

A BILL

*i n t i t u l e d*

An Act to amend the Domestic Violence Act 1994.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

**1.** (1) This Act may be cited as the Domestic Violence (Amendment) Act 2017.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Amendment of section 2**

**2.** The Domestic Violence Act 1994 [*Act 521*], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) in the definition of “domestic violence”, by inserting after paragraph (e) the following paragraphs:

“(ea) dishonestly misappropriating the victim’s property which causes the victim to suffer distress due to financial loss;

- (*eb*) threatening the victim with intent to cause the victim to fear for his safety or the safety of his property, to fear for the safety of a third person, or to suffer distress;
- (*ec*) communicating with the victim, or communicating about the victim to a third person, with intent to insult the modesty of the victim through any means, electronic or otherwise;”;
- (*b*) by inserting after the definition of “court” the following definition:
- ‘ “Director General” means the Director General of Social Welfare and includes the State Director of Social Welfare of each of the States;’; and
- (*c*) by inserting after the definition of “domestic violence” the following definition:
- ‘ “emergency protection order” means an order issued under section 3A;’.

## **New Part IA**

**3.** The principal Act is amended by inserting after Part I the following Part:

### “PART IA

#### EMERGENCY PROTECTION ORDER

### **Emergency protection order**

**3A.** (1) A social welfare officer duly authorized in writing by the Director General may, in an application involving a complaint of domestic violence referred to in paragraph (*a*) or (*b*) of the definition of “domestic violence” under section 2, issue an emergency protection order.

(2) An application for an emergency protection order may be made at any time whether or not an interim protection order or a protection order has been previously made or an

application for an interim protection order or a protection order is still pending.

(3) An application for an emergency protection order shall be made *ex-parte* by—

- (a) the victim;
- (b) the victim's counsel; or
- (c) in the case where the victim is a child or an incapacitated adult, the guardian, relative or person responsible for the care of such child or incapacitated adult, or a social welfare officer other than an authorized social welfare officer.

(4) An application for an emergency protection order may be made in any district where—

- (a) the victim resides;
- (b) the person against whom the protection is made resides;
- (c) the alleged domestic violence occurred; or
- (d) the victim is placed temporarily.

(5) Upon receipt of the application for an emergency protection order, the application shall be heard by the authorized social welfare officer immediately and the issuance of the emergency protection order, if any, shall be made, where practicable, within two hours after the application is made.

(6) For the purpose of an application for an emergency protection order, a police report relating to the domestic violence is not required.

(7) The authorized social welfare officer, in making an emergency protection order under subsection (1), may issue one or more of the following orders:

- (a) prohibiting the person against whom the order is made from using domestic violence referred to in paragraph

(a) or (b) of the definition of “domestic violence” under section 2 against his or her spouse or former spouse, a child, an incapacitated adult or any other member of the family, as the case may be;

(b) prohibiting the person against whom the order is made from inciting any other person to commit domestic violence referred to in paragraph (a) or (b) of the definition of “domestic violence” under section 2 against his or her spouse or former spouse, a child, an incapacitated adult or any other member of the family, as the case may be; or

(c) prohibiting the person against whom the order is made from entering any protected person’s safe place, shelter, place of residence, shared residence or alternative residence, as the case may be.

(8) An emergency protection order shall be valid for the period of seven days from the date of issuance of the order, and enforceable when a copy of the order is served on the person against whom the order is made in accordance with section 3B.

(9) The emergency protection order issued shall not be affected by the issuance of an interim protection order or a protection order.

### **Service of emergency protection order**

**3B.** (1) The authorized social welfare officer who issued the emergency protection order under subsection 3A(1) shall forward a copy of the order, where practicable within ten hours of the issuance of the emergency protection order, to the officer in charge of the police district where the person against whom the order is made resides or any other police officer under his command.

(2) The officer in charge of the police district or any other police officer under his command referred to in subsection (1) shall serve a copy of the emergency protection order personally on the person against whom the order is made, where practicable, within twelve hours upon receiving a copy of the order.

