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CRIMES DECREE 2009
 (DECREE NO. 44 OF 2009)

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GOVERNMENT OF FIJI

—
 CRIMES DECREE 2009
 (DECREE NO. 44 OF 2009)
 —

A DECREE TO REPEAL THE PENAL CODE AND MAKE COMPREHENSIVE PROVISION IN RELATION TO THE ELEMENTS OF CRIMINAL RESPONSIBILITY AND TO PRESCRIBE A RANGE OF CRIMINAL OFFENCES, AND FOR RELATED PURPOSES.

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

CHAPTER I — GENERAL PROVISIONS

PART 1 — PRELIMINARY

Short title and commencement

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

(2) This Decree shall come into effect on a date appointed by the Minister by notice in the *Gazette*.

Common law offences cease to apply

2.—(1) No person may be prosecuted for any common law offence.

(2) The only offences against the laws of Fiji are those offences created by, or under the authority, of this Decree and any other Act or Decree or Promulgation or Regulation.

Savings of certain laws

3.—(1) Unless otherwise provided in this Decree or any other law, nothing in this Decree shall affect—

- (a) the liability, trial or punishment of a person for an offence against any other law in force in Fiji other than this Decree; or
- (b) the liability of a person to be tried or punished for an offence under the provisions of any law in force in Fiji relating to the jurisdiction of the courts of Fiji in respect of acts done beyond the ordinary jurisdiction of such courts; or
- (c) the power of any court to punish a person for contempt of such court; or
- (d) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Decree; or
- (e) any lawful power to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or
- (f) any of the Statutes, Acts, Promulgations, Decrees, Regulations or Articles for the time being in force for the disciplined services of Fiji.

(2) If a person does an act which is punishable under this Decree and is also punishable under another Act or Decree or Promulgation or any other law of any of the kinds mentioned in sub-section (1), he or she shall not be punished for that act both under that Act or Decree and also under this Decree.

PART 2 — INTERPRETATION OF CRIMINAL LAWS

Interpretation

4.—(1) In this Decree, unless the context otherwise requires—

“aggravated burglary” means any offence against section 313;

“aggravated robbery” means any offence against section 311

“ancillary offence” means any offence against—

- (a) section 44 (attempts);

- (b) section 48 (incitement);
- (c) section 49 (conspiracy); and
- (d) any offence against this Decree or any other Act or Decree, to the extent that the offence arises out of the operation of section 45 (complicity and common purpose) or section 47 (innocent agency);

“benefit” includes any advantage, and is not limited to property;

“burglary” means any offence against section 312;

“court” means a court of competent jurisdiction;

“communication” includes any communication—

- (a) whether between persons and persons, things and things or persons and things; and
- (b) whether the communication is—
 - (i) in the form of text; or
 - (ii) in the form of speech, music or other sounds; or
 - (iii) in the form of visual images (still or moving); or
 - (iv) in the form of signals; or
 - (v) in the form of data; or
 - (vi) in any other form; or
 - (vii) in any combination of forms;

“contracted service provider”, for a government contract, means—

- (a) a person who is a party to the government contract and who is responsible for the provision of goods or services to the government entity under the government contract; or
- (b) a sub-contractor for the government contract;

“Covenant” means the International Covenant on Civil and Political Rights;

“crime against humanity” means an offence under Division 3 of Part 12;

“dangerous harm” means harm endangering life;

“data” includes—

- (a) information in any form; or
- (b) any program (or part of a program);

“data held in a computer” includes—

- (a) data held in any removable data storage device for the time being held in a computer; or
- (b) data held in a data storage device on a computer network of which the computer forms a part;

“data storage device” means a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer;

“death” means—

- (a) the irreversible cessation of all function of a person’s brain (including the brain stem); or
- (b) the irreversible cessation of circulation of blood in a person’s body;

“debt bondage” means the status or condition that arises from a pledge by a person—

- (a) of his or her personal services; or
- (b) of the personal services of another person under his or her control;

as security for a debt owed, or claimed to be owed, (including any debt incurred, or claimed to be incurred, after the pledge is given), by that person if—

- (i) the debt owed or claimed to be owed is manifestly excessive; or
- (ii) the reasonable value of those services is not applied toward the liquidation of the debt or purported debt; or
- (iii) the length and nature of those services are not respectively limited and defined;

“defence aircraft” means an aircraft of any part of the Fiji Military Forces and includes an aircraft that is being commanded or piloted by a member of that Force in the course of his or her duties as such a member;

“defence ship” means a ship of any part of the Fiji Military Forces that is being operated or commanded by a member of that Force in the course of his or her duties as such a member;

“detaining” a person includes causing the person to remain where he or she is;

“detriment” includes any disadvantage and is not limited to personal injury or to loss of or damage to property;

“document of title to goods” includes any—

- (a) bill of lading, warehouse keeper’s certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought or sold; or
- (b) other document used in the ordinary course of business—
 - (i) as proof of the possession or control of goods; or
 - (ii) authorising or purporting to authorise (either by endorsement or by delivery) the possessor of such document to transfer or receive any goods represented or mentioned in the document;

“document of title to lands” includes any deed, map, roll, register, paper or parchment (written or printed, or partly written and partly printed), being or containing evidence of the title (or any part of the title) to any real estate or to any interest in or out of any real estate, and includes an instrument under the Land Transfer Act [Cap.131] Native Land Trust Act [Cap. 134];

“dwelling-house” includes—

- (a) any building or structure; or
- (b) vessel or part of a building or structure or vessel which is for the time being kept by the owner or occupier as a residence (and it is immaterial that it is from time to time uninhabited); or
- (c) a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between the building or structure and the dwelling-house (either immediate or by means of a covered and enclosed passage leading from the one to the other) but not otherwise;

“electronic communication” means a communication by means of guided or unguided electromagnetic energy or both;

“employee” includes a servant;

“engage in conduct” is defined in section 15;

“evidence” includes anything that may be used as evidence;

“evidential burden” is defined in section 59(7);

“exploitation”, of one person (the victim) by another person (the exploiter), occurs if—

- (a) the exploiter’s conduct causes the victim to enter into slavery, forced labour or sexual servitude; or
- (b) the exploiter’s conduct causes an organ of the victim to be removed and—
 - (i) the removal is contrary to law; or

- (ii) neither the victim nor the victim's legal guardian consented to the removal, and it does not meet a medical or therapeutic need of the victim;

“Fijian aircraft” means—

- (a) an aircraft registered, or required to be registered under a law of Fiji relating to civil aviation;
- (b) an aircraft (other than a defence aircraft) that is owned by, or in the possession or control of a government entity; or
- (c) a defence aircraft.

“Fijian ship” means—

- (a) a ship or vessel registered, or required to be registered under a law of Fiji relating to shipping;
- (b) an unregistered ship or vessel that has Fijian nationality; or
- (c) a defence ship;

“genocide” means any offence against Division 2 of Part 12;

“government authority” means a body established by or under a law of Fiji but does not include any body that is established under a law which states that the body is not a government authority;

“government contract” means a contract to which a government entity is a party, under which goods or services are to be, or were to be, provided to a government entity;

“government entity” means—

- (a) the Government of Fiji; or
- (b) a government authority;

“grievous harm” means any harm which—

- (a) amounts to a maim or dangerous harm; or
- (b) seriously or permanently injures health or which is likely so to injure health; or
- (c) extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;

“harm” means any bodily hurt, disease or disorder (including harm to a person's mental health) whether permanent or temporary, and includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time);

“harm to a person's mental health” includes significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger;

“judicial officer” means—

- (a) a judge of any court in Fiji;
- (b) a magistrate;
- (c) any other court officer which is deemed by law to be a judicial officer;

“ICC Statute” means the Statute of the International Criminal Court adopted at Rome on 17 July 1998;

“identity document” includes any kind of document that may be used to establish the identity of a person in a country under the law or procedures of that country;

“intention” has the meaning given in section 19;

“International Criminal Court” means the International Criminal Court established under the ICC Statute;

“judicial proceeding” includes any proceeding had or taken in or before any court, tribunal, commission of inquiry or person, in which evidence may be taken on oath;

“knowingly” used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

“knowledge” has the meaning given in section 20;

“law” means a law of Fiji, and includes this Decree;

“legal burden” has the meaning given in section 57;

“local authority” means a local government council or other local authority established under any Act;

“maim” means the destruction or permanent disabling of any external or internal organ, member or sense;

“mental subnormality” means a state of arrested or incomplete development of mind, which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or guarding against sources of exploitation, or will be so incapable when of an age to do so;

“Minister” means the Minister for Justice;

“money” includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

“negligence” has the meaning given in section 22;

“night” means the interval between half-past six o’clock in the evening and half-past six o’clock in the morning;

“oath” includes affirmation or declaration, and “swear” includes affirm or declare;

“offence” is an act, attempt or omission punishable by law;

“Penalty” means the maximum penalty which may be determined and imposed by a court (in accordance with the Sentencing and Penalties Decree 2009) in relation to the offence for which the penalty is prescribed under this Decree;

“person” and “owner”, and other like terms, when used with reference to property, include corporations of all kinds and any other association of persons capable of owning property, and also when so used include the government of Fiji or any part of the government;

“person employed in the public service” means any person holding any of the following offices or performing the duties of that office, (whether as a deputy or otherwise), namely—

