EXTRAORDINARY

531

REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 10 FRIDAY, 14th AUGUST 2009 No. 67

[723]

DOMESTIC VIOLENCE DECREE 2009

ARRANGEMENT OF SECTIONS

SECTION

Part 1—PRELIMNARY

1. Short title and commencement
2. Interpretation
3. Definition of domestic violence
4. Decree to bind the State
5. Application of Decree
6. Objects
7. Principles
8. Jurisdiction of Courts
9. Transfer of proceedings
10. Courts to act in aid of each other
11. Matters to be considered by the Court

Part 2—DUTIES

12. Police to prevent domestic violence, detect and bring to justice
13. Police to render assistance to victims of domestic violence
14. Police to apply for a domestic violence restraining order
15. Police to assist in collection of personal property
16. Legal practitioners to provide information about services
17. Court to provide information about services
18. Court to explain the effect of orders

Part 3—DOMESTIC VIOLENCE RESTRAINING ORDERS

19. Who can apply
20. Urgent proceedings without notice to the respondent
21. Application with notice to the respondent
22. Interim and final orders
23. Grounds for making a domestic violence restraining order
24. Circumstances where orders must be made
25. Application by police by telephone
26. Orders by the Court's own motion
27. Standard non-molestation conditions
28. Standard non-molestation conditions apply to a child
29. Additional conditions – contact

30. Additional conditions – spouse
31. Additional conditions – children
32. Additional conditions – possessions
33. Additional conditions – weapons
34. Additional conditions – urgent monetary relief
35. Additional conditions – occupying a home
36. Additional conditions – tenancy
37. Additional conditions – respondent attend counselling or programme
38. Varying, suspending or discharging order

Part 4—COMPENSATION

39. Compensation

Part 5—PROCEDURE

40. Application of Part and procedure generally
41. Hearing in person or by telephone
42. Listing an application and service by police
43. Service of orders
44. Service of order on the respondent by police
45. Clerk to forward a copy of the order to police
46. Standard of proof
47. Competence and compellability
48. Rules of evidence
49. Evidence given orally or by affidavit
50. Proving injuries by evidence other than a medical report
51. Appearing and leave to appear
52. Examination of witness by the respondent
53. Orders by consent
54. Warrant to secure the attendance of the respondent
55. Costs
56. Closed court and arrangements for support people
57. Restrictions on publication
58. Safety planning conference

Part 6—ENFORCEMENT OF CERTAIN ORDERS

59. Enforcement of order for urgent monetary relief
60. Methods of enforcement

Part 7—ENFORCEMENT OF ORDERS OVERSEAS AND FOREIGN ORDERS

61. Enforcement of orders made in Fiji overseas
62. Registration of foreign domestic violence restraining orders
63. Copy of registered foreign orders to be sent to police
64. Effect of registration
65. Variation of registered foreign domestic violence restraining order
66. Registered foreign orders not to be enforced in certain circumstances
67. Evidence taken overseas
68. Proof of documents
69. Depositions to be evidence
70. Prescribed foreign countries
71. Evidence of orders made in foreign country

Part 8—APPEALS

72. Jurisdiction in relation to appeals
73. Commencing an appeal
74. Appeal does not act as a stay of the order under appeal
75. Nature of appeal
76. Power on appeal

Part 9—OFFENCE

77. Criminal offence to breach a domestic violence restraining order
78. Police may arrest without warrant

Part 10—CONTEMPT

79. Contempt and referral for investigation or prosecution

Part 11—MISCELLANEOUS

80. Power to make rules
81. Power to make regulations
82. Consequential amendments

GOVERNMENT OF FIJI

DOMESTIC VIOLENCE DECREE 2009
(DECREE No. 33 OF 2009)

A DECREE TO PROVIDE GREATER PROTECTION FROM DOMESTIC VIOLENCE, TO CLARIFY THE DUTIES OF THE POLICE IN THAT REGARD, TO INTRODUCE DOMESTIC VIOLENCE RESTRAINING ORDERS AND OTHER MEASURES TO PROMOTE THE SAFETY AND WELLBEING OF VICTIMS OF DOMESTIC VIOLENCE AND TO PROMOTE REHABILITATION OF PERPETRATORS OF DOMESTIC VIOLENCE AND FOR RELATED MATTERS

IN exercise of the powers vested in me as Vice-President of the Republic of Fiji by virtue of the Office of the Vice-President and Succession Decree 2009 I hereby make the following Decree:

Part 1—PRELIMINARY

Short title and commencement

1.—(1) This Decree may be cited as the Domestic Violence Decree 2009.

(2) This Decree commences on a date or dates to be appointed by the Minister by notice in the Gazette.

(3) The Minister may appoint different dates for the commencement of different provisions of this Decree.

Interpretation

2. In this Act, unless the context otherwise requires—

"adult" means a person who has reached the age of 18 years;

"applicant" means a person who applies for an order under this Decree on their own behalf or for the benefit of another person or persons;

"child" means a person who is under the age of 18 years;

"Clerk of the Court" includes the Registrar of a Court;

"Commissioner of Police" means the office of Commissioner of Police established under section 21 of the State Services Decree 2009 (Decree No. 6);

"compensation order" means an order for compensation made under section 39;

"Court" means a court set out in section 8;

"de facto relationship" means the relationship between a man and a woman who live or lived with each other as spouses on a genuine domestic basis although not legally married to each other;

"domestic violence" has the meaning set out in section 3;

"domestic violence offence" means a domestic violence offence as defined in section 4 of the Penal Code;

"domestic violence restraining order" means—

(a) an order referred to in section 23 consisting of standard non-molestation conditions, referred to in sections 27 and 28, and any additional conditions that a Court applies, referred to in sections 29 to 38 inclusive; and

(b) includes an order that varies such an order;

"Family Law Act" means the Family Law Act 2003;

"family or domestic relationship" means the relationship of—

(a) spouse;

(b) other family member;

(c) person who normally or regularly resides in the household or residential facility;

(d) boyfriend or girlfriend;

(e) person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care;

"final order" in relation to an order made under this Decree means an order that deals with a substantive matter in issue in proceedings on a final basis;

"foreign domestic violence restraining order" means an order made by a Court in a prescribed foreign country, being—

(i) an order to protect a person from behaviour by the person against whom the order is made, where, if the behaviour occurred in Fiji it would be behaviour in respect of which a domestic violence restraining order could be made under this Decree; or

(ii) an order that varies, discharges, or is made in substitution for, such an order;

but does not include—

(i) an order made ex parte; or

(ii) an order of an interim nature; or

(iii) an order made by a Court in a prescribed foreign country that varies, discharges, or is made in substitution for, an order made by a Court in Fiji that is registered or is otherwise enforceable in that country;

"home" includes—

(a) any structure or vessel or part of a structure or vessel that can be used as a residence;

(b) any mobile home, caravan or other means of shelter placed upon any land that can be used as a residence;

"interim order" in relation to an order made under this Decree means an order that deals with a substantive matter in issue in proceedings on an interim basis pending further hearing of that particular matter;

"native land" has the meaning given to it by section 2 of the Native Lands Act (Cap. 133), and includes land administered or regulated under the Banaban Lands Act (Cap. 124) and the Rotuma Lands Act (Cap. 138);

"order" means an order by a Court that may be made or has been made under this Decree including an order—

(a) made in the absence of the respondent;

(b) made without notice to the respondent, and

(c) made on an interim or final basis;

"other family member" means any of the following—

(a) parent, grandparent, step-parent, father-in-law, mother-in-law;

(b) child, grandchild, step-child, son-in-law, daughter-in-law;

(c) sibling, half-brother, half-sister, brother-in-law, sister-in-law;

(d) uncle, aunt, uncle-in-law, aunt-in-law;

(e) nephew, niece, cousin;

(f) clan, kin or other person who in the particular circumstances should be regarded as a family member,

provided that, if a person was or is in a de facto relationship with another person the relationship of other family member includes a person who would be included if the persons in that de facto relationship were or had been married to each other;

"personal property" means clothing, furniture, household appliances, effects and other similar property in the possession or control of—

(a) the respondent; or

(b) a person who is or will be protected by the domestic violence restraining order;

"perpetrator" means a person who perpetrates domestic violence as defined in section 3;

"police officer" means any member of the Fiji Police Force;

"police station" includes a police post;

"prescribed foreign country" means a country within the Commonwealth or which is a member of the Pacific Islands Forum, or any other country prescribed by regulations for this purpose;

"presiding judicial officer" means a resident Magistrate or Judge presiding in proceedings under this Decree,

"proceedings under this Decree" includes proceedings where a Court exercises jurisdiction under this Decree in the course of other proceedings before the Court;

"property of the protected person" means property that a person protected by a domestic violence restraining order owns or does not own, but where the person does not own the property, the property was—

(a) used or enjoyed by the person;

(b) available for the person's use or enjoyment;

(c) in the person's care or custody; or

(d) at the person's home or place or residence;

"property of a victim" means property that a victim owns or does not own, but where the person does not own the property, was—

(a) used or enjoyed by the person;

(b) available for the person's use or enjoyment;

(c) in the person's care or custody; or

(d) at the person's home or place or residence;

"protected person" means a person who is protected by a domestic violence restraining order made under this Decree and includes a person protected by an interim order or a final order;

"registered foreign domestic violence restraining order" means a foreign domestic violence restraining order that is registered in a Court pursuant to section 62;

"regulations" means regulations made under this Decree;

"respondent" means a person against whom an order is sought or made under this Decree;

"rules" means the rules made under this Decree unless the context otherwise requires;

"safety planning conference" means a conference referred to in section 58, conducted in accordance with that section, to attempt to resolve details about how the safety of a victim will be ensured and other matters relating to the objectives and principles in this Decree so far as the objectives and principles are relevant in a particular case.

"senior court officer" means a clerk of the Court or another senior administrative officer of the Court;

"sexual abuse" means any act of a sexual nature by one person towards another which is or was violence as defined in subsections 3(2)*(a), (d), (e), (f)* or *(g);*

"spouse" includes a person who is or has been in a de facto relationship with the other person;

"tenancy order" means an order made under section 36;

"urgent monetary relief" means payment of, or contribution towards, any of the following expenses of a protected person, by the respondent—

(a) medical expenses;

(b) living expenses (for example food, necessities);

(c) accommodation expenses (for example rent, mortgage, loans, electricity, fuel bills);

(d) relocation expenses (for example telephone calls, transport, establishing a child at a new school);

(e) purchase of household necessities; and

(f) any other expenses of an urgent nature that the Court considers reasonably necessary;

"victim" means a victim of domestic violence as defined in section 3, including a child as set out in that section;

"weapon" means any article —

(a) used or threatened to be used by a person to cause injury to a person;

(b) made or adapted for use to cause injury to a person; or

(c) intended to be used, or which may be used, by a person who has possession of it, or access to it, to cause injury to a person;

"weapons licence" means a licence of a kind issued under the Arms and Ammunition Act (Cap 188).

Definition of domestic violence

3.—(1) "Domestic violence" in relation to any person means violence against that person ('the victim') committed, directed or undertaken by a person ('the perpetrator') with whom the victim is, or has been, in a family or domestic relationship.

(2) In relation to subsection (1), "violence" means any of the following—

(a) physical injury or threatening physical injury;

(b) sexual abuse or threatening sexual abuse;

(c) damaging or threatening to damage property of a victim;

(d) threatening, intimidating or harassing;

(e) persistently behaving in an abusive, cruel, inhumane, degrading, provocative or offensive manner;

(f) causing the victim apprehension or fear by—

(i) following the victim; or

(ii) loitering outside a workplace or other place frequented by the victim, or

(iii) entering or interfering with a home or place occupied by the victim, or

(iv) interfering with property of the victim, or

(v) keeping the victim under surveillance;

(g) causing or allowing a child to see or hear any of the violence referred to in paragraphs *(a)* to *(f)* inclusive;

(h) causing another person to do any of the acts referred to in paragraphs *(a)* to *(g)* inclusive towards the victim.

(3) Subject to subsection (4), causing or allowing a child to see or hear violence, as specified in paragraph *(g)* of subsection (2), includes putting the child, or allowing the child to be put, at real risk of seeing or hearing that violence.

(4) A person who suffers the violence is not to be regarded, for the purposes of paragraph *(g)* of subsection (2) or of subsection (3), as having caused or allowed or put the child at real risk of seeing or hearing the violence.

(5) A single act may amount to violence for the purpose of subsection (1) and in addition a number of acts that form part of a pattern of behaviour may amount to violence even though some or all of those acts, when viewed in isolation, may appear minor or trivial.

Decree to bind State

4. This Decree binds the State.

Application of the Decree

5. This Decree applies to domestic violence committed in Fiji and overseas.

Objects

6. The objects of this Decree are –

(a) to eliminate, reduce and prevent domestic violence;

(b) to ensure the protection, safety and wellbeing of victims of domestic violence;

(c) to implement the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and related conventions; and

(d) to provide a legally workable framework for the achievement of *(a)*, *(b)* and *(c)* above.

Principles

7.—(1) The following principles must be applied by a Court when exercising jurisdiction under this Decree and by any person who exercises a power, or performs a function, pursuant to this Decree—

(a) the need to promote the objects of this Decree;

(b) the need to ensure that proceedings under this Decree are as speedy, inexpensive and simple as possible;

(c) the need to ensure the safety and wellbeing of victims of domestic violence;

(d) the need to ensure that children are not exposed to domestic violence and to ensure the safety and wellbeing of children who have been, or are at risk of becoming, a direct or indirect victim of domestic violence;

(e) the need to ensure that victims of domestic violence can go about their life and usual routines free from the risk of domestic violence;

(f) the need to ensure as far as possible that victims of domestic violence are able to remain in their usual homes, and even if this does not or cannot occur, that their accommodation needs have highest priority;

(g) the need to address the adverse consequences of domestic violence for the victims and to rehabilitate the victims;

(h) the need to ensure that victims of domestic violence are not further victimised by the perpetrator or others, in the course of the proceedings or otherwise, because the victim sought protection or other redress in relation to the violence; and

(i) the need to ensure that the perpetrator—

(i) is aware of the terms and effect of an order made under this Decree which imposes obligations upon them;

(ii) is aware of services that may be able to assist them to address their violence;

(iii) is encouraged to accept responsibility for their violence; and

(iv) contributes, where possible, to the rehabilitation of the victim.

Jurisdiction of Courts

8.—(1) The following Courts have jurisdiction to make orders under this Decree—

(a) the Magistrates' Court when constituted by a resident magistrate;

(b) the Family Division of the Magistrates' Court;

(c) the Family Division of the High Court;

(d) a Juvenile Court; and

(e) the High Court.

