

REGISTRATION OF SEX OFFENDERS BILL 2018
(BILL NO. 34 OF 2018)

CLAUSES

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objective
4. Act to bind the State
5. Offenders to whom this Act applies

PART 2—REGISTER OF SEX OFFENDERS

Division 1—Establishment and administration of register

6. Establishment of register
7. Administration of register

Division 2—Reporting obligations

8. Explanation and notices to be given when sex offender sentenced
9. Notice to be given when sex offender ceases to be in custody
10. Notice to be given to corresponding sex offender who enters Fiji
11. Notice may be given by the Commissioner or an authorised person
12. Relevant personal information to be reported
13. When initial report must be made
14. Requirement to report changes to relevant personal information
15. Requirement to make periodic reports
16. Travel plans to be reported
17. Change of travel plans while away from home or out of Fiji to be given
18. Requirement to report return to Fiji or decision not to leave

Division 3—Reporting at police station or approved place

19. Sex offender must report at police station or approved place
20. Rights of sex offender to privacy and support when reporting
21. Reporting by remote sex offender

Division 4—Fingerprints, finger scans and photographs

22. Power to take fingerprints or finger scans
23. Power to take photographs
24. Authorised person must inform sex offender before exercising power

Division 5—Offences relating to reporting obligations

- 25. Offence of failing to comply with reporting obligations
- 26. Offence of providing false or misleading information

PART 3—ACCESS TO REGISTER AND INFORMATION SHARING

- 27. Access to register to be restricted
- 28. Information sharing between specified agencies in interest of public safety
- 29. Confidentiality
- 30. Rights of sex offender in relation to register

PART 4—MISCELLANEOUS

- 31. Exclusion of sex offenders from child-related employment
- 32. Exclusion from liability
- 33. Act to prevail
- 34. Regulations
- 35. Transition

BILL NO. 34 OF 2018**A BILL**

FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A REGISTER OF SEX OFFENDERS, THE REGISTRATION AND REPORTING OBLIGATIONS OF SEX OFFENDERS AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.**—(1) This Act may be cited as the Registration of Sex Offenders Act 2018.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

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

“authorised person” means a person appointed by the Commissioner under section 7(3);

“child” means an individual who has not reached the age of 18 years;

“child-related employment” means employment involving contact with a child in connection with—

- (a) child protection services;
- (b) educational institutions;
- (c) community centres, remand centres, youth residential centres, youth supervision units or youth justice centres;
- (d) refuges or other residential facilities used by children;
- (e) paediatric or maternity wards of hospitals;
- (f) clubs, associations or movements, including of a cultural, recreational or sporting nature, that provide services or conduct activities for, or directed at, children or whose membership mainly comprises children;
- (g) religious organisations;
- (h) child minding services;
- (i) providing, on a publicly-funded or commercial basis, a transport service specifically for children;
- (j) coaching or private tuition services for children;
- (k) counselling or other support services for children;
- (l) overnight camps for children regardless of the type of accommodation or of the number of children involved;
- (m) school crossing services, being services provided by people employed to assist children to cross roads on their way to or from school;
- (n) providing, on a commercial basis and not merely incidental to or in support of other business activities—
 - (i) an entertainment or party service specifically for children;
 - (ii) gym or play facilities specifically for children; or
 - (iii) photography services specifically for children; or
- (o) talent competitions or pageants held for children on a commercial basis and not merely incidental to or in support of other business activities;

“Commissioner” means the Commissioner of Police;

“Commissioner of Corrections” means the Commissioner of the Fiji Corrections Service;

“corresponding law” means a law of a foreign jurisdiction that—

- (a) provides for a person who has been convicted by a court of law for an offence to report in that jurisdiction information about himself or herself and to keep that information current for a specified period; or
- (b) is prescribed by regulations as a corresponding law;

“corresponding offence” means an offence under the laws of a foreign jurisdiction that is the same or substantially similar to a sexual offence;

“corresponding sex offender” means a person who has been convicted of a corresponding offence in a foreign jurisdiction;

“employment” has the meaning given in section 4 of the Employment Relations Act 2007;

“immigration officer” has the meaning given in section 2(1) of the Immigration Act 2003;

“initial report” means the first report made, or required to be made, by a sex offender under section 13;

“juvenile” has the meaning given in section 2 of the Juveniles Act 1973;

“Minister” means the Minister responsible for justice;

“police station” includes a community police post;

“register” means the Register of Sex Offenders established under section 6;

“relevant personal information” means the information specified in section 12(1);

