

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

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

Appeal does not act as a stay of the order under appeal

74. (1) Unless the Court that made the order appealed from otherwise directs:

(a) the operation of an order made under this Act is not suspended as a result of an appeal being filed; and

(b) every order made under this Act may be enforced in the same manner in all respects as if no appeal were pending.

Nature of appeal

75. (1) An appeal from a decision:

(a) referred to in section 72(2)(a) may be on a matter of fact as well as on a matter of law;

(b) referred to in sections 72(2)(b) and (c) may be on a matter of law.

Power on appeal

76. (1) A court that hears an appeal against an order to which section 72 applies may affirm, vary or discharge an order under appeal and may make such other order or decision as the court thinks fit having regard to the provisions of this Act.

Part 9 – OFFENCE

Criminal offence to breach a domestic violence restraining order

77. (1) Any person who, having notice of a domestic violence restraining order by which they were bound, without reasonable excuse contravenes the order or part of the order, is guilty of a criminal offence and is liable;

(a) subject to subsection (b), to a fine of \$1,000 or imprisonment for 12 months or both;

(b) if the person has previously been convicted of an offence of breach of a domestic violence restraining order, to a fine of \$2,000 or

imprisonment for 2 years or both.²⁵

(2) It is no defence to a charge under subsection (1) that when the contravention occurred:

(a) the person charged, or a person protected by the domestic violence restraining order, was in another country; or

(b) both were in another country or other countries.

(3) Subsection (1) does not apply to:

(a) a condition of a domestic violence restraining order made under section 34 or section 37 of this Act;

(b) an order that a person pay compensation made under section 39 of this Act; or

(c) a condition of a domestic violence restraining order directed to a person protected by the order made under section 32(2)(b) of this Act;

(4) For the purposes of subsection (1) a person will be taken to have had notice of a domestic violence restraining order if the person:

(a) was present before the Court at the time the order was made, or

(b) was present when the order was made by telephone and the presiding judicial officer spoke to the person by telephone and explained the terms of the order, or

(c) was told of the existence of the order and the terms of the order orally, or in writing, by a police officer, or

(d) was personally served with the order, or

(e) was served with a copy of the order in such other manner as the Court directed, or

(f) was aware of the terms of the order.

(5) In proceedings under this section the Court must inquire whether the person charged was subject to an order under section 37 of this Act requiring the person to attend a counselling, education, rehabilitation or support program.

²⁵ Drafting note: Interpretation Act s. 60 'Where in any written law a penalty is prescribed for an offence under that law, such provision shall, unless a contrary intention appears, mean that the offence shall be punishable by a penalty not exceeding the penalty prescribed'

(6) Where the Court becomes aware during proceedings under this section that the person charged has not complied with an order made under section 37 requiring the person to attend a counselling, education, rehabilitation or support program, the Court must proceed in relation to that matter in accordance with section 37(7) of this Act.

Police may arrest without warrant

78. (1) Where a domestic violence restraining order is in force, any police officer may arrest, without warrant, and charge any person whom the police officer has good cause to suspect is about to commit or has committed the offence of breach of a domestic violence restraining order referred to in section 77.

(2) In considering whether or not to arrest a person pursuant to subsection (1) of this section, the police officer must take the following matters into account:

- (a) The risk to the safety and wellbeing of a person protected by the domestic violence restraining order if the arrest is not made;
- (b) The seriousness of the anticipated or alleged offence; and
- (c) The imminence of offence or the length of time since the alleged offence occurred.

(3) Nothing in this section limits or impinges upon any other power of arrest that the police officer may have in the circumstances.

Part 10 - CONTEMPT

Contempt and referral for investigation or prosecution

79. (1) Notwithstanding any other provision in this Act a Court which has jurisdiction under this Act may punish persons for -

- (a) contempt in the face of the Court when exercising jurisdiction under this Act;
- (b) wilful disobedience of an order specified in section 77(3)(a) and (b) [order for urgent monetary relief; respondent to attend counselling or program; order for payment of compensation]

(2). The rules may provide for practice and procedure as to charging with contempt and the hearing of the charge.

(3). Where a natural person is in contempt the Court may punish the contempt by committal to prison or fine or both.