(2) An application under this Decree may be commenced in any of the Courts specified in subsection (1) and in addition those Courts may make an order under this Decree when exercising jurisdiction in other proceedings before the Court, including proceedings relating to a criminal charge.

Transfer of proceedings

9.—(1) Subject to subsection (2) and (3), where—

(a) proceedings under this Decree are pending before a Court, and

(b) it appears to the Court that it is in the interests of justice or of convenience to the parties that the proceedings be dealt with in another Court that has jurisdiction under this Decree,

the Court may, before making an order, or after making an interim order but before making a final order, transfer the proceedings to another Court that has jurisdiction under this Decree.

(2) When a Court is considering whether to transfer the proceedings to another Court, the Court must make an interim order under this Decree to ensure the safety and wellbeing of each person proposed to be protected unless—

(a) suitable orders are already current; or

(b) the Court determines that the safety and wellbeing of each relevant person is not at risk.

(3) Where a Court intends to order that proceedings under this Decree be transferred to another Court, the Court may—

(a) request that the Court to which the proceedings are being transferred list the matter within a specified time, and

(b) make orders about procedural matters that will enable the case to proceed as quickly as possible before the Court to which the proceedings are being transferred.

Courts to act in aid of each other

10. Courts having jurisdiction under this Decree must severally act in aid of and be auxiliary to each other in all matters under this Decree.

Matters to be considered by the Court

11. Notwithstanding sections 28 and 29 of the Magistrates Court Act (Cap. 14), and any other law that would require a Court, when exercising jurisdiction under this Decree, to promote reconciliation between the parties, the Court must, in making any decisions or order under this Decree, regard the safety and wellbeing of the victim to be of the utmost and paramount importance in weighing factors that need to be taken into account.

PART 2—DUTIES

Police to prevent domestic violence, detect and bring to justice

12. Each police officer has a duty to prevent the commission of domestic violence offences, to detect and bring offenders to justice and to apprehend all persons who the police officer is legally authorised to apprehend and for whose apprehension sufficient grounds exist.

Police to render assistance to victims of domestic violence

13.—(1) Each police officer must when an incident of domestic violence is reported, respond in a timely way, investigate and render such assistance as is reasonable in the circumstances to the victim.

(2) Each police officer must at the scene of an incident of domestic violence or as soon after as is reasonably possible, or when an incident of domestic violence is reported —

(a) render such assistance to the victim as may be required in the circumstances, including—

(i) assisting the victim or another person to obtain medical treatment;

(ii) subject to subsection (iii), assisting to ensure as far as possible that the victim is able to remain in their usual home in accordance with the priority that is placed on the victim's accommodation needs by section 7 of this Decree;

(iii) assisting the victim to find other suitable accommodation if it is not possible for the victim to remain in their usual home or the victim does not wish to do so; and

(iv) assisting the perpetrator to find suitable accommodation;

(b) if it is reasonably possible to do so, hand written information listed in subsection (c) to the victim, in the language of the victim's choice and explain the contents to the victim;

(c) the written information to be handed to the victim referred to in subsection (b) is information in the prescribed form regarding—

(i) services that are available to assist the victim;

(ii) the rights that the victim may have to seek protection and other orders under this Decree;

(iii) the duty that police may have to apply for an order for the protection of the victim under this Decree;

(iv) the responsibilities police may have in relation to charging the perpetrator, and

(v) information about the complaints process that applies to police work in relation to domestic violence;

(d) if it is reasonably possible to do so, hand prescribed written information listed in subsection *(c)* to the perpetrator in the language of the perpetrator's choice, and explain the contents to the perpetrator including—

(i) services that are available to assist the perpetrator; and

(ii) the matters in section 13(2)*(c)*, subparagraphs (ii) to (v), regarding the rights that the victim may have to seek protection and other orders under this Decree.

Police to apply for a domestic violence restraining order

14.—(1) Subject to subsection (2), a police officer must make an application for a domestic violence restraining order for the protection of a person who is, or may become, a victim of domestic violence in the following cases—

(a) where a person is charged with a domestic violence offence, or

(b) where the police officer suspects or believes that—

(i) a domestic violence offence has recently been committed, is being committed, is imminent, or is likely to be committed, and

(ii) the victim's safety or wellbeing is at risk.

(2) Where subsection (1) applies a police officer must make an application for a domestic violence restraining order against the relevant person or persons, being—

(a) the person charged with a domestic violence offence, or

(b) the person or persons who pose the risk.

(3) The obligation to apply for a domestic violence restraining order in subsection (1) and (2) does not apply if the police officer—

(a) is aware that an application for a domestic violence restraining order has already been commenced for the protection of the person against the person who would be bound if an order was sought by the police officer; or

(b) in the special circumstances of the case, having regard to the objects and principles in this Decree, a decision has been made by the officer in charge that that there are good reasons why an application should not be made.

(4) Where a decision not to apply is made under subsection (3), then subject to subsection (5), the officer in charge must make a written record of the decision and the reason for the decision and immediately provide a copy of this with the prescribed complaints notice attached to each person for whose protection a domestic violence restraining order would otherwise have been sought.

(5) Where a person for whose protection a domestic violence restraining order would otherwise have been sought is a person under 16 years or a person who lacks the mental capacity to understand the effect of a domestic violence restraining order, the written copy of the decision and reasons referred to in subsection (4) with the complaints notice attached must instead be immediately provided to a person above the age of 18 years who—

(a) is a parent or guardian of the person; or

(b) is providing care to the person; or

(c) is supporting or assisting the person and is considered appropriate by the senior police officer in the particular circumstances.

(6) The complaints notice referred to in subsection (4) and (5) is a notice in the form prescribed by the regulations that explains the rights of the victim to make a complaint about delay by a police officer in applying for a domestic violence restraining order for the protection of the person or a decision by a police officer not to apply for such an order.

Police to assist with collection of personal property

15.—(1) Where a Court makes a request under this Decree that the officer in charge of a police station arrange for a police officer to accompany a person to a specified place to assist with arrangements regarding the collection of specified personal property it is the duty of the officer in charge of a police station to whom the request is directed to arrange for a suitable police officer to accompany the person as specified in the order.

(2) Where a person who is protected by a domestic violence restraining order, requests a police officer to be present at a place to supervise the transfer of personal property between a person who is bound by the order and a person who is protected by the order, it is the duty of the officer to make all reasonable arrangements to assist where the office believes that a breach of the peace or a breach of the domestic violence restraining order may otherwise occur.

Legal practitioners to provide information about services

16.—(1) In the circumstances referred to in subsection (3) a legal practitioner who receives instructions to act for a person must provide the person at the earliest reasonable opportunity with information in the prescribed form which explains the services and programs that may be available to assist.

(2) Subsection (1) applies unless the legal practitioner considers that providing the person with information in the prescribed form would not be useful or appropriate for the person in the circumstances.

(3) Subject to subsection (2), subsection (1) applies when a legal practitioner receives instructions from—

(a) a person who instructs that they have been a victim of domestic violence;

(b) a person who seeks to be, or is, protected by an order made under this Decree;

(c) a person who instructs that they have perpetrated domestic violence,

(d) a person who is the respondent to an application for an order under this Decree; and

(e) a person who has been charged with a domestic violence offence.

(4) Where subsection (3) applies but the legal practitioner is of the opinion that the person is unable to read or understand information in the prescribed form, the legal practitioner must take reasonable steps to explain the information to the person.

Court to provide information about services

17.—(1) Subject to this section a Court, when dealing with an application for an order under this Decree, must ensure that information in the prescribed form, which explains services and programs that may be available to provide assistance, is given as early as possible in the proceedings to—

(a) each person who would be protected by the order; and

(b) to the respondent.

(2) The requirement in subsection (1) is satisfied in relation to a person if the person confirms, or the Court has reason to believe, that the person has already received the information.

(3) Where a person who would be protected by an order is under 16 years or has a mental or other incapacity such that they are incapable of understanding the information required to be provided, the requirement in subsection (1) is satisfied—

(a) if the Court directs that the information be provided to the applicant or to another person who is caring for, or supporting, that protected person, or

(b) if the Court determines, in the special circumstances of the case, that it would not be useful or appropriate for the information to be provided to that protected person.

(4) Where a person to whom this section applies is not present before the Court, the Court may direct that the information be—

(a) posted to the person;

(b) served on the person; or

(c) provided to the person in another way specified by the Court.

(5) In criminal proceedings relating to a charge for a domestic violence offence, the Court must ensure that information in the prescribed form, which explains services and programs that may be available to provide assistance, is given to the defendant at the earliest possible opportunity during the proceedings.

(6) The requirement in subsection (5) is satisfied if the defendant advises that they have already received a copy of the information.

Court to explain the effect of orders

18.—(1) Subject to subsection (2), a Court that makes a domestic violence restraining order under this Decree must explain to—

(a) the person bound by the order; and

(b) the person protected by the order,

who are in Court when the order is made—

(c) the purpose, terms and effects of the order;

(d) the consequences that may follow if the person bound by the order breaches the order;

(e) the consequences that may follow if the person protected by the order –

(i) encourages or invites the person who is bound by the order to breach the order; or

(ii) by their actions causes the person who is bound by the order to breach the order;

(f) that the order must be varied, suspended or discharged if the person who is bound by the order or the person protected by the order or both or all of them wish to do anything that would be contrary to, or in breach of, the order;

(g) how the order may be varied, suspended or discharged.

(2) If a person who would be protected by an order is under 16 years or has a mental or other incapacity such that they are incapable of understanding the information required to be provided, the requirement in subsection (1) is satisfied if the Court directs that the information be provided to the applicant or to another person who is caring for, or supporting, that person.

(3) If a person referred to in section 19(1)*(a)* or *(b)* is not present in Court when the order is made or it is not practical for the court to give the explanation at the time the restraining order is made, then the Court must direct the clerk of the court to cause a prescribed document containing the explanation—

(a) in the case of a person bound by the order, to be served on the person; and

(b) in the case of a person protected by the order, to be delivered to the person unless the Court directs that it should be delivered to another person on behalf of the protected person (for example, to their care giver).

(4) An order made under this Decree is not invalid merely because a person who should have been given the explanation referred to in subsection (1) was not given the explanation.

PART 3—DOMESTIC VIOLENCE RESTRAINING ORDERS

Who can apply

19.—(1) An application for an order under this Decree may be made in respect of—

(a) an adult, by—

(i) the person themselves; or

(ii) another person who normally cares for, or is currently caring for, the person;

(b) a child, by—

(i) a parent or guardian of the child;

(ii) an adult with whom the child resides (either usually or on a temporary basis);

(iii) a child themselves where the child has attained the age of 16 years and is a married person; and

(iv) a child themselves where the child has attained the age of 16 years and the court has granted leave to the child to make the application on their own behalf;

(c) an adult or a child, by—

(i) a police officer, where a person has been charged with a domestic violence offence or the police officer suspects or believes that a domestic violence offence has recently been committed, is being committed, is imminent, or is likely to be committed, and the victim's safety or wellbeing is at risk; or

(ii) the Director of Social Welfare or a welfare officer appointed under section 37(2) of the Juveniles Act (Cap. 56); or

(iii) the Public Trustee when undertaking management and care of the property of a person of unsound mind under section 17(1) of the Public Trustee Act (Cap. 64) or another person holding an appointment in respect of the affairs of a person of unsound mind under section 23 of that Act; or

(iv) the Public Trustee when holding an appointment under section 17(2) of the Public Trustee Act (Cap. 64) to undertake the management and care of the property of an incapable person; or

(v) any other person where it appears to the Court to be necessary for the safety or wellbeing of the victim.

(2) Where an application is made under section (1) for the protection of a person over 16 years and the applicant is not the person intended to be protected, the applicant must demonstrate to the satisfaction of the Court that—

(a) the applicant has the consent of the person to be protected to make the application; or

(b) the person to be protected lacks the capacity to understand the proceedings or the nature and extent of the risk and the proceedings are necessary for the victim's safety or wellbeing; or

(c) it is not reasonable in the circumstances for consent to be required.

Urgent proceedings without notice to the respondent

20.—(1) Where an application is filed seeking an order under this Decree and the applicant seeks to proceed urgently without notice to the respondent, section 42 applies in relation to listing the matter for urgent hearing by the court.

(2) A Court exercising jurisdiction under this Decree may make a domestic violence restraining order without notice to the respondent if the Court is satisfied that the delay that would be caused if notice to the respondent was required would or might entail—

(a) a risk of harm; or

(b) undue hardship

to a person who would be protected by the order.

(3) A domestic violence restraining order made without notice to the respondent is an interim order which continues until it is confirmed as a final order, or is earlier varied, suspended or discharged by a Court.

(4) At the time the order referred to in subsection (2) is made, the Court must—

(a) specify a further Court date when the respondent must be present at Court; and

(b) give directions about urgent service on the respondent of—

(i) a sealed copy of the order of the Court;

(ii) a sealed copy of any application and supporting material filed by the applicant; and

(iii) the information the Court is required to be provide to the respondent pursuant to sections 17 and 18.

Application with notice to the respondent

21. Where an application is filed seeking an order under this Decree and the applicant does not seek to proceed urgently without notice to the respondent, section 42 applies in relation to listing the matter before the court and service of the application on the respondent.

Interim and final orders

22. Except as provided by this Decree—

(a) any order that a Court may make under this Decree may be made as an interim order or as a final order;

(b) where a Court makes an interim domestic violence restraining order that order continues until confirmed by a Court as a final order or earlier varied, suspended or discharged by a Court;

(c) where a Court makes a final domestic violence restraining order that order continues unless varied, suspended or discharged by a Court.

Grounds for making a domestic violence restraining order

23.—(1) A Court may make a domestic violence restraining order for the safety and wellbeing of a person if satisfied that the person is, or has been, in a family or domestic relationship with the respondent, and—

(a) the respondent has committed, is committing, or is likely to commit domestic violence against that person or against another person relevant to the application, and

(b) the making of the order is necessary for the safety and wellbeing of the person or another person relevant to the application, or both.

(2) In determining whether a domestic violence restraining order should be made for the safety and wellbeing of a person, the Court must consider—

(a) whether there is reason for concern that the respondent's behaviour or other behaviour that would be domestic violence may be repeated by the respondent;

(b) the perception of the applicant and of a person who would be protected by the order, about the nature and seriousness of the respondent's behaviour in respect of which the application is made; and

(c) the effect of the respondent's behaviour on each person who would be protected by the order including the effect of the respondent's behaviour on their ability to go about their normal life and normal routines.

