

# Family Law Act 2003



## FAMILY LAW ACT 2003

### ARRANGEMENT OF SECTIONS

#### **PART I -PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Institution of proceedings
4. Pending proceedings
5. Restriction on parenting orders

#### **PART II - MARRIAGE EDUCATION AND COUNSELLING ORGANISATIONS**

6. Approval of organizations
7. Financial assistance
8. Annual reports

#### **PART III - COUNSELLING AND RECONCILIATION**

9. Possibility of reconciliation
10. Notice to seek assistance
11. Availability of counselling services
12. Rules of each Family Division
13. Privileged communications
14. Oath of secrecy

#### **PART IV - THE FAMILY DIVISION OF THE HIGH COURT AND MAGISTRATES' COURT**

15. Family Division of the High Court
16. Chief Judge of the Family Division of the High Court
17. Jurisdiction and powers of the Family Division of the High Court
18. Exercise of jurisdiction
19. Appeals from the Family Division
20. Family Division of the Magistrates' Court
21. Jurisdiction and powers of the Family Division of the Magistrates' Court

22. Practice and procedure
23. Officers of the Family Division

## **PART V - MATRIMONIAL CAUSES**

### **DIVISION I - JURISDICTION**

24. Institution of proceedings
25. Law to be applied
26. Principles to be applied by courts
27. Institution of proceedings
28. Staying and transferring proceedings
29. Courts to act in aid of each other

### **DIVISION 2 - DISSOLUTION AND NULLITY OF MARRIAGE**

30. Ground for dissolution
31. Effect of resumption of co-habitation
32. Nullity of marriage
33. Court not to make order of dissolution where before it
34. Conditional order in the first instance
35. When conditional order becomes final
36. Final order where children of the marriage
37. Certificate as to final order
38. Reversion of conditional order
39. Re-marriage after dissolution
40. No limit as to time or place of facts and circumstances

## **PART VI - CHILDREN**

### **DIVISION 1 - INTRODUCTORY**

41. Objects of Part
42. Interpretation
43. Application of Part to void marriages
44. Certain children are children of marriages etc.

### **DIVISION 2 - PARENTAL RESPONSIBILITY**

45. Meaning of "parental responsibility"
46. Each parent has parental responsibility

- 47. Parenting orders and parental responsibility
- 48. Effect of adoption on parental responsibility

### **DIVISION 3 - COUNSELLING, ETC.**

- 49. Obligation to consider advising people about counselling for Part VI Orders
- 50. Request for counselling made through a court
- 51. Request for counselling made to a family and child counsellor
- 52. Court counselling facilities to be made available
- 53. Conferences with family and child counsellors or welfare officers
- 54. Reports by family and child counsellors and welfare officers
- 55. Provision of certain documents

### **DIVISION 4 - PARENTING PLANS**

- 56. Parents encouraged to reach agreement
- 57. Meaning of "parenting plan" and related terms
- 58. Parenting plan may not be varied, but may be revoked, by further agreement
- 59. Registration in a court
- 60. Child welfare provisions of registered parenting plans
- 61. Child maintenance provisions of registered parenting plans which are not enforceable as maintenance agreements
- 62. Court's powers to set aside, discharge, vary, suspend or revive registered parenting plan

### **DIVISION 5 - PARENTING ORDERS**

- 63. Meaning of "parenting order" and related terms
- 64. Parenting orders may be made in favour of parents or other persons

### **DIVISION 6 - PARENTING ORDERS OTHER THAN CHILD MAINTENANCE ORDERS**

#### *Subdivision A - General principles*

- 65. Applying for parenting orders
- 66. Court's power to make parenting order
- 67. General requirements for counselling before parenting order made
- 68. Order by consent in favour of non-parent
- 69. Children who have married or entered into relationships making the parenting or maintenance order unreasonable
- 70. Effect of adoption on parenting order
- 71. Death of parents with whom child lives

- 72. Counsellors may be required to supervise or assist
- 73. General obligations created by parenting orders

*Subdivision B - Arrest of offenders*

- 74. Warrant for arrest of alleged offender
- 75. Arrested person to be brought before a court
- 76. Obligation of court where application before it to deal with contravention
- 77. Obligation of court where no application before it, but application before another court, to deal with contravention
- 78. Obligation of court where no application before any contravention
- 79. Applications heard as required by section 77

*Subdivision C - Obligations under parenting orders relating to taking or sending children from the Fiji Islands*

- 80. Interpretation
- 81. Obligation if residence order, contact order or care has been made
- 82. Obligations if proceedings for the making of a residence order, contact order or care order are pending
- 83. Obligations of owners etc. of aircraft and vessels if residence order, contact order or care order are made
- 84. Obligations of owners if proceedings are pending
- 85. General provisions applicable to sections 83 or 84

**DIVISION 7- CHILD MAINTENANCE ORDERS**

*Subdivision A - Principles*

- 86. Parents have primary duty to maintain child
- 87. Duty of step-parents

*Subdivision B - Applying for and making child maintenance orders*

- 88. Who may apply
- 89. Power of the Court
- 90. Considering what financial support necessary
- 91. Matters to be taken into account in determining contribution that made by party etc.
- 92. Children who are aged 18 or over
- 93. When step-parents have a duty to maintain
- 94. Determining financial contribution of step-parent

*Subdivision C - Other aspects of court's powers*

- 95. General powers of Court
- 96. Urgent child maintenance orders
- 97. Modification of child maintenance orders

*Subdivision D - When child maintenance orders cease*

- 98. Effect of death, adoption or marriage
- 99. Recovery of arrears

**DIVISION 8 - OTHER MATTERS RELATING TO CHILDREN**

*Subdivision A - Father liable to contribute towards child bearing expenses if not married to mother*

- 100. Father liable to contribute towards maintenance and expenses of mother
- 101. Matters to be taken into account
- 102. Powers of court
- 103. Urgent orders
- 104. Institution of proceedings

*Subdivision B - Recovery of children*

- 105. Nature of recovery orders
- 106. Recovery orders authorising or directing people
- 107. Recovery orders to stop and search etc. vehicles, places, etc.
- 108. Who may apply for a recovery order
- 109. Court's power to make recovery order
- 110. How long recovery order remains in force
- 111. Persons not to prevent or hinder taking of action under recovery order
- 112. Obligation to notify persons of child's return

*Subdivision C - Allegations of child abuse*

- 113. Where party to proceedings makes allegation of child abuse
- 114. Where member of the court personnel or counsellor suspects child abuse etc.
- 115. No liability for notification under section 113 or 114.
- 116. Orders relating to welfare of children
- 117. Delivery of passport

## **DIVISION 9 - INJUNCTIONS IN RELATION TO A CHILD**

- 118. Injunctions
- 119. Powers of arrest

## **DIVISION 10 - BEST INTERESTS OF CHILDREN AND THE REPRESENTATION OF CHILDREN**

### *Subdivision A - Determining the best interests of a child*

- 120. Proceedings to which subdivision applies
- 121. How a court determines what is in a child's best interests
- 122. Child's wishes - how expressed
- 123. Relevant family violence orders
- 124. Risk of family violence

### *Subdivision B - Separate representation of children*

- 125. Order for separate representation
- 126. Child to be made available for examination

## **DIVISION 11 - PROCEEDINGS AND JURISDICTION**

### *Subdivision A - Institution of proceedings and procedures*

- 127. Institution of proceedings under this Part
- 128. Institution of maintenance proceedings by authorised authority
- 129. Child or parent to be present in Fiji Islands etc.
- 130. Failure to comply no bar to proceedings

### *Subdivision B - Presumptions of parentage*

- 131. Arising from marriage
- 132. Arising from cohabitation
- 133. Arising from registration of birth
- 134. Arising from findings of courts
- 135. Arising from acknowledgments
- 136. Rebuttal of presumptions

### *Subdivision C - Parentage testing*

137. Evidence of parentage
138. Orders for carrying out of parentage testing procedures
139. Orders associated with parentage testing orders
140. Orders directed to persons aged 18 or over
141. Orders directed to children
142. No liability if parent etc. consents
143. Regulations about carrying out, and reporting on, parentage testing procedures
144. Reports of information obtained may be received in evidence
145. Parentage testing for purposes of international maintenance agreements

*Subdivision D - Child welfare laws not affected*

146. Child welfare laws

**DIVISION 12 - OVERSEAS ORDERS**

*Subdivision A - Registration of overseas orders*

147. Interpretation
148. Registration of orders
149. Effect of registration on exercise of jurisdiction
150. Cancellation of registration if residence order, contact order or care order made
151. Relationship between local orders and registered overseas child orders

*Subdivision B - Transmission of Fiji Islands orders to overseas jurisdictions*

152. Registrar to send documents etc. to overseas jurisdiction
153. Regulations may deal with sending Fiji Islands orders etc. to overseas jurisdiction

**PART VII - PROPERTY, SPOUSAL MAINTENANCE AND MAINTENANCE AGREEMENTS**

154. Interpretation
155. Right of spouse to maintenance
156. Power of court in spousal maintenance proceedings
157. Matters to be taken into consideration in relation to spousal maintenance
158. Urgent spousal maintenance cases
159. Parental maintenance
160. Declaration of interests in property
161. Alteration of property interests
162. Factors to be taken into account

163. Setting aside of orders altering property interests
164. General powers of court
165. Cessation of orders
166. Native land
167. Modification of spousal maintenance orders
168. Execution of instruments by order of court
169. Transactions to defeat claims
170. Ante-nuptial and post-nuptial settlements
171. Registered maintenance agreements
172. Operation of maintenance agreements entered into in substitution for rights under this Part
173. Enforcement of maintenance agreements
174. Overseas maintenance agreements
175. Institution of spousal maintenance proceedings by authorised authority or person
176. Certain instruments not liable to stamp duty

### **PART VIII - INTERVENTION**

177. Intervention by Attorney-General
178. Intervention by social welfare officer
179. Intervention by other persons
180. Intervention in child abuse cases

### **PART IX - APPEALS**

181. No appeal after final order
182. Appeals to the Court of Appeal
183. Case stated
184. Appeals from the Family Division of the Magistrates' Court

### **PART X - PROCEDURE AND EVIDENCE**

185. Procedure
186. Evidence of children
187. Evidence by affidavit
188. Evidence of husbands and wives
189. Protection of witnesses
190. Proof of birth, parentage, death or marriage
191. Restrictions on the medical and psychological examination of children

### **PART XI - RECOGNITION OF ORDERS**



- 192. Orders under this Act
- 193. **Overseas** orders

## **PART XII - ENFORCEMENT OF ORDERS**

- 194. Enforcement generally
- 195. Methods of enforcement
- 196. Contempt
- 197. **Overseas** enforcement of maintenance orders etc.
- 198. Convention on Recovery Abroad of Maintenance
- 199. Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
- 200. Convention on the Civil Aspects of International Child Abduction

## **PART XIII - DECLARATIONS AND INJUNCTIONS**

- 201. Proceedings for declarations
- 202. Power to grant injunctions
- 203. Powers of arrest

## **PART XIV - MISCELLANEOUS**

- 204. Family Law Council
- 205. Costs
- 206. Interest on moneys ordered to be paid
- 207. Frivolous or vexatious proceedings
- 208. Married persons may sue each other
- 209. Criminal conversation, adultery, enticement and breach of promise
- 210. Restriction on publication of court proceedings
- 211. Powers of entry and search for purpose of arresting persons
- 212. Rules of the Family Division
- 213. Regulations may prescribe certain matters
- 214. Repeal and savings

Schedule - Repealed Acts

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**Act No. 18 of 2003**

I assent.

J.I. ULUIVUDA  
President

[6 November, 2003]

**AN ACT**

**TO ESTABLISH FAMILY DIVISIONS OF THE HIGH COURT AND THE  
MAGISTRATES' COURT, TO MAKE FRESH PROVISIONS RELATING TO  
DISSOLUTION OF MARRIAGE, SPOUSAL AND CHILD SUPPORT, PARENTING  
RESPONSIBILITY AND SPOUSAL PROPERTY, TO PROVIDE FOR MARRIAGE  
COUNSELLING AND RECONCILIATION, AND FOR RELATED MATTERS**

**ENACTED** by the Parliament of the Fiji Islands-

**PART I - PRELIMINARY**

*Short title and commencement*

1.-(1) This Act may be cited as the Family Law Act 2003.

(2) This Act comes into force on a date or dates appointed by the Attorney General by notice in the *Gazette*.

(3) The Attorney General may appoint different dates for the coming into operation of different Parts, Divisions or sections of this Act.

*Interpretation*

2.-(1) In this Act, unless the contrary intention appears-

"adopted", in relation to a child, means adopted under the law of any place (whether in or out of the Fiji Islands) relating to the adoption of children;

"appeal" includes an application for a re-hearing;

"applicant" includes a cross-applicant and, in relation to proceedings for dissolution of marriage instituted before the commencement of this Act, includes a petitioner or cross-petitioner.

"approved", in relation to a marriage education and counselling organisation, means approved by the Attorney-General under section 6;

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

"child counselling" means counselling to-

(a) discuss the care, welfare or development of a child; or

(b) discuss, and try to resolve, differences between persons that affect the care, welfare or development of a child;

"child maintenance order" has the meaning given by section 63(5);

"contact order" has the meaning given by section 63(4);

"court", in relation to any proceedings, means the court exercising jurisdiction in those proceedings by virtue of this Act;

"court counsellor" means a Director of Counselling and any other court counsellor appointed under section 23;

"Director of Counselling" means a person appointed as such under section 23;

"family and child counselling" means any of the following kinds of counselling-

(a) marriage counselling;

(b) child counselling;

(c) counselling about any matter that arises out of proceedings under this Act and that involves-

(i) a parent of a child;

(ii) a child; or

(iii) a party to a marriage;

"family and child counsellor" means-

(a) a court counsellor;

(b) a person authorised by an approved counselling organisation to offer family and child counselling on behalf of the organisation; or

(c) a person authorised under the regulations to offer family and child counselling;

"Family Division" means the Family Division of the High Court established by section 15 or the Family Division of the Magistrates' Court established by section 20, as the case may be;

"Family Law Council" means the body of that name established under section 204;

"financial matters", in relation to the parties to a marriage, means matters with respect to-

(a) the maintenance of one of the parties;

(b) the property of those parties or of either of them; or

(c) the maintenance of children of the marriage;

"financial or Part VII proceedings", means-

(a) proceedings (being, unless the context otherwise requires, proceedings under this Act) of a kind referred to in any of paragraphs (c) to (h) of the definition of "matrimonial cause" in this subsection; or

(b) proceedings under Part VII;

"made", in relation to an order which is a judgment means given, and "make" has a corresponding meaning;

"maintenance agreement" means an agreement in writing which is made, either before or after the commencement of this Act, between the parties to a marriage and which makes provision with respect to financial matters, whether or not-

(a) there are other parties to the agreement;

(b) it also makes provision with respect to other matters,

and includes such an agreement that varies an earlier maintenance agreement;

"marriage counselling" includes the counselling of a person in relation to-

(a) entering into marriage;

(b) reconciliation of the parties to a marriage;

(c) separation of the parties to a marriage;

(d) the dissolution or annulment of a marriage; or

(e) adjusting to the dissolution or annulment of a marriage, whether-

(i) the counselling is provided in relation to the proposed marriage, marriage or former marriage of the person or in relation to the proposed marriage, marriage or former marriage of another person or other persons; and

(ii) the counselling is provided to the person individually or as a member of a group of persons;

"matrimonial cause" means-

(a) proceedings between the parties to a marriage, or by the parties to a marriage, for an order of-

(i) dissolution of marriage; or

(ii) nullity of marriage;

(b) proceedings for a declaration as to the validity of a marriage or of the dissolution or annulment of a marriage by order or otherwise;

(c) proceedings between the parties to a marriage with respect to the maintenance of one of the parties to the marriage;

(d) proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, being proceedings-

(i) arising out of the marital relationship;

(ii) in relation to concurrent, pending or complete proceedings between those parties for principal relief; or

(iii) in relation to the dissolution or annulment of that marriage or the legal separation of the parties to that marriage, being a dissolution, annulment or legal separation effected in accordance with the law of an **overseas** jurisdiction, where that dissolution, annulment or legal separation is recognized as valid in the Fiji Islands under Part XI;

(e) proceedings between the parties to a marriage for the approval by a court of a maintenance agreement or for the revocation of such an approval or for the registration of a maintenance agreement;

(f) proceedings between the parties to a marriage for an order or injunction in circumstances arising out of the marital relationship;

(g) proceedings between-

(i) the parties to a marriage;

(ii) if one of the parties to a marriage has died - the other party to the marriage and the legal personal representative of the deceased party to the marriage, being proceedings-

(iii) for the enforcement of, or otherwise in relation to, a maintenance agreement that has been approved under section 172 and the approval of which has not been revoked;

(iv) in relation to a maintenance agreement the approval of which under section 172 has been revoked; or

(v) with respect to the enforcement under this Act of a maintenance agreement that is registered in a court under section 171 or an **overseas** maintenance agreement that is registered in a court under regulations made under section 174;

(h) proceedings with respect to the enforcement of an order made under the law of an **overseas** jurisdiction in proceedings of a kind referred to in paragraph (c); or

(i) any other proceedings (including proceedings with respect to the enforcement of an order or the service of process) in relation to concurrent, pending or completed proceedings of a kind referred to in any of paragraphs (a) to (h), including proceedings of such a kind pending at, or completed before, the commencement of this Act;

"order" means an order, decree or judgement and includes an order *nisi* and an order dismissing an application or refusing to make an order;

"ordinarily resident" includes habitually resident;

"**overseas** jurisdiction" means the jurisdiction of a country or part of a country outside the Fiji Islands;

"**overseas** maintenance agreement" means a maintenance agreement that has force and effect in a prescribed overseas jurisdiction by reason of the registration of the agreement, or the taking of any other action in relation to the agreement, under the law of that country and includes such an agreement with respect to the maintenance of an ex-nuptial child as if the child were a child of the marriage of the parties to the agreement;

"parenting order" has the meaning given by section 63(1);

"parenting plan" has the meaning given by section 57;

"Part VII proceedings" means proceedings under Part VII with respect to spousal maintenance or the property of the parties to the marriage;

"prescribed **overseas** jurisdiction" means a jurisdiction in any country or part of a country outside the Fiji Islands which is prescribed by the regulations as an overseas jurisdiction for the purposes of the provision in which the expression is used;

"proceedings" means proceedings in a court, whether between parties or not, and includes cross-proceedings or an incidental proceeding in the course of or in connection with a proceeding;

"proceedings for principal relief" means proceedings under this Act of a kind referred to in paragraph (a) or (b) of the definition of "matrimonial cause";

"property", in relation to the parties to a marriage or either of them, means property within or outside the to which those parties are, or that party is, entitled, whether in possession or reversion;

"registrar" includes a deputy registrar;

"regulation" means regulations made under section 213;

"repealed Act" means any of the Acts set out in the Schedule;

"residence order" has the meaning given by section 63(3);

"separation order" means an order, not being an order of dissolution of nullity of marriage or for a judicial separation, having the effect of relieving a party to a marriage from any obligation to cohabit with the other party to the marriage;

"specific issues order" has the meaning given by section 63(6);

"welfare officer" means any of the following-

(a) a person who is permanently or temporarily employed as a welfare officer in the public service;

(b) a person nominated by an organisation concerned with the welfare of children, being an organisation that has been approved under section 6;

(c) a person appointed as a welfare officer in accordance with the regulations.

(2) A reference in this Act to a party to a marriage includes a reference to a person who was a party to a marriage that has been dissolved or annulled in the Fiji Islands or elsewhere.

(3) A reference in this Act to a parent of a person includes an adoptive parent, if the personal law of the person permits adoption.

(4) In ascertaining the domicile of a party to a marriage for the purposes of this Act -

(a) a person's domicile at anytime (whether before or after the commencement of this Act) in any country, however acquired, is deemed to have continued, or to continue, until the acquisition by that person of a domicile of choice in another country;

(b) the domicile of a woman who is, or has at any time been, married must be determined as if she had never been married; or

(c) a person who has attained the age of 18 years, or a person who has not attained that age but is, or has at any time been, married, has, and is deemed to have had at all times since that person attained that age or became married, the capacity to acquire a domicile of choice.

#### *Institution of proceedings*

**3.-(1)** After the commencement of this Act-

(a) proceedings by way of a matrimonial cause cannot be instituted except under this Act; and

(b) proceedings by way of a matrimonial cause instituted before the commencement of this Act cannot be continued except in accordance with section 4.

(2) Proceedings for an order of restitution of conjugal rights, of jactitation of marriage or of judicial separation cannot be instituted or continued after the commencement of this Act.

(3) Proceedings for a separation order cannot be instituted after the commencement of this Act.

#### *Pending proceedings*

4.-(1) Subject to subsection (2), pending proceedings for a decree of dissolution of marriage or for a decree of nullity of marriage on the ground that the marriage is voidable, and pending proceedings for a separation order, may be continued and must be dealt with as if this Act had not been passed.

(2) Where the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of commencement of this Act, pending proceedings for a decree of dissolution of marriage must, if the applicant so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 30(1) and, in relation to proceedings in which such a request is made, section 30(2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of commencement of Part V of this Act.

(3) Where subsection (2) does not apply but the parties have lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of making of the request under this subsection, pending proceedings for a decree of dissolution of marriage must, if either party so requests, be dealt with as if they were proceedings instituted under this Act on the ground referred to in section 30(1) and, in relation to proceedings in which such a request is made, section 30(2) has effect as if the proceedings for dissolution of marriage had been instituted by an application filed on the date of making of the request.

(4) Pending proceedings for a decree of nullity of marriage on the ground that the marriage is void, or pending proceedings of a kind referred to in paragraph (b) of the definition of "matrimonial cause" in section 2(1), may be continued and must be dealt with as if they were proceedings instituted under this Act.

(5) Pending proceedings constituting a matrimonial cause, not being proceedings for principal relief, instituted under a repealed Act may be continued and must be dealt with as if they were proceedings instituted under this Act.

(6) Section 214(2) does not apply to proceedings continued and dealt with under this section.

(7) Where, in any proceedings constituting a matrimonial cause, an order has been made before the commencement of the relevant Part of this Act-

- (a) any appeal in respect of that order may be continued or instituted;
- (b) any new trial or re-hearing ordered upon the hearing of such an appeal, or upon an appeal heard before the commencement of the Part, may be heard and completed; and
- (c) any order maybe made upon any such appeal, new trial or re-hearing, and, if an order so made is a conditional order, the order may become final,

as if this Act had not been passed.

(8) Where, in any proceedings constituting a matrimonial cause, a conditional order was made before the commencement of the relevant Part of this Act but did not become final before that date, the order becomes final upon-

- (a) the expiration of 1 month from the date of making of the order;
- (b) the expiration of 1 month from the date of making of a relevant order under section 58 (1) of the Matrimonial Causes Act or section 34 of this Act; or
- (c) the date of commencement of the relevant Part of this Act,

whichever is the latest.

(9) At the commencement of this Act, any proceedings pending under the written laws (including practice and procedures) repealed under section 214, continue and are to be determined under those repealed written laws (including practice and procedures), as if such laws were still in force.

(10) In this section -

"appeal" includes-

- (a) an application for leave to appeal;
- (b) an application for a new trial or for a re-hearing; and
- (c) an intervention;

"pending proceedings" means proceedings that were instituted before the date of commencement of the relevant Part of this Act but not completed before that date.