(4). Where a Court exercising jurisdiction under this Act becomes aware, in the course of the proceedings, that a person who is bound by a domestic violence restraining order made under this Act appears to have breached the order, the Court may direct that information in relation to the apparent breach be referred to the Commissioner of Police, the Director of Public Prosecutions or both.

Part 11 - MISCELLANEOUS

Power to make rules

80. (1) The Chief Justice may from time to time make rules not inconsistent with this Act providing for and in relation to practice and procedure to be followed by Courts exercising jurisdiction under this Act and for and in relation to all matters and things incidental to any such practice and procedure, or necessary or convenient to be prescribed for the conduct of any business of those Courts under this Act including providing for and in relation to -

- (a) forms, and the use of forms, as necessary for the purposes of the Act;
- (b) service of documents, substituted service and dispensing with service;
- (c) applications and hearings by telephone including but not limited to geographic location, permissible hours and equipment requirements (e.g. location of telephone, availability of facsimile machine);
- (d) who may be joined in proceedings and how they may be joined;
- (e) intervention;
- (f) consolidation of applications or of proceedings;
- (g) discontinuance and withdrawal of proceedings;
- (h) striking out and staying proceedings;
- (i) amendment of documents;
- (j) representatives, including (without limitation), -
 - (i) providing for the appointment, retirement and removal of representatives, and
 - (ii) providing for the conduct of proceedings brought on a person's behalf by a representative;
- (k) attendance of witnesses;

- (l) production of documents and other material to be used in evidence;
- (m) trial management;
- (n) giving judgment;
- (o) institution of appeals;
- (p) costs of proceedings (including solicitor and client costs and party and party costs) and the assessment or taxation of those costs;
- (q) the enforcement and execution of orders;
- (r) the attendance by parties and others, in relation to proceedings under this Act, at Court and at safety planning conferences;
- (s) information about proceedings under this Act to be transferred between Courts exercising jurisdiction under this Act or otherwise in relation to this Act;
- (2). The power of the Chief Justice to make rules under subsection (1) includes power to apply, with or without modification, provisions of the Family Law Rules 2005 or the Rules of the Court or procedures of another Court of the Fiji Islands.
- (3). Before making rules under this section the Chief Justice must consult with the Chief Magistrate.

Power to make regulations

81. The Attorney-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular –

- (a) prescribing a country to be a *prescribed foreign country* referred to in section 2 of this Act;
- (b) prescribing the information that police must give to a victim of domestic violence and to a perpetrator of domestic violence referred to in section 13 of this Act;
- (c) prescribing the information that police must give to a victim of domestic violence about how a person may complain if a police officer does not apply for a domestic violence restraining order, referred to in section 14 of this Act;
- (d) prescribing the information about services for victims of domestic violence and for perpetrators of domestic violence referred to in

sections 16 and 17 of this Act;

(e) prescribing the information about the effect of domestic violence restraining orders referred to in section 19 of this Act;

(f) prescribing categories of police officers or individual officers for the purpose of section 25 of this Act;

(g) prescribing counselling, education, rehabilitation and support programs, referred to in section 37, including the means by which potential providers may be approved for this purpose and other requirements that may apply for quality assurance purposes;

(h) in relation to safety planning conferences referred to in section 58:

(i) prescribing training to be undertaken by those who would act as a Conference Convenor; and

(ii) prescribing additional details, consistent with section 58 concerning arrangements for safety planning conferences.

(i) providing for the enforcement of overseas of orders made under this Act; and

(j) providing for enforcement in the Fiji Islands of foreign domestic violence restraining orders.

**DRAFT PENAL CODE (DOMESTIC VIOLENCE) AMENDMENT
BILL 2005**

ARRANGEMENT OF CLAUSES

CLAUSES

1. Short title.....	1
2. Commencement.....	1
3. Amendments to the Penal Code	1
(1) Section 4 - insert definition of 'domestic violence offence'	1
(2) Insert Schedule 1A - definitions	3
(3) Section 46A & 46B - domestic violence offences – determining penalty	4

A BILL

TO INSERT A DEFINITION OF DOMESTIC VIOLENCE OFFENCE IN THE PENAL CODE AND TO SPECIFY CONSIDERATIONS TO BE TAKEN INTO ACCOUNT BY THE COURTS WHEN SENTENCING AND TO PROMOTE THE REHABILITATION OF PERPETRATORS OF DOMESTIC VIOLENCE

ENACTED by the Parliament of the Fiji Islands –

Short title

1. This Act may be cited as the Penal Code (Domestic Violence) Amendment Act 2005.

Commencement

- (2.) This Act commences on a date or dates to be appointed by the Attorney-General by notice in the Gazette.