- (a) any civil office including the office of President or Vice-President;
- (b) any office to which a person is appointed or nominated under the provisions of any Act or by election or by promulgation or decree;
- (c) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of paragraphs (a) or (b);
- (d) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Act;
- (e) a member of a commission of inquiry appointed under or in pursuance of any Act;
- (f) any person employed to execute any process of a court;
- (g) all persons belonging to a disciplined service of Fiji;
- (h) all persons in the employment of any government department; and
- (i) a person in the employ of a local authority;

“personal service” means any labour or service (including a sexual service), provided by a person;

“possession”, “be in possession of” or “have in possession” includes—

- (a) not only having in one’s own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person; and

- (b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

“primary offence” is any offence other than an ancillary offence;

“property” includes any —

- (a) description of real and personal property;
- (b) money, debt or legacy;
- (c) deeds and instruments relating to or evidencing the title or right to any property (including any document of title to goods or document of title to lands), or giving a right to recover or receive any money or goods —

and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which that property has been converted or exchanged, and anything acquired by such conversion or exchange (whether immediately or otherwise);

“proscribed inhumane act” means any act that constitutes the physical element of an offence being a crime against humanity in contravention of any section of Division 3 of Part 12;

“public” refers not only to all persons within Fiji, but also to —

- (a) the persons inhabiting or using any particular place (or any number of such persons); and
- (b) such indeterminate persons as are affected by the conduct in respect to which such expression is used;

“publicly” when applied to acts done, means either -

- (a) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or
- (b) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

“public official” means —

- (a) the President or Vice-President;
- (b) any person who is appointed or nominated under the provisions of any Act or promulgation or decree or by election, including all —
- (i) Ministers;
- (ii) Members of Parliament of Fiji; and
- (iii) Local Government Councillors;
- (c) any person employed in the public service;
- (d) any person holding an office under the Constitution of Fiji;
- (e) any judge or magistrate, or any person holding any other judicial or quasi-judicial office;
- (f) any person who holds or performs the duties of an office established by or under any law;
- (g) any person who is an officer or employee of a government authority or agency, whether or not the authority or agency is established by an Act;
- (h) any person who is a contract service provider for a government contract; and
- (i) any person who is an officer or employee of a contracted service provider to or under a government contract.

“public place” means —

- (a) any highway, public street, public road, public park or garden, sea beach, river, public bridge, wharf, jetty, lane, footway, square, court, alley or passage whether a thoroughfare or not; or

(b) any—

- (i) land or open space (whether such land or space is closed or unenclosed); and
- (ii) place or building of public resort other than a dwelling house—

to which for the time being the public have or are permitted to have access whether on payment or otherwise;

“public way” includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

“receiving” means any offence against section 306;

“recklessness” has the meaning given in section 21;

“resident of” Fiji means an individual who is a resident of Fiji in accordance with the provisions of the Immigration Act 2003 ;

“robbery” means any offence against section 310;

“sexual service” means the commercial use or display of the body of the person providing the service for the sexual gratification of others;

“sexual servitude” has the meaning given by section 106;

“slavery” has the meaning given by section 102;

“special liability provision” means—

- (a) a provision that provides that absolute liability applies to one or more (but not all) of the physical elements of an offence;
- (b) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew a particular thing; or
- (c) a provision that provides that, in a prosecution for an offence, it is not necessary to prove that the defendant knew or believed a particular thing;

“subcontractor”, for a government contract, means a person—

- (a) who is a party to a contract (the subcontract)—
 - (i) with a contracted service provider for the government contract (within the meaning of paragraph (a) of the definition of contracted service provider); or
 - (ii) with a subcontractor for the government contract (under a previous application of this definition); and
- (b) who is responsible under the subcontract for the provision of services to a government entity, or to a contracted service provider for the government contract, for the purposes (whether direct or indirect) of the government contract;

“sworn statement” means an oral statement made on oath or affirmation or a statement in a document verified on oath or affirmation;

“taking” a person includes causing the person to accompany another person and causing the person to be taken;

“theft” means any offence against section 291;

“threat” includes a threat made by any conduct, whether express or implied and whether conditional or unconditional;

“travel document” includes any kind of document required, under the law of a country, to enter or leave that country;

“trustee” means a trustee on an express trust created by a deed, will, or instrument in writing, and includes—

- (a) the heir or personal representative of any such trustee; and
- (b) any other person upon or to whom the duty of such trust shall have devolved or come; and

- (c) an executor and administrator; and
- (d) an official receiver, assignee, liquidator or other like officer acting under any present or future law relating to companies or bankruptcy;

“utter” includes—

- (a) using or dealing with; and
- (b) attempting to use or deal with; and
- (c) attempting to induce any person to use, deal with or act upon—
the thing in question;

“valuable security” includes—

- (a) any writing entitling or evidencing the title of any person—
 - (i) to any share or interest in any public stock, annuity, fund or debt of any country or territory; or
 - (ii) in any stock, annuity, fund or debt of any body corporate, company or society, whether within Fiji or any other country or territory; or
 - (iii) to any deposit in any bank;
- (b) any script, debenture, bill, note, warrant, order or other security for the payment of money;
- (c) any authority or request for the payment of money or for the delivery or transfer of goods or chattels;
- (d) any accountable receipt, release or discharge;
- (e) any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal; and
- (f) any document of title to lands or goods;

“vessel” includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters, and includes any type of aircraft;

“wound” means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is “exterior” for the purpose of this definition which can be touched without dividing or piercing any other membrane.

(2) In the case of any of the offences in this Decree, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

Other rules of construction

5.—(1) This Decree shall be interpreted in accordance with the principles of legal interpretation ordinarily applied by the courts of Fiji.

(2) Expressions used in this Decree shall be presumed to be used with the meaning attaching to them in the criminal law as applied in jurisdictions based upon the laws of England, and shall be construed in accordance with such meanings—

- (a) so far as is consistent with their context; and
- (b) except as is expressly provided in this Decree.

(3) Nothing in section 2 or any other provision of this Decree prevents a court from relying on the authority of any judgment of a court in Fiji, or any comparable foreign jurisdiction, in the aid of any matter of interpretation arising in the context of any offence prescribed by this Decree, or any other Act or Decree.

PART 3 — TERRITORIAL APPLICATION OF THE CRIMINAL LAWS

Extent of jurisdiction of Fiji's courts

6.—(1) Subject to the other sections of this Part, the jurisdiction of the courts of Fiji for the purposes of this Decree extends to every place within Fiji or within—

- (a) the internal waters of Fiji;
- (b) the archipelagic waters of Fiji; or
- (c) the territorial seas of Fiji.

(2) The jurisdiction of the courts of Fiji may extend to the contiguous zone and the exclusive economic zone of Fiji in accordance with the provisions of the United Nations Convention on the Law of the Sea and any law in Fiji implementing the Convention.

Standard geographical jurisdiction

7.—(1) Unless any of the provisions of section 8 apply to an offence under this Decree or any other Act or Decree, a person does not commit an offence against the laws of Fiji unless—

- (a) the conduct constituting the alleged offence occurs—
 - (i) wholly or partly in Fiji; or
 - (ii) wholly or partly on board a Fijian aircraft or a Fijian ship; or
- (b) the conduct constituting the alleged offence occurs wholly outside Fiji and a result of the conduct occurs—
 - (i) wholly or partly in Fiji; or
 - (ii) wholly or partly on board a Fijian aircraft or a Fijian ship; or
- (c) all of the following conditions are satisfied—
 - (i) the alleged offence is an ancillary offence;
 - (ii) the conduct constituting the alleged offence occurs wholly outside Fiji; and
 - (iii) the conduct constituting the primary offence to which the ancillary offence relates, or a result of that conduct occurs (or is intended by the person to occur) wholly or partly in Fiji, or wholly or partly on board a Fijian aircraft or a Fijian ship.

Extended geographical jurisdiction

8.—(1) The provisions of this Decree or any other Act or Decree prescribing an offence may extend the standard geographical jurisdiction to be applied to that offence by providing that the offence may be committed by—

- (a) any citizen of Fiji in any place outside of Fiji;
- (b) any corporation registered in Fiji in any place outside of Fiji;
- (c) any resident of Fiji in any place outside of Fiji;

(2) Any provision of this Decree or any other Act which extends the geographical jurisdiction under sub-section (1) may specifically make the extension of geographical jurisdiction conditional upon there being no comparable offence in the foreign jurisdiction where the citizen, corporation or resident committed the offence.

(3) Proceedings for an offence committed by a resident of Fiji in accordance with sub-section (1)(c) require the written consent of the Director of Public Prosecutions a person may be arrested and charged with such an offence (and remanded or released on bail) before the necessary consent has been given.

Conduct taken to occur partly in Fiji

9.—(1) For the purposes of this Part, if a person sends a thing, or causes a thing to be sent—

- (a) from a point outside Fiji to a point in Fiji;
- (b) from a point in Fiji to a point outside Fiji—

the conduct is taken to have occurred partly in Fiji.

(2) For the purposes of this Part, if a person sends, or causes to be sent, an electronic communication—

- (a) from a point outside Fiji to a point in Fiji;
- (b) from a point in Fiji to a point outside Fiji—

the conduct is taken to have occurred partly in Fiji.

(3) For the purposes of this section, “point” includes a mobile or potentially mobile point, whether on land, underground, in the atmosphere, underwater, at sea or anywhere else.

