

17 Domestic Violence and Family Protection Act 2017

17.1 Introduction

The [Domestic Violence and Family Protection Act 2017](#) (the “Act”) came into force on 1 June 2017. The objectives of the Act include the following (s 3):

- Provide for the safety, protection and welfare of domestic violence victims,
- Prevent and reduce domestic violence incidents,
- Create measures for rehabilitation and family mediation, and
- Foster peaceful and lasting domestic relationships.

[Part 6](#) of the Act creates duties for the following public office holders: health practitioners, police officers and Child Protection officers.

The Criminal Procedure Act 1972 applies to all proceedings under the Act (s 38).

17.2 Definitions

17.2.1 Domestic relationship

A domestic relationship under s 5 exists where:

- the parties are spouses or partners,
- the parties are family members,
- the parties normally share a household,
- one party is dependent on the other for regular support due to disability, illness or impairment, or
- the parties have a close personal relationship.

Having a landlord-tenant, or employer-employee, relationship does not count as sharing a household and therefore does not meet the definition of domestic relationship. Occupying a common dwelling house also is not sufficient to meet the definition of being in a domestic relationship.

In determining whether a domestic relationship exists, the court must consider the duration of the relationship and the nature and intensity of the relationship. This includes the amount of time spent together, the places where those involved ordinarily spend time together, and how that time is usually spent.

17.2.2 Domestic violence

Under s 6, domestic violence is defined by threats or acts of the following, against someone they are in a domestic relationship with:

- assault,

- coercive control,
- economic and financial abuse,
- sexual violence,
- stalking,
- damage to property, or
- consistently being abusive, cruel, inhumane, degrading, provocative or offensive.

The Act provides further definitions of the above under s [4](#).

Domestic violence can be a single act, or a number of acts that form a pattern of behaviour. A person also engages in domestic violence if they incite another person to conduct any of the acts outlined above (s [6\(3\)](#)).

17.2.3 Coercion and coercive control

To coerce a person means to compel or force them to do, or refrain from doing, a particular act. This includes by acts or threats of violence, and humiliation or intimidation. Coercive control includes a pattern of behaviour that causes physical or psychological harm, punishment or fear to a victim.

17.3 Rights protected

The objectives under s [3](#) of the Act include having regard to the Constitution of Nauru, specifically the rights to equality, freedom and security.

When determining each case you must also consider the Republic's obligations under the United Nations Convention on the Elimination of all forms of Discrimination against Women ("CEDAW") and the United Nations Convention on the Rights of the Child ("CRC").

The Human Rights Council considered the Report of the Working Group on the 3rd cycle Universal Periodic Review ("UPR") of the Republic of Nauru on 2 February 2021 ([A/HRC/47/17](#)). As part of these proceedings, the government acknowledged that addressing domestic violence was a priority (at [92]). All recommendations in the UPR on women and children were accepted ([A/HRC/47/17/Add.1](#) at parts K and L).

17.4 Cultural context

The concluding observations on the combined initial and second periodic reports of Nauru by the Committee on the Elimination of Discrimination against Women were delivered on 22 November 2017 ([CEDAW/C/NRU/CO/1-2](#)). At [18], the Committee noted concerns about the social stereotype that primary roles for women are considered to be wife and homemaker, and that men assert control over women by dictating their clothing, mobility and behaviour. This lack of autonomy is considered an underlying cause of gender-based violence against women, and the Committee was concerned that the Republic of Nauru had not adequately addressed this issue.

The case of *Republic of Nauru v Buraman* [2020] NRDC 19 (7 August 2020) discussed the common law right of parental discipline of children, which creates a defence to criminal charges of common assault on the basis that the discipline was justified. The court held that this right applied to members of extended families, in this case the grand-uncle of the eight year old complainant. It was determined that the defendant's actions in disciplining the boy were also in line with the Republic's international law obligations under the CRC, on the basis that it was in the best interests of the boy that he be taught good behaviour to ensure his future safety and wellbeing (at [26]). This case demonstrates that physical discipline of children is an accepted part of Nauruan custom, and is not considered domestic violence.

17.5 Family Protection Coordination Committee

The Family Protection Coordination Committee (the "Committee") was established by s 7 of the Act, and its functions and membership are explained under [Part 2](#). The Director of Women is the Chairperson of the Committee, and other members are appointed by Cabinet (s [8\(1\)](#)). Section [11](#) requires that an annual report be provided to the Minister each year by October, which is then tabled in Parliament.