“remote sex offender” means a sex offender who resides—

- (a) more than 100 kilometres from the nearest police station;
- (b) on an island where there is no police station; or
- (c) in an area where transportation from the area to the nearest police station is reasonably likely to be a challenge;

“reporting obligation” means a reporting obligation under this Act or any regulations made under this Act;

“reporting period” means the period prescribed by regulations;

“representative” means—

- (a) in the case of a child, the parent or legal guardian of the child;
- (b) in the case of a person who has a mental disorder, mental illness or who is of unsound mind, the legally appointed representative of the person; and

- (c) in the case of a person who has a physical disability or illness that hinders the making of his or her report on their own, the legally appointed representative of the person;

“sex offender” has the meaning given in section 5;

“sexual offence” means, except for section 213, an offence under Part 12B of the Crimes Act 2009;

“signature” includes an e-mail signature or other form of electronic signature;

“specified agency” means—

- (a) the Fiji Police Force;
- (b) the Fiji Corrections Service;
- (c) the Office of the Director of Public Prosecutions;
- (d) the Fiji Revenue and Customs Service;
- (e) the ministry responsible for justice;
- (f) the ministry responsible for education;
- (g) the ministry responsible for children;
- (h) the ministry responsible for defence and national security;
- (i) the ministry responsible for health and medical services;
- (j) the department responsible for immigration;
- (k) the department responsible for social welfare; or
- (l) any public agency that the Minister declares as a specified agency by notice in the Gazette; and

“welfare officer” has the meaning given in section 2 of the Juveniles Act 1973.

Objective

3. The objective of this Act is to establish a register containing information on sex offenders to enable specified agencies to monitor sex offenders and to assist in reducing the risk posed by sex offenders and the rate of sexual offences in Fiji, by providing—

- (a) specified agencies with the information needed to monitor sex offenders in the community, including after the completion of their sentences; and
- (b) current information that may assist the Fiji Police Force to rapidly resolve cases of sexual offences.

Act to bind the State

4. This Act binds the State.

Offenders to whom this Act applies

5.—(1) A sex offender is a person who—

- (a) has been convicted of a sexual offence; or
- (b) is a corresponding sex offender who resides in Fiji or enters Fiji with the intention to reside in Fiji.

(2) A person ceases to be a sex offender if the conviction in respect of the sexual offence or corresponding offence that qualifies the person as a sex offender is quashed or set aside by a court of law.

PART 2—REGISTER OF SEX OFFENDERS

Division 1—Establishment and administration of register

Establishment of register

6.—(1) The Commissioner must establish a register of sex offenders to be known as the Register of Sex Offenders.

(2) The register must contain, to the extent that it is known to the Commissioner, the following information in relation to each sex offender—

- (a) the name and photograph of the sex offender, and other identifying particulars;
- (b) details of each sexual offence or corresponding offence of which the sex offender has been convicted;
- (c) the date on which the sex offender was charged for any sexual offence or corresponding offence;
- (d) the date on which the sex offender was convicted for any sexual offence or corresponding offence;
- (e) the date on which the sex offender was sentenced for any sexual offence or corresponding offence;
- (f) for each sexual offence or corresponding offence of which the sex offender was convicted, the sentencing notes of the sentencing judge or magistrate;
- (g) the date on which the sex offender ceased to be in custody in respect of a sexual offence or corresponding offence, or ceased to be in custody in respect of any offence during his or her reporting period;
- (h) the corresponding criminal case number and investigation file number relevant to the charge, conviction and sentence;
- (i) any information reported in respect of the sex offender under Division 2 or 3;

- (j) any information provided to the Commissioner in respect of the sex offender under Division 2 or 3; and
- (k) any other information as prescribed by regulations.

(3) For the avoidance of doubt, the register must not contain information in relation to a person who ceases to be a sex offender under section 5(2).

Administration of register

7.—(1) The Commissioner is responsible for the administration of the register.

(2) The Commissioner must, before making any significant operational decision on the way in which the register is administered, consult the Commissioner of Corrections.

(3) The Commissioner may appoint authorised persons from the—

- (a) Fiji Police Force; and
- (b) Fiji Corrections Service, as nominated by the Commissioner of Corrections,

to administer the register.

Division 2—Reporting obligations

Explanation and notices to be given when sex offender sentenced

8.—(1) This section applies when a court of law imposes a sentence for a sexual offence.

(2) The sentencing judge or magistrate must, at the time of sentencing, explain to the offender that the offender is a sex offender under this Act.