**Substituted service for emergency protection order**

**3c.** If the officer in charge of the police district or any other police officer under his command referred to in subsection 3B(1) is not able to serve a copy of the emergency protection order on the person against whom the order is made personally within twelve hours of receiving a copy of the order, the service of the emergency protection order shall be effected—

- (a) by leaving a copy of the order at the last known address of the person against whom the order is made; or
- (b) by any other manner as the authorized social welfare officer may direct.

**Proof of service of emergency protection order**

**3d.** The officer in charge of the police district or any other police officer under his command referred to in subsection 3B(1) shall file proof of service of the copy of the emergency protection order effected under section 3B or 3C with the authorized social welfare officer, and communicate the service effected to the victim, within twelve hours of service.

**Contravention of emergency protection order**

**3e.** (1) Any person who willfully contravenes an emergency protection order or any provision of the order shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(2) Any person who willfully contravenes an emergency protection order by using violence on a protected person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) Any person who is convicted for a second or subsequent violation of an emergency protection order under subsection (2) shall be punished with imprisonment for a period of not less than seventy-two hours and not more than two years, and shall also be liable to a fine not exceeding five thousand ringgit.

**Record of applications and emergency protection orders**

**3F.** (1) The authorized social welfare officer shall maintain a record of all applications for emergency protection orders and emergency protection orders issued by the authorized social welfare officer under this Act.

(2) The record shall contain—

- (a) the names, gender and relationship of the parties;
- (b) the domestic violence alleged, whether it involved any weapon, or resulted in personal injuries and whether the injuries inflicted required medical treatment; and
- (c) the effective date and terms of each order issued.”.

**Amendment of section 4**

**4.** Section 4 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsections:

“(3A) An interim protection order issued under subsection (1) may, where the court is satisfied that it is necessary for the protection and personal safety of the spouse or former spouse, child, incapacitated adult or any other member of the family, as the case may be, provide for any one or more of the orders specified in paragraphs 6(1)(a) to (f).

(3B) For the purpose of making the orders under subsection (3A), the provisions in subsections 6(3), (4) and (5) shall apply.

(3C) The orders provided under subsection (3A) shall have effect for the duration of the interim protection order.”; and

(b) by substituting for subsection (4) the following subsection:

“(4) An interim protection order shall cease to have effect—

- (a) upon the protected person being informed in writing by a police officer about the completion of the investigations and that there is no further action to be taken against the person against whom the order is made;
- (b) upon the institution of a criminal proceeding against the person against whom the order is made if, upon being informed in writing by a police officer that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made, no application for a protection order is made by the protected person within seven days after being so informed; or
- (c) upon the determination of an application for a protection order by the court if, upon being informed in writing by a police officer that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made, the application for the protection order is made by the protected person within seven days after being so informed.”.

#### **Amendment of section 5**

**5.** Paragraph 5(1)(a) of the principal Act is amended by substituting for the word “complainant” the word “victim”.

#### **Amendment of section 6**

**6.** Section 6 of the principal Act is amended—

(a) in subsection (1)—

- (i) by substituting for the word “complainant” the word “victim”;

- (ii) in paragraph (a)—
    - (A) by deleting the words “or a specified part of the shared residence”; and
    - (B) by deleting the words “or specified part thereof”;
  - (iii) in paragraph (e), by inserting the word “and” at the end of the paragraph;
  - (iv) in paragraph (f), by substituting for the comma at the end of the paragraph a full stop; and
  - (v) by deleting the words “to have effect for such period, not exceeding twelve months from the date of the commencement of such order, as may be specified in the protection order.”; and
- (b) by inserting after subsection (1) the following subsection:
- “(1A) For the purpose of subsection (1), the orders provided in the protection order shall have effect for such period not exceeding twelve months from the date of the commencement of such order as may be specified in the protection order.”.

