

CHILD CARE AND PROTECTION BILL 2024
(BILL NO. 5 OF 2024)

CLAUSES

PART 1—PRELIMINARY

1. Short title and commencement
2. Application
3. Interpretation
4. Objectives
5. Child in need of care and protection
6. Principles for the care and protection of a child
7. Responsibility of parents
8. Decision-making principles

PART 2—ADMINISTRATION

9. Duties of the Director
10. Delegation of powers
11. Register of approved child protection agencies, organisations and children's homes
12. Director may request services from other agencies
13. Police assistance
14. Obstruction

PART 3—CARE AND PROTECTION OF CHILDREN

Division 1—Promoting well-being and preventing abuse

15. Prevention measures
16. Early intervention services

Division 2—Reporting and referral of a child in need of care and protection

17. Reporting of child in need of care and protection
18. Contents of report
19. Protection of person reporting
20. Inter-agency referrals and coordination
21. Director may request for information
22. Referral of children by court for assessment

Division 3—Assessment and intervention planning

23. Reports and requests for assistance
24. Medical examination of a child
25. Director's intervention
26. Case conferences
27. Agreed care and protection plans
28. No agreement

Division 4—Emergency Protection Power

- 29. Warrant to take a child to place of safety
- 30. Child in immediate danger
- 31. Police assistance
- 32. Child in the care of the Director
- 33. Interim care and protection order
- 34. Circumstances when no interim care and protection order required

Division 5—Emergency care and treatment orders for a child

- 35. Designated medical officers
- 36. Powers of designated medical officers
- 37. Procedure
- 38. Enforcement
- 39. Duration and release
- 40. Medical examinations and information
- 41. Obstruction of a designated medical officer

Division 6—Care and protection orders

- 42. Application for care and protection order
- 43. Application to be heard immediately
- 44. Parties to the proceedings
- 45. Legal representation
- 46. Child protection hearings
- 47. Conferences with family and child counsellors or child welfare officers
- 48. Views of the child
- 49. Criteria for issuing care and protection orders
- 50. Care and protection orders
- 51. Supervision order
- 52. Restraining order
- 53. Temporary care order
- 54. Permanent care order
- 55. Maintenance order
- 56. When a care and protection order ceases
- 57. Court may vary or revoke a care and protection order
- 58. Appeals
- 59. Review of care and protection plan
- 60. Offence against care and protection orders

PART 4—CHILDREN IN THE CARE OF THE DIRECTOR

- 61. Application
- 62. Duties of the Director
- 63. Placement of a child in the care of the Director
- 64. Foster parents

- 65. Children's homes
- 66. Administration of children's homes

PART 5—MISCELLANEOUS

- 67. Confidentiality
- 68. Regulations
- 69. Repeal
- 70. Transitional
- 71. Consequential amendments

BILL NO. 5 OF 2024

A BILL

FOR AN ACT TO PROVIDE FOR AND PROMOTE THE WELFARE AND PROTECTION OF CHILDREN AND TO PROVIDE FOR FAMILIES AND COMMUNITIES TO RECEIVE ASSISTANCE IN THE CARE AND PROTECTION OF CHILDREN 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 Child Care and Protection Act 2024.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Application

2. This Act binds the State.

Interpretation

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

“approved children’s home” means a children’s home registered in the Register in accordance with section 11;

- “child” means a person who is under the age of 18 years;
- “child in need of care and protection” has the meaning assigned to it by section 5;
- “child welfare officer” means a person who is employed as a child welfare officer in the Department, and includes the Director and the assistant Director of the Department and any senior welfare officer, welfare officer or temporary welfare officer;
- “court” means the family division of the Magistrates Court established by the Family Law Act 2003;
- “Department” means the department responsible for children;
- “designated medical officer” means a medical practitioner appointed under section 35;
- “Director” means the director of the Department;
- “emotional abuse” means any act or omission that causes or is likely to cause mental or emotional suffering of a child and includes acts of belittling, denigrating, threatening, scaring, ridiculing or any other non-physical forms of degrading or rejecting treatment;
- “family”, in relation to a child, means—
- (a) a parent of the child;
 - (b) grandparent, step-parent, sibling, half-sibling, uncle, aunt or cousin of the child, whether by birth or adoption; and
 - (c) any other person with whom the child has developed a significant relationship based on psychological or emotional attachment, which significantly resembles a family relationship;
- “hazardous or exploitive labour”, in relation to a child, includes any work that is—
- (a) inappropriate for the child’s age;
 - (b) hazardous to the child’s physical or mental health;
 - (c) impairs the child’s educational and moral development; or
 - (d) is defined as hazardous work under the Hazardous Occupations Prohibited to Children Under 18 Years of Age Order 2013;
- “health facility” means health centre, health care facility, hospital or doctor’s surgery;
- “Mandatory reporter” has the meaning assigned to it by section 17(3);
- “Minister” means the Minister responsible for child welfare;

“Ministry” means the Ministry responsible for child welfare;

“neglect”, in relation to a child, means failure to provide for the child’s basic physical, intellectual, emotional or social needs, including any special needs where the child has a disability;

“parent” means—

- (a) the birth or adoptive mother of the child;
- (b) the birth or adoptive father of the child;
- (c) a guardian or person to whom custody of the child has been granted by a court or by an agreement; or
- (d) a caregiver with whom the child lives and who stands in place of the child’s mother or father;

“physical abuse” includes any act of violence or maltreatment that results in a physical wound or injury;

“place of safety” means a shelter, health facility, approved children’s home or the home of any foster parent or other individual approved by the Director to receive and temporarily care for a child in need of care and protection;

“police officer” means any officer of the Fiji Police Force;

“Register” means the Register of approved child agencies, organisations and children’s homes established under section 11;

“sexual abuse” means any sexual activity or behaviour with a child—

- (a) for which the child is unable to give consent;
- (b) for which the child is not developmentally prepared;
- (c) by a person in a position of authority and trust;
- (d) in circumstances where there is a significant disparity in the developmental function or maturity of the child and the other person involved in the behaviour; or
- (e) that is contrary to this Act or any other written law;

“sexual exploitation” means—

- (a) the involvement of a child in sexual activity for remuneration or any other form of consideration; or
- (b) the use of a child in sexually explicit performances or materials;

“street” includes any highway, square, bridge, footway, market, alley or passage, whether a thoroughfare or not, used by the public; and

“well-being”, in relation to a child, includes the care, development, health and safety of the child.

*Objectives***4.** The objectives of this Act are to—

- (a) promote the well-being of children and to protect them from all forms of violence, abuse, neglect and exploitation;
- (b) acknowledge the role of parents, families and communities in promoting the well-being and protection of children and to encourage and support them in carrying out that role;
- (c) foster collaboration between government agencies, non-governmental organisations, faith-based organisations and traditional or community leaders engaged in the provision of services designed to promote the well-being and protection of children; and
- (d) provide for the care and protection of children in circumstances where their parents, families and communities are unable to do so.