Circumstances where orders must be made

24.—(1) Subject to subsection (3) but notwithstanding any other provision in this Decree—

(a) where a person stands charged before a Court with an offence which is a domestic violence offence, the Court must—

(i) make an interim domestic violence restraining order under this Decree against the defendant for the safety and wellbeing of the person against whom the offence appears to have been committed; and

(ii) make an order directing the defendant to appear at the further hearing of the matter on a date and at a location fixed by the Court;

(b) where a person—

(i) pleads guilty to, or is found guilty of, an offence which is a domestic violence offence; or

(ii) the Court intends to stay or terminate the proceedings,

the Court must make a domestic violence restraining order under this Decree for the safety and wellbeing of the person against whom the offence or alleged offence was committed;

(2) Where paragraph *(a)* or *(b)* of subsection (1) applies and there is a domestic violence restraining order made under this Decree in effect against the defendant for the safety and wellbeing of the person against whom the offence is alleged to have been committed, or was committed, the Court may vary the order if this appears desirable to provide greater protection for the safety and wellbeing of a protected person.

(3) Where subsection (1) applies the Court need not make an order under this section if satisfied that, having regard to the safety and wellbeing of the person for whose protection the order would be made, the order is not required.

Application by police by telephone

25.—(1) A prescribed police officer may apply to a magistrate or judge of a Court that has jurisdiction under this Decree (referred to in this section as the "presiding judicial officer") by telephone for an interim domestic violence restraining order under this section.

(2) Before applying for an order under this section the police officer must—

(a) complete the application part of the prescribed form by indicating the grounds on which the order is sought;

(b) if possible to do so, without causing any unreasonable delay in making the application, transmit a copy of the completed application to the presiding judicial officer by facsimile transmission;

(c) if the respondent is present at the location from which the police officer is intending to apply for the order by telephone—

(i) invite the respondent to be present during the telephone application; or

(ii) if the respondent is in custody, unless there are good reasons not to do so, arrange for the respondent to be present;

(d) at the commencement of the application by telephone advise the presiding judicial officer whether the respondent is present with the police officer and if present whether the respondent is able to hear all of the telephone call.

(3) Where a presiding judicial officer to whom the application under subsection (1) is made is of the opinion that it is not practical in the circumstances of the case for the police officer to appear before the Court to make the application, the application may proceed by telephone.

(4) Where an application proceeds by telephone under this section the proceedings are deemed to be interim proceedings in Court before the presiding judicial officer, and—

(a) the provisions of this Decree apply, and

(b) any order made by the presiding judicial has the same effect as an order made in Court under this Decree.

(5) A judicial officer who makes an order under this section must—

(a) complete the application part of the prescribed application form unless the judicial officer has before the conclusion of the hearing by telephone received a copy of the application from the police officer by facsimile transmission;

(b) reduce to writing and include with the prescribed application form any additional information provided by the police officer during the hearing by telephone;

(c) complete and sign the order on the prescribed form;

(d) determine the time and place of the next Court date being a date—

(i) within 30 days of the date that the order is made if the Court will be sitting during that time at a location sufficiently convenient to the person protected by the order, the police officer and the respondent; or

(ii) if it is not possible to specify a date within 30 days then the first suitable hearing day after the end of that period;

(e) record on the order the reasons for making the order and the time and place of the next Court date;

(f) inform the member of the police force, by telephone, of the terms of the order, the reasons for making it and the time at and place of the next Court date;

(g) if the respondent is present with the police officer, speak to the respondent and inform the respondent of the matters set out in subsection (5)*(f)* and also explain the effect of the orders to the respondent as required by this Decree;

(h) if reasonably possible to do so, immediately send by facsimile transmission to the police officer, a copy of the application, the written notes of any additional information provided by the police officer during the hearing by telephone, and the order so made; and

(i) as soon as practical, cause the completed and signed prescribed form, to be forwarded to the Clerk of the Court for the Court file.

(6) A police officer who proceeds with an application under this section must—

(a) reduce to writing on the prescribed application completed by the police officer any additional information provided by the police officer to the presiding judicial officer during the hearing by telephone;

(b) on being informed under subsection (5) of the making and terms of the order, complete the relevant order parts of the prescribed form as directed by the presiding judicial officer; and

(c) place a copy of the application and order if received from the presiding judicial officer by facsimile transmission with the application.

(7) As soon as possible after an order under this section is made, the police officer must—

(a) cause a copy of the application and the order received by facsimile transmission from the presiding judicial officer, or if not available, then the application completed under subsection (6)*(a)* and the order completed under subsection (6)*(b)*, to be served on the defendant; and

(b) unless already explained to the respondent by the presiding judicial officer, cause the effect of the orders to be explained to the respondent having regard to section 18 of this Decree;

(c) cause a copy of the documents referred to in subsection 7*(a)* to handed as soon as possible to the person protected by the order;

(d) forward a copy of the order served to the clerk of the court, for the Court file.

(8) An order made under this section is deemed to be a summons to the respondent requiring the respondent to appear before the Court at the time and place shown on the order.

Orders by the Court's own motion

26.—(1) Notwithstanding any other provision in this Decree, where the Court that has jurisdiction under this Decree is dealing with proceedings, other than proceedings under this Decree, the Court may on its own motion make a domestic violence restraining order under this Decree if the Court considers—

(a) there are sufficient grounds to consider making an order under this Decree;

(b) that the order is required to ensure the safety and wellbeing of a victim of domestic violence;

(c) it is convenient and in the interests of justice that the order be made; and

(d) it is reasonable in all the circumstances that the order be made.

(2) An order made by the Court on its own motion under subsection (1) is an interim order and the Court must give directions in relation to—

(a) the date and place of the next hearing;

(b) who must be present at Court at the next hearing;

(c) service of the order;

(d) any documents that should be filed prior to the next hearing; and

(e) any other matter relating to the further hearing of the matter considered appropriate by the Court.

Standard non-molestation conditions

27.—(1) The standard non-molestation conditions that apply to every domestic violence restraining order are set out in subsection (2).

(2) The standard non-molestation conditions are that the respondent must not–

(a) physically assault or sexually abuse the protected person;

(b) threaten to physically assault or sexually abuse the protected person;

(c) damage or threaten to damage any property of the protected person;

(d) threaten, intimidate or harass the protected person;

(e) behave in an abusive, provocative or offensive manner towards the protected person;

(f) encourage any person to engage in behaviour against a protected person, where the behaviour if engaged in by the respondent would be prohibited by the order.

(3) In addition to the conditions set out in subsection (2), a Court may order other conditions having regard to sections 28 to 37.

Standard non-molestation conditions apply to a child

28.—(1) Where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person and the person has a child or children in their care—

(a) unless the Court orders otherwise, the standard non-molestation conditions also apply for the protection of that child or those children; and

(b) the Court may apply additional conditions under this Decree for the safety and wellbeing of the child or children.

(2) The powers in this section are in addition to the power of a Court, exercising jurisdiction under this Decree, to make a domestic violence restraining order for the protection of a child in the child's own right.

Additional conditions - contact

29.—(1) Where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may include, either absolutely or on conditions specified by the Court, any of the non-contact conditions specified in subsection (2).

(2) The non-contact conditions referred to in subsection (1) are that the respondent must not—

(a) watch, loiter near, or prevent or hinder access to or from, the protected person's place of residence, business, employment, educational institution, or any other place that the protected person visits often; or

(b) follow the protected person about or stop or accost the protected person in any place; or

(c) enter or remain on any land or building occupied by the protected person; or

(d) enter any land or building or remain there when the protected person is also on the land or in the building;

(e) make any other contact with the protected person (whether by telephone, correspondence, or otherwise), except such contact—

(i) that is permitted in the domestic violence restraining order made by the Court; and

(ii) that is reasonably necessary in an emergency.

Additional conditions - spouse

30.—(1) Subject to subsection (2), where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may direct that the order, or specified parts of the order, also apply for the benefit of a person, not being the respondent, who is the spouse of the protected person.

(2) The Court may make a direction under subsection (1) when satisfied that—

(a) the respondent is engaging in, or has engaged in, behaviour that, if the respondent and the person were or had been in a family or domestic relationship would amount to domestic violence against the person; and

(b) the respondent's behaviour towards the person is wholly or partly due to the person's relationship with a protected person; and

(c) the making of the direction is necessary for the safety of the person; and

(d) where practical in the circumstances, the court is satisfied that the person consents to the direction being made.

Additional conditions - children

31.—(1) This section applies where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a child.

(2) In this section, "a specified order or agreement" means—

(a) an interim or final custody, guardianship or access order made by a court in Fiji;

(b) an order which is a residence order, a specific issues order or a contact order made under the Family Law Act; or

(c) a parenting plan registered under section 59 of the Family Law Act.

(3) Where subsection (1) applies—

(a) if there is no specified order or agreement in effect in relation to the child; and

(b) the Court considers that the safety and wellbeing of the child, or of another person, or of the child and another person requires that an order be made immediately in relation to –

(i) where the child should live;

(ii) who should care for the child;

(iii) a child being delivered to the person who should care for the child;

(iv) arrangements for contact in relation to the child; or

(v) other issues relating to the safety and wellbeing of the child,

then subject to subsection (4) and subsection (11), the Court may make an order in relation to a matter specified in subparagraphs (i) to (v) of paragraph *(b)* as a condition of a domestic violence restraining order.

(4) Before a Court makes an order of the kind specified in subsection (3) the Court—

(a) must consider whether each parent or guardian of the child has received notice of the application; and

(b) unless the Court considers that the safety and wellbeing of the child, or of a person protected by the domestic violence restraining order, or both, justifies the Court proceeding without notice, the Court must order that adequate notice be given to each parent or guardian of the child before making the order.

(5) When a Court makes an order under subsection (3) the order so made takes effect immediately and continues in effect unless and until it is varied, suspended or discharged by subsequent order under this Decree or by a Court exercising jurisdiction under the Family Law Act.

(6) Where subsection (1) applies and—

(a) a specified order or agreement is in effect in relation to that child; and

(b) the Court considers that one or more of the provisions of a specified order or agreement requires adjustment to ensure the safety and wellbeing of the child, or another person who is or will be protected by the domestic violence restraining order or both,

then subject to subsection (11), the Court may vary or suspend the specified order or agreement to the extent necessary to ensure the safety and wellbeing of the child or another person who is, or will be, protected by the domestic violence restraining order.

(7) The power in subsection (6) to vary or suspend a specified order or agreement applies notwithstanding the provisions of the Family Law Act.

(8) Before a Court makes an order to vary or suspend a specified order or agreement the Court—

(a) must consider whether each of the parties to the proceedings in which the existing orders were made have received notice of the application to vary or suspend; and

(b) unless the Court considers that the safety and wellbeing of the child or of a person protected by the domestic violence restraining order, or of both such child and person, warrants the Court proceeding without notice, the Court must order that adequate notice be given to the relevant party or to each of the relevant parties before proceeding to determine the matter.

(9) In determining, whether to vary or suspend a specified order or agreement, the Court must take the following matters into account—

(a) the nature and extent of the risk to the child and to any other person protected by the domestic violence restraining order that has been made or which the Court intends to make;

(b) whether the risk can be eliminated if the Court makes an order or varies an existing order—

(i) to provide that access or contact visits by the respondent in relation to the child may only take place if supervised by a suitable person specified by the Court; or

(ii) to provide that particular arrangements apply to ensure that the respondent does not come into contact with a specified person protected by this order when a child is being collected and returned in relation to access or contact visits; or

(iii) in some other way concerning how the contact or access visits may take place.

(10) In addition to the matters specified in subsection (9), when determining whether to vary or suspend a specified order or agreement, the Court must take into account—

(a) whether the concerns raised in support of the application to vary or suspend the specified order or agreement, were considered by the Court that made the specified order or agreement; and

(b) whether proceedings in relation to the specified order or agreement are pending before another Court,

provided that neither of these matters may be treated as an impediment by the Court if the Court considers that the circumstances that now exist require variation or suspension of the specified order or agreement to ensure the safety and wellbeing of the child or another person who is, or will be, protected by the domestic violence restraining order.

(11) If the Court that is considering an application under subsection (3) or subsection (6) is a Court that also has jurisdiction under the Family Law Act and the Court considers that—

(a) it would be preferable to deal with the application under the Family Law Act rather than under this Decree; and

(b) there would be no disadvantage in relation to the need to ensure the safety and wellbeing of the child or another person who is, or will be, protected by the domestic violence restraining order,

the Court may decline to hear the application under this section and instead treat the application under this section as an application made under the Family Law Act to which the Family Law Act applies.

(12) When a Court makes an order under subsection (6) the order so made—

(a) takes effect immediately in substitution for the provisions of the specified order or agreement so varied or suspended; and

(b) continues in effect unless and until it is varied, suspended or discharged by subsequent order under this Decree or by a Court exercising jurisdiction under the Family Law Act.

(13) When a court makes an order under subsection (6) the Court must ensure that a sealed copy of the order is—

(a) forwarded as soon as possible to the Registrar of the Family Division of the Magistrates Court or the Family Division of the High Court, which ever may be appropriate; and

(b) served on each of the parties in the proceedings in which the specified order was made.

(14) A person specified in section 65 of the Family Law Act may apply to the Family Division of the Magistrates' Court or the Family Division of the High Court, as the case may be, to vary, suspend or discharge an order made under subsection (3) or subsection (6).

(15) If an application is made to the Family Division of the Magistrates' Court or the Family Division of the High Court, to vary, suspend or discharge an order made under subsection (3) or subsection (6) that Court is deemed to have power under the Family Law Act to vary or discharge the order made under subsection (3) or subsection (6) as if the order was an order made under the Family Law Act.

Additional conditions - possessions

32.—(1) Where a Court makes, or intends to make, a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may make any of the orders specified in subsection (2) concerning use of personal property.

(2) The orders referred to in subsection (1) are—

(a) that the respondent—

(i) must deliver specified personal property to the protected person or to another person or location specified in the order;

(ii) must allow the protected person, or another person on their behalf, to collect specified personal property from the respondent or from a specified location;

(iii) must allow the protected person, or another person on their behalf, access to premises for the purpose of collecting specified personal property;

(iv) must leave specified personal property in the home, or at another specified location, for use by the protected person;

(v) must not remove or attempt to remove specified personal property from the protected person;

(vi) must comply with directions by the court regarding arrangements for transfer of specified personal property.

(b) that a person protected by the order must—

(i) make specified personal property available for use by the respondent;

(ii) comply with directions made by the court regarding arrangements for transfer of specified personal property.

(3) When considering whether to make an order under this section the Court must—

(a) give highest priority to the safety and wellbeing of the protected person and any child in their care or ordinarily in their care; and

(b) have regard to the needs of the respondent and to any other person who would be affected by the order.

(4) When a Court makes an order under this section, the Court may request that the officer in charge of a particular police station arrange for a police officer to accompany a person to a specified place to assist with arrangements regarding the collection of specified personal property.