### **Amendment of Part III**

7. The principal Act is amended by substituting for the heading of Part III the following heading:

“COMPENSATION AND REHABILITATION PROGRAMME”.

### **Amendment of section 11**

8. Section 11 of the principal Act is amended—

- (a) by substituting for the shoulder note the following shoulder note:

“**Rehabilitation programme, etc.**”;

(b) by substituting for subsection (1) the following subsection:

“(1) The court may, in an application in which a protection order is sought, in addition to issuing a protection order, make an order that one or more of the parties to the dispute be referred to a rehabilitation programme, provided that an order to refer the victim to a rehabilitation programme shall be made only with the consent of the victim.”;

(c) by deleting subsections (1A) and (1B);

(d) in subsection (2), by substituting for the words “one or both of the orders under subsection (1) or (1B)” the words “the order under subsection (1)”;

(e) in subsection (3), by deleting the words “or (1B)”; and

(f) by substituting for subsection (4) the following subsection:

“(4) In this section, “rehabilitation programme” means the programme provided by the Ministry responsible for welfare services for the purposes of family and community development.”.

### **Amendment of section 12A**

**9.** Section 12A of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

**“*Ex-parte* application for interim protection order”;**

(b) in paragraph (a), by substituting for the word “applicant” the word “victim”;

(c) in paragraph (b), by substituting for the word “applicant’s” the word “victim’s”; and

(d) in paragraph (c), by substituting for the word “applicant” the word “victim”.

**Substitution of section 13**

**10.** The principal Act is amended by substituting for section 13 the following section:

**“When protection order may be sought**

**13.** (1) A protection order may be sought—

- (a) within seven days after the victim has been informed in writing by a police officer under paragraph 4(4)(b) that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made; or
- (b) at any stage of the criminal proceedings under the Penal Code or any other written law where the accused is charged with an offence involving domestic violence whether or not an interim protection order or emergency protection order has been sought and issued against the accused.

(2) A protection order under subsection (1) may be sought in particular—

- (a) as a condition of the accused’s release on bail; or
- (b) upon the compounding of the offence referred to in subsection (1) under section 260 of the Criminal Procedure Code [*Act 593*].”.

**New section 13A**

**11.** The principal Act is amended by inserting after section 13 the following section:

**“Application for protection order**

**13A.** A protection order sought under section 13 shall be made by—

- (a) the victim;
- (b) the victim’s counsel;

- (c) a social welfare officer on behalf of the victim; or
- (d) a police officer on behalf of the victim.”.

**Amendment of section 14**

**12.** Section 14 of the principal Act is amended—

- (a) in paragraph (a), by substituting for the word “complainant” the word “victim”; and
- (b) in paragraph (d), by substituting for the word “complainant” the word “victim”.

**Amendment of section 17**

**13.** Subsection 17(2) of the principal Act is amended by inserting after the words “the court” the words “, and communicate the service effected to the victim,”.

**Amendment of section 17A**

**14.** Subsection 17A(4) of the principal Act is amended by substituting for the word “applicant” the word “victim”.

**Amendment of section 19**

**15.** Subsection 19(2) of the principal Act is amended—

- (a) in paragraph (b), by substituting for the full stop at the end of the paragraph a semicolon; and
- (b) by inserting after paragraph (b) the following paragraphs:
  - “(c) informing the victim on the status of the investigations relating to the offence involving domestic violence; and

- (d) informing the victim on the status of application for an interim protection order or a protection order, including the service of the order, and the relevant court dates relating to the application.”.

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#### EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to amend the Domestic Violence Act 1994 (“Act 521”). The main purpose of the proposed Act is to enhance the protection for a victim of domestic violence by making provision for an emergency protection order as an addition to the existing interim protection order and protection order provided under Act 521. The proposed Act also seeks to expand the circumstances in which an act could fall under the definition of “domestic violence”. The proposed Act also seeks to strengthen the order that can be made under an interim protection order, and to clarify the circumstances in which an interim protection order ceases to have effect.