*Child in need of care and protection***5.** For the purposes of this Act, a child is in need of care and protection if—

- (a) the child has been orphaned or abandoned and appropriate arrangements have not been made for his or her care;
- (b) the parents of the child are unwilling or unable to care for the child;
- (c) the child lives or works on the street in circumstances that expose the child to harm or exploitation;
- (d) the child has been displaced or separated from his or her family as a result of an emergency, natural disaster or conflict;
- (e) the physical development or health of the child has been, or is likely to be, harmed and the child's parents have not provided or allowed the provision of basic care or effective medical, surgical or other remedial care;
- (f) the child is being or is likely to be harmed due to any of the following—
 - (i) physical abuse;
 - (ii) sexual abuse or sexual exploitation;
 - (iii) emotional abuse;
 - (iv) neglect; or
 - (v) hazardous or exploitive labour;
- (g) the child has committed or is suspected of committing an offence or is suspected of having committed an offence;
- (h) the child is behaving in a manner that is or is likely to be harmful to the child or to others and the child's parents are unable or unwilling to control the child's behaviour; or

- (i) the child is a member of the same household as a person who has been convicted of an offence against a child.

Principles for the care and protection of a child

6.—(1) A child requires care, guidance and support to ensure his or her full development as a responsible member of the community.

(2) A child should, as far as possible, grow up in an environment that—

- (a) is nurturing, safe and stable;
- (b) fosters positive relationships with his or her parents, family and the community;
- (c) promotes his or her healthy growth and development;
- (d) ensures access to education or skills training;
- (e) provides opportunities for recreation and play;
- (f) promotes pride in and respect for positive cultural and traditional values;
- (g) fosters a sense of responsibility towards family and the community; and
- (h) is free from discrimination, violence, abuse, neglect or exploitation.

Responsibility of parents

7. A parent has the primary role of safeguarding and promoting the well-being of his or her child and in particular is responsible for—

- (a) registering the child at birth;
- (b) ensuring that the child's basic needs are met, including any special needs relating to a disability;
- (c) ensuring that the child receives adequate nutrition, safe water supply and is free from communicable diseases;
- (d) ensuring that the child receives appropriate medical care and treatment;
- (e) ensuring that the child completes compulsory education, and encourage further study;
- (f) encouraging the child to participate in social and cultural activities and to express himself or herself in a manner appropriate to the child's age;
- (g) instilling self-discipline, tolerance and respect for others and knowledge of and respect for positive cultural and spiritual values;
- (h) protecting the child from engaging in activities that are harmful to his or her health, education and moral development;
- (i) ensuring that the child grows up in an environment that is free of violence, abuse, neglect or exploitation; and

- (j) ensuring that in the temporary absence of a parent, the child is cared for by a person who is known and trusted by both the child and his or her parent.

Decision-making principles

8. In making a decision or taking any action in relation to a child under this Act, consideration must be given to the following principles—

- (a) the best interests of the child must be the primary consideration;
- (b) concerns about the well-being of a child must be addressed as a matter of priority and decisions affecting a child must be made and implemented in a timely manner;
- (c) a child’s privacy and dignity must be respected and protected;
- (d) any decision in relation to a child must be appropriate to the age, gender, character, condition, status, disability and any other circumstance of the child;
- (e) a child must be cared for and protected from harm;
- (f) the support of the child’s parents and family is the preferred way of ensuring a child’s well-being;
- (g) the preferred environment for the care and upbringing of a child is with his or her own family;
- (h) the child and any family member or community member, may participate in deciding what action is to be taken to promote the care and protection of the child; and
- (i) decisions must be reached by collaboration and consensus and where applicable, the intervention of the court must be used only as a last resort.

PART 2—ADMINISTRATION

Duties of the Director

9. The Director is responsible for the promotion and the development and implementation of policies, procedures and services that accord with the objectives of this Act, including—

- (a) promoting partnership among agencies, non-government organisations, faith-based groups, community health workers, and traditional or community leaders in taking responsibility for and dealing with abuse, neglect and exploitation of children;
- (b) developing and implementing protocols and procedures for agencies both government and non-government and professional and occupational groups for reporting of a child in need of care and protection, and monitoring the effectiveness of such protocols and procedures;
- (c) responding to suspected cases of a child in need of care and protection and taking such steps necessary to ensure the child’s well-being and protection;

- (d) ensuring that any person providing services under this Act receives adequate training and comply with appropriate standards;
- (e) monitoring and assessing the services provided under this Act by the Department and by other organisations, groups and individuals;
- (f) maintaining confidential information of a child in need of care and the protection of such children;
- (g) encouraging research, education and training on child protection issues; and
- (h) leading the on-going development of an integrated child welfare service system.

Delegation of powers

10. The Director may, delegate in writing, to any staff member of the Ministry, as the Director deems fit and proper, all or any of the powers exercisable by the Director, except the power to delegate and may withdraw the delegation in writing at any time.

Register of approved child protection agencies, organisations and children's homes

11.—(1) This section establishes the Register of approved child protection agencies, organisations and children's homes, that must be kept and maintained by the Director.

(2) The Register must contain a record of all agencies, organisations and children's homes providing services to—

- (a) a child in need of care and protection; and
- (b) a family requiring counselling, assistance or support.

(3) The Register must include, in relation to an agency, organisation or children's home, the following information—

- (a) its registered name and contact address;
- (b) the qualification of any person providing services to children in that agency, organisation or children's home; and
- (c) any other information that the Director considers relevant.

(4) Any agency, organisation or children's home intending to provide services to children must apply to be registered in accordance with this section.

(5) An application under subsection (4) must—

- (a) be made to the Director in the approved form; and
- (b) include any information as the Director may require to enable him or her to make a determination on the application.

(6) The Director may issue terms and conditions as he or she deems appropriate for the registration of an agency, organisation or children's home.

(7) If the Director is satisfied that the criteria under subsection (5) is complied with, the Director may grant a certificate of registration to an applicant on terms and conditions the Director sees fit.

(8) If an application for registration is refused by the Director, the Director may within 21 days of reaching the decision, inform the applicant in writing stating the reason for the refusal.

(9) The Director may cause the name of any agency, organisation or children's home to be removed from the Register if the agency, organisation or children's home—

- (a) ceases to function as an agency, organisation or children's home providing services to children in need of care and protection;
- (b) fails to meet any terms and conditions issued; or
- (c) fails to adhere to the requirements and standards issued by the Director.

(10) Where the Director intends to remove the name of an agency, organisation or children's home from the Register for any reason stated under subsection (9), the Director must give written notice to the agency, organisation or children's home and consider any representation made in that matter.

(11) An agency, organisation or children's home in operation before the commencement of this Act must, within 90 days from the commencement of this Act, submit an application for registration in accordance with this section.

(12) A person operating or purporting to operate an agency, organisation or children's home that is not registered under this section commits a summary offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or both;
- (b) in the case of a body corporate, a fine not exceeding \$15,000.

Director may request services from other agencies

12.—(1) The Director, may request a government department or agency to provide services to a child or his or her family.

(2) Notwithstanding subsection (1), the government department or agency may, as far as practicable, comply with the request if it does not unduly prejudice the discharge of its functions.

Police assistance

13. The Director or any child welfare officer may in the execution of his or her duties, request the assistance of a police officer and the police officer must provide the assistance.

Obstruction

14. A person who wilfully obstructs the Director, child welfare officer or police officer in the lawful execution of his or her duty under this Act commits a summary offence and is liable on conviction to a fine of \$10,000 or imprisonment for a term not exceeding 18 months or both.