Amendments to the Penal Code

3. The Penal Code [Cap 17] is amended as follows:

- (1) Section 4 - insert definition of 'domestic violence offence'

(1) Section 4¹ is amended by inserting in the appropriate alphabetical position the following definitions -

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

“domestic violence offence” means:

a) a personal violence offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship,

b) a property damage offence committed by the offender against a person with whom the offender is or has been in a family or domestic relationship, or

c) the offence of breach of domestic violence restraining order under section 77 of the Domestic Violence Act 2005

“family or domestic relationship” means the relationship of:

a) spouse

b) other family member

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

d) boyfriend or girlfriend,

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

“other family member” means any of the following:

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

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

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

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

e) nephew, niece, cousin

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

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

“personal violence offence” means an offence specified in Part 1 of Schedule 1A

“property damage offence” means any an offence specified in Part 2 of Schedule 1A

¹ Drafting note: section 4 is ‘definition of certain expressions and terms’

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

(2) Insert Schedule 1A - definitions

(2) The following Schedule is inserted after Schedule 1

Schedule 1A

Domestic violence offences

Part 1 – Personal violence offence

Part 1 lists offences referred to by the definition of ‘personal violence offence’ in section 4 of the Penal Code.

Item	Penal Code Section	Description
1	149	Definition of rape
2	151	Attempted rape
3	152	Abduction
4	153	Abduction of girl under eighteen years of age with intent to have carnal-knowledge
5	154	Indecent assaults on and indecently insulting or annoying females
6	155	Defilement of girl under thirteen years of age
7	156	Defilement of girl between thirteen and sixteen years of age. Defilement of idiots or imbeciles.
8	157	Procuration
9	158	Procuring defilement of women by threats, fraud or drugs
10	159	Householder permitting defilement of girl under thirteen years of age on his premises
11	160	Householder permitting, defilement of girl under sixteen years of age on his premises
12	161	Detention of female in brothel or elsewhere
13	171	Conspiracy to defile
14	172	Attempts to procure abortion
15	175	Unnatural offences
16	176	Attempts to commit unnatural offences and indecent assaults
17	178	Incest by males
18	179	Incest by females
19	191	Inciting dogs to attack
20	197	Criminal trespass
21	198	Manslaughter
22	199	Murder
23	205	Infanticide
24	209	Responsibility of person who has charge of another
25	210	Duty of head of family
26	211	Duty of masters
27	214	Attempt to murder
28	215	Attempt to murder by convict
29	216	Accessory after the fact to murder
30	217	Conspiracy to murder
31	219	Liability for complicity in another's suicide
32	221	Killing unborn child
33	222	Disabling in order to commit felony or misdemeanour

34	223	Stupefying in order to commit felony or misdemeanour
35	224	Acts intended to cause grievous harm or to prevent arrest
36	227	Grievous harm
37	228	Placing explosive with intent
38	229	Maliciously administering poison with intent to harm
39	230	Unlawful wounding
40	231	Unlawful poisoning
41	233	Failure to supply necessities
42	237	Reckless or negligent acts
43	244	Common assault
44	245	Assault causing actual bodily harm
45	247(a)	Assault any person with intention to commit a felony
46	249	Punishment for kidnapping
47	250	Kidnapping or abducting in order to murder
48	251	Kidnapping or abducting with intent to confine person
49	252	Kidnapping or abducting with intent to harm
50	253	Wrongfully concealing kidnapped person
51	254	Child stealing
52	255	Abduction of girls under sixteen
53	256	Punishment for wrongful confinement
	Juveniles Act Section	
54	57	Cruelty to and neglect of juveniles

Part 2 – Property damage offence

Part 2 lists criminal offences referred to by the definition of 'property damage offence' in section 4 of the Penal Code.