2. *Clause 1* contains the short title of the proposed Act and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 521. *Subclauses 2(a)* and *(c)* seek to introduce new definitions of “Director General” and “emergency protection order” into Act 521. *Subclause 2(b)* seeks to expand the definition of “domestic violence” by providing three more circumstances under which domestic violence could occur. This proposed amendment will provide better protection for the victims of domestic violence as the victims could make an application for an interim protection order and a protection order when those circumstances arise.

4. *Clause 3* seeks to introduce a new Part IA into Act 521 which deals with an emergency protection order.

The proposed new section 3A seeks to empower an authorized social welfare officer to issue an emergency protection order for the victims of domestic violence referred to in paragraph (a) or (b) of the definition of “domestic violence” under section 2 of Act 521 which involves fear of physical injury or physical injury. An application for the emergency protection order may be made at any time whether or not an interim protection order or a protection order has been previously made or an application for an interim protection order or a protection order is still pending. The emergency protection order shall be valid for seven days only.

The proposed new section 3B seeks to provide for the procedure on the service of an emergency protection order on the person against whom the order is made.

The proposed new section 3C seeks to provide for the procedure on the substituted service of an emergency protection order on the person against whom the order is made if the officer in charge of the police district or any other police officer under his command is not able to serve the copy of the emergency protection order to the person personally within twelve hours of receiving a copy of the order.

The proposed new section 3D seeks to require the officer in charge of the police district or any other police officer under his command to file proof of service of the copy of the emergency protection order effected under the proposed new section 3B or 3C with the authorized social welfare officer, and communicate the service effected to the victim, within twelve hours of the service.

The proposed new section 3E seeks to provide that any person who wilfully contravenes an emergency protection order commits an offence, and any person who wilfully contravenes an emergency protection order by using violence on a protected person also commits an offence.

The proposed new section 3F seeks to require an authorized social welfare officer to maintain a record of all applications for emergency protection orders as well as the emergency protection orders issued.

5. *Clause 4* seeks to amend section 4 of Act 521.

*Subclause 4(a)* seeks to introduce new subsections 4(3A), (3B) and (3C) into Act 521 to provide for better protection to the victims of domestic violence. The proposed new subsection 4(3A) seeks to provide that an interim protection order issued under subsection 4(1) of Act 521 may, where the court is satisfied that it is necessary for the protection and personal safety of the spouse or former spouse, child, incapacitated adult or any other member of the family, as the case may be, provide for any one or more of the orders specified in paragraphs 6(1)(a) to (f) of Act 521 which are currently only available in a protection order. This proposed amendment allows the orders that can be made in a protection order, that are the orders specified in paragraphs 6(1)(a) to (f) of Act 521, to also be made in an interim protection order. This will enable the courts to provide the same protection to the victims of domestic violence whether under a protection order or an interim protection order.

The proposed new subsection 4(3B) seeks to provide that for the purpose of making the orders under the proposed new subsection 4(3A), the safeguards in relation to the right to occupy a shared residence, *etc.*, provided in the existing subsections 6(3), (4) and (5) of Act 521 shall apply. This will enable the safeguards in relation to the right to occupy a shared residence, *etc.*, which is available when a protection order is made, to also be applicable to an interim protection order.

The proposed new subsection 4(3C) seeks to provide that the orders provided under the proposed subsection 4(3A) shall have effect for the duration of the interim protection order.

*Subclause 4(b)* seeks to amend subsection 4(4) of Act 521 to provide for clearer circumstances in which an interim protection order ceases to have effect. This proposed amendment will enable a victim to know exactly when an interim protection order ceases to have effect and when the victim is no longer protected under an interim protection order. This proposed amendment will also provide continuous protection to a victim under an interim protection order until the determination of the victim's application for a protection order by the court if the victim applies for the protection order within seven days after being informed by a police officer that a criminal proceeding relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made.