PART 3—CARE AND PROTECTION OF CHILDREN

Division 1—Promoting well-being and preventing abuse

Prevention measures

15. The Director must formulate prevention measures to promote the care and protection of a child, including—

- (a) promoting community discussion on issues relating to the well-being and protection of children;
- (b) reinforcing protective practices by parents, families and communities;
- (c) fostering respect for positive values and traditions that encourage caring attitudes and behaviours towards children;
- (d) promoting the use of positive non-violent forms of discipline;
- (e) raising public awareness on the dangers and consequences of child abuse, neglect and exploitation, the need to report cases of children in need of care and protection and the ways in which concerns may be reported;
- (f) coordinating prevention initiatives with government and non-government agencies involved in child care and protection, including ministries and agencies responsible for education, health and law enforcement; and
- (g) ensuring child protection is incorporated into national and local disaster preparedness and response plans.

Early intervention services

16. The Director must promote and coordinate the progressive development of early intervention services to—

- (a) build the capacity of families and communities to identify and respond appropriately to a child who is vulnerable or at risk of abuse and in need of care and protection;
- (b) work with families, communities and other service providers to prevent or alleviate conditions that might place a child at risk;
- (c) reduce the negative consequences of risk factors through appropriate support services; and
- (d) provide children and families with information to enable access to support services.

Division 2—Reporting and referral of a child in need of care and protection

Reporting of child in need of care and protection

17.—(1) A person who has reason to believe that a child is being harmed or likely to be harmed and is in need of care and protection, must report the matter to the Director, a welfare officer, a police officer or a Mandatory reporter under subsection (2).

(2) If a Mandatory reporter in the course of his or her professional duties, has reason to believe that a child is in need of care and protection, the mandatory reporter must immediately report the matter to the Director in writing.

(3) For the purposes of subsection (2), a Mandatory reporter is a person who performs professional duties with respect to a child and includes—

- (a) a health professional;
- (b) legal practitioner;
- (c) police officer;
- (d) teacher;
- (e) social worker;
- (f) educational officer;
- (g) psychologist;
- (h) family counsellor;
- (i) labour inspector; and
- (j) owner or employee of a daycare centre, child care service, hostel or children's home.

(4) A Mandatory reporter who fails to make a report under subsection (2) commits a summary offence and is liable on conviction to a fine of \$5,000.

Contents of report

18.—(1) A report under section 17(2) must, to the extent reasonably possible, contain the following information—

- (a) the child's name;
- (b) the child's date of birth;
- (c) the place or places where the child lives;
- (d) the names of the child's parents;
- (e) the place or places where the child's parents live or may be contacted;
- (f) details of the harm or likely harm of which the mandatory reporter is aware of or reasonably suspects; and
- (g) the name, address and telephone number of the person making the report.

(2) Where a report under section 17(2) has been given orally, the person must submit a written report to the Director in accordance with subsection (1) within 7 days after giving the oral notice.

(3) A report under section 17(1) may be made anonymously.

Protection of person reporting

19.—(1) A person is not liable under any civil, criminal or administrative process, where the person acting in good faith—

- (a) provides information to the Director or a Mandatory reporter and the person giving the information is aware or reasonably suspects that a child has been, is being, or is likely to be harmed and is in need of care and protection; or
- (b) gives any information relating to the harm or intended harm referred to in paragraph (a).

(2) Without limiting subsection (1), in a proceeding for defamation, a Mandatory reporter or other person who makes a report under section 17(1), has a defence of absolute privilege for publishing the information in respect of the provisions of this Division.

(3) If a mandatory reporter or other person is otherwise required to maintain confidentiality about the information under any written law, oath or rule of law or practice, that person—

- (a) does not contravene any written law, oath, rule of law or practice by giving the information; and
- (b) is not liable to disciplinary action for giving the information.

(4) A Mandatory reporter who gives the information required under this Act is deemed not to have breached any code of professional conduct or ethics or to have departed from accepted standards of professional conduct.

Inter-agency referrals and coordination

20. The Director is responsible for establishing procedures to ensure timely referrals, information sharing and coordination of all service providers, relating to—

- (a) identifying and assessing cases of children who may be in need of care and protection; and
- (b) taking action to ensure the care and protection of a child.

Director may request for information

21.—(1) The Director may request a government department, agency or statutory authority to provide information relating to a child for the purposes of—

- (a) determining whether the child is in need of care and protection; or
- (b) any proceedings under this Act.

(2) Subsection (1) applies notwithstanding any written law or rule of law that obliges a person to maintain secrecy in relation to, or not to disclose, any matter, and any compliance with this section is not a breach of the relevant obligation of secrecy or non-disclosure.

Referral of children by court for assessment

22.—(1) If it appears to a Court in the course of proceedings that a child with whom the proceedings relate, is in need of care and protection, the Court must issue an order that the child be referred to the Director for an assessment under Division 3.

(2) A Court issuing an order under subsection (1) may also order that the child be temporarily placed in a place of safety if it appears to the Court that this is necessary for the safety and well-being of the child.

*Division 3—Assessment and intervention planning**Reports and requests for assistance*

23.—(1) Where the Director receives a request for assistance, referral by a court order or information that raises concerns about a child's well-being, the Director must cause an assessment to be made which the Director considers reasonably necessary for the purpose of determining whether intervention of the Director is necessary and is in the best interests of the child.

(2) In carrying out an assessment, the Director may take reasonable steps to assess the circumstances of the child and his or her home environment, including—

- (a) visiting the child's home;
- (b) interviewing the child, the child's parents and any other person with an interest in, or knowledge of, the care, well-being and development of the child;
- (c) making inquiries about the child and his or her circumstances;
- (d) requesting information from any person or any government department, agency or statutory authority; and
- (e) any other action deemed necessary to conduct a thorough assessment.

(3) An assessment under subsection (1) must be made within 14 days after the report or request for information is received.

(4) Where a person who has custody of a child refuses to allow the Director access to the child, the Director may exercise his or her authority under Division 4.

Medical examination of a child

24.—(1) In carrying out an assessment under section 23, the Director may, with the consent of the parent of a child, arrange for the child to be medically examined by a medical practitioner.

(2) Where, after making reasonable efforts, the Director is not able to obtain the consent of the parent of a child for a medical examination under subsection (1), the Director may request that a designated medical officer issue an emergency care and treatment order in accordance with Division 5.

(3) Where a child has been medically examined in accordance with this section, the medical practitioner must submit a medical report to the Director within 7 days of the examination.

Director's intervention

25.—(1) If the Director determines that actions are to be taken to ensure the care and protection of a child, the Director may do one or more of the following—

- (a) consult with the parents, the child, and where appropriate, family and community members and develop an agreed care and protection plan for the child;
- (b) exercise the Director's emergency protection powers as referred to in Division 4;
- (c) refer the matter to a police officer if it appears that a criminal offence has been committed against the child; or
- (d) seek appropriate care and protection orders from the court.

(2) In making a determination under subsection (1), the Director must ensure that decisions are reached by collaboration with the child and any relevant family and community member and such determination is in the best interests of the child.

(3) The Director may decide not to take action if he or she considers that proper arrangements have been made for the care and protection of the child and the circumstances that led to the report have been adequately dealt with.

(4) Where the Director has received a report under section 17(2), the Director must notify the mandatory reporter of the outcome of the assessment and the actions taken.

Case conferences

26.—(1) In determining what actions are to be taken to ensure the care and protection of a child under section 25, the Director may convene an inter-agency case conference to—

- (a) consider the child's care and protection needs; and
- (b) develop an inter-agency care and protection plan to meet those needs.

(2) In place of or in addition to an inter-agency case conference, the Director may convene, a case conference to—

- (a) engage the child, his or her parents and family members in assessing and making decisions about the child's care and protection needs; and
- (b) develop an agreed care and protection plan to meet those needs.

