has not been personally served, the protected person must be advised immediately.

A police officer may keep the respondent for up to 2 hours, to get the authority to make the order, then make the order and serve it. Anyone under the rank of sergeant must obtain the authority from a sergeant or higher rank before making the order unless they are a police officer: ss [108](#), [113](#).

If the respondent fails or refuses to remain there, they may be arrested without warrant as this is an offence. If convicted they are liable to community service not exceeding 6 months: s [113](#).

## 5.4 Process for protection orders

### 5.4.1 Who can apply for a protection order

ss [97–98](#) FPSA.

The following people may apply for a protection order:

- anyone who is or has been in a domestic relationship with another person: s [97\(1\)](#) FPSA;
- anyone who has an interest in the safety of a person in a domestic relationship with the written consent of the person on whose behalf the application is made (for example, a family member, the police, social welfare, health care provider, teacher, traditional or religious leader, or an employer): s [97\(2\)](#) FPSA;

- a child, but only with the leave of the court: s [97\(4\)](#) FPSA.

However, written consent is **not** required if that person is:

- a child not of an age or maturity to understand the proceedings;
- mentally incapacitated or unconscious;
- regularly under the influence of alcohol or drugs;
- at risk of serious physical harm or in fear for their safety;
- illiterate or otherwise unable to provide consent in writing;
- lives in a rural area, outer island, or any other remote location and is unable to provide written consent: s [97\(3\)](#) FPSA.

For a child who applies, you may grant leave only if satisfied the child understands both:

- the nature, purpose, and legal effect of the application; and
- the legal effect of making a protection order: s [97\(5\)](#) FPSA.

The application may be in Māori or in English and made:

- verbally, whether in person, by telephone, or any other way, and the court will if needed put this into writing; or
- in writing, whether by post, email, text, or any other way: s [98](#) FPSA.

## 5-5 Temporary protection orders without notice

s [99](#) FPSA.

On receiving an application, you must make a temporary protection order (TPO) without notice if satisfied that **all three** of the following grounds are met:

1. the respondent is in a domestic relationship with the applicant;
2. the respondent has committed domestic violence against the applicant, or the applicant has reasonable grounds to fear that the respondent will commit domestic violence; and
3. the delay that would be caused by proceeding on notice would or might entail a risk of harm to the applicant or any child residing with the applicant: s [99\(1\)](#) FPSA.

This order becomes a final protection order automatically after 3 months from the date that it is made: s [99\(2\)](#) FPSA. Note, however, that the respondent can oppose and if so, a defended hearing will decide the matter.

The registrar must issue the final protection order, unless:

- you decide otherwise in a hearing requested by the respondent under s [121](#); or
- the order is discharged earlier or lapses: s [99\(2\)](#) FPSA.



### 5.5.1 Principles to apply when making a temporary protection order

A cautious but realistic approach is needed when considering applications made on a without notice basis, as the New Zealand courts have stated. Overall, this requires you to balance two important considerations:

1. the need to protect victims and potential victims of family violence from the effects of delays in making a protection order;
2. making an order without notice, which means the respondent is not given the opportunity to be heard before the court imposes conditions on them (see [CRA v Family Court at Blenheim \[2015\] NZFLR 731](#); [2015] NZHC 1604 at [20] per Dobson J.)

All three of the following grounds must be met on the face of the application (*prima facie*) and any evidence in support:

1. Is there evidence of a domestic relationship?
2. Does the evidence support a finding that there has probably been domestic violence or reasonable grounds to fear the threat of it?
3. On the face of it, will the delay in making the application on notice cause any risk of harm to the applicant or child in need of protection?

New Zealand case law on appeal directs you to view the overall pattern of behaviour, rather than focusing on individual episodes of violence, and the combined effect of the alleged acts on the victim ([SN v MN \[2016\] NZCA 384](#) at [26]; [Surrey v Surrey \[2008\] NZCA 565](#) at [99]).

Victims often report that psychological or ongoing mental abuse is just as harmful as physical or sexual abuse – if not more so.

Consider the applicant's own viewpoint; whether they are afraid of future violence and whether that fear is reasonably held. Factors to consider include:

- the nature and seriousness of past violence and risk of future violence. The single most reliable predictor of future violence is a history of prior multiple offences. But a serious one-off episode may still pose sufficient risk to justify an order;
- the applicant's view of the nature and seriousness of the respondent's behaviour (including subjective fears for the future);
- the effect on the applicant of how the respondent behaves including behaviours to control the applicant's movement, contact with family, finances and other controlling behaviours such as threats to self-harm or to harm the children, family pets or family property.