6. *Clause 5* seeks to amend paragraph 5(1)(a) of Act 521 to clarify that the court may issue a protection order restraining the person against whom the order is made from using domestic violence against the victim and not the complainant. The word "victim" is used because it is more accurate than the word "complainant".

7. *Clause 6* seeks to amend section 6 of Act 521. Paragraph 6(a)(i) seeks to amend paragraph 6(1)(a) of Act 521 to allow the court, if satisfied that it is necessary for the protection and personal safety of the victim, child or incapacitated adult, to grant the right of exclusive occupation of the whole shared residence in a protection order to a protected person. With this proposed amendment, the court is no longer allowed to grant the right of exclusive occupation of only a specified part of the shared residence to a protected person. The grant of the right of exclusive occupation of the whole shared residence to a protected person is to ensure the safety of the protected person. The safety of the protected person will be at stake if the protected person is only granted the right of exclusive occupation of only a specified part of the shared residence whereby the other part of the shared residence is occupied by the person against whom the order is made.

*Subclause 6(b)* seeks to introduce a new subsection 6(1A) into Act 521 to specify that the orders provided in the protection order shall have effect for such period not exceeding twelve months from the date of the commencement of such order as may be specified in the protection order. This provision is redrafted from the existing subsection 6(1) of Act 521.

8. *Clause 8* seeks to amend section 11 of Act 521.

*Subclause 8(b)* seeks to amend subsection 11(1) of Act 521 to empower the court, in an application for a protection order, to make an order that one or more of the parties to the dispute be referred to a rehabilitation programme, provided that an order to refer the victim to a rehabilitation programme shall be made only with the consent of the victim. This order is in addition to issuing a protection order.

*Subclause 8(c)* seeks to delete subsections 11(1A) and (1B) of Act 521 to remove the provisions on the conciliatory body. With this proposed amendment, the conciliatory body will no longer exist but the court may order the parties involved to be referred to a rehabilitation programme.

*Subclause 8(f)* seeks to amend subsection 11(4) of Act 521 to provide for the definition of “rehabilitation programme” which means the programme provided by the Ministry responsible for welfare services for the purposes of family and community development.

9. *Clause 9* seeks to amend section 12A of Act 521. *Subclauses 9(b), (c) and (d)* seek to clarify that the application for an interim protection order shall be made *ex-parte* by the victim, the victim’s counsel or a social welfare officer on behalf of the victim. The word “victim” is used because it is more accurate than the word “applicant”.

10. *Clause 10* seeks to amend section 13 of Act 521 to provide for the circumstances in which a protection order may be sought. A protection order may be sought within seven days after the victim being informed in writing by a police officer under the proposed paragraph 4(4)(b) that a criminal proceedings relating to the commission of an offence involving domestic violence will be instituted against the person against whom the order is made. A protection order may also be sought at any stage of the criminal proceedings under the Penal Code or any other written law where the accused is charged with an offence involving domestic violence whether or not an interim protection order or emergency protection order has been sought and issued against the accused.

11. *Clause 11* seeks to introduce a new section 13A into Act 521 to provide that an application for a protection order shall be made by the victim, the victim’s counsel, a social welfare officer on behalf of the victim or a police officer on behalf of the victim.

12. *Clause 12* seeks to amend paragraphs 14(a) and (d) of Act 521 to clarify that the application for a protection order or an interim protection order involving a complaint of domestic violence may be filed in any district where the victim resides or the victim is placed temporarily. The word “victim” is used because it is more accurate than the word “complainant”.

13. *Clause 13* seeks to amend subsection 17(2) of Act 521 to require the officer in charge of the police district or any other police officer under his command to communicate the service of an interim protection order or a protection order effected to the victim within seven days of service.

14. *Clause 15* seeks to amend subsection 19(2) of Act 521 to impose additional duties on an enforcement officer, who is a police officer, to inform the victim on the status of the investigations relating to an offence involving domestic violence and the status of the application for the interim protection order and protection order, *etc.*

15. Other amendments not specifically dealt with in this Statement are minor and consequential in nature.

#### FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.