CHAPTER II — GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

PART 4 — PURPOSE AND APPLICATION

Purpose

10.—(1) The purpose of this Chapter is to codify the general principles of criminal responsibility under laws of Fiji.

(2) This Chapter contains all the general principles of criminal responsibility that apply to any offence, irrespective of how the offence is created.

Application

11.—(1) This Chapter applies to all offences against this Decree.

(2) All courts in criminal proceedings or trials shall apply the provisions of this Decree in relation to offences under other laws to the fullest extent possible.

(3) Nothing in this Decree shall affect the validity of any proceeding taken in relation to any offence under any law that is not framed or expressed in accordance with the provisions of this Decree.

Application of provisions relating to intoxication

12.—(1) Section 16(6) and (7) and Division 2 of Part 6 apply to all offences.

(2) For the purpose of interpreting the provisions stated in sub-section (1) in connection with an offence, the other provisions of this Chapter may be considered, whether or not those other provisions apply to the offence concerned.

PART 5 — GENERAL ELEMENTS OF AN OFFENCE

Division 1 — General

Elements

13.—(1) An offence consists of physical elements and fault elements.

(2) However, the law that creates the offence may provide that there is no fault element for one or more physical elements.

(3) The law that creates the offence may provide different fault elements for different physical elements.

Establishing guilt in respect of offences

14. In order for a person to be found guilty of committing an offence the following must be proved -

- (a) the existence of such physical elements as are, under the law creating the offence, relevant to establishing guilt;
- (b) in respect of each such physical element for which a fault element is required, one of the fault elements for the physical element.

Division 2 — Physical Elements of an Offence

Physical elements

15.—(1) A physical element of an offence may be—

- (a) conduct; or
- (b) a result of conduct; or
- (c) a circumstance in which conduct, or a result of conduct, occurs.

(2) In this Decree—

“conduct” means an act, or an omission to perform an act or a state of affairs;

“engage in conduct” means—

- (a) do an act; or
- (b) omit to perform an act.

Voluntariness

16.—(1) Conduct can only be a physical element if it is voluntary.

(2) Conduct is only voluntary if it is a product of the will of the person whose conduct it is.

(3) The following are examples of conduct that is not voluntary—

- (a) a spasm, convulsion or other unwilled bodily movement;
- (b) an act performed during sleep or unconsciousness;
- (c) an act performed during impaired consciousness depriving the person of the will to act.

(4) An omission to perform an act is only voluntary if the act omitted is one which the person is capable of performing.

(5) If the conduct constituting an offence consists only of a state of affairs, the state of affairs is only voluntary if it is one over which the person is capable of exercising control.

(6) Evidence of self induced intoxication cannot be considered in determining whether conduct is voluntary.

(7) Intoxication is self induced unless it came about—

- (a) involuntarily; or
- (b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

Omissions

17. An omission to perform an act can only be a physical element if—

- (a) the law creating the offence makes it so; or
- (b) the law creating the offence impliedly provides that the offence is committed by an omission to perform an act that by law there is a duty to perform.

Division 3 — Fault Elements of an Offence

Fault elements

18.—(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.

(2) Sub-section (1) does not prevent a law that creates a particular offence from specifying other fault elements for a physical element of that offence.

Intention

19.—(1) A person has intention with respect to conduct if he or she means to engage in that conduct.

(2) A person has intention with respect to a circumstance if he or she believes that it exists or will exist.

(3) A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

Knowledge

20. A person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

Recklessness

21.—(1) A person is reckless with respect to a circumstance if—

- (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(2) A person is reckless with respect to a result if—

(a) he or she is aware of a substantial risk that the result will occur; and

(b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

(3) The question whether taking a risk is unjustifiable is one of fact.

(4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.

Negligence

22. A person is negligent with respect to a physical element of an offence if his or her conduct involves—

(a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and

(b) such a high risk that the physical element exists or will exist—

that the conduct merits criminal punishment for the offence.

Offences that do not specify fault elements

23.—(1) If the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element.

(2) If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.

Division 4 — Cases where fault elements are not required

Strict liability

24.—(1) If a law that creates an offence provides that the offence is an offence of strict liability—

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 35 is available.

(2) If a law that creates an offence provides that strict liability applies to a particular physical element of the offence—

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 35 is available in relation to that physical element.

(3) The existence of strict liability does not prevent an offender from raising any other defence that is applicable to the offence for which he or she is charged.

Absolute liability

25.—(1) If a law that creates an offence provides that the offence is an offence of absolute liability—

(a) there are no fault elements for any of the physical elements of the offence; and

(b) the defence of mistake of fact under section 35 is unavailable.

(2) If a law that creates an offence provides that absolute liability applies to a particular physical element of the offence:

(a) there are no fault elements for that physical element; and

(b) the defence of mistake of fact under section 35 is unavailable in relation to that physical element.

(3) The existence of absolute liability does not prevent an offender from raising any defence that is applicable to the offence for which he or she is charged.

PART 6 — CIRCUMSTANCES IN WHICH THERE IS NO CRIMINAL RESPONSIBILITY

*Division 1 — Circumstances Involving Lack of Capacity**Children under 10 years*

26. A child under 10 years old is not criminally responsible for an offence.

Children over 10 years but under 14 years

27.—(1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong.

(2) The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

Mental impairment

28.—(1) A person is not criminally responsible for an offence if, at the time of carrying out the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that—

- (a) the person did not know the nature and quality of the conduct; or
- (b) the person did not know that the conduct was wrong (that is, the person could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, was wrong); or
- (c) the person was unable to control the conduct.

(2) The question whether the person was suffering from a mental impairment is one of fact.

(3) A person is presumed not to have been suffering from such a mental impairment. The presumption is only displaced if it is proved on the balance of probabilities (by the prosecution or the defence) that the person was suffering from such a mental impairment.

(4) The prosecution can only rely on this section if the court gives leave.

(5) The court must return a special verdict that a person is not guilty of an offence because of mental impairment if and only if it is satisfied that the person is not criminally responsible for the offence only because of a mental impairment.

(6) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element but may rely on this section to deny criminal responsibility.

(7) If the court is satisfied that a person carried out conduct as a result of a delusion caused by a mental impairment, the delusion cannot otherwise be relied on as a defence.

(8) In this section—

“mental impairment” includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

(9) The reference in sub-section (8) to mental illness is a reference to an underlying pathological infirmity of the mind (whether of long or short duration and whether permanent or temporary), but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli.

(10) A condition that results from the reaction of a healthy mind to extraordinary external stimuli may be evidence of a mental illness if it involves some abnormality and is prone to recur.

*Division 2 — Intoxication**Definition—self induced intoxication*

29. For the purposes of this Chapter, intoxication is self induced unless it came about—

- (a) involuntarily; or
- (b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.

Intoxication (offences involving basic intent)

30.—(1) Evidence of self induced intoxication cannot be considered in determining whether a fault element of basic intent existed.

(2) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.

(3) This section does not prevent evidence of self induced intoxication being taken into consideration in determining whether conduct was accidental.

(4) This section does not prevent evidence of self induced intoxication being taken into consideration in determining whether a person had a mistaken belief about facts if the person had considered whether or not the facts existed.

(5) A person may be regarded as having considered whether or not facts existed if—

- (a) he or she had considered, on a previous occasion, whether those facts existed in circumstances surrounding that occasion; and
- (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Intoxication (negligence as fault element)

31.—(1) If negligence is a fault element for a particular physical element of an offence, in determining whether that fault element existed in relation to a person who is intoxicated, regard must be had to the standard of a reasonable person who is not intoxicated.

(2) However, if intoxication is not self induced, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

Intoxication (relevance to defences)

32.—(1) If any part of a defence is based on actual knowledge or belief, evidence of intoxication may be considered in determining whether that knowledge or belief existed.

(2) If any part of a defence is based on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.

(3) If a person's intoxication is not self induced, in determining whether any part of a defence based on reasonable belief exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.

(4) If, in relation to an offence—

- (a) each physical element has a fault element of basic intent; and
- (b) any part of a defence is based on actual knowledge or belief—

evidence of self induced intoxication cannot be considered in determining whether that knowledge or belief existed.

(5) A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct

Involuntary intoxication

33. A person is not criminally responsible for an offence if the person's conduct constituting the offence was as a result of intoxication that was not self induced.

*Division 3 — Circumstances involving mistake or ignorance**Mistake or ignorance of fact (fault elements other than negligence)*

34.—(1) A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if—

- (a) at the time of the conduct constituting the physical element, the person is under a mistaken belief about, or is ignorant of, facts; and

- (b) the existence of that mistaken belief or ignorance negates any fault element applying to that physical element.

(2) In determining whether a person was under a mistaken belief about facts, or was ignorant of the facts, the court may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

Mistake of fact (strict liability)

35.—(1) A person is not criminally responsible for an offence that has a physical element for which there is no fault element if—

- (a) at or before the time of the conduct constituting the physical element, the person considered whether or not facts existed, and is under a mistaken but reasonable belief about those facts; and
(b) had those facts existed, the conduct would not have constituted an offence.

(2) A person may be regarded as having considered whether or not facts existed if—

- (a) he or she had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
(b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

Mistake or ignorance of statute law

36.—(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of an Act or Decree that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Sub-section (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act expressly provides that a person who is not aware of the existence or content of the Act creating the offence is not to be liable for the offence.