#### *Restriction on parenting orders*

**5.-(1)** Subject to subsection (3), a court must not make a parenting order under Part VI in relation to a child who is a ward of the Department responsible for Social Welfare or who is under the care and control of the Minister responsible for Social Welfare in his or her capacity as a Minister.



(2) Nothing in this Act, and no order under this Act, affects-

(a) the jurisdiction of a court, or the power of an authority, under the law to make an order, or take any other action, whereby a child becomes a ward of the State, or is placed under the care and control of the Minister responsible for Social Welfare, or any similar jurisdiction or power;

(b) any such order made, or action taken, or the operation, in respect of a child in relation to whom any such order has been made or action taken, of the law under which the order was made or action taken;

(c) the jurisdiction of a court to make an order in respect of the maintenance of a child referred to in subsection (1) in favour of an officer or authority of the State performing functions in relation to the welfare of children; or

(d) an order of a kind referred to in paragraph (c) made by a court.

(3) A judge or magistrate of the Family Division may make an order referred to in subsection (1) if the judge or magistrate is satisfied that there are special circumstances that justify the making of the order.

## **PART II - MARRIAGE EDUCATION AND COUNSELLING ORGANIZATIONS**

### *Approval of organizations*

**6.**-(1) A person or organization may apply to the Family Law Council for approval under this Part as-

(a) a marriage education and counselling organization; or

(b) an organisation concerned with the welfare of children.

(2) The Family Law Council, in consultation with the Attorney-General, may approve any such person or organisation if it is satisfied that-

(a) the person or organisation is willing and able to engage in marriage education and counselling or is concerned with the welfare of children, as the case may be; and

(b) marriage education and counselling or the welfare of children, as the case may be, constitutes or will constitute the whole or the major part of its activities.

(3) The approval of a person or organisation under this section may be given subject to any conditions the Family Law Council determines.

(4) If the approval of a person or organisation has been given subject to conditions, the Family Law Council may, from time to time, revoke or vary all or any of those conditions or add further

conditions.

(5) The Family Law Council may, at any time, in consultation with the Attorney-General, revoke the approval of an organization if -

(a) the person organisation has not complied with a condition of the approval of the person or organisation;

(b) the person or organization has not furnished, in accordance with section 8, a statement or report that the organization is required by that section to furnish; or

(c) The Family Law Council is satisfied that the person or organisation is not adequately carrying out marriage education and counselling or being concerned in the welfare of children.

(6) Notice of the approval of a person or an organization under this section, and of the revocation of any such approval, must be published in the *Gazette*.

#### *Financial assistance*

7. The Attorney-General may, from time to time, in consultation with the Family Law Council, out of moneys appropriated by Parliament for the purposes of this Part, grant to a person or organisation approved as a marriage education and counselling or approved as an organization concerned with the welfare of children, upon such conditions as he or she thinks fit, such sums by way of financial assistance as he or she determines.

#### *Annual reports*

8.-(1) An approved marriage education and counselling organization or an organization concerned with the welfare of children must, not later than 31st March in each year or other period as may be extended by the Attorney-General in consultation with the Family Law Council, furnish to the Family Law Council and a copy to the Attorney-General, in respect of the year ending 31st December of the previous year-

(a) An audited financial statement of the receipts and payments of the organisation, with those for its functions under this Act shown separately from other receipts and payments; and

(b) A report on its marriage education and counselling activities or child welfare activities, including information as to the number of cases dealt with by the person or organisation during the year.

(2) If, upon application by a person or an organisation, the Attorney-General is satisfied that it would be impracticable for the person or organization to comply with the requirements of subsection (1) or that the application of those requirements to the person or organization would be unduly onerous, he or she may, in writing, exempt the person or organization, wholly or in

part, from those requirements.

(3) The Family Law Council must submit a copy of the annual report to the Chief Registrar of the High Court to be included in the annual report of the Judicial Department.

### **PART III - COUNSELLING AND RECONCILIATION**

#### *Possibility of reconciliation*

9.-(1) Where proceedings for a dissolution of marriage have been instituted, or Part V or Part VI proceedings have been instituted by a party to a subsisting marriage, it is the duty of the judge or magistrate constituting the court, and of every legal practitioner representing a party, to give consideration, from time to time, to the possibility of a reconciliation of the parties.

(2) If, in such proceedings, it appears at any time to the judge or magistrate, from the evidence in the proceedings or the attitude of the parties, or of either of them, that there is a reasonable possibility of such a reconciliation, the judge or magistrate may-

(a) adjourn the proceedings to afford the parties an opportunity to consider a reconciliation;

(b) with the consent of these parties, interview them in chambers, with or without counsel, as the judge or magistrate thinks proper, with a view to effecting a reconciliation; and

(c) if the judge or magistrate thinks it desirable to do so, nominate-

(i) a marriage counsellor or an approved marriage education and counselling organisation; or

(ii) in special circumstances, some other suitable person or organisation, to assist those parties is considered a reconciliation.

(3) If, after an adjournment under subsection (2) has taken place, either of the parties requests that the hearing be proceeded with, the judge or magistrate must resume the hearing as soon as practicable.

(4) If the court makes an order or grants an injunction under section 202, the court must, if it is of the opinion that it is in the interests of the parties or of the children of the marriage to do so, advise either or both of the parties to attend a marriage counsellor.

(5) Where a court having jurisdiction under this Act is of the opinion that counselling may assist the parties to a marriage to improve their relationship to each other and to any child of the marriage, it may advise the parties to attend upon a marriage counsellor or an approved marriage education and counselling organization and, if it thinks it desirable to do so, may adjourn any proceedings before it to enable the attendance.

#### *Notice to seek assistance*

**10.**-(1) A party to a marriage may file in either Family Division a notice stating that he or she intends to seek the assistance of the counselling facilities of the Family Division.

(2) If such a notice is filed, the Director of Counselling of the relevant Division must arrange for the parties to the marriage to be interviewed by a marriage counsellor for the purpose of assisting the parties with a view to a reconciliation or the improvement of their relationship to each other and to the children of the marriage.

*Availability of counselling services*

**11.**-(1) A Director of Counselling must advertise the existence and availability of the counselling and welfare facilities of the respective Family Division.

(2) A party to a marriage must seek the assistance of the counselling facilities of either Family Division and when such assistance is sought the Director of Counselling must, as far as practicable, make those facilities available.

*Rules of each Family Division*

**12.** The rules of each Family Division must provide for furnishing to persons proposing to institute proceedings under this Act, and in appropriate cases to their spouses, documents setting out-

(a) the legal and possible social effects of the proposed proceedings (including the consequences for the children of the marriage); and

(b) the counselling and welfare facilities available within the respective Family Division and elsewhere.

*Privileged communications*

**13.**-(1) This section applies to-

(a) a marriage counsellor;

(b) a person nominated, or acting on behalf of an organisation nominated, in accordance with section 9(2)(c); or

(c) a person to whom a party to a marriage has been referred by a marriage counsellor, or by a person referred to in paragraph (b), for medical or other professional consultation.

(2) Evidence of anything said or of any admission made at a conference with a person to whom this section applies, acting in the capacity referred to in subsection (1), is not admissible in any

court or in proceedings before a person authorized by law, or by the consent of the parties, to hear evidence.

*Oath of secrecy*

**14.** A marriage counsellor must, before first performing the functions of a counsellor, make before a person authorized under the law of the Fiji Islands to take affidavits an oath or affirmation of secrecy in the prescribed form.

**PART IV - THE FAMILY DIVISION OF THE HIGH COURT AND MAGISTRATES' COURT**

*Family Division of the High Court*

**15.**-(1) This section establishes a Family Division of the High Court.

(2) The Division consists of such judges as the Chief Justice determines.

*Chief Judge of the Family Division of the High Court*

**16.**-(1) The Chief Justice may, in writing, designate a judge as the judge or to act as a judge of the Division.

(2) Subject to section 134 of the Constitution, a person designated under subsection (1) must be, by reason of training, experience and personality, a suitable person to deal with matters of family law.

(3) The designation of a judge under this section does not preclude the judge exercising other powers and jurisdiction of the High Court.

(4) The appointment of a judge under section 134 of the Constitution is not affected if the judge ceases to be so designated under this section.

*Jurisdiction and powers of the Family Division of the High Court*

**17.**-(1) The Family Division of the High Court has jurisdiction in-

- (a) matrimonial causes and all other matters instituted or continued under this Act;
- (b) any other matter in respect of which jurisdiction is conferred on it by a written law.

(2) Subject to such restrictions and conditions (if any) as are contained in the regulations, the

jurisdiction of the Family Division of the High Court may be exercised in relation to persons or things outside the Fiji Islands.

(3) The Family Division of the High Court has exclusive jurisdiction in relation to applications for orders for nullity of marriage and to applications under section 200 in relation to the Convention on the Civil Aspects of **International** Child Abduction (1980).

(4) Subject to this Act judges of the Division have all such powers as are bylaw or custom granted to the High Court including hearing of appeals from the Family Division of the Magistrates' Court.

#### *Exercise of jurisdiction*

**18.**-(1) The original and appellate jurisdiction of the Family Division of the High Court is exercisable by one or more judges as the Chief Justice may direct or as prescribed by rules of court.

(2) Sittings of judges of the Division are to be held from time to time as required at such places in the Fiji Islands as the judge of the Family Division directs.

#### *Appeals from the Family Division*

**19.**-(1) An appeal from the Family Division of the Magistrates' Court lies as of right to the Family Division of the High Court.

(2) Appeals from judges of the Family Division exercising original jurisdiction lie as of right to the Court of Appeal.

(3) Appeals from judges of the Family Division sitting on appeal from orders of the magistrates' court lie to the Court of Appeal with leave of the Court of Appeal.

(4) This section is in addition to Part IX.

#### *Family Division of the Magistrates' Court*

**20.**-(1) This section establishes a Family Division of the Magistrates' Court which is subordinate to the Family Division of the High Court.

(2) The Family Division consists of such resident magistrates as the Chief Magistrate determines.

(3) A person must not be appointed as a magistrate of the Division unless he or she is, by reason of training, experience and personality, a suitable person to deal with matters of family law.

(4) An appointment as a magistrate of the Division does not prevent a magistrate sitting as or executing any other powers of a resident magistrate.

(5) A magistrate of the Division may resign that office without resigning office as resident magistrate.

*Jurisdiction and powers of the Family Division of the Magistrates' Court*

**21.**-(1) The Family Division of the Magistrates' Court has jurisdiction in-

(a) matrimonial causes and all other matters instituted or continued under this Act;

(b) any other matter in respect of which jurisdiction is conferred on it by a written law.

(2) Subject to this Act all magistrates of the Division have all such powers as are granted by law to resident magistrates and to magistrates' courts.

(3) Sittings of Magistrates of the Division are to be held from time to time as required at such places in the Fiji Islands as the Chief Magistrate directs.

*Practice and procedure*

**22.**-(1) The practice and procedure of each Family Division are governed by the rules of the respective Division.

(2) In so far as the rules of the respective Division are insufficient, the High Court Rules or the Magistrates' Courts Rules respectively apply (so far as they are capable of such application and subject to any directions of the judge of the Family Division or the Chief Magistrate, as the case may be) to the practice and procedure of the Division.

*Officers of the Family Division*

**23.**-(1) The Family Division of the High Court and of the Magistrates' Court must each have a Director of Counselling and such other court counsellors as are required.

(2) There must be a registrar of each Family Division and such deputy registrars as are necessary.

(3) The Public Service Commission appoints each Director of Counselling and other court counsellors, who must be persons skilled in the social sciences and with a knowledge of court procedures and must be suitable to deal with matters of family law.

(4) The Judicial Service Commission appoints the Registrars, who must be legal practitioners

with skills in conciliation.

(5) The Directors of Counselling have such duties as are given to the Directors by this Act, the rules of the Division, the Chief Justice or the Chief Magistrate, as the case may be.

(6) A registrar must, before first performing the functions of a registrar, make before a person authorised under the law of the Fiji Islands to take affidavits an oath or affirmation of office of secrecy in the prescribed form.

## **PART V - MATRIMONIAL CAUSES**

### **DIVISION 1 - JURISDICTION**

#### *Institution of proceedings*

**24.**-(1) Subject to this Part a person may institute a matrimonial cause under this Act-

- (a) in the Family Division of the High Court; or
- (b) in the Family Division of the Magistrates' Court.

(2) Proceedings for an order of dissolution of marriage may be instituted under this Act by a party to the marriage if, at the date on which the application for the order is filed in a court, either party to the marriage-

- (a) is a Fiji Islands citizen;
- (b) is domiciled in the Fiji Islands; or
- (c) is ordinarily resident in the Fiji Islands and has been so resident for one year immediately preceding that date.

(3) Proceedings of a kind referred to in any of paragraphs (a) to (e) of the definition of "matrimonial cause" in section 2(1), other than proceedings for an order of dissolution of marriage, may be instituted under this Act if-

- (a) either party to the marriage is a citizen of the Fiji Islands;
- (b) either party to the marriage is present in the Fiji Islands; or
- (c) the proceedings relate to a child of the marriage and the child is present in the Fiji Islands.

#### *Law to be applied*

**25.**-(1) The jurisdiction conferred on a court, or with which a court is invested, by this Act must



be exercised in accordance with this Act.

(2) Where it would be in accordance with the common law rules of private international law to apply the laws of any other country or place, the court must apply the laws of that country or place.

*Principles to be applied by courts*

**26.** A court exercising jurisdiction under this Act must, in the exercise of that jurisdiction, have regard to-

- (a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life;
- (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while the family is responsible for the care and education of dependent children;
- (c) the need to protect the rights of children and to promote their welfare;
- (d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to the children of the marriage;
- (e) the Convention on the Rights of the Child (1989) and the Convention on the Elimination of all Forms of Discrimination against Women (1979).

*Institution of proceedings*

**27.**-(1) Subject to this section, proceedings under this Act must be instituted by application.

(2) A respondent may, in a response to an application, include an application for any order or declaration under this Act.

(3) Where a final order for dissolution of marriage or of nullity of marriage has been of the definition made, proceedings of a kind referred to in sub-paragraph (c) or (d) of the definition of "matrimonial cause" in section 2(1) (not being proceedings seeking the discharge, suspension, revival or variation of an order previously made in proceedings with respect to the maintenance of a party) cannot be instituted before the expiration of 2 years after the date of the making of the order or the date of commencement of this Act, whichever is the later, except by leave of the court in which the proceedings are to be instituted.

(4) The court must not grant leave under subsection (3) unless it is satisfied that hardship would be caused to a party to a marriage or to a child of the marriage if leave were not granted.

*Staying and transferring proceedings*

**28.**-(1) If-

(a) there are pending in a court proceedings which have been instituted under this Act or are being continued in accordance with section 4; and

(b) it appears to that court that other proceedings which have been so instituted or are being so continued in relation to the same marriage or void marriage or to the same matter are pending in another court,

the first-mentioned court may stay the first-mentioned proceedings for such time as it considers appropriate or may dismiss the proceeding.

(2) If-

(a) there are pending in a court proceedings that have been instituted under this act or are being continued in accordance with section 4; and

(b) it appears to that court that it is in the interests of justice, or of convenience to the parties, that the proceedings be doubt with in another court having jurisdiction under this Act,

the court may transfer the proceedings to the other court.

(3) The judge of the Family Division may of his or her own motion or on the application of a party at anytime order that any proceedings be transferred from the Family Division of the High Court to the Family Division of the Magistrates' Court or from the Magistrates' Court to the Family Division of the High Court.

(4) No appeal lies from an order of the judge made under subsection (3).

*Courts to act in aid of each other*

**29.** Courts having jurisdiction under this Act must severally act in aid of auxiliary to each other in all matters under this Act.

**DIVISION 2 - DISSOLUTION AND NULLITY OF MARRIAGE**

*Ground for dissolution*

**30.**-(1) An application under this Act by a party to a marriage for an order for dissolution of the marriage must be based on the ground that the marriage has broken down irretrievably.

(2) Subject to subsection (3), in a proceeding instituted by an application, the ground will be held to have been established, and an order for dissolution of the marriage must be made, if, and only

if, the court is satisfied that the parties have separated and have thereafter lived separately and apart for a continuous period of not less than 12 months immediately preceding the date of the filing of the application for dissolution of marriage.

(3) An order for dissolution of marriage will not be made if the court is satisfied that there is a reasonable likelihood of cohabitation being resumed.

*Effect of resumption of co-habitation*

**31.**-(1) For the purposes of proceedings for dissolution of marriage, where, after the parties to the marriage separated, they resumed cohabitation on one occasion but, within a period of 3 months after the resumption of cohabitation, they again separated and thereafter lived separately and apart up to the date of the filing of the application, the periods of living separately and apart before and after the period of cohabitation may be treated as if they were one continuous period, but the period of cohabitation will not be deemed to be part of the period of living separately and apart.

(2) For the purposes of subsection (1), a period of cohabitation is deemed to have continued during any interruption of the cohabitation that, in the opinion of the court, was not substantial.

*Nullity of marriage*

**32.**-(1) An application under this Act for an order of nullity of marriage must be based on the ground that the marriage is void.

(2) A marriage that takes place after the commencement of this Act is void if-

(a) either of the parties is, at the time of the marriage, lawfully married to some other person;

(b) the parties are within a prohibited relationship;

(c) the marriage is not a valid marriage under the law of the place where the marriage takes place, by reason of a failure to comply with the requirements of the law of that place with respect to the form of solemnization of marriages;

(d) the consent thereto of either of the parties is not a real consent because-

(i) it was obtained by duress or fraud;

(ii) that party is mistaken as to the identity of the other party or as to the nature of the ceremony performed; or

that party is mentally incapable of understanding the nature and effect of the marriage ceremony;  
or

(e) either of the parties is not of marriageable age,

and not otherwise.

(3) Marriages that are within a prohibited relationship are marriages-

(a) between a person and an ancestor or descendant of the person; or

(b) between a brother and a sister (whether of the whole blood or the half-blood).

(4) Any relationship specified in subsection (3) includes a relationship traced through, or to, a person who is or was an adopted child, and, for that purpose, the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is deemed to be or to have been the natural relationship of child and parent.

(5) Nothing in subsection (4) makes it lawful for a person to marry a person whom the first-mentioned person could not lawfully have married if that subsection had not been enacted.

(6) For the purposes of this section-

(a) a person who has at any time been adopted by another person is deemed to remain the adopted child of that other person notwithstanding that any order by which the adoption was effected has been annulled, cancelled or discharged or that the adoption has for any other reason ceased to be effective; and

(b) a person who has been adopted on more than one occasion is deemed to be the adopted child of each person by whom he or she has been adopted.

*Court not to make order of dissolution where application for order of nullity before it*

**33.** If both an application for an order of nullity of a marriage and an application for an order of dissolution of that marriage are before a court, the court must not make an order of dissolution of the marriage unless it has dismissed the application for an order of nullity of the marriage.

*Conditional order in the first instance*

**34.** An order for dissolution of marriage under this Act must, in the first instance, be a conditional order.

*When conditional order becomes final*

**35.**-(1) Subject to this section, a conditional order made under this Act becomes final by virtue of this section at the end of one month after the making of the order or on the making of an order under section 36, whichever is the later.

(2) If a conditional order has been made in any proceedings, the court of first instance (whether or not it made the order), or a court in which an appeal has been instituted, may either before or

after it has disposed of the proceedings or appeal, and whether or not a previous order has been made under this subsection-

(a) having regard to the possibility of an appeal or further appeal - make an order extending the period at the expiration of which the conditional order will become final; or

(b) if it is satisfied that there are special circumstances that justify its so doing-make an order reducing the period at the expiration of which the conditional order will become final.

(3) If an appeal is instituted (whether or not it is the first appeal) before a conditional order has become final, then, notwithstanding any order in force under subsection (2) at the time of the institution of the appeal, but subject to any such order made after the institution of the appeal, the conditional order, unless reversed or rescinded, becomes final by virtue of this section-

(a) at the end of a period of 1 month after the day on which the appeal is determined or discontinued; or

(b) on the day on which the order would have become final under subsection (1) if no appeal had been instituted.

(4) A condition order does not become final by virtue of this section if either of the parties to the marriage has died.

(5) In this section, "appeal", in relation to a conditional order means-

(a) an appeal or application for leave to appeal against, or an invitation or application for a re-hearing relating to-

(i) the conditional order; or

(ii) an order under section 36 in relation to the proceedings in which the conditional order was made; or

(b) an application under section 38 for rescission of the order or an appeal or application for leave to appeal arising out of such an application.

(6) For the purposes of this section, if an application for leave to appeal, or for a re-hearing, is granted, the application is deemed not to have been determined or discontinued so long as-

(a) the leave granted remains capable of being exercised; or

(b) an appeal or re-hearing instituted in pursuance of the leave is pending.

*Final order where children of the marriage*

**36.**-(1) A conditional order of dissolution of marriage does not become final unless the court has, by order, declared that it is satisfied-

- (a) that there are no children of the marriage who have not attained 18 years of age; or
- (b) that the only children of the marriage who have not attained 18 years of age are the children specified in the order and that-
  - (i) proper arrangements in all the circumstances have been made for the care, welfare and development of those children; or
  - (ii) there are circumstances by reason of which the conditional order should become final even though the court is not satisfied that such arrangements have been made.

(2) Where, in proceedings for an order of dissolution of marriage, the court doubts whether the arrangements made for the care, welfare and development of a child of the marriage are proper in all the circumstances, the court may adjourn the proceedings until a report has been obtained from a family and child counsellor or welfare officer regarding those arrangements.

(3) For the purposes of this section, a child (including an ex-nuptial child of either the husband or the wife, a child adopted by either of them or a child who is not a child of either of them) is a child of the marriage if the child was treated by the husband and wife as a child of their family at the relevant time.

(4) For the purposes of subsection (3), the relevant time is the time immediately before the time when the husband and wife separated or, if they have separated on more than one occasion, the time immediately before the time when they last separated before the institution of the proceedings in which the conditional order of dissolution of marriage was made.

*Certificate as to final order*

**37.**-(1) If a conditional order becomes final, the Registrar must prepare and file a memorandum of the fact and of the date upon which the order became final.

(2) If a conditional order has become final, any person is entitled, on application to the Registrar, to receive a certificate signed by the Registrar that the conditional order has become final.

(3) A certificate given under subsection (2) is, in all courts and for all purpose evidence of the matters specified in the certificate.

(4) The regulations must provide for the establishment of central records of order for dissolution of marriage or nullity of marriage made under this Act and for this notification of such orders to the Registrar-General.

*Rescission of conditional order*

**38.**-(1) If a conditional order has been made in proceedings for dissolution of marriage, the court may, at any time before the order becomes absolute, upon the application of either party to the marriage, rescind the order on the ground that the parties have become reconciled.

(2) If a conditional order has been made but has not become final, the court by which the order was made may, on the application of a party to the proceedings, or on the intervention of the Attorney-General, if it is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstances rescind the order and, if it thinks fit, order that the proceedings be re-heard.

*Re-marriage after dissolution*

**39.** When an order for dissolution of marriage under this Act has become final party to the marriage may marry again.

*No limit as to time or place of facts and circumstances*

**40.** An order may be made or refused under this Part by reason of facts and circumstances which took place before the commencement of this Act or outside the Fiji Islands.