Other factors which are statistically significant for increased risk of family violence include:

- Where the applicant is pregnant or recently given birth,
- Where the applicant has recently separated or attempted to leave the relationship,
- Where the respondent has drug or alcohol addictions,
- Where the respondent has depression or other mental health issues,

- Where the respondent is unemployed or the couple have financial difficulties,
- Where the respondent possesses firearms or other weapons,
- Where the respondent has previously threatened applicant, children, others or breached previous orders,
- Where the respondent has a history of (non-family related) violent crime.

See the attached Risk Assessment Survey, which can help you to assess prospective risks of family violence.

You must still consider whether the application supports the decision that proceeding on notice would or might entail a risk of harm. Unless it does, the application must proceed on notice.

### 5.6 Final protection orders at a hearing

s [100](#) FPSA.

You may also direct the registrar to organise a hearing, if you are satisfied there is good reason for a hearing, at which either or both parties to the application are present or represented, soon after a TPO has been granted: s [100\(1\)](#) FPSA. This may be useful in certain circumstances to get a better understanding of the situation.

You may make a final protection order if satisfied that the respondent:

- is in a domestic relationship with the applicant; and
- has committed domestic violence against the applicant, or the applicant has reasonable grounds to fear that the respondent will commit domestic violence: s [100\(2\)](#) FPSA.

The main factor to consider is the safety and protection of the applicant and any child living with them: s [100\(3\)](#) FPSA.

### 5.7 Advice and service of protection and police safety orders

ss [101](#), [139](#) FPSA.

When a protection order is made (or varied under s 106), the court must immediately advise the respondent, protected person (applicant) and the police officer at the station closest to where the applicant lives, either in person, by phone, or in writing (post, email, or any other way).

The police officer must serve the protection order on the respondent personally, within 24 hours, otherwise it lapses. If an order lapses, the court must advise the protected person and the police station nearest to where the person lives immediately: s [101](#).

If the order lapses those in need of legal protection will not have it, so it is good practice that after granting a protection order, the court should proactively follow up with the police to ensure that the order is served by them on the respondent within 24 hours. Alternatively, consider using powers under ss [141](#) and [142](#) (set out below) to dispense with the need for personal service and derive an alternative way to put the respondent on notice of the order.

Protection and police safety orders may be served on any day including a public holiday: s [139](#).

## 5.8 Protection orders – mandatory conditions

s [102](#) FPSA.

Every protection order must have the following conditions:

- The respondent must not do or threaten to do, or cause or allow another person to do, any of the following acts to the protected person or to a person in a domestic relationship with the protected person:
  - physically or sexually abuse the person,
  - stalk the person,
  - economically abuse the person,
  - damage, sell, give away, or otherwise dispose of the person’s property,
  - emotionally, verbally, or psychologically abuse the person.
- Even if the respondent has a legal or equitable interest in the land or building, unless the protected person and the respondent are living together in the same residence with the express consent of the protected person, the respondent must not:
  - enter or remain on any land or building occupied by the protected person;
  - if the protected person is present on any land or building, enter or remain on that land or building where that would be a trespass (that is, being there without permission);
  - make any other contact with the protected person (whether orally or in writing, and whether in person, by phone, post, email, or any other medium) except such contact as is reasonably necessary in an emergency.

Also, while a protection order is in force, the terms of any parenting order, contact order, or kaveinga a te kopu tangata, that make the respondent a caregiver of a child, or authorise the respondent to have contact with a child, are suspended if the child lives with the protected person.

## 5.9 Protection orders – other conditions

ss [103–104](#) FPSA.

You may include the following conditions if the respondent has any weapons or shared living arrangements with the protected person.

### 5.9.1 Weapons

The respondent:

- must not possess, or have under their control, any weapon; and
- must dispose of any weapon or surrender it to a police officer for disposal.

### 5.9.2 Shared living arrangements

Grant the protected person and other family members:

- sole right to live in their home, regardless of any legal or equitable rights of possession or ownership;
- sole use of part of the protected person's home, if it is legally owned by a third party.

**Note:** If the respondent and the protected person normally live in the same home with a child, you must presume that it is best if the protected person and the child continue to live there. Also consider the financial support needs of applicants and dependent children in tailoring orders to the individual circumstances of the parties.