The Committee provides advice and recommendations to the Minister on a number of matters, including the following:

- proposing amendments to the Act;
- efficient collaboration of support services for victims of domestic violence;
- training, education and awareness programmes;
- developing a national plan of action for prevention of domestic violence; and
- the implementation of Government policies regarding prevention of domestic violence, and assistance for victims.

17.6 Safety orders

Safety orders are governed by [Part 3](#) of the Act. An individual can apply to the police who may issue a safety order for the purpose of protecting victims of domestic violence. To issue a safety order, a police officer must believe on reasonable grounds that (s [13\(1\)](#)):

- the victim is in a domestic relationship with the respondent,
- the respondent has, or is likely to, commit domestic violence against the victim, and
- the order is necessary for the protection of the victim.

An order must be issued in line with [Form 1](#) of the Schedule to the Act. A safety order can be issued without the consent of the victim, provided the above grounds are met. An order can include others if the police officer believes they are also at risk of domestic violence.

A safety order prohibits the respondent from attempting to, or committing, any of the following:

- entering or remaining at a specified place, or going within a certain distance of that place,
- approaching the victim within a specified distance or at a specific place,

- contacting the victim,
- engaging in any behaviour that is likely to lead to domestic violence against the victim,
- possessing weapons, or
- engaging or inciting another person to do any of the above.

The police officer will serve a copy of the safety order on the respondent, explain the purpose, effect and duration of the order, and explain the consequences of breaching an order (s 14). If an order is breached, the police may arrest the respondent and hold them in custody for a period not exceeding 24 hours (s 16(2)).

A safety order will expire after 7 days from service, unless the victim applies to the court for an interim protection order, which must be done within 5 days of service of the safety order (s 15).

17.7 Protection orders

Permanent and interim protection orders are governed by [Part 4](#) of the Act. A protection order will prohibit the respondent from:

- approaching the victim, and any other person included in the order,
- contacting or communicating with the victim by any means (except to make arrangements for children),
- being in or near a specified location where the victim lives, works or frequents, even if the respondent has a personal or proprietary interest in the premises,
- damaging property belonging to the victim,
- engaging or inciting another person to carry out any of the above, and
- possessing a weapon.

You may impose any other conditions necessary in the circumstances, or desirable in the interests of the victim or children (s 17(4)). If it is in the best interests of the children, you may impose conditions that grant custody of them to the victim, and direct the respondent to pay maintenance (s 17(3)). The court can also impose further conditions relating to property under s 17(2), and the court may order the respondent to pay compensation to the victim for property damage or financial loss (s 25).

If someone is convicted of an offence arising from domestic violence or in a domestic relationship under the Crimes Act 2016, or any other law, you may grant a protection order on your own initiative (s 20).

Note: The Supreme Court has inherent jurisdiction, and jurisdiction under the Constitution, to impose protection orders. In [Republic v DD \[2019\] NRSC 35 \(29 August 2019\)](#), a permanent order was sought. However, as the complaint was withdrawn and nothing was proven in court, an order under s 17 was made instead on the basis of the Supreme Court's inherent jurisdiction.

17.7.1 Procedure

An application for a protection order can be made by a victim, complainant, another interested person, or a person prescribed by law (s 22). The application may be made in person, in writing, electronically, or by telephone, but where an initial application is not made in writing a formal application must subsequently be filed in court with a copy served on the respondent (s 23).

Where an application is made under s 17, you must either summon the respondent to appear or issue a warrant for their arrest (s 39(1)). An arrest warrant should be issued if you have concerns that the personal safety of the victim may be adversely affected unless the respondent is brought into custody. If the respondent fails to appear at the time and date stipulated, the court may issue a warrant for their arrest, and proceed to determine the application for a protection order (s 40).

You may consider any evidence you deem necessary to make a determination, regardless of whether that evidence is normally admissible by law (s 42(1)). Where no procedure is specified, the court may apply such procedure as it “deems best calculated to promote the ends of justice” (s 42(2)).

You must decide any question of fact on the balance of probabilities, except for when you are determining whether or not an offence has been committed (s 24).

Protection order hearings are closed to the public (s 44). Section 45 creates restrictions on publication of proceedings, and an offence and penalty for breaching these restrictions.

Under s 21, the court may vary or revoke a protection order on application by the complainant, victim, respondent, or any other person who the order applies to. A hearing must be held for the variation or revocation of a protection order, so summons must be served on the parties involved.