Mistake or ignorance of subordinate legislation

37.—(1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, he or she is mistaken about, or ignorant of, the existence or content of the subordinate legislation that directly or indirectly creates the offence or directly or indirectly affects the scope or operation of the offence.

(2) Sub-section (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the subordinate legislation expressly provides that a person who is not aware of the existence or content of the subordinate legislation creating the offence is not to be liable for the offence.

(3) In this section “subordinate legislation” means an instrument of a legislative character made directly or indirectly under an Act, or in force directly or indirectly under an Act.

Claim of right

38.—(1) A person is not criminally responsible for an offence that has a physical element relating to property if—

- (a) at the time of the conduct constituting the offence, the person is under a mistaken belief about a proprietary or possessory right; and
(b) the existence of that right would negate a fault element for any physical element of the offence.

(2) A person is not criminally responsible for any other offence arising necessarily out of the exercise of the proprietary or possessory right that he or she mistakenly believes to exist.

(3) This section does not negate criminal responsibility for an offence relating to the use of force against a person.

Division 4 — Circumstances involving external factors

Intervening conduct or event

39. A person is not criminally responsible for an offence that has a physical element to which absolute liability or strict liability applies if—

- (a) the physical element is brought about by another person over whom the person has no control or by a non human act or event over which the person has no control; and

- (b) the person could not reasonably be expected to guard against the bringing about of that physical element.

Duress

40.—(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

- (2) A person carries out conduct under duress if and only if he or she reasonably believes that -
- (a) a threat to cause death or serious harm has been made that will be carried out unless an offence is committed; and
 - (b) there is no reasonable way that the threat can be rendered ineffective; and
 - (c) the conduct is a reasonable response to the threat.

(3) This section does not apply if the threat is made by or on behalf of a person with whom the person under duress is voluntarily associating for the purpose of carrying out conduct of the kind actually carried out.

Sudden or extraordinary emergency

41.—(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.

- (2) This section applies if and only if the person carrying out the conduct reasonably believes that—
- (a) circumstances of sudden or extraordinary emergency exist; and
 - (b) committing the offence is the only reasonable way to deal with the emergency; and
 - (c) the conduct is a reasonable response to the emergency.

Self defence

42.—(1) A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self defence.

- (2) A person carries out conduct in self defence if and only if he or she believes the conduct is necessary:
- (a) to defend himself or herself or another person; or
 - (b) to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
 - (c) to protect property from unlawful appropriation, destruction, damage or interference; or
 - (d) to prevent criminal trespass to any land or premises; or
 - (e) to remove from any land or premises a person who is committing criminal trespass—
- and the conduct is a reasonable response in the circumstances as he or she perceives them.

(3) This section does not apply if the person uses force that involves the intentional infliction of death or grievous harm—

- (a) to protect property; or
- (b) to prevent criminal trespass; or
- (c) to remove a person who is committing criminal trespass.

(4) This section does not apply if—

- (a) the person is responding to lawful conduct; and
- (b) he or she knew that the conduct was lawful.

(5) For the purposes of sub-section (4) conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

Lawful authority

43. A person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by or under a law.

PART 7—EXTENSIONS OF CRIMINAL RESPONSIBILITY
(ATTEMPTS, COMPLICITY, INCITEMENT ETC.)

Attempt

44.—(1) A person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.

(2) For the person to be guilty, the person's conduct must be more than merely preparatory to the commission of the offence, and the question whether conduct is more than merely preparatory to the commission of the offence is one of fact.

(3) Subject to sub-section (7), for the offence of attempting to commit an offence, intention and knowledge are fault elements in relation to each physical element of the offence attempted

(4) A person may be found guilty even if—

(a) committing the offence attempted is impossible; or

(b) the person who actually committed the offence attempted is found not guilty.

(5) A person who is found guilty of attempting to commit an offence cannot be subsequently charged with the completed offence.

(6) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(7) Any special liability provisions that apply to an offence apply also to the offence of attempting to commit that offence.

(8) It is not an offence to attempt to commit an offence against section 45 (complicity and common purpose), section 49 (conspiracy to commit an offence) or the offence of conspiracy to defraud.

Complicity and common purpose

45.—(1) A person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

(2) For the person to be guilty—

(a) the person's conduct must have in fact aided, abetted, counselled or procured the commission of the offence by the other person; and

(b) the offence must have been committed by the other person.

(3) Subject to sub-section (6), for the person to be guilty, the person must have intended that—

(a) his or her conduct would aid, abet, counsel or procure the commission of any offence (including its fault elements) of the type the other person committed; or

(b) his or her conduct would aid, abet, counsel or procure the commission of an offence and have been reckless about the commission of the offence (including its fault elements) that the other person in fact committed.

(4) A person cannot be found guilty of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person—

(a) terminated his or her involvement; and

(b) took all reasonable steps to prevent the commission of the offence.

(5) A person may be found guilty of aiding, abetting, counselling or procuring the commission of an offence even if the principal offender has not been prosecuted or has not been found guilty.

(6) Any special liability provisions that apply to an offence apply also to the offence of aiding, abetting, counselling or procuring the commission of that offence.

(7) If the trier of fact is satisfied beyond reasonable doubt that a person either—

- (a) is guilty of a particular offence otherwise than because of the operation of sub-section (1); or
- (b) is guilty of that offence because of the operation of sub-section (1)—

but is not able to determine which, the trier of fact may nonetheless find the person guilty of that offence.

Offences committed by joint offenders in prosecution of common purpose

46. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

Innocent agency

47. A person who—

- (a) has, in relation to each physical element of an offence, a fault element applicable to that physical element; and
- (b) procures conduct of another person that (whether or not together with conduct of the procurer) would have constituted an offence on the part of the procurer if the procurer had engaged in it -

is taken to have committed that offence and is punishable accordingly.

Incitement

48. — (1) A person who urges the commission of an offence is guilty of the offence of incitement.

(2) Subject to sub-section (5), for the person to be guilty, the person must intend that the offence incited be committed.

(3) A person may be found guilty even if committing the offence incited is impossible.

(4) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

(5) Any special liability provisions that apply to an offence apply also to the offence of incitement in respect of that offence.

(6) It is not an offence to incite the commission of an offence against section 44 (attempt), this section or section 49 (conspiracy).

(7) The penalty for an offence against this section shall be—

- (a) if the offence incited is punishable by life imprisonment—imprisonment for 10 years; or
- (b) if the offence incited is punishable by imprisonment for 14 years or more, but is not punishable by life imprisonment—imprisonment for 7 years; or
- (c) if the offence incited is punishable by imprisonment for 10 years or more, but is not punishable by imprisonment for 14 years or more—imprisonment for 5 years; or
- (d) if the offence is otherwise punishable by imprisonment—imprisonment for 3 years or for the maximum term of imprisonment for the offence incited, whichever is the lesser; or
- (e) if the offence incited is not punishable by imprisonment—the number of penalty units equal to the maximum number of penalty units applicable to the offence incited.

Conspiracy

49.—(1) A person who conspires with another person to commit an offence punishable by imprisonment for more than 12 months is guilty of the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

(2) Subject to sub-section (8), for the person to be guilty—

- (a) the person must have entered into an agreement with one or more other persons; and

- (b) the person and at least one other party to the agreement must have intended that an offence would be committed pursuant to the agreement; and
 - (c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.
- (3) A person may be found guilty of conspiracy to commit an offence even if—
- (a) committing the offence is impossible; or
 - (b) the only other party to the agreement is a body corporate; or
 - (c) each other party to the agreement is at least one of the following—
 - (i) a person who is not criminally responsible;
 - (ii) a person for whose benefit or protection the offence exists; or
 - (d) subject to paragraph (4)(a), all other parties to the agreement have been acquitted of the conspiracy.
- (4) A person cannot be found guilty of conspiracy to commit an offence if—
- (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or
 - (b) he or she is a person for whose benefit or protection the offence exists.
- (5) A person cannot be found guilty of conspiracy to commit an offence if, before the commission of an overt act pursuant to the agreement, the person—
- (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the commission of the offence.
- (6) A court may dismiss a charge of conspiracy if it thinks that the interests of justice require it to do so.
- (7) Any defences, procedures, limitations or qualifying provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.
- (8) Any special liability provisions that apply to an offence apply also to the offence of conspiracy to commit that offence.
- (9) Proceedings for an offence of conspiracy require the consent of the Director of Public Prosecutions.
- (10) A person may be arrested for, charged with, or remanded in custody or on bail in connection with, an offence of conspiracy before the necessary consent under sub-section (9) has been given.

References in Acts to offences

50.—(1) A reference in a law (including this Decree) to an offence is deemed to include an offence against section 44 (attempt), 48 (incitement) or 49 (conspiracy) of this Decree that relates to such an offence.

- (2) Sub-section (1) does not apply if a law is expressly or impliedly to the contrary effect.

PART 8 — CORPORATE CRIMINAL RESPONSIBILITY

General principles

51.—(1) This Decree applies to bodies corporate in the same way as it applies to individuals. It so applies with such modifications as are set out in this Part, and with such other modifications as are made necessary by the fact that criminal liability is being imposed on bodies corporate rather than individuals.

- (2) A body corporate may be found guilty of any offence, including one punishable by imprisonment.

Physical elements

52. If a physical element of an offence is committed by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the physical element must also be attributed to the body corporate.

Fault elements other than negligence

53.—(1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.

(2) The means by which such an authorisation or permission may be established include—

- (a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
- (b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
- (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non compliance with the relevant provision; or
- (d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.

