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An Act to—

- (a) replace existing law relating to:
 - (i) divorce and separation; and
 - (ii) the material support of spouses, partners, and children; and
 - (iii) parenting arrangements; and
- (b) provide for:
 - (i) the care and protection of children; and
 - (ii) responses to domestic violence; and
 - (iii) miscellaneous other family law matters.

(13 July 2017)

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Family Protection and Support Act 2017.
- 2 Commencement**
This Act comes into force on 1 December 2017.

Part 1

Preliminary provisions

- 3 Purposes of Act**
The principal purposes of this Act are—
 - (a) to provide for the orderly and equitable settlement of the affairs of spouses and de facto partners when a marriage or de facto relationship breaks down; and

- (b) to ensure that persons with parental responsibility fulfil their duties, and meet their responsibilities relating to the care, welfare, best interests, and development of children; and
- (c) to confirm that the best interests of the child are the paramount consideration in all matters relating to parenting and the care and protection of the child; and
- (d) to encourage, where appropriate, the resolution of issues relating to family relations through negotiation and agreement; and
- (e) to ensure the safety and protection of adults and children in domestic relationships; and
- (f) to ensure that the matters to which this Act applies are consistent with the Cook Islands' commitment to Christian principles and to human rights and gender equality, particularly through its commitments to—
 - (i) the United Nations Convention on the Elimination of All Forms of Discrimination against Women; and
 - (ii) the United Nations Convention on the Rights of the Child; and
 - (iii) the United Nations Convention on the Rights of Persons with Disabilities.

4 Interpretation

In this Act,—

adoptive parent means a person who has adopted another person—

- (a) under an order made under the Cook Islands Act 1915; or
- (b) under an order made in a country outside the Cook Islands that is recognised and effective in the Cook Islands

adult child means a daughter or son who is 18 years or older

applicant, in relation to an application for a protection order or police safety order, includes a person on whose behalf an application is made

caregiver means a person who, under this Act or an order of the court, has the role of providing day-to-day care of a child

child means a person under 18 years

child of the marriage means a child of a husband and wife and includes a child (whether or not a child of the husband or wife) who is a member of the family of the husband and wife at the time at which either party makes an application for divorce

contact, in relation to a child, includes all forms of direct and indirect interaction with the child

court means the High Court of the Cook Islands

de facto relationship has the meaning given in section 5

detain includes moving a person to a police station

DNA parentage test means a test carried out on blood samples, buccal samples, or other genetic material to determine the biological parent or parents of a child

domestic relationship has the meaning given in section 90

domestic violence has the meaning given in section 91

domestic worker means a person who performs domestic work in a private household and who receives, or is entitled to receive, remuneration in any form

domiciled means ordinarily resident in the Cook Islands

economic abuse has the meaning given in section 94

emotional, verbal, or psychological abuse has the meaning given in section 96

family member means—

- (a) a person who is or has been related to the person in question by blood or by or through marriage, or by a de facto relationship, or by adoption; or
- (b) a person who is a member of the person's culturally recognised family group

free agreement has the meaning given in section 6

Justice means a Justice of the Peace for the Cook Islands appointed under the provisions of the Constitution of the Cook Islands (1964)

kaveinga a te kopu tangata has the meaning given in section 81

liable person means a person who is liable to pay support

major long-term issues, in relation to a child, means issues about the care, welfare, and development of the child of a long-term nature and includes (but is not limited to) issues about —

- (a) the child's education (both current and future); and
- (b) the child's religious and cultural upbringing; and
- (c) the child's health; and
- (d) the child's name; and
- (e) changes to the child's living arrangements that will make it significantly more difficult for the child to spend time with a parent or other family member

matrimonial property has the meaning given in section 8 of the Matrimonial Property Act 1976 (NZ)

native land has the meaning given in section 2(1) of the Cook Islands Act 1915

parent means a biological parent or an adoptive parent

parental responsibility has the meaning given in section 34

parenting plan has the meaning given in section 36

partner means either of 2 persons who are (or were) in a de facto relationship

physical abuse has the meaning given in section 92

proceedings means proceedings before a court, and includes any application to a court

protected person means the person for whose benefit a protection order or a police safety order is in force

protection order means a temporary protection order made under section 99 and a final protection order made under section 99 or 100

recorded statement means a statement recorded in an audio, visual, audio-visual, or other electronic format

registered chairperson means a person appointed by the Secretary as a registered chairperson under section 84

Registrar means the Registrar of the High Court and includes a Deputy Registrar of the High Court

respondent means the person against whom an application for an order under this Act is—

- (a) sought; or
- (b) in force

Secretary means the Secretary of the Ministry of Internal Affairs

sexual abuse has the meaning given in section 93

sexual contact includes—

- (a) vaginal intercourse, anal intercourse, fellatio, cunnilingus, and anilingus; and
- (b) any intrusion of any part of a person's body, or of any object, into the genital or anal opening of another person's body; and
- (c) the introduction of any part of the penis of a person into the mouth of another person; and
- (d) any touching of the sexual or other intimate parts of a person whether directly or through the clothing or other material intended to cover the sexual or other intimate parts

spouse means either of 2 persons who are (or were) married

stalking has the meaning given in section 95

support means the provision of money, land, property, assets, or valuable goods

support order means an order made under section 14 requiring one person to provide another person with 1 or more of the following:

- (a) domestic support;
- (b) child support;
- (c) childbearing expenses

uipaanga kopu tangata has the meaning given in section 80

Vaka means the localities of Takitumu, Te-Au-O-Tonga, and Puaikura on Rarotonga

valuable goods includes fish, meat, taro, and livestock, including pigs, goats, and chicken

weapon means—

- (a) a firearm of any kind; or
- (b) an object used for causing injury to, or incapacitating, an individual; or
- (c) a part of a firearm or object used for causing injury to, or incapacitating, an individual.

5 Definition of de facto relationship

(1) A **de facto relationship** means a relationship between a man and a woman who—

- (a) live together as a couple in a relationship in the nature of a marriage; and
- (b) are not married to each other; and
- (c) are both aged 18 years or older.

(2) In determining whether a person is (or has been) in a de facto relationship, the court may consider all or any of the following—

- (a) the length of the period during which the parties have been living together (or lived together):
 - (b) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties:
 - (c) the degree of mutual commitment to a shared life:
 - (d) the degree of shared care and support of children.
- (3) No finding in respect of any of the specific factors listed in subsection (2), or any specific combination of them, is necessary for a finding that there is or has been a de facto relationship.
- (4) The court may have regard to such matters, and to attach such weight to any matter, as seems appropriate to the court in the circumstances of the case.

6 Definition of free agreement

- (1) **Free agreement** means an express agreement by words or conduct to engage in sexual contact.
- (2) The circumstances in which a person does not provide free agreement to sexual contact include, but are not limited to, the following—
- (a) the agreement is expressed by the words or conduct of another person; or
 - (b) the person is incapable of understanding the nature of the sexual contact or of communicating her or his unwillingness to participate in the sexual contact due to mental or physical disability; or
 - (c) the person is incited to engage in sexual contact by a person abusing a position of trust, power, or authority; or
 - (d) the person submits because of threats or intimidation against the person or another person; or
 - (e) the person is asleep, unconscious, or so affected by alcohol or another drug so as to be incapable of providing free agreement; or
 - (f) the person, having provided free agreement to engage in sexual contact, expresses, by words or conduct, a lack of agreement to continue to engage in sexual contact.

7 Determining child's best interests

In determining what is in the **child's best interests**, a court must take into account—

- (a) the ascertainable views of the child concerned (considered in the light of the developing capacities of the child, including the child's age and capacity to understand); and
- (b) the likely effect that a change in circumstances will have on the child, including the likely effect of separation from—
 - (i) either parent; or
 - (ii) any other child or person with whom the child has been living; and
- (c) the child's age, sex, background, and any characteristics of the child which the court considers relevant; and
- (d) the child's physical, emotional, and educational needs and the capability, based on evidence, of each of the child's parents or of any other person to meet those needs; and

- (e) the need to protect the child from any physical or psychological harm or any risk of physical or psychological harm; and
- (f) the attitude to the child, and to the responsibilities of parenthood, demonstrated by a person seeking parental responsibility for the child, based on the duration, quality, and quantity of care that the person has already provided to the child; and
- (g) any other factor or circumstance as seems relevant to the court.

8 Act binds the Crown

This Act binds the Crown.

Part 2 Divorce

9 Application for divorce

If either party to a marriage has been domiciled in the Cook Islands for more than 2 years, an application for a divorce order may be made to the court—

- (a) by either party to the marriage; or
- (b) jointly by both parties to the marriage.

10 Court's power to make divorce order

- (1) The court must make an order for divorce if, at the time the application is made, the parties have been separated for at least 12 months.
- (2) The court may make a divorce order if, at the time the application is made, the parties have not been separated for at least 12 months but—
 - (a) the application is made jointly by both parties; and
 - (b) neither party is living on a permanent basis with a child of the marriage.

11 Period of separation

- (1) A separation period begins—
 - (a) when the parties to a marriage make a joint application for divorce; or
 - (b) when notice of one party's application for divorce is served on the other party; or
 - (c) when the parties cease living together.
- (2) A separation period continues after an application for divorce is made even if the parties continue to reside in the same residence or even if one party provides domestic services to the other.
- (3) If the parties reconcile during a separation period and subsequently separate again, the period of reconciliation is not included in the calculation of the separation period.
- (4) A period of separation immediately before a reconciliation must be included in the calculation of the separation period if the parties subsequently separate again.

12 Legal effect of separation

At any time during a separation period the court may, on the application of either party to the marriage, do any of the following—

- (a) make a support order under Part 3 requiring one spouse to pay domestic support or child support to the other spouse;
- (b) make a parenting order under Part 4;
- (c) determine which of the parties is entitled to continue to reside in their joint residence regardless of legal title in accordance with sections 27 and 28 of the Matrimonial Property Act 1976 (NZ).

Part 3

Domestic and child support

Preliminary provisions

13 Purposes of Part

The purposes of this Part are—

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

14 Court's power to make support order

- (1) The court may make, in accordance with this Part, a support order.
- (2) A support order may deal with 1 or more of the following matters—
 - (a) the provision of domestic support by one former spouse or partner to the other former spouse or partner;
 - (b) childbearing expenses;
 - (c) the provision of child support for 1 or more children, including adult children.
- (3) The court may order the payment of support in 1 or more of the following forms—
 - (a) periodic payments for a specified period;
 - (b) a lump sum payment;
 - (c) property, land, or any other assets;
 - (d) valuable goods.
- (4) The court may order the payment of support in the form of valuable goods only if the liable person does not earn or have sufficient money to pay the support ordered.
- (5) If the exclusion of a legal or equitable interest in native land results in an inequitable result for one spouse or partner, the court may order additional or other forms of support.

15 Expiry, variation, or discharge of support order

- (1) An application to vary or discharge a support order may be made by a party to the support order.
- (2) The court may, on receiving an application, vary or discharge a support order if satisfied that varying or discharging the order is justified because of a change in the circumstances of—
 - (a) a party to the order; or
 - (b) a subject of the order.
- (3) A child support order in respect of a child expires and ceases to have effect when the child turns 18, except as provided in section 23.

*Domestic support***16 Persons who may apply for domestic support**

After separation or divorce, each spouse or partner may apply to the court for a support order requiring the payment of domestic support.

17 Court's power to order payment of domestic support

The court may, on receiving an application under section 16, make a support order requiring one spouse or partner to provide domestic support to the other spouse or partner for a specified period.