(3) Depending on the nature of the concern and the child's best interests, and having regard to the views of the child, and with the consent of the child, the Director may include any of the following in the case conference—

- (a) the child;
- (b) the child's parents;
- (c) other members of the child's family;
- (d) traditional or community leaders;

- (e) a community health worker and other relevant service providers; or
- (f) any other person in the opinion of the Director, would be of assistance in developing an agreed care and protection plan.

(4) If a child does not take part in a case conference, the Director must take all reasonable steps to—

- (a) determine the views and wishes of the child;
- (b) make known the views and wishes of the child to any person taking part in the case conference; and
- (c) ensure that the views and wishes of the child are considered in reaching any agreed care and protection plan.

(5) The Director must ensure that anyone participating in an inter-agency case conference understands his or her obligation to respect the child's privacy, dignity, views and wishes.

Agreed care and protection plans

27.—(1) An agreed care and protection plan for a child, developed under section 26, may include the following—

- (a) counselling for the child;
- (b) regular monitoring and supervision of the child by a child welfare officer or any other person appointed by the Director;
- (c) attendance of a parent for family counselling or treatment for alcohol, drug or other substance abuse;
- (d) agreement prohibiting a specified person, including a parent, not to enter or have contact at the place where the child lives;
- (e) an agreement that a parent or any other person may have supervised contact with the child;
- (f) an agreement that the child is to live in the home of a family member or other appropriate person approved by the Director; or
- (g) any other measure the Director considers appropriate to ensure the care and protection of the child.

(2) Where appropriate, an agreed care and protection plan for a child may engage members of the family and community, including family elders, religious leaders, traditional or community leaders, faith-based organisations and other service providers, in the provision of support to the child and parents.

(3) An agreed care and protection plan must—

- (a) be in writing;

- (b) be approved by the Director or his or her delegate; and
- (c) include a provision for the monitoring of progress and compliance.

No agreement

28. The Director may apply to the court for a care and protection order in accordance with Division 6, where the Director has reasonable grounds to believe that a child may be in need of care and protection and—

- (a) no agreement can be reached on a care and protection plan;
- (b) the agreement proposed is not, in the opinion of the Director, adequate to ensure the care and protection of the child; or
- (c) the provisions of an agreement have not been complied with.

Division 4—Emergency Protection Power

Warrant to take a child to place of safety

29.—(1) A Magistrate may issue a warrant authorising a child welfare officer or police officer to search and remove a child to a place of safety if the Magistrate is satisfied, on an application made on oath, that there are reasonable grounds to believe that—

- (a) the child is in need of care and protection; and
- (b) a less restrictive course of action is not available or will not adequately protect the child.

(2) An application for a warrant under subsection (1) may be made by a child welfare officer or a police officer.

(3) A person authorised by warrant under this section may at any time enter any premises or vehicle or board any vessel specified in the warrant, by force if necessary, to search for and remove the child.

Child in immediate danger

30.—(1) A child welfare officer or police officer may, without a warrant, remove a child to a place of safety if the child welfare officer or police officer suspects on reasonable grounds that—

- (a) the child's health or safety is in immediate danger; and
- (b) there is a substantial risk to the child's health or safety if the child is not removed to a place of safety during the time necessary to obtain a warrant under section 29.

(2) A child welfare officer or police officer exercising authority under this section may enter any premises or vehicle or board any vessel, where he or she reasonably believes that the child may be, and may search for and remove the child, by force if necessary.

(3) A police officer exercising authority under this section must as soon as possible notify the Director or a child welfare officer.

Police assistance

31. A child welfare officer exercising the authority under this Division may request for the assistance of a police officer.

Child in the care of the Director

32. Where a child has been removed to a place of safety under this Division, the child is in the care of the Director until—

- (a) the child is returned to a parent; or
- (b) the court issues an interim care and protection order under section 33.

Interim care and protection order

33.—(1) Where a child is taken to a place of safety under sections 29 or 30, the Director must, as soon as reasonably possible, make an application to the court for an interim care and protection order.

(2) An interim care and protection order may include the following the following conditions—

- (a) returning the child to his or her parent, with or without conditions;
- (b) placing the child in the care of a family member or other appropriate person approved by the Director;
- (c) placing the child in the care of the Director;
- (d) authorising a medical examination of the child;
- (e) prohibiting any specified person from entering the home or place where the child lives or from having any contact with the child;
- (f) providing for interim maintenance of the child; and
- (g) any other term and condition the court considers necessary and in the best interests of the child.

(3) An interim care and protection order remains in force until a final order has been made under Division 6 or is earlier suspended or discharged by a court.

Circumstances when no interim care and protection order required

34. Where a child has been taken to a place of safety under sections 29 or 30, an application for an interim care and protection order is not required and any application that has been commenced may, with the leave of the court, be discontinued by the Director if the Director—

- (a) reaches an agreement with a parent of the child that the Director considers adequate to protect the child; or
- (b) considers that circumstances have changed so that the child is no longer in need of emergency protection and the Director returns the child to the parent.

Division 5—Emergency care and treatment orders for a child

Designated medical officers

35.—(1) The person in charge of a health facility may appoint a doctor within that health facility to be a designated medical officer.

(2) If the person in charge of a health facility is a doctor, he or she is taken to be the designated medical officer while in charge of that facility.

Powers of designated medical officers

36.—(1) A designated medical officer may order that the child be held at the same or different health facility where a designated medical officer becomes aware or reasonably suspects that a child at a health facility—

- (a) has been harmed or is at risk of harm; and
- (b) is likely to leave or be taken from the health facility and suffer harm if the designated medical officer does not take immediate action,

(2) The direction given by the designated medical officer referred to in subsection (1) must be in writing and is called a care and treatment plan.

(3) A care and treatment plan must be in writing and contain the following—

- (a) details of the child's condition;
- (b) the reasons for the care and treatment plan;
- (c) the name of the health facility where the child is held; and
- (d) the time of the making of the care and treatment plan.

(4) A designated medical officer must, where a child is capable of understanding, explain to the child the purpose and effect of the care and treatment plan.

(5) The designated medical officer must give to the person in charge of the health facility notice of the care and treatment plan as soon as practicable after the child is held, with any reason for such plan and any other information that may be relevant pursuant to the making of the plan.

Procedure

37.—(1) Any child held in a health facility in accordance with a care and treatment plan must, within 48 hours of the time of the making of the care and treatment plan—

- (a) be released into the custody of a parent;
- (b) be referred to the Director to exercise his or her powers under this Act; or
- (c) be transferred to another health facility.

(2) A care and treatment plan may be extended beyond 48 hours to 96 hours by the designated medical officer if—

- (a) the initial designated medical officer has consulted with another designated medical officer who agrees that the care and treatment plan is to be extended; and

- (b) a written record of the extension is made by the initial designated medical officer, including in the record—
- (i) the initial designated medical officer’s name, address and telephone number;
 - (ii) the reasons for the extension of the care and treatment plan;
 - (iii) the name, address and telephone number of the consulted designated medical officer; and
 - (iv) the date and time to which the care and treatment plan is extended.

(3) A designated medical officer extending the care and treatment plan for a child must advise the person in charge of the health facility about the extension of the care and treatment plan and provide to such person a copy of the written record under subsection (2)(b).

(4) A designated medical officer extending the care and treatment plan must inform the Director in writing of the extension.