**PART VI - CHILDREN**

**DIVISION 1 - INTRODUCTORY**

*Objects of Part*

**41.**-(1) The objects of this Part are-

(a) to ensure that children receive adequate and proper parenting to help them achieve their full potential; and

(b) to ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

(2) The principles underlying these objects are that, except when it is or would be contrary to a child's best interests-

(a) children have the right to know and be cared for by both their parents , regardless of whether their parents are married, separated, have never married or have never lived together;

(b) children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development;

(c) parents share duties and responsibilities concerning the care, welfare and development of their children; and

(d) parents should agree about the future parenting of their children.

### *Interpretation*

**42.**-(1) In this Part, unless the context otherwise requires-

"abuse", in relation to a child, means-

(a) an assault, including a sexual assault, on the child which is an offence under the law; or

(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person;

"adopted", in relation to a child, means adopted under the law of any place (whether in or outside the Fiji Islands) relating to the adoption of children;

"birth" includes stillbirth;

"child" means a nuptial and an ex-nuptial child and includes an adopted child and a stillborn child;

"childbirth maintenance period", in relation to the birth of a child, means the period-

(a) commencing-

(i) in the case of a mother who-

(A) works in paid employment;

(B) is advised by a medical practitioner to stop working for medical reasons related to her pregnancy; and

(C) on the basis of that advice stops working more than 2 months before the child is due to be born-

on the day on which she stops working; or

(ii) in any other case - 2 months before the child is due to be born;

and

(b) ending 3 months after the child's birth;

"child maintenance provisions", in relation to a parenting plan, has the meaning given by section 57(5);

"child welfare law" means a law or class of laws prescribed for the purposes of this definition;

"child welfare officer" means-

(a) a person who has responsibilities in relation to a child welfare law; or



(b) a person authorised in writing by such a person for the purposes of this Part;

"child welfare provisions", in relation to a parenting plan, has the meaning given by section 57(4);

"court officer" includes -

(a) a court counsellor;

(b) a welfare officer;

(c) a registrar or deputy registrar;

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

"education" includes apprenticeship or vocational training;

"family violence" means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or to be apprehensive about, his or her personal well-being or safety;

"family violence order" means an order (including an interim order) made under a written law to protect a person from family violence;

"guardian", in relation to a child, includes a person who has been granted (whether alone or jointly with another person or other persons) guardianship of the child under the law.

"interests", in relation to a child, includes matters related to the care, welfare or development of the child;

"medical expenses" includes medical, surgical, dental, diagnostic, hospital, nursing, pharmaceutical and physiotherapy expenses;

"medical practitioner" means a person registered or licensed as a medical practitioner under a law that provides for the registration or licensing of medical practitioners;

"member of the family" has the meaning given by subsection (2);

"parent", in relation to a child who has been adopted, means an adoptive parent of the child;

"parentage testing order" has the meaning given by section 145;

"parentage testing procedure" means a medical procedure prescribed, or included in a class of medical procedures prescribed, for the purposes of this definition;

"parental responsibility" has the meaning given by section 45;

"professional ethics" includes-

(a) rules of professional conduct;

(b) rules of professional etiquette;

(c) a code of ethics;

(d) standards of professional conduct;

"Step-parent", in relation to a child, means a person who-

(a) is not a parent of the child;

(b) is or has been married to a parent of the child; and

(c) treats, or at any time during the marriage treated, the child as a member of the family formed with the parent.

(2) For the purposes of this section, section 121(2)(i) and (j) and section 123, a person (the "first person") is a member of the family of another person (the "second person") if-

(a) the first person is or has been married to, or is in a *de facto* relationship with, the second person;

(b) the first person is or has been a relative of the second person (as defined in subsection (3));

(c) there is or has at any time been in force an order under this Act of any of the following kinds-

(i) a residence order, contact order or specific issues order that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;

(ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons;

(d) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or

(e) the first person is or has been a member of the family of a child of the second person.

(3) For the purposes of this section, a relative of a person is-

(a) a father, mother, grandfather, grandmother, step-father or step-mother of the person;

(b) a son, daughter, grandson, grand-daughter, step-son or step-daughter of the person;

(c) a brother, sister, half-brother, half-sister, step-brother or step-sister of the person;

(d) an uncle or aunt of the person;

(e) a nephew or niece of the person;

(f) a cousin of the person;

(g) if the person is or was married - in addition to paragraphs (a) to (e), a person who is or was a relative, of the kind described in any of those paragraphs, of the person's spouse;

(h) if the person is or was in a *de facto* relationship with another person - in addition to paragraphs (a) to (e), a person who would be a relative of a kind described in any of those paragraphs if the persons in that *de facto* relationship were or had been married to each other.

#### *Application of Part to void marriages*

**43.** This Part applies in relation to a purported marriage that is void as if-

(a) the purported marriage were a marriage; and

(b) the parties to the purported marriage were husband and wife.

*Certain children are children of marriage etc.*

**44.**-(1) A reference in this Act to a child of a marriage includes a reference to each of the following children-

(a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;

(b) a child of the husband and wife born before the marriage.

(2) A reference in this Act to a child of a marriage includes a reference to a child of-

(a) a marriage that has been dissolved or annulled, in the Fiji Islands or elsewhere; or

(b) a marriage that has been terminated by the death of one party to the marriage.

## **DIVISION 2 - PARENTAL RESPONSIBILITY**

*Meaning of "parental responsibility"*

**45.**-In this part, "parental responsibility", in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.

*Each parent has parental responsibility*

**46.**-(1) Each of the parents of a child who is under 18 years has parental responsibility for the child.

(2) Subsection (1) has effect despite any changes in the nature of the relationships of the child's parents such as becoming separated or either or both of them marrying or re-marrying.

(3) Subsection (1) has effect subject to any order of a court for the time being in force (whether or not made under this Act and whether made before or after the commencement of this section).

*Parenting Orders and parental responsibilities*

**47.**- (1) A parenting order confers parental responsibility for a child on a person, but those paragraphs, only to the extent to which the order confers on the person duties, powers, responsibilities or authority in relation to the child.

(2) A parenting order in relation to a child does not take away or diminish any aspect of the parental responsibility of any person for the child except to the extent (if any)-

- (a) expressly provided for in the order; or
- (b) necessary to give effect to the order.

*Effect of adoption on parental responsibility*

**48.** If-

- (a) a child is adopted; and
- (b) immediately before the adoption, a person had parental responsibility for the child, whether in full or to a limited extent and whether because of section 47 or because of a parenting order,

the person's parental responsibility for the child ends on the adoption of the child.

**DIVISION 3 - COUNSELLING ETC.**

*Obligation to consider advising people about counselling for Part VI Orders*

**49.**-(1) In this section, counselling for Part VI orders is counselling to assist children and parties to proceedings under this Part to adjust to the consequences of orders under this Part.

(2) A court exercising jurisdiction in proceedings under this Part must consider whether or not to advise parties to the proceedings about counselling for Part VI orders available through courts exercising jurisdiction under this Part and through approved counselling organisations.

(3) A legal practitioner acting in proceedings under this Part, or consulted by a person considering commencing such proceedings, must consider whether or not to advise the parties to the proceedings, or the person considering commencing proceedings, about counselling for Part VI orders available through courts exercising jurisdiction under this Part and through approved marriage education and counselling organisations.

*Request for counselling made through a court*

**50.**-(1) A party to proceedings under this Part, or a person representing a child under an order made under section 125 may file in the Family Division of the High Court or of the Magistrates' Court a notice stating that he or she wishes to have the assistance of the counselling facilities of that Court.

(2) On the filing of the notice, the Director of Counselling must arrange for parties to the proceedings (with or without the child) to be interviewed by a family and child counsellor or welfare officer to assess whether counselling is appropriate in all the circumstances, and if it is-

- (a) to discuss the care, welfare and development of the child; and

(b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child-to try to resolve those differences.

*Request for counselling made to a family and child counsellor*

**51.** A person may at any time request a family and child counsellor to provide counselling about a matter relating to a child.

*Court counselling made to a family and child counsellor*

**52.**-(1) A parent of a child, a child or a party to proceedings under this Part may seek the assistance of the counselling facilities of the Family Division of either the High Court or the Magistrates' Court.

(2) On a request under this section, the Director of Counselling must, as far as practicable, make counselling facilities available.

(3) A child may apply under subsection (1) through a representative appointed under section 125.

*Conferences with family and child counsellors or welfare officers*

**53.**-(1) This section applies if, in proceedings under this Act, the care, welfare and development of a child is relevant.

(2) The court may, at any stage of the proceedings, make an order directing the parties to the proceedings to attend a conference with a family and child counsellor or welfare officer-

(a) to discuss the care, welfare and development of the child; and

(b) if there are differences between the parties in relation to matters affecting the care, welfare and development of the child-to try to resolve those differences.

(3) The court may make an order under subsection (2)-

(a) on its own initiative; or

(b) on the application of-

(i) a party to the proceedings; or

(ii) a person representing the child under an order made under section 125.

(4) The court may, in an order under subsection (2)-

(a) fix a place and time for the conference to take place; or

(b) direct that the conference is to take place at a place and time to be fixed by a family and child counsellor or welfare officer.

(5) If a person fails to attend a conference in respect of which the court has made an order under subsection (2), the counsellor or welfare officer must report the failure to the court.

(6) On receiving a report under subsection (5), the court may give such further directions in relation to the conference or otherwise as it considers appropriate.

(7) The court may make further directions under subsection (6)-

(a) on its own initiative; or

(b) on the application of-

(i) a party to the proceedings; or

(ii) a person representing the child under an order made under section 125.

(8) Evidence of anything said, or of any admission made, at a conference that takes place pursuant to an order under subsection (2) is not admissible-

(a) in any court; or

(b) in any proceedings before a person authorised by law or by consent of the parties, to hear evidence.

#### *Reports by family and child counsellors and welfare officers*

**54.**-(1) This section applies if, in proceedings under this Act, the care, welfare and development of a child is relevant.

(2) The court may direct a family and child counsellor or welfare officer to give the court a report on such matters relevant to the proceedings as the court thinks desirable.

(3) If the court gives a direction under subsection (2) it may, if it thinks it necessary, adjourn the proceedings until the report has been given to the court.

(4) A family and child counsellor or welfare officer may include in a report prepared pursuant to a direction under subsection (2), in addition to the matters required to be included in it, any other matters that relate to the care, welfare or development of the child.

(5) For the purpose of the preparation of a report pursuant to a direction under subsection (2), the court may make such orders, or give such further directions, as it considers appropriate, including orders or directions for the attendance on the counsellor or welfare officer of a party to

the proceedings or of the child.

(6) If a person fails to comply with an order or direction under subsection (5), the counsellor or welfare officer must report the failure to the court.

(7) On receiving a report under subsection (6), the court may give such further directions in relation to the preparation of the report as it considers appropriate.

(8) A report given to the court pursuant to a direction under subsection (2) may be received in evidence in any proceedings under this Act.

#### *Provision of certain documents*

**55.** The Rules of each Family Division must provide that people proposing to institute proceedings under this Part in relation to children, and in appropriate cases other persons who may be interested in the care, welfare and development of children, will be given documents setting out-

(a) the legal and possible social effects of an order under this Part;

(b) the counselling and welfare facilities available within the Division and elsewhere.

### **DIVISION 4 - PARENTING PLANS**

#### *Parents encouraged to reach agreement*

**56.** The parents of a child should as far as possible-

(a) agree about matters concerning the child rather than seeking an order from a court; and

(b) in reaching agreement regard the best interests of the child as the paramount consideration.

#### *Meaning of "parenting plan" and related terms*

**57.**-(1) A parenting plan is an agreement that-

(a) is in writing;

(b) is or was made between the parents of a child; and

(c) deals with a matter or matters mentioned in subsection (2).

(2) A parenting plan may deal with one or more of the following-

(a) the person or persons with whom a child is to live;

- (b) contact between a child and another person or other person;
- (c) maintenance of a child;
- (d) any other aspect of parental responsibility for a child.

(3) An agreement may be a parenting plan-

- (a) whether made before or after the commencement of this section;
- (b) whether made in or outside the Fiji Islands;
- (c) whether other persons as well as a child's parents are also parties; and
- (d) whether it deals with other matters as well as matters mentioned in subsection (2).

(4) Provisions of a parenting plan that deal with any of the matters mentioned in (2) (a), (b) and (d) are child welfare provisions.

(5) Provisions of a parenting plan that deal with the matter mentioned in subsection 2 (c) are child maintenance provisions.

*Parenting plan may not be varied, but may be revoked, by further agreement*

**58.**-(1) An agreement, in whatever form and however expressed, is not effective to vary a parenting plan for the purposes of this Act.

(2) An agreement purporting to vary a parenting plan cannot be registered under section 59.

(3) Subject to subsection (4), a parenting plan may be revoked by agreement in writing between the parties to the plan.

(4) An agreement revoking a registered parenting plan-

- (a) may, subject to the Rules of the respective Division, be registered under section 59 as if it were a parenting plan; and
- (b) does not have effect to revoke the plan until it is so registered.

*Registration in a court*

**59.**-(1) Subject to this section, a parenting plan may be registered in a court which has jurisdiction under this Part.

(2) To apply for registration of a parenting plan-



(a) an application for registration of the plan must be lodged in accordance with the Rules of the respective Family Division; and

(b) the application must be accompanied by a copy of the plan, the information required by the Rules of the Division and-

(i) a statement, in relation to each party, that the party has been provided with independent legal advice as to the meaning and effect of the plan and that is signed by the practitioner who provided that advice; or

(ii) a statement to the effect that the plan was developed after consultation with a family and child counsellor or registrar.

(3) The statement referred to in subsection (2) (b) (i) must be signed by the legal practitioner who provided the advice and a statement referred to in subsection (2)(b)(ii) must be signed by the counsellor or registrar.

(4) The court may register a parenting plan if it considers it appropriate to do so having regard to the best interests of the child to which the plan relates.

(5) In determining whether it is appropriate to register a plan, the court-

(a) must have regard to the information accompanying the application for registration; and

(b) may, but is not required to, have regard to all or any of the matters set out in section 121(2).

(6) The Rules of the respective Family Division-

(a) must prescribe what information is to accompany an application for registration of a parenting plan; and

(b) may prescribe other matters relating to the procedures for registration.

#### *Child welfare provisions of registered parenting plans*

**60.**-(1) This section applies if a parenting plan that contains child welfare provisions is registered in a court under section 59.

(2) The court may, by order, vary the child welfare provisions in the plan if it considers the variation is required in the best interests of a child.

(3) The child welfare provisions of a parenting plan have effect, subject to subsections (5) and (6), as if they were-

(a) to the extent that they deal with the person or persons with whom the child is to live - a residence order made by the court;

(b) to the extent that they deal with contact between the child and another person or other persons - a contact order made by the court; and

(c) to the extent that they deal with any other aspect of parental responsibility for the child - a specific issues order made by the court.

(4) If provisions of a parenting plan have effect under subsection (3) as a court order, a person who is a party to the plan is taken (for example, for the purposes of section 89) to be a party to the proceedings in which the order was made.

(5) Subsection (3) does not apply to a parenting plan (whenever registered) to the extent (if at all) that the plan purports to determine that the child concerned is to live with a person who is not a parent of the child.

(6) Even though a parenting plan is registered, the court, or another court having jurisdiction under this Part, must not enforce the child welfare provisions of the plan if it considers that to do so would be contrary to the best interests of a child.

*Child maintenance provisions of registered parenting plans which are not enforceable as maintenance agreements*

**61.-(1) If-**

(a) a parenting plan that contains child maintenance provisions is registered in a court under section 59; and

(b) the plan is not a maintenance agreement, or, if it is a maintenance agreement, the child concerned is not a child of the relevant marriage,

the child maintenance provisions have effect, subject to subsections (2), and (3) as if they were a child maintenance order made by the court.

(2) Unless the plan provides otherwise, the child maintenance provisions (other than provisions for the periodic payment of maintenance) continue to operate in spite of the death of a party to the plan and operate in favour of, and are binding on, the legal personal representative of that party.

(3) If the child maintenance provisions include provisions (the "periodic provisions") for the periodic payment of maintenance-

(a) the periodic provisions continue to operate, if the plan so provides, in spite of the death of a party to the plan who is liable to make the periodic payments, and are binding on the legal personal representative of that party; but

(b) the periodic provisions do not continue to operate, in spite of anything in the plan, after the death of the person entitled to receive the periodic payments.

*Court's powers to set aside, discharge, vary, suspend or revive registered parenting plan*

**62.**-(1) The court in which a parenting plan is registered under section 59 may set aside the plan, and its registration, if the court is satisfied that-

- (a) the concurrence of a party was obtained by fraud, duress or undue influence;
- (b) the parties want the plan set aside; or
- (c) it is in the best interests of a child to set aside the plan.

(2) In proceedings under subsection (1) on the ground mentioned in paragraph (c), the best interests of the child concerned are the paramount consideration.

(3) This section does not affect other provisions of this Act under which provisions of a parenting plan may be set aside or otherwise affected namely-

- (a) section 60(2) - (a court may vary child welfare provisions in the plan);
- (b) section 66(2) - (a court may make a parenting order that discharges, varies, suspends or revives provisions of a plan that have effect as if they were a parenting order);
- (c) section 97- (a court may discharge, vary, suspend or revive provisions of the plan that have effect as if they were a child maintenance order).

(4) Except as permitted by subsection (1) or by a provision mentioned in subsection (3), a court must not set aside, discharge, vary, suspend or revive the whole or any part of a parenting plan.

## **DIVISION 5 - PARENTING ORDERS**

*Meaning of "parenting order" and related terms*

**63.**-(1) A "parenting order" is-

- (a) an order under this Part (including an order until further order) dealing with a matter mentioned in subsection (2); or
- (b) an order under this Part discharging, varying, suspending or reviving an order, or part of an order, described in paragraph (a).

(2) A parenting order may deal with one or more of the following-

- (a) the person or persons with whom a child is to live;
- (b) contact between a child and another person or other persons;
- (c) maintenance of a child;
- (d) any other aspect of parental responsibility for a child.

(3) To the extent that a parenting order deals with the matter mentioned in subsection (2)(a), the order is a "residence order".

(4) To the extent that a parenting order deals with the matter mentioned in subsection (2)(b), the order is a "contact order".

(5) To the extent that a parenting order deals with the matter mentioned in subsection (2)(c), the order is a "child maintenance order".

(6) To the extent that a parenting order deals with any other aspect of parental responsibility for a child, the order is a specific issues order and may, for example, confer on a person (whether alone or jointly with another person) responsibility for the long-term care, welfare and development of the child or for the day-to-day care, welfare and development of the child.

(7) For the purposes of this Act -

(a) a residence order is made in favour of a person, or the person, with whom the child concerned is supposed to live under the order;

(b) a contact order is made in favour of a person, or the person, with whom the child concerned is supposed to have contact under the order;

(c) specific issues order is made in favour of a person, or the person, on whom the order confers duties, powers, responsibilities or authority in relation to the child concerned.

(8) For the purposes of this Act -

(a) a person has a residence order in relation to a child if a residence order made in favour of the person is in force in relation to the child;

(b) a person has a contact order in relation to a child if a contact order made in favour of the person is in force in relation to the child;

(c) a person has a specific issues order in relation to a child if a specific issues order made in favour of the person is in force in relation to the child.

*Parenting orders may be made in favour of parents or other persons*

**64.** A parenting order in relation to a child may be made in favour of a parent of the child or some other person.

## **DIVISION 6 - PARENTING ORDERS OTHER THAN CHILD MAINTENANCE ORDERS**

### *Subdivision A - General Principles*

#### *Applying for parenting orders*

**65.** A parenting order in relation to a child, other than a child maintenance order, may be applied for by -

- (a) either or both of the child's parents;
- (b) a person representing the child under an order made under section 125; or
- (c) any other person concerned with the care, welfare or development of the child.

#### *Courts power to make parenting order*

**66.** (1) In proceedings for a parenting order the court may make any parenting order it thinks proper.

(2) Without limiting subsection (1), a court may make a parenting order that discharges, varies, suspends or revives part or all of an earlier parenting order.

(3) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it must not make the order or any of the orders unless it considers doing so would be better for the child than making no order at all.

(4) In deciding whether to make a parenting order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

#### *General requirements for counselling before parenting order made*

**67.**-(1) In proceedings for a parenting order in relation to a child, the court may order the parties to the proceedings to attend a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate.

(2) Subject to subsection (3), a court must not make a parenting order in relation to a child unless-

(a) the parties to the proceedings have attended a conference with a family and child counsellor or a welfare officer to discuss the matter to which the proceedings relate;

(b) the court is satisfied that there is an urgent need for the parenting order, or there is some other special circumstance (such as family violence) that makes it appropriate to make the order even

though the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or

(c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(3) Subsection (3) does not apply to the making of a parenting order if-

(a) it is made with the consent of all the parties to the proceedings; or

(b) it is an interim order until further order.

*Order by consent in favour of a non-parent*

**68.**-(1) This section applies if-

(a) a court proposes to make-

(i) a residence order; or

(ii) a specific issues order under which a person will be responsible for a child's long-term or day-to-day care, welfare and development; and

(b) the court proposes to make the order-

(i) otherwise than in favour of a parent, or of persons who include a parent, of the child concerned; and

(ii) with the consent of all the parties to the proceedings.

(2) The court must not make the proposed order unless either-

(a) the following conditions are satisfied-

(i) the parties to the proceedings have attended a conference with a family and child counsellor or a welfare officer to discuss the matter to be determined by the proposed order; and

(ii) the court has considered a report prepared by the counsellor or welfare officer about that matter; or

(b) the court is satisfied that there are circumstances that make it appropriate to make the proposed order even though the conditions in paragraph (a) are not satisfied.

*Children who have married or entered into relationships making the parenting or maintenance order unreasonable*

**69.**-(1) A parenting order must not be made in relation to a child-

(a) who is or has been married; or

(b) if a declaration has been made under subsection (3).

(2) A parenting order in relation to a child stops being in force if the child turns 18, marries or a declaration has been made under subsection (3).

(3) A court having jurisdiction under this Part may make a declaration to the effect that the child is in, or has entered into, a relationship with another person that would render making the parenting or maintenance order unreasonable.

(4) A declaration under subsection (3) has effect for the purposes of this Act but does not have effect for any other purpose.

*Effect of adoption on parenting order*

**70.** If-

(a) a child is adopted; and

(b) immediately before the adoption, a parenting order was in force in relation to the child,

the parenting order stops being in force on the adoption of the child.

*Death of parents with whom child lives*

**71.**-(1) If-

(a) a parenting order that is or includes a residence order is in force determining that a child is to live with one of the child's parents;

(b) that parent dies; and

(c) the parenting order does not provide for what is to happen on that parent's death,

the surviving parent cannot require the child to live with him or her.

(2) The surviving parent, or another person (subject to section 65) may apply for the making of a residence order in relation to the child.

(3) In an application under subsection (2) by a person who does not, at the time of the application, have any parental responsibility for the child, any person who, at that time, has any parental responsibility for the child is entitled to be a party to the proceedings.

*Counsellors may be required to supervise or assist*

**72.**-(1) If a court makes a parenting order in relation to a child, the court may also, subject to subsection (2), make either or both of the following orders-

(a) an order requiring compliance as far as practicable with the parenting order, to be supervised by a family and child counsellor or a welfare officer;

(b) an order requiring a family and child counsellor or a welfare officer to give any party to the parenting order any assistance reasonably requested by that party in relation to compliance with, and the carrying out of, the parenting order.