(3) A registrar of the sentencing court of law must, as soon as practicable after a sex offender is sentenced—

- (a) give written notice to the sex offender of the—
 - (i) reporting obligations of the sex offender; and
 - (ii) penalties for failing to comply with those reporting obligations; and
- (b) give written notice of that fact to the—
 - (i) Commissioner; and
 - (ii) Commissioner of Corrections.

(4) Failure to give the explanation required under subsection (2) does not affect the validity of the sentence or the sex offender's reporting obligations.

Notice to be given when sex offender ceases to be in custody

9. As soon as practicable before or after a sex offender who has been in custody ceases to be in custody, whether in respect of a sexual offence or otherwise, the Commissioner of Corrections or an authorised person appointed under section 7(3)(b), or, if the sex offender is a juvenile, the Director of Social Welfare or a welfare officer must give written notice to the sex offender of the—

- (a) reporting obligations of the sex offender; and

- (b) penalties for failing to comply with those reporting obligations.

Notice to be given to corresponding sex offender who enters Fiji

10.—(1) The Director of Immigration must implement measures to ascertain whether a person entering Fiji is a corresponding sex offender.

(2) The Director of Immigration or an immigration officer must, as soon as practicable after becoming aware that a corresponding sex offender has entered Fiji—

- (a) give written notice to the corresponding sex offender of the—
 - (i) reporting obligations of the corresponding sex offender; and
 - (ii) penalties for failing to comply with those reporting obligations; and
- (b) give written notice of that fact to the Commissioner.

Notice may be given by the Commissioner or an authorised person

11. The Commissioner or an authorised person appointed under section 7(3)(a) may, if the Commissioner or the authorised person suspects that a sex offender may not have received notice under section 8, 9 or 10, or may otherwise be unaware, of the sex offender's reporting obligations, cause written notice to be given to the sex offender of the—

- (a) reporting obligations of the sex offender; and
- (b) penalties for failing to comply with those reporting obligations.

Relevant personal information to be reported

12.—(1) For the purposes of this Act, the relevant personal information to be reported by a sex offender consists of the following information—

- (a) his or her name, together with any other name by which the sex offender is, or has previously been, known;
- (b) in respect of each name other than his or her current name, the period during which the sex offender was known by that other name;
- (c) his or her sex;
- (d) his or her date of birth;
- (e) the address of each of the premises at which the sex offender generally resides or, if the sex offender does not generally reside at any particular premises, the name of each of the localities in which the sex offender can generally be found;
- (f) the name, sex and date of birth of each person who generally resides in the same household as that in which the sex offender generally resides;

- (g) in respect of each child who generally resides in the same household as that in which the sex offender generally resides, the name of the principal caregiver of the child;
- (h) his or her postal address;
- (i) if the sex offender is working—
 - (i) the nature of the work;
 - (ii) the name of his or her employer, if applicable; and
 - (iii) the address of each of the premises at which the sex offender generally works or, if the sex offender does not generally work at any particular premises, the name of each of the localities at which the sex offender generally works;
- (j) details of his or her affiliation with any club or organisation that has a child membership or child participation in its activities, including any online club or organisation;
- (k) the make, model, colour and registration number of any motor vehicle owned by, or generally driven by, the sex offender;
- (l) details of any tattoo, scar or permanent distinguishing mark that the sex offender has, including details of any tattoo or permanent distinguishing mark that has been removed;
- (m) if, at the time of making an initial report, the sex offender has one or more valid passports, the passport number, place of issue and date of expiry of each passport;
- (n) details of any telecommunications service used, or intended to be used, by the sex offender, including—
 - (i) the name of any landline or mobile telephone service provider used, or intended to be used, by the sex offender; and
 - (ii) any phone number used, or intended to be used, by the sex offender;
- (o) the name of any Internet service provider and the details of any routing or modem device used, or intended to be used, by the sex offender;
- (p) details of any username for any online social network, online gaming account, or online storage account used, or intended to be used, by the sex offender;
- (q) details of any website domain owned or website administered, or intended to be owned or administered, by the sex offender;
- (r) details of any e-mail address used, or intended to be used, by the sex offender; and
- (s) any other information as prescribed by regulations.

(2) For the purposes of this section—

- (a) a sex offender generally resides at any particular premises if the sex offender resides at that premises for at least 14 days, whether consecutive or not, in any period of 12 months;
- (b) a child generally resides in the same household as a sex offender if they reside together in that household for at least 14 days, whether consecutive or not, in any period of 12 months;
- (c) a sex offender generally works at any particular premises if the sex offender works at that premises for at least 14 days, whether consecutive or not, in any period of 12 months; and
- (d) a sex offender generally drives a particular motor vehicle if the sex offender drives that motor vehicle for at least 14 days, whether consecutive or not, in any period of 12 months.