Direct a police officer to:

- remove the respondent from the protected person's home immediately or within a specified time;
- accompany the respondent or another specified person, within a set time, to the protected person's home to supervise the removal of personal belongings.

When deciding on whether to add any conditions for shared living arrangements you must consider:

- if the condition is not made, how this would impact on the safety and protection of the protected person and any child or others living at the home;
- keeping social networks and support for the protected person and any child living with them;
- keeping the same care arrangements for any child who lives with a protected person;
- keeping the same childcare, education, training, and work for the protected person and any child who lives with them;
- the housing needs of the parties;
- the best interests of any child of the protected person or any child of the protected person and the respondent.

### 5.10 Who can apply to vary or discharge a protection order

s [105](#) FPSA.

The following people may apply to vary or discharge a protection order:

- the protected person,
- the respondent.
- with leave of the court, anyone who has an interest in the safety of a person who reasonably believes that there is sufficient reason to vary or discharge the order.

### 5.11 Your power to vary or discharge a protection order

ss [106–107](#) FPSA.

You may vary a protection order if you are satisfied that either the variation is necessary for the safety of the protected person or will not adversely affect their safety: s [106](#).

You may discharge a protection order if you are satisfied that:

- the respondent is not likely to commit domestic violence against the protected person or any person in a domestic relationship with the person; and
- the protected person does not reasonably fear the respondent will commit domestic violence: s [107](#).

## 5.12 Compensation

ss [119–120](#) FPSA.

You may also order a respondent to pay compensation to a protected person for:

- their injuries and losses sustained before or after the granting of a protection order or police safety order is made, due to acts of domestic violence committed by the respondent – for example, pain and suffering, physical and mental injury, medical treatment, loss of earnings, and the value of any property of the protected person that has been removed, damaged, destroyed, or sold: s [119\(2\)\(f\)](#);
- reasonable expenses that the protected person has or will have in setting up a separate household (for example, accommodation expenses, moving expenses and any other related expenses): s [120](#).

## 5.13 Service of orders (not protection orders or police safety orders) and of applications

ss [140–142](#) FPSA.

Every application for an order or variation or discharge of an order and every order made under this Act must be immediately served personally or by email on all parties to the proceedings and on any other person specified by the court. The order has no legal effect until it is served on the respondent or as determined by the court under s [142\(2\)](#): s [141](#). It is good practice for the court to proactively follow up with police to ensure that service has taken place so that legal effect can be given to the order, or alternatively, use the provisions below to dispense with the need for notice to be provided.

If an order cannot be served, the registrar must ask the court to determine when the order takes legal effect: s [142\(1\)](#).

You may dispense with service on a person if they cannot be served with an application or order in accordance with s [141](#): s [142\(2\)](#).

## 5.14 Process for defended hearings

### 5.14.1 Respondent can request hearing

s [121](#) FPSA.

If a temporary protection order is made without notice, the respondent may, at any time before the order becomes a final protection order under s 99(2), request the court for a hearing to determine whether:

- a final protection order should replace the temporary protection order,
- the temporary protection order should be discharged,
- a condition relating to weapons should be varied or discharged,
- a condition relating to occupation should be varied or discharged: s 117.

### 5.14.2 Pre-trial conference

s 122 FPSA.

The registrar must schedule a pre-trial conference after the respondent requests a hearing or you direct the registrar to organise a hearing. The pre-trial notice should set out the time, date, and place and explain the purpose of the conference and their rights, so that every party can understand.

The respondent, the applicant, and any other person you think necessary can be required in writing to attend. But the applicant may ask to be excused if they have reasonable grounds to fear for their safety, or request that a support person be present.

The registrar should provide you with all criminal files relating to the respondent 3 days before the pre-trial conference.

The purpose of the pre-trial conference is to:

- identify and simplify the issues,
- determine what facts, if any, are agreed by the parties,
- rule in advance on what evidence is required and its admissibility,
- determine how much court time is needed for the hearing.

### 5.14.3 Procedure for hearing

ss [123](#), [125](#) FPSA.

The registrar must schedule a hearing date within 2 weeks after the pre-trial conference and give the parties written notice of the time, date, and place for the hearing: s [123](#).

You may make a protection order even if the respondent does not appear at the hearing, and even if the respondent did not receive notice of the time, date, and place of the hearing: s [123](#).

No application fees are payable: s [125](#).