(2) In deciding whether to make an order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

*General obligations created by parenting orders*

**73.**-(1) If a residence order is in force in relation to a child, no person may, contrary to the order-

(a) remove the child from the care of another person; or

(b) refuse or fail to deliver or return the child to another person; or

(c) interfere with the exercise or performance of any of the powers, duties or responsibilities that a person has under the order.

(2) If a contact order is in force in relation to a child, no person may-

(a) hinder or prevent another person or the child from having contact in accordance with the order; or

(b) interfere with the contact that a person and the child are supposed to have with each other under the order.

(3) If, in relation to a child order is in force which confers responsibility on a person (the "carer") for the child's long-term or day-to-day care, welfare and development, no person may hinder the carer in, or prevent the carer from discharging that responsibility.

**SUBDIVISION B-ARREST OF OFFENDERS**

*Warrant for arrest of alleged offender*

**74.** - (1) If -

(a) a residence order or a contact order is in force in relation to a child;



(b) a court having jurisdiction under this Part is satisfied, on application by a person in whose favour the order was made, that there are reasonable grounds for believing that a person (the "alleged offender") has contravened section 73 in relations to the order;

(c) there is an application before the court for the enforcement of the order alleged to have been contravened; and

(d) the court is satisfied that the issue of a warrant is necessary to ensure that the alleged offender will attend before the court to be dealt with for the alleged contravention,

the court may issue a warrant authorising a person to whom it is addressed to arrest the alleged offender.

(2) A warrant under this section ceases to be in force-

(a) if a date not later than 6 months after the issue of the warrant is specified in the warrant as the date when it ceases to be in force - on that date; or

(b) otherwise - 6 months after the issue of the warrant.

*Arrested person to be brought before the court*

**75.**-(1) If a person-

(a) is arrested under a warrant issued under section 74(1); or

(b) is arrested without a warrant under a recovery order,

the arresting person must-

(aa) ensure that the alleged offender is brought before a court having jurisdiction under this Part before the end of the holding period applicable under subsection (4); and

(bb) take all reasonable steps to ensure that, before the alleged offender is brought before a court, the person who applied for the warrant or recovery order is aware-

(i) that the alleged offender has been arrested; and

(ii) of the court before which the alleged offender is to be brought.

(2) The alleged offender must not be released before the end of the holding period except under an order of a court having jurisdiction under this Part.

(3) This section does not authorise the holding in custody of the alleged offender after the end of the holding period.

(4) The "holding period" is-

(a) if a Saturday, Sunday or public holiday starts within 24 hours after the arrest of the alleged offender - the longer of the following periods-

(i) the period starting with the arrest and ending 48 hours later;

(ii) the period starting with the arrest and ending at the end of the next day after day of the arrest that is not a Saturday, Sunday or public holiday;

(b) in any other case - the period starting with the arrest and ending 24 hours later.

(5) In this Subdivision "alleged offender" means a person against whom a warrant has been issued as a result of the contravention of the residence order or contract order.

*Obligation of court where application before it to deal with contravention*

**76. If-**

(a) an alleged offender is brought before the court under section 75; and

(b) there is an application before the court for the enforcement of the order alleged to have been contravened,

the court must, without delay, proceed to hear and determine the application.

*Obligation of court where no application before it, but application before another court, to deal with contravention*

**77.-(1) This section applies if-**

(a) an alleged offender is brought before a court under section 75;

(b) there is no application, or no longer any application, before the court for the enforcement of the order; and

(c) the court is aware that there is an application before another court for the enforcement of the order.

**(2) The court must-**

(a) within 48 hours or if that is not possible, as soon as possible after that, order that the alleged offender be released from custody on his or her entering into a bond (with or without surety or security) that he or she will attend before the other court on a date, at a time and at a place specified by the court; or

(b) order the arresting person to arrange for the alleged offender to be brought before the other court on such date and at such time as the court specifies, being a date and time such that the

alleged offender is to be brought before the other court within 48 hours or if that is not possible, as soon as possible after the order is made.

(3) If a court makes an order under subsection (2)(b) for the alleged offender to be brought before another court-

(a) subject to paragraph (c), the alleged offender may be kept in custody until he or she is brought before the other court;

(b) if the alleged offender is brought before the other court as required by the order, the other court must, without delay, proceed to hear and determine the application mentioned in subsection (1)(c).

*Obligation of court where no application before any court to deal with contravention*

**78.** If an alleged offender is brought before a court under section 75 and-

(a) there is no application, or no longer any application, before the court for enforcement of the order; and

(b) so far as the court is aware, there is no application, or no longer any application, before any other court for the enforcement of the order,

the court must, without delay, order the release of the alleged offender.

*Applications heard as required by section 77*

**79.**-(1) If a court hearing an application as required by section 77(2) or (3)(b) adjourns the hearing, the court must-

(a) order the alleged offender to be kept in such custody as the court considers appropriate during the adjournment; or

(b) order the alleged offender be released from custody, on his or her entering into a bond (with or without surety or security) that he or she will attend before the court on the resumption of the hearing or otherwise.

(2) This section does not authorise the holding in custody of the alleged offender during an adjournment of proceedings that-

(a) is expressed to be for a period of more than 24 hours; or

(b) continues for more than 24 hours.

**SUBDIVISION C - OBLIGATIONS UNDER PARENTING ORDERS RELATING TO  
TAKING OR SENDING CHILDREN FROM THE FIJI ISLANDS**

*Interpretation*

**80.**-(1) In this Subdivision-

"captain", in relation to an aircraft or vessel, means the person in charge or command of the aircraft or vessel;

"care order" means a specific issues order under which a person is responsible for a child's long-term or day-to-day care, welfare and development.

(2) For the purposes of this Subdivision, if an appeal against a decision of a court in proceedings has been instituted and is pending, the proceedings are taken to be pending and sections 82 and 84 (rather than sections 81 and 83 apply).

*Obligation if residence order, contact order or care order has been made*

**81.**-(1) If a residence order, a contact order or a care order (the "Part VI order") is in force, a person who was party to the proceedings in which the order was made, or a person who is acting on behalf of, or at the request of, a party, must not, intentionally or recklessly, take or send, or attempt to take or send, the child concerned from the Fiji Islands to a place outside the Fiji Islands except as permitted by subsection (3).

(2) Subsection (1) does not prohibit taking or sending, or attempting to take or send, the child from the Fiji Islands to a place outside the Fiji Islands if-

(a) it is done with the consent in writing (authenticated as prescribed) of each person in whose favour the Part VI order was made; or

(b) it is done in accordance with an order of a court made under this Part at the time of, or after, the making of the Part VI order.

(3) A person who contravenes subsection (1) commits an offence and is liable to a fine of \$10,000 or to imprisonment for 3 years.

*Obligations if proceedings for the making of a residence order, contact order or care order are pending*

**82.**-(1) If proceedings (the "Part VI proceedings") for the making of a residence order, a contact order or a care order are pending, a person who is a party to the proceedings, or who is acting on behalf of, or at the request of, a party, must not, intentionally or recklessly, take or send, or

attempt to take or send, the child concerned from the Fiji Islands to a place outside the Fiji Islands except as mentioned in subsection (3).

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$10,000 or imprisonment for 3 years.

(3) Subsection (1) does not prohibit taking or sending, or attempting to take or send, the child from the Fiji Islands to a place outside the Fiji Islands if-

(a) it is done with the consent in writing (authenticated as prescribed) of each other party to the Part VI proceedings; or

(b) it is done in accordance with an order of a court made under this Part at the time of or after the institution of the Part VI proceedings.

*Obligations of owners etc. of aircraft and vessels if residence order, contact order or care order are made*

**83.**-(1) If-

(a) a residence order, a contact order or a care order (the "Part VI order") is in force; and

(b) a person in whose favour the Part VI order was made has served on the captain, owner or charterer of an aircraft or vessel a statutory declaration made by the person not earlier than 7 days before the date of service that-

(i) relates to the order; and

(ii) complies with subsection (3),

the person on whom the declaration is served must not, intentionally or recklessly and without reasonable excuse, permit the child identified in the declaration to leave a port or place in the Fiji Islands in the aircraft or vessel for a destination outside the Fiji Islands except as permitted by subsection (2).

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$10,000 or to imprisonment for 3 years.

(3) Subsection (1) does not prohibit permitting the child to leave the Fiji Islands in the aircraft or vessel if-

(a) the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the person who made the statutory declaration; or

(b) the child leaves in accordance with an order of a court made under this Part at the time of, or after, the making of the Part VI order.

(4) The statutory declaration referred to in subsection (1) must contain-

(a) full particulars of the Part VI order, including-

(i) the full name and the date of birth of the child to whom the order relates;

(ii) the full names of the parties to the proceedings in which the order was made; and

(iii) the terms of the order; and

(b) any other prescribed matters.

*Obligations of owners if proceedings are pending*

**84.**-(1) If-

(a) proceedings (the "Part VI proceedings") for the making of a residence order, a contact order or a care order are pending; and

(b) a party to the proceedings has served on the captain, owner or charterer of an aircraft or vessel a statutory declaration made by the party not earlier than 7 days before the date of service that-

(i) relates to the proceedings; and

(ii) complies with subsection (3),

the person on whom the declaration is served must not, intentionally or recklessly and without reasonable excuse, permit the child identified in the declaration to leave a port or place in the Fiji Islands in the aircraft or vessel for a destination outside the Fiji Islands except as permitted by subsection (2).

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine of \$10,000 or to imprisonment for 3 years.

(3) Subsection (1) does not prohibit permitting the child to leave the Islands in the aircraft or vessel if-

(a) the child leaves in the company, or with the consent in writing (authenticated as prescribed), of the party who made the statutory declaration; or

(b) in accordance with an order of a court made under this Part after the institution of the Part VI proceedings.

(4) The statutory declaration referred to in subsection (1) must contain -

(a) full particulars of the Part VI proceedings, including -

- (i) the full name and the date of birth of the child to whom the proceedings relate;
  - (ii) the full names of the parties to the proceedings;
  - (iii) the name of the court, the nature of the proceedings and the date of institution of the proceedings; and
  - (iv) if an appeal has been instituted in the proceedings - the name of the court in which the appeal was instituted and the date on which it was instituted;
- (b) a statement that the Part VI proceedings are pending at the date of the declaration; and
- (c) any other prescribed matters.

*General provisions applicable to sections 83 or 84*

**85.**-(1) A declaration under section 83 or 84 may be served on the owner or charter of an aircraft or vessel, or on the agent of the owner of an aircraft or vessel, by sending the declaration by registered post addressed to the owner, charterer or agent at the principal place of business of the owner, charterer or agent.

(2) The captain, owner or charterer of an aircraft or vessel, or the agent of the owner of an aircraft or vessel, is not liable in any civil or criminal proceedings in respect of anything done in good faith for the purpose of complying with section 83 or 84.

(3) If an act or omission by a person that constitutes an offence against section 83 or 84 is also an offence against any other law, the person may be prosecuted and convicted under that other law, but nothing in this subsection makes a person liable to be punished twice in respect of the same act or omission.

**DIVISION 7 - CHILD MAINTENANCE ORDERS**

*Subdivision A - Principles*

*Parents have primary duty to maintain child*

**86.**-(1) The parents of a child have, subject to this Division, the primary duty to maintain the child.

(2) Without limiting subsection (1), the duty of a parent to maintain a child-

(a) is not of lower priority than the duty of the parent to maintain any other child or another person;

(b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support-

(i) himself or herself; or

- (ii) any other child or another person that the parent has a duty to maintain; and
- (c) is not affected by the duty of any other person to maintain the child.

*Duty of step-parents*

**87.** - (1) The step-parent of a child has, subject to this Division, the duty of maintaining a child if, and only if, a court, by order under section 93, determines that it is proper for the step-parent to have that duty.

(2) Any duty of a step-parent to maintain a step-child-

(a) is a secondary duty subject to the primary duty of the parents of the child to maintain the child; and

(b) does not derogate from the primary duty of the parents to maintain the child.

*Subdivision B -Applying for and making child maintenance orders*

*Who may apply*

**88.**-(1) Unless subsection (2) applies, a child maintenance order in relation to a child may be applied for by-

(a) either or both of the child's parents;

(b) a person representing the child under an order made under section 125; or

(c) any other person concerned with the care, welfare or development of the child.

(2) A child maintenance order in relation to a child who is under the guardianship, or in the care (however described) of a person under a child welfare law may only be applied for by-

(a) the child (through the guardian or care-giver);

(b) a parent of the child who has the daily care of the child;

(c) a relative of the child who has the daily care of the child; or

(d) a child welfare officer.

*Power of the Court*

**89.**-(1) In proceedings for a child maintenance order, the court may, subject to this Division, make any child maintenance order it thinks proper.

(2) The court must, in accordance with the following sections-



- (a) consider the financial support necessary for the maintenance of the child; and
- (b) determine the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of the child that should be made by a party, or by parties, to the proceedings.

*Considering what financial support necessary*

**90.**-(1) In considering the financial support necessary for the maintenance of a child, the court must take into account the following (and no other) matters-

- (a) the matters mentioned in section 91;
- (b) the proper needs of the child;
- (c) the income, earning capacity, property and financial resources of the child.

(2) In taking into account the proper needs of the child the court-

(a) must have regard to-

- (i) the age of the child;
- (ii) the manner in which the child is being, and in which the parents expect the child to be, educated or trained; and
- (iii) any special needs of the child; and

(b) may have regard, to the extent to which the court considers appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.

(3) In taking into account the income, earning capacity, property and financial resources of the child, the court must-

(a) have regard to the capacity of the child to earn or derive income, including any assets of, under the control of or held for the benefit of the child that do not produce, but are capable of producing, income; and

(b) disregard the income, earning capacity, property and financial resources of any other person unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

(4) Subsection (2) and (3) do not limit the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

*Matters to be taken into account in determining contributions that should be made by party etc.*

**91.**-(1) In determining the financial contribution, or respective financial contributions, towards the financial support necessary for the maintenance of a child that should be made by a party, or by parties, to the proceedings, the court must take into account the following (and no other) matters-

(a) the matters mentioned in section 90;

(b) the income, earning capacity, property and financial resources of the party or each of the parties;

(c) the commitments of the party, or each of the parties, that are necessary to enable the party to support-

(i) himself or herself; or

(ii) any other child or another person that the person has a duty to maintain;

(e) the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child;

(f) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2) In taking into account the income, earning capacity, property and financial resources of a party to the proceedings, the court must have regard to the capacity of the party to earn and derive income, including any assets of, under the control of or held for the benefit of the party that do not produce, but are capable of producing, income.

(3) In taking into account the direct and indirect costs incurred by the parent or other person with whom the child lives in providing care for the child, the court must have regard to the income and earning capacity foregone by the parent or other person in providing that care.

(4) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must disregard the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, or has such a duty but is not a party to the proceedings, unless, in the special circumstances of the case, the court considers it appropriate to have regard to them.

(5) In determining the financial contribution, or respective financial contributions, that should be made by a party, or by parties, to the proceedings, the court must consider the capacity of the party, or each of those parties, to provide maintenance by way of periodic payments before considering the capacity of the party, or each of those parties, to provide maintenance-

(a) by way of lump sum payment;

(b) by way of transfer or settlement of property; or

(c) in any other way.

(6) Subsections (2) to (5) do not limit the matters to which the court may have regard in taking into account the matters referred to in subsection (1).

*Children who are aged 18 or over*

**92.**-(1) A court must not make a child maintenance order in relation to a child who is aged 18 or over unless the court is satisfied that the provision of the maintenance is necessary-

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

(2) A court must not make a child maintenance order in relation to a child that extends beyond the day on which the child will turn 18 unless the court is satisfied that the provision of the maintenance beyond that day is necessary-

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

(3) A child maintenance order in relation to a child stops being in force when the child turns 18 unless the order is expressed to continue in force after then.

*When step-parents have a duty to maintain*

**93.**-(1) For the purpose of section 89, a court which has jurisdiction under this Part may, by order, determine that it is proper for a step-parent to have a duty of maintaining a step-child.

(2) In making an order under subsection (1), the court must have regard to the following (and no other) matters-

- (a) the matters referred to in sections 90 and 91;
- (b) the length and circumstances of the marriage to the relevant parent of the child;
- (c) the relationship that has existed between the step-parent and the child;
- (d) the arrangements that have existed for the maintenance of the child;
- (e) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

*Determining financial contribution of step-parent*

**94.** In determining the financial contribution towards the financial support necessary for the maintenance of the child that should be made by a party to the proceedings who is a step-parent of the child, the court must take into account-

- (a) the matters referred to in sections 90, 91 and 93;
- (b) the extent to which the primary duty of the parents to maintain the child is being, and can be fulfilled.

*Subdivision C - Other aspects of court's powers*

*General powers of court*

**95.**-(1) In proceedings for a child maintenance order, a court may at any time do one or more of the following-

- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic amount;
- (c) order that a specified transfer or settlement of property be made by way of maintenance for a child;
- (d) order that a party deliver to another party, or to a child, goods specified in the order;
- (e) determine the times and places for goods to be delivered under an order made under paragraph (d) and place a monetary value on such deliveries;
- (f) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
- (g) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (h) order that payment be made to a specified person or public authority or into court;
- (i) make a permanent or interim order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further order;
- (j) make an order imposing terms and conditions;
- (k) make an order by consent;
- (l) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (k)) that it considers appropriate.

(2) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Division, in relation to the maintenance of a child does not prevent a court from making a subsequent order in relation to the maintenance of the child.

(3) The Rules of the respective Family Division may make provision with respect to the making of orders under this Division (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

*Urgent child maintenance orders*

**96.** If, in proceedings for a child maintenance order in relation to a child-

- (a) the court considers that the child is in immediate need of financial assistance; but
- (b) it is not practicable in the circumstances to determine immediately what order (if any) should be made,

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

*Modification of child maintenance orders*

**97.**-(1) This section applies if-

- (a) there is in force an order (the "first order") for the maintenance of a child (whether or not made under this Act and whether made before or after the commencement of this section) which has been-
  - (i) made by the court; or
  - (ii) registered in a court under the Rules of the respective Division; and
- (b) a person (being someone who could apply for a child maintenance order in relation to the child) applies to the court for an order under this section in relation to the first order.

(2) The court may, by order-

- (a) discharge the first order if there is just cause for so doing;
- (b) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of a future event;
- (c) if the operation of the order has been suspended under paragraph (b), revive its operation wholly or in part; or
- (d) subject to subsection (3), vary the order-
  - (i) so as to increase or decrease any amount ordered to be paid by the order; or
  - (ii) in any other way.

(3) The court must not vary the order so as to increase or decrease any amount ordered to be paid by the order unless the court is satisfied-

(a) that, since the order was made or last varied-

(i) the circumstances of the child have changed so as to justify the variation;

(ii) the circumstances of the person liable to make payments under the order have changed so as to justify the variation;

(iii) the circumstances of the person to receive payments under the order have changed so as to justify the variation;

(iv) in the case of an order that operates in favour of, or is binding on, a legal personal representative - the circumstances of the estate are such as to justify the variation;

(b) that, since the order was made or last varied, the cost of living has changed to such an extent as to justify the court so doing;

(c) if the order was made by consent - that the amount ordered to be paid is not proper or adequate; or

(d) that material facts were withheld from the court that made the order, or from a court that varied the order, or that material evidence previously given to such a court was false.

(4) In satisfying itself for the purposes of subsection (3)(b), the court must have regard to any changes that have occurred in the Consumer Price Index published by the Bureau of Statistics.

(5) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied having regard to a change in the cost of living.

(6) In satisfying itself for the purposes of paragraph (3)(c), the court must have regard to any payments, and any transfer or settlement of property, previously made to the child, or to any other person for the benefit of the child, by the person against whom the order was made.

(7) An order decreasing a periodic amount payable under the order, or discharging the order, may be expressed to be retrospective to any day the court considers appropriate.

(8) If an order (the "subsequent order") decreasing a periodic amount payable under the first order is expressed to be retrospective, amounts paid under the first order that are not payable under the first order as varied by the subsequent order may be recovered in a court having jurisdiction under this Part.

(9) If an order discharging the first order is expressed to be retrospective to a specified day, amounts paid under the first order since the specified day may be recovered in a court which has jurisdiction under this Part.

(10) The discharge of the first order does not affect the recovery of arrears due under the order

when the discharge takes effect.

(11) In performing its functions under this section, a court must have regard to the provisions of Subdivisions A and B (to the extent applicable).

*Subdivision D - When child maintenance orders cease*

*Effect of death, adoption or marriage*

**98.**-(1) A child maintenance order in relation to a child stops being in force-

(a) on the death of the child;

(b) on the death of the person liable to make payments under the order;

(c) on the death of the person entitled to receive payments under the order.

(2) A child maintenance order in relation to a child stops being in force if the child is adopted, marries or a declaration has been made under section 69(3).

(3) If a child to whom a child maintenance order applies dies, is adopted, marries or a declaration has been made under section 69(3), the person entitled to receive payments under the order must immediately inform the person liable to make payments under the order.

(4) Any amounts paid under a child maintenance order in relation to a period after the child dies, is adopted, marries or a declaration has been made under section 69(3) may be recovered in a court which has jurisdiction under this Part.

(5) A court which has jurisdiction under this Part may make a declaration under section 69(3).

(6) A declaration under subsection (5) has effect for the purposes of this Act but does not have effect for any other purpose.

*Recovery of arrears*

**99.** Nothing in this Subdivision affects the recovery of arrears due under an order which has ceased to be in force.

**DIVISION 8 - OTHER MATTERS RELATING TO CHILDREN**

*Subdivision A - Father liable to contribute towards child bearing expenses if not married to mother*

*Father liable to contribute towards maintenance and expenses of mother*

**100.** If the father of a child is not married to the child's mother the father must make a proper contribution towards-

- (a) the maintenance of the mother for the childbirth maintenance period in relation to the birth of the child;
- (b) the mother's reasonable medical expenses in relation to the pregnancy and birth;
- (c) if the mother dies and the death is as a result of the pregnancy or birth - the reasonable expenses of the mother's funeral; and
- (d) if the child is stillborn, or dies and the death is related to the birth - the reasonable expenses of the child's funeral.

*Matters to be taken into account*

**101.**-(1) In proceedings under this Subdivision in relation to the birth of a child, the court must, in determining the contribution that should be made by the father of the child, take into account the following and no other matters-

- (a) the income, earning capacity, property and financial resources of the mother and the father of the child;
- (b) commitments of each of those persons that are necessary to enable the person to support-
  - (i) himself or herself; or
  - (ii) any other child or another person that the person has a duty to maintain;
- (c) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

(2) In taking into account the income, earning capacity, property and financial resources of a person, the court must have regard to the capacity of the person to earn and derive income, including any assets of, under the control of or held for the benefit of the person that do not produce, but are capable of producing, income.

(3) Subsection (2) does not limit the matters to which the court may have regard in taking into account matters referred to in subsection (1).

*Powers of court*

**102.** (1) In proceedings under this Subdivision in relation to the birth of a child, the court may make such order as it thinks proper.