(3) Sub-section (2)(b) does not apply if the body corporate proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.

(4) Factors relevant to the application of sub-section (2)(c) or (d) include—

- (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and
- (b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.

(5) If recklessness is not a fault element in relation to a physical element of an offence, sub-section (2) does not enable the fault element to be proved by proving that the board of directors, or a high managerial agent, of the body corporate recklessly engaged in the conduct or recklessly authorised or permitted the commission of the offence.

(6) In this section—

“board of directors” means the body (by whatever name called) exercising the executive authority of the body corporate.

“corporate culture” means an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities takes place.

“high managerial agent” means an employee, agent or officer of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the body corporate's policy.

Negligence

54.—(1) The test of negligence for a body corporate is that set out in section 22.

(2) If—

- (a) negligence is a fault element in relation to a physical element of an offence; and
- (b) no individual employee, agent or officer of the body corporate has that fault element—

that fault element may exist on the part of the body corporate if the body corporate's conduct is negligent when viewed as a whole (that is, by aggregating the conduct of any number of its employees, agents or officers).

(3) Negligence may be evidenced by the fact that the prohibited conduct was substantially attributable to—

- (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or

- (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

Mistake of fact (strict liability)

55.—(1) A body corporate can only rely on section 35 (mistake of fact (strict liability)) in respect of conduct that would, apart from this section, constitute an offence on its part if—

- (a) the employee, agent or officer of the body corporate who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
- (b) the body corporate proves that it exercised due diligence to prevent the conduct.

(2) A failure to exercise due diligence may be evidenced by the fact that the prohibited conduct was substantially attributable to—

- (a) inadequate corporate management, control or supervision of the conduct of one or more of its employees, agents or officers; or
- (b) failure to provide adequate systems for conveying relevant information to relevant persons in the body corporate.

Intervening conduct or event

56. A body corporate cannot rely on section 39 (intervening conduct or event) in respect of a physical element of an offence brought about by another person if the other person is an employee, agent or officer of the body corporate.

PART 9 — PROOF OF CRIMINAL RESPONSIBILITY

Legal burden of proof—prosecution

57.—(1) The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.

(2) The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.

(3) In this Decree—

“legal burden” , in relation to a matter, means the burden of proving the existence of the matter.

Standard of proof—prosecution

58.—(1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.

(2) Sub-section (1) does not apply if the law creating the offence specifies a different standard of proof.

Evidential burden of proof—defence

59.—(1) Subject to section 60, a burden of proof that a law imposes on a defendant is an evidential burden only.

(2) A defendant who wishes to deny criminal responsibility by relying on a provision of this Decree (other than section 28) bears an evidential burden in relation to that matter.

(3) A defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

(4) The exception, exemption, excuse, qualification or justification need not accompany the description of the offence.

(5) The defendant no longer bears the evidential burden in relation to a matter if evidence sufficient to discharge the burden is adduced by the prosecution or by the court.

(6) The question whether an evidential burden has been discharged is one of law.

(7) In this Decree—

“evidential burden”, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

Legal burden of proof—defence

60. A burden of proof that a law imposes on the defendant is a legal burden if and only if the law expressly—

- (a) specifies that the burden of proof in relation to the matter in question is a legal burden; or
- (b) requires the defendant to prove the matter; or
- (c) creates a presumption that the matter exists unless the contrary is proved.

Standard of proof—defence

61. A legal burden of proof on the defendant must be discharged on the balance of probabilities.

Use of averments

62. A law that allows the prosecution to make an averment is taken not to allow the prosecution—

- (a) to aver any fault element of an offence; or
- (b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

CHAPTER III — CRIMINAL OFFENCES

PART 10 — TREASON AND OTHER OFFENCES AGAINST GOVERNMENT AUTHORITY

Definitions

63. In this Part—

“organisation” means—

- (a) a body corporate; or
- (b) an unincorporated body;

whether or not the body is based outside Fiji, consists of persons who are not Fijian citizens, or is part of a larger organisation.

Treason

64.—(1) A person commits the indictable offence of treason, if at the time of the offence being a Fijian citizen or resident, the person—

- (a) causes the death of the President or the Prime Minister; or
- (b) causes harm to the President or the Prime Minister resulting in the death of the President or the Prime Minister; or
- (c) causes harm to the President or the Prime Minister, or imprisons or restrains the President or the Prime Minister; or
- (d) levies war, or does any act preparatory to levying war, against Fiji; or
- (e) engages in conduct that materially assists, with intent to assist, an enemy at war with Fiji, (whether or not the existence of a state of war has been declared);
- (f) engages in conduct that materially assists, with intent to assist—
 - (i) another country; or
 - (ii) an organisation;

that is engaged in armed hostilities against the Fiji Military Forces or

- (g) instigates a person who is not a citizen of Fiji to make an armed invasion of Fiji or any part of Fiji; or
- (h) forms an intention to do any act referred to in a preceding paragraph and manifests that intention by an overt act.

Penalty — Imprisonment for life.

(2) Sub-sections (1) (e) and (f) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

(3) Sub-section (1) (h) does not apply to formation of an intention to engage in conduct that—

- (a) is referred to in sub-section (1) (e) or (f); and
- (b) is by way of, or for the purposes of, the provision of aid of a humanitarian nature.

(4) A person commits an indictable offence if the person—

- (a) receives or assists another person who, to his or her knowledge, has committed treason with the intention of allowing him or her to escape punishment or apprehension; or
- (b) knowing that another person intends to commit treason, does not inform the President, the Prime Minister or a judge, magistrate or police officer of it within a reasonable time, or use other reasonable endeavours to prevent the commission of the offence.

Penalty — Imprisonment for life.

(5) On the trial of a person charged with treason on the ground that he or she formed an intention to do an act referred to in sub-section (1)(a), (b), (c), (d), (e), (f) or (g) and manifested that intention by an overt act, evidence of the overt act is not to be admitted unless the overt act is alleged in the information.

Urging political violence or inciting communal antagonism

65.—(1) A person commits an indictable offence (which is triable summarily) if the person intentionally urges another person to overthrow by force or violence—

- (a) the Constitution of Fiji; or
- (b) the Government of Fiji; or
- (c) the lawful authority of the Government of Fiji.

Penalty — Imprisonment for 15 years.

(2) A person commits an indictable offence (which is triable summarily) if the person by any communication whatsoever including electronic communication, or by signs or by visible representation intended by the person to be read or heard—

- (a) makes any statement or spreads any report which is likely to—
 - (i) incite dislike or hatred or antagonism of any community; or
 - (ii) promote feelings of enmity or ill-will between different communities, religious groups or classes of the community; or
 - (iii) otherwise prejudices the public peace by creating feelings of communal antagonism; or
- (b) makes any intimidating or threatening statement in relation to a community or religious group other than the person's own which is likely to arouse fear, alarm, or insecurity amongst members of that community or religious group

Penalty — Imprisonment for 10 years.

(3) Recklessness applies to the element of the offence under sub-section (1) that it is—

- (a) the Constitution; or
- (b) the Government of Fiji; or
- (c) the lawful authority of the Government of Fiji—

that the first-mentioned person urges the other person to overthrow.

(4) For a person to be guilty of an offence under this section the person must intend that the force or violence urged will occur.

(5) Recklessness applies to the element of the offence under subsection (2) that the communication, signs or representation made by the person is likely to have the effect specified in sub-paragraphs (a) and (b).

Seditious Intention

66.—(1) A “seditious intention” is an intention—

- (i) to bring into hatred or contempt or to excite disaffection against the Government of Fiji as by law established; or
- (ii) to excite the inhabitants of Fiji to attempt to procure the alteration, otherwise than by lawful means, of any matter in Fiji as by law established; or
- (iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in Fiji; or
- (iv) to raise discontent or disaffection amongst the inhabitants of Fiji; or
- (v) to promote feelings of ill-will and hostility between different classes of the population of Fiji.

But an act, speech or publication is not seditious by reason only that it intends—

- (a) to show that the Government of Fiji has been misled or mistaken in any of its measures; or
- (b) to point out errors or defects in the government or Constitution of Fiji as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
- (c) to persuade the inhabitants of Fiji to attempt to procure by lawful means the alteration of any matter in Fiji as by law established; or
- (d) to point out, with a view to their removal, any matters which are producing or having a tendency to produce feelings of ill-will and enmity between different classes of the population of Fiji

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

Seditious offences

67.—(1) A person commits an indictable offence (which is triable summarily) if the person—

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do any act with a seditious intention;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious.

Penalty — Imprisonment for 7 years.

(2) A person commits a summary offence if without lawful excuse the person has in his possession any seditious publication.

Penalty — Imprisonment for 1 year and 2 penalty points.

(3) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

Urging a person to assist the enemy

68.—(1) A person commits a summary offence if—

- (a) the person urges another person to engage in conduct; and
- (b) the first-mentioned person intends the conduct to assist an organisation or country; and
- (c) the organisation or country is—

at war with Fiji, whether or not the existence of a state of war has been declared

Penalty — Imprisonment for 7 years.

(2) This section does not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Urging a person to assist those engaged in armed hostilities

69.—(1) A person commits a summary offence if—

- (a) the person urges another person to engage in conduct; and
- (b) the first-mentioned person intends the conduct to assist an organisation or country; and
- (c) the organisation or country is engaged in armed hostilities against the Fiji Military Force.