When initial report must be made

13. A sex offender must make an initial report to the Commissioner of all relevant personal information within such time as prescribed by regulations from—

- (a) in the case of a sex offender with a custodial sentence, the date of being released from custody;
- (b) in the case of a sex offender with a suspended or non-custodial sentence, the date of sentencing by the sentencing court of law; or
- (c) in the case of a corresponding sex offender, the date of—
 - (i) entering Fiji from a foreign jurisdiction to reside in Fiji; or
 - (ii) demonstrating an intention to reside in Fiji by applying for a permit to reside in Fiji after entering Fiji from a foreign jurisdiction.

Requirement to report changes to relevant personal information

14.—(1) A sex offender must report to the Commissioner—

- (a) any change in the details reported under section 12(1)(e) within such time as prescribed by regulations before the change occurs; and
- (b) any other change in his or her relevant personal information within such time as prescribed by regulations.

(2) For the purposes of subsection (1)—

- (a) a change occurs in the premises or household where the sex offender or a child generally resides only on the expiration of the relevant 14-day period referred to in section 12(2)(a) or 12(2)(b), as the case may be; and
- (b) a change occurs in the premises where the sex offender generally works or the motor vehicle that the sex offender generally drives, only on the expiration of the relevant 14-day period referred to in section 12(2)(c) or 12(2)(d), as the case may be.

(3) A sex offender who has reported a change of residential address in the course of reporting travel plans under section 16(2) is not required to report that same information for the purpose of subsection (1).

(4) If the relevant personal information of a sex offender changes while the sex offender is not in Fiji, the sex offender must report the change to the Commissioner within such time as prescribed by regulations after entering and remaining within Fiji for 7 or more consecutive days, excluding any day spent in custody.

(5) If the relevant personal information of a sex offender changes while the sex offender is in custody for 7 or more consecutive days, the sex offender must report the change to his or her relevant personal information to the Commissioner on whichever of the following occurs first—

- (a) within such time as prescribed by regulations after the sex offender ceases to be in custody; and
- (b) before the sex offender leaves Fiji.

Requirement to make periodic reports

15.—(1) A sex offender must, within such time and manner as prescribed by regulations, make periodic reports of the sex offender's relevant personal information to the Commissioner.

(2) A periodic report includes a report that confirms that the sex offender's relevant personal information stated in the last report previously made by the sex offender—

- (a) is correct; and
- (b) has not changed since the sex offender made the last report.

Travel plans to be reported

16.—(1) Subsection (2) applies if a sex offender intends to travel away from his or her registered residential address or between registered residential addresses, within Fiji, for more than such time as prescribed by regulations.

(2) Within such time as prescribed by regulations before travelling, the sex offender must report the intended travel to the Commissioner and must provide the following details—

- (a) each address at which the sex offender intends to stay;
- (b) the dates on which the sex offender intends to stay at each of those addresses;
- (c) whether any child will or is likely to reside together with the sex offender at any of those addresses; and
- (d) if the sex offender intends to return to his or her registered residential address, the date on which the sex offender intends to return.

(3) Subsection (4) applies if a sex offender intends to travel out of Fiji for more than such time as prescribed by regulations.

(4) At least within such time as prescribed by regulations before travelling, the sex offender must report the intended travel to the Commissioner and must provide the following details—

- (a) the date on which the sex offender intends to travel out of Fiji;
- (b) if the sex offender intends to return to Fiji, the date on which the sex offender intends to return; and
- (c) if the sex offender does not intend to return to Fiji, a statement of that intention.

(5) If exceptional circumstances arise making it impracticable for a sex offender to whom subsection (2) or (4) applies to make the report within such time as prescribed by regulations before the sex offender travels, it is sufficient compliance with subsection (2) or (4) if the sex offender reports the required information to the Commissioner—

- (a) as soon as practicable in the circumstances; and
- (b) before travelling.

Change of travel plans while away from home or out of Fiji to be given

17.—(1) This section applies if a sex offender who has travelled away from his or her registered residential address or between registered residential addresses decides to change any details given to the Commissioner under section 16(2) or 16(4).

(2) The sex offender must, as soon as practicable after making the decision, report the change of details to the Commissioner.

(3) The sex offender must make the report—

- (a) in writing sent by post or transmitted electronically to the Commissioner or to any other address permitted by regulations; or
- (b) in any other manner prescribed by regulations.