(2) In exercising its powers under this Subdivision, a court may at any time (before or after the birth of the child) do one or more of the following-



- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly or other periodic amount;
- (c) order that payment of an amount ordered to be paid be wholly or partly secured as the court specifies;
- (d) order that a party deliver to another party, or to a child, goods of a kind specified in the order;
- (e) determine the times and places for goods to be delivered under an order made under paragraph (d) and place a monetary value on such deliveries;
- (f) order that any necessary instrument be executed, and that such documents of title be produced and such other things be done, as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (g) order that payment be made to a specified person or public authority or into court;
- (h) make a permanent order, an order pending the disposal of proceedings, an order for a fixed period or an order until further order;
- (i) make an order imposing terms and conditions;
- (j) make an order by consent;
- (k) make any other order (whether or not of the same nature as those referred to in paragraphs (a) to (j)) that it considers appropriate.

(3) The Rules of the respective Division may make provision with respect to the making of orders under this Subdivision (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of amounts payable under them.

#### *Urgent orders*

**103.** If, in proceedings under this Subdivision in relation to the birth of a child-

- (a) the court considers that the applicant is in immediate need of financial assistance; but
- (b) it is not practicable in the circumstances to determine immediately what order (if any) should be made (whether because the applicant has not yet given birth to the child or otherwise),

the court may order the payment, pending the disposal of the proceedings, of such periodic or other amount as the court considers appropriate.

#### *Institution of proceedings*

**104.**-(1) Proceedings under this Subdivision in relation to the birth of a child may be instituted by the mother or by a legal practitioner on her behalf.

(2) Proceedings under this Subdivision in relation to the birth of a child may be instituted-

(a) at any time during the pregnancy of the mother; or

(b) after the birth of the child, but not later than 6 years after the birth except by leave of the court.

(3) The court must not grant leave under subsection (2) (b) unless it is satisfied that refusal to grant leave would cause hardship to the applicant, the child or another person.

### *Subdivision B -Recovery of Children*

#### *Nature of recovery orders*

**105.** A recovery order is an order made by a court which does one or more of the following-

(a) requires the return of a child to-

(i) a parent of the child;

(ii) a person who has a residence order or a contact order in relation to the child; or

(iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;

(b) authorises or directs a person or persons, with such assistance as he or she requires or they require, and if necessary by force, to stop and search any vehicle, vessel or aircraft, and to enter and search any premises or place, for the purpose of finding a child;

(c) authorises or directs a person or persons, with such assistance as he or she requires or they require, and if necessary by force, to recover a child;

(d) authorises or directs a person to whom a child is returned, or who recovers a child, to deliver the child to-

(i) a parent of the child; or

(ii) a person who has a residence order or a contact order in relation to the child; or

(iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; or

(iv) some other person on behalf of a person described in subparagraph (i), (ii) or (iii);

(e) gives direction about the day-to-day care of a child until the child is returned or delivered to another person;

(f) prohibits a person from again removing or taking possession of a child;

(g) authorises the arrest, without warrant, of a person who again removes or takes possession of a child.

*Recovery orders authorising or directing people*

**106.**-(1) An authorising or direction described in section 105(b), (c) or (d) may be addressed to-

- (a) a named person; or
- (b) any person holding or acting in a prescribed public office.

(2) Without limiting subsection (1), an authorisation or direction described in section 105(b), (c) or (d) may be addressed to-

- (a) a named person who holds an appointment as a child recovery officer under subsection (3); or
- (b) every person from time to time holding or acting in an office of child recovery officer.

(3) The Attorney-General may appoint persons to be child recovery officers for the purposes of this Subdivision.

(4) An appointment under subsection (3) may be of-

- (a) a named person only; or
- (b) every person from time to time holding or acting in a specified public office.

*Recovery orders to stop and search etc. vehicles, places etc.*

**107.** An authorisation or direction described in section 105 may be expressed to apply to-

- (a) a vehicle, vessel, aircraft, premises or place named or described either specifically or in general terms; or
- (b) any vehicle, vessel, aircraft, premises or place in which there is, at any time, reasonable cause to believe that the child concerned may be found.

*Who may apply for a recovery order*

**108.** A recovery order in relation to a child may be applied for by-

- (a) a person who has a residence order in relation to the child; or
- (b) a person who has a contact order in relation to the child;
- (c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development; or
- (d) any other person concerned with the care, welfare or development of the child.

*Court's power to make recovery order*

**109.**-(1) In proceedings for a recovery order, the court may make any recovery order it thinks proper.

(2) In deciding whether to make a recovery order in relation to a child, a court must regard the best interests of the child as the paramount consideration.

*How long recovery order remains in force*

**110.**-(1) The Rules of each Division may deal with how long recovery orders remain in force.

(2) Subject to the Rules of the relevant Division, a recovery order remains in force.

*Persons not to prevent or hinder taking of action under recovery order*

**111.**-(1) Where an order has been made under section 105(b), (c), or (d), it is unlawful for any person to prevent or hinder the taking of the action by the person or persons authorised or directed to take the action.

(2) If a court which has jurisdiction under this Part is satisfied that a person has intentionally, and without reasonable excuse, contravened subsection (1), the court may-

(a) order the person to pay a fine not exceeding \$1,000;

(b) order the person to enter into a recognizance (with or without surety or security) on conditions specified by the court; or

(c) order the person to be imprisoned until he or she enters into a recognizance (with or without surety or security) on conditions specified by the court, or until the person has been imprisoned for 3 months, whichever happens first.

(3) A court that makes an order under subsection (2) may make any other order it considers necessary to ensure the person does not again contravene subsection (1).

*Obligation to notify persons of child's return*

**112.**-(1) This section applies if-

(a) a recovery order that consists of or includes provisions described in section 105(a), (b), (c) or (d) is in force in relation to a child; and

(b) the child returns, or is returned, to the person who applied for the order.

(2) The person must, as soon as practicable after the child's return, give notice of the child's return to-

(a) the Registrar of the Court that issued the recovery order; and

(b) if a location order in relation to the child is in force and was applied for by the person - the person whom the location order applies.

*Subdivision C-Allegations of child abuse*

*Where a party to proceedings makes allegations of child abuse*

**113.**-(1) This section applies if a party to proceedings under this Act alleges that a child whom the proceedings relate has been abused or is at risk of being abused.

(2) The party must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

(3) If a notice under subsection (2) is filed in a court, the Registrar must, as soon as practicable, notify a prescribed child welfare authority.

*Where member of the court personnel or counsellor suspects child abuse etc.*

**114.**-(1) This section applies to a person in the court of carrying out duties, performing functions or exercising powers as-

(a) a member of the Court personnel;

(b) a family and child counsellor; or

(c) a welfare officer.

(2) If the person has reasonable grounds for suspecting that child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for it.

(3) If the person has reasonable grounds for suspecting that a child-

(a) has been ill treated, or is at risk of being ill treated; or

(b) has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child,

the person may notify a prescribed child welfare authority of his or her suspicion and the basis for it.

(4) The person need not notify a prescribe child welfare authority of his or her suspicion that a child has been abuse, or is at risk of being abuse, if the person knows that the authority has previously been notified about the abuse or risk under subsection (2) or under section 113 (3), but the person may notify the authority of his or her suspicion.

(5) If notice under this section is given orally, written notice confirming the oral notice to be given to the prescribed child welfare authority as soon as practicable after the oral notice.

(6) If the person notifies a prescribed child welfare authority under this section or section 113(3) the person may make such disclosures of other information as the person reasonably believes are necessary to enable the authority to properly manage the matter the subject of notification.

*No liability for notification under section 113 or 114*

**115.**-(1) A person-

(a) must give notice under section 113(3) or 114(2); or

(b) may give notice under section 114(3) or (4); or

(c) may disclose other information under subsection 114(6),

in spite of any obligation of confidentiality imposed on the person by this Act, another Act, another law or anything else (including a contract or professional ethics).

(2) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under subsection 113(3) or 114(2).

(3) A person is not liable in civil or criminal proceedings, and is not to be considered to have breached any professional ethics, in respect of a notification under section 114(3) or (4), or a disclosure under section 114(6), if the notification or disclosure is made in good faith.

(4) Evidence of a notification under section 113(3) or section 114(2), (3) or (4), or a disclosure under 114(6), is not admissible in any court except where that evidence is given by the person who made the notification or disclosure.

(5) In this section, "court" means a court, whether or not exercising jurisdiction under this Act, and includes a tribunal or other body concerned with professional ethics.

*Orders relating to welfare of children*

**116.**-(1) In addition to the justification that a court has under this Part in relation to children, the court also has jurisdiction to make orders relating to the welfare of children.

(2) In deciding whether to make an order under subsection (1) in relation to a child, a court must regard the best interests of the child as the paramount consideration.

#### *Delivery of passport*

**117.** If a court which has jurisdiction under this Part considers that there is a possibility or threat that a child may be removed from the Fiji Islands, it may order the passport of the child and of any other person concerned to be delivered up to the court upon such conditions as the court considers it appropriate.

### **DIVISION 9 - INJUNCTIONS IN RELATION TO A CHILD**

#### *Injunctions*

**118.**-(1) If proceedings are instituted in a court which has jurisdiction under this Part for an injunction in relation to a child, the court may make such order or grant such injunction as it considers appropriate for the welfare of the child, including-

(a) an injunction for the personal protection of the child;

(b) an injunction for the personal protection of-

(i) a parent of the child;

(ii) a person who has a residence order or a contact order in relation to the child;

(iii) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development;

(c) an injunction restraining a person from entering or remaining in-

(i) a place a residence, employment or education of the child; or

(ii) a specified area that contains a place of a kind referred to in subparagraph (i); or

(d) an injunction restraining a person from entering or remaining in:

(i) a place of residence, employment or education of a person referred to in paragraph (b); or

(ii) a specified area that contains a place of a kind referred to in subparagraph (i).

(2) A court exercising jurisdiction under this Act (other than in proceedings to which subsection (1) applies) may grant an injunction in relation to a child, by interim order or otherwise, in any case in which it appears to the court to be just or convenient to do so.

(3) An injunction under this section may be granted unconditionally or on such terms and conditions as the court considers appropriate.

*Powers of arrest*

**119.**-(1) If-

(a) an injunction is in force under section 118 for the personal protection of a person (the *protected person*); and

(b) a police officer believes, on reasonable grounds, that the person (the *respondent*) against whom the injunction is directed had breached the injunction by causing, or threatening to cause, bodily harm to the protected person or by harassing or molesting that person,

the police officer may arrest the respondent without warrant.

(2) For the purposes of subsection (1), an injunction granted under section 118 is an injunction for the personal protection of a person if, and only if, it is expressed to be for the personal protection of the person.

(3) Section 203(2), (3), (4) and (5) apply in relation to a person arrested under this section as if-

(a) the person had been arrested under section 203(1) because he or she was believed to have breached an injunction granted under section 202; and

(b) the person on whose application the injunction was granted under section 118 were the person on whose application the injunction under section 202 had been granted.

**DIVISION 10 - BEST INTERESTS OF CHILDREN AND THE REPRESENTATION OF CHILDREN**

*Subdivision A -Determining the best interests of a child*

*Proceedings to which subdivision applies*

**120.**-(1) This subdivision applies to any proceedings under this Part in which the best interests of a child are the paramount consideration.

(2) This Subdivision also applies to proceedings, in relation to a child, to which section 60(6) applies.

*How a court determines what is in a child's best interests*

**(121)**- (1) Subject to subsection (3), in determining what is in the child's best interests, the court



may consider the matters set out in subsection (2).

(2) The court must consider-

(a) any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's wishes;

(b) the nature of the relationship of the child with each of the child's parents and with other persons;

(c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from-

(i) either of his or her parents; or

(ii) any other child, or other person, with whom the child has been living;

(d) the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

(e) the capacity of each parent, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;

(f) the child's maturity, sex and background (including any need to maintain a connection with the lifestyle, culture and traditions of the child) and any other characteristics of the child that the court thinks are relevant;

(g) the need to protect the child from physical or psychological harm caused, or that may be caused, by-

(i) being subjected or exposed to abuse, ill-treatment, violence or other behaviour; or

(ii) being directly or indirectly exposed to abuse, ill-treatment, violence or other behaviour that is directed towards, or may affect, another person;

(h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;

(i) any family violence involving the child or a member of the child's family;

(j) any family violence order that applies to a child or a member of the child's family;

(k) any other fact or circumstances that the court thinks is relevant.

(3) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2).

#### *Child's wishes - how expressed*

**122.**-(1) The court may inform itself of wishes expressed by a child-

(a) by having regard to anything contained in a report given to the court under section 54(2); or  
(b) subject to the Rules of the respective Division, by such other means as the court thinks appropriate.

(2) Nothing in this Part permits the court or any person to require the child to express his or her wishes in relation to any matter.

#### *Relevant family violence orders*

**123.**-(1) If a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that party must inform the court of the family violence order.

(2) If a person who is not a party to the proceedings is aware that a family violence order applies to the child, or a member of the child's family, that person may, subject to the Rules of the respective Division, inform the court of the family violence order.

(3) Failure to inform the court of the family violence order does not affect the validity of any order made by the court.

#### *Risk of family violence*

**124.**-(1) In considering what order to make, the court must, to the extent that it is possible to do so consistently with the child's best interest being the paramount consideration ensure that the order-

(a) is consistent with any family violence order; and

(b) does not expose a person to an unacceptable risk of family violence.

(2) For the purpose of subsection (1) (b) the court may include in the order any safeguards that it considers necessary for the safety of those affected by the order.

#### *Subdivision B- Separate representation of children*

##### *Order for separate representation*

**125.**-(1) This section applies to proceedings under this Act in which a child's best interests are, or a child's welfare is, the paramount, or a relevant, consideration.

(2) If it appears to the court that the child ought to be separately represented, the court may order that the child is to be separately represented, and may also make such other orders as it considers necessary to secure separate representation including the party to bear the costs of the child's

separate representation if the State does not provide for it.

(3) A court may make an order for separate representation on its own initiative or at the request of-

- (a) the child;
- (b) an organisation concerned with the welfare of children; or
- (c) any other person.

*Child to be made available for examination*

**126.**-(1) If, in proceedings under this Act, a child is separately represented by a person (the child's representative) under an oath under section 125, the court may, on application by the child's representative, order a person mentioned in subsection (2) to make the child available, as specified in the order, for a psychiatric or psychological examination to be made for the purpose of preparing a report about the child for use by the child's representative in connection with the proceedings.

(2) The order may be directed to-

- (a) a parent of the child;
- (b) a person who has a residence order or a contract order in relation to the child; or
- (c) a person who has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

**DIVISION 11 - PROCEEDINGS AND JURISDICTION**

*Subdivision A - Institution of proceedings and procedures*

*Institution of proceedings under this Part*

**127.**-(1) Proceedings that may be instituted under this Part must not, after the commencement of this section, be instituted otherwise than under this Part.

(2) Proceedings in relation to a child, other than under section 65, 88 or 104 may, unless a contrary intention appears, be instituted by-

- (a) either or both of the child's parents;
- (b) a person representing the child under an order made under section 125;
- (c) a grandparent of the child;
- (d) any other person concerned with the care, welfare or development of the child.

*Institution of maintenance proceedings by authorised authority*

**128.**-(1) The regulations may make provisions authorising-

(a) a specified authority; or

(b) the person from time to time holding or acting in a specified office established under a law,

to institute and conduct, on behalf of a child, in the authority's or person's direction, proceedings with respect to the maintenance of the child.

(2) Proceedings instituted on behalf of a child under regulations referred to in subsection (1) are taken, for the purposes of section 127(2) and the provisions referred to in it, to have been instituted by the child.

*Child or parent to be present in Fiji Islands etc.*

**129.**-(1) Proceedings may be instituted under this Act in relation to a child only if-

(a) the child is present in the Fiji Islands on the relevant day;

(b) the child is a citizen of the Fiji Islands, or is ordinarily resident in the Fiji Islands, on the relevant day;

(c) a parent of the child is a citizen of the Fiji Islands, is ordinarily resident in the Fiji Islands, or is present in the Fiji Islands, on the relevant day;

(d) a party to the proceedings is a citizen of the Fiji Islands, or is present in the Fiji Islands, on the relevant day; or

(e) it would be in accordance with a treaty or arrangement in force between the State and an **overseas** jurisdiction, or the common law rules of private **international** law, for the court to exercise jurisdiction in the proceedings.

(2) In this section "relevant day", in relation to proceedings, means the day on which the application instituting the proceedings is filed in a court.

*Failure to comply no bar to proceedings*

**130.** A court may proceed with the hearing of proceedings in relation to a child even though the person who instituted the proceedings has failed to comply with an order of the court or of another court having jurisdiction under this Act.

*Subdivision B - Presumptions of parentage*

*Arising from marriage*

**131-**(1) If a child is born to a woman while she is married, the child is presumed to be a child of the woman and her husband.

(2) If-

(a) at a particular time-

(i) a marriage to which a woman is a party is ended by death; or

(ii) a purported marriage to which a woman is a party is annulled; and

(b) a child is born to the woman within 44 weeks after the time,

the child is presumed to be a child of a the woman and the husband.

(3) If-

(a) the parties to a marriage separated at any time;

(b) after the separation, they resumed cohabitation on one occasion;

(c) within 3 months after the resumption of cohabitation, they separated again and lived separately and apart; and

(d) a child is born to the woman within 44 weeks after the end of the cohabitation, but after the dissolution of the marriage,

the child is presumed to be a child of the woman and the husband.

*Arising from cohabitation*

**132.** If-

(a) a child is born to a woman; and

(b) at any time during the period beginning not earlier than 44 weeks and ending not less than 20 weeks before the birth, the woman cohabited with a man to whom she is not married,

the child is presumed to be a child of the man.

*Arising from registration of birth*

**133.** If a person's name is entered as a parent of a child in a register of births or parentage

information kept under a law of the Fiji Islands or of a prescribed **overseas** jurisdiction, the person is presumed to be a parent of the child.

*Arising from findings of courts*

**134.**-(1) If-

(a) during the lifetime of a particular person, a prescribed court has-

(i) found expressly that the person is a parent of a particular child; or

(ii) made a finding that it could not have made unless the person was a parent of a particular child; and

(b) the finding has not been altered, set aside or reversed,

the person is conclusively presumed to be a parent of the child.

(2) If-

(a) after the death of a particular person, a prescribed court has-

(i) found expressly that the person was a parent of a particular child; or

(ii) made a finding that it could not have made unless the person was a parent of a particular child; and

(b) the finding has not been altered, set aside or reversed,

the person is presumed to have been a parent of the child.

(3) In this section "prescribed court" means a court in the Fiji Islands or a court of a prescribed **overseas** jurisdiction.

*Arising from knowledge*

**135.** If-

(a) under the law of the Fiji Islands or of a prescribed **overseas** jurisdiction, a man has executed an instrument acknowledging that he is the father of a specified child; and

(b) the instrument has not been annulled or otherwise set aside,

the man is presumed to be the father of the child.

*Rebuttal of presumptions*

**136.** - (1) A presumption arising under this Subdivision is rebuttable by proof on a balance of probabilities.

(2) If-

(a) 2 or more presumptions arising under this Subdivision are relevant in any proceedings; and

(b) those presumptions, or some of those presumptions, conflict with each other and are not rebutted in the proceedings,

the presumption that appears to the court to be the more or most likely to be correct prevails.

(3) This section does not apply to a presumption arising under section 134(1).

*Subdivision C - Parentage testing*

*Evidence of parentage*

**137.** If the parentage of a child is a question in issue in proceedings under this Act, the court may make an order requiring any person to give such evidence as is material to the question.

*Orders for carrying out of parentage testing procedures*

**138.**-(1) If the parentage of a child is a question in issue in proceedings under this Act, the court may make an order (a parentage testing order) requiring a parentage testing procedure to be carried out on a person mentioned in subsection (3) for the purpose of obtaining information to assist in determining the parentage of the child.

(2) A court may make a parentage testing order-

(a) on its own initiative; or

(b) on the application of:

(i) a party to the proceedings; or

(ii) a person representing the child under an order made under section 125.

(3) A parentage testing order may be made in relation to -

(a) the child;

(b) a person known to be the mother of the child; or

(c) any other person, if the court is of the opinion that, if the parentage testing procedure were to be carried out in relation to the person, the information that could be obtained might assist in determining the parentage of the child.

(4) A parentage testing order may be made subject to terms and conditions.

(5) This section does not limit section 137.

*Orders associated with parentage testing orders*

**139.**-(1) If a court makes a parentage testing order, it may also make orders under subsection (2) or (4).

(2) The court may make such orders as it considers necessary or desirable-

(a) to enable the parentage testing procedure to be carried out; or

(b) to make the parentage testing procedure more effective or reliable.

(3) The orders the court may make under subsection (2) include, but are not limited to -

(a) an order requiring a person to submit to a medical procedure;

(b) an order requiring a person to provide a bodily sample;

(c) an order requiring a person to provide information relevant to the person's medical or family history.

(4) The court may make such orders as it considers just in relation to costs incurred in relation to-

(a) the carrying out of the parentage testing procedure or other orders made by the court in relation to the parentage testing procedure; or

(b) the preparation of reports relating to the information obtained as a result of carrying out the parentage testing procedure.

*Orders directed to persons aged 18 or over*

**140** If a person who is aged 18 or over fails to comply with a parentage testing order or an order under section 139, the person is not liable to any penalty in relation to the contravention, but the court may draw such inferences from the failure as appear just in the circumstances.

*Orders directed to children*



**141.**-(1) This section applies if a parentage testing order, or an order under section 139, requires a medical procedure or other act to be carried out in relation to a child.

(2) The procedure or act must not be carried out in relation to the child under the order without the consent of-

(a) a parent of the child;

(b) a guardian of the child; or

(c) a person who, under a specific issues order, is responsible for the child's long-term or day-to-day care, welfare and development.

(3) The court may draw such inferences from a failure or refusal to consent as mentioned in subsection (2) as appear just in the circumstances.

*No liability if parent etc. consents*

**142.** - (1) A person who carries out, or who assists in the carrying out of, a medical procedure or other act in relation to a child under a parentage testing order is not liable to any civil or criminal action in relation to the proper carrying out of the procedure or act if it is carried out with the consent of-

(a) a parent of the child;

(b) a guardian of the child; or

(c) a person who, under a specific issues order, is responsible for the child's long-term or day-to-day care, welfare and development.

(2) Subsection (1) does not affect any liability of a person for an act that negligently, or negligently omitted to be done, in relation to the carrying out of the medical procedure or act.

*Regulations about carrying out, and reporting on parentage testing procedures*

**143.** The regulations may make provision relating to-

(a) the carrying out of parentage testing procedures under parentage testing orders; and

(b) the preparation of reports relating to the information obtained as the result of carrying out such procedures.

*Reports of information obtained may be received in evidence*

**144.**-(1) A report made in accordance with regulations made under section 143(b) may be received in evidence in any proceedings under this Act.

(2) If, under subsection (1), a report is received in evidence in proceedings under this Act, the court may make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the court and give evidence in relation to the report.

(3) A court may make an order under subsection (2)-

(a) on its own initiative; or

(b) on the application of -

(i) a party to the proceedings; or

(ii) a person representing the relevant child under an order made under section 125.

*Parentage testing for purposes of international maintenance agreements*

**145.** For the purpose of the carrying out of any of the State's obligation under-

(a) an arrangement with a reciprocating jurisdiction, or with a jurisdiction with restricted reciprocity, within the meaning of section 197; or

(b) the Convention referred to in section 198,

the regulations may make provision-

(c) conferring jurisdiction on a court to make an order requiring a parentage testing procedure to be carried out at the request of-

(i) a court or authority in a foreign country; or

(ii) the Permanent Secretary to the Minister of Justice or a person authorised by the Permanent Secretary;

(d) for the carrying out of a parentage testing procedure, and the preparation of a report in relation to the information obtained as a result of the carrying out of the procedure; or

(e) for the admissibility in legal proceedings of a report, in relation to the information obtained as a result of the carrying out of a parentage testing procedure, received from an authority in a foreign country,

whether or not there is any express provision in the relevant arrangement or in the Convention authorising the carrying out of a parentage testing procedure.