18 Factors relevant to determining amount of domestic support order

- (1) The court must consider the following factors in determining the amount, if any, of domestic support—
 - (a) the age and state of health of each spouse or partner:
 - (b) the income, earning capacity, property, and financial resources of each spouse or partner:
 - (c) whether either spouse or partner has parental responsibility for a child or has any dependents:
 - (d) the ability of each spouse or partner to support—
 - (i) herself or himself; and
 - (ii) any child for whom he or she has parental responsibility; and
 - (iii) any dependants:
 - (e) the eligibility of either spouse or partner for a pension, allowance, or benefit, whether the fund or scheme was established, or operates, within or outside the Cook Islands, and the rate of any such pension, allowance, or benefit that is being paid, or will be paid, to either spouse or partner:
 - (f) the extent to which the payment of support to a spouse or partner would increase the earning capacity of that person by enabling the person to—
 - (i) undertake a course of education or training; or
 - (ii) establish a business; or
 - (iii) obtain an adequate income property:
 - (g) the extent to which the spouse or partner who has applied for support has made financial or non-financial contributions to the other party's—
 - (i) income; or

- (ii) earning capacity; or
 - (iii) property; or
 - (iv) financial resources:
- (h) the duration of the marriage or the de facto relationship and the extent to which it has affected the earning capacity of the spouse or partner who has applied for support:
- (i) the degree to which one spouse or partner has access to, the use of, and control over native lands, resources, and hunting and fishing grounds that results in material benefits to that person that are not equally shared by the other spouse or partner:
- (j) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.
- (2) In this section, a **dependant** is a person who relies on the material support provided by another person by reason of age, disability, or infirmity.

Childbearing expenses

19 Court's power to order payment of childbearing expenses

- (1) The court may, on receiving an application by the mother of a child, or in respect of the deceased mother of a child, make a support order requiring the father of the child to make an equitable contribution towards 1 or more of the following—
 - (a) the support of the mother during pregnancy:
 - (b) the mother's reasonable medical expenses relating to the pregnancy and birth:
 - (c) if the child is stillborn, or dies and the death is related to the birth, the reasonable expenses of the child's funeral:
 - (d) if the mother dies and the death is as a result of the pregnancy or birth, the reasonable expenses of the mother's funeral.
- (2) Subsection (1) applies whether or not the father of the child is or was married to the mother.

Child support

20 Persons who may apply for child support order

One or more of the following persons may apply to the court for a support order requiring the payment of child support—

- (a) either or both of the child's parents:
- (b) any caregiver of the child:
- (c) with the leave of the court, any person concerned with the welfare, best interests, and development of a child.

21 Court's power to order payment of child support

- (1) The court may, on receiving an application under section 20, make a support order requiring either or both of the child's parents to pay child support to the applicant.
- (2) Each parent of a child is liable for the reasonable and necessary support of the child.

- (3) The making of a support order against one parent for the support of a child does not reduce the liability of the other parent to provide support for the child.

22 Factors relevant to determining amount of child support

The court must consider the following factors in determining the amount of child support payable—

- (a) the need to provide suitable accommodation for the child;
- (b) the age and health of the child, including any special needs of the child;
- (c) the educational or training needs of the child;
- (d) the financial circumstances of the child;
- (e) the availability and cost of suitable child-care facilities or services;
- (f) the needs and resources of the person from whom child support is sought;
- (g) the needs and resources of any caregiver or caregivers;
- (h) the previous commitments of the person from whom child support is sought to pay support to any other child or person, if the court regards these as relevant;
- (i) any fact or circumstance that, in the opinion of the court, the justice of the case requires to be taken into account.

23 Child support for adult child

A court may order the provision of child support for an adult child if the provision of support is necessary—

- (a) to enable the adult child to complete her or his education; or
- (b) because of a mental or physical disability of the adult child.

Support enforcement orders

24 Court's power to make support enforcement order

- (1) A person with a support order in their favour may apply to the court for a support enforcement order.
- (2) If an application under this section is made and the court is satisfied that the liable person is in breach of the terms of a support order, the court may make an order requiring 1 or more of the following—
 - (a) that a specified amount is deducted weekly from the wages of the liable person and paid to the person in whose favour the support enforcement order is made;
 - (b) that a specified amount is deducted from the bank account of the liable person on a specified day and paid to the person in whose favour the support enforcement order is made;
 - (c) that a police officer—
 - (i) seize valuable goods owned by the liable person to the value specified by the court; and
 - (ii) deliver them to the person in whose favour the support enforcement order is made.
- (3) Deductions under subsection (2)(a) and (b) may be a single deduction or periodic deductions of a specified weekly, fortnightly, or monthly amount for a specified period.

- (4) Nothing in this section prevents a person with a support order in their favour from seeking a remedy under the Code of Civil Procedure of the High Court 1981.

Paternity orders

25 Persons who may apply for paternity order

An application to the court for a paternity order in respect of a child may be made by—

- (a) either parent of the child; or
- (b) the child, if she or he is of an age and maturity to understand the consequences of a paternity order; or
- (c) any caregiver of the child.

26 Presumption of paternity

A man is presumed to be the father of a child if—

- (a) he and the child's mother were married or in a de facto relationship—
 - (i) at the time of the child's conception; or
 - (ii) at the time of the child's birth; or
- (b) he is named as the child's father on the child's birth certificate.

27 Court's power to make paternity order

- (1) On receiving an application for a paternity order in respect of a child, the court may,—
 - (a) if satisfied that a person is the father of the child, make an order declaring the person is the father of the child; or
 - (b) if satisfied that a person is not the father of the child, make an order declaring the person is not the father of the child.
- (2) In proceedings for the payment of childbearing expenses under section 19 or a child support order under section 21,—
 - (a) a paternity order in respect of a child is conclusive evidence that the person against whom it is made is the father of the child; and
 - (b) an order declaring a person is not the father of the child is conclusive evidence that the person is not the father of the child.

28 Evidence of mother unnecessary

- (1) The court may make a paternity order without hearing the evidence of the mother of the child.
- (2) If the mother of the child gives evidence in relation to a paternity order, corroboration of her evidence is unnecessary.

29 DNA parentage testing

- (1) The court may recommend that a DNA parentage test is carried out on—
 - (a) a child; and
 - (b) any person who may be a parent of the child.

- (2) If the court recommends that a DNA parentage test is carried out in accordance with subsection (1), a refusal to consent to the test may be given to the court as evidence.
- (3) A person who refuses to consent to a DNA parentage test must be given the opportunity to explain to the court the reasons for the refusal.
- (4) The court may draw any inferences it considers appropriate from—
 - (a) a refusal by a person who may be a parent of the child to consent to a parentage test; or
 - (b) a refusal by a parent or caregiver of the child to consent to a parentage test being carried out on the child.

30 Consent to DNA parentage test on child

DNA parentage tests may be carried out on a child only if written consent has been given by—

- (a) a parent or caregiver of the child; and
- (b) the child, if the court considers the child to be of an age and maturity to understand the consequences of consenting to DNA testing as part of parentage testing.

31 Costs of parentage tests

The court must determine how the costs of DNA parentage tests are to be met by the parties.

Part 4

Parenting arrangements

Preliminary provisions

32 Purposes of Part

The purposes of this Part are—

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

33 Child's best interests paramount

The best interests of the child are the first and paramount consideration in all proceedings under this Part.

34 Definition of parental responsibility

- (1) **Parental responsibility** for a child means the responsibility—

- (a) to safeguard and promote the child's welfare, best interests, and development; and

- (b) to provide to the child, in a manner appropriate to the stage of development of the child, direction and guidance; and
 - (c) to contribute to the child's intellectual, emotional, physical, social, cultural, and other personal development; and
 - (d) to maintain personal relations and direct contact with the child on a regular basis if the child is not living with the parent, if appropriate; and
 - (e) to act as the child's legal representative; and
 - (f) to determine for or with the child questions about major long-term issues affecting the child.
- (2) Each parent and caregiver of a child has parental responsibility for the child.
 - (3) Subsection (2) has effect despite any changes in the nature of the relationships of the child's parents such as—
 - (a) either or both of them remarrying; or
 - (b) either or both of them entering into a de facto relationship.
 - (4) A caregiver of a child may perform parental responsibilities without the consent of others with parental responsibility in relation to issues that are not major long-term issues.
 - (5) To avoid doubt, parental responsibility encompasses (without limitation) all the rights, responsibilities, and duties of guardianship, as that term is used in other legislation.

35 Determining major long-term issues

- (1) In determining major long-term issues, a caregiver must, wherever practicable, act jointly (in particular, by consulting with the aim of securing agreement) with any other person with parental responsibility for the child.
- (2) If agreement cannot be reached in determining a major long-term issue the court may, on application from a person with parental responsibility, make a major long-term issues order that provides direction on the major long-term issue.

Parenting plans

36 Definition of parenting plan

- (1) A parenting plan is an agreement for the purpose of establishing the parental responsibilities and the caregiving arrangements for a child made between—
 - (a) the parents of the child; or
 - (b) a parent or both parents and other relevant persons involved in the care of the child.
- (2) A parenting plan must specify—
 - (a) the caregiver or caregivers of the child; and
 - (b) the process to be used for resolving disputes about the terms or operation of the parenting plan; and
 - (c) the process to be used for changing the plan to take account of the changing wishes, needs, or circumstances of the child or the parties to the plan.
- (3) A parenting plan may also deal with one or more of the following matters—
 - (a) the time the child is to spend with any specified person:

- (b) the allocation of parental responsibilities for the child:
- (c) the form of consultations that persons with parental responsibility are to have with one another about decisions to be made in the exercise of that responsibility:
- (d) the communication and the means of communication the child is to have with other persons:
- (e) any other aspect of the welfare, best interests and development of the child or any other aspect of parental responsibility for the child.

37 Registration of parenting plan

- (1) The parties to a parenting plan may apply to the court for registration of the plan.
- (2) If the court is satisfied that the plan is in the child's best interests, the court must register the plan.
- (3) If the court is not satisfied that the plan is in the child's best interests, the Registrar must set down the matter for a hearing and give notice to the relevant parties identified by the court of the date, time, and place of the hearing.
- (4) Following the hearing, the court may—
 - (a) vary the plan, with the agreement of the parties, and register it; or
 - (b) cancel the plan and make a parenting order under section 40.
- (5) A parenting plan that is registered has the same effect as a parenting order made under this Part.

38 Review of registered parenting plan

- (1) The court may review a registered parenting plan on receiving an application for review by 1 or more parties to the plan.
- (2) The court must give each party to the parenting plan an opportunity to make submissions on the application for review.
- (3) If the court is satisfied that the child is of an age and maturity to understand the proceedings, the court must give the child an opportunity to express any views on the application for review.
- (4) Following its review of the parenting plan, the court may, if satisfied that it is in the best interests of the child to do so,—
 - (a) vary the parenting plan; or
 - (b) discharge the plan; or
 - (c) confirm the plan.
- (5) A parenting plan that is varied by the court under this section has the same effect as if it were the plan originally agreed to and registered by the parties.

Parenting orders

39 Persons who may apply for parenting order

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

- (a) either or both of the parents; or
- (b) a representative of the child; or
- (c) with the leave of the court, a family member; or

- (d) with the leave of the court, any other person concerned with the welfare, best interests, and development of the child.

40 Court's power to make parenting order

- (1) The court may make a parenting order following an application under section 39, or on its own initiative under section 37.
- (2) The court must consider the best interests of the child as the first and paramount consideration in determining—
 - (a) whether to make a parenting order; and
 - (b) the terms of the parenting order.

41 Content of parenting order

A parenting order must—

- (a) specify the caregiver or caregivers of the child; and
 - (b) determine the time or times when specified caregivers have the role of providing the day-to-day care of the child; and
 - (c) specify any person whose contact with the child must not be restricted; and
 - (d) specify any person whose contact with the child is prohibited or restricted; and
 - (e) give directions for the determination of a specific question that has arisen, or that may arise, in connection with any aspect of parental responsibility for a child; and
 - (f) order that a parent or caregiver must obtain the consent of the court before taking any steps or actions of a kind specified in the order.
- (2) If a parenting order deals with contact with a child, it must include any conditions that are necessary or desirable to either facilitate or restrict the contact (as the case requires), including conditions relating to—
 - (a) the nature of the contact (for example, whether it is direct contact (that is, face to face) or some form of indirect contact (for example, by way of letters, phone calls, or email); and
 - (b) the place, duration, and timing of the contact; and
 - (c) whether another person must or may be present during contact.