Additional conditions - weapons

33.—(1) Where a Court makes or intends to make a domestic violence restraining order for the safety and wellbeing of a person, the Court may make orders in relation to any of the matters in subsection (2) if satisfied that the condition is necessary for the safety and wellbeing of the protected person.

(2) Where subsection (1) applies, the additional orders that the Court may make in relation to weapons are—

(a) that the respondent must not have any weapons or particular weapons specified by the Court in their possession, custody or control;

(b) that the respondent must not seek to acquire any weapons or particular weapons specified by the Court;

(c) that the respondent must surrender all weapons and weapons licences or those specified by the Court, to the police within the time specified in the order;

(d) that the respondent must surrender all or any weapons and weapons licences at any time on demand by a police officer;

(e) that all weapons licences or those specified by the Court held by the respondent is suspended or cancelled; and

(f) that the respondent is disqualified from holding or seeking to hold any weapons licence or a particular weapons licence specified by the Court.

(3) Where the Court makes an order under subsection (2) the order applies unless and until the order is discharged by the Court.

(4) Where the Court makes an order under subsection (2) the Court may additionally order that—

(a) the Commissioner of Police be notified of the terms of these orders in relation to the Commissioner's functions under the Arms and Ammunition Act (Cap 188);

(b) police search locations specified by the Court for all or particular weapons or weapons licences, that the Court has reason to believe are in the respondent's possession, custody or control, to remove such weapons and retain them unless and until the Court directs that they be released to the respondent or be destroyed.

Additional conditions - urgent monetary relief

34.—(1) Where the Court makes or is intending to make a domestic violence restraining order under this Decree for the safety and wellbeing of a person, the Court may make an order that the respondent pay such urgent monetary relief to, or in respect of, a person protected by the order as the Court deems fair and reasonable.

(2) The following factors must be considered by the Court in determining an application for urgent monetary relief—

(a) the consequences of the domestic violence for the protected person;

(b) whether the protected person was wholly or partly financially reliant on the respondent;

(c) the financial circumstances of the protected person and whether there is a need for urgent monetary relief;

(d) whether the protected person would suffer hardship if an order for urgent monetary relief is not made;

(e) the financial circumstances of the respondent and whether the respondent has an ability to pay urgent monetary relief; and

(f) the desirability of ensuring wherever possible that the primary responsibility to provide urgent monetary relief is borne by the respondent rather than by the Department of Social Welfare.

(3) An order for urgent monetary relief may specify such lump sum, periodic or in-kind payments as the Court determines and in each case the Court must specify when and to whom the payment the payment must be made, but—

(a) where an order does not specify when a particular payment is to be made—

(i) if it is a lump sum or in-kind payment, the payment must be made by the respondent within 7 days of the date of the order; and

(ii) if it is a periodic payment, the first payment must be made within two days of the date of the order and on that same day in each subsequent week.

(b) where an order does not specify to whom a payment must be made—

(i) if it is a cash payment, it must be paid by the due date to the Clerk of the Court at the registry at which the order was made for payment out immediately to the protected person; and

(ii) if it is an in-kind payment, it must be paid by the due date to the victim by means that do not breach the terms of the domestic violence restraining order or any other order that binds the respondent.

(4) Subject to subsection (5) an order for urgent monetary relief may provide for payments that continue for such period specified by the Court up to a maximum of 3 months from the date that the order was made.

(5) Where, having regard to the matters referred to in subsection (2), the Court determines that there are exceptional circumstances, provided this determination is made —

(a) when making the order for urgent monetary relief ("the original order"); or

(b) within 3 months of that date,

the order for urgent monetary relief may provide for payments that continue for such period specified by the Court up to a maximum of 6 months from the date that the original order was made.

(6) Nothing in this section precludes a protected person from applying for a new order for urgent monetary relief if a further incident of domestic violence occurs.

(7) If a person who has been ordered to pay urgent monetary relief under this section fails to comply with the order, in addition to other powers that the Court may have in the circumstances, Part 6 applies in relation to enforcement of the order.

Additional conditions - occupying a home

35.—(1) Subject to this section—

(a) a Court that makes, or intends to make, a domestic violence restraining order, may order that a protected person has the right to occupy a home and that access by the respondent to the home be restricted (an "occupation order"); and

(b) a Court which is considering whether to make a domestic violence restraining order under this Decree, must consider whether an occupation order is required to promote the safety and wellbeing of the person who would be protected by the order and the safety and wellbeing of any child in their care or who is ordinarily in their care.

(2) An occupation order—

(a) may be made in relation to a home—

(i) which the protected person or the respondent, or the protected person and the respondent, own or in which either has a legal or equitable interest (including, but not limited to a tenancy);

(ii) whether or not the protected person and the respondent have ever lived in the same home, the home to which the order relates, or any other home; and

(iii) whether or not the protected person or the respondent is living in the home at the time that the order is made, provided that

(b) nothing in this section or this Decree allows a court to make an order alienating native land or any legal or equitable interest in it.

(3) Where an application is made for an occupation order, the Court may treat that application as an application for a tenancy order or an occupation order or both, and may, if it is satisfied that—

(a) it has jurisdiction to make a tenancy order;

(b) there are grounds to make a tenancy order; and

(c) the making of a tenancy order is appropriate,

make a tenancy order whether or not it makes an occupation order.

(4) Before an occupation order is made under this section—

(a) such notice as the Court directs must be given to any person having an interest in the home that would be affected by the order; and

(b) any person to whom notice is given pursuant to paragraph *(a)* of subsection is entitled to appear and to be heard in the matter as a party to the application.

(5) A Court that is considering whether to make an occupation order, must take the following into account—

(a) the principle in section 7(1)*(f)*;

(b) the effect on the safety and wellbeing of the protected person and on any child in their care, or who is ordinarily in their care, if an order under this section is made or is not made;

(c) any hardship that may be caused to the protected person and to any child in their care, or who is ordinarily in their care, if an order under this section is made or is not made; and

(d) the accommodation needs of the respondent, and any other relevant person, provided that unless there are exceptional circumstances, priority must still be given to the accommodation needs, safety and wellbeing of the protected person and any child in their care or who is ordinarily in their care.

(6) An occupation order may specify that a protected person has a right to occupy a specified home either from the time the order is made or from a time specified by the Court and that—

(a) the respondent is to vacate the home immediately or within a specified time; and

(b) the respondent may not enter the home, be in the home, or be within a specified distance of the home either from the time the order is made or from a time specified by the Court.

(7) An occupation order—

(a) applies for such period or periods specified by the Court in the order, or until the order is varied or discharged; and

(b) may be made on such terms and conditions relating to the occupation of the home as the court thinks fit.

Additional conditions - tenancy

36.—(1) If a Court makes, or is intending to make, a domestic violence restraining order for the safety and wellbeing or a person, an application may be made by, or for the benefit of, a person who is or will be protected by the order for an order that vests in the protected person the tenancy of any home of which, at the time the order is made, the respondent is—

(a) the sole tenant; or

(b) a tenant holding jointly, or in common, with the protected person.

(2) In this section "home" includes—

(a) any furniture or other household effects let with the home; and

(b) any land, outbuildings, or parts of buildings included in the tenancy.

(3) Before a tenancy order, or an order discharging a tenancy order, is made under this section—

(a) such notice as the Court directs must be given to any person having an interest in the property that would be affected by the order; and

(b) any person to whom notice is given pursuant to paragraph *(a)* is entitled to appear and to be heard in the matter as a party to the application.

(4) Where an application is made for a tenancy order, the Court may treat that application as an application for an occupation order or a tenancy order or both, and may, if it is satisfied that—

(a) it has jurisdiction to make an occupation order;

(b) there are grounds for making an occupation order; and

(c) the making of an occupation order is appropriate,

make an occupation order whether or not it makes a tenancy order.

(5) Subject to this section, on hearing an application for a tenancy order, the Court may make an order vesting the tenancy of a specified home in a specified protected person despite any other law to the contrary, provided that nothing in this section or this Decree allows a court to make an order alienating native land or any legal or equitable interest in it.

(6) The Court may make an order under subsection (5) of this section if it is satisfied that the order—

(a) is necessary for the safety and wellbeing of the protected person; or

(b) is necessary for the safety and wellbeing of a child who is in the care of the protected person or is ordinarily in the care of the protected person.

(7) In determining whether to make a tenancy order under this section, the Court must take the matters specified in section 35(5) into account.

(8) Where a tenancy order takes effect, then, until the tenancy ends under the terms and conditions of the tenancy agreement—

(a) the protected person specified by the Court becomes the tenant of the home subject to the terms and conditions of the tenancy in force at the time the order is made; and

(b) the respondent ceases to be a tenant.

(9) Subject to subsection (3) and subsection (10), where a tenancy order has been made under this section the specified protected person who has become the tenant or the respondent may apply for an order (a "revesting order") to discharge the tenancy order.

(10) Where an application is made under subsection (9) to discharge a tenancy order, the Court may discharge the tenancy order and revest the tenancy accordingly if satisfied that the discharge and revesting will not result in risk to the safety and wellbeing of—

(a) the protected person; or

(b) a child who is in the care of the protected person or is ordinarily in the care of the protected person.

(11) Where a revesting order made under subsection (9) takes effect, then, unless the tenancy has ended under the terms and conditions of the tenancy agreement, the person in whose favour it is made becomes the tenant of the home subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order.

Additional conditions – respondent to attend counselling or programme

37.—(1) Subject to subsection (2), when a Court makes, or is intending to make, a domestic violence restraining order against a respondent for the safety and wellbeing of a protected person, the Court may order the respondent to attend a prescribed counselling, education, rehabilitation or support programme specified by the Court.

(2) When considering whether to make an order that the respondent attend a prescribed counselling, education, rehabilitation or support programme the Court must take into account the availability of the counselling or other programmes being considered for the respondent having regard to—

(a) whether the respondent has been accepted for counselling or for the relevant programme by the intended provider;

(b) where and when the counselling or programme sessions would take place;

(c) the cost of the counselling or programme sessions;

(d) the desirability, in the circumstances, of the respondent attending to address their behaviour and to reduce the risk of repetition;

(e) any consequences for the respondent, or for the victim, if the respondent is ordered to attend (for example, loss of income, particularly if the respondent is contributing to the support of the victim and any other person protected by the domestic violence restraining order).

(3) If the Court makes an order under subsection (1) the Court must—

(a) specify when the respondent must start the specified counselling or specified programme (for example, that the first attendance must be by a stated date);

(b) specify the frequency of attendance or that the respondent must attend as frequently as recommended to the respondent by the counselling or programme provider;

(c) specify when the attendance would cease (for example, after one session or upon completion of the programme);

(d) issue a request to the person in charge of the specified counselling or specified programme that the Court be notified if the respondent fails to attend the specified counselling or specified programme in accordance with the order of the Court; and

(e) direct that the Clerk of the Court provide a copy of the order to the person in charge of the specified counselling service or specified programme referred to in the order.

(4) If the Court makes an order under subsection (1) the Court may order that the respondent pay or contribute towards the cost of the counselling or programme specified by the Court, and the Court must take the following matters into account in making this decision—

(a) the cost of the specified counselling or programme;

(b) the respondent's financial position;

(c) the respondent's obligations, if any, to support the victim, any children and any other person.

(5) Nothing in this section or this Decree gives a Court power to order or require that a provider of a prescribed counselling or of a prescribed education, rehabilitation or support programme must accept the respondent for counselling or for a programme.

(6) For the avoidance of doubt—

(a) a Court exercising jurisdiction under this Decree may not make an order that a person, other than a person restrained by a domestic violence restraining order, attend counselling or an education, rehabilitation or support programme;

(b) a Court may recommend, but cannot require, that a person protected by a domestic violence restraining order to attend counselling;

(c) a Court may request, but cannot require, that counselling be made available by a particular service or agency for a person protected by a domestic violence restraining order, including a child protected by an order;

(d) if a person protected by an domestic violence restraining order wishes to attend counselling jointly with the person restrained the court may facilitate this, for example by adjourning the further hearing, if satisfied that the person protected—

(i) is not likely to be placed at risk; and

(ii) has freely given their consent.

(7) If a Court that has jurisdiction under this Decree becomes aware that the respondent has not complied with an order requiring the respondent to attend a counselling, education, rehabilitation or support programme the Court must inquire into the matter to determine if the respondent has, without reasonable excuse, failed to comply with the order.

(8) Where subsection (7) applies, the Court may, before proceeding to inquire into the matter—

(a) allocate a date when the matter will be considered by the Court;

(b) unless the relevant person was before the Court when the date was allocated, cause a notice to be served on the person who applied for the order and on the respondent advising of the court date; and

(c) order the respondent to be present on the court date to explain the apparent failure to comply with the order.

(9) Where upon completing the inquiry referred to in subsection (7), the Court determines that the respondent has without reasonable excuse failed to comply with the order, in addition to any other powers the Court may have in the circumstances under this Decree, the Court may—

(a) note the respondent's failure to comply with the order on the court file;

(b) admonish the respondent;

(c) make a further order that the respondent attend a specified counselling, education, rehabilitation or support program; or

(d) vary or discharge the order.

(10) If the respondent is not present before the Court on the date referred to in paragraph *(a)* of subsection (8), the Court may issue a warrant for the respondent to be brought before the Court.

Varying, suspending or discharging order

38.—(1) A person who—

(a) applied for a domestic violence restraining order;

(b) is protected by a domestic violence restraining order; or

(c) is bound by a domestic violence restraining order,

may, subject to this section, apply to a Court to vary, suspend or discharge the order.

(2) Subject to subsection (6), the Court must, before hearing an application to vary, suspend or discharge a domestic violence restraining order, consider whether each person who in the opinion of the Court has a direct interest in the outcome, has received notice of the application and had adequate opportunity to be heard.

(3) If an application to vary, suspend or discharge a domestic violence restraining order is made by or for a protected person, in considering the application the Court must have regard to—

(a) the wishes of the protected person;

(b) any current contact between the protected person and the person bound by the order;

(c) whether any pressure has been applied, or threat made, to the protected person by the person bound by the order or by someone else; and

(d) the objects and principles of this Decree.

(4) In relation to an application to which subsection (3) applies—

(a) the Court may vary, suspend or discharge an order only if satisfied that the safety of each person protected by the order would not be compromised;

(b) if the Court refuses to vary the order in the way sought or refuses to suspend or discharge the order, the Court may vary the order in a way that it considers does not compromise the safety of a protected person.

(5) An application to vary, suspend or discharge a domestic violence restraining order may be made by or on behalf of the person bound by the order—

(a) only with the leave of the Court; and

(b) leave may be granted only if the Court is satisfied there has been a substantial change in relevant circumstances since the order was made or last varied.