*Subdivision D - Child welfare laws not affected*

*Child welfare laws*

**146.**-(1) A court having jurisdiction under this Act must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law unless-

- (a) the order is expressed to come into effect when the child ceases to be under that care; or
- (b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer has been obtained.

(2) Nothing in this Act, and no order under this Act, affects-

- (a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law;
- (b) any such order made or any such action taken; or
- (c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in subsection (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

**DIVISION 12-OVERSEAS ORDERS**

*Subdivision A - Registration of overseas orders*

*Interpretation*

**147.** In this Subdivision-

"care order" means a specific issues order under which a person is responsible for a child's day-to-day care, welfare and development;

"excluded order" means-

- (a) an interim order; or
- (b) an order made in favour of a person where-
  - (i) the order was made on the application of the person;

(ii) notice of making the application was not served on any other person; and

(iii) no other person appeared at the hearing of the application;

"overseas child order" means an order made by a court of a prescribed overseas jurisdiction (however expressed) that-

(a) has the effect of determining the person or persons with whom a person who is aged under 18 is to live, or that provides for a person or persons to have custody of a person who is under 18;

(b) has the effect of providing for contact between a person who is aged under 18 and another person or persons, or that provides for a person or persons to have access to a person who is aged under 18;

(c) varies or discharges an order of the kind referred to in paragraph (a) or (b), including an order of that kind made under this Act.

#### *Registration of orders*

**148.**-(1) The regulations may make provision for and in relation to the registration in courts in the Fiji Islands of overseas child orders, other than excluded orders.

(2) An overseas child order registered in a court under subsection (1) has the same force and effect as if it were an order made by that court under this Part.

#### *Effect of registration on exercise of jurisdiction*

**149.**-(1) A court in the Fiji Islands that is aware that an overseas child order is registered under section 148 must not exercise jurisdiction in proceedings for the making of a residence order, a contact order or a care order in relation to the child concerned unless-

(a) each person with whom the child is suppose to live or have contact under the overseas order, or who has rights of custody or access in relation to the child concerned under the order, consents to the exercise of jurisdiction by the court in the proceedings; or

(b) the court is satisfied that there are substantial grounds for believing that the child's welfare requires that the court exercise jurisdiction in the proceedings.

(2) If a court exercise jurisdiction in proceedings for a residence order, a contact order or a care order in relation to a child who is the subject of an overseas child order, the court must not make a residence order, a contact order, or a care order in relation to the child unless it is satisfied that-

(a) the welfare of the child is likely to be adversely affected if the order is not made; or

(b) there has been such a change in the circumstances of the child since the making of the overseas child order that the residence order, contact order or a care order ought to be made.

#### *Cancelling of registration if residence order, contact order or care order made*

**150.** If a court-

- (a) is aware that an **overseas** child order is registered under section 148; and
- (b) makes a residence order, a contact order or a care order in relation to the child concerned,

the court must cancel the registration of the overseas child order.

*Relationship between local orders and registered **overseas** child orders*

**151.**-(1) In this section-

"local child order" means a residence order, a contact order or a care order;

"responsible person", in relation to a local child order or an overseas child order, means a person-

- (a) with whom the child is supposed to live or have contact under the order;
  - (b) who is responsible for the child's day-to-day care, welfare and development under the order;
- or
- (c) who has a right to custody of, or access to, the child under the order.

(2) This section applies if-

(a) a local child order, whether made under this Part or another law, is in force under this Part in relation to a child; and

(b) an **overseas** child order, other than an excluded order, that relates to the child but that has a different effect from the local order has been registered under section 148 (whether before or after the making of the local child order) and its registration has not been cancelled.

(3) A responsible person under the overseas child order may apply to a court having jurisdiction under this Part for the discharge of the local child order.

(4) A responsible person under the local child order may apply to a court having jurisdiction under this Part for the cancellation of the registration of the overseas child order.

(5) If an application is made under subsection (3) or (4), the court must-

- (a) if a condition specified in subsection (6) is satisfied -cancel the registration of the overseas child order; or
- (b) in any other case - discharge the local child order.

(6) For the purposes of subsection (5) (a), the conditions are-

- (a) each responsible person under the **overseas** child order consents to the cancellation of the registration of the order;
- (b) the court is satisfied that there are substantial grounds for believing that the child's welfare will be adversely affected if the overseas child order continues to operate in relation to the child;
- (c) the court is satisfied that there has been a change in the circumstances of the child since the overseas child order was made that makes it inappropriate for the order to continue to operate in relation to the child.

*Subdivision B - Transmission of Fiji Islands orders to **overseas** jurisdictions*

*Registrar to send documents etc. to overseas jurisdiction*

**152.**-(1) If-

- (a) a court in the Fiji Islands makes, in relation to a person who is aged under 18, a residence order, a contact order or a specific issues order; and
- (b) the order is enforceable in a prescribed **overseas** jurisdiction under provisions corresponding to Subdivision C,

a person referred to in subsection (2) may, in writing, request the Registrar of the court to send to an appropriate court or authority in the overseas jurisdiction the documentation and information necessary for securing the enforcement of the order in the overseas jurisdiction.

(2) A request under subsection (1) may be made by-

- (a) a person with whom the child is supposed to live or have contact under the order; or
- (b) as person who has a right to custody of, or of access to, the child under the order.

(3) The Registrar of the court must comply with a request under subsection (1).

*Regulations may deal with sending Fiji Islands order etc. to **overseas** jurisdiction*

**153.** The regulations may make provisions for and in relation to the sending to a prescribed overseas jurisdiction of copies of, and documents relating to, a residence order, a contact order or a specific issues order, that relates to a child to whom an overseas child order relates.

## **PART VII- PROPERTY, SPOUSAL MAINTENANCE AND MAINTENANCE AGREEMENTS**

### *Interpretation*

**154.** In this Part-

"marriages" includes a void marriage

"property", without limiting its definition in section 2, includes the money standing to the credit of a party in the Fiji National Provident Fund but does not include the interest of any party in real or leasehold property which is inalienable ;

"re-marriage", in relation to a person who was a party to a purported marriage that is void, means marriage.

### *Right of spouse to maintenance*

**155.** A party to a marriage is liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so, if, and only if, that other party is unable to support herself or himself adequately, whether-

(a) by reason of having the care and control of a child of the marriage who has not attained the age of 18 years;

(b) by reason of age or physical or mental incapacity for appropriate gainful employment; or

(c) for any other adequate reason,

having regard to any relevant matter referred to in section 157.

### *Power of court in spousal maintenance proceedings*

**156.** In proceedings with respect to the maintenance of a party to a marriage, the court may make such order as it considers proper for the provision of maintenance in accordance with this Part.

### *Matters to be taken into consideration in relation to spousal maintenance*

**157.** In exercising jurisdiction under section 155, the court may take into account only the following matters-

(a) the age and state of health of each of the parties;

(b) the income, property and financial resources (including any interest in leasehold or real estate which is inalienable) of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;

- (c) where either party has the care or control of a child of the marriage who had not attained the age of 18 years;
- (d) commitments of each of the parties that are necessary to enable the party to support -
- (i) himself or herself; and
  - (ii) a child or another person that the party has a duty to maintain;
- (e) the responsibilities of either party to support any other person;
- (f) the eligibility of either party for a pension, allowance or benefit under-
- (i) any law of the Fiji Islands or of another country; or
  - (ii) any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside of the Fiji Islands;
- (g) the rate of any such pension, allowance or benefit being paid to either party;
- (h) a standard of living that in all the circumstances is reasonable;
- (i) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earnings capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;
- (j) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;
- (k) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;
- (l) if either party is cohabitating with another person - the financial circumstances relating to the cohabitation;
- (m) the terms of any order made or proposed to be made under section 161 in relation to the property of the parties.

#### *Urgent spousal maintenance cases*

**158.** Where, in proceedings with respect to the maintenance of a party to a marriage, it appears to the court that the party is in immediate need of financial assistance, but it is not practicable in the circumstances to determine immediately what order, if any, should be made, the court may order the payment, pending the disposal of the proceedings, of such periodic sum or other sums as the court considers reasonable.

#### *Parental maintenance*

**159.** - (1) A person is liable to maintain his or her parent to the extent that the person is reasonably able to do so if and only the parent is unable to support herself or himself adequately whether-



- (a) by reason of age or physical or mental incapacity for inappropriate gainful employment;
- (b) for any other adequate reason having regard to any relevant matter referred to in section 157.

(2) Section 157 applies to parental maintenance so far as it is relevant.

(3) In proceedings with respect to the maintenance of a parent the court may make any order it considers proper for the provision of parental maintenance in accordance with this Part.

(4) In this section "parent" includes the parent of an ex-nuptial child.

(5) The Attorney-General may, after consultation with the Family Law Council, prescribe by regulations the procedures for application for the purposes of implementing and giving effect to this section.

#### *Declaration of interests in property*

**160.**-(1) In proceedings between the parties to a marriage with respect to existing title or rights in respect of property, the court may declare the title or rights, if any, that a party has in respect of the property.

(2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including orders as to sale or partition and interim or permanent orders as to possession.

#### *Alteration of property interests*

**161.**-(1) In proceedings with respect to the property of the parties to a marriage or either of them, the court may make such order as it considers appropriate altering the interests of the parties in the property, including-

- (a) an order for a settlement of property in substitution for any interest in the property; and
- (b) an order requiring either or both of the parties to make, for the benefit of either or both of the parties or a child of the marriage, such settlement or transfer of property as the court determines.

(2) An order made under subsection (1) in proceedings with respect to the property of the parties to the marriage or either of them may, after the death of a party to the proceedings, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(3) The court may adjourn proceedings with respect to the property of the parties to a marriage or either of them, except where the parties to the proceedings are-

- (a) parties to concurrent, pending or completed proceedings for principal relief;

(b) parties to a marriage that has been dissolved or annulled under the law of an overseas country, where that dissolution or annulment is recognized as valid in the Fiji Islands under section 193; or

(c) parties to a marriage who have been granted a legal separation under the law of an overseas country, where that legal separation is recognised as valid in the Fiji Islands under section 193,

on such terms and conditions as it considers appropriate, and of such period as it considers necessary to enable the parties to the proceedings to consider the likely effects (if any) of an order under this section on the marriage or the children of the marriage.

(4) Nothing in subsection (3) limits any other power of the court to adjourn proceedings with respect to the property of the parties to a marriage.

(5) Where the period for which a court had adjourned proceedings with respect to the property of the parties to a marriage or either of them as provided by subsection (3) has not expired and-

(a) proceedings for principal relief are instituted by one or both of those parties;

(b) the marriage is dissolved or annulled under the law of an overseas country and the dissolution or annulment is recognised as valid in the Fiji Islands under section 193; or

(c) the parties are granted a legal separation under the law of an overseas country and the legal separation is recognised as valid in the Fiji Islands under section 193,

either party to the first-mentioned proceedings may apply to the court for the hearing of those proceedings to be continued.

(6) The court must not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

#### *Factors to be taken into account*

**162.**-(1) In considering what order (if any) should be made under section 161 in proceedings with respect to any property of the parties to a marriage or either of them, the court must take into account-

(a) the financial contribution made directly or indirectly by or on behalf of a party to the marriage or a child of the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of the last-mentioned property, whether or not the last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a party to the improvement of any of the property of the parties to the marriage or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that

last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the marriage or either of them;

(c) the contribution made by a party to the marriage to the welfare of the family constituted by the parties to the marriage and any children of the marriage, including any contribution made in the capacity of homemaker or parent.

(d) the eligibility of either party for a pension, allowance or benefit under-

(i) any law of the Fiji Islands or of another country; or

(ii) any superannuation funds or scheme, whether the funds or scheme was established, or operates, within or outside the Fiji Islands.

(2) For the purposes of subsection (1) the contribution of the parties to a marriage is presumed to be equal, but the presumption may be rebutted if a court considers a finding of equal contribution is on the facts of the case repugnant to justice, (for example as a marriage of short duration.)

(3) The court must also take into account-

(a) the age and state of health of the parties;

(b) the income, property and financial resources, including any interest in capacity of each of them for appropriate gainful employment;

(c) whether either party has the care and control of a child of the marriage who has not attained the age of 18 years;

(d) the commitments of each of the parties that are necessary to enable the party to support-

(i) himself or herself; and

(ii) a child to another person that the party has a legal or customary duty to support.

(e) a standard of living that in all circumstances is reasonable;

(f) the financial resources available to a person if cohabiting with another person;

(g) the duration of the marriage;

(h) the terms of any order for spousal or child maintenance made in favour of or against a party;

(i) any other fact or circumstances which, in the opinion of the court, the justice of the case requires to be taken into account.

(4) If, before proceedings with respect to the property of the parties to a marriage or either of them are completed, either party to the proceedings dies-

(a) the proceedings may be continued by or against, as the case may be, the legal personal representatives of the deceased party and the Rules of the respective Division may make provision in relation to the substitution of the legal personal representative as a party to the proceedings;

(b) if the court is of the opinion-

(i) that it would have made an order with respect to property if the deceased party had not died; and

(ii) that it is still appropriate to make an order with respect to property, the court may make such order as it considers appropriate with respect to any of the property of the parties to the marriage or either of them; and

(c) an order made by the court pursuant to paragraph (b) may be enforced on behalf of, or, as the case may be, against the estate of the deceased party.

(5) A court must not make an order under this section in proceedings with respect to the property of the parties to a marriage or either of them (other than an interim order or an order made with the consent of all parties to the proceedings) unless-

(a) the parties to the proceedings have attended a conference in relation to the matter to which the proceedings relate with a Registrar or of the respective Family Division;

(b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstances, it is appropriate to make the order notwithstanding that the parties to the proceedings have not attended a conference as mentioned in paragraph (a); or

(c) the court is satisfied that it is not practicable to require the parties to the proceedings to attend a conference as mentioned in paragraph (a).

(6) Evidence of anything said or of any admission made at a conference referred to in subsection (5) or at any conference with a registrar in proceedings under this Part is not admissible in any court or in proceedings before a person authorised by law, or by consent of parties, to hear evidence.

(7) A person who files an application seeking an order under section 163(1) in relation to land is deemed to have a beneficial interest in the land within the meaning of section 106 of the Land Transfer Act. Such beneficial interest will cease on the proceedings being finalised by order or the withdrawal of the application.

#### *Setting aside of orders altering property interests*

**163.**-(1) If, on application by a person affected by an order made by a court under section 162 in proceedings with respect to the property of the parties to a marriage or either of them, the court is satisfied that-

(a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;

(b) in the circumstances that have arisen since the order was made it is impracticable for the order or a part of it to be carried out;

(c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order; or

(d) in the circumstances that have arisen since the making of the order, being circumstances of an exceptional nature relating to the care, welfare and development of a child of the marriage, the child or, where the applicant has caring responsibility for the child (as defined in subsection (3)) the applicant, will suffer hardship if the court does not vary the order or set the order aside and make another order in substitution for the order,

the court may, in its direction, vary the order or set the order aside and, if it considers appropriate, make another order under section 162 in substitution for the order so set aside.

(2) A court may, on application by a person affected by an order made by a court under section 162 in proceedings with respect to the property of the parties to a marriage or either of them, and with consent of all the parties to the proceedings in which the order was made, vary the order or set the order aside and, if it considers appropriate, make another order under section 162 in substitution for the order so set aside.

(3) For the purposes of subsection (1) (d), a person has *caring responsibility* for a child if-

(a) the person is a parent of the child with whom the child lives;

(b) the person has a residence order in relation to the child; or

(c) the person has a specific issues order in relation to the child under which the person is responsible for the child's long-term or day-to-day care, welfare and development.

(4) An order varied or made under subsection (1) and (2) may, after the death of a party to the proceedings in which the order was so varied or made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(5) Where, before proceedings under this section in relation to an order made under section 162 are completed, either party to the proceedings dies-

(a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the Rules of each Family Division may make provisions in relation to the substitution of the legal personal representative as a party to the proceedings;

(b) if the court is of the opinion-

(i) that it would have exercised its powers under subsection (1) or (2) in relation to the other if the deceased party had not died; and

(ii) that it is still appropriate to exercise its power under subsection (1) or (2) in relation to the order,

the court may vary the order, set the order aside, or set the order aside and make another order under section 162 in substitution for the order so set aside; and

(c) an order varied or made by the court pursuant to paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

(6) In the exercise of its powers under subsection (1), (2) or (5) a court must have regard to the interests of, and must make any order proper for the protection of, a *bona fide* purchaser or other person interested.

(7) In this section, a reference to an order made by a court under section 162 includes reference to an order made by a court under section 86 of the Matrimonial Causes Act before the commencement of this Act.

#### *General powers of court*

**164.**-(1) The court, in exercising its powers under this Part, may do any or all of the following-

- (a) order payment of a lump sum, whether in one amount or by instalments;
- (b) order payment of a weekly, monthly, yearly or other periodic sum;
- (c) order that a specified transfer or settlement of property be made by way of maintenance for a party to a marriage;
- (d) order that payment of any sum ordered to be paid be wholly or partly secured in a manner the court directs;
- (e) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (f) appoint or remove trustees;
- (g) order that payment be made direct to a party to the marriage, to a trustee to be appointed or into court or to a public authority for the benefit of a party to the marriage;
- (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for life or during joint lives or until further order;
- (i) impose terms and conditions;
- (j) make an order by consent;
- (k) make any other order (whether or not of the same nature as those mentioned in the preceding paragraphs) which it thinks it is necessary to make to do justice.

(2) Subject to this Act, an order under this Part may be made at any time before or after the making of an order under another Part.

(3) The making of an order of a kind referred to in subsection (1)(c), or of any other order under this Part, in relation to the maintenance of a party to a marriage does not prevent a court from making a subsequent order in relation to the maintenance of the party.

(4) The Rules of the respective Division may make provision with respect to the making of orders under this Part in relation to the maintenance of parties to a marriage (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

(5) The Rules of the respective Division may make provision with respect to the making of orders under this Part in relation to the maintenance of a parent (whether as to their form or otherwise) for the purpose of facilitating their enforcement and the collection of maintenance payable under them.

#### *Cessation of orders*

**165.**-(1) An order with respect to the maintenance of a party to a marriage ceases to have effect-

(a) upon the death of the party;

(b) upon the death of the person liable to make payments under the order.

(2) An order with respect to the maintenance of a party to a marriage ceases to have effect upon the re-marriage of the party or the party cohabitating with another person in a domestic relationship unless in special circumstances a court which has jurisdiction under this Act otherwise orders.

(3) Where a re-marriage or the cohabitation referred to in subsection (2) takes place, it is the duty of the person for whose benefit the order was made to inform without delay the person liable to make payments under the order of the date of the re-marriage or cohabitation.

(4) Any moneys paid in respect of a period after the event referred to in subsection (2) may be recovered in a court which has jurisdiction under this Act.

(5) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

#### *Native Land*

**166.**-(1) Nothing in this Act allows a court to make an order alienating native land or any legal or equitable interest in it.

(2) If a court is of the opinion that an interest in native land would have influenced or varied an order that the court would have made had it not been for subsection (1), the Court may make such order affecting other property of the parties or either of them as will compensate a party for the effect of subsection (1).

(3) In this section "native land" has the meaning given to it by section 2 of the Native Lands Act, and includes land administered or regulated under the Banaban Lands Act and the Rotuma Land Act.

*Modification of spousal maintenance orders*

**167.**-(1) In proceedings with respect to the maintenance of a party to a marriage, or a parent of a party if there is in force an order (whether made before or after the commencement of this Act) with respect to the maintenance of that party by the other party to the marriage, or of a parent by a person-

(a) made by the court; or

(b) made by another court and registered in the first-mentioned court in accordance with the Rules of the respective Division,

the court may-

(i) discharge the order if there is any just cause for so doing;

(ii) suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;

(iii) revive wholly or in part an order suspended under paragraph (ii);

(iv) subject to subsection (2), vary the order so as to increase or decrease any amount ordered to be paid or in any other manner.

(2) The court must not make an order increasing or decreasing an amount ordered to be paid by an order unless it is satisfied-

(a) that, since the order was made or last varied-

(i) the circumstances of a person for whose benefit the order was made have so changed;

(ii) the circumstances of the person liable to make payments under the order have so changed; or

(iii) in the case of an order that operates in favour of, or is binding on, a legal personal representative - the circumstances of the estate are such,

as to justify its so doing;

(b) that, since the order was made, or last varied, the cost of living has changed to such an extent as to justify its so doing;

(c) in a case where the order was made by consent- that the amount ordered to be paid is not proper or adequate; or

(d) that material facts were withheld from the court that made the order or from a court that varied the order or material evidence previously given before such a court was false.



(3) Subsection (2) does not prevent the court from making an order varying an order made before the date of the commencement of this Act if the first-mentioned order is made for the purpose of giving effect to this Part.

(4) In satisfying itself for the purposes of subsection (2) (b), the court must have regard to any changes that have occurred in the Consumer Price Index.

(5) The court must not, in considering the variation of an order, have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or was last varied having regard to a change in the cost of living.

(6) In satisfying itself for the purposes of subsection (2) (c), the court must have regard to any payments, and any transfer or settlement of property, previously made by a party to the marriage to-

(a) the other party; or

(b) any other person for the benefit of the other party.

(7) An order decreasing the amount of a periodic sum payable under an order or discharging an order may be expressed to be retrospective to such date as the court considers appropriate.

(8) If, as provided by subsection (7), an order decreasing the amount of a periodic sum payable under an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date, being moneys that would not have been required to be paid under the second-mentioned order as varied by the first-mentioned order, may be recovered in a court which has jurisdiction under this Act.

(9) If, as provided by subsection (7), an order discharging an order is expressed to be retrospective to a specified date, any moneys paid under the second-mentioned order since the specified date may be recovered in a court which has jurisdiction under this Act.

(10) For the purpose of this section, the court must have regard to the provisions of section 157 or 162 as the case may be.

(11) The discharge of an order does not affect the recovery of arrears due under the order at the time at which the discharge takes effect.

*Execution of instruments by order of court*

**168.**-(1) If-

(a) an order under this Act has directed a person to execute a deed or instrument; and

(b) the person has refused or neglected to comply with the direction or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection,

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operations to the deed or instrument.

(2) If-

(a) a provision of a maintenance agreement that has been registered under section 171 of approved by a court under section 172 requires a person to execute a deed or instrument; and

(b) the person has refused or neglected to comply with that provisions of the maintenance agreement or, for any other reason, the court considers it necessary to exercise the powers of the court under this subsection,

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person required by that provision of the maintenance agreement to execute the deed or instrument and to do all acts and things necessary to give validity and operation to the deed or instrument.

(3) The execution of a deed or instrument has the same force and validity as if the deed or instrument had been executed by the person directed by an order referred to in subsection (1)(a), or required by a provision of a maintenance agreement referred to in subsection (2)(a), to execute it.

(4) The court may make any order if it considers just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

#### *Transactions to defeat claims*

**169.**-(1) In proceedings under this Act, the court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction of or in the interest of a party, that is made or proposed to be made to defeat an existing or anticipated order in those proceedings or if, irrespective of intention, it is likely to defeat any such order.