42 Expiry, variation, or discharge of parenting order

- (1) A parenting order expires and ceases to have effect when a child turns 18.
- (2) An application to vary or discharge a parenting order may be made by—
 - (a) a party to the parenting order; or
 - (b) a representative of the child; or
 - (c) the Secretary, if the child is in the care of the Ministry of Internal Affairs.
- (3) The court may, on application, vary or discharge a parenting order—
 - (a) if satisfied that it is in the best interests of the child to do so; and
 - (b) if each party to the parenting order has been given an opportunity to make submissions on the application; and
 - (c) if the court considers it appropriate, a representative of the child has been given an opportunity to make submissions on the application.

43 Primacy of parenting order

If there is a conflict between a parenting order and a person's parental responsibility, the parenting order has primacy.

*Parenting enforcement orders***44 Court's power to make parenting enforcement order**

(1) An application to the court for a parenting enforcement order may be made by—

- (a) a party to a parenting order; or
- (b) with the leave of the court, a person concerned with the welfare, best interests, and development of a child.

(2) If satisfied that a party to a parenting order is in breach of the order, the court may make a parenting enforcement order that does either or both of the following—

- (a) varies, reduces, or prohibits contact between the child and the person who has breached the order;
- (b) directs the person in breach of the order to deposit a bond not exceeding \$5,000 in the court as an assurance that the person will not breach the parenting order again.

(3) If, after depositing a bond under subsection (2)(b), the person breaches the parenting order again, the court may direct that—

- (a) any costs incurred by another party to the parenting order are satisfied from that bond; or
- (b) that some or all of the bond is forfeited to the Crown.

(4) If a parenting order is discharged or expires, any bond deposited under subsection (2)(b) must be returned to the person who deposited it, less any amount paid or forfeited under subsection (3).

45 Return of child

If the court is satisfied that a party to a parenting order has breached the order by not returning a child, the court may issue a warrant authorising a police officer or a person named in the warrant—

- (a) to take immediate custody of the child; and
- (b) to deliver the child to any caregiver of the child under the parenting order.

Part 5

Care and protection

Subpart 1—Preliminary provisions

46 Purposes of Part

The purposes of this Part are—

- (a) to affirm that the best interests of the child, both in childhood and later life, are the paramount consideration in all matters relating to the care and protection of the child;

- (b) to provide, where appropriate, for the convening of an uipaanga kopu tangata—
 - (i) to encourage family members to take part in decisions affecting the child;
 - (ii) to increase the support for the child by family members and other relevant persons;
 - (iii) to make agreed arrangements for the care and protection of the child;
- (c) to assist parents and caregivers to exercise their responsibilities to prevent children from experiencing harm, abuse, neglect, or deprivation;
- (d) to provide for the care and protection of children who have experienced harm, abuse, neglect, or deprivation;
- (e) to ensure that a child is removed from the child's home only if there is a serious risk of harm to the child;
- (f) to ensure that, if a child is removed from the child's home, the child, wherever practicable, lives in an appropriate family-like setting in the same locality as before and in which the child's links with family members and other relevant persons are maintained.

47 Child's best interests paramount

The best interests of the child are the first and paramount consideration in all proceedings under this Part.

48 Definition of in need of care and protection

A child is **in need of care and protection** for the purposes of this Part if—

- (a) the child is being, or is likely to be, harmed (whether physically, emotionally or sexually), ill-treated, abused, or seriously deprived; or
- (b) the child's development or physical, mental, or emotional well-being is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, serious and avoidable; or
- (c) serious differences exist between the child and the parents or any caregiver of the child so that the physical, mental, or emotional well-being of the child is being seriously impaired; or
- (d) the child has behaved, or is behaving, in a manner that—
 - (i) is, or is likely to be, harmful to the physical, mental, or emotional well-being of the child or to others; and
 - (ii) the parents or caregivers of the child are unable or unwilling to control; or
- (e) the parents or caregivers of the child are unwilling or unable to care for the child; or
- (f) the parents or caregivers of the child have abandoned the child; or
- (g) serious differences exist between a parent or caregiver of the child and the other parent so that the physical, mental, or emotional well-being of the child is being seriously impaired.

49 Secretary's duty

- (1) This Part is administered by the Ministry of Internal Affairs.

- (2) It is the duty of the Secretary to take positive and prompt action and steps to implement the purposes of this Part.
- (3) For the purposes of this Part, the Secretary must—
 - (a) establish services (including social work services, family support services, and community-based services) designed to advance the care and protection of children in the community or the home; and
 - (b) establish, facilitate, and supervise the use of uipaanga kopu tangata in the making of an agreed kaveinga a te kopu tangata regarding the care and protection of children; and
 - (c) ensure that children placed in the care of the Ministry of Internal Affairs receive adequate and appropriate care; and
 - (d) convey to members of the public (including children) and members of professional and occupational groups, through education and publicity,—
 - (i) an awareness of child abuse; and
 - (ii) an understanding of the unacceptability of child abuse; and
 - (iii) the ways in which child abuse may be prevented; and
 - (iv) the importance of reporting cases of child abuse; and
 - (v) how to report child abuse; and
 - (e) ensure, wherever possible, that all policies adopted and all services provided by the Ministry of Internal Affairs—
 - (i) support the role of families and other relevant persons in the care and protection of children; and
 - (ii) strengthen and encourage children's links with family members and other relevant persons; and
 - (f) establish procedures to ensure that the cases of children placed in the care of the Ministry of Internal Affairs are regularly reviewed in order to assess the adequacy and appropriateness of that action; and
 - (g) ensure that persons providing services under this Part receive adequate training and comply with appropriate standards; and
 - (h) monitor and assess the services provided by the Ministry of Internal Affairs under this Part.
- (4) The Secretary may delegate the exercise of all or any of the Secretary's duties under this section to any member of staff of the Ministry of Internal Affairs.
- (5) A delegation under subsection (4) must be in writing and signed by the Secretary.

Subpart 2— Notification of abuse

50 Notification of abuse

- (1) A person who suspects a child is in need of care and protection may notify the Ministry of Internal Affairs.
- (2) A police officer, a teacher at a school, a religious leader, a doctor, or a nurse must, as soon as practicable, notify the Ministry of Internal Affairs if—
 - (a) she or he believes on reasonable grounds that a child has experienced, or is experiencing,—
 - (i) sexual abuse; or

- (ii) non-accidental physical injury; and
 - (b) the person's reasons for the belief arise from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid).
- (3) A person who notifies the Ministry of Internal Affairs under subsection (1) or (2) must provide—
 - (a) the child's name or description; and
 - (b) the reasons for the person's belief.
- (4) If a notification is received by the Ministry of Internal Affairs under subsection (1) or (2), the Secretary must record the notification and investigate the matter.
- (5) If the Secretary is satisfied after investigation that there are reasonable grounds for believing a child is in need of care and protection, the Secretary must—
 - (a) convene an uipaanga kopu tangata; or
 - (b) make a temporary care arrangement in respect of the child in accordance with subpart 3 of this Part; or
 - (c) apply to the court for a supervision order or a care order.

51 Offence of failing to notify

- (1) A person who, without reasonable excuse, breaches section 50(2) commits an offence.
- (2) A person convicted of an offence against subsection (1) is liable to a fine not exceeding \$200.

Subpart 3—Temporary care arrangements

52 Arrangements for temporary care of child

- (1) The Secretary may make a temporary care arrangement that places a child in the care of the Ministry of Internal Affairs for a period not exceeding 3 months.
- (2) The arrangement may be made—
 - (a) at the request, and with the agreement, of any person who is providing day-to-day care of the child immediately before the arrangement is made; or
 - (b) on the Secretary's own initiative, but only if the person who is providing day-to-day care of the child immediately before the arrangement is made—
 - (i) cannot (after reasonable inquiries) be found; or
 - (ii) is incapable of requesting or agreeing to the arrangement.
- (3) 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.
- (4) The uipaanga kopu tangata must—
 - (a) specify a caregiver or caregivers for the child; or
 - (b) apply to the court for a care order; or

- (c) renew the temporary care arrangement for a further period not exceeding 3 months.
- (5) At the end of any extended temporary care arrangement, an uipaanga kopu tangata must be convened and it must either—
 - (a) specify a caregiver or caregivers for the child; or
 - (b) apply to the court for a care order.
- (6) Despite subsections (3) to (5), if the Secretary believes there has been sexual or physical abuse of the child by any parent, caregiver, or family member of the child, the Secretary—
 - (a) must not convene an uipaanga kopu tangata; and
 - (b) apply to the court for a care order.

53 Form and terms of temporary care arrangements

A temporary care arrangement entered into under section 52 must—

- (a) be in writing; and
- (b) specify the term of the arrangement; and
- (c) provide that the arrangement may be terminated by either the Secretary or a person who requested the arrangement, after giving 7 days' notice in writing; and
- (d) contain provisions relating to the care of the child during the term of the arrangement, including, but not limited to,—
 - (i) the educational, social, and religious needs of the child; and
 - (ii) a programme for the provision of services and assistance for the benefit of the child; and
 - (iii) the responsibilities of the parents, caregivers, or any other person who was providing day-to-day care of the child immediately before the arrangement was made; and
 - (iv) the time or times when specified persons may or may not have contact with the child, and any conditions (such as when, where, and for how long) that apply to the contact.

Subpart 4—Safety warrants

54 Safety warrant may be issued

- (1) If satisfied that a child is urgently in need of care and protection, the court may issue a safety warrant that places the child in the care of the Ministry of Internal Affairs on receiving an application from—
 - (a) a police officer; or
 - (b) the Secretary.
- (2) A safety warrant issued under this section may authorise a police officer to—
 - (a) enter and search, by force if necessary, any residence, building, vehicle, premises, or place where it is believed the child is located; and
 - (b) remove or detain, by force if necessary, the child; and
 - (c) place the child in the care of the Ministry of Internal Affairs.

- (3) The Secretary may, at any time, release a child placed in the care of the Ministry of Internal Affairs under this section if satisfied the child is no longer in need of care and protection.

55 Time limit of safety warrant

- (1) The Secretary must, within 7 days after the date on which a child is placed in the care of the Ministry of Internal Affairs under section 54(2)(c),—
 - (a) release the child from the care of the Ministry of Internal Affairs, if satisfied the child is no longer in need of care and protection; or
 - (b) convene an uipaanga kopu tangata; or
 - (c) apply to the court for a care order.
- (2) If no agreement is reached at an uipaanga kopu tangata, the Secretary must—
 - (a) release the child from the care of the Ministry of Internal Affairs, if satisfied the child is no longer in need of care and protection; or
 - (b) make a temporary care arrangement under section 52 for a period not exceeding 3 months; or
 - (c) apply to the court for a care order.
- (3) If the Secretary believes there has been sexual or physical abuse of the child by a parent, family member, or caregiver of the child, the Secretary—
 - (a) must not convene an uipaanga kopu tangata under subsection (1)(b); but
 - (b) must apply to the court for a care order.
- (4) The child may be kept in the care of the Ministry of Internal Affairs—
 - (a) until an uipaanga kopu tangata is held; or
 - (b) until the child is brought before the court; or
 - (c) for such further period as may be directed by the court.

Subpart 5—Supervision orders

56 Application for supervision order

- (1) The Secretary may apply to the court for a supervision order if the Secretary—
 - (a) believes on reasonable grounds that a child is, or is likely to be, in need of care and protection; and
 - (b) is satisfied a supervision order is in the best interests of the child.
- (2) A supervision order places the child under the supervision of the Ministry of Internal Affairs.