(6) Where an application is made for leave under subsection (5), the Court may determine the application for leave without notice to the applicant, or to a person protected by the order, if the Court considers that—

(a) the application is or may be an attempt to harass the applicant or a protected person; and

(b) that there will be no prejudice to the applicant or to a protected person if the Court considers the application for leave without prior notice.

(7) For the avoidance of doubt, when a Court is considering an application for leave under subsection (5) and (6) the Court may not vary, suspend or discharge the existing order.

(8) If a Court grants leave to a respondent under subsection (5) to proceed with an application to vary, suspend or discharge a domestic violence restraining order the Court must make directions about—

(a) the date and place of the hearing;

(b) service of a sealed copy of the respondent's application, any supporting material and the order granting leave on the applicant and each person specified by the Court who is protected by the order; and

(c) any other matters that will assist with the determination of the matter.

(9) Where an order is made under this section varying, suspending or discharging a condition of a domestic violence restraining order made under section 33 in relation to a weapon, the Court must direct that the Commissioner of Police immediately be notified of the variation, suspension or discharge of that condition or of those conditions.

PART 4—COMPENSATION

Compensation

39.—(1) Where a victim of domestic violence suffers personal injury or damage to property or financial loss as a result of the domestic violence, the Court hearing a claim for compensation under this Decree may—

(a) order that the respondent pays or provides such compensation in respect of the injury or damage or loss as it deems fair and reasonable;

(b) make orders about how, when and to whom the compensation payment or payments must be made; and

(c) make related orders, including orders for the establishment and operation of a trust fund for the victim.

(2) Where a victim of domestic violence is the parent of a child in their care and the child was affected as indicated in subsection (1), the claim may be made, or also be made, in respect of the injury or damage or loss to the child and for this purpose references in this section to "the victim" include a child victim where appropriate.

(3) In circumstances in addition to that dealt with in subsection (2) where compensation is sought by two or more people who were affected as indicated in subsection (1)—

(a) references in this section to "the victim" include each victim; and

(b) the Court may give directions about whether the claims may be made in one application or separately, and if separately, whether the claims should be heard together or separately.

(4) Subject to subsection (8) a claim for compensation may be made—

(a) where the domestic violence occurred before or after the commencement of this Decree;

(b) whether or not a domestic violence restraining order was sought or has been made under this Decree.

(5) The Court hearing a claim for compensation, referred to in subsection (1) must take the following into account—

(a) the pain and suffering of the victim, and the nature and extent of the physical or mental injuries suffered;

(b) the cost of medical treatment, including the cost associated with obtaining medical treatment, incurred by or on behalf of the victim;

(c) the cost associated with the victim obtaining crisis support or counselling incurred by, on behalf of, or for the benefit of the victim;

(d) any loss of earnings by the victim;

(e) the amount or value of the property taken or destroyed or damaged by the respondent; and

(f) necessary and reasonable expenses incurred by or on behalf of the victim as a result of the domestic violence, including the expenses referred to in the definition of urgent monetary relief.

(6) In considering whether to make an order for compensation and in considering the terms of an order, the Court must also take into account—

(a) the reasons for, and consequences of, the time that has elapsed between the domestic violence occurring and the hearing of the application for compensation;

(b) the financial position of the victim and the financial position of the respondent;

(c) the consequences for the victim and for the respondent if the order sought is made or not made;

(d) the appropriateness of an order being made in relation to the compensation sought, and each part of the compensation sought, under this Decree compared to other options for seeking compensation from the respondent that are reasonably available to the victim;

(e) any payments and other allowances made by or on behalf of the respondent to, or for the benefit of, the victim in relation to the consequences of the domestic violence for the victim including the terms of—

(i) any other order made under this Decree including any order that the respondent pay or provide urgent monetary relief to or for the victim;

(ii) an order made in criminal proceedings for compensation for the victim in relation to the domestic violence; and

(iii) any other order the Court considers relevant to the issues to be determined in relation to the application for compensation.

(7) A Court that is considering an application for compensation under this section may make an interim order if satisfied in the circumstances of the case that it is appropriate to do so prior to a final order being made.

(8) A Court that makes or declines to grant an application for compensation must specify whether that order is an interim or final order in respect of compensation for the person in relation to the matter, but where the Court does not so specify—

(a) the order is not invalid, and

(b) the order is deemed to be an interim order.

(9) An application for compensation under this Decree is deemed to be an action in tort to which section 4(1) of the Limitation Act (Cap 35) applies.

(10) If a person who has been ordered to pay compensation under this section fails to comply with the order, in addition to other powers that the Court may have in the circumstances, Part 6 applies in relation to enforcement of the order.

PART 5—PROCEDURE

Application of Part 5 and procedure generally

40.—(1) This Part applies to proceedings under this Decree excluding proceedings for a criminal charge brought under section 77.

(2) Except as provided in subsection (1)—

(a) proceedings under this Decree are governed by the procedure in this Decree and any rules and regulations made under this Decree; and

(b) in cases of difficulty or doubt the Court exercising jurisdiction in the proceedings may give directions about procedure.

Hearing in person or by telephone

41.—(1) Subject to this section, a Court may hear an application under this Decree in person or by telephone.

(2) This section does not affect the operation of section 25.

(3) An application, or part of an application, may be heard by telephone where this is technically possible, and—

(a) the presiding judicial officer gives a direction that a hearing by telephone may take place;

(b) during the hearing the presiding judicial officer is sitting in a court room or office in a court house;

(c) the telephone used by person appearing or giving evidence by telephone is in a court room or a court house.

(4) Where it is technically possible for an application or part of an application to be heard by telephone, the presiding judicial officer must take the following matters into account in determining whether to give a direction that a hearing by telephone may take place in a particular case—

(a) the urgency of the matter and the delay that would arise if the hearing does not take place by telephone;

(b) the consequences for the safety and wellbeing of a person for whose benefit the application is made if the hearing does not take place by telephone;

(c) the adequacy of a hearing by telephone having regard to justice and fairness in the matter if the hearing does or does not take place by telephone;

(d) any other matters considered relevant having regard to the objects and principles of this Decree.

(5) A presiding judicial officer who directs that a hearing or part of a hearing may take place by telephone may give directions concerning any details or protocols that will apply in relation to how the hearing by telephone will proceed.

Listing an application and service by police

42.—(1) Subject to subsection (2), each Court exercising jurisdiction under this Decree must make arrangements for applications under this Decree to be heard as soon as is reasonably possible after filing and in any event within 7 working days of the application being filed.

(2) Where an applicant is applying to proceed urgently the Clerk of the Court must—

(a) consider the urgency of the case having regard to the objects and principles of this Decree and the circumstances of the case, and

(b) where the urgency of the matter requires it the Clerk of the Court must allocate a time for an interim hearing that, if possible, is on the day that the application is filed and in any event is within 2 working days of the application being filed.

(3) Subject to subsection (4), as soon as possible after an application is filed under this Decree, the Clerk of the Court in the registry in which the application is filed must provide, or transmit by facsimile transmission, to the senior officer of the police station closest to where the respondent is likely to be personally served, a sealed copy of the application and any supporting documents.

(4) Subsection (3) does not apply if—

(a) the applicant is applying to proceed urgently without notice to the respondent; or

(b) the Clerk of the Court considers that, having regard to the safety and wellbeing of each person who would be protected if the orders sought were made and to the objects and principles of this Decree, that service on the respondent by police may not be necessary.

(5) Where paragraph *(a)* of subsection (4) applies the Clerk of the Court must—

(a) schedule the application for an urgent interim hearing in accordance subsection (2); and

(b) if necessary arrange for and schedule the hearing to take place from the court house by telephone.

(6) Where paragraph *(b)* of subsection (4) applies—

(a) the Clerk of the Court must immediately put the matter before a judicial officer of the Court in chambers to determine if the police should be required to serve the application and any supporting material on the respondent;

(b) if the judicial officer does not consider that service by the police of the application and any supporting material is necessary having regard to the safety and wellbeing of the victim, and to the objects and principles of this Decree, the judicial officer may direct that the applicant arrange personal service on the respondent;

(c) where an applicant objects to a direction made pursuant to paragraph *(b)* and the applicant is entitled to be heard in relation to the matter in Court, the matter must be allocated a time for hearing before the judicial officer who made the direction, or if unavailable, then before another judicial officer of the Court—

(i) within one working day of the direction being made or on a later date if acceptable to the applicant; and

(ii) if necessary the hearing of the issue should be scheduled to take place from the court house by telephone.

(7) Upon receiving an application and any supporting documents referred to in subsection (3) the senior officer at the relevant police station must as soon as is reasonably possible—

(a) make an entry in a book or data base, maintained for this purpose at the police station, that the documents have been received and the time the documents were received;

(b) provide a copy of that entry to police headquarters in accordance with the police procedure established for this purpose;

(c) confirm receipt, the time of receipt and the name and contact details of the senior officer in writing to the Clerk of the Court who forwarded the documents;

(d) determine how the documents will be personally served on the respondent by police;

(e) if necessary, send, provide or transmit by facsimile transmission a copy of the documents to another police station closest to where the respondent is likely to be personally served;

(f) monitor police action to ensure that all reasonable steps are taken by the police to serve the respondent as soon as possible;

(g) where service is completed ensure that an affidavit of service—

(i) is completed by the police officer who served the respondent; and

(ii) the affidavit is promptly delivered, posted or transmitted by facsimile transmission to the registry of the Court in which the application was filed in time for the hearing of the matter;

(h) where service is not completed prior to the time for the hearing of the matter, ensure that an affidavit of attempted service detailing attempts to serve and any evidence from which the Court may conclude that the respondent is aware of the application, is evading service, or how the respondent may be served—

(i) is completed by the police officer who attempted service or where several police officers attempted service, then by the senior officer concerned; and

(ii) promptly deliver, post or transmit the affidavit by facsimile transmission to the registry of the Court in which the application was filed in time for the hearing of the matter;

(i) respond to inquiries by the Clerk of the Court, the applicant and a person over the age of 16 years who would be protected by the order sought in the application, about progress in serving the respondent.

Service of orders

43.—(1) When an interim order or a final order is made under this Decree, including an order varying, suspending or discharging a previous order, a sealed copy of the order must be provided—

(a) to the applicant and must be personally served on the respondent;

(b) by the Clerk of the Court in the registry where the order was made, on request to a person over the age of 16 years who is protected by the order; and

(c) by the Clerk of the Court in the registry where the order was made to the Commissioner of Police in accordance with section 45.

(2) In relation to paragraph (a) of subsection (1)—

(a) if the relevant person is present at Court when the order was made personal service must, if possible, be completed by the Clerk of the Court or a Court officer; and

(b) the Court may give directions about waiting arrangements, or arrangements for one of both of the parties to return to the court house to collect a copy of the order provided that in making such directions the primary consideration must be the safety and wellbeing of each person protected by the order;

(c) where an applicant –

(i) was present at Court when the order was made, but leaves the court house before being served with the order; or

(ii) the applicant was not present when the order was made,

a copy of the order may be provided to the person by the Clerk of the Court posting a sealed copy of the order to the applicant at the address shown on the application;

(d) where a respondent—

(i) was present at Court when the order was made, but leaves the court house before being served with the order; or

(ii) was not present at Court when the order was made,

section 44 applies in relation to service of the order on the respondent.

Service of order on the respondent by police

44.—(1) Where an order referred to in section 43(1) is made—

(a) in the absence of the respondent; or

(b) in the presence of the respondent but paragraph (d) of section 43(2) applies,

then, unless the Court makes an order for personal service of a sealed copy of the order on the respondent by different means, the Clerk of the Court in the registry where the order was made must as soon as possible provide, or transmit by facsimile transmission, a sealed copy of the order to the senior officer of the police station or police post closest to where the respondent is likely to be served.

(2) Upon receiving a sealed copy of an order made under this Decree from the Clerk of the Court in accordance with subsection (1), the senior officer at the relevant police station must as soon as is reasonably possible—

(a) make an entry in a book or data base maintained for this purpose at the police station that the order for service has been received and the time it was received;

(b) provide a copy of that entry to police headquarters in accordance with the police procedure established for this purpose;

(c) confirm receipt, the time of receipt and the name and contact details of the senior officer in writing to the Clerk of the Court who forwarded the order for service;

(d) determine how the order will be personally served on the respondent;

(e) if necessary, send or transmit by facsimile transmission a copy of the order to another police station or police post closest to where the respondent is likely to be served;

(f) monitor police action to ensure that all reasonable steps are taken by police to serve the respondent as soon as possible;

(g) where service is completed ensure that an affidavit of service –

(i) is completed by the police officer who served the respondent; and

(ii) the affidavit is promptly delivered, posted or transmitted by facsimile transmission to the registry of the Court where the order was made;

(h) where service is not completed within 1 month of the order being received for service by the police, ensure that an affidavit of attempted service detailing attempts to serve and any evidence from which the Court may conclude that the respondent is aware that the police are attempting to serve, is evading service and how the respondent may be served –

(i) is completed by the police officer who attempted service or where several police officers attempted service, then by the senior officer concerned; and

(ii) is delivered, posted or transmitted by facsimile transmission to the registry of the Court where the order was made;

(i) respond to inquiries by the Clerk of the Court, the applicant and a person over the age of 16 years who is protected by the order about progress in serving the respondent.

Clerk of the Court to forward a copy of the order to police

45.—(1) When an interim order or a final order is made under this Decree, including an order varying, suspending or discharging a previous order made under this Decree, the Clerk of the Court in which the order is made must ensure that a copy of the order is made available, without delay, to the Commissioner of Police for police records.

(2) Where a copy of an order is made available to the Commissioner of Police in accordance with subsection (1), the Commissioner must ensure that a copy of that order, is made available, without delay, to the officer in charge of the police station nearest to where the protected person or, each protected person, resides.

(3) For the purposes of this section, a copy of an order may be made available by the Commissioner of Police by—

(a) sending the copy by facsimile transmission;

(b) entering the copy on a database maintained in electronic form, where that database may be accessed by the person or persons to whom the copy is required to be made available; or

(c) making the copy available in such other manner as is appropriate in the circumstances.

Standard of proof

46.—(1) Subject to subsection (2), every question of fact arising in any proceedings under this Decree must be decided on the balance of probabilities.

(2) Subsection (1) does not apply to criminal proceedings for the offence under section 77 of breach of a domestic violence restraining order.

Competence and compellability

47.–(1) The parties to proceedings under this Decree are competent and compellable witnesses.

(2) In proceedings under this Decree the parties to a marriage are competent and compellable to disclose communications made between them during the marriage.

(3) Subsection (2) applies to communications made before, as well as to communications made after, the date of commencement of this Decree.

Rules of evidence

48.—(1) Subject to subsection (2), in any proceedings under this Decree the Court may receive any evidence that it thinks fit, whether or not it is otherwise admissible in a court of law.