Requirement to report return to Fiji or decision not to leave

18.—(1) This section applies if a sex offender is required under section 16 to report that he or she intends to leave Fiji.

(2) If the sex offender leaves Fiji, the sex offender must within such time as prescribed by regulations after entering and remaining in Fiji for 7 consecutive days, excluding any day spent in custody—

- (a) report his or her return to the Commissioner; and
- (b) present his or her passport for inspection and copying.

(3) If the sex offender decides not to leave Fiji, he or she must report his or her change of intention within such time as prescribed by regulations after deciding not to leave but before his or her previous date of departure.

*Division 3—Reporting at police station or approved place**Sex offender must report at police station or approved place*

19. A sex offender makes his or her report to the Commissioner by making the report—

- (a) in person or through his or her representative; and
- (b) to an authorised person appointed under section 7(3)(a) at the police station nearest to the address where the sex offender generally resides or any other place approved by the Commissioner.

Rights of sex offender to privacy and support when reporting

20.—(1) A sex offender making a report in person at a police station or any other place approved by the Commissioner has the right to—

- (a) make the report out of the hearing of members of the public; and
- (b) be accompanied by a support person of his or her choice.

(2) An authorised person receiving the report must—

- (a) where required or requested, arrange for an interpreter to be present when a sex offender is making a report; and
- (b) not allow an interpreter to be present when the sex offender is making the report unless the interpreter has signed an undertaking not to disclose any information in relation to the report.

(3) Notwithstanding subsection (2)(b), an interpreter may disclose any information in relation to the report if the interpreter is required or authorised to do so by any written law.

(4) The authorised person must, as soon as practicable after receiving a report under this section, acknowledge the making of the report.

(5) The acknowledgement by the authorised person must—

- (a) be in writing;
- (b) be given to the sex offender who made the report; and
- (c) include—
 - (i) the name and signature of the authorised person who received the report;
 - (ii) the name and signature of the interpreter, if applicable;
 - (iii) the date and time when, and the place where, the report was received; and
 - (iv) a copy of the information that was reported.

(6) The authorised person must ensure that a copy of the acknowledgement is retained.

Reporting by remote sex offender

- 21.**—(1) This section applies to a remote sex offender.
- (2) A sex offender is not required to comply with a time limit for the making of a report in person if—
- (a) the sex offender or the representative of the sex offender contacts the Commissioner before the time limit ends;
 - (b) the Commissioner agrees to allow the report to be made at a specific time, that is after the time limit, and at a specific place; and
 - (c) when contacting the Commissioner under paragraph (a), the person gives the Commissioner, by phone or any other way, the information required to be reported under this Part.
- (3) The Commissioner must—
- (a) where required or requested, arrange for an interpreter to assist in receiving a report;
 - (b) not allow an interpreter to assist in receiving a report unless the interpreter has signed an undertaking not to disclose any information in relation to the report; and
 - (c) ensure that there is a method for recording all—
 - (i) information given under subsection (2); and
 - (ii) agreements made under subsection (2)(b).
- (4) Notwithstanding subsection (3)(b), an interpreter may disclose any information in relation to the report if the interpreter is required or authorised to do so by any written law.
- (5) Without limiting the generality of subsection (3)(c), the recording method must result in the creation of a written record that—
- (a) is identified by a unique reference number;
 - (b) identifies when and where each agreement was made;
 - (c) identifies the person who enters into any agreement; and
 - (d) contains the terms of any agreement.
- (6) If an agreement is made under this section, the Commissioner must ensure that the sex offender is given the reference number mentioned in subsection (5)(a).

*Division 4—Fingerprints, finger scans and photographs**Power to take fingerprints or finger scans*

- 22.** An authorised person who receives a report made by a sex offender in person under this Part may take, or cause to be taken by a person authorised by the authorised person, the fingerprints or a finger scan of the sex offender if the authorised person is not

satisfied as to the identity of the sex offender after the authorised person has examined all the material relating to the identity provided or presented to the authorised person by, or on behalf of, the sex offender.

Power to take photographs

23. An authorised person who receives a report made by a sex offender in person under this Part may take, or cause to be taken by a person authorised by the authorised person, photographs of the sex offender for the purpose of ongoing identification.

Authorised person must inform sex offender before exercising power

24. An authorised person must, before exercising a power under section 22 or 23, inform the sex offender in a language understood by the sex offender—

- (a) of the purpose for which the power is to be exercised; and
- (b) that the Commissioner will retain the fingerprints, finger scan or photographs, as the case may be.