57 Court's power to make supervision order

The court may, on receiving an application from the Secretary, make a supervision order if satisfied that—

- (a) the child is in need of care and protection; and
- (b) a supervision order is in the best interests of the child.

58 Conditions of supervision order

- (1) A supervision order may include conditions to be observed by all or any of the following—
 - (a) the child to whom it relates:

- (b) a parent or caregiver of the child;
 - (c) any person providing day-to-day care of the child;
 - (d) a person with whom the child is living.
- (2) The conditions of a supervision order must be conditions that the court considers to be in the best interests of the child.

59 Appointment of supervisor

- (1) The Secretary must appoint a person to supervise a child to whom a supervision order relates.
- (2) The Secretary may appoint a person as a supervisor only if satisfied that—
- (a) the person has undertaken training in supervision approved by the Secretary for the purposes of this section; and
 - (b) the person has demonstrated experience in dealing with children in need of care and protection.

60 Duty of supervisor

The duties of a supervisor appointed by the Secretary under section 59 are—

- (a) to advise and assist the child who is the subject of the supervision order; and
- (b) to take such steps as are reasonably necessary to give effect to the supervision order; and
- (c) to consider whether to apply to the court for the variation or discharge of the supervision order if—
 - (i) the order is not wholly complied with and therefore requires variation, discharge, or enforcement; or
 - (ii) the supervisor considers that the order is no longer necessary or in the best interests of the child.

61 Expiry, discharge, or variation of supervision order

- (1) A supervision order expires and ceases to have effect when a child turns 18.
- (2) The court may vary or discharge a supervision order on receiving an application from—
- (a) the supervisor of the child; or
 - (b) the child; or
 - (c) with the leave of the court, any other person.

Subpart 6—Care orders

62 Application for care order

The Secretary may apply to the court for a care order if the Secretary—

- (a) believes on reasonable grounds that the child is, or is likely to be, in need of care and protection; and
- (b) is satisfied that it is in the best interests of the child to place the child in the care of the Ministry of Internal Affairs.

63 Court's power to make care order

- (1) The court may, on receiving an application from the Secretary, make a care order if it is satisfied that—
 - (a) the child is in need of care and protection; and
 - (b) a care order is in the best interests of the child.
- (2) A care order places the child in the care of the Ministry of Internal Affairs.
- (3) A care order may authorise the Secretary to prohibit or impose restrictions on the contact that any specified person may have with the child.

64 Expiry, discharge, or variation of care order

- (1) A care order expires when a child turns 18.
- (2) The court may, in accordance with this section, vary or discharge a care order on receiving an application from—
 - (a) the Secretary; or
 - (b) the child; or
 - (c) with leave of the court, any other person.
- (3) The court may vary a care order if satisfied that—
 - (a) it is in the best interests of the child to do so; and
 - (b) the circumstances of the child have changed and the order requires variation to safeguard or promote the child's welfare.

Subpart 7—Placement of child in care of Ministry of Internal Affairs**65 Responsibility, duty, and power of Secretary**

While a child is placed in the care of the Ministry of Internal Affairs, the Secretary—

- (a) has parental responsibility for the child, but may determine whether, and to what extent, any parent of the child may also exercise parental responsibility for the child; and
- (b) has a duty to ensure the child receives adequate and appropriate care; and
- (c) may, if a care order authorises the Secretary to impose restrictions on contact with the child, prohibit or restrict contact between any specified person and the child and impose conditions (such as when, where, and for how long) that apply to that contact; and
- (d) must appoint at least one caregiver of the child, who may be—
 - (i) a parent or previous caregiver of the child; or
 - (ii) a person who was providing day-to-day care of the child immediately before the child was placed in the care of the Ministry of Internal Affairs; or
 - (iii) a family member of the child; or
 - (iv) any other person approved by the Secretary.

66 Caregiver of child in care of Ministry of Internal Affairs

- (1) A caregiver appointed under section 65(d) must, on behalf of the Secretary and in accordance with any conditions relating to contact,—
 - (a) provide day-to-day care of the child; and

- (b) exercise parental responsibility for the child.
- (2) The Ministry of Internal Affairs must pay a weekly amount, as prescribed in the regulations, to a person appointed as a caregiver of a child under section 65, unless the person is a parent, previous caregiver, or family member of the child.

67 Contact with children in care

Unless it is not in the best interests of a child, the Secretary must allow any child in his or her care reasonable contact with all or any of the following—

- (a) the child's parents;
- (b) a person who was a caregiver of the child immediately before the child was placed in the care of the Ministry of Internal Affairs;
- (c) a person who was providing day-to-day care of the child immediately before the child was placed in the care of the Ministry of Internal Affairs.

68 Court's power to make contact orders

- (1) The court may make a contact order in respect of a child who is in the care of the Ministry of Internal Affairs.
- (2) A contact order may—
 - (a) authorise contact, with or without conditions, between the child and any specified person; or
 - (b) prohibit or restrict contact between the child and any specified person, and impose conditions on any contact.
- (3) An application for a contact order under subsection (2)(a) must be made by the person seeking contact.
- (4) An application for a contact order under subsection (2)(b) may be made by the Secretary, the child, or (with the leave of the court) any person.
- (5) The court 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.
- (6) An application for variation or discharge may be made by the Secretary, the child, or any person who is authorised to have contact under the contact order.

Subpart 8—Court may convene uipaanga kopu tangata

69 Court's power to convene uipaanga kopu tangata

- (1) The court may—
 - (a) direct the Secretary to convene an uipaanga kopu tangata at any stage of the proceedings for an order under this Part to consider such matters relating to the child as the court directs; and
 - (b) adjourn the hearing of the application for the order until the uipaanga kopu tangata has been held.
- (2) If an uipaanga kopu tangata convened under subsection (1) makes a kaveinga a te kopu tangata in accordance with sections 81 and 82, the court may cease the proceedings for an order.

Subpart 9—Procedure for Part 5

*Reports***70 Social welfare report**

- (1) The court may, before making an order in any proceeding under this Part, direct that a report on the child from a social welfare worker be prepared.
- (2) A report from a social welfare worker must include—
 - (a) a professional assessment of the child; and
 - (b) details of past and current parenting arrangements; and
 - (c) details of the child's relationships with significant people; and
 - (d) the child's views; and
 - (e) recommendations for arrangements that will best meet the care and protection needs of the child; and
 - (f) any other information that may assist the court in its consideration of the matter; and
 - (g) any specific information the court requests.

71 Medical and psychological report

- (1) The court may, on its own initiative or at the request of a party to proceedings under this Part, direct any of the following persons to undergo a medical or psychological examination—
 - (a) the child who is the subject of proceedings under this Part;
 - (b) a parent or caregiver of the child;
 - (c) any person who is proposed to be a caregiver of the child.
- (2) The court must not give a direction under subsection (1)(b) or (c) unless the person to whom it applies gives written consent to the making of the direction.
- (3) If a person refuses to give written consent, the court may draw such inferences (if any) from the fact of the refusal as appear to it to be relevant in the circumstances, but the person must have had the opportunity to explain to the court the reasons for that refusal.
- (4) Every person who carries out a medical or psychological examination of a person pursuant to a direction under this section must prepare a written report of the results of that examination and supply the report to the court.

72 Further provisions relating to medical and psychological examinations

- (1) Every medical examination carried out under section 71 must be carried out by a registered medical practitioner.
- (2) Every psychological examination carried out under section 71 must be carried out by a person who the court is satisfied has qualifications that are at least equivalent to those required of a person practising as a psychologist.
- (3) Every child who is examined under section 71 is, where practicable, entitled to have an adult present during the examination—
 - (a) who is nominated for that purpose by the child or, if the child is not of an age and level of maturity to make a nomination, by the Secretary; and
 - (b) who consents to be present.

73 Restrictions on internal examinations and examinations under general anaesthetic

- (1) No medical examination under section 71 may include an internal examination of the genitals or anus of any child unless—
 - (a) the medical practitioner carrying out the examination believes that the child may have been subject to recent physical or sexual abuse involving either or both of those parts of the body; and
 - (b) the child gives written consent to such an examination of that part of the body, if the child is of an age and level of maturity to give that consent.
- (2) No medical examination may include any medical procedure that involves the administration of a general anaesthetic to a child.
- (3) Nothing in subsection (1)(b) requires the consent of a child to a medical examination if the age and level of maturity of the child makes it impracticable to obtain such consent.

74 Liability for reports

A person who provides a report to the court under section 70 or 71 has no civil or criminal liability in respect of the report unless that person has acted in bad faith or without reasonable care.

75 Adjournment for purposes of obtaining report

- (1) An adjournment for the purposes of obtaining a report under section 70 or 71 must not exceed 28 days unless the court in a special case otherwise determines.
- (2) If proceedings are adjourned for the purposes of obtaining a report under this subpart, the person responsible for preparing that report must make all reasonable endeavours to ensure that the report is filed with the court at least 2 working days before the sitting of the court.

76 Access to reports

- (1) A copy of every report provided to the court under section 70 or 71 must, subject to section 77, be given by the Registrar to—
 - (a) each person entitled to appear and be heard in the proceedings to which the report relates; and
 - (b) to each lawyer, or other person representing—
 - (i) any person entitled to appear and be heard in the proceedings to which the report relates; and
 - (ii) the child to whom the proceedings relate; and
 - (iii) each parent and caregiver of the child; and
 - (c) the Secretary; and
 - (d) any other person whom the court considers has a proper interest in receiving a copy of the report.
- (2) Every copy must, wherever possible, be supplied no later than 1 working day before the sitting of the court.

77 Court may order report not to be disclosed

The court may direct that the whole or any part of a report provided under section 70 or 71 must not be disclosed to a person specified in the order if satisfied that such disclosure would be, or is likely to be, detrimental to the physical, mental, or emotional well-being of a child or other person to whom the report relates.

78 Fees for reports

- (1) No fees are payable for social welfare reports prepared under section 70.
- (2) The fees for medical and psychological reports prepared under section 71 must be paid by the Ministry of Justice.

*Uipaanga kopu tangata***79 Objects of uipaanga kopu tangata**

The objects of an uipaanga kopu tangata are—

- (a) to determine whether a child is in need of care and protection; and
- (b) to encourage the child and the child's family members to take part in decisions affecting the child; and
- (c) to increase the support for the child by the child's family members and other relevant persons; and
- (d) to make arrangements for the care and protection of the child to reduce the likelihood of the child being in need of care and protection in the future.

80 Meaning of uipaanga kopu tangata

An **uipaanga kopu tangata** is a meeting about a child to give the relevant uipaanga kopu tangata participants an opportunity—

- (a) to determine whether the child is in need of care and protection; and
- (b) to make a kaveinga a te kopu tangata specifying agreed arrangements for the care and protection of the child; and
- (c) if a kaveinga a te kopu tangata is already in force in relation to the child, to review the kaveinga.

81 Meaning of kaveinga a te kopu tangata

- (1) A **kaveinga a te kopu tangata** is an agreement between—

- (a) the Ministry of Internal Affairs; and
- (b) the relevant uipaanga kopu tangata participants.

- (2) A kaveinga a te kopu tangata—

- (a) must specify the arrangements agreed to by the participants for the care and protection of a child; and
- (b) must be in writing and signed by—
 - (i) the chairperson; and
 - (ii) the relevant uipaanga kopu tangata participants; and
 - (iii) a representative of the Ministry of Internal Affairs; and
- (c) may 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.