(2) The court may order-

(a) that the money or real or personal property dealt with by any such instrument or disposition of the kind referred to in subsection (1) may be taken in execution or charged with the payment of such sums for costs or maintenance as the court directs; or

(b) that the proceeds of a sale are to be paid into court to abide its order.

(3) The court must have regard to the interests of, and must make any order proper for the protection of, a *bona fide* purchaser or other person interested in an instrument or disposition of the kind referred to in subsection (1).

(4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a *bona fide* purchaser or other person interested in and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

(5) In this section, "disposition" includes a sale and a gift.

#### *Ante-nuptial and post-nuptial settlements*

**170.**-(1) The court may, in proceedings under this Act, make such order as the court considers just and equitable with respect to the application, for the benefit of all or any of the parties to, and the children of, the marriage, of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements made in relation to the marriage.

(2) In considering what order (if any) should be made under subsection (1), the court must take into account the matters referred to in section 162 so far as they are relevant.

#### *Registered maintenance agreements*

**171.**-(1) A maintenance agreement other than an agreement to which section 163 applies may be registered, as prescribed by the Rules of the relevant Division, in any court which has jurisdiction under this Act.

(2) Section 91 applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a child of the relevant marriage, as if the agreement were an order made by consent under Part VI by the court in which the agreement is registered.

(3) Section 157 applies in relation to the variation of a maintenance agreement registered under subsection (1), in so far as the agreement makes provision for the maintenance of a party to the relevant marriage, as if the agreement were an order made by consent under this Act by the court in which the agreement is registered.

(4) The court in which a maintenance agreement is registered under subsection (1) may set aside the agreement if, and only if, the court is satisfied that the concurrence of a party was obtained by fraud or undue influence or that the parties desire the agreement to be set aside.

(5) If a marriage agreement has been registered under subsection (1), then -

(a) unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representative of that party; and

(b) if the agreement so provides, a provision in the agreement providing for the payment to person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of the person who is entitled to receive those payments.

(6) Subject to section 165, this section does not apply to **overseas** maintenance agreements.

*Operation of maintenance agreements entered into in substitution for rights under this Part*

**172.**-(1) Subject to this section, a maintenance agreement may make provision to the effect that the agreement operates, in relation to the financial matters dealt with in the agreement, in substitution for any rights of the parties to the agreement under this Part.

(2) If a maintenance agreement makes provision as mentioned in subsection (1), the maintenance agreement has no effect, and is not enforceable in any way, unless it has been approved by the court.

(3) In proceedings for the approval of a maintenance agreement, if the court is satisfied that the provisions of the agreement with respect to financial matters are proper, the court must, by order, approve the agreement, but if the court is not so satisfied, it must, by order, refuse to approve the agreement.

(4) If a maintenance agreement that makes provision as mentioned in subsection (1) is approved by the court-

(a) any order having effect under this Part or any order made under Part XII of the Matrimonial Causes Act and continued in effect by virtue of this Act, ceases to have effect insofar as it relates to the financial matters dealt with in the agreement and, whether or not the approval of the agreement is revoked, has no further effect; and

(b) subject to subsection (5), no court having jurisdiction under this Act may make an order (other than an order under this section or an order in connection with the enforcement of the agreement) with respect to those financial matters unless the approval of the agreement is revoked.

(5) The approval, whether before or after the commencement of this subsection, of a maintenance agreement under this section does not exclude or limit the power of a court which has jurisdiction under Part VI to make any order under that Part in relation to a child of the

relevant marriage and, where the agreement makes provisions for the maintenance of a child of the marriage, section 91 applies in relation to the variation of the agreement, insofar as it makes that provision, as if the agreement were an order made by consent under that Part by a court in which the agreement is registered or deemed to be registered.

(6) Notwithstanding any rule of law or equity, an approved maintenance agreement is not void, voidable or unenforceable by reason that it makes provision as mentioned in subsection (1).

(7) If a court has approved a maintenance agreement, the agreement is deemed to be registered in that court.

(8) An agreement that is by virtue of subsection (7) deemed to be registered in a court may be registered, as prescribed by the Rules of the relevant Division, in another court which has jurisdiction under this Act.

(9) A court may, by order, revoke the approval of a maintenance agreement under this section if, and only if, the agreement is registered or deemed to be registered in that court and the court is satisfied that-

(a) the approval was obtained by fraud;

(b) the parties to the agreement desire the revocation of the approval;

(c) the agreement is void, voidable or unenforceable; or

(d) in the circumstances that have arisen since the agreement was approved it is impracticable for the agreement or a part of it to be carried out.

(10) If the approval of a maintenance agreement under this section is revoked by a court-

(a) the agreement ceases, for all purposes, to be in force; and

(b) the court may, in proceedings for the revocation of the approval or on application by a party to the agreement or any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of the parties to the agreement and any other interested persons,

and, in exercising its powers under paragraph (b), the court must have regard to the ground on which it revoked the approval of the agreement.

(11) Where a maintenance agreement has been approved by a court as provided by this section, then-

(a) unless the agreement otherwise provides, the agreement (other than a provision in the agreement providing for the payment by way of maintenance of a periodic sum) continues to operate notwithstanding the death of a party to the agreement and operates in favour of, and is binding on, the legal personal representatives of that party; and

*(b)* if the agreement so provides, a provision in the agreement providing for the payment to a person by way of maintenance of a periodic sum continues to operate notwithstanding the death of any party to the agreement who is liable to make payments pursuant to that provision and is binding on the legal personal representative of that party but, notwithstanding any provision in the agreement, does not continue to operate after the death of a person who is entitled to receive those payments.

(12) Apart from the provision made by subsections (2), (5), (6), (10) and (11), the validity, enforceability and effect of an approved maintenance agreement must be determined by the court according to the principles of law and equity that are applicable in determining the validity, enforceability and effect of contracts and purported contracts, and, in proceedings of the kind referred to in subparagraph *(g)*(iii) of the definition of "matrimonial causes" in section 2(1), being proceedings instituted in a court in which the approved maintenance agreement is registered or deemed to be registered, the court-

*(a)* subject to paragraph *(b)*, has the same powers, may grant the same remedies and must have the same regard to the rights of third parties as the High Court has, may grant and is required to have in proceedings in connection with contracts or purported contracts, being proceedings in which the High Court has original jurisdiction;

*(b)* has power to make an order for the payment, by a party to the agreement to another party to the agreement, of interest on an amount payable pursuant to the agreement, from the time when the amount became or becomes due and payable, at a rate not exceeding the rate prescribed by the Rules of the respective Division; and

*(c)* in addition to, or instead of, making an order or orders pursuant to paragraph *(a)* or *(b)*, may order that the agreement, or a specified part of the agreement, be enforced as if it were an order of the court.

(13) Where the approval of a maintenance agreement under this section has been revoked, a court must, in considering whether, and is so, how, to exercise any powers under this Part, have regard to-

*(a)* anything done or omitted to be done by a party to the agreement pursuant to the agreement;

*(b)* any change in the circumstances of a party to the agreement arising out of the doing of any act by a person, or the failure of a person to do an act, pursuant to the agreement;

*(c)* any order made by that court or another court exercising jurisdiction under this Act in connection with the agreement while the agreement was in force; and

*(d)* any order made under subsection (10)*(b)* in connection with the revocation of the approval of the agreement.

(14) In this section, "approved maintenance agreement" means a maintenance agreement that has been approved under this section and the approval of which has not been revoked.

(15) Nothing in this Act affects the operation of an agreement sanctioned under section 87(1)(k) of the Maintenance Causes Act before the commencement of this Act, or the rights and obligations of a person under such an agreement.

(16) Subject to section 174, this section does not apply to **overseas** maintenance agreements.

*Enforcement of maintenance agreements*

**173.**-(1) A maintenance agreement that has been registered, or is deemed to have been registered, in a court may be enforced as if it were an order of that court.

(2) Subsection (1) does not apply in relation to a maintenance agreement that has been approved under section 172.

**Overseas** *maintenance agreements*

**174.** The regulations may make provision for and in relation to-

(a) the application of sections 171 and 172, with such additions, exceptions and modifications as are prescribed, to overseas maintenance agreements; and

(b) the transmission to appropriate courts or authorities of prescribed overseas jurisdiction of, or of copies of, maintenance agreements and of agreements for maintenance of ex-nuptial children for the purpose of securing the enforcement of those agreements in those jurisdictions.

*Institution of spousal maintenance proceedings by authorised authority or person*

**175.** The regulations may make provisions for and in relation to the authorising of a prescribed authority of the State, or the person for the time being holding a prescribed office under a law of the Fiji Islands, in the discretion of the authority or person to institute and prosecute proceedings with respect to the maintenance of a party to a marriage, on behalf of that party.

*Certain instruments not liable to stamp duty*

**176.**-(1) The following agreements, deeds and other instruments are not subject to any duty or charge under any law of the Fiji Islands-

(a) a deed or other instrument executed by a person for the purpose of, or in accordance with, an order made under this Part;

(b) a maintenance agreement that confers a benefit upon the party to, or a child of, marriage to which the agreement related, to the extent that the maintenance agreement confers that benefit;

(c) a deed or other instrument executed by a person for the purposes of, or in accordance with, a maintenance agreement, being a deed or other instrument that confers a benefit upon a party to, or a child of, the marriage to which the maintenance agreement related, to the extent that the deed or other instrument confers that benefit.

(2) The following maintenance agreements are relevant maintenance agreements for the purposes of this section-

(a) a registered maintenance agreement made in connection with the dissolution or annulment of the marriage to which the maintenance agreement relates;

(b) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a)) made in contemplation of the dissolution annulment of the marriage to which the maintenance agreement relates;

(c) a registered maintenance agreement (other than a maintenance agreement referred to in paragraph (a) or (b)) made in connection with the breakdown of the marriage to which the maintenance agreement relates;

(d) an approved maintenance agreement made in connection with the dissolution or annulment of the marriage to which the maintenance agreement relates;

(e) an approved maintenance agreement (other than a maintenance agreement referred to in paragraph (d)) made in contemplation of the dissolution annulment of the marriage to which the maintenance agreement relates;

(f) an approved maintenance agreement (other than a maintenance agreement referred to in paragraph (d) or (e)) made in connection with the breakdown of the marriage to which the maintenance agreement relates.

(3) For the purpose of this section, a maintenance agreement, deed or other instrument that confers an entitlement to property on a person may be taken to confer a benefit upon the person notwithstanding that the maintenance agreement, deed or other instrument also deprives the person of an entitlement to other property of an equal or greater value.

(4) In this section-

(a) "approved maintenance agreement" means a maintenance agreement approved by a court by order under section 172;

(b) "registered maintenance agreement" means a maintenance agreement registered in a court under section 171 or a maintenance agreement that is registered in a court under the regulations.

## **PART VIII-INTERVENTION**

### *Intervention by Attorney-General*



**177.**-(1) The Attorney-General may intervene in, and contest or argue any question arising in-

(a) any proceedings under this Act where the court requests the Attorney-General to do so or a matter arises that affects the public interest; or

(b) any proceedings under this Act for or in relation to-

(i) a residence order, a contact order or a specific issues order; or

(ii) an order under section 116.

(2) At any time after a conditional order has been made in any proceedings and before it has become final, the Attorney-General may intervene in the proceedings for the purpose of bringing to the notice of the court matters relevant to the exercise of its power under section 38.

(3) If the Attorney-General intervenes in any proceedings, the Attorney-General is deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

*Intervention by social welfare officer*

**178.**-(1) In any proceedings under this Act that affect, or may affect, the welfare of a child, the court may request the intervention in the proceedings of the Director of Social Welfare.

(2) If the court has, under subsection (1), requested the Director of Social Welfare to intervene in proceedings-

(a) the Director of Social Welfare may intervene in those proceedings; and

(b) if the Director so intervenes, the Director is deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

*Intervention by other persons*

**179.**-(1) In proceedings other than proceedings for principal relief, any person may apply for leave to intervene in the proceedings, and the court may make an order entitling that person to intervene in the proceedings.

(2) In proceedings for principal relief, a person in relation to whom an order has been made under section 138(1) requiring a parentage testing produce to be carried out may apply for leave to intervene in the proceedings, and the court may make an order entitling the person to intervene in the proceedings.

(3) An order under this section may be upon such conditions as the court considers appropriate.

(4) Where a person intervenes in any proceedings by leave of the court the person is, unless the

court otherwise orders, deemed to be a party to the proceedings with all the rights, duties and liabilities of a party.

*Intervention in child abuse cases*

**180.**-(1) In proceedings under this Act in which it has been alleged that a child has been abused or is at risk of being abused, each of the following persons is entitled to intervene-

- (a) a guardian of the child;
- (b) a parent of the child with whom the child lives;
- (c) a person who has a residence order in relation to the child;
- (d) a person who has a specific issues order in relation to the child under the person which the person is responsible for the child's long-term or day-to-day care, welfare and development;
- (e) any other person responsible for the care, welfare or development of the child;
- (f) the Director of Social Welfare;
- (g) a person who is alleged to have abused the child or from whom it is alleged to be at risk of abuse.

(2) If a person intervenes in proceedings pursuant to this section, the person is, unless the court otherwise orders, to be taken to be a party to the proceedings with rights, duties and liabilities of a party.

**PART IX - APPEALS**

*No appeal after final order*

**181.** An appeal does not lie from an order of dissolution of marriage after it has become final.

*Appeals to the Court of Appeal*

**182.**-(1) An appeal lies as of right to the Court of Appeal from an order of the Family Division of the High Court exercising original jurisdiction under this Act or under any other law.

(2) An appeal lies to the Court of Appeal from an order or decision of a judge exercising original jurisdiction under this Act rejecting an application that he or she disqualify himself or herself from further hearing a matter.

(3) An appeal under subsection (1) or (2) must be instituted within the time prescribed by the Rules of the Division or within such further time as is allowed in accordance with the Rules of the Division.

(4) Upon such an appeal, the Court of Appeal may affirm, reverse or vary the order or decision the subject of the appeal and may make such order or decision as, in the opinion of the court, ought to have been made in the first instance, or may, if it considers appropriate, order a re-hearing, on such terms and conditions, if any, as it considers appropriate.

(5) In a appeal the Court of Appeal must have regard to the evidence given in the proceedings out of which the appeal arose and has power to draw inferences of fact and, in its discretion, to receive further evidence upon questions of fact, which evidence may be given by affidavit, by oral examination before the Court of Appeal or a Judge or in such other manner as the Court may direct.

(6) This section is in addition to section 19.

#### *Case stated*

**183.**-(1) If, in proceedings in the Family Division of the High Court, being proceedings in which an order or decision to which section 182(1) or (2) applies could be made, a question of law arises which the judge and at least one of the parties wish to have determined by the Court of Appeal before the proceedings are further dealt with, the judge must state the facts and question in the form of a special case for the opinion of the Court of Appeal, and the Court of Appeal must hear and determine the question.

(2) The Court of Appeal may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the judge and may make any order which the judge could have made.

#### *Appeals from the Family Division of the Magistrates' Court*

**184.**-(1) An appeal under section 19 must be instituted within the time prescribed by the Rules of the Division or within such further time as is allowed in accordance with the Rules of the Division.

(2) The court hearing an appeal under this section may, on the application of a party or of its own motion, refer the appeal to the Court of Appeal.

(3) If an appeal is referred to the Court of Appeal under subsection (2), the Court of Appeal may-

(a) proceed at the discretion of the Court of Appeal by way of a hearing *de novo* or by way of rehearing, but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the Family Division of the Magistrates Court;

(b) order that questions of fact arising in the proceedings be tried by a judge;

(c) determine questions of law arising in the proceedings and remit the appeal to a judge for hearing in accordance with directions given by it; and

(d) make such other orders as it considers appropriate, including an order affirming, reversing or varying the order the subject of the appeal.

(4) This section is in addition to section 19.

## **PART X-PROCEDURE AND EVIDENCE**

### *Procedure*

**185.**-(1) Subject to subsections (2) and (3), to the regulations and to the Rules of the respective Division, all proceedings in a court when exercising jurisdiction under this Act are to be heard in closed court.

(2) The regulations and the Rules of the respective Division may authorise proceeding to be heard by a judge or magistrate sitting in Chambers.

(3) In any proceedings in a Family Division when exercising jurisdiction under this Act, the court may, of its own motion or on the application of a party to the proceedings make one or more of the following orders-

(a) an order that a specified person is not, or specified persons are not, to be present in court during the proceedings or during a specified part of the proceedings;

(b) an order that persons included in a specified class of persons are not to be present in court during the proceedings or during a specified part of the proceedings;

(c) an order that only the parties to the proceedings, their legal representative and such other persons (if any) as are specified by the court may be present in court during the proceedings or during a specified part of the proceedings.

(4) In proceedings under this Act, the court must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted.

### *Evidence of children*

**186.** - (1) In any court exercising jurisdiction under this Act-

(a) no child is permitted in any court room except a child who is a party to the proceedings or who is called to give evidence and then only while the child is giving evidence;

(b) no child may be called as a witness without the leave of the court;

(c) no affidavit of a child may be filed or admitted into evidence without the leave of the court.

(2) In deciding whether to give leave to call a child to give evidence or to file an affidavit of a child, a court must regard the best interests of the child as the paramount consideration.

(3) Evidence of a representation made by a child about a matter that is relevant to the welfare of the child or of another child, which would not otherwise be admissible as evidence because of the law against hearsay, is not inadmissible solely because of the law against hearsay in any proceedings under Part VI.

(4) A court may give such weight (if any) as it thinks fit to evidence admitted pursuant to subsection (3).

(5) In this section -

"child" means a child under 18 years of age;

"representation" includes an expression or implied representation, whether oral or in writing, and a representation inferred from conduct.

#### *Evidence by affidavit*

**187.** The Rules of the Family Division may provide for evidence of any material matter to be given on affidavit at the hearing of-

- (a) proceedings for principal relief that are undefended at the time of hearing; and
- (b) proceedings other than proceedings for principal relief.

#### *Evidence of husbands and wives*

**188.**-(1) The parties to proceedings under this Act are competent and compellable witnesses.

(2) In proceedings under this Act, 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 Act.

#### *Protection of witnesses*

**189.** - (1) The court must forbid the asking of, or excuse a witness from answering, a question that it regards as offensive, scandalous, insulting, abusive or humiliating, unless the court is satisfied that it is essential in the interests of justice that the question be answered.

(2) The court must forbid an examination of a witness that it regards as oppressive, repetitive or

hectoring, or excuse a witness from answering questions asked during such an examination, unless the court is satisfied that it is essential in the interests of justice for the examination to continue or for the questions to be answered.

*Proof of birth, parentage, death or marriage*

**190.**-(1) In proceedings under this Act, the court may receive as evidence if the facts stated in it a document purporting to be either the original or a certified copy of-

(a) a certified, entry or record of a birth, death or marriage alleged to have taken place, whether in the Fiji Islands or elsewhere; or

(b) an entry in a register of parentage information kept under the law of the Fiji Islands or of a prescribed **overseas** jurisdiction.

*Restrictions on the medical and psychological examination of children*

**191.**-(1) Subject to this section, where a child is examined without the leave of the court, the evidence resulting for the examination which relates to the abuse of, or the risk of abuse of, the child is not admissible in proceedings under this Act.

(2) If a person causes a child to be examined for the purpose of deciding-

(a) to bring proceedings under this Act involving an allegation that the child has been abused or is at risk of being abused; or

(b) to make an allegation in proceedings under this Act that the child has been abused or is at risk of being abused,

subsection (1) does not apply in relation to evidence resulting from the first examination which the person caused the child to undergo.

(3) In considering whether to give leave for a child to be examined, the court must have regard to one or more of the following matters-

(a) whether the proposed examination is likely to provide relevant information that is unlikely to be obtained otherwise;

(b) the qualifications of the person who proposes to conduct that examination;

(c) whether any distress likely to be caused to the child by the examination will be outweighed by the value of the information that might be obtained from the examination;

(d) any distress already caused to the child by any previous examination associated with the proceedings or with related proceedings;

(e) any other matter that the court thinks is relevant.

(4) In proceedings under this Act, a court may admit evidence which is otherwise inadmissible under this section if it is satisfied that-

(a) the evidence relates to relevant matters on which the evidence already before the court is inadequate;

(b) the court will not be able to determine the proceedings properly unless the evidence is admitted; and

(c) the welfare of the child concerned is likely to be served by the admission of the evidence.

(5) In this section, "*examined*", in relation to a child, means-

(a) subjected to a medical procedure of clinical examination; or

(b) examined or assessed by a psychiatrist or psychologist (other than a family and child counsellor or welfare officer).

## **PART XI - RECOGNITION OF ORDERS**

### *Orders under this Act*

**192.** An order under this Act has effect throughout the Fiji Islands.

#### **Overseas orders**

**193.**-(1) In this section-

"applicant", in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means-

(a) the party at whose instance the dissolution, annulment or legal separation was effected; or

(b) where the dissolution, annulment or legal separation was effected at the instance of both the parties - each of the parties;

"marriage" includes a purported marriage that is void;

"relevant date", in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means the date of the institution of the proceedings that resulted in the dissolution, annulment or legal separation;

"respondent", in relation to the dissolution or annulment of a marriage or the legal separation of the parties to a marriage, means a party to the marriage, not being a party at whose instance the dissolution, annulment or legal separation was effected.

(2) For the purposes of this section, a person who is a national of a country of which an overseas jurisdiction forms part is deemed to be a national of that overseas jurisdiction.

(3) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, effected in accordance with the law of an overseas jurisdiction will be recognised as valid in the Fiji Islands if-

(a) the respondent was ordinarily resident in the overseas jurisdiction at the relevant date;

(b) the applicant or, in a case referred to in paragraph (b) of the definition of "applicant" in subsection (1), one of the applicants, was ordinarily resident in the overseas jurisdiction at the relevant date and either-

(i) the ordinary residence of the applicant or of that applicant, as the case may be, had continued for not less than one year immediately before the relevant date; or

(ii) the last place of cohabitation of the parties to the marriage was in that jurisdiction;

(c) the applicant or the respondent or, in a case referred to in paragraph (b) of the definition of "applicant" in subsection (1), one of the applicants, was domiciled in the overseas jurisdiction at the relevant date;

(d) the respondent was a national of the overseas jurisdiction at the relevant date;

(e) the applicant or, in a case referred to in paragraph (b) of the definition of "applicant" in subsection (1), one of the applicants, was a national of the overseas jurisdiction at the relevant date and either-

(i) the applicant or that applicant, as the case may be, was ordinarily resident in that jurisdiction at that date; or

(ii) the applicant or that applicant, as the case may be, had been ordinarily resident in that jurisdiction for a continuous period of one year falling, at least in part, within the period of 2 years immediately before the relevant date; or

(f) the applicant or, in a case referred to in paragraph (b) of the definition of "applicant" in subsection (1), one of the applicants, was a national of, and present in, the overseas jurisdiction at the relevant date and the last place of cohabitation of the parties to the marriage was an overseas jurisdiction the law of which, at the relevant date, did not provide for dissolution of marriage, annulment of marriage or the legal separation of the parties to a marriage, as the case may be.

(4) A dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, will not be recognized as valid by virtue of subsection (3) if-

(a) under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice; or

(b) recognition would manifestly be contrary to public policy.