Penalty — Imprisonment for 7 years.

(2) This section does not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Determination of certain elements of offences under this Part

70.—(1) For the purposes of determining whether a person has intended that force or violence shall occur in the context of an offence under this Part, or intended to materially assist an enemy, organisation or group in relation to an offence under this Part, the court shall have regard to the context in which the conduct occurred, including whether the person's conduct was done—

- (a) in good faith to show that any of the following persons are mistaken in any of his or her counsels, policies or actions—
 - (i) the President;
 - (ii) the Prime Minister;
 - (iii) an adviser of either of the above;
 - (iv) a person responsible for the government of another country; or
- (b) to point out in good faith errors or defects in the following, with a view to reforming those errors or defects—
 - (i) the Government of Fiji;
 - (ii) the Constitution of Fiji;
 - (iii) legislation of Fiji or another country;
 - (iv) the administration of justice of or in Fiji, or another country; or
- (c) to urge in good faith another person to attempt to lawfully procure a change to any matter established by law, policy or practice in Fiji or another country; or
- (d) to point out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, in order to bring about the removal of those matters; or
- (e) to do anything in good faith in connection with an industrial dispute or an industrial matter; or
- (f) to publish in good faith a report or commentary about a matter of public interest.

(2) In considering matters under sub-section (1), the Court may have regard to any relevant matter, including whether the acts were done—

- (a) for a purpose intended to be prejudicial to the safety or defence of Fiji; or
- (b) with the intention of assisting an enemy at war with Fiji;
- (c) with the intention of assisting another country, or an organisation, that is engaged in armed hostilities against the Fiji Military Force; or
- (d) with the intention of causing violence or creating public disorder or a public disturbance.

Extended jurisdiction for offences against this Part

71. A person commits an offence against all sections of this Part—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

PART 11 — OTHER OFFENCES AGAINST PUBLIC ORDER

Inciting to mutiny

- 72.—(1) A person commits an offence if he or she attempts to—
- (a) seduce any person serving in the military forces of Fiji or any police officer from his or her duty and allegiance to Fiji; or
 - (b) incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or
 - (c) incite any such persons to make or endeavour to make a mutinous assembly.

Penalty — Imprisonment for 15 years.

- (2) The offences under sub-section (1) are indictable offences which are triable summarily.

Aiding soldiers or police in act of mutiny

73. A person commits a summary offence if he or she—
- (a) aids, abets, or is accessory to, any act of mutiny by any non-commissioned officer or private of the military forces of Fiji or any police officer; or
 - (b) incites any person named in paragraph (a) to sedition or to disobedience to any lawful order given by a superior officer.

Penalty — Imprisonment for 5 years.

Inducing soldier or police to desert

74. A person commits a summary offence if he or she, by any means (directly or indirectly)—
- (a) procures or persuades or attempts to procure or persuade any non-commissioned officer or private of the Fiji military forces or any police officer to desert; or
 - (b) aids, abets, or is accessory to the desertion of any person named in paragraph (a); or
 - (c) having reason to believe a person named in paragraph (a) is a deserter and he or she harbours or aids in concealing the person.

Penalty — Imprisonment for 5 years.

Aiding prisoners of war to escape

75. A person commits a summary offence if he or she aids an alien enemy, being a prisoner of war in Fiji—
- (a) to escape from prison or a place of confinement; or
 - (b) if the prisoner of war is at large on parole, to escape from Fiji.

Penalty — Imprisonment for 5 years.

PART 12 — OFFENCES AGAINST THE INTERNATIONAL ORDER

*Division 1 — Purpose of this Part**Purpose of this Part and definition of Covenant*

76.—(1) The purpose of this Part is to create certain offences that are of international concern and certain related offences.

(2) Any law providing for the jurisdiction of the International Criminal Court in Fiji is to be complementary to the jurisdiction of Fiji with respect to offences in this Division (and any other law prescribing such offences) that are also crimes within the jurisdiction of that Court.

(3) Accordingly, any law which makes provision for the jurisdiction of the International Criminal Court shall not affect the primacy of Fiji's right to exercise its jurisdiction with respect to offences created by this Division (and any other law prescribing offences against humanity or war crimes) that are also crimes within the jurisdiction of the International Criminal Court.

(4) "Covenant" means the International Covenant on Civil and Political Rights.

*Division 2 – Genocide**Genocide by killing*

77. A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes the death of one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy (in whole or in part) that national, ethnical, racial or religious group, as such.

Penalty — Imprisonment for life.

Genocide by causing serious bodily or mental harm

78.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes serious bodily or mental harm to one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy (in whole or in part) that national, ethnical, racial or religious group, as such.

Penalty — Imprisonment for life.

(2) In sub-section (1)—

“causes serious bodily or mental harm” includes, but is not limited to, the committing of acts of torture, rape, sexual violence or inhuman or degrading treatment.

Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

79.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator inflicts certain conditions of life upon one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy (in whole or in part) that national, ethnical, racial or religious group, as such; and
- (d) the conditions of life are intended to bring about the physical destruction of that group, in whole or in part.

Penalty — Imprisonment for life.

(2) In sub-section (1)—

“conditions of life” includes, but is not limited to intentional deprivation of resources indispensable for survival, such as deprivation of food or medical services, or systematic expulsion from homes.

Genocide by imposing measures intended to prevent births

80. A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator imposes certain measures upon one or more persons; and
- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the measures imposed are intended to prevent births within that group.

Penalty — Imprisonment for life.

Genocide by forcibly transferring children

81.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator forcibly transfers one or more persons; and

- (b) the person or persons belong to a particular national, ethnical, racial or religious group; and
- (c) the perpetrator intends to destroy, in whole or in part, that national, ethnical, racial or religious group, as such; and
- (d) the transfer is from that group to another national, ethnical, racial or religious group; and
- (e) the person or persons are under the age of 18 years; and
- (f) the perpetrator knows that, or is reckless as to whether, the person or persons are under that age.

Penalty — Imprisonment for life.

(2) In sub-section (1)—

“forcibly transfers one or more persons” includes transfers one or more persons—

- (a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or
- (b) by taking advantage of a coercive environment.

Division 3 — Crimes Against Humanity

Crime against humanity—murder

82. A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes the death of one or more persons; and
- (b) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for life.

Crime against humanity—extermination

83.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes the death of one or more persons; and
- (b) the perpetrator’s conduct constitutes, or takes place as part of, a mass killing of members of a civilian population; and
- (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for life.

(2) In sub-section (1)—

“causes the death of” includes causes death by intentionally inflicting conditions of life (such as the deprivation of access to food or medicine) intended to bring about the destruction of part of a population.

Crime against humanity—enslavement

84.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons (including the exercise of a power in the course of trafficking in persons, in particular women and children); and
- (b) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(2) In sub-section (1)—

“exercises any or all of the powers attaching to the right of ownership” over a person includes purchases, sells, lends or barter a person or imposes on a person a similar deprivation of liberty and also includes exercise a power arising from a debt incurred or contract made by a person.

Crime against humanity—deportation or forcible transfer of population

- 85.—(1) A person (the perpetrator) commits an indictable offence if—
- (a) the perpetrator forcibly displaces one or more persons, by expulsion or other coercive acts, from an area in which the person or persons are lawfully present to another country or location; and
 - (b) the forcible displacement is contrary to paragraph 4 of article 12 or article 13 of the Covenant; and
 - (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the lawfulness of the presence of the person or persons in the area; and
 - (d) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 17 years.

- (2) Strict liability applies to paragraph (1)(b).
- (3) In sub-section (1)—
- “forcibly displaces one or more persons” includes displaces one or more persons—
- (a) by threat of force or coercion (such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power) against the person or persons or against another person; or
 - (b) by taking advantage of a coercive environment.

Crime against humanity—imprisonment or other severe deprivation of physical liberty

- 86.—(1) A person (the perpetrator) commits an indictable offence if—
- (a) the perpetrator imprisons one or more persons or otherwise severely deprives one or more persons of physical liberty; and
 - (b) the perpetrator’s conduct violates article 9, 14 or 15 of the Covenant; and
 - (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 17 years.

- (2) Strict liability applies to paragraph (1)(b).

Crime against humanity—torture

87. A person (the perpetrator) commits an indictable offence if—
- (a) the perpetrator inflicts severe physical or mental pain or suffering upon one or more persons who are in the custody or under the control of the perpetrator; and
 - (b) the pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions; and
 - (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

Crime against humanity—rape

- 88.—(1) A person (the perpetrator) commits an indictable offence if—
- (a) the perpetrator sexually penetrates another person without the consent of that person; and
 - (b) the perpetrator knows of, or is reckless as to, the lack of consent; and
 - (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

- (2) A person (the perpetrator) commits an indictable offence if—
- (a) the perpetrator causes another person to sexually penetrate the perpetrator without the consent of the other person; and

- (b) the perpetrator knows of, or is reckless as to, the lack of consent; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(3) In this section—

“consent” means free and voluntary agreement.

(4) Without limiting the generality of the references to consent in this section, a person does not consent to an act if—

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(5) In this section—

“sexually penetrate” means—

- (a) penetrate (to any extent) the genitalia or anus of a person by any part of the body of another person or by any object manipulated by that other person; or
- (b) penetrate (to any extent) the mouth of a person by the penis of another person; or
- (c) continue to sexually penetrate as defined in paragraph (a) or (b).