(5) A designated medical officer extending a care and treatment plan must inform the parent of the child about—

- (a) the extension of the care and treatment plan;
- (b) the reasons for the extension of the care and treatment plan;
- (c) the time when the extended care and treatment plan lapses; and
- (d) if applicable, the right of the parent to receive custody of the child after the expiration of the care and treatment plan.

Enforcement

38. A designated medical officer may request a police officer or any other person to provide such assistance as is reasonably necessary to hold or transfer any child at a health facility and that person must provide the assistance required.

Duration and release

39.—(1) A care and treatment plan commences at the time it is signed and ends 48 hours thereafter or where the order has been extended, at the time to which it has been extended.

(2) A child must be released at the end of a care and treatment plan if not released during such plan.

(3) Following the end of the care and treatment plan and upon release of the child, the designated medical officer must make a written record of the release recording—

- (a) the reasons for the release of the child;
- (b) the time of the release of the child; and
- (c) the person into whose care the child is released.

(4) Only one care and treatment plan and one subsequent extension may be made in respect of a child where the risk of harm arises from the same event or circumstances that give rise to the care and treatment plan, and, where applicable, the extension of that plan.

Medical examinations and information

40.—(1) A child held under a care and treatment plan at any health facility may be medically examined with or without the consent of the child or the child's parents.

(2) A designated medical officer may request from another medical practitioner any information possessed by the medical practitioner relevant to the health of the child.

(3) A person requested to give information under subsection (2) for the medical examination of a child who gives the requested information is not in breach of any written law, rule of law or practice or code of professional ethics.

(4) A designated medical officer may transfer a child who is the subject of a care and treatment plan to another health centre, health facility if he or she deems it appropriate.

(5) The care and treatment plan continues to apply to the child during and after the transfer referred to in subsection (4).

(6) The designated medical officer must inform the parents of the child of the transfer and the reasons for it, unless the designated medical officer believes on reasonable grounds that a proceeding has been or will be instituted against the parent for harming the child.

(7) A designated medical officer, if asked by a parent of the child held at a health facility must—

- (a) give the name and details of an alternative doctor or doctors who may be chosen by the parent for the medical examination or treatment of the child; or
- (b) allow the child to be independently examined by such other doctor or doctors at that facility.

Obstruction of a designated medical officer

41. A person who—

- (a) obstructs a designated medical officer or any person requested by a designated medical officer under section 38 to hold or transfer a child under a care and treatment plan;
- (b) without the approval of the designated medical officer, removes a child from a health facility knowing that the child is the subject of a care and treatment plan; or
- (c) without the approval of the designated medical officer keeps a child in his or her custody knowing that the child is the subject of a care and treatment plan,

commits a summary offence and is liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 18 months or both.

*Division 6—Care and protection orders**Application for care and protection order*

42.—(1) An application for a care and protection order for a child may be made by—

- (a) the Director; or
- (b) with the leave of the court, any other person.

(2) An application made under with subsection (1) must be accompanied by a care and protection plan compiled by a child welfare officer with the Director’s approval.

(3) A care and protection plan compiled in accordance with subsection (2) must include—

- (a) a description of the proposed arrangements for the care, custody or supervision of the child;
- (b) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of care and protection; and
- (c) an estimate of the time required to achieve the purpose of the Director’s intervention;

(4) If the Director makes an application to temporarily remove the child from a person’s care, the Director must provide—

- (a) an explanation of why the child cannot be adequately protected while in the person’s care and a description of any past efforts to protect the child; and
- (b) a statement of what efforts, if any, are planned to maintain the child’s contact with that person.

(5) Where the Director proposes to remove the child from a person’s custody permanently, a description of the arrangements made for the child’s long-term placement.

Application to be heard immediately

43. When an application is made under section 42, the Registrar of the court must immediately fix the time and place for hearing the application.

Parties to the proceedings

44.—(1) The following may be parties to a proceeding under this Part—

- (a) the applicant;
- (b) if the applicant is not the Director, the Director;
- (c) the child;
- (d) parent of the child;
- (e) any other person who is the caregiver for the child; or
- (f) any other person who has been granted leave by the court.

(2) An application for a care and protection order must be served on the parties to the proceedings in accordance with the rules of the court.

Legal representation

45. Where a child involved in a matter before the court is not represented by a legal representative, and the court is of the opinion that the child ought to be separately represented, the court may order that the child is to be separately represented and that the cost of the child's legal representation be borne by the State.

Child protection hearings

46.—(1) A hearing under this Part must—

- (a) be conducted with as little formality as the circumstances of the case permit;
- (b) be conducted in a manner conducive to the active participation of all persons involved in the proceedings;
- (c) be conducted in closed Court and attended only by persons directly involved in the proceedings; and
- (d) as far as is practicable, be held—
 - (i) at a different time or at a different place from the usual time or place for sittings of the court relating to criminal matters; and
 - (ii) in a room that is furnished and designed in a manner aimed at putting children at ease.

(2) The Chief Justice may from time to time make rules of court for regulating practice and procedure of the Family Division in proceedings under this Act and the provisions of any other written law or rule that regulate procedure in family law cases must have effect, subject to the provisions of this Act and of any rules so made.

Conferences with family and child counsellors or child welfare officers

47.—(1) At any time during a proceeding under this Part, the court may issue an order directing the parties to the proceedings to attend a conference with a family and child counsellor or child welfare officer to—

- (a) discuss the care and protection of the child; and
- (b) reach an agreement as to the action to be taken in the best interests of the child.

(2) The court may, in an order under subsection (1)—

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

Views of the child

48. Before issuing a care and protection order under this Part, the court must ensure that a child who is capable of expressing his or her views has had an opportunity to express those views which the court must give due consideration to, having regard to the age and understanding of the child.

Criteria for issuing care and protection orders

- 49.** The court may issue a care and protection order if the court is satisfied that—
- (a) the child is in need of care and protection on any of the grounds specified in section 5;
 - (b) the intervention through a court order is necessary to ensure the care and protection of the child; and
 - (c) making the care and protection order is in the best interests of the child.

Care and protection orders

50.—(1) In exercising its authority under section 49, the court may issue one or more of the following orders it considers to be appropriate in the circumstances—

- (a) a supervision order, placing a child and the parent under the supervision of a child welfare officer or any other person designated by the court;
- (b) a restraining order to protect the child;
- (c) a temporary care order placing the child in the care of the following persons is subject to the supervision of the Director and on such reasonable terms and conditions as the court considers appropriate—
 - (i) a family member who has agreed to assume care of the child;
 - (ii) a foster parent nominated by the Director; or
 - (iii) the Director; or
- (d) a permanent care order granting custody and guardianship of the child to—
 - (i) a member of the child’s family or other appropriate person nominated by the Director who agrees to assume custody and guardianship of the child; or
 - (ii) the Director.

(2) The court must not issue a care and protection order that has the effect of removing a child from the care of his or her parents unless it is satisfied that the less disruptive alternative would be inadequate to protect the child.

(3) In accordance with subsection (1)(d) a permanent care order must only be issued where—

- (a) the identity or location of the parents of the child has not been found and is not likely to be found;

- (b) a parent is unable or unwilling to assume custody of the child; or
- (c) the nature and extent of the harm the child has suffered is such that it would be in the child's best interests to be returned to the parent, within a reasonably foreseeable time.

(4) In issuing an order under subsections (1)(c) or (d), the court must give priority to placing the child with a family member, unless that would be contrary to the child's best interests.