82 Content of kaveinga a te kopu tangata

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

- (a) specify—
 - (i) a caregiver or caregivers of the child; and
 - (ii) any person who is specifically authorised to have contact with the child, and any conditions (such as when, where, and for how long) that apply to that contact; and
 - (iii) the allocation of parental responsibilities for a child; and
 - (iv) if 2 or more persons are to share parental responsibilities for a child, the form of consultation those persons are to have with one another about decisions to be made in the exercise of those responsibilities; and
- (b) specify the objectives sought to be achieved for the child, and the period within which those objectives should be achieved; and
- (c) contain details of the service, assistance, and support to be provided for the child and caregiver or caregivers of the child; and
- (d) specify the persons or organisations who will provide the services, assistance, and support; and
- (e) state the responsibilities of the child; and
- (f) state the responsibilities of the caregiver or caregivers of the child; and
- (g) contain such other matters relating to the education, employment, recreation, and welfare of the child as are relevant; and
- (h) specify the process to be used for resolving disputes about the terms or operation of the kaveinga a te kopu tangata.

83 Views of child

If a child in respect of whom an uipaanga kopu tangata is held does not take part in the uipaanga kopu tangata, the registered chairperson must take all reasonable steps—

- (a) to find out the views of the child; and
- (b) to make the views of the child known to all other participants at the uipaanga kopu tangata; and
- (c) to ensure that the views of the child are considered in making a kaveinga a te kopu tangata.

84 Appointment of registered chairperson

- (1) The Secretary must appoint persons to be registered chairpersons for each Vaka and each of the outer islands of the Cook Islands.
- (2) A person can be appointed as a registered chairperson only if—
 - (a) the person has undertaken training in chairing an uipaanga kopu tangata approved by the Secretary for the purposes of this section; and
 - (b) the person has demonstrated experience in care and protection matters; and
 - (c) the person has demonstrated understanding of gender equality; and
 - (d) the Secretary is satisfied that the person meets any other criteria for appointment that are prescribed by regulations made under this Act.

- (3) The Secretary must ensure the appointment of 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.

85 Procedure for convening uipaanga kopu tangata

- (1) If the Secretary wishes, or is directed by the court, to convene an uipaanga kopu tangata, the Secretary must appoint a registered chairperson to convene the uipaanga kopu tangata.
- (2) The registered chairperson must,—
- (a) as soon as is reasonably practicable, appoint a time, date, and place for holding the uipaanga kopu tangata; and
 - (b) by post, email, text message, or orally, inform each person who is entitled to attend of the time, place, and date of the uipaanga kopu tangata, and request them to attend.
- (3) The chairperson must take all reasonable steps to appoint a time, date, and place for holding the uipaanga kopu tangata that is suitable for those persons entitled to attend.

86 Persons entitled to attend uipaanga kopu tangata

The following persons are entitled to attend an uipaanga kopu tangata—

- (a) the child in respect of whom the uipaanga kopu tangata is held, unless the registered chairperson considers that—
 - (i) the attendance of the child is not in the best interests of the child, or may negatively impact on the child, or would, for any other relevant reason, not be suitable for the child; or
 - (ii) the child would be unable, by reason of the child's age and level of maturity, to understand the proceedings:
- (b) the parents of the child;
- (c) any caregivers of the child;
- (d) a representative of the Ministry of Internal Affairs;
- (e) any proposed caregivers of the child;
- (f) any other family member, if the registered chairperson is satisfied it is in the best interests of the child that that person attends.

87 Functions of registered chairperson

- (1) The functions of a registered chairperson are—
- (a) to hear the views of uipaanga kopu tangata participants in relation to—
 - (i) whether the child is in need of care and protection; and
 - (ii) if the child is in need of care and protection, the appropriate arrangements for the care and protection of the child; and
 - (b) to facilitate the making of a kaveinga a te kopu tangata by the participants; and
 - (c) to record in writing the details of the kaveinga a te kopu tangata made by the participants; and
 - (d) if the uipaanga kopu tangata was convened under section 69(1)(a), to provide to the court a written copy of the kaveinga a te kopu tangata; and

- (e) if the uipaanga kopu tangata was convened under section 50(5)(a), 52(3), or 55(1)(b), to provide the Secretary with a written copy of the kaveinga a te kopu tangata.
- (2) If the participants of an uipaanga kopu tangata are unable to reach an agreement in relation to the child, the registered chairperson must,—
 - (a) if the uipaanga kopu tangata was convened under section 50(5)(a), 52(3), or 55(1)(b), inform the Secretary—
 - (i) that no agreement was reached; and
 - (ii) of the reasons no agreement was reached, if appropriate; or
 - (b) if the uipaanga kopu tangata was convened under section 69(1)(a), inform the court—
 - (i) that no agreement was reached; and
 - (ii) of the reasons no agreement was reached, if appropriate.
- (3) A registered chairperson who convenes an uipaanga kopu tangata must take all reasonable steps to ascertain the views of any person who is entitled to attend the uipaanga kopu tangata and who has notified the chairperson that she or he is unable, for any reason, to do so.
- (4) If a registered chairperson ascertains the views of any person under subsection (3), the chairperson must ensure that those views are made known at the uipaanga kopu tangata.

88 Chairperson may determine attendance

- (1) The registered chairperson, in consultation with the Secretary, may request, allow, or refuse attendance of any of the following persons at an uipaanga kopu tangata—
 - (a) a member of the child's community as agreed to by the child;
 - (b) a social welfare worker or police officer who is working with the child or the family, or both;
 - (c) a barrister or solicitor or lay advocate representing the child;
 - (d) any other support person for the child requested by the child.
- (2) If, at any time prior to or during an uipaanga kopu tangata, the registered chairperson believes there has been sexual or physical abuse of the child by a parent, family member, or caregiver, she or he must—
 - (a) immediately stop the uipaanga kopu tangata; and
 - (b) apply to the court for a supervision order or a care order.

Part 6 Domestic violence

Subpart 1—Preliminary provisions

89 Purposes of Part

The purposes of this Part are—

- (a) to ensure the safety and protection of all persons, including children, who experience, or are or may be exposed to, domestic violence; and

- (b) to recognise that domestic violence in all its forms is unacceptable behaviour; and
- (c) to prevent domestic violence.

90 Definition of domestic relationship

A person is in a **domestic relationship** with another person (the **other person**) if the person—

- (a) is or was previously in a marriage or de facto relationship with the other person; or
- (b) is or was previously in a close personal relationship with the other person; or
- (c) has a child with the other person (whether or not the person is or was previously in a marriage or de facto relationship with the other person); or
- (d) is a family member of the other person; or
- (e) is a domestic worker for the other person; or
- (f) is dependent on the other person for help with an activity of daily living required because of disability, illness, or impairment; or
- (g) shares or recently shared the same residence as the other person; or
- (h) is a child who—
 - (i) ordinarily resides or resided with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person.

91 Definition of domestic violence

- (1) In this Part, **domestic violence** means any of the following committed by a person against a person (**person P**) with whom the person is, or has been, in a domestic relationship—

- (a) physical abuse:
- (b) sexual abuse:
- (c) economic abuse:
- (d) emotional, verbal, or psychological abuse:
- (e) stalking:
- (f) causing the death of, or injury to, an animal, even if the animal is not person P's property:
- (g) any conduct that reasonably arouses in person P apprehension or fear of—
 - (i) personal injury; or
 - (ii) damage to property:
- (h) causing or allowing another person to engage in any conduct described in paragraphs (a)-(i):
- (i) a threat of any conduct described in paragraphs (a)-(i):
- (j) any of the above against a person in a domestic relationship with person P if that conduct or threat is intended to arouse an apprehension of fear in person P.

- (2) A single act may amount to abuse and constitute domestic violence.

- (3) A number of acts that together form part of a pattern of behaviour may amount to abuse and constitute domestic violence, even if some of those acts when viewed in isolation may appear to be minor or trivial.

92 Definition of physical abuse

Physical abuse includes any of the following—

- (a) physical assault or any use of physical force:
- (b) forcibly confining or detaining a person:
- (c) depriving a person of access to necessary and adequate food, water, clothing, shelter, or rest.

93 Definition of sexual abuse

Sexual abuse of a person includes any of the following—

- (a) engaging the person in sexual contact without her or his free agreement:
- (b) engaging in any sexual conduct that abuses, humiliates, degrades, or violates the person's sexual integrity:
- (c) exposing the person to sexual material that humiliates, degrades, or violates the person's sexual integrity.

94 Definition of economic abuse

Economic abuse of a person includes any of the following—

- (a) withholding or limiting money that is necessary for the support of the person (for example, money for household necessities, mortgage repayments, or rent in respect of a shared residence):
- (b) coercing the person to relinquish control over money, assets, resources, or income:
- (c) disposing of matrimonial property without the person's full and free consent:
- (d) disposing of assets acquired during a de facto relationship without the person's full and free consent:
- (e) preventing the person from participating in decisions over household expenditure:
- (f) preventing or restricting the person's employment opportunities or access to education.

95 Definition of stalking

Stalking a person means doing any of the following on 2 or more separate occasions—

- (a) following the person:
- (b) watching or loitering outside or near a building or place where the person resides, works, farms, fishes, carries on a business, or studies, or any other place frequented by the person:
- (c) telephoning, text messaging, emailing, or using other technologically assisted means to contact the person, or inducing another person to contact the person:
- (d) sending, or delivering, or causing the delivery of letters, packages, or other objects to the person:

- (e) entering or interfering with property in the person's possession without the express consent of the person;
- (f) keeping the person under surveillance;
- (g) acting in any other way towards the person that could arouse fear in a reasonable person.

96 Definition of emotional, verbal, or psychological abuse

- (1) **Emotional, verbal, or psychological abuse** of a person means a pattern of degrading or humiliating conduct towards the person, including—
 - (a) repeatedly insulting, ridiculing, or name calling;
 - (b) repeatedly threatening the person;
 - (c) repeatedly exhibiting obsessive possessiveness;
 - (d) jealousy constituting a serious invasion of a person's privacy, liberty, integrity, or security.
- (2) A person emotionally, verbally, or psychologically abuses a child if that person physically, sexually, emotionally, verbally, or psychologically abuses a person with whom the child has a domestic relationship.

Subpart 2—Protection orders

97 Persons who may apply for protection order

- (1) A person who is or has been in a domestic relationship with another person may apply to the court for a protection order.
- (2) A person who has an interest in the safety of a person in a domestic relationship (including, but not limited to, a person who is a family member, a police officer, a social welfare worker, a health care provider, a teacher, a traditional leader, a religious leader, or an employer) may apply to the court for a protection order on behalf of the person in a domestic relationship.
- (3) An application made under subsection (2) must be made with the written consent of the person on whose behalf the application is made, unless that person is—
 - (a) a child not of an age or maturity to understand the proceedings; or
 - (b) mentally incapacitated; or
 - (c) unconscious; or
 - (d) regularly under the influence of alcohol or drugs; or
 - (e) at risk of serious physical harm; or
 - (f) in fear for her or his safety; or
 - (g) illiterate or otherwise unable to provide consent in writing; or
 - (h) unable to provide written consent to the court because the person lives in a rural area, outer island, or any other remote location.
- (4) A child may apply for a protection order only with the leave of the court.
- (5) The court may grant leave under subsection (4) only if satisfied the child understands—
 - (a) the nature, purpose, and legal effect of the application; and
 - (b) the legal effect of making a protection order.

98 Means of application

- (1) A person may apply to the court for a protection order, in Maori or in English,—
 - (a) orally, whether in person, by telephone, or any other medium; or
 - (b) in writing, whether by post, email, text, or any other medium.
- (2) The court must, if necessary, reduce the application to writing.

99 Temporary protection order may be made without notice

- (1) On receiving an application for a protection order, the court must make a temporary protection order without notice if satisfied that—
 - (a) the respondent is in a domestic relationship with the applicant; and
 - (b) 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
 - (c) 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.
- (2) A temporary protection order becomes a final protection order by operation of law 3 months after the date on which it is made unless—
 - (a) the court determines otherwise in a hearing requested by the respondent under section 121; or
 - (b) the order is sooner discharged or lapses.
- (3) When a temporary protection order becomes a final protection order under subsection (2), the Registrar must issue the final protection order.