Division 5—Offences relating to reporting obligations

Offence of failing to comply with reporting obligations

25. Any sex offender who fails to comply with any of the reporting obligations without reasonable excuse commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Offence of providing false or misleading information

26. Any sex offender who provides information, that he or she knows to be false or misleading in a material particular, to any other person commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

PART 3—ACCESS TO REGISTER AND INFORMATION SHARING

Access to register to be restricted

27—(1) The Commissioner must ensure that the register, or any part of the register, is only accessed by a person, or a class of persons, that is authorised to do so by the Commissioner in accordance with guidelines issued under this section.

(2) The Commissioner must issue guidelines in relation to access to information in the register to ensure that—

- (a) persons authorised by the Commissioner can access information in the register for the following purposes—
 - (i) to prevent, detect, investigate and prosecute sexual offences;
 - (ii) to monitor sex offenders in the community; and
 - (iii) the purposes specified in section 28; and
- (b) access to information in the register is otherwise restricted to the greatest extent that is possible without interfering with the objective of this Act.

(3) Notwithstanding subsection (2), the guidelines may authorise the use of information contained in the register for a purpose other than the purpose for which the information was obtained if an authorised person reasonably believes such use is necessary to prevent, detect, investigate or prosecute an offence.

(4) For the purposes of this section, the register includes any information from any register maintained under a corresponding law that is accessible by the Commissioner, regardless of whether the information is physically part of the register.

Information sharing between specified agencies in interest of public safety

28. A specified agency may disclose personal information in the register to another specified agency for any of the following purposes—

- (a) to monitor the whereabouts of a sex offender;
- (b) to verify personal information reported by a sex offender;
- (c) to manage the risk that a sex offender may commit further sexual offences;
- (d) to manage any risk or threat to public safety; and
- (e) any other purpose prescribed by regulations.

Confidentiality

29.—(1) A person authorised to access the register or any part of the register must not disclose any information in the register, unless the person is—

- (a) authorised by the Commissioner to disclose the information; or
- (b) otherwise permitted or required by a court of law, or under any other written law, to disclose the information.

(2) A person to whom personal information about a registered offender is disclosed under this Part must not disclose that information to any other person unless that disclosure is—

- (a) made with the consent of the Commissioner given, either generally or in a particular case, for the purposes of ensuring the safety or protection of a person; or
- (b) otherwise permitted or required by a court of law or under any other written law.

(3) A person who contravenes subsection (1) or who without reasonable excuse contravenes subsection (2) commits an offence and is liable upon conviction to—

- (a) in the case of a natural person, a fine not exceeding \$2,000 or imprisonment for a term not exceeding one year or both; or
- (b) in the case of a body corporate, a fine not exceeding \$100,000.

Rights of sex offender in relation to register

30.—(1) If requested in writing by a sex offender, the Commissioner must, within 14 days after receiving the request, provide the sex offender with all the information that is held in the register in relation to the sex offender.

(2) A sex offender may make a written request to the Commissioner to amend any information held in the register in relation to the sex offender that is incorrect, and the Commissioner must, if satisfied that it is incorrect, amend the information as soon as practicable.

(3) The Commissioner must take reasonable steps to inform the sex offender as to whether the Commissioner will comply with a request under subsection (2).

(4) If the Commissioner denies a request made under subsection (2), the Commissioner must—

- (a) provide written reasons for the denial of the request to the sex offender; and
- (b) ensure that the details of the request and the denial of the request are recorded in the register.

PART 4—MISCELLANEOUS

Exclusion of sex offenders from child-related employment

31.—(1) A sex offender must not apply for, or engage in, child-related employment.

(2) A sex offender who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

(3) In proceedings for an offence against subsection (1), it is a defence to the charge for the accused to prove that, at the time the offence is alleged to have been committed, he or she did not know that the employment was child-related employment.

Exclusion from liability

32. An act or omission that a person does or omits to do in good faith in the administration or execution of, or in accordance with, this Act does not subject the person personally to any action, liability, claim or demand.

Act to prevail

33. This Act has effect notwithstanding any provision of any other written law, and accordingly, to the extent that there is any inconsistency between this Act and any other written law, this Act prevails.

Regulations

34.—(1) The Minister may, following consultation with the Commissioner and the Commissioner of Corrections, make regulations to prescribe 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 generally for achieving the purposes of this Act.

(2) Without affecting the generality of subsection (1), the Minister may, following consultation with the Commissioner and the Commissioner of Corrections, make regulations prescribing—

- (a) details relating to the administration of the register;
- (b) details relating to the reporting obligations of a sex offender;
- (c) certain laws of foreign jurisdictions to be corresponding laws for the purposes of this Act; or
- (d) offences and penalties, not exceeding—
 - (i) in the case of a natural person, a fine of \$10,000 or imprisonment for a term of 5 years or both; or
 - (ii) in the case of a body corporate, a fine of \$100,000.