(6) In this section, being reckless as to a lack of consent to sexual penetration includes not giving any thought to whether or not the person is consenting to sexual penetration.

(7) In this section, the genitalia or other parts of the body of a person include surgically constructed genitalia or other parts of the body of the person.

Crime against humanity—sexual slavery

89.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes another person to enter into or remain in sexual slavery; and
- (b) the perpetrator intends to cause, or is reckless as to causing, that sexual slavery; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(2) For the purposes of this section, sexual slavery is the condition of a person who provides sexual services and who, because of the use of force or threats—

- (a) is not free to cease providing sexual services; or
- (b) is not free to leave the place or area where the person provides sexual services.

(3) In this section—

“sexual service” means the use or display of the body of the person providing the service for the sexual gratification of others.

“threat” means—

- (a) a threat of force; or
- (b) a threat to cause a person’s deportation; or
- (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

Crime against humanity—enforced prostitution

90.—(1) A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes one or more persons to engage in one or more acts of a sexual nature without the consent of the person or persons, including by being reckless as to whether there is consent; and
- (b) the perpetrator intends that he or she, or another person, will obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature; and
- (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(2) In sub-section (1)—

“consent” means free and voluntary agreement.

(3) Without limiting the generality of the references to consent in this section, a person does not consent to an act if—

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section “threat of force or coercion” includes—

- (a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
- (b) taking advantage of a coercive environment.

(5) In sub-section (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.

Crime against humanity—forced pregnancy

91.—(1) A person (the perpetrator) commits an indictable offence if —

- (a) the perpetrator unlawfully confines one or more women forcibly made pregnant; and
- (b) the perpetrator intends to affect the ethnic composition of any population or to destroy, wholly or partly, a national, ethnical, racial or religious group, as such; and
- (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(2) In sub-section (1)—

“forcibly made pregnant” includes made pregnant by a consent that was affected by deception or by natural, induced or age-related incapacity.

Crime against humanity—enforced sterilisation

92.—(1) A person (the perpetrator) commits an indictable offence if —

- (a) the perpetrator deprives one or more persons of biological reproductive capacity; and
- (b) the deprivation is not effected by a birth-control measure that has a non-permanent effect in practice; and
- (c) the perpetrator’s conduct is neither justified by the medical or hospital treatment of the person or persons nor carried out with the consent of the person or persons; and
- (d) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(2) In sub-section (1)—

“consent” does not include consent effected by deception or by natural, induced or age-related incapacity.

Crime against humanity—sexual violence

93.—(1) A person (the perpetrator) commits an indictable offence if —

- (a) the perpetrator does either of the following —
 - (i) commits an act or acts of a sexual nature against one or more persons;
 - (ii) causes one or more persons to engage in an act or acts of a sexual nature;

without the consent of the person or persons, including by being reckless as to whether there is consent; and

- (b) the perpetrator’s conduct is of a gravity comparable to the offences referred to in sections 88 to 92; and
- (c) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

(2) In sub-section (1)—

“consent” means free and voluntary agreement.

(3) Without limiting the generality of the references to consent in this section, a person does not consent to an act if—

- (a) the person submits to the act because of force or the fear of force to the person or to someone else;
- (b) the person submits to the act because the person is unlawfully detained;
- (c) the person is asleep or unconscious, or is so affected by alcohol or another drug as to be incapable of consenting;
- (d) the person is incapable of understanding the essential nature of the act;
- (e) the person is mistaken about the essential nature of the act (for example, the person mistakenly believes that the act is for medical or hygienic purposes);
- (f) the person submits to the act because of psychological oppression or abuse of power;
- (g) the person submits to the act because of the perpetrator taking advantage of a coercive environment.

(4) In this section “threat of force or coercion” includes—

- (a) a threat of force or coercion such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or
- (b) taking advantage of a coercive environment.

(5) In sub-section (1), being reckless as to whether there is consent to one or more acts of a sexual nature includes not giving any thought to whether or not the person or persons are consenting to engaging in the act or acts of a sexual nature.

Crime against humanity—persecution

- 94.—(1) A person (the perpetrator) commits an indictable offence if —
- (a) the perpetrator severely deprives one or more persons of any of the rights referred to in paragraph (b); and
 - (b) the rights are those guaranteed in articles 6, 7, 8 and 9, paragraph 2 of article 14, article 18, paragraph 2 of article 20, paragraph 2 of article 23 and article 27 of the Covenant; and
 - (c) the perpetrator targets the person or persons by reason of the identity of a group or collectivity or targets the group or collectivity as such; and
 - (d) the grounds on which the targeting is based are political, racial, national, ethnic, cultural, religious, gender or other grounds that are recognised in paragraph 1 of article 2 of the Covenant; and
 - (e) the perpetrator’s conduct is committed in connection with another act that is:
 - (i) a proscribed inhumane act; or
 - (ii) genocide; and
 - (f) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 17 years.

- (2) Strict liability applies to—
- (a) the physical element of the offence referred to in sub-section (1)(a) that the rights are those referred to in sub-section (1)(b); and
 - (b) sub-sections (1)(b) and (d).

Crime against humanity—enforced disappearance of persons

- 95.—(1) A person (the perpetrator) commits an indictable offence if—
- (a) the perpetrator arrests, detains or abducts one or more persons; and
 - (b) the arrest, detention or abduction is carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and
 - (c) the perpetrator intends to remove the person or persons from the protection of the law for a prolonged period of time; and
 - (d) the perpetrator’s conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population; and
 - (e) after the arrest, detention or abduction, the government or organisation refuses to acknowledge the deprivation of freedom of, or to give information on the fate or whereabouts of, the person or persons.

Penalty — Imprisonment for 17 years.

- (2) A person (the perpetrator) commits an indictable offence if—
- (a) one or more persons have been arrested, detained or abducted; and
 - (b) the arrest, detention or abduction was carried out by, or with the authorisation, support or acquiescence of, the government of a country or a political organisation; and
 - (c) the perpetrator refuses to acknowledge the deprivation of freedom, or to give information on the fate or whereabouts, of the person or persons; and
 - (d) the refusal occurs with the authorisation, support or acquiescence of the government of the country or the political organisation; and
 - (e) the perpetrator knows that, or is reckless as to whether, the refusal was preceded or accompanied by the deprivation of freedom; and

- (f) the perpetrator intends that the person or persons be removed from the protection of the law for a prolonged period of time; and
- (g) the arrest, detention or abduction occurred, and the refusal occurs, as part of a widespread or systematic attack directed against a civilian population; and
- (h) the perpetrator knows that the refusal is part of, or intends the refusal to be part of, such an attack.

Penalty — Imprisonment for 17 years.

Crime against humanity—apartheid

96. A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator commits against one or more persons an act that is a proscribed inhumane act, or an act that is of a nature and gravity similar to any such proscribed inhumane act; and
- (b) the perpetrator's conduct is committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups; and
- (c) the perpetrator knows of, or is reckless as to, the factual circumstances that establish the character of the act; and
- (d) the perpetrator intends to maintain the regime by the conduct; and
- (e) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 17 years.

Crime against humanity—other inhumane act

97. A person (the perpetrator) commits an indictable offence if—

- (a) the perpetrator causes great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act; and
- (b) the act is of a character similar to another proscribed inhumane act; and
- (c) the perpetrator's conduct is committed intentionally or knowingly as part of a widespread or systematic attack directed against a civilian population.

Penalty — Imprisonment for 25 years.

Division 4 — Miscellaneous Provisions Applying to Genocide and Crimes Against Humanity

Defence of superior orders

98. The fact that genocide or a crime against humanity has been committed by a person pursuant to an order of a Government or of a superior (whether military or civilian) does not relieve the person of criminal responsibility.

Geographical jurisdiction

99. A person commits an offence against all sections of Divisions 2 and 3 of this Part—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

Double jeopardy

100. A person cannot be tried by the High Court for an offence under Divisions 2 and 3 of this Part if the person has already been convicted or acquitted, in accordance with the laws of Fiji, by the International Criminal Court for an offence constituted by substantially the same conduct as constituted the offence under Divisions 2 and 3 of this Part.

Bringing proceedings under this Part and Part 10

101. Proceedings for an offence under Divisions 2 and 3 of this Part and Part 10 must not be commenced without the written consent of the Director of Public Prosecutions.

Division 5 — Slavery, Sexual Servitude and Deceptive Recruiting

Definition of slavery

102. For the purposes of this Division, slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.

Slavery offences

103.—(1) A person who, whether within or outside Fiji, intentionally—

- (a) possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership; or
 - (b) engages in slave trading; or
 - (c) enters into any commercial transaction involving a slave; or
 - (d) exercises control or direction over, or provides finance for -
 - (i) any act of slave trading; or
 - (ii) any commercial transaction involving a slave;
- commits an indictable offence.

Penalty — Imprisonment for 25 years.

(2) A person who—

- (a) whether within or outside Fiji—
 - (i) enters into any commercial transaction involving a slave; or
 - (ii) exercises control or direction over, or provides finance for, any commercial transaction involving a slave; or
 - (iii) exercises control or direction over, or provides finance for, any act of slave trading; and
 - (b) is reckless as to whether the transaction or act involves a slave, slavery or slave trading;
- commits an indictable offence.

Penalty — Imprisonment for 17 years.