The court must direct police to serve a copy of the varied or revoked order on both the victim and respondent (s 21(6)(b)).

17.7.2 Interim protection order

You may grant an interim order if you are satisfied that the respondent is likely to commit, or has committed, domestic violence against the victim. You must determine an application for an interim protection order on the same day that it is brought before the court. An interim order must be reviewed by the court on a fortnightly basis, and extended as the court deems necessary (s 18(7)).

Neither the victim or respondent are required to be present in order for an interim protection order to be granted (s 18(4)). An interim order may not be refused on the basis that other legal proceedings involving the same parties are ongoing.

A lay magistrate has jurisdiction to hear and grant interim protection orders (s 18(3)).

17.7.3 Permanent protection order

A permanent protection order may be granted if (s 19(1)):

- the respondent has habitually committed acts of domestic violence against the victim,

- the respondent is likely to commit further acts of domestic violence against the victim,
- the respondent has breached a safety or interim protection order or orders, or
- a report from a counsellor under Part 5 concludes that the parties cannot reconcile.

You must take into account the protection of the victim from domestic violence, the welfare of the victim and children, and the welfare of other family members (s [19\(2\)](#)). A permanent protection order remains in force until it is varied or revoked by the court.

Any other person in the domestic relationship may be included in a permanent protection order if you are satisfied that the respondent has committed, or is likely to commit, domestic violence against the other person (s [19\(3\)](#)).

In [Republic of Nauru v JA \[2022\] NRDC 3 \(17 November 2022\)](#), the defendant pleaded guilty to one count of threatening to kill and one count of damage to property, the victim being his grandaunt. As part of sentencing, the court made a Permanent Domestic Violence Restraining Order, which included the condition that the defendant stay away from the victim's address until he reached 18 years of age (he was 17 at the time of sentencing).

In [Republic of Nauru v Bagaga \[2023\] NRDC 21 \(4 August 2023\)](#), the defendant pleaded guilty to one charge of threatening to kill his spouse. The sentence imposed included a permanent protection order with one condition, that "the Defendant must not molest the victim mentally or physically".

The defendant was sentenced to two years' imprisonment, and ordered to serve one year of that sentence. The remaining year was suspended for three years, and would be imposed upon any breach of the protection order.

17.7.4 Mandatory counselling

When a protection order is granted, you must make a supplementary order directing the parties, either jointly or severally, to attend mandatory counselling (s [26\(1\)](#)). Failure to attend mandatory counselling without reasonable cause will be deemed contempt of court, and that person is liable to a term of imprisonment not exceeding one month.

The counsellor must provide reports to the court on a fortnightly basis, or as otherwise directed by the court (s [27](#)). The Director of Women, in consultation with the Minister, has the power to register counsellors for the purposes of this Act (s [28](#)), and the Director must keep a register of counsellors (s [29](#)).

17.8 Appeals

Appeals are governed by [Part 9](#) of the Act. A decision to make a permanent protection order, or refusal to make, vary or revoke a permanent protection order, may be appealed to the Supreme Court. Appeals may be against the law or facts, and can be made by the complainant or respondent within 14 days from the delivery of the decision which is being appealed (s [43\(2\)](#)). Unless a stay is granted by the Supreme Court, the order being appealed will remain in force.

17.9 Offences and penalties

The Act creates the following offences and penalties under [Part 7](#):

- Breach of a protection order is deemed to be contempt of court, and the offender is liable to a term of imprisonment not exceeding 12 months (s [34](#)).
- Obstruction of a service provider is an offence punishable by a term of imprisonment not exceeding 12 months (s [35](#)).
- Wilfully evading the service of safety and protection orders, or wilfully withholding information, assisting or conspiring with the respondent to evade the service of orders, is an offence punishable by a term of imprisonment not exceeding one month (s [36](#)).

When dealing with a breach of a protection order, the court may vary the order of its own initiative (s [21\(4\)](#)).

The first case dealing with a breach of a protection order under s 34 was [Republic of Nauru v Amram \[2020\] NRDC 16 \(11 September 2020\)](#). The offender breached an interim protection order by calling the victim, his sister, on her mobile phone while he was intoxicated. The court determined that the seriousness of the offending was close to but below the midpoint on the spectrum. Considering previous cases from Fiji, Australia and New Zealand for guidance, a starting point of three months' imprisonment was imposed and the accused was given a final custodial sentence.