(5) Any dissolution or annulment of a marriage, or any legal separation of the parties to a marriage, that would be recognised as valid under the common law rules of private international law but to which none of the preceding provisions of this section applies will be recognised as valid in Fiji Islands, and the operation of this subsection is not limited by any implication from those provisions.

(6) Notwithstanding anything contained in this section, the annulment in accordance with the law of an overseas jurisdiction of a marriage solemnized under Part V of the Marriage Act, being an annulment on the ground only of non-compliance with the formalities prescribed by the law of the jurisdiction in which the marriage was solemnised, will not be recognised as valid in the Fiji Islands.

(7) For the purpose of this section, a court in the Fiji Islands, in considering the validity of a dissolution or annulment of a marriage, or a legal separation of the parties to a marriage, effected under the law of an overseas jurisdiction-

(a) if the respondent appeared in the proceedings for the dissolution, annulment or separation-

(i) is bound by the findings or fact on the basis of which a court of the overseas jurisdiction assumed jurisdiction to grant the dissolution, annulment or separation; and

(ii) may treat as proved any other facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction;

(b) if the respondent did not appear in the proceedings for the dissolution, annulment or separation - may treat as proved any facts found by a court of the overseas jurisdiction or otherwise established for the purposes of the law of the overseas jurisdiction.

(8) For the purposes of the preceding provisions of this section but without limiting the operation of those provisions, a dissolution or annulment of a marriage, or the legal separation of the parties to a marriage, is deemed to have been effected in accordance with the law of an overseas jurisdiction if it was effected in another overseas jurisdiction in circumstances in which, at the relevant date, it would have been recognized as valid by the law of the first-mentioned overseas jurisdiction.

(9) If a dissolution or annulment of a marriage is recognized as valid in accordance with this section, the capacity of a party to that marriage to re-marry in accordance with the law of the Fiji Islands is not affected by the fact that the validity of the dissolution or annulment is not recognized under the law of some other jurisdiction.

(10) The preceding provisions of this section apply in relation to dissolutions, annulments and legal separations effected whether by an order, legislation or otherwise and whether before or after the commencement of this Act, and, for the purposes of this section, any order, legislation or other process by which it is established that a purported marriage was or is to become void is deemed to be an annulment of the marriage.

## PART XIII - ENFORCEMENT OF ORDERS

### *Enforcement generally*

**194.** (1) Subject to this Part, to the regulations and to the Rules of the respective Family Division, all orders made under this Act may be enforced by any court having jurisdiction under this Act.

(2) Except as prescribed, a court must not entertain a proceeding under this Act for the enforcement of an order made by another court unless the order is registered in the first-mentioned court in accordance with the Rules of the respective Division.

(3) If a person bound by an order made under this Act has died, the order may, by leave of -

(a) the court by which it was made; or

(b) any court in which the order has been registered in accordance with the Rules of the respective Division (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*

**195.** The Rules of each Family Division may make provision for and in relation to the enforcement of orders made under this Act, including, in the case of a maintenance order under Part VII, provision for an officer of a court exercising jurisdiction under this Act or an authority or person specified in the Rules -

(a) in his or her 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;

(b) to enforce maintenance orders.

### *Contempt*

**196.** (1) A court which has jurisdiction under this Act may punish persons for contempt in the face of the court when exercising that jurisdiction or for wilful disobedience of any order made by the court in the exercise of jurisdiction under this Act.

(2) The Rules of each Family Division may provide for practice and procedure as to charging with contempt and the hearing of the charge.

(3) Where a person in contempt is not a corporation, the court may punish the contempt by committal to prison or fine or both.

(4) Where a corporation is in contempt, the court may punish the contempt by sequestration or fine or both.

(5) An order under this section may include an order for -

(a) punishment on terms;

(b) suspension of punishment; or

(c) the giving of security for good behaviour.

**Overseas** *enforcement of maintenance orders etc.*

**197.** (1) In this section -

"jurisdiction with restricted reciprocity" means a country, or part of a country, outside the Fiji Islands declared by the regulations to be a jurisdiction with restricted reciprocity for the purposes of this section;

"maintenance order" means -

(a) an order or determination (however described) with respect to the maintenance of a party to a marriage;

(b) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, other than an order or determination of the kind referred to in paragraph (c);

(c) an order or determination (however described) with respect to the maintenance of a child who has not attained the age of 18 years, being an order or determination that is expressed to continue in force until a day that is later than, or for a period that extends beyond, the day on which the child will attain that age, if the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is mentally or physically handicapped;

(d) an order or determination (however described) with respect to the maintenance of a child who has attained the age of 18 years, being an order or determination that is expressed to continue in force until a day, or for a period, specified in the order or determination, if the provision of maintenance for the child is necessary to enable the child to complete a course of study, vocational training or an apprenticeship or to continue his or her education in any other way, or because the child is mentally or physically handicapped; and

(e) to the extent prescribed by the regulations, an order made under section 102, or an order or determination (however described) that deals with matters of a kind in relation to which orders may be made under that section;

"reciprocating jurisdiction" means a country, or part of a country, outside the Fiji Islands declared by the regulations to be a reciprocating jurisdiction for the purposes of this section.

(2) The regulations may make provision for and in relation to -

(a) the registration in, and enforcement by, courts which have jurisdiction under this Act of maintenance orders made by courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity;

(b) the institution and prosecution, by an officer of a court which has jurisdiction under this Act, or by a prescribed authority of another country or a part of another country, or by a person for the time being holding a prescribed office under a law, in his, her or its discretion, of proceedings -

(i) on behalf of the person entitled to moneys payable under a maintenance order made by a court or authority of a reciprocating jurisdiction or of a jurisdiction with restricted reciprocity, for the enforcement by a court which has jurisdiction under this Act of that maintenance order; or

(ii) for the making of orders confirming provisional orders made by courts of reciprocating jurisdictions or of jurisdictions with restricted reciprocity, being provisional orders referred to in paragraph (e);

(c) the institution and prosecution, by an authority entitled to moneys payable under a maintenance order, in the authority's discretion, of proceedings for the enforcement of that maintenance order by a court having jurisdiction under this Act;

(d) the transmission to appropriate courts or authorities of reciprocating jurisdictions or of jurisdictions with restricted reciprocity of maintenance orders made by courts which have jurisdiction under this Act for the purpose of securing the enforcement of those orders in those jurisdictions;

(e) the making of provisional maintenance orders, and the transmission of such orders to appropriate courts of reciprocating jurisdictions or jurisdictions with restricted reciprocity, for the purposes of obtaining the confirmation, and securing the enforcement, of those orders in those jurisdictions, and the effect in the Fiji Islands of those orders;

(f) the making of orders (including provisional orders) for the variation, discharge, suspension or revival of maintenance orders registered in accordance with regulations under this section or of maintenance orders or provisional maintenance orders transmitted to other jurisdictions in accordance with regulations under this section, and the effect in the Fiji Islands of orders under this paragraph;

(g) the making of orders confirming provisional orders made by courts in reciprocating jurisdictions or in jurisdictions with restricted reciprocity, being provisional maintenance orders or provisional orders varying, discharging, suspending or reviving maintenance orders, and the effect in the Fiji Islands of orders under this paragraph; and

(h) the making of orders for giving effect to process certified or approved by a court in the United States of America or in a non-reciprocal jurisdiction, being process relating to the provision of maintenance, and the effect in the Fiji Islands of orders under this paragraph.

(3) The regulations may make different provision under this section in relation to reciprocating jurisdictions from the provision made in relation to jurisdictions with restricted reciprocity.

*Convention on Recovery Abroad of Maintenance*

**198.** The regulations may make such provision as is necessary to enable the performance of the obligations of the State, or to obtain for any advantage or benefit, under the Convention on the Recovery Abroad of Maintenance signed at New York on 20th June 1956, but any such regulations must not come into operation until the day on which that Convention enters into force for the Fiji Islands.

*Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*

**199.** The regulations may make such provision as is necessary to enable the performance of the obligations of the State, or to obtain for the State any advantage or benefit, under the Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations signed at The Hague on 2nd October 1973.

*Convention on the Civil Aspects of **International** Child Abduction*

**200.** (1) The regulations may make such provision as is necessary to enable the performance of the obligations of the State, or to obtain for the State any advantage or benefit, under the Convention on the Civil Aspects of **International** Child Abduction signed at The Hague on 25 October 1980 (the Convention) but any such regulations must not come into operation until the day on which that Convention enters into force for the Fiji Islands.

(2) For the purposes of the Convention -

(a) each of the parents of a child is, subject to any order of a court for the time being in force, to be regarded as having custody of the child;

(b) a person who has a residence order in relation to a child is to be regarded as having custody of the child;

(c) a person who, under a specific issues order, is responsible for the day-to-day care, welfare and development of a child is to be regarded as having custody of the child; and

(d) a person who has a contact order in relation to a child is to be regarded as having a right of access to the child.

(3) It is hereby declared that -

(a) a parent or guardian of a child can no longer be stated to have custody of the child; and

(b) a court can no longer make an order under this Act expressed in terms of granting a person custody of, or access to, a child.

(4) Expressions used in this section have the same meaning as they have in Part VI.

### **PART XIII - DECLARATIONS AND INJUNCTIONS**

#### *Proceedings for declarations*

**201.** In proceedings of the kind referred to in paragraph (b) of the definition of matrimonial cause in section 2(1), the court may make such declaration as is justified.

#### *Power to grant injunctions*

**202.** (1) In proceedings of the kind referred to in paragraph (f) of the definition of matrimonial cause in section 2(1), the court may make such order or grant such injunction as it considers proper with respect to the matter to which the proceedings relate, including -

- (a) an injunction for the personal protection of a party to the marriage;
- (b) an injunction restraining a party to the marriage from entering or remaining in the matrimonial home or the premises in which the other party to the marriage resides, or restraining a party to the marriage from entering or remaining in a specified area, being an area in which the matrimonial home is, or the premises in which the other party to the marriage resides are, situated;
- (c) an injunction restraining a party to the marriage from entering the place of work of the other party to the marriage;
- (d) an injunction for the protection of the marital relationship;
- (e) an injunction in relation to the property of a party to the marriage; or
- (f) an injunction relating to the use or occupancy of the matrimonial home.

(2) In exercising its powers under subsection (1), the court may make an order relieving a party to a marriage from any obligation to perform marital services or render conjugal rights.

(3) A court exercising jurisdiction under this Act in proceedings other than proceedings to which subsection (1) applies may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of an order), in any case in which it appears to the court to be just or convenient to do so and either unconditionally or upon such terms and conditions as the court considers appropriate.

#### *Powers of arrest*

**203.** (1) If -

- (a) an injunction is in force under section 202 for the personal protection of a person; and
- (b) a police officer believes, on reasonable grounds, that the person against whom the injunction is directed (in this section called the "respondent") has, since the injunction was granted, breached the injunction by causing, or threatening to cause, bodily harm to the person referred to in paragraph (a),

the police officer may arrest the respondent without warrant.

(2) If a police officer arrests a person pursuant to subsection (1)

(a) the police officer must -

- (i) ensure that the person is brought before the court that granted the injunction, or another court having jurisdiction under this Act, before the expiration of the relevant period; and
  - (ii) take all reasonable steps to ensure that, before the person is so brought before a court, the person on whose application the injunction under section 202 was granted is aware that the first-mentioned person has been arrested and of the court before which the person is to be brought; and
- (b) the person must not be released before the expiration of the relevant period except pursuant to an order of the court that granted the injunction or another court having jurisdiction under this Act,

but nothing in this subsection authorises the keeping of the person in custody after the expiration of the relevant period.

(3) If a person is brought before a court in accordance with subsection (2), the court must -

- (a) if there is an application before the court for the person to be dealt with for breach of the injunction forthwith proceed to hear and determine that application; or
- (b) if there is no application before the court as mentioned in paragraph (a) order that the person be released forthwith.

(4) If -

- (a) a person is brought before a court in accordance with subsection (2);
- (b) the court proceeds to hear and determine an application for the person to be dealt with for breach of an injunction as mentioned in paragraph (3)(a); and
- (c) at the expiration of the relevant period the proceedings have not been determined,

the person may be kept in custody after the expiration of the relevant period until -

- (d) the court gives its decision on the proceedings;
- (e) the court orders that the person be released; or
- (f) the court adjourns the hearing for a period of more than 72 hours,

whichever happens first.

(5) In this section -

"relevant period", in relation to the arrest of a person, means -

(a) if a Sunday or public holiday commences within 72 hours after the time when the person is arrested the period commencing at the time when the person is arrested and ending 48 hours later;

(b) in a case to which paragraph (a) does not apply the period commencing at the time when the person is arrested and ending 48 hours later.

## **PART XIV - MISCELLANEOUS**

### *Family Law Council*

**204.** (1) The Attorney-General may establish a Family Law Council consisting of persons appointed by the Attorney-General in accordance with subsection (2).

(2) The Council consists of a judge of the Family Division of the High Court and magistrates, officers of the Public Service or representatives of organisations that provide pre-marriage education, family and child counselling and other persons as the Attorney-General thinks fit.

(3) It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning

-

(a) the working of this Act and other legislation relating to family law;

(b) the working of legal aid in relation to family law; and

(c) any other matters relating to family law.

(4) The Attorney-General must appoint one of its members to be Chairperson of the Council.

(5) Subject to this section, a member of the Council holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(6) A member (including the Chairperson) may resign by writing to the Attorney-General.



(7) The Attorney-General may terminate the appointment of a member because of the misbehaviour, or physical or mental incapacity, of the member.

(8) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Attorney-General must terminate the appointment of that member.

(9) Meetings of the Council must be convened by the Chairperson or by the Attorney-General.

(10) The Council must cause records to be kept of its meetings.

(11) The Council must, as soon as practicable after 31st December in each year, but in any case before 30th April in the next year, prepare and furnish to the Attorney-General a report of the operations of the Council during the year that ended on 31st December of the previous year.

(12) The Attorney-General must cause a copy of a report furnished under subsection (11) to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Attorney-General.

#### *Costs*

**205.** (1) Subject to subsection (2) and section 207, each party to proceedings under this Act bears his or her own costs.

(2) If, in proceedings under this Act, the court is of opinion that there are circumstances that justify it in doing so, the court may, subject to subsection (3) and the Rules of the respective Division, make such order as to costs and security for costs, whether by way of interlocutory order or otherwise, as the court considers just.

(3) In considering what order (if any) should be made under subsection (2), the court must have regard to -

(a) the financial circumstances of each of the parties to the proceedings;

(b) whether any party to the proceedings is in receipt of assistance by way of legal aid and, if so, the terms of the grant of that assistance to that party;

(c) the conduct of the parties to the proceedings in relation to the proceedings including, without limiting the foregoing, the conduct of the parties in relation to pleadings, particulars, discovery, inspection, directions to answer questions, admissions of facts, production of documents and similar matters;

(d) whether the proceedings were necessitated by the failure of a party to the proceedings to comply with previous orders of the court;

(e) whether any party to the proceedings has been wholly unsuccessful in the proceedings;

(f) whether either party to the proceedings has made an offer in writing to the other party to the proceedings to settle the proceedings and the terms of any such offer; and

(g) such other matters as the court considers relevant.

*Interest on moneys ordered to be paid*

**206.** (1) Subject to any order made by the court under subsection (2), if, in proceedings under this Act, a court makes an order for the payment of money (other than an order for the payment by way of maintenance of a periodic sum), interest is payable, at the rate prescribed by the Rules of the Division, from -

(a) the date on which the order is made; or

(b) the date on which the order takes effect,

whichever is later, on so much of the money as is from time to time unpaid.

(2) A court that makes an order for the payment of money as mentioned in subsection (1) may order that interest is not payable on the money payable under the first-mentioned order or may order -

(a) that interest is payable at a rate specified in the order, being a rate other than the rate prescribed by the Rules of that respective Division; or

(b) that interest is payable from a date specified in the order, being a date other than the date from which the interest would be payable under subsection (1).

*Frivolous or vexatious proceedings*

**207.** (1) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious -

(a) dismiss the proceedings;

(b) make such order as to costs as the court considers just; and

(c) if the court considers appropriate, on the application of a party to the proceedings or of its over motion - order that the person who instituted the proceedings must not, without leave of a court having jurisdiction under this Act, institute proceedings under this Act of the kind or kinds specified in the order,

and an order made by a court under paragraph (c) has effect notwithstanding any other provision of this Act.

(2) A court may discharge or vary an order made by it under subsection (1) (c).

*Married persons may sue each other*

**208.** Either party to a marriage may bring proceedings in contract or in tort against the other party.

*Criminal conversation, adultery, enticement and breach of promise*

**209.** After the commencement of this Act, no action lies for criminal conversation, damages for adultery, or for enticement of a party to a marriage or for damages for breach of promise to marry.

*Restriction on publication of court proceedings*

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

- (a) a party to the proceedings;
- (b) a person who is related to, or associated with, a party to the proceedings or who is, or is alleged to be, in any other way concerned in the matter to which this matter relates; or
- (c) a witness in the proceedings,

commits an offence and is liable upon conviction to imprisonment for one year and a fine of \$10,000.

(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; or

(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 requires,

(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 requires.

(3) A reference in subsection (1) to proceedings is to be construed as including a reference to proceedings commenced before the commencement of this section.

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

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

(6) The preceding provisions of this section do not apply to or in relation to -

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

(b) the communication of any pleading, transcript of evidence or other document to-

(i) a body that is responsible for disciplining members of the legal profession in the Fiji Islands; or

(ii) persons concerned in disciplinary proceedings against a member of the legal profession in the Fiji Islands, being proceedings before a body that is responsible for disciplining members of the legal profession in the Fiji Islands;

(c) the communication, to a body that grants assistance by way of legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether assistance by way of legal aid should be granted, continued or provided in a particular case;

(d) the publishing of a notice or report in pursuance of the direction of a court;

(e) the publishing of any publication *bona fide* intended primarily for use by the 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

(f) the publication or other dissemination of an account of 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 student, in connection with the studies of that person.

(7) Rules of a Family Division made for the purposes of subsection (2) may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

#### *Powers of entry and search for purpose of arresting persons*

**211.** (1) If -

- (a) a person (in this subsection called the *authorised person*) is, by a provision of this Act, or by a warrant issued under a provision of this Act, authorised to arrest another person; and
- (b) the authorised person reasonably believes that the other person is in or on a particular searchable place,

the authorised person may, with warrant, enter and search the searchable place.

(2) A person who is entitled to enter and search a vehicle, vessel or aircraft under subsection (1) may, for the purposes of effecting the entry and search, stop and detain the vehicle, vessel or aircraft.

(3) In exercising powers under this section, a person may use such force and assistance as is necessary and reasonable to enable the exercise of the powers.

(4) In this section "*searchable place*" means-

- (a) premises or a place; or
- (b) a vehicle, vessel or aircraft.

#### *Rules of the Family Division*

**212.** (1) The Chief Justice may make Rules of the Family Division of the High Court and of the Magistrates Court not inconsistent with this Act, providing for or in relation to the practice and procedure to be followed in the Family Divisions 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 in those Divisions and, in particular -

- (a) providing for and in relation to the attendance of witnesses;

- (b) providing for and in relation to the manner of service of process of each Family Division and for and in relation to dispensing with such service;
- (c) providing for and in relation to trial management;
- (d) providing for and in relation to the time and manner of institution of appeals in and to each Family Division and the Court of Appeal;
- (e) prescribing the duties of officers of each Family Division;
- (f) prescribing the seals and stamps to be used in each Family Division;
- (g) prescribing matters relating to the costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs;
- (h) authorising a court to refer to an officer of the court for report and recommendation claims or applications for or relating to any matters before the court;
- (i) obtaining and receiving in evidence a report from a family and child counsellor or welfare officer;
- (j) regulating the procedure of a court upon receiving a report of an officer referred to in paragraph (h);
- (k) providing for and in relation to the procedure of a court exercising its powers to deal with a person for contempt of court;
- (l) providing for and in relation to the making of applications for dissolution of marriage jointly by both parties to the marriage;
- (m) providing for and in relation to the appointment, by the Attorney-General, of a guardian *ad litem* for a party to proceedings under this Act;
- (n) providing for and in relation to the enforcement and execution of the orders of each Family Division;
- (o) providing for and in relation to -
  - (i) the forfeiture of bonds entered into in pursuance of requirements made under this Act; and
  - (ii) the recovery of any money that may be due to the State under such bonds or from any person who has become a surety under this Act;
- (p) providing for and in relation to -
  - (i) the attendance, by parties to proceedings under this Act, at conferences conducted by family and child counsellors or welfare officers; and
  - (ii) the use by courts exercising jurisdiction under this Act, and by officers of such courts, for the purposes of such proceedings, of reports prepared by family and child counsellors or welfare officers pursuant to Rules made under paragraph (i), being reports relating to the future conduct of the proceedings;
- (q) providing for and in relation to conciliation conferences;
- (r) prescribing matters incidental to the matters specified in the preceding paragraphs; and
- (s) prescribing penalties not exceeding \$5,000 for offences against the Rules.

(2) Before making Rules under subsection (1) for the Family Division of the Magistrates' Court the Chief Justice must consult the Chief Magistrate.

*Regulations may prescribe certain matters*

**213.** (1) The Attorney-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular -

(a) providing for and in relation to the service **overseas**, pursuant to any convention between the Fiji Islands and another country, of any documents in proceedings under this Act;

(b) providing for and in relation to the transcription of proceedings under this Act and the making available of copies of transcripts of those proceedings;

(c) prescribing fees to be payable in respect of the use of the counselling facilities of each Family Division;

(d) exempting persons included in particular classes of persons from liability to pay court fees prescribed under paragraph (c);

(e) providing for the refund of court fees prescribed under paragraph (c) that have been paid in particular circumstances; and

(f) providing for an officer of a court exercising jurisdiction under this Act, a prescribed authority or the person for the time being holding a prescribed office under a law, in his, her or its discretion, to institute and prosecute proceedings, on behalf of the person entitled to moneys payable under a child maintenance order under Part VI or a maintenance order under Part VII, for the purpose of enforcing payment of those moneys.

(g) prescribing penalties not exceeding \$5,000 for offences against the Regulations.

*Repeal and savings*

**214.** (1) The Acts or Parts of the Acts set out in the Schedule are repealed.

(2) Despite the repeal effected by subsection (1) a decree or order of the High Court or of a Magistrates Court or of the District Officers Court of Rotuma in the exercise of jurisdiction invested or conferred by the repealed Acts or the repealed Parts of any Act set out in the First Schedule and in force before the commencement of this Act or the Part of this Act continue in full force and effect and except in the case of -

(i) a decree of nullity of marriage made on the ground that the marriage was voidable;

(ii) a decree of judicial separation;

(iii) a decree of jactitation of marriage;

(iv) a separation order made under section 4(a) of the Maintenance and Affiliation Act.

(3) This Act applies to and in relation to an order made under any of the repealed Acts as if the order was an order made under this Act.

(4) This section is in addition to section 4.

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**SCHEDULE**  
*(Section 214(1))*

**REPEALED ACTS**

Matrimonial Causes Act (Cap. 51)

Maintenance and Affiliation Act (Cap. 52)

Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act (Cap. 53)

Maintenance Orders (Facilities for Enforcement) Act (Cap. 54)

Maintenance Orders (Reciprocal Enforcement) Act (Cap. 55)

Passed by the House of Representatives this 14th day of October 2003.

Passed by the Senate this 24th day of October 2003.