Item	Penal Code Section	Description
1	317	Arson
2	318	Attempts to commit arson
3	324	Other malicious injuries-general and special punishments
4	325	Attempts to destroy property by explosives
5	330	Criminal Intimidation

(3) Section 46A & 46B - domestic violence offences – determining penalty

(3) After section 46 the following sections are inserted -

46A (1) Notwithstanding any other provision of this Act, where a person is charged with a domestic violence offence the matters listed in section 46A(3), so far as each is relevant in the particular case, must be taken into account by the court, in addition to any other relevant matters, in determining penalty.

(2) Where there was more than one victim of a particular domestic violence offence, references in this section to 'the victim' means each of the victims.

(3) The matters referred to in section 46A(1) which must be taken into account are:

- (a) Whether the defendant has any previous convictions for a domestic violence offence;
- (b) Whether the defendant has previously been charged with a domestic violence offence where the charge was stayed or terminated under section 163 of the Criminal Procedure Code or otherwise;
- (c) The extent of the damage, injuries or loss suffered by the victim as a result of the offence;
- (d) Any special considerations relating to the physical, psychological or other characteristics of the victim when the offence occurred including but not limited to:
 - (i) the age of the victim;
 - (ii) whether the victim was pregnant;
 - (iii) whether the victim was disabled;
- (e) Whether a child or children in witnessed or heard the offence;
- (f) The effect of the offence on the emotional, psychological and physical well being of the victim;
- (g) The effect of the offence in terms of hardship, dislocation or other difficulties caused to the victim;
- (h) The weight that can be accorded to any evidence, including a report by a person who has counselled, assisted or treated the victim since the offence, that deals with the victim's:
 - (i) attitude to the offence;
 - (ii) views in relation to any steps taken or proposed to be taken by the defendant to address his or her behaviour;
 - (iii) assessment of whether the defendant continues to pose a risk or threat to the victim and if so what measures would help ensure the victim's safety and well being.
- (i) The conduct of the defendant towards the victim since the offence occurred so far as it relates to whether the defendant:
 - (i) accepts responsibility for the offence;
 - (ii) has taken reasonable steps available to the defendant to make amends to the victim including addressing or reducing the negative effects of the offence on the victim;
 - (iii) appears to pose any further threat to the victim;

- PACIFIC COLLECTION
- (j) Whether the defendant is willing to take steps, or further steps, to attempt to make amends to the victim;
 - (k) Whether the defendant has sought and received personal counselling or other assistance since the offence or intends to do so;
 - (l) Whether the defendant is willing to participate in personal counselling, an educational or other program if ordered by the Court;
 - (m) The weight that can be accorded to any report submitted by a person who has counselled, assisted or treated the defendant since the offence occurred that deals with whether:
 - (i) the defendant accepts responsibility for the offence;
 - (ii) the defendant appears to pose any further threat to the victim;
 - (iii) the defendant is likely to be assisted by further counselling, assistance or treatment.

46B. Where section 46A applies, the Court must:

- (a) consider whether conditions should be imposed and whether a domestic violence restraining order should be made under the Domestic Violence Act 2005, to ensure the safety and well being of the victim, or where more than one, then of each victim,
- (b) consider making an order that the defendant undertake a course of counselling, suitable education or treatment program that is likely to assist to ensure that the defendant does not re-offend;
- (c) in a case where the court:
 - (i) has power to order that the defendant pay or provide compensation to to or for the victim or victims, or
 - (ii) power to order payment of compensation for any loss or injury caused by the offence from a fine or money found on or in the possession of a convicted person pursuant to s.161 of the Criminal Procedure Code

consider and make proper inquiry into whether an order for compensation, to or for the victim or victims, should be made.

**DRAFT CRIMINAL PROCEDURE CODE (DOMESTIC
VIOLENCE) AMENDMENT BILL 2005**

ARRANGEMENT OF CLAUSES

CLAUSE

1. Short title.....	1
2. Commencement.....	1
3. Amendments to the Criminal Procedure Code.....	1
(1) Section 15- entry and search in case of domestic violence offence.....	1
(2) Section 163 - not to apply to domestic violence offence	3
(3) Schedule 1 - Arrest without warrant for common assault when a domestic violence offence	3

A BILL

TO PROVIDE FOR INCREASED POLICE POWERS OF ENTRY, SEARCH
AND ARREST IN RELATION TO DOMESTIC VIOLENCE OFFENCES AND
TO INCREASE DETERRENCE IN RELATION TO THE MOST COMMON
DOMESTIC VIOLENCE OFFENCES