Supervision order

51.—(1) A supervision order may be issued in accordance with section 50(1)(a) for a period not exceeding 24 months.

(2) In issuing a supervision order, the court may impose reasonable terms and conditions in relation to the care and supervision of the child, including—

- (a) the guidance, support and assistance to be provided to the parent and the child by the Director or any other person or organisation;
- (b) the participation of the parent in counselling or a specified treatment or rehabilitation programme necessary for the well-being or protection of the child; and
- (c) the right of a child welfare officer or any other person designated by the Director to visit, assist and advise the child.

Restraining order

52.—(1) A restraining order may be issued for the purposes of—

- (a) prohibiting a person from entering the home or place where the child lives;
- (b) limiting or placing conditions on a person's contact with the child; or
- (c) prohibiting a person from having any contact with the child.

(2) A restraining order may be amended by the court and remains valid until that the court revokes the order.

Temporary care order

53.—(1) A temporary care order may be issued in accordance with section 50(1)(c) for a period not exceeding 12 months.

(2) In issuing a temporary care order, the court may impose reasonable terms and conditions in relation to the care and protection of the child, including—

- (a) contact with the child by a parent, unless the court is satisfied that continued contact with the parent would not be in the best interests of the child;
- (b) the guidance, support and assistance to be provided to the child by the Director or any other person or organisation; and

- (c) the guidance, support and assistance to be made available to the child's parents to address the condition or situation that necessitated the child's removal from their custody.

Permanent care order

54.—(1) Where a permanent care order issued in accordance with section 50(1)(d) placing a child in the permanent care of the Director or other designated person—

- (a) the Director or other designated person must have custody and guardianship of the child to the exclusion of all other persons; and
- (b) the order must not affect the child's rights with respect to succession to property or other inheritance.

(2) Where a permanent care order has been granted to the Director, the Director—

- (a) must make appropriate arrangements for the care of the child; and
- (b) may consent to the child's adoption.

Maintenance order

55. Where a court has issued a care and protection order in accordance with section 50, the court may order a parent to pay to the Director or to a person designated in the order an amount either in cash or in kind, that the court considers reasonable for the maintenance of the child.

When a care and protection order ceases

56. A care and protection order placing a child in the care of the Director or other person under this Part ceases to have effect when—

- (a) the child reaches the age of 18 years;
- (b) the child is adopted;
- (c) in the case of an interim care order or a temporary care order, when the order expires; or
- (d) the court revokes the care and protection order.

Court may vary or revoke a care and protection order

57.—(1) A person who is a party to a proceeding where a care and protection order has been issued, may apply to the court to vary or revoke the care and protection order.

(2) On the hearing of an application under this section, the court may, if satisfied that it is in the best interests of the child to do so—

- (a) confirm the order;
- (b) vary the order or any condition of the order;
- (c) revoke the order; or
- (d) revoke the order and issue a new care and protection order.

Appeals

58.—(1) Any party to proceedings under this Act may appeal against any care and protection order issued, or any refusal to issue a care and protection order, to the court having jurisdiction to hear an appeal against a Ruling of the court.

(2) The procedure for the conduct of an appeal must be, in accordance with the rules of court relating to an appeal against a Ruling of the court.

Review of care and protection plan

59.—(1) The Director must ensure that a care and protection plan is prepared for each child who is the subject of a care and protection order from the court.

(2) A care and protection plan must be—

- (a) prepared within 3 days after the court issues a care and protection order;
- (b) monitored and assessed quarterly; and
- (c) reviewed at least once every 6 months.

(3) After reviewing the care and protection plan, the Director must prepare—

- (a) a report about the care and protection plan; and
- (b) if applicable a revised care and protection plan.

Offence against care and protection orders

60. Any person who fails to comply with a care and protection order commits a summary offence and is liable on conviction to a fine of \$2,000 or imprisonment for a term not exceeding 2 months or both.

PART 4—CHILDREN IN THE CARE OF THE DIRECTOR

Application

61. This Part applies to the Director who has care or guardianship of a child under this Act.

Duties of the Director

62.—(1) The Director must take reasonable steps to ensure that a child placed in his or her care meets the following standards ensuring—

- (a) the child’s needs for physical care is met including adequate food, clothing and shelter;
- (b) the child receives emotional support;
- (c) the child receives education, training or employment opportunities appropriate to the child’s age and ability;
- (d) the child receives medical and dental care when required;
- (e) the child is afforded reasonable privacy and possession of personal belongings;

- (f) the child is given the opportunity to participate in social and recreational activities appropriate to his or her age, developmental level and interests;
- (g) the child receives guidance, encouragement and the opportunity to maintain his or her cultural heritage;
- (h) the child is given the opportunity to participate in any religious activities of his or her choice;
- (i) the child receives positive guidance in assisting the child change his or her inappropriate behaviour;
- (j) the child maintains family and other significant personal relationships;
- (k) a child with a disability receives care and help appropriate to the child's special needs;
- (l) the child is consulted and given the opportunity to express his or her views, about significant decisions affecting him or her; and
- (m) the child is informed of his or her rights and the procedures available for enforcing those rights.

(2) Measures for managing the child's behaviour pursuant to subsection (1)(i) must not include corporal punishment or punishment that humiliates or threatens the child.

Placement of a child in the care of the Director

63.—(1) A child who is in the care of the Director, may be placed by the Director in the care of—

- (a) an approved family member who has agreed to assume care of the child;
- (b) an approved foster parent; or
- (c) a children's home registered in accordance with section 11.

(2) Wherever practicable, a child must be placed in an appropriate family setting and a child may be placed in a children's home only as a measure of last resort, where it is not practicable or appropriate to place the child with a family member or approved foster parent.

(3) The Director must ensure that a leaving care plan is prepared for each child and that the child's placement is reviewed at least once every 6 months.

Foster parents

64.—(1) A person who intends to become a foster parent must make an application, in the approved form, to the Director.

(2) A prospective foster parent must—

- (a) be a fit and proper person to be entrusted with the foster care of a child;
- (b) be willing and able to undertake, exercise and maintain the responsibilities of such care; and

(c) have the capacity to provide an environment that is conducive to a child's growth and development.

(3) A person applying under subsection (1) is to be assessed by a child welfare officer for compliance with subsection (a) to (c).

Children's homes

65.—(1) A children's home is considered a facility for the provision of residential care of children, other than in a family environment.

(2) The Minister may, establish and maintain such number and type of children's homes as the Minister may be required to provide for the care of children, and must endeavour to establish a sufficient range of children's homes to cater effectively for the variety of special needs of children.

Administration of children's homes

66.—(1) A person must not establish, operate or maintain a children's home unless the children's home has been registered in accordance with section 11.

(2) The Director or any child welfare officer at any reasonable hour may enter a children's home to assess and ensure that the welfare of the children in its care is in accordance with the standards provided in this Act.

(3) Notwithstanding section 11(9), if the Director is not satisfied with the management, maintenance or conduct of any registered children's home, the Director must give written notice to the children's home, requiring the children's home to show sufficient cause as to why it should not be removed from the Register.

(4) Pursuant to subsection (3), if within 28 days after such notice has been given, the children's home has not shown sufficient cause as to why it should not be removed from the Register, the Director may remove the children's home from the Register and transfer the children within that children's home to his or her care.

PART 5—MISCELLANEOUS

Confidentiality

67.—(1) A person must not publish or make public any information or matter that has the effect of identifying a child who is the subject of a proceeding under this Act.