(2) Subsection (1) does not apply to criminal proceedings for the offence under section 77 of breach of a domestic violence restraining order.

Evidence given orally or by affidavit

49. In proceedings under this Decree, subject to any directions by the Court in a particular case, evidence may be given orally or in an affidavit.

Proving injuries by evidence other than a medical report

50.—(1) Where the nature and extent of injuries suffered by a victim of domestic violence are relevant in proceedings, the Court may—

(a) receive evidence from that person and any other witness in relation to the nature and extent of the injuries;

(b) place such weight that the Court considers appropriate in the circumstances on this evidence,

and if the Court is satisfied that the nature and extent of the injuries are substantiated to the extent that is relevant in the proceedings, or to the extent that is relevant at that stage in the proceedings, the Court may proceed without requiring that a medical report be submitted in evidence.

(2) Nothing in subsection (1) prevents the Court from directing that a medical report in relation to the nature and extent of the injuries suffered by a victim of domestic violence is required by the Court in order to make a finding of the kind sought by the applicant.

Appearing and leave to appear

51.—(1) The following may appear in proceedings under this Decree in relation to a domestic violence restraining order or a compensation order—

(a) a legal practitioner representing a party, or other person, in the proceedings; or

(b) a party to the proceedings who is representing themselves in the proceedings, whether or not that party is also seeking orders for the benefit of another person; or

(c) a police officer, the Director of Social Welfare, a welfare officer or the Public Trustee when permitted by section 19 or section 25 to apply for an order.

(2) Where a Court receives a request from a person for the leave of the Court to appear in proceedings under this Decree, the Court must consider the following in determining the request—

(a) the objects and principles of this Decree;

(b) the interests of justice;

(c) whether the person who would be so represented—

(i) objects, and if so, the reasons for the objection;

(ii) would have difficulty representing themselves in the proceedings if leave is not granted;

(d) whether the person seeking leave to appear—

(i) has any interest that is contrary to the person they wish to assist;

(ii) is likely to focus on issues that are relevant and avoid unnecessarily lengthening, complicating or inflaming the proceedings;

(e) whether the other party, or other parties, object and if so the reasons for the objection; and

(f) any other matters considered relevant by the Court.

(3) If a Court grants leave to a person to appear for a person in the proceedings, the Court may—

(a) impose conditions or give directions that the person granted leave must comply with; and

(b) withdraw leave at any time during the proceedings.

Examination of witness by the respondent

52. The Court may, on its own accord or on the request of the applicant, if it is of the opinion that it is desirable to do so, order that in the examination of witnesses including the applicant, that a respondent who is not represented by a legal representative—

(a) is not entitled to cross-examine a particular witness directly; and

(b) must put any question to that witness by stating the question to the Court or to another person as directed by the Court,

on the basis that the Court or the person directed will repeat the question accurately to the person being questioned by the respondent.

Orders by consent

53.—(1) Subject to subsections (2), (3) and (4), in proceedings before a Court under this Decree where the parties are present before the Court, the Court may make an order under this Decree by consent of the parties.

(2) Where the applicant is consenting to an order for the benefit of another person, the consent of that other person is required unless—

(a) that other person is a child;

(b) that other person lacks the capacity to understand the proceedings; or

(c) the Court determines, having regard to the circumstances of the case and the objects and principles of this Decree, that the consent of that other person should not be required.

(3) Where an order sought to be made by consent is a domestic violence restraining order, the Court may make the order only if satisfied that—

(a) the person who would be bound by the order admits that there are grounds for the order;

(b) the order will not expose the victim or another person to risk of domestic violence; and

(c) the order is appropriate in all the circumstances of the case having regard to the objects and principles of this Decree.

(4) Where one or both parties are not present before the Court at the time that it is proposed that an order be made by consent, the Court may—

(a) proceed to deal with the application, if satisfied that the attendance of the parties or the relevant party should not be required; or

(b) adjourn the application and direct that—

(i) notice of the next Court date be given to those specified in the order; and

(ii) a specified person or persons be present at Court at that time.

Warrant to secure the attendance of the respondent

54. Where a respondent has been served with a summons or order to attend at a certain time, place and date in relation to proceedings under this Decree and the respondent has failed to do so, the Court may issue a warrant for the arrest of the respondent if it appears to the Court that—

(a) the personal safety of a person who would be protected by the order will be put at risk unless the respondent is arrested for the purpose of being brought before the Court; or

(b) the step is necessary to secure the respondent's attendance before the Court to give evidence, for the Court to explain the seriousness of the orders the Court may make to the respondent, or for other similar reasons.

Costs

55.—(1) Subject to subsections (2) and (3), parties to proceedings under this Decree bear their own legal costs and expenses in relation to the proceedings.

(2) A Court hearing an application under this Decree may order that a particular party to the proceedings bear part or all of the legal costs and expenses of the other if satisfied that the party acted frivolously, vexatiously or unreasonably in relation to the proceedings.

(3) An order for payment of costs or expenses may not be made against a police officer or other official who made an application for the protection of a person in their official capacity unless the Court finds that the police officer or official put material before the Court in the application, or otherwise during the proceedings, that they knew to be false or misleading.

Closed Court and arrangements for support people

56.—(1) Proceedings in a Court when exercising jurisdiction under this Decree are to be heard in closed court except proceedings referred to in subsection (2).

(2) The proceedings which are excepted from the application of subsection (1) are the hearing of a criminal charge, where—

(a) an application for a domestic violence order is made during those proceedings; or

(b) the court of its own volition is considering making a domestic violence restraining order.

(3) Subsection (1) does not operate to exclude the following from the Court—

(a) officers of the Court;

(b) parties to the proceedings;

(c) a person bringing or defending the proceedings on behalf of another person;

(d) a lawyer representing any person in the proceedings;

(e) witnesses;

(f) a person or persons nominated by a person who would be protected by the order sought to provide support; and

(g) a person or persons nominated by the respondent to provide support.

(4) The Court may exclude a person from the whole or part of the proceedings or impose conditions upon attendance.

Restrictions on publication

57.—(1) A person who publishes in a newspaper or periodical publication or by radio broadcast or television, or otherwise disseminates to the public or to a section of the public by any means any account of any proceedings, or any part of any proceedings, under this Decree that identifies—

(a) a person for whose benefit an order has been made or has been sought under this Decree or a person bound by an order or who would be bound by an order if an application made under this Decree is granted;

(b) a person who is related to, or associated with a person specified in paragraph (a) or who is, or is alleged to be, in any other way concerned in the matter to which the application relates; and

(c) a witness in the proceedings,

commits an offence and is liable upon conviction to a fine of $10,000 and to a term of imprisonment not exceeding 12 months.

(2) Without limiting subsection (1), an account of proceedings, or of any part of proceedings, referred to in that subsection is taken to identify a person if—

(a) it contains any particulars of—

(i) the name, title, pseudonym or alias of the person;

(ii) the address of any premises at which the person resides or works, or the locality in which any such premises are situated;

(iii) the physical description or the style of dress of the person;

(iv) any employment or occupation engaged in, profession practised, or calling pursued by the person, or any official or honorary position held by the person;

(v) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;

(vi) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person;

(vii) any real or personal property in which the person has an interest or with which the person is otherwise associated,

being particulars that are sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case may be.

(b) in the case of a written or televised account, it is accompanied by a picture of the person; or

(c) in the case of a broadcast or televised account, it is spoken in whole or in part by the person and the person's voice is sufficient to identify that person to a member of the public, or to a member of the section of the public to which the account is disseminated, as the case may be.

(3) An offence against this section is an indictable offence.

(4) Proceedings for an offence against this section must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

(5) Notwithstanding the preceding provisions of this section, the following do not constitute an offence under subsection (1)—

(a) the communication, to persons concerned in the proceedings in any Court, of any order, any documents filed in the proceedings, transcript of evidence or other document for use in connection with those proceedings or other Court proceedings;

(b) the communication of any order, any documents filed in the proceedings, transcript of evidence or other document used in connection with the proceedings to—

(i) a person by a party to the proceedings or a person or persons for whose benefit an order has been sought or has been made;

(ii) a police officer in relation to the exercise of their functions;

(iii) the Legal Aid Commission for the purpose of facilitating the making of a decision about whether legal aid assistance should be granted, continued or provided in a particular case;

(iv) the Fiji Law Society or any other body or person responsible for dealing with complaints, disciplining members or particular members of the legal profession in Fiji for the purpose of performing such functions;

(c) the publishing of a notice, report or communication of information pursuant to the direction of a Court;

(d) the publishing of any publication bona fide intended primarily for use by members of any profession, being—

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(e) the publication or other dissemination of an account of the proceedings or of any part of proceedings—

(i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or

(ii) to a person who is a researcher or student, in connection with the research or studies of that person.

(6) Despite this section, a court exercising jurisdiction under this Decree may order that specified information concerning particular proceedings may be disseminated in accordance with directions made by the Court where the Court determines that this is—

(a) required in the public interest;

(b) will promote compliance with an order made under this Decree; or

(c) is necessary or desirable for the proper operation of this Decree.

Safety planning conference

58.—(1) Subject to subsection (2) the Court may direct that on the first substantial Court date when the parties to the proceedings are present, or on a later date ordered by the Court, that a safety planning conference be conducted at the court house where the proceedings are listed.

(2) The Court may direct that a safety planning conference be conducted if the Court is satisfied that—

(a) such a conference would not put the safety and wellbeing of a person who is, or who seeks to be, protected by a domestic violence restraining order at risk;

(b) each of those who would participate in the conference—

(i) are over the age of 18 years;

(ii) have been informed of the purpose of the conference and the conference procedure; and

(iii) have agreed to participate in the conference;

(c) there are suitable facilities at the court house, including an area where parties can remain separate, for the conference procedure specified in subsection (3) to apply;

(d) conference convenors, as required by the procedure specified in subsection (3), are available to conduct the conference; and

(e) in all the circumstances and having regard to the objects and principles of this Decree, that a safety planning conference should be conducted.

(3) A safety planning conference must be conducted as follows—

(a) the conference must be jointly convened and conducted by—

(i) a Clerk of the Court; and

(ii) a domestic violence counsellor;

("the conference convenors") each of whom has successfully completed prescribed training in relation to the conference procedure;

(b) a person who is, or seeks to be, protected by a domestic violence restraining order must have a separate support person of their choice present with them during the conference at all times;

(c) subject to paragraph *(d)*, the conference must be conducted by a shuttle discussion whereby the conference convenors move between the parties but the parties remain in separate locations and not in the presence of the other;

(d) a person who is, or who seeks to be, protected by a domestic violence restraining order must not be required to be in the presence of the respondent during the conference unless the person gives their free and informed consent and in the view of the conference convenors—

(i) the person is not likely to be at risk or be subjected to pressure by the respondent; and

(ii) the process is likely to be constructive having regard to the circumstances of the case, the matters to be resolved and the objects and principles of this Decree.

(4) An agreement reached by the parties as a result of a safety planning conference may be confirmed by order of the Court subject to the discretion of the Court to decline to make any order where the Court considers that the proposed order—

(a) does not accord with the objects and principles of this Decree as they apply in the particular case; or

(b) is contrary to another provision in this Decree including, but not limited to, considerations specified in section 53 regarding the making of orders by consent.

(5) Additional details, consistent with this section, concerning arrangements for safety planning conferences may be prescribed by regulations.

PART 6 – ENFORCEMENT OF CERTAIN ORDERS

Enforcement of order for urgent monetary relief or compensation

59.—(1) This Part applies to enforcement of—

(a) an order made under section 34 in relation to payment of urgent monetary relief; and

(b) an order made under section 39 in relation to compensation.

(2) Subject to this Part, and to regulations and rules made under this Decree, the orders to which this Part applies may be enforced by any Court having jurisdiction under this Decree.

(3) Except as prescribed, a Court must not entertain a proceeding under this Decree for the enforcement of an order made by another Court under this Decree unless the order is registered in the first-mentioned Court in accordance with the rules.

(4) If a person bound by an order to which this Part applies has died, the order may, by leave of—

(a) the Court which made the order; or

(b) any Court in which the order has been registered in accordance with the rules (whether the order was registered before or after the death of the person),

and on such terms and conditions as the Court considers appropriate, be enforced, in respect of liabilities that arose under the order before the death of that person, against the estate of that person.

Methods of enforcement

60. The rules may make provision for and in relation to the enforcement of orders to which this Part applies, including provision—

(a) for an officer of a Court exercising jurisdiction under this Decree; or

(b) an authority or person specified in the rules,

at the direction of the Court in its discretion, to take proceedings on behalf of the person entitled to moneys payable under that order for the purpose of enforcing payment of those moneys.

PART 7 – ENFORCEMENT OF ORDERS OVERSEAS AND FOREIGN ORDERS

Enforcement overseas of orders made in Fiji

61.—(1) Subject to subsections (2) and (3), the Attorney-General may request the appropriate Court or authority in a foreign country to make arrangements for the enforcement in that country of a domestic violence restraining order made under this Decree.

(2) Where a person wishes a request to be transmitted to a foreign country pursuant to subsection (1), the person must make a request in writing in the first instance to the Clerk of the Court in which the domestic violence restraining order was made.

(3) Where, on receiving a request made under subsection (2), the Clerk of the Court is satisfied that—

(a) the request is made by or on behalf of a protected person;

(b) the request relates to a domestic violence restraining order made under this Decree by a Court in Fiji;

(c) orders of that nature may be enforced in the foreign country to which the request relates; and

(d) there are reasonable grounds for believing that enforcement of the order in the foreign country is necessary for the protection of the protected person,

the Clerk of the Court must send the request to the Attorney-General for transmission to the foreign country in accordance with subsection (1).

(4) Where, pursuant to this section, a Clerk of the Court or the Attorney-General receives a request for the transmission of a domestic violence restraining order to a foreign country, the Clerk of the Court or, as the case requires, the Attorney-General, may require the person by or on whose behalf the request is made to supply such information or evidence as may be necessary—

(a) to enable a determination to be made whether or not the request satisfies the requirements of subsection (3); and

(b) to secure enforcement of the order in the foreign country.

(5) Where, in relation to a request made under subsection (2), a Clerk of the Court or the Attorney-General imposes a requirement pursuant to subsection (4), the Clerk of the Court or, as the case requires, the Attorney-General, may refuse to take any action, or further action, in relation to that request until that requirement is complied with.

(6) Nothing in this section prevents—

(a) a protected person from applying to a court or other appropriate authority in a foreign country for enforcement, in that country, of a domestic violence restraining order; or

(b) the variation or discharge, pursuant to this Decree, of a domestic violence restraining order that is enforced in a foreign country.

(7) In this section, the term "enforcement" includes registration and enforcement and "enforced" has a corresponding meaning.