100 Court may direct Registrar to organise hearing

- (1) The court may, on receiving an application for a protection order under section 97, direct the Registrar to organise a hearing if satisfied there is good reason for a hearing at which the applicant, the respondent, or both are present or represented.
- (2) On hearing an application under subsection (1), the court may make a protection order if satisfied that—
 - (a) the respondent is in a domestic relationship with the applicant; and
 - (b) the respondent has committed domestic violence against the applicant, or the applicant has reasonable grounds to fear that the respondent will commit domestic violence.
- (3) In deciding whether to make a protection order under subsection (2), the court must consider the safety and protection of the applicant and any child residing with the applicant to be of paramount importance.
- (4) A protection order made at a hearing is a final protection order.

101 Advice and service of protection order

- (1) The following people must be advised immediately when a protection order is made, or varied under section 106—
 - (a) the respondent;
 - (b) the protected person;
 - (c) the police officer in charge of the police station closest to where the protected person lives.

- (2) The advice may be given orally or in writing, whether in person, by phone, post, email, or any other medium.
- (3) The protection order must be served personally by a police officer on the respondent.
- (4) The order takes effect as soon as the respondent is advised that it has been made, but it lapses 24 hours after it is made unless, before that, the respondent is served as required by subsection (3).
- (5) If an order lapses because it has not been personally served, the protected person and the police officer in charge of the police station closest to where the protected person lives must be advised immediately.

102 Mandatory conditions of every protection order

- (1) It is a condition of every protection order that the respondent must not do or threaten to do any of the following to the protected person or to a person in a domestic relationship with the protected person—
 - (a) physically or sexually abuse the person:
 - (b) stalk the person:
 - (c) economically abuse the person:
 - (d) damage, sell, give away, or otherwise dispose of the person's property:
 - (e) emotionally, verbally, or psychologically abuse the person:
 - (f) cause or allow another person to do any act described in paragraphs (a) to (e) to the person.
- (2) Except as provided by subsection (3), it is a condition of every protection order that the respondent must not—
 - (a) enter or remain on any land or building occupied by the protected person, whether or not the respondent has a legal or equitable interest in the land or building; or
 - (b) if the protected person is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or
 - (c) 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.
- (3) Subsection (2) does not apply if the protected person and the respondent are living together in the same residence with the express consent of the protected person.
- (4) While a protection order is in force, the provisions 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.

103 Conditions relating to weapons

The court may include either or both of the following conditions in a protection order—

- (a) a prohibition on the respondent possessing, or having under her or his control, any weapon:
- (b) a direction to the respondent to dispose of any weapon or surrender it to a police officer for disposal.

104 Conditions relating to occupation of shared residence

- (1) The court may include all or any of the following conditions in a protection order—
- (a) granting the protected person and other family members exclusive occupation of the protected person's residence, regardless of any legal or equitable rights of possession or ownership;
 - (b) granting the protected person exclusive use of a portion of the protected person's residence, if the residence is legally owned by a third party;
 - (c) directing a police officer to remove the respondent from the protected person's residence immediately or within a specified time;
 - (d) directing a police officer to accompany the respondent or another specified person, within a specified time, to the protected person's residence to supervise the removal of personal belongings.
- (2) If the respondent and the protected person normally live in the same residence with a child, the court must presume that the protection of the protected person and the child is best achieved by the protected person and the child continuing to live in the residence.
- (3) In determining whether to include any of the conditions in subsection (1), the court must consider—
- (a) the impact on the safety and protection of the protected person and any child or other people who live at the residence if the condition is not made; and
 - (b) the desirability of minimising disruption and maintaining social networks and support to the protected person and any child living with the protected person; and
 - (c) the importance of ensuring continuity of care for any child who lives with a protected person; and
 - (d) ensuring continuity in childcare, education, training, and employment for the protected person and any child who lives with the protected person; and
 - (e) the accommodation needs of the parties; and
 - (f) the best interests of any child of the protected person or any child of the protected person and the respondent.

105 Application for variation or discharge of protection order

An application for the variation or discharge of a protection order may be made to the court by—

- (a) the protected person; or
- (b) the respondent; or
- (c) with leave of the court, a person—
 - (i) who has an interest in the safety of the protected person; and
 - (ii) who reasonably believes that there is sufficient reason to vary or discharge the order.

106 Court's power to vary protection order

The court may, on receiving an application under section 105, vary a protection order if it is satisfied—

- (a) the variation is necessary for the safety of the protected person; or
- (b) the variation will not adversely affect the safety of the protected person.

107 Court's power to discharge protection order

The court may, on receiving an application under section 105, discharge a protection order if it is satisfied—

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

Subpart 3—Police safety orders

108 Police officer may make police safety order

- (1) 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—
 - (a) the respondent has committed an act of domestic violence against person P; or
 - (b) person P has reasonable grounds to fear the respondent will commit an act of domestic violence.
- (2) A police officer who is not a sergeant must obtain authority from a police officer with the rank of sergeant or higher prior to making a police safety order, unless the police officer is a pa enua constable.
- (3) A pa enua constable who makes a police safety order against a person must, as soon as practicable, inform a sergeant in Rarotonga in writing that the order was made, and provide background details.

109 Consent to police safety order not required

A police safety order may be made without the consent of the person for whose benefit it is made.

110 When police safety order must be made

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

- (a) domestic violence has been committed, is being committed, or is likely to be committed; and
- (b) the child's welfare has been, or is likely to be, adversely affected by the domestic violence.

111 Police safety order must not be made against child

A police safety order must not be made against a child under 16 years of age.

112 Effect of police safety order

- (1) A respondent who is personally served with a police safety order must immediately—

- (a) surrender to a police officer any weapon in his or her possession or control; and
 - (b) vacate the residence occupied by the protected person, whether or not he or she has a legal or equitable interest in the residence.
- (2) It is a condition of every police safety order that the respondent must not do or threaten to do any of the following to the protected person or to a person in a domestic relationship with the protected person—
 - (a) physically or sexually abuse the person:
 - (b) stalk the person:
 - (c) economically abuse the person:
 - (d) damage, sell, give away, or otherwise dispose of property of the person:
 - (e) emotionally, verbally, or psychologically abuse the person.
- (3) It is also a condition of every police safety order that the respondent must not—
 - (a) enter or remain on any land or building occupied by the protected person, whether or not the respondent has a legal or equitable interest in the land or building; or
 - (b) if the protected person is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or
 - (c) 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.
- (4) While a police safety order is in force, the provisions 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.

113 Police officer may detain respondent

- (1) A police officer who is proposing to make a police safety order against a person (the **respondent**) under section 108 or 110 may detain the respondent for a period, not exceeding 2 hours, in order to do 1 or more of the following—
 - (a) obtain authorisation under section 108(2) to make the order:
 - (b) make the order:
 - (c) serve the order.
- (2) If a respondent who is detained under subsection (1) fails or refuses to remain at the place where he or she is detained, the respondent—
 - (a) commits an offence, regardless of whether an order is made; and
 - (b) may be arrested without warrant.
- (3) A person convicted of an offence against subsection (2)(a) is liable to a period of community service not exceeding 6 months.

114 Service and duration of police safety order

- (1) A police safety order must be personally served on the respondent by a police officer as soon as practicable, but the order lapses if it is not personally served within 24 hours after it is made.

- (2) A police safety order comes into force as soon as it is served and continues in force for the period specified in the order, which must not exceed 5 days from the day on which it is served.
- (3) In considering the period to be specified in the police safety order, the police officer must consider the safety and protection of the protected person to be of paramount importance.
- (4) If a police safety order lapses because it has not been personally served, the protected person must be advised immediately.

115 Police safety order to be explained

- (1) A police officer who makes a police safety order must, to the extent that it is reasonably practicable to do so in the circumstances, either at the time of the making or of the service of the order, explain to the respondent—
 - (a) the purpose, duration, and effect of the order; and
 - (b) the consequences that may follow if the respondent breaches the order.
- (2) A police officer who makes a police safety order must also, either before or immediately after making the order, explain to the protected person the matters set out in subsection (1)(a) and (b).

Subpart 4—Obligations of police

116 Obligations of police

- (1) A police officer must immediately investigate a matter if the police officer—
 - (a) receives a complaint of domestic violence; or
 - (b) suspects domestic violence has been committed, is being committed, or is likely to be committed.
- (2) A police officer must, within 48 hours, submit a written report detailing the reasons for not making a police safety order to the Commissioner of Police if the police officer—
 - (a) investigates a matter under subsection (1); and
 - (b) does not make a police safety order; and
 - (c) the person subject, or suspected to have been subject, to domestic violence does not apply for a protection order.
- (3) A police officer who investigates a matter under subsection (1) and believes domestic violence has been committed, is being committed, or is likely to be committed must immediately inform the person subject, or likely to be subject, to domestic violence of the person's right to apply for a protection order.

Subpart 5—Enforcement of orders

117 Arrest for breach of protection order or police safety order

A police officer may, without a warrant, arrest a person if the police officer is satisfied the person is breaching or has breached a police safety order or a protection order.

118 Offence to breach protection order or police safety order

- (1) A person commits an offence if the person—

- (a) does any act in breach of a police safety order or a protection order; or
 - (b) fails to comply with any condition of a police safety order or a protection order.
- (2) A person who is convicted of an offence against this section is liable to a period of community service not exceeding 12 months or a fine not exceeding \$500, or both.
- (3) A person who is convicted of a subsequent offence against this section is liable to imprisonment for a minimum term of 12 months but not exceeding 3 years.

119 Compensation for injuries and losses

- (1) The court may order a respondent to pay compensation to a protected person for injuries and losses incurred as a result of acts of domestic violence committed by the respondent.
- (2) Injuries and losses compensable under subsection (1) include, but are not limited to the following—
 - (a) pain and suffering;
 - (b) physical and mental injury;
 - (c) the cost of any medical treatment incurred by the protected person;
 - (d) any loss of earnings suffered by the protected person;
 - (e) the value of any property of the protected person that has been removed, damaged, destroyed, or disposed of;
 - (f) injuries and losses sustained before or after the protection order or police safety order is made.

120 Compensation for expenses

- (1) The court may order a respondent to pay compensation to a protected person for expenses that have been incurred or will be incurred by the protected person in establishing a separate household.
- (2) Expenses compensable under subsection (1) include but are not limited to the following—
 - (a) reasonable accommodation expenses;
 - (b) reasonable moving expenses;
 - (c) any other expenses reasonably associated with establishing a separate household.

Subpart 6—Procedure for Part 6*Hearings***121 Respondent can request hearing**

If a temporary protection order is made without notice, the respondent may, at any time before the order becomes a final protection order by virtue of section 99(2), request the court for a hearing to determine any one of the following—

- (a) whether a final protection order should be substituted for the temporary protection order;
- (b) whether the temporary protection order should be discharged;

- (c) whether a condition relating to weapons made under section 103 should be varied or discharged:
- (d) whether a condition relating to occupation made under section 104 should be varied or discharged.

122 Pre-trial conference required

- (1) The Registrar must schedule a pre-trial conference to be conducted by a Justice on receipt of—
 - (a) a request for a hearing from a respondent under section 121; or
 - (b) a direction for a hearing from the court under section 100.
- (2) The court may require the attendance at the pre-trial conference of all or any of the following persons—
 - (a) the respondent;
 - (b) the applicant;
 - (c) any other person the Justice considers necessary.
- (3) If the Justice requires the attendance of the applicant at the pre-trial conference, the applicant may—
 - (a) ask to be excused if the applicant has reasonable grounds to fear for her or his safety;
 - (b) request that a support person be present.
- (4) The Registrar must provide in writing to all persons required to attend the pre-trial conference—
 - (a) notice of the time, date, and place for the conference;
 - (b) an explanation of the purpose of the conference, given in a manner and in a language that the recipients of those explanations can understand;
 - (c) an explanation of their rights.
- (5) The Registrar must ensure that all criminal files relating to the respondent are made available to the Justice 3 days before the pre-trial conference.
- (6) The Justice may take judicial notice of any files provided to her or him under subsection (5).
- (7) The purpose of the pre-trial conference is to—
 - (a) formulate and simplify the issues;
 - (b) determine what facts, if any, are agreed by the parties;
 - (c) rule in advance on what evidence is required and the admissibility of evidence;
 - (d) determine how much court time should be allocated for the hearing.