ENACTED by the Parliament of the Fiji Islands –

Short title

1. This Act may be cited as the Criminal Procedure Code (Domestic Violence) Amendment Act 2005.

Commencement

2. This Act commences on a date or dates to be appointed by the Attorney-General by notice in the Gazette.

Amendments to the Criminal Procedure Code

3. The Criminal Procedure Code [Cap 21] is amended as follows:

- (1) **Section 15- entry and search in case of domestic violence offence**

(1) After section 15 the following section is inserted -

15A. (1) Where a police officer reasonably suspects that a person is about to commit or is committing a domestic violence offence or that such an offence was committed before the officer's arrival, on any premises, the officer may without a warrant enter those premises and may remain in those premises for as long as the officer considers necessary -

(a) to ensure that, in the officer's opinion, there is no imminent danger of a person committing a domestic violence offence on the premises;

(b) to investigate whether or not a domestic violence offence has been committed; and

(c) to give or arrange for such assistance as is reasonable in the circumstances.

(2) If after entering premises (pursuant to the power in subsection (1) or pursuant to another power) a police officer reasonably suspects that a domestic violence offence is being or is about to be committed, or was committed before the officer's arrival, on the premises the officer without further authority may -

(a) search the premises to establish whether any person on the premises -

- (i) is in need of assistance; or
- (ii) is in possession of a weapon

(b) search -

- (i) in the premises for a weapon; and
- (ii) any person on the premises whom the officer reasonably suspects is in possession of a weapon;

and

(c) seize any weapon found on the premises, or on a person, that the officer reasonably suspects-

- (i) was used to commit a domestic violence offence; or
- (ii) maybe used to commit a domestic violence offence.

(3) A police officer may use such force, and such assistance, as is necessary and reasonably in the circumstances in order to perform a function under this section

(4) This section does not limit any other power a police officer may have under this Act, any other written law or at common law.

(2) Section 163 - not to apply to domestic violence offence

(2) After section 163 the following section is inserted –

163A. Section 163 does not apply to a charge, which in the circumstances of the case, is a charge for a domestic violence offence.

(3) Schedule 1 - Arrest without warrant for common assault when a domestic violence offence

(3) Schedule 1 is amended by adding to the list of offences -

common assault that is a domestic violence offence¹

¹ Drafting note: drafting may need to be adjusted to fit the pattern of offences listed in schedule 1 however the current draft shows the effect of the intended amendment

DRAFT BAIL (DOMESTIC VIOLENCE) AMENDMENT BILL 2005

ARRANGEMENT OF CLAUSES

CLAUSE

1. Short title.....	1
2. Commencement.....	1
3. Amendments to the Bail Act 2002.....	1
(1) Section 2 - 'serious offence' includes breach of domestic violence restraining order	2
(2) Section 3 - entitlement to bail, domestic violence offence	2
(3) Section 8 - authority of police to grant bail - domestic violence offence	3
(4) Section 16 - residential address of accused on bail – domestic violence offences.....	3
(5) Section 19 - reasons for refusing bail – domestic violence offences.....	4
(6) Section 22 - conditions of bail – domestic violence offences.....	4
(7) Section 23 - restrictions on imposing bail conditions – domestic violence offences	5
(8) Insert new Part VA - Notification of bail decisions - domestic violence offences	6

A BILL

TO AMEND THE BAIL ACT 2002 TO SPECIFY SAFETY AND OTHER CONSIDERATIONS RELEVANT TO BAIL WHEN A PERSON IS CHARGED WITH A DOMESTIC VIOLENCE OFFENCE

ENACTED by the Parliament of the Fiji Islands –

Short title

1. This Act may be cited as the Bail (Domestic Violence) Amendment Act 2005.

Commencement

2. This Act commences on a date or dates to be appointed by the Attorney-General by notice in the Gazette.

Amendments to the Bail Act 2002

3. The Bail Act 2002 is amended as follows:

(1) Section 2 - 'serious offence' includes breach of domestic violence restraining order

(1) Section 2 is amended by -

(a) inserting the following definition in the appropriate alphabetical position -

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

(b) deleting -

"serious offence" means any offence for which the maximum penalty includes imprisonment for 5 years or more;" and inserting instead -

"serious offence" means:

(a) the offence of breach of a domestic violence restraining order; and

(b) any offence for which the maximum penalty includes imprisonment for 5 years or more;¹

(2) Section 3 - entitlement to bail, domestic violence offence

(2) Section 3(4) is amended by

(a) deleting the word 'conviction' in section 3(4)(b) and substituting 'conviction, or';

(b) inserting the following section after section (3)(4)(b) -

(c) the person has been charged with a domestic violence offence².