Registration of foreign domestic violence restraining orders

62.—(1) A foreign domestic violence restraining order may be registered in a Court in accordance with this section.

(2) Where the Attorney-General receives—

(a) a certified copy of a foreign domestic violence restraining order;

(b) a certificate—

(i) that is signed by an officer of a court in the foreign country in which the order was made; and

(ii) that contains a statement that the order is, at the date of the certificate, enforceable in the foreign country; and

(c) written information tending to show that a person for whose protection the order was made—

(i) is present in Fiji; or

(ii) is proceeding to Fiji; or

(iii) is about to proceed to Fiji,

the Attorney-General must send the documents to a clerk of the Magistrates' Court for the purposes of registration.

(3) The clerk of the Magistrates' Court must register the foreign domestic violence restraining order by filing a certified copy of the order in the Court.

(4) Where the clerk of the Magistrates' Court receives the documents described in subsection (2) other than from the Attorney-General, the Registrar may register the order if satisfied that the nature of the documents is such that, if they had been transmitted to the Attorney-General, they would have been sent to the clerk of the Magistrates' Court by the Attorney-General.

Copy of registered foreign orders to be sent to police

63. Where a foreign domestic violence restraining order is registered pursuant to section 62, section 45 applies—

(a) in relation to that order; and

(b) in relation to any variation of that order pursuant to section 38,

as if the foreign domestic violence restraining order were a domestic violence restraining order made under this Decree.

Effect of registration

64. Subject to section 66, upon registration pursuant to section 62, a foreign domestic violence restraining order—

(a) has effect; and

(b) may be enforced; and

(c) the terms in which it has effect in Fiji, may be varied,

as if it were a domestic violence restraining order made under this Decree on the date of registration.

Variation of registered foreign domestic violence restraining order

65.—(1) Where, pursuant to paragraph *(c)* of section 64, a Court makes an order varying a foreign domestic violence restraining order, the Clerk of the Court—

(a) must, in the prescribed manner, notify the Court or the appropriate authority in the country in which the order was made of the variation; and

(b) must forward to the clerk of that court a copy of the order varying the foreign domestic violence restraining order.

(2) The Clerk of the Court in which the foreign domestic violence restraining order is registered, on receiving notice of the variation of that order, must note the Court records accordingly.

Registered foreign orders not to be enforced in certain circumstances

66.—(1) Where a Court is satisfied that a foreign domestic violence restraining order—

(a) was not, at the time of its registration in Fiji, enforceable in the country in which it was made; or

(b) has, since its registration in Fiji, ceased to be enforceable in the country in which it was made,

the Court must not enforce or vary the order under this Decree.

(2) Where the Clerk of the Court in which a foreign domestic violence restraining order is registered is satisfied—

(a) that a Court in Fiji has refused, pursuant to subsection (1), to enforce or vary the order under this Decree; or

(b) that the order is not enforceable in the country in which it was made; or

(c) that registration of the order in Fiji is no longer necessary,

the Clerk of the Court must cancel the registration of the order and must, in the prescribed manner, notify the court or the appropriate authority in the country in which the order was made of the cancellation.

(3) For the purposes of this section, a foreign domestic violence restraining order is not unenforceable in the country in which it was made solely by reason of the fact that the person to whom the order relates, or any other person affected by the order, is no longer in that country.

Evidence taken overseas

67. Where, pursuant to section 64 of this Decree, an application is heard in a Court, the evidence of any person outside Fiji may be taken in accordance with the rules of the High Court covering the examination of witnesses outside Fiji, and those rules, as far as they are applicable and with all necessary modifications, apply.

Proof of documents

68.—(1) For the purposes of this Part—

(a) any document purporting to be signed by any judge or officer of a court in any prescribed foreign country is, in the absence of evidence to the contrary, deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it; and

(b) the officer of a court by whom a document purports to be signed is, in the absence of evidence to the contrary, deemed to have been the proper officer of the court to sign the document.

(2) Any document purporting to be signed, certified, or verified by any of the persons mentioned in subsection (1) is admissible in evidence in proceedings under this Part if it appears to be relevant to those proceedings.

Depositions to be evidence

69. Depositions taken for the purposes of this Part in a court in any prescribed foreign country may be received in evidence in any proceedings under this Part.

Prescribed foreign countries

70.—(1) A country outside Fiji may be declared by regulations to be a prescribed foreign country for the purposes of this Decree.

(2) Regulations made for the purpose of subsection (1) may specify the courts of the foreign country in relation to which the order is to have effect, or may otherwise modify the application of that order to that other country.

Evidence of orders made in foreign country

71. Nothing in this Part precludes a Court from receiving evidence of an order made in a foreign country (whether or not that country is a prescribed foreign country) with respect to the protection of any person from domestic violence.

PART 8 - APPEALS

Jurisdiction in relation to appeals

72.—(1) This section applies to an order of a Court in proceedings under this Decree, other than proceedings in relation to the criminal offence under section 77 of breach of a domestic violence restraining order, to—

(a) make or refuse to make an order; or

(b) dismiss the proceedings.

(2) Subject to section 73(3), an appeal from an order to which this section applies where it was made—

(a) by the Magistrates' Court, the Family Division of the Magistrates' Court or a Juvenile Court, lies of right to the Family Division of the High Court;

(b) as an original decision of a judge of the Family Division of the High Court or the High Court, lies to the Court of Appeal;

(c) by judges of the Family Division of the High Court sitting on appeal from orders of the Magistrates' Court, the Family Division of the Magistrates' Court or a Juvenile Court, lies to the Court of Appeal with leave of the Court of Appeal.

Commencing an appeal

73.—(1) Subject to this section, an appeal against an order to which section 72 applies, may be commenced by a person who was—

(a) an applicant in the proceedings; or

(b) a person for whose protection or benefit an order under this Decree was sought; or

(c) the respondent to the proceedings.

(2) An appeal must be commenced within 28 days of the date on which the order or decision which is the subject of the appeal was made.

(3) Where an order was made with the consent of the respondent no appeal by the respondent lies in relation to that order without the leave of the Court which would hear the appeal if leave is granted.

Appeal does not act as a stay of the order under appeal

74. Unless the Court that made the order appealed from otherwise directs—

(a) the operation of an order made under this Decree is not suspended as a result of an appeal being filed; and

(b) every order made under this Decree may be enforced in the same manner in all respects as if no appeal were pending.

Nature of appeal

75. An appeal from a decision—

(a) referred to in paragraph *(a)* of section 72(2) may be on a matter of fact as well as on a matter of law;

(b) referred to in paragraphs *(b)* and *(c)* of section 72(2) may only be on a matter of law.

Power on appeal

76. A court that hears an appeal against an order to which section 72 applies may affirm, vary or discharge an order under appeal and may make such other order or decision as the court thinks fit having regard to the provisions of this Decree.

PART 9—OFFENCE

Criminal offence to breach a domestic violence restraining order

77.—(1) Any person who, having notice of a domestic violence restraining order by which they were bound, without reasonable excuse contravenes the order or part of the order, is guilty of a criminal offence and is liable on conviction—

(a) subject to paragraph *(b)*, to a fine of $1,000 and a term of imprisonment of 12 months;

(b) if the person has previously been convicted of an offence of breach of a domestic violence restraining order, to a fine of $2,000 and a term of imprisonment of 12 months.

(2) It is no defence to a charge under subsection (1) that when the contravention occurred—

(a) the person charged, or a person protected by the domestic violence restraining order, was in another country; or

(b) both were in another country or other countries.

(3) Subsection (1) does not apply to—

(a) a condition of a domestic violence restraining order made under section 34 or section 37;

(b) an order that a person pay compensation made under section 39; or

(c) a condition of a domestic violence restraining order directed to a person protected by an order made under paragraph *(b)* of section 32(2);

(4) For the purposes of subsection (1) a person will be taken to have had notice of a domestic violence restraining order if the person—

(a) was present before the Court at the time the order was made, or

(b) was present when the order was made by telephone and the presiding judicial officer spoke to the person by telephone and explained the terms of the order, or

(c) was told of the existence of the order and the terms of the order orally, or in writing, by a police officer, or

(d) was personally served with the order, or

(e) was served with a copy of the order in such other manner as the Court directed, or

(f) was aware of the terms of the order.

(5) In proceedings under this section the Court must inquire whether the person charged was subject to an order under section 37 requiring the person to attend a counselling, education, rehabilitation or support program.

(6) Where the Court becomes aware during proceedings under this section that the person charged has not complied with an order made under section 37 requiring the person to attend a counselling, education, rehabilitation or support program, the Court must proceed in relation to that matter in accordance with section 37(7).

Police may arrest without warrant

78.—(1) Where a domestic violence restraining order is in force, any police officer may arrest, without warrant, and charge any person whom the police officer has good cause to suspect is about to commit or has committed an offence under section 77.

(2) In considering whether or not to arrest a person pursuant to subsection (1) of this section, the police officer must take the following matters into account—

(a) the risk to the safety and wellbeing of a person protected by the domestic violence restraining order if the arrest is not made;

(b) the seriousness of the anticipated or alleged offence; and

(c) the imminence of the commission of the anticipated offence or the length of time since the alleged offence occurred.

(3) Nothing in this section limits or impinges upon any other power of arrest that the police officer may have in the circumstances.

PART 10—CONTEMPT

Contempt and referral for investigation or prosecution

79.—(1) Notwithstanding any other provision in this Decree a Court which has jurisdiction under this Decree may punish persons for—

(a) contempt in the face of the Court when exercising jurisdiction under this Decree;

(b) wilful disobedience of an order specified in paragraphs *(a)* and (b) of section 77(3).

(2) Rules may provide for the practice and procedure as to charging with contempt and the hearing of the charge.

(3) Where a natural person is in contempt the Court may punish the contempt by committal to imprisonment or a fine or both.

(4) Where a Court exercising jurisdiction under this Decree becomes aware, in the course of the proceedings, that a person who is bound by a domestic violence restraining order made under this Decree appears to have breached the order, the Court may direct that information in relation to the apparent breach be referred to the Commissioner of Police or the Director of Public Prosecutions or both.

PART 11 – MISCELLANEOUS

Power to make rules

80.—(1) The Chief Justice may from time to time make rules not inconsistent with this Decree providing for and in relation to practice and procedure to be followed by Courts exercising jurisdiction under this Decree and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business of those Courts under this Decree including providing for and in relation to—

(a) forms, and the use of forms, as necessary for the purposes of the Decree;

(b) service of documents, substituted service and dispensing with service;

(c) applications and hearings by telephone including but not limited to geographic location, permissible hours and equipment requirements (e.g. location of telephone, availability of facsimile machine);

(d) who may be joined in proceedings and how they may be joined;

(e) intervention;

(f) consolidation of applications or of proceedings;

(g) discontinuance and withdrawal of proceedings;

(h) striking out and staying proceedings;

(i) amendment of documents;

(j) representatives, including (without limitation)—

(i) providing for the appointment, retirement and removal of representatives, and

(ii) providing for the conduct of proceedings brought on a person's behalf by a representative;

(k) attendance of witnesses;

(l) production of documents and other material to be used in evidence;

(m) trial management;

(n) giving judgment;

(o) institution of appeals;

(p) costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs;

(q) the enforcement and execution of orders;

(r) the attendance by parties and others, in relation to proceedings under this Decree, at Court and at safety planning conferences;

(s) information about proceedings under this Decree to be transferred between Courts exercising jurisdiction under this Decree or otherwise in relation to this Decree;

(2) The power of the Chief Justice to make rules under subsection (1) includes power to apply, with or without modification, provisions of the Family Law Rules 2005, the High Court Rules, or the rules of procedure of another Court of Fiji.

(3) Before making rules under this section the Chief Justice must consult with the Chief Magistrate.

Power to make regulations

81. The Minister may make regulations, not inconsistent with this Decree, prescribing all matters that are required or permitted by this Decree to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Decree and, in particular—

(a) prescribing a country to be a prescribed foreign country in accordance with section 70;

(b) prescribing the information that the police must give to a victim of domestic violence and to a perpetrator of domestic violence as required by 13;

(c) prescribing the information that the police must give to a victim of domestic violence in a "complaints notice" about how a person may complain if a police officer does not apply for a domestic violence restraining order, as required by section 14;

(d) prescribing the information about services for victims of domestic violence and for perpetrators of domestic violence as required by sections 16 and 17;

(e) prescribing the information to be supplied for the purpose of Part 3 about the effect of domestic violence restraining orders;

(f) prescribing categories of police officers or individual officers for the purpose of section 25;

(g) prescribing counselling, education, rehabilitation and support programs, referred to in section 37, including the means by which potential providers may be approved for this purpose and other requirements that may apply for quality assurance purposes;

(h) in relation to safety planning conferences referred to in section 58—

(i) prescribing training to be undertaken by those who would act as a conference convenor; and

(ii) prescribing additional details, consistent with section 58 concerning arrangements for safety planning conferences.

(i) providing for the enforcement of overseas of orders made under this Decree; and

(j) providing for enforcement in Fiji of foreign domestic violence restraining orders.

Consequential amendments

82. The following enactments are amended as set out in the Schedule, as a consequence of this Decree.

SCHEDULE
(Section 82)

CONSEQUENTIAL AMENDMENTS

PART 1—AMENDMENTS TO THE MARRIAGE ACT

1. The Marriage Act (Cap 50) is amended—

(a) in section 2 by inserting in the appropriate alphabetical order the following definitions—

" "existing marriage officer" means a person who is registered as a marriage officer under section 4 or 5; "

" "new marriage officer" means a person who is registered as a marriage officer under section 4 or 5; "

" "prescribed information for marriage officers" means written information for marriage officers regarding the prevention of domestic violence, prescribed by regulations made under section 38;"

" "prescribed information for those intending to marry" means written information for those intending to marry regarding the prevention of domestic violence, prescribed by regulations made under section 38; "

(b) by adding after section 11 the following section—

"Provision of prescribed information to marriage officers

11A.—(1) The Registrar-General shall provide the prescribed information for marriage officers and an appropriate number of copies of the prescribed information for those intending to marry to—

(a) each existing marriage officer, within one month of coming into force of this section, and

(b) to each new marriage officer, within one month of the Registrar-General registering the person as a marriage officer under section 4 or 5.

(2) The Registrar General shall, when requested by a marriage officer, promptly provide an appropriate number of additional copies of the prescribed information for marriage officers and the prescribed information for those intending to marry.".

(c) by adding after section 19 the following section—

"Information to accompany certificate for marriage and licence

19A. The Registrar-General must ensure that—

(a) when a certificate for marriage is issued under section 17; or

(b) when a special licence to marry is issued under section 19,

the certificate or licence is accompanied by 2 copies of the prescribed information for those intending to marry."