123 Procedure for hearing

- (1) The Registrar must schedule a hearing date within 2 weeks after the pre-trial conference.
- (2) The Registrar must give notice in writing to the parties of the time, date, and place for the hearing.
- (3) The court may make a protection order even if the respondent does not appear at the hearing.

- (4) Subsection (3) applies even if the respondent did not receive notice of the time, date, and place of the hearing.

Evidence

124 Evidence of protected person

- (1) The court may permit the evidence of an applicant in proceedings under this Part—
- (a) to be given by written or recorded statement; or
 - (b) to be given from behind a screen or partition.
- (2) The court may require a respondent to be in a different location or room than the protected person during proceedings under this Part, and allow the respondent to hear the evidence being given via a telephone or other appropriate technology.

No application fees payable

125 No application fees payable

No application fees are payable for any proceedings under this Part.

Part 7

General and miscellaneous provisions

General provisions

126 Content and explanation of court orders

- (1) Every order made under this Act must contain an explanation, based on the precise terms of the particular order, of—
- (a) the effect of the order (for example, the obligations the order creates); and
 - (b) the means by which the order can be varied or discharged; and
 - (c) the consequences that may follow if the order is breached.
- (2) A lawyer acting for, or other person representing, a party to an order under this Act, must explain to the party the effect of the order.
- (3) Explanations required by subsections (1) and (2) must be given in a manner and in a language that the recipients of those explanations can understand.
- (4) A lawyer acting for, or other person representing, a child, must take all reasonable steps to ensure that the effect of any order in relation to the child made under this Act is explained to the child to an extent and in an age-appropriate manner and in a language that the child understands.
- (5) A failure to comply with a requirement imposed by this section does not affect the validity of the order concerned.

127 Register of court orders

The court must keep a written register of—

- (a) all applications for orders made to the court under this Act; and
- (b) all orders made by the court under this Act.

128 Mandatory separate legal representation for child

- (1) The court must appoint a lawyer to act for a child who is the subject of, or a party to, proceedings under this Act if—
- (a) there appears to be an irreconcilable conflict between the parents; or
 - (b) there are significant issues of cultural or religious difference affecting the care of the child; or
 - (c) either parent or a caregiver of the child, or a child or other person having significant contact with the child, has a significant medical, psychological, or psychiatric illness, or personality disorder issues affecting the care of the child; or
 - (d) it appears neither parent is a suitable person to be a caregiver of the child; or
 - (e) a child of mature years is expressing strong views which, if given effect to, would change a long-standing residence arrangement or prevent contact by a parent; or
 - (f) a parent proposes permanently removing a child from the Cook Islands; or
 - (g) it is proposed to separate siblings; or
 - (h) there are allegations of child abuse, whether physical, sexual, or psychological.
- (2) The expenses of the lawyer appointed to act for a child under subsection (1) must be met by the court.
- (3) The lawyer appointed to act for a child under subsection (1) must—
- (a) act in relation to the proceedings in what the lawyer believes to be the best interests of the child; and
 - (b) ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court; and
 - (c) if a report or other document that relates to the child is to be used in the proceedings,—
 - (i) analyse the report or other document to identify those matters in the report or other document that the lawyer considers to be the most significant ones for determining what is in the best interests of the child; and
 - (ii) ensure that those matters are properly drawn to the court's attention; and
 - (d) take all practicable steps to minimise any trauma to the child from the proceedings; and
 - (e) take all practicable steps to facilitate an agreement in the best interests of the child.

129 Court must appoint representative for child

If a child who is the subject of, or a party to, proceedings under this Act is not of an age or maturity to understand the proceedings or for any other reason is unable to express her or his views, the court must—

- (a) appoint a representative for the child; and

- (b) ensure the representative makes submissions to the court regarding the best interests of the child.

Overseas orders

130 Registering overseas parenting, support and protection orders in Cook Islands

- (1) The court may, on application, register an overseas parenting order, an overseas support order, or an overseas protection order (or equivalent order, by whatever name called), which gives it the same force in the Cook Islands as if it were an order made under this Act, if the court receives—
 - (a) a certified copy of the overseas order; and
 - (b) a certificate signed by an officer of a court in the overseas country that states that the order is, at the date of the certificate, enforceable in the overseas country; and
 - (c) written information indicating that any of the following are present or shortly to be present in the Cook Islands—
 - (i) a person who is a party to the order; or
 - (ii) a person who is the subject of the order; or
 - (iii) a person who is providing day-to-day care of a child who is the subject of an order.
- (2) The court may, on its own initiative or at the request of a party to the order, and whether before or after registration, vary an overseas order if the variation is necessary to ensure its effective operation in the Cook Islands.
- (3) On application by any person, the court may order the de-registration of a registered overseas order; and upon deregistration the order ceases to have force in the Cook Islands.

Transmission of Cook Islands order to overseas jurisdiction

131 Registrar to send documents to overseas jurisdiction

- (1) The person for whose benefit a protection order, a support order, or a parenting order has been made may, in writing, request the Registrar to send to an appropriate court or authority in an overseas jurisdiction—
 - (a) a certified copy of the order; and
 - (b) a certificate signed by an officer of the court that contains a statement that the order is, at the date of the certificate, enforceable in an overseas jurisdiction; and
 - (c) any other documents and information necessary for securing the enforcement of the order in the overseas jurisdiction.
- (2) The Registrar must comply with a request under subsection (1) within 14 days after the request is made.

*Removal of child from Cook Islands***132 Preventing removal of child from Cook Islands**

- (1) The court must take steps to prevent the removal of a child from the Cook Islands if satisfied on reasonable grounds that a person is about to remove a child from the Cook Islands and that this is likely to—
 - (a) breach an order made under this Act; or
 - (b) breach a kaveinga a te kopu tangata made under this Act; or
 - (c) defeat the claim of a person who has applied for, or is about to apply for, an order under this Act.
- (2) To prevent the removal of a child from the Cook Islands, the court may do either or both of the following—
 - (a) issue a warrant directing a police officer or a person named in the warrant 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 of Internal Affairs pending a further order of the court;
 - (b) 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 surrendered to the police for whatever period and on any conditions the court determines necessary in the circumstances.
- (3) Within 28 days of the issue of a warrant under subsection (2)(a), the matter must be brought before the court for determination.
- (4) A person against whom an order is made under subsection (2)(b) may apply to the court for the discharge of the order, and the court may discharge the order if it is satisfied that the circumstances that made it necessary to require the documents to be surrendered no longer exist.

133 Offence of taking child from Cook Islands

- (1) Every person commits an offence if the person, without the leave of the court, removes or attempts to remove any child from the Cook Islands—
 - (a) knowing that a person has applied for, or is about to apply for, an order under this Act; or
 - (b) knowing that a parenting order, a contact order, or a kaveinga a te kopu tangata is in force that makes the person the caregiver of, or authorises contact with, the child.
- (2) A person convicted of an offence against subsection (1) is liable to a fine not exceeding \$1,000, or to imprisonment for a term not exceeding 12 months, or both.

*Evidence***134 Evidence of child**

- (1) In any proceedings under this Act relating to a child, the court may do 1 or more of the following—
 - (a) require a person to withdraw from the court while the child gives evidence;
 - (b) require that cross-examination is conducted by video link with a screen;

- (c) excuse the child from cross-examination if the child is not of an age or maturity to understand the proceedings:
 - (d) confer in private with the child in the presence of the child's lawyer or representative:
 - (e) receive the evidence of the child by written or recorded statement:
 - (f) hear any evidence that it thinks fit.
- (2) The manner in which a child gives evidence must minimise any trauma or negative consequences that may occur as a result of giving evidence in proceedings under this Act.

135 Power of court to conduct hearings in private

The court may hear any proceedings under this Act in private or exclude any person from the court.

136 Power of court to call witnesses

- (1) In any proceedings under this Act, the court may call as a witness any person whose evidence may, in its opinion, be of assistance to the court.
- (2) The power conferred by subsection (1) includes the power to call as a witness any parent or caregiver of the child to whom the proceedings relate, or any person with whom a parent or caregiver of the child is cohabiting, or any family member of the child.
- (3) A witness called by the court under this section has the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.
- (4) A witness called by the court under this section may be examined and re-examined by the court, or by any lawyer assisting the court, and may be cross-examined by or on behalf of any party to the proceedings or by a lawyer appointed to represent a child to whom the proceedings relate.
- (5) The court must pay the reasonable expenses of any witness called by the court under this section.

Jurisdiction

137 Jurisdiction of High Court

The High Court has jurisdiction to hear and determine all matters under this Act.

138 Jurisdiction of Justices

- (1) The court presided over by a Justice has civil jurisdiction to hear and determine matters before the court under any of the following sections—
 - (a) section 10 (divorce order):
 - (b) section 15 (application for variation or discharge of support order):
 - (c) section 17 (domestic support order):
 - (d) section 19 (childbearing expenses order):
 - (e) section 21 (child support order):
 - (f) section 23 (child support order for adult child):
 - (g) section 24 (support enforcement order):
 - (h) section 27 (paternity order):

- (i) section 29 (DNA parentage testing):
 - (j) section 35 (major long-term issues order):
 - (k) section 37 (registration of parenting plan):
 - (l) section 38 (review of parenting plan):
 - (m) section 40 (parenting order):
 - (n) section 42 (variation or discharge of parenting order):
 - (o) section 44 (parenting enforcement order):
 - (p) section 45 (warrant for return of child):
 - (q) section 54(1) (safety warrant):
 - (r) section 55(4)(c) (safety warrant extension):
 - (s) section 57 (supervision order):
 - (t) section 61 (variation or discharge of supervision order):
 - (u) section 63 (care order):
 - (v) section 64 (variation or discharge of care order):
 - (w) section 68 (contact order):
 - (x) section 69 (uipaanga kopu tangata):
 - (y) section 70 (social welfare report):
 - (z) section 71 (medical and psychological report):
 - (aa) section 77 (non-disclosure of report):
 - (bb) section 99 (temporary protection order):
 - (cc) section 100 (direction to organise hearing):
 - (dd) section 103 (conditions relating to weapons):
 - (ee) section 104 (conditions relating to occupation of shared residence):
 - (ff) section 106 (variation of protection order):
 - (gg) section 107 (discharge of protection order):
 - (hh) section 119 (compensation for injuries and losses):
 - (ii) section 120 (compensation for expenses):
 - (jj) section 128 (legal representation for child):
 - (kk) section 129 (representative for child):
 - (ll) section 130 (registration of overseas order):
 - (mm) section 132 (preventing removal of child).
- (2) The court presided over by a Justice has criminal jurisdiction to hear, determine, and pronounce sentence for an offence against—
- (a) section 51 (failure to notify):
 - (b) section 113(2) (failure to remain at place detained):
 - (c) section 118(1) (breach of protection order or police safety order).
- (3) The court presided over by 3 Justices has criminal jurisdiction to hear, determine, and pronounce sentence for an offence against—
- (a) section 118(3) (subsequent breach of protection order or police safety order):
 - (b) section 133 (taking child out of the Cook Islands).