(2) A person who contravenes this section commits a summary offence and is liable on conviction to a fine not exceeding—

(a) in the case of an individual, \$5,000; or

(b) in the case of a body corporate, \$15,000.

Regulations

68. The Minister may 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.

Repeal

69. The Child Welfare Act 2010 is repealed.

Transitional

70.—(1) A court hearing any proceedings which has commenced prior to the commencement of this Act must apply the repealed Child Welfare Act 2010 if no judgment has been made in the case and no order has been imposed prior to the commencement of this Act.

(2) On the hearing of any appeal against an order imposed by a court under the repealed Child Welfare Act 2010, prior to the commencement of this Act, the court hearing the appeal must, as far as is practicable in the circumstances, give effect to the provisions of the repealed Child Welfare Act 2010.

Consequential Amendments

71.—(1) The Crimes Act 2009 is amended by inserting the following new Part after Part 15—

“PART 15A—OFFENCES AGAINST CHILDREN

Interpretation

287A. In this Part—

“child”, in the context of child pornographic material, includes—

- (a) a person regardless of age, who is presented, depicted or portrayed as being under the age of 18 years; and
- (b) computer-generated, digitally or manually crafted images, graphics or animation of a person who is represented or who is made to appear to be, under the age of 18 years;

“child pornographic material” means any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, that depicts, presents or represents—

- (i) a person who is or appears to be a child engaged in or apparently engaged in sexual intercourse or other sexual activity; or
- (ii) the sexual organs or anal region of a child, for primarily sexual purposes;

“child sexual offence” means a sexual offence committed against a child.

Child pornographic material

287B—(1) A person commits an indictable offence if he or she possesses, views, downloads or accesses child pornographic material.

Penalty – Imprisonment for a term not exceeding 5 years.

(2) A person commits an indictable offence which is triable summarily if he or she makes, publishes, prints, creates, manufactures, transmits, distributes, disseminates, exhibits, sells, advertises, imports or exports child pornographic material.

Penalty – Imprisonment for a term not exceeding 10 years.

(3) A person commits an indictable offence if he or she—

- (a) uses a child for the production of child pornographic material or causes or procures a child to be so used; or
- (b) having the care of a child, consents to the child being used or allows the child to be used for the production of child pornographic material.

Penalty – Imprisonment for a term not exceeding 15 years.

(4) A person must not be convicted for an offence under this section if the act that is alleged to constitute the offence has a legitimate purpose related to the administration of justice or to science, medicine or education.

Sexual communication with a child

287C.—(1) A person commits a summary offence if he or she—

- (a) for the purpose of obtaining sexual gratification, intentionally communicates with a child under the age of 16 years; and
- (b) the communication is sexual or is intended to encourage the child to participate in a communication that is sexual.

(2) For the purposes of this section, communication is sexual if—

- (a) any part of it relates to sexual activity; or
- (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual.

Penalty – Imprisonment for a term not exceeding 2 years.

Luring a child

287D—(1) A person commits a summary offence if he or she engages in any conduct that exposes a child to indecent material or provides a child with any object with the intention to procure the child for sexual activity with himself or herself or any other person.

Penalty – Imprisonment for a term not exceeding 5 years.

(2) A person commits an indictable offence which is triable summarily if—

- (a) having met or communicated with a child on an earlier occasion, he or she takes one of the following actions—
 - (i) intentionally meets the child;

- (ii) travels with the intention of meeting the child; or
 - (iii) arranges for or persuades the child to travel with the intention of meeting him or her; and
- (b) at the time of taking the action, he or she intends to do anything to or in respect of the child which would constitute the commission of a sexual offence against the child.

Penalty – Imprisonment for a term not exceeding 10 years.

(3) A reference in this section to a child includes a reference to a police officer who pretends to be a child (the fictitious child) if the offender, when taking any of the actions described in subsection (1), believed that the fictitious child was a child.

Defences

287E.—(1) It is a sufficient defence to any charge under sections 287C and 287D if it is made to appear to the court that the person charged had reasonable cause to believe and did in fact believe, that the person was of or above the age of 18 years.

(2) It is no defence to any charge under this Part to prove that the child consented to an act.”.

(2) The Domestic Violence Act 2009 is amended in section 19(1)(c) by deleting subparagraph (ii) and substituting the following—

“(ii) a welfare officer, a child welfare officer or a child justice officer employed in the Ministry responsible for child welfare; or”.

(3) The Juveniles Act 1973 is amended by deleting Part 6 to Part 12.

(4) The Family Law Regulations 2005 is amended in section 4 by deleting “Juveniles Act 1973” and substituting “Child Care and Protection Act 2024”.

(5) The Domestic Violence (Prescribed Forms) Rules 2009 is amended in the Schedule, in Form 6 by deleting “the Director of Social Welfare or a Welfare Officer appointed under section 37(2) of the Juveniles Act 1973” and substituting “a welfare officer, a child welfare officer or a child justice officer employed in the Ministry responsible for child welfare”.

May 2024

CHILD CARE AND PROTECTION BILL 2024

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 Child Care and Protection Bill 2024 (**‘Bill’**) replaces the child protection sections of the Juveniles Act 1973 (**‘Act’**). It outlines what the country will do to promote the wellbeing of children and to protect them from all forms of violence, abuse, neglect and exploitation. The intension of the Child Care and Protection Bill is to provide a more comprehensive framework for child welfare services, and in particular to better guide the work of the Ministry responsible for child welfare (**‘Ministry’**) in preventing and responding to child abuse.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provide 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 that the Bill applies to all persons under the age of 18 years in Fiji.
- 2.3 Clause 3 of the Bill provides for the interpretation of terms used throughout the Bill.
- 2.4 Clause 4 of the Bill provides for the objectives of the Bill.
- 2.5 Clause 5 of the Bill lists and describes instances where a child would be considered to be in need of care and protection.
- 2.6 Clause 6 of the Bill provides the principles for the care and protection of a child.
- 2.7 Clause 7 of the Bill provides for the responsibilities of parents in relation to the care and protection of children.

- 2.8 Clause 8 of the Bill provides for the decision-making principles that are to be considered in instances where a decision or action is to be taken in relation to a child under the Bill.
- 2.9 Clause 9 of the Bill provides for the powers and duties of the Director of the Department responsible for children (**'Director'**).
- 2.10 Clause 10 of the Bill provides for the delegation powers of the Director.
- 2.11 Clause 11 of the Bill establishes the Register of Approved Child Protection Agencies, Organisations and Children's Homes.
- 2.12 Clause 12 of the Bill allows for the Director, in deciding what action to be taken to promote the well-being of a child, to request for assistance from a government department or agency to provide services to a child or to the child's family.
- 2.13 Clause 13 of the Bill empowers the Director or any child welfare office to request for police assistance in executing their duties under the Bill.
- 2.14 Clause 14 of the Bill provides that a person who willfully obstructs or resists the Director or any child welfare officer or police officer in the lawful execution of their duties under the Bill, commits a summary offence and is liable to a prescribed penalty.
- 2.15 Clause 15 of the Bill provides that the Director must coordinate prevention measures to, *inter alia*, promote the well-being and protection of children.
- 2.16 Clause 16 of the Bill mandates the Director to promote and coordinate progressive development of early intervention services.
- 2.17 Clause 17 of the Bill provides for provisions relating to the reporting of a child in need of care and protection.
- 2.18 Clause 18 of the Bill clarifies as to what must be included in a report when reporting a child in need of care and protection.
- 2.19 Clause 19 of the Bill provides for the protection of a person who makes a report in relation to a child in need of care and protection.
- 2.20 Clause 20 of the Bill provides that the Director is responsible for establishing ways to ensure timely referrals, information sharing and coordination of all service providers when taking action to ensure a child's well-being.
- 2.21 Clause 21 of the Bill allows for the Director to request a government department or agency, or statutory authority to provide information in relation to a child.
- 2.22 Clause 22 of the Bill allows for a court, in any proceedings, to refer a child to the Director for an assessment to determine whether the child is need of care and protection.