Transition

35.—(1) Notwithstanding section 13, a person who is a sex offender at the commencement of this Act must make an initial report of all relevant personal information within 6 months from the commencement of this Act.

(2) A person who is—

- (a) a sex offender at the commencement of this Act; and
- (b) engaged in child-related employment,

must cease such child-related employment within 6 months from the commencement of this Act.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

November 2018

REGISTRATION OF SEX OFFENDERS BILL 2018

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Registration of Sex Offenders Bill 2018 (**‘Bill’**) seeks to establish the Register of Sex Offenders (**‘register’**) to enable specified agencies to monitor sex offenders in the community and to reduce the risk posed by sex offenders and the rate of sexual offences in Fiji.
- 1.2 The Bill requires sex offenders to report relevant personal information about themselves for inclusion in the register. Sex offenders are also required to make periodic reports to keep their personal information in the register up-to-date.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions of the terms used throughout the Bill.
- 2.3 Clause 3 of the Bill provides for the objective of the Bill. The objective of the Bill is to establish a register containing information on sex offenders to reduce the risk posed by sex offenders and the rate of sexual offences in Fiji.
- 2.4 Clause 4 of the Bill states that the State will be bound by the provisions of the Bill.
- 2.5 Clause 5 of the Bill states that the Bill applies to a person who has been convicted of a sexual offence. In the Bill, a sexual offence is an offence that is specified in Part 12B of the Crimes Act 2009, except for section 213 of that Act.
- 2.6 Clause 6 of the Bill provides for the establishment of the register and the information that must be contained in the register.

- 2.7 Clause 7 of the Bill states that the Commissioner of Police will be responsible for the administration of the register. The Commissioner of Police may appoint authorised persons from the Fiji Police Force as well as the Fiji Corrections Service as nominated by the Commissioner of the Fiji Corrections Service (**‘Commissioner of Corrections’**), to administer the register.
- 2.8 Clause 8 of the Bill states that an explanation of the reporting obligations of a sex offender must be given to the sex offender at the time of sentencing.
- 2.9 Clause 9 of the Bill states that the Commissioner of Corrections must give written notice to a sex offender of the sex offender’s reporting obligations and the penalties for failing to comply with those reporting obligations, when the sex offender ceases to be in custody.
- 2.10 Clause 10 of the Bill states that the Director of Immigration (**‘Director’**) must implement measures to ascertain whether a person entering Fiji is a corresponding sex offender. The Director must also give written notice to the corresponding sex offender and the Commissioner of Police of the corresponding sex offender’s reporting obligations and the penalties for failing to comply with those reporting obligations. A corresponding sex offender is a person who has been convicted of a corresponding offence in a foreign jurisdiction.
- 2.11 Clause 11 of the Bill states that the Commissioner of Police or an authorised person may give written notice to a sex offender of the sex offender’s reporting obligations and the penalties for failing to comply with those reporting obligations if the Commissioner of Police or authorised person suspects that the sex offender has not previously been notified or is unaware of his or her reporting obligations.
- 2.12 Clause 12 of the Bill prescribes the relevant personal information that a sex offender must report. This includes the names, addresses, permanent distinguishing marks, places of employment and physical description, and registration numbers of vehicles belonging to a sex offender.
- 2.13 Clause 13 of the Bill deals with the initial report that must be made by a sex offender.
- 2.14 Clause 14 of the Bill requires a sex offender to report any change to his or her relevant personal information.
- 2.15 Clause 15 of the Bill requires a sex offender to make periodic reports of his or her relevant personal information. A periodic report simply confirms that the sex offender’s relevant personal information stated in the previous report is correct and has not changed since the previous report.
- 2.16 Clause 16 of the Bill requires a sex offender to report his or her travel plans.