*Service***139 Service of protection orders and police safety orders on public holidays**

- (1) A protection order served under section 101, and a police safety order served under section 114, maybe served on any day, despite rule 78 of the Code of Civil Procedure (which prohibits the service of any process on a public holiday).
- (2) Despite section 141, protection orders and police safety orders must be served by way of personal service in accordance with the CCP.

140 Service of other orders and of applications

- (1) Except as otherwise provided in this Act,—
 - (a) every order made under this Act must be immediately served on all parties to the proceedings and on any other person specified by the court; and
 - (b) the order has not legal effect until it is served on the respondent or as determined by the court under section 142(2).
- (2) Every application for an order, or for the variation or discharge of an order, must be immediately served on—
 - (a) all parties to the proceedings; and
 - (b) any other person specified by the court.
- (3) Subsection (1) does not apply to an application that this Act or any regulations made under it permit or require to be made without notice.

141 Form of service

Despite anything in the CCP, service on any person that is required by this Act or regulations made under it must be by way of—

- (a) personal service made accordance with the CCP; or
- (b) service to the recipient's email address.

142 What happens when orders and applications cannot be served

- (1) If an order cannot be served, the Registrar must ask the court to determine when the order takes legal effect.
- (2) If a person cannot be served with an application or order in accordance with section 141, the court may dispense with service on that person.

*Repeals and amendments***143 Repeals**

The following enactments are repealed—

- (a) Cook Islands Amendment Act 1994;
- (b) Infants Amendment Act 2009;
- (c) Protection of Children Ordinance 1954.

144 Amendments to Infants Act 1908

- (1) This section amends the Infants Act 1908.
- (2) Part 1 (comprising sections 2 to 11) is repealed.
- (3) Part II is amended by inserting the following section above section 12—

“12AA Interpretation

“In this Part, if not inconsistent with the context, **infant** means a person under the age of 18 years.”

145 Amendments to Cook Islands Act 1915

- (1) This section amends the Cook Islands Act 1915.
- (2) Parts XVIII to XX (comprising sections 523A to 573G) are repealed.

146 Amendments to Judicature Act 1980-81

- (1) This section amends the Judicature Act 1980-81.
- (2) Section 10 is repealed.
- (3) Section 19(d) is repealed.

147 Amendments to High Court Fees, Costs and Allowances Regulations 2005

- (1) This section amends the High Court Fees, Costs and Allowances Regulations 2005.
- (2) Item 5(i) in the First Schedule is repealed.
- (3) The First Schedule is amended by repealing item 6 and substituting the following item—
“6. Filing
For filing any application under the Family Protection and Support Act 2017—\$65”

148 Amendments to Prevention of Juvenile Crime Act 1968

- (1) This section amends the Prevention of Juvenile Crime Act 1968.
- (2) Section 2 is amended by inserting the following definition:
“**caregiver** has the meaning given in section 4 of the Family Protection and Support Act 2017”.
- (3) Section 8 is amended by replacing the heading with “**Referral of alleged offences**”.
- (3A) Section 8 is amended by deleting subsection (1) and substituting the following subsection—
“(1) If a police officer reasonably believes that a child has committed an offence he must notify the Secretary of the belief and the grounds for the belief and, in particular, must provide—
 - (a) the name of the child referred to:
 - (b) the names of the parents, guardians, or caregivers of the child:
 - (c) the place of residence of the child and of his parents, guardians, or caregivers:
 - (d) particulars of the offence:
 - (e) the name of any victim or victims.”
- (4) Section 9 is amended by—
 - (a) deleting the heading “**Chairman to consider the complaint and refer to**” and substituting “**Chairman to call a meeting of Committee**”; and

- (b) deleting from subsection (1) “complaint” and substituting “referral”; and
 - (c) repealing subsection (2) and substituting the following subsection—
 - “(2) The Chairman shall consider the referral and any further particulars (if any) obtained by him and refer it to a meeting of the Committee to be called by him for that purpose.”
- (5) Section 10 is amended by—
 - (a) deleting the heading “**Committee to consider the complaint referred to it**” and substituting “**Committee to consider referral**”; and
 - (b) repealing subsection (1) and substituting the following subsection—
 - “(1) The Committee, at the meeting called by the Chairman under section 9 of this Act, shall consider the referral to it and, if it is in the best interests of the child and in the public interest, may by summons require the child, his parents, guardians and caregivers, or any of them, to attend before it at a time and place to be fixed by the Chairman for the purpose of further inquiry into the referral.”
 - (c) repealing subsection (3) and substituting the following subsection—
 - “(3) The Committee may, after considering the referral provided,—
 - “(a) (a) take no further action; or
 - “(b) (ab) direct an inquiry to be held, as provided in subsection (1); or
 - (b) if the Committee, by a majority, agree that the child is in need of care and protection, notify the Ministry of Internal Affairs pursuant to section 49(1) of the Family Protection and Support Act 2017.”
- (6) Section 11 is amended by deleting from subsection (1) “complaint” and substituting “referral”.
- (7) Section 12 is amended by—
 - (a) adding in subsection (1) the following paragraph after paragraph (d)—
 - “(e) the victim or victims of the offence or offences.”; and
 - (b) repealing subsections (2) and (3).
- (8) Section 13 is amended by—
 - (a) deleting from subsection (1) “complaint against him and to ascertain if that person desires to give any answer thereto” and substituting “alleged offence or offences and the purpose of the meeting”; and
 - (b) deleting from subsection (4)(a) “his parents, guardians or custodians or any of them”; and
 - (c) repealing paragraphs (b) and (c) of subsection (4) and substituting the following paragraphs—
 - “(b) issue a notice in writing under the hand of the Chairman ordering certain conditions of conduct to be observed by the child, the parents, guardians or caregivers or any of them, and/or such other conditions as the Committee thinks necessary for preventing the commission of any offence by the child the subject of the referral; or;” and

- “(c) authorise the laying of any information in the Children’s Court concerning the subject-matter of the offence in the manner hereinafter appearing; or”.
- (9) Section 17 is amended by deleting from subsection (2) “not under proper control and may be brought before the Children’s Court on a complaint to the effect to be dealt with in accordance with the provisions of this Act” and substituting “in need of care and protection and may be notified to the Ministry of Internal Affairs to be dealt with in accordance with the provisions of the Family Protection and Support Act 2017.”
- (10) Section 18 is amended by—
- (a) deleting from subsection (1) “or any complaint concerning any child”; and
 - (b) repealing subsection (2) and substituting the following subsection—

“(2) Where the authority of the Chairman is sought to the laying of any information, he may, instead of consenting, to refer it to the Committee to be dealt with as a referral under section 10.”
 - (c) deleting from subsection (3) “a complainant” and substituting “an informant”.
- (11) Section 22 is amended by replacing the heading with “**Duty of parent, guardian, or caregiver to appear before Court**”.
- (11A) Section 22 is amended by—
- (a) repealing subsection (1) and substituting—

“(1) Where an information is laid against a child in respect of any offence any Judge or Justice may issue a summons addressed to any parent or guardian or caregiver of the child requiring him to appear before the Children’s Court with the child at a time to be named in the summons.”; and
 - (b) repealing subsections (2), (3) and (4); and
 - (c) repealing subsection (5) and substituting—

“(5) Any parent, guardian, or caregiver who is required to appear in the Children’s Court following a summons may, at the hearing of the information, be examined in respect of the upbringing and control of the child.”
- (12) Section 23 is amended by repealing subsection (2) and substituting the following section—
- “(2) It shall be the duty of every constable who lays any information in respect of an offence alleged to have been committed by a child to advise a community youth officer of the information.”
- (13) Section 23(3) is repealed.
- (14) Section 28(b) is repealed.
- (15) The word “custody” is deleted wherever it appears and is substituted by the word “care”.
- (16) The word “custodian” or “custodians” is deleted where it appears and is substituted by the word “caregiver” or “caregivers” as the case may be.
- (17) Schedule 1 Form No.1 is amended by—

- (a) deleting “complaint” in each place where it appears and substituting “referral”; and
 - (b) deleting “is (here state briefly the nature of the complaint).” and substituting “is alleged to have committed a criminal offence.”; and
 - (c) deleting “19” in each place where it appears and substituting “20”; and
 - (d) deleting “forty” and substituting “fifty”.
- (18) Schedule 1 Form No. 2 is amended by—
- (a) deleting “19” in each place where it appears and substituting “20”; and
 - (b) deleting “Complaint” and substituting “referral”; and
 - (c) deleting “(you”; and
 - (d) deleting “) or (“; and
 - (e) deleting from the quoted section 17(1) in the Note “custodian” and substituting “caregiver”.
 - (f) deleting from the quoted section 17(2) in the Note “not under proper control and may be brought before the Children’s Court on a complaint to the effect to be dealt with in accordance with the provisions of this Act” and substituting “child in need of care and protection and may be notified to the Ministry of Internal Affairs to be dealt with in accordance with the provisions of the Family Protection and Support Act 2017”.
- (19) Schedule 1, Form No. 3, is amended by—
- (a) deleting “Complaint” and substituting “Referral”; and
 - (b) deleting “occupation” and substituting “Police Officer”; and
 - (c) deleting “is a neglected (*or indigent or delinquent) child (or is not under proper control) or (is being in an environment detrimental to its physical (or moral) well-being)” and substituting “has committed an offence”; and
 - (d) deleting “19” and substituting “20”.
- (20) Schedule 1 Form No. 4 is amended by—
- (a) deleting “(2) on a complaint that he is (3)”;
 - (b) deleting “(complaint)”;
 - (c) deleting “19” in each place where it appears and substituting “20”.

Regulations and transitional provisions

149 Regulations

- (1) The Queen’s Representative may, by Order in Executive Council, make regulations for all or any of the following purposes—
- (a) prescribing forms to be used for the purposes of this Act;
 - (b) prescribing matters for which fees are payable under this Act and the amounts of those fees;
 - (c) prescribing procedures, including timeframe, for proceedings under this Act;
 - (d) prescribing the weekly amount payable to caregivers under section 66(2);
 - (e) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

- (2) The regulations may make provision to enable the performance of the obligations of the Cook Islands, or to obtain for the Cook Islands any benefit, under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980 but such regulations must not come into operation until the day on which that convention enters into force in the Cook Islands.
- (3) The regulations may make provision to enable the performance of the obligations of the Cook Islands, or to obtain for the Cook Islands any benefit, under the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956, but such regulations must not come into operation until the day on which that convention enters into force in the Cook Islands.

150 Transitional provisions

- (1) All proceedings for occupation orders, or for the variation or discharge of occupation orders, that have been commenced under the Cook Islands Amendment Act 1994 but have not yet been determined before the repeal of that Act are taken to be applications for protection orders under this Act.
- (2) All proceedings for non-molestation orders, or for the variation or discharge of non-molestation orders, that have been commenced under the Cook Islands Amendment Act 1994 but have not yet been determined before the repeal of that Act are taken to be applications for protection orders under this Act.
- (3) An occupation order in force under section 523G or 523H of the Cook Islands Amendment Act 1994 before the repeal of that Act is taken to be a protection order made under this Act.
- (4) A non-molestation or ancillary order in force under any of sections 523I, 523J, 523K, and 523L of the Cook Islands Amendment Act 1994 before the repeal of that Act is taken to be a protection order made under this Act.
- (5) All proceedings for custody orders and maintenance orders that have been commenced under the Cook Islands Amendment Act 1994 but have not yet been determined before the repeal of that Act are taken to be applications for parenting orders and support orders under this Act.
- (6) A custody order made under section 538 of the Cook Islands Amendment Act 1994 or under section 10 of the Judicature Act 1980-81 before the repeal of those sections is taken to be a parenting order made under this Act.
- (7) A maintenance order made under any of sections 537, 547, 548, 549, 550, 551, or 552 of the Cook Islands Amendment Act 1994 before the repeal of that Act is taken to be a support order made under this Act.

This Act is administered by the Ministry of Justice.

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