¹ Drafting note: the effect of this amendment is that police would not have power to grant bail when a person is charged with the new criminal offence of breach of a domestic violence restraining order in addition to the existing limitation that police do not have power to grant bail if a person is charged with any offence for which the maximum penalty is 5 years imprisonment or more.

² Drafting note: this provision means that the presumption of bail is displaced where a person is charged with a domestic violence offence

(2) Section 3(5) is amended by -

(a) deleting the word 'one' in section 3(5)(c) and substituting 'one, or;';

(b) inserting the following section after section (3)(5)(d) -

(c) the person has been charged with a domestic violence offence³.

(3) Section 8 - authority of police to grant bail - domestic violence offence

(3) Section 8(2) is amended:

(a) in section 8(2)(c) - by deleting the word 'one' and substituting 'one, or':

(b) in section 8(2) - by inserting the following section after section 8(2)(c) -

(d) the offence is a domestic violence offence unless satisfied that the release of the person on conditions, that would or could be applied, would not pose a risk to the safety of a specially affected person⁴.

(4) Section 16 - residential address of accused on bail – domestic violence offences

(4). Sections 16(3) and (4) be deleted and the following sections be substituted:

(3) Subject to subsection (5) and subsection (6), where a person who is charged with a domestic violence offence is granted bail the person must reside at the residential address stipulated in the bail conditions until the hearing of the case.

(4) Subject to subsection (5) where a person who is charged with an offence other than a domestic violence offence is granted bail the person must reside at the

³ Drafting note: this applies to an accused person who is under 18 years

⁴ Drafting note: 'specifically affected person' is already defined in section 2 of the Bail Act. The term means (a) a person against whom the alleged offence has been committed; (b) a close relative of any such person' or (c) any other person who in the opinion of the police officer or the court warrants special consideration because of the circumstances of the case

address provided under subsection (1) until the hearing of the case.

(5) If the accused person wishes to reside elsewhere than at the address at which the person is required to reside in accordance with subsection (3) or (4), the person must, in writing or in person notify the police officer or the bail officer, as the case may be, and that officer must either make a decision or obtain a decision of the court, as the case may be, on whether the bail undertaking should be varied accordingly.

(6) Where a person is charged with a domestic violence offence a police officer or a court must have regard to the following in making a decision about where the person may reside while on bail -

(a) if the person's residential address is also the normal residential address of a specially affected person, unless it appears safe for each specially affected person and that person or those persons are agreeable, it must be a condition of bail that the accused reside at a residential address other than that residential address while on bail.

(b) where subsection (6) (a) applies the accommodation needs of a specially affected person has priority over the accommodation needs of the accused person.

(5) Section 19 - reasons for refusing bail – domestic violence offences

(5) Section 19 is amended in:

(a) section 19(1)(c) – by deleting the word 'difficult' and substituting 'difficult, or;'

(b) section 19(1) – by inserting the following section after section 19(1)(c) -

(d) the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.

(c) section 19(2) - by -

(i) deleting the word 'bail' in section 19(2)(c)(iii) and substituting 'bail;'

(ii) inserting the following section after section 19(2)(c)

(d) as regards the safety of a specially affected person when the accused is charged with a domestic violence offence -

(i) the nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person;

(ii) the views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and well being of a specially affected person while on bail;

(iii) whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;

(iv) the likelihood of the accused person committing a further domestic violence offence while on bail.

(6) Section 22 - conditions of bail – domestic violence offences

(6) Section 22 is amended by -

(a) inserting at the commencement of the section 22(1), the words 'Subject to subsection (1A), bail' and deleting the word 'Bail'.