(d) by adding after section 21 the following section—

"Marriage officer to provide information

21A. A marriage officer who is intending to solemnize a marriage shall before performing the ceremony referred to in section 22—

(a) ask each person who is a party to the intended marriage whether they have personally received a copy of the prescribed information for those intending to marry, and

(b) if a party has not personally received that information the marriage officer shall provide the prescribed information to that person,

provided that no marriage shall be void by reason only of non-compliance with this section by the marriage officer."

(e) in section 38 by inserting ", the information to be provided" after "adopted".

PART 2—AMENDMENTS TO THE BAIL ACT 2002

2. The Bail Act 2002 is amended—

(a) in section 2 by—

(i) inserting the following definition—

" "domestic violence offence" means a domestic violence offence as defined in section 4 of the Penal Code";

(ii) repealing the definition of "serious offence" and substituting the following definition—

" "serious offence" means –

(a) the offence of breach of a domestic violence restraining order; or

(b) any offence for which the maximum penalty includes imprisonment for 5 years or more;";

(b) in section 3(4) by—

(i) deleting "or" at the end of paragraph *(a)*;

(ii) deleting the full-stop at the end of paragraph *(b)* and substituting "; or"

(iii) adding the following paragraph—

"*(c)* the person has been charged with a domestic violence offence.";

(c) in section 3(5) by—

(i) deleting "or" at the end of paragraph *(b)*;

(ii) deleting the full-stop at the end of paragraph *(c)* and substituting "; or"

(iii) adding the following paragraph—

"*(d)* the person has been charged with a domestic violence offence."

(d) in section 8(2) by—

(i) deleting "or" at the end of paragraph *(b)*;

(ii) deleting the full-stop at the end of paragraph *(c)* and substituting "; or"

(iii) adding the following paragraph –

"*(d)* the offence is a domestic violence offence unless satisfied that the release of the person on conditions, that would or could be applied, would not pose a risk to the safety of a specially affected person.";

(e) by repealing subsections (3) and (4) of section 16 and substituting the following subsections—

"(3) Subject to subsections (5) and (6), where a person who is charged with a domestic violence offence is granted bail the person must reside at the residential address stipulated in the bail conditions until the hearing of the case.

(4) Subject to subsection (5) where a person who is charged with an offence other than a domestic violence offence is granted bail the person must reside at the address provided under subsection (1) until the hearing of the case.

(5) If the accused person wishes to reside elsewhere than at the address at which the person is required to reside in accordance with subsection (3) or (4), the person must, in writing or in person notify the police officer or the bail officer, as the case may be, and that officer must either make a decision or obtain a decision of the court, as the case may be, on whether the bail undertaking should be varied accordingly.

(6) Where a person is charged with a domestic violence offence a police officer or a court must have regard to the following in making a decision about where the person may reside while on bail—

(a) if the person's residential address is also the normal residential address of a specially affected person, unless it appears safe for each specially affected person and that person or those persons are agreeable, it must be a condition of bail that the accused reside at a residential address other than that residential address while on bail;

(b) where paragraph *(a)* applies, the accommodation needs of a specially affected person have priority over the accommodation needs of the accused person.";

(f) in section 19 by –

(i) deleting "or" at the end of paragraph *(b)*;

(ii) deleting the full-stop at the end of paragraph *(c)* and substituting "; or"

(iii) adding the following paragraph—

"*(d)* the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.";

(g) in section 19(2)*(c)* by deleting the full-stop at the end of sub-paragraph (iii) and substituting a semi-colon and by adding the following paragraph—

"*(d)* as regards the safety of a specially affected person when the accused is charged with a domestic violence offence—

(i) the nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person;

(ii) the views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and well being of a specially affected person while on bail;

(iii) whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;

(iv) the likelihood of the accused person committing a further domestic violence offence while on bail.".

(h) in section 22 by—

(i) deleting "Bail" in subsection (1) and substituting "Subject to subsection (1A), bail";

(ii) inserting after subsection (1) the following subsection—

"(1A) Where an accused person is charged with a domestic violence offence—

(a) bail may not be granted unconditionally; and

(b) if bail is granted, bail must be subject to a condition that the accused person must not assault, threaten or harass the person or persons in respect of whom the alleged offence was committed.";

(i) in section 23 by—

(i) deleting "Bail" in subsection (1) and substituting "Subject to subsection (3), bail";

(ii) by inserting after subsection (2) the following subsection—

"(3) Where an accused person is charged with a domestic violence offence—

(a) bail may not be granted unconditionally, and

(b) if bail is granted, bail must be subject to a condition that the accused person must not assault, threaten or harass the person or persons in respect of whom the alleged offence was committed.";

(j) by adding after Part V the following Part—

"Part VA – NOTIFICATION OF DECISIONS IN DOMESTIC VIOLENCE CASES

Duty to notify persons at risk of domestic violence

24A. Where an accused person is charged with a domestic violence offence and bail is granted, refused, varied or discharged by a police officer or by the court, immediate steps must be taken by the police or by the court, as the case may be, to inform each specially affected person—

(a) of the decision; and

(b) where bail conditions apply, then of the precise terms and conditions of bail.".

PART 3 – AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

3. The Criminal Procedure Code (Cap. 21) is amended—

(a) by adding after section 15 the following section—

"Entry and search in case of domestic violence offence

15A.–(1) Where a police officer reasonably suspects that a person is about to commit or is committing a domestic violence offence or that such an offence was committed before the officer's arrival, on any premises, the officer may without a warrant enter those premises and may remain in those premises for as long as the officer considers necessary—

(a) to ensure that, in the officer's opinion, there is no imminent danger of a person committing a domestic violence offence on the premises;

(b) to investigate whether or not a domestic violence offence has been committed; and

(c) to give or arrange for such assistance as is reasonable in the circumstances.

(2) If after entering premises, pursuant to the power conferred by subsection (1) or pursuant to a power conferred by any other law, a police officer reasonably suspects that a domestic violence offence is being or is about to be committed, or was committed before the officer's arrival, on the premises the officer without further authority may—

(a) search the premises to establish whether any person on the premises—

(i) is in need of assistance; or

(ii) is in possession of a weapon;

(b) search—

(i) in the premises for a weapon; and

(ii) any person on the premises whom the officer reasonably suspects is in possession of a weapon; and

(c) seize any weapon found on the premises, or on a person, that the officer reasonably suspects—

(i) was used to commit a domestic violence offence; or

(ii) may be used to commit a domestic violence offence.

(3) A police officer may use such force and such assistance as is necessary and reasonable in the circumstances in order to exercise the powers under this section.

(4) This section does not limit any other power a police officer may have under this Act, any other written law or at common law."

(b) by adding after section 163 the following section—

"Section 163 not to apply to domestic violence offence

163A. Section 163 does not apply to a charge, which in the circumstances of the case, is a charge for a domestic violence offence.".

(c) by adding to Schedule 1 the following offence—

"common assault that is a domestic violence offence".

PART 4 – AMENDMENTS TO THE PENAL CODE

4. The Penal Code (Cap. 17) is amended as follows—

(a) in section 4 by inserting in the appropriate alphabetical order the following definitions—

" "de facto relationship" means the relationship between a man and a woman who live or lived with each other as spouses on a genuine domestic basis although not legally married to each other;"

" "domestic violence offence" means—

(a) a personal violence offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship;

(b) a property damage offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship; or

(c) the offence of breach of domestic violence restraining order under section 77 of the Domestic Violence Decree 2009;"

" "family or domestic relationship" means the relationship of—

(a) spouse;

(b) other family member;

(c) person who normally or regularly resides in the household or residential facility;

(d) boyfriend or girlfriend;

(e) person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care;"

" "other family member" means any of the following—

(a) parent, grandparent, step-parent, father-in-law, mother-in-law;

(b) child, grandchild, step-child, son-in-law, daughter-in-law;

(c) sibling, half-brother, half-sister, brother-in-law, sister-in-law;

(d) uncle, aunt, uncle-in-law, aunt-in-law;

(e) nephew, niece, cousin;

(f) clan, kin or other person who in the particular circumstances should be regarded as a family member,

provided that if a person was or is in a de facto relationship with another person the relationship of other family member includes a person who would be included if the persons in that de facto relationship were or had been married to each other;"

" "personal violence offence" means an offence specified in Part 1 of Schedule 1A;"

" "property damage offence" means any an offence specified in Part 2 of Schedule 1A;"

" "spouse" includes a person who is or has been in a de facto relationship with the other person;"

(b) by adding after section 46 the following sections—

"Domestic violence offences – determining penalty

46A.—(1) Notwithstanding any other provision of this Act, where a person is charged with a domestic violence offence the matters listed in section 46A(3), so far as each is relevant in the particular case, must be taken into account by the court, in addition to any other relevant matters, in determining penalty.

(2) Where there was more than one victim of a particular domestic violence offence, references in this section to "the victim" means each of the victims.

(3) The matters referred to in section 46A(1) which must be taken into account are—

(a) whether the defendant has any previous convictions for a domestic violence offence;

(b) whether the defendant has previously been charged with a domestic violence offence where the charge was stayed or terminated under section 163 of the Criminal Procedure Code or otherwise;

(c) the extent of the damage, injuries or loss suffered by the victim as a result of the offence;

(d) any special considerations relating to the physical, psychological or other characteristics of the victim when the offence occurred including but not limited to—

(i) the age of the victim;

(ii) whether the victim was pregnant;

(iii) whether the victim was disabled;

(e) whether a child or children witnessed or heard the offence;

(f) the effect of the offence on the emotional, psychological and physical well being of the victim;

(g) the effect of the offence in terms of hardship, dislocation or other difficulties caused to the victim;

(h) the weight that can be accorded to any evidence, including a report by a person who has counselled, assisted or treated the victim since the offence, that deals with the victim's—

(i) attitude to the offence;

(ii) views in relation to any steps taken or proposed to be taken by the defendant to address his or her behaviour;

(iii) assessment of whether the defendant continues to pose a risk or threat to the victim and if so what measures would help ensure the victim's safety and well being;

(i) the conduct of the defendant towards the victim since the offence occurred so far as it relates to whether the defendant—

(i) accepts responsibility for the offence;

(ii) has taken reasonable steps available to the defendant to make amends to the victim including addressing or reducing the negative effects of the offence on the victim;

(iii) appears to pose any further threat to the victim;

(j) whether the defendant is willing to take steps, or further steps, to attempt to make amends to the victim;

(k) whether the defendant has sought and received personal counselling or other assistance since the offence or intends to do so;

(l) whether the defendant is willing to participate in personal counselling or in an educational or other programme if ordered by the Court;

(m) the weight that can be accorded to any report submitted by a person who has counselled, assisted or treated the defendant since the offence occurred that deals with whether—

(i) the defendant accepts responsibility for the offence;

(ii) the defendant appears to pose any further threat to the victim;

(iii) the defendant is likely to be assisted by further counselling or assistance or treatment.

Matters courts must consider

46B. Where section 46A applies, the court must:

(a) consider whether conditions should be imposed and whether a domestic violence restraining order should be made under the Domestic Violence Decree 2009 to ensure the safety and well being of the victim, or where more then one, then of each victim,

(b) consider making an order that the defendant undertake a course of counselling or suitable education or treatment programme that is likely to assist to ensure that the defendant does not re-offend;

(c) in a case where the court—

(i) has power to order that the defendant pay or provide compensation to or for the victim or victims; or

(ii) power to order payment of compensation for any loss or injury caused by the offence from a fine or money found on or in the possession of a convicted person pursuant to section 161 of the Criminal Procedure Code,

consider and make proper inquiry into whether an order for compensation, to or for the victim or victims, should be made.";

(c) by adding after Schedule 1 the following Schedule—

Schedule 1A

Domestic violence offences

Part 1 – Personal violence offence

Part 1 lists offences referred to by the definition of "personal violence offence" in section 4.

Item	**Penal Code** (Section)	Description
1	149	Definition of rape
2	151	Attempted rape
3	152	Abduction
4	153	Abduction of girl under 18 years of age with intent to have carnal knowledge
5	154	Indecent assaults on and indecently insulting or annoying females
6	155	Defilement of girl under 13 years of age
7	156	Defilement of girl between thirteen and 16 years of age. Defilement of idiots or imbeciles
8	157	Procuration
9	158	Procuring defilement of women by threats, fraud or drugs
10	159	Householder permitting defilement of girl under 13 years of age on his premises
11	160	Householder permitting, defilement of girl under 16 years of age on his premises
12	161	Detention of female in brothel or elsewhere
13	171	Conspiracy to defile
14	172	Attempts to procure abortion
15	175	Unnatural offences
16	176	Attempts to commit unnatural offences and indecent assaults
17	178	Incest by males
18	179	Incest by females
19	191	Inciting dogs to attack
20	197	Criminal trespass
21	198	Manslaughter
22	199	Murder
23	205	Infanticide
24	209	Responsibility of person who has charge of another
25	210	Duty of head of family
26	211	Duty of masters
27	214	Attempt to murder
28	215	Attempt to murder by convict
29	216	Accessory after the fact to murder
30	217	Conspiracy to murder

31	219	Liability for complicity in another's suicide
32	221	Killing unborn child
33	222	Disabling in order to commit felony or misdemeanour
34	223	Stupefying in order to commit felony or misdemeanour
35	224	Acts intended to cause grievous harm or to prevent arrest
36	227	Grievous harm
37	228	Placing explosive with intent
38	229	Maliciously administering poison with intent to harm
39	230	Unlawful wounding
40	231	Unlawful poisoning
41	233	Failure to supply necessaries
42	237	Reckless or negligent acts
43	244	Common assault
44	245	Assault causing actual bodily harm
45	247*(a)*	Assault any person with intention to commit a felony
46	249	Punishment for kidnapping
47	250	Kidnapping or abducting in order to murder
48	251	Kidnapping or abducting with intent to confine person
49	252	Kidnapping or abducting with intent to harm
50	253	Wrongfully concealing kidnapped person
51	254	Child stealing
52	255	Abduction of girls under 16 years
53	256	Punishment for wrongful confinement
	Juveniles Act (Section)	
54	57	Cruelty to and neglect of juveniles

PART 2 – PROPERTY DAMAGE OFFENCE

Part 2 lists criminal offences referred to by the definition of "property damage offence" in section 4.

Item	**Penal Code** (Section)	Description
1	317	Arson
2	318	Attempts to commit arson
3	324	Other malicious injuries - general and special punishments
4	325	Attempts to destroy property by explosives
5	330	Criminal Intimidation

GIVEN UNDER my hand this 7th day of August 2009

EPELI NAILATIKAU
Vice-President
of the Republic of Fiji

Price: $3.90

R. S. OLI, *Acting* Government Printer, Suva, Fiji—2009
Official Printer Since 1883

134/FGG/09—1,200