- 2.17 Clause 17 of the Bill applies if a sex offender who has travelled away from his or her registered residential address or between registered residential addresses decides to change any travel details previously given to the Commissioner.
- 2.18 Clause 18 of the Bill applies if a sex offender is required under clause 16 to report that he or she intends to leave Fiji, and requires a sex offender to report his or her return to Fiji or decision not to leave but before his or her previous date of departure.
- 2.19 Clause 19 of the Bill requires a sex offender to report to an authorised person, in person or through his or her representative at the nearest police station or at such other place approved by the Commissioner of Police.
- 2.20 Clause 20 of the Bill outlines the rights of a sex offender to privacy and support when reporting in person at a police station or place approved by the Commissioner of Police.
- 2.21 Clause 21 of the Bill deals with reporting by a remote sex offender. A remote sex offender is a sex offender who resides —
- (a) more than 100 kilometres from the nearest police station;
 - (b) on an island where there is no police station; or
 - (c) notwithstanding paragraph (a), in an area where transportation from the area to the nearest police station is reasonably likely to be a challenge.
- 2.22 Clause 22 of the Bill allows an authorised person who receives a report made by a sex offender in person to take the fingerprints or a finger scan of the sex offender.
- 2.23 Clause 23 of the Bill allows an authorised person who receives a report made by a sex offender in person to take photographs of the sex offender.
- 2.24 Clause 24 of the Bill requires an authorised person exercising a power under clause 22 or 23 to inform the sex offender, in a language that he or she understands, of the purpose for which the power was exercised and that the fingerprints, finger scans or photographs will be retained by the Commissioner of Police.
- 2.25 Clause 25 of the Bill states that a sex offender commits an offence if he or she fails to comply with a reporting obligation without reasonable excuse. The penalty is a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.
- 2.26 Clause 26 of the Bill states that a sex offender commits an offence if he or she provides information that he or she knows to be false or misleading in a material particular. The penalty is a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

- 2.27 Clause 27 of the Bill restricts access to the register. The register will only be accessed by a person who is authorised by the Commissioner of Police in accordance with guidelines issued by the Commissioner of Police. The guidelines will ensure that a person authorised to access the register can access the register for the following purposes—
- (a) to prevent, detect, investigate and prosecute sexual offences;
 - (b) to monitor sex offenders in the community; and
 - (c) the purposes specified in clause 28.
- 2.28 Clause 28 of the Bill states that a specified agency may disclose personal information in the register to another specified agency for the following purposes—
- (a) to monitor the whereabouts of a sex offender;
 - (b) to verify personal information reported by a sex offender;
 - (c) to manage the risk that a sex offender may commit further sexual offences;
 - (d) to manage any risk or threat to public safety; and
 - (e) any other purpose prescribed by regulations.
- 2.29 A specified agency means—
- (a) the Fiji Police Force;
 - (b) the Fiji Corrections Service;
 - (c) the Office of the Director of Public Prosecutions;
 - (d) the Fiji Revenue and Customs Service;
 - (e) the ministry responsible for justice;
 - (f) the ministry responsible for education;
 - (g) the ministry responsible for children;
 - (h) the ministry responsible for defence and national security;
 - (i) the ministry responsible for health and medical services;
 - (j) the department responsible for immigration;
 - (k) the department responsible for social welfare; or
 - (l) any public agency that the Minister declares as a specified agency by notice in the Gazette.
- 2.30 Clause 29 of the Bill deals with confidentiality. A person authorised to access the register must not disclose any information in the register unless he or she is authorised by the Commissioner of Police or by a court of law or under any other written law.

- 2.31 Clause 30 of the Bill outlines the rights of a sex offender in relation to the register. A sex offender may make a written request to obtain all the information that is held in the register in relation to the sex offender. A sex offender may also make a written request to the Commissioner of Police to amend any information in the register in relation to the sex offender that is incorrect.
- 2.32 Clause 31 of the Bill prohibits sex offenders from applying or engaging in child-related employment. The penalty is a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.
- 2.33 Clause 32 of the Bill states that any act or omission done by a person in good faith for the administration or execution of the provisions of the Bill does not subject the person to any action, liability, claim or demand.
- 2.34 Clause 33 of the Bill states that the new legislation will prevail if there is an inconsistency between a provision of the new legislation and any other written law.
- 2.35 Clause 34 of the Bill empowers the Minister, following consultation with the Commissioner of Police and the Commissioner of Corrections, to make regulations prescribing matters that are required or permitted by the new legislation to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the new legislation and generally for achieving the purposes of the new legislation.
- 2.36 Clause 35 of the Bill sets out transitional provisions. A person who is a sex offender at the commencement of the new legislation must comply with the reporting requirements under Divisions 2 and 3 of Part 2 of the Bill within 6 months from the commencement of the new legislation. Also, a person who is a sex offender at the commencement of the new legislation and is engaged in child-related employment must, within 6 months from the commencement of the new legislation, cease such child-related employment. If the person fails to comply, he or she commits an offence and the penalty is a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for justice.

A. SAYED-KHAIYUM
Attorney-General