- 2.23 Clause 23 of the Bill makes provision to allow the Director to make any assessment about a child's well-being to determine whether the intervention of the Director is necessary in the best interests of the child.
- 2.24 Clause 24 of the Bill provides provisions that allow for the Director, with the consent of the child's parent to arrange for the child to be medically examined by a doctor.
- 2.25 Clause 25 of the Bill lists out the actions that the Director may take if the he or she determines that actions are to be taken to ensure the care and protection of a child.
- 2.26 Clause 26 of the Bill provides that in determining what actions are to be taken to ensure the care and protection of a child, the Director may convene or cause to be convened an inter-agency case conference.
- 2.27 Clause 27 of the Bill makes provisions for agreed care and protection plans.
- 2.28 Clause 28 of the Bill provides that where the Director has reasonable grounds to believe that a child is in need of care and protection and, *inter alia*, no agreement can be reached on a plan to ensure the care and protection of the child, the Director may apply to the court for a care and protection order.
- 2.29 Clause 29 of the Bill allows for a Magistrate to issue a warrant authorising a child welfare officer or police officer to search for and remove a child to a place of safety if there are grounds to believe that the child is in need of care of protection and a less restrictive is not available.
- 2.30 Clause 30 of the Bill allows for a child welfare officer or a police officer to remove a child to a place of safety, without a warrant, if there are reasonable grounds that the child's health or safety is in immediate danger.
- 2.31 Clause 31 of the Bill allows for a child welfare officer to request for the assistance of a police officer.
- 2.32 Clause 32 of the Bill provides that where a child has been removed to a place of safety, the child is in the care of the Director until the child is returned to a parent or the court issues an interim care and protection order.
- 2.33 Clause 33 of the Bill provides for the terms and conditions that may be included in an interim care and protection order.
- 2.34 Clause 34 of the Bill describes circumstances when do interim care and protection order is required.
- 2.35 Clause 35 of the Bill clarifies as to who may be appointed as a designated medical officer.

- 2.36 Clause 35 of the Bill provides for the powers of designated medical officers.
- 2.37 Clause 37 of the Bill describes the procedure to be followed when a child is being held in a medical facility in accordance with a care and treatment plan.
- 2.38 Clause 38 of the Bill allows for a designated medical officer to request any person to provide any assistance necessary to hold any child at a health centre, health care facility, hospital or doctor's surgery or to transfer a child to another health centre, health care facility, hospital or doctor's surgery.
- 2.39 Clause 39 of the Bill provides for the duration of a care and treatment plan and the procedures to be followed when a child is to be released at the end of such plan.
- 2.40 Clause 40 of the Bill provides that, *inter alia*, a child held under a care and treatment plan at any health centre, health care facility, hospital or doctor's surgery may be medically examined with or without the consent of the child's parents, at the discretion of the designated medical officer.
- 2.41 2.41 Clause 41 of the Bill provides that the obstruction of a designated medical officer in the exercise of his or her duties is an offence for which there is a prescribed penalty.
- 2.42 Clause 42 of the Bill provides the procedure to be followed when applying for a care and protection order.
- 2.43 Clause 43 of the Bill provides that where an application is made under clause 42, the Registrar of the court must immediately fix the time and place for hearing of the application, having regard to the principle that it is in the best interests of the child for the application to be heard as early as practicable.
- 2.44 Clause 44 of the Bill lists the persons who may be parties to an application made under Part 3.
- 2.45 Clause 45 of the Bill provides that a child involved in a matter before the court is not represented by a legal representative and the court is of the opinion that the child ought to be separately represented, the court may order that the child is to be separately represented and that the cost of the child's legal representation be paid by the State.
- 2.46 Clause 46 of the Bill provides for the principles to be applied when courts conduct child protection hearings.
- 2.47 Clause 47 of the Bill provides that the court, in proceedings in relation to children, may issue an order directing parties to attend a conference with the family and child counsellor to, *inter alia*, discuss and try to reach an agreement as to the actions to be taken in the best interests of the child.

- 2.48 Clause 48 of the Bill provides that prior to issuing care and protection orders, the court must ensure that a child's views are also considered.
- 2.49 Clause 49 of the Bill provides for the criteria to be followed prior to the issuance of care and protection orders.
- 2.50 Clause 50 of the Bill contains provisions relating to care and protection orders.
- 2.51 Clause 51 of the Bill contains provisions relating to the issuance of supervision orders.
- 2.52 Clause 52 of the Bill contains provisions relating to the issuance of restraining orders.
- 2.53 Clause 53 of the Bill contains provisions relating to the issuance of temporary care orders.
- 2.54 Clause 54 of the Bill contains provisions relating to the issuance of permanent care orders.
- 2.55 Clause 55 of the Bill contains provisions relating to the issuance of maintenance orders.
- 2.56 Clause 56 of the Bill contains provisions to provide for instances where a care and protection order would cease.
- 2.57 Clause 57 of the Bill allows for a court to vary or revoke a care and protection order.
- 2.58 Clause 58 of the Bill allows for the appeal provisions to allow a party aggrieved by the decision to issue or revoke a care and protection order, to appeal against such order.
- 2.59 Clause 59 of the Bill allows makes for the provisions for care and protection plans and its review.
- 2.60 Clause 60 of the Bill provides that any person who does not comply with a care and protection plan commits a summary and is liable for the prescribed offence.
- 2.61 Clause 61 of the Bill provides that Part 4 of the Bill applies if the Director has care or guardianship of a child.
- 2.62 Clause 62 of the Bill provides that the Director must take reasonable steps to ensure that a child placed in the care of the Director is cared for in a way that meets prescribed standards.
- 2.63 Clause 63 of the Bill makes provisions relating the placement of a child in the care of the Director.

- 2.64 Clause 64 of the Bill makes provisions in relation to persons who wish to be approved as prospective foster parents.
- 2.65 Clause 65 of the Bill provides for the powers of the Minister to, *inter alia*, establish and maintain such numbers and types of children's homes that may be required to provide for the care of children.
- 2.66 Clause 66 of the Bill contains provisions relating to the administration of children's homes.
- 2.67 Clause 67 of the Bill makes provision for the maintaining of confidentiality in relation to any matter or information that has the effect of identifying a child who the subject of proceedings instituted under the Bill.
- 2.68 Clause 68 of the Bill provides for the powers of the Minister to make regulations.
- 2.69 Clause 69 of the Bill repeals the Child Welfare Act 2010.
- 2.70 Clause 70 of the Bill provides that any orders issue under the Child Welfare Act 2010 continue in force until its expiry or revocation.
- 2.71 Clause 71 of the Bill provides consequential amendments to the Crimes Act 2009, Domestic Violence Act 2009, Family Law Act 2003, Juveniles Act 1973 and Domestic Violence (Prescribed Forms) Rules 2009.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new legislation comes under the responsibility of the Minister responsible for child welfare.

S. D. TURAGA
Attorney-General