(b) inserting the following section after section 22(1)

22(1A) Where an accused person is charged with a domestic violence offence:

(a) bail may not be granted unconditionally, and

(b) if bail is granted it must be subject to a condition that the accused person must not assault, threaten or harrass the person or persons in respect of whom the alleged offence was committed.

(7) Section 23 - restrictions on imposing bail conditions – domestic violence offences

(7). Section 23 is amended by

(a) inserting at the commencement of the section 22(1), the words 'Subject to subsection (3), bail' and deleting the word 'Bail'.

(b) by inserting the following section after section 23(2) –

(3) Where an accused person is charged with a domestic violence offence:

(a) bail may not be granted unconditionally, and

(b) if bail is granted it must be subject to a condition that the accused person must not assault, threaten or harrass the person or persons in respect of whom the alleged offence was committed.

(8) Insert new Part VA - Notification of bail decisions - domestic violence offences

(8). That the following Part, be inserted after Part V –

Part VA – NOTIFICATION OF DECISIONS IN DOMESTIC VIOLENCE CASES

Duty to notify persons at risk of domestic violence

24A. Where an accused person is charged with a domestic violence offence and bail is granted, refused, varied or discharged by a police officer or by the court, immediate steps must be taken by the police or by the court, as the case may be, to inform each specially affected person:

(a) of the decision; and

(b) where bail conditions apply, then of the precise terms and conditions of bail.

DRAFT MARRIAGE ACT (PREVENTION OF DOMESTIC VIOLENCE) AMENDMENT BILL 2005

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A BILL

TO AMEND THE MARRIAGE ACT TO PROVIDE FOR INFORMATION REGARDING THE PREVENTION OF DOMESTIC VIOLENCE TO BE GIVEN TO MARRIAGE OFFICERS AND TO THOSE INTENDING TO MARRY

ENACTED by the Parliament of the Fiji Islands –

Short title

1. This Act may be cited as the Marriage Act (Prevention of Domestic Violence) Amendment Act 2005.

Commencement

2. This Act commences on a date or dates to be appointed by the Attorney-General by notice in the Gazette.

Amendments to the Marriage Act

3. The Marriage Act [Cap 50] is amended as follows:

(1) Section 2 – Interpretation

(1) The following definitions are inserted in section 2 in the correct alphabetical location:

“existing marriage officer” means a person who is registered as a marriage officer under section 4 or 5 of this Act at the time this section commences;

"new marriage officer" means a person who is registered as a marriage officer under section 4 or 5 of this Act after this section commences;

"prescribed information for marriage officers" means written information for marriage officers regarding the prevention of domestic violence, prescribed by regulation made under section 40 of this Act;

"prescribed information for those intending to marry" means written for those intending to marry regarding the prevention of domestic violence, prescribed by regulation made under section 40 of this Act;

(2) Section 11A – Provision of prescribed information to marriage officers

(2) After section 11 the following section is inserted:

11A. (1) The Registrar-General shall provide the prescribed information for marriage officers and an appropriate number of copies of the prescribed information for those intending to marry to:

(a) each existing marriage officer – within one month of this section commencing, and

(b) to each new marriage officer – within one month of the Registrar-General registering the person as a marriage officer under section 4 or 5 of this Act.

(2) The Registrar General shall when requested by a marriage officer promptly provide an appropriate number of additional copies of the prescribed information for marriage officers and the prescribed information for those intending to marry.

(3) Section 21A - Information to accompany certificate for marriage and licence

(3) After section 21 the following section is inserted:

21A. The Registrar-General must ensure that:

(a) when a certificate for marriage is issued under section 19, or

(b) when a special licence to marry is issued under section 21

the certificate or licence is accompanied by two copies of the prescribed information for those intending to marry.

(4) Section 22A – Marriage officer to provide information

(4) The following section is inserted after section 22:

22A. A marriage officer who is intending to solemnize a marriage shall before performing the ceremony referred to in section 23:

(a) ask each person party to the intended marriage whether they have personally received a copy of the prescribed information for those intending to marry, and

(b) if a party has not personally received that information the marriage officer shall provide the prescribed information to that person.

Provided that no marriage shall be void by reason only of non-compliance with this section by the marriage officer.

(5) Section 40 - Power to make regulations

(5) Section 40 is amended by deleting the word 'adopted' and substituting in its place:

"adopted, the information to be provided'