(3) In this section—

“slave trading” includes—

- (a) the capture, transport or disposal of a person with the intention of reducing the person to slavery; or
- (b) the purchase or sale of a slave.

(4) A person who engages in any conduct with the intention of securing the release of a person from slavery is not guilty of an offence against this section.

(5) The defendant bears a legal burden of proving the matter mentioned in sub-section (4).

Definition of sexual servitude

104.—(1) For the purposes of this Division, sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or threats—

- (a) is not free to cease providing sexual services; or
- (b) is not free to leave the place or area where the person provides sexual services.

(2) In this section—

“threat” means—

- (a) a threat of force; or
- (b) a threat to cause a person’s deportation; or
- (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

Extended jurisdiction for offences against this Division

105. A person commits an offence against all sections of this Division—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

Sexual servitude offences

106.—(1) A person—

- (a) whose conduct causes another person to enter into or remain in sexual servitude; and
- (b) who intends to cause, or is reckless as to causing, that sexual servitude;

commits an indictable offence.

Penalty—

- (i) in the case of an aggravated offence under section 108 - imprisonment for 20 years; or
- (ii) in any other case - imprisonment for 15 years.

(2) A person—

- (a) who conducts any business that involves the sexual servitude of other persons; and
- (b) who knows about, or is reckless as to, that sexual servitude -

commits an indictable offence.

Penalty—

- (i) in the case of an aggravated offence under section 108 - imprisonment for 20 years; or
- (ii) in any other case - imprisonment for 15 years.

(3) In this section—

“conducting a business” includes—

- (a) taking any part in the management of the business; or
- (b) exercising control or direction over the business; or
- (c) providing finance for the business.

Deceptive recruiting for sexual services

107.—(1) A person who, with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about—

- (a) the fact that the engagement will involve the provision of sexual services; or
- (b) the nature of sexual services to be provided (for example, whether those services will require the person to have unprotected sex); or
- (c) the extent to which the person will be free to leave the place or area where the person provides sexual services; or
- (d) the extent to which the person will be free to cease providing sexual services; or
- (e) the extent to which the person will be free to leave his or her place of residence; or
- (f) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or
- (g) the fact that the engagement will involve exploitation, debt bondage or the confiscation of the person’s travel or identity documents;

commits of an indictable offence.

Penalty—

- (i) in the case of an aggravated offence under section 107 - imprisonment for 9 years; or
- (ii) in any other case—imprisonment for 7 years.

(2) In determining, for the purposes of any proceedings for an offence against sub-section (1), whether a person has been deceived about any matter referred to in a paragraph of that sub-section, a court may have regard to any of the following matters—

- (a) the economic relationship between the person and the alleged offender;

- (b) the terms of any written or oral contract or agreement between the person and the alleged offender;
 - (c) the personal circumstances of the person, including but not limited to:
 - (i) whether the person is lawfully entitled to be in Fiji; and
 - (ii) the person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and
 - (iii) the extent of the person's social and physical dependence on the alleged offender.
- (3) Sub-section (2) does not—
- (a) prevent the leading of any other evidence in proceedings for an offence against sub-section (1); or
 - (b) limit the manner in which evidence may be adduced or the admissibility of evidence.
- (4) In this section—
- “deceive” has the same meaning as in section 111.
- “sexual service” means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

Aggravated offences

108.—(1) For the purposes of this Division, an offence against section 106 or 107 is an aggravated offence if the offence was committed against a person who is under 18.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person under that age.

(3) In order to prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

Alternative verdict if aggravated offence not proven

109. If, on a trial for an aggravated offence against section 106 or 107, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that he or she is guilty of an offence against that section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

Double jeopardy

110. If a person has been convicted or acquitted in a country outside Fiji of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Division 6 — Trafficking in Persons and Children

Definitions

111. In this Division—

“confiscate”, in relation to a person's travel or identity document, means to take possession of the document, whether permanently or otherwise, to the exclusion of the person, or to destroy the document.

“deceive” means mislead as to fact (including the intention of any person) or as to law, by words or other conduct.

“threat” means—

- (a) a threat of force; or
- (b) a threat to cause a person's removal from Fiji; or
- (c) a threat of any other detrimental action -

unless there are reasonable grounds for the threat of that action.

Offence of trafficking in persons

112.—(1) A person (the first person) commits an indictable offence of trafficking in persons if—

- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and

- (b) the first person uses force or threats; and
- (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that entry or proposed entry or in respect of that receipt.

Penalty — Imprisonment for 12 years.

- (2) A person (the first person) commits an indictable offence of trafficking in persons if—
- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person's compliance in respect of that exit or proposed exit.

Penalty — Imprisonment for 12 years.

- (3) A person (the first person) commits an indictable offence of trafficking in persons if—
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and
 - (b) in organising or facilitating that entry or proposed entry, or that receipt, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that entry or receipt.

Penalty — Imprisonment for 12 years.

- (4) A person (the first person) commits an indictable offence of trafficking in persons if—
- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
 - (b) in organising or facilitating that exit or proposed exit, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that exit.

Penalty — Imprisonment for 12 years.

- (5) A person (the first person) commits an indictable offence of trafficking in persons if—
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and
 - (b) the first person deceives the other person about the fact that the other person's entry or proposed entry, the other person's receipt or any arrangements for the other person's stay in Fiji, will involve the provision by the other person of sexual services or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty — Imprisonment for 12 years.

- (6) A person (the first person) commits an indictable offence of trafficking in persons if—
- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
 - (b) the first person deceives the other person about the fact that the other person's exit or proposed exit is for purposes that involve the provision by the other person of sexual services outside Fiji or will involve the other person's exploitation or debt bondage or the confiscation of the other person's travel or identity documents.

Penalty — Imprisonment for 12 years.

- (7) A person (the first person) commits an offence of trafficking in persons if—
- (a) the first person organises or facilitates the entry or proposed entry, or the receipt, of another person into Fiji; and
 - (b) there is an arrangement for the other person to provide sexual services in Fiji; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;

- (iii) the extent to which the other person will be free to cease providing sexual services;
- (iv) the extent to which the other person will be free to leave his or her place of residence;
- (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty — Imprisonment for 12 years.

- (8) A person (the first person) commits an indictable offence of trafficking in persons if—
- (a) the first person organises or facilitates the exit or proposed exit of another person from Fiji; and
 - (b) there is an arrangement for the other person to provide sexual services outside Fiji; and
 - (c) the first person deceives the other person about any of the following:
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services - the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty -Imprisonment for 12 years.

- (9) Absolute liability applies to sub-sections (1)(c) and (2)(c).

Aggravated offence of trafficking in persons

113.—(1) A person (the first person) commits an aggravated offence of trafficking in persons if the first person commits the offence of trafficking in persons in relation to another person (the victim) and any of the following applies—

- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or another:
 - (i) if the offence of trafficking in persons is an offence against sub-section 112(1), (3), (5) or (7) - after entry into Fiji; and
 - (ii) if the offence of trafficking in persons is an offence against sub-section 112(2), (4), (6) or (8) - after exit from Fiji;
- (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (c) the first person, in committing the offence—
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.

Penalty — Imprisonment for 20 years.

(2) If, on a trial for an offence against this section, the court is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 115, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

Offence of trafficking in children

114.—(1) A person (the first person) commits an indictable offence of trafficking in children if—

- (a) the first person organises or facilitates the entry or proposed entry into Fiji, or the receipt in Fiji, of another person; and
- (b) the other person is under the age of 18; and

- (c) in organising or facilitating that entry or proposed entry, or that receipt, the first person -
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that entry or receipt.

Penalty — Imprisonment for 25 years.

- (2) A person (the first person) commits an indictable offence of trafficking in children if —
 - (a) the first person organises or facilitates the exit or proposed exit from Fiji of another person; and
 - (b) the other person is under the age of 18; and
 - (c) in organising or facilitating that exit or proposed exit, the first person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.

Penalty — Imprisonment for 25 years.

- (3) In this section—

“sexual service” means the use or display of the body of the person providing the service for the sexual gratification of others.

Offence of domestic trafficking in persons

- 115.—(1) A person (the first person) commits an indictable offence of domestic trafficking in persons if—
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Fiji to another place in Fiji; and
 - (b) the first person uses force or threats; and
 - (c) that use of force or threats results in the first person obtaining the other person’s compliance in respect of that transportation or proposed transportation.

Penalty — Imprisonment for 12 years.

- (2) A person (the first person) commits an indictable offence of domestic trafficking in persons if—
 - (a) the first person organises or facilitates the transportation or proposed transportation of another person from one place in Fiji to another place in Fiji; and
 - (b) in organising or facilitating that transportation or proposed transportation, the first person is reckless as to whether the other person will be exploited, either by the first person or another, after that transportation.

Penalty — Imprisonment for 12 years.

- (3) A person (the first person) commits an indictable offence of domestic trafficking in persons if—
 - (a) the first person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and
 - (b) the first person deceives the other person about the fact that the transportation, or any arrangements the first person has made for the other person following the transportation, will involve the provision by the other person of sexual services or will involve the other person’s exploitation or debt bondage or the confiscation of the other person’s travel or identity documents.

Penalty — Imprisonment for 12 years.

- (4) A person (the first person) commits an indictable offence of domestic trafficking in persons if—
 - (a) the first person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and

- (b) there is an arrangement for the other person to provide sexual services; and
- (c) the first person deceives the other person about any of the following—
 - (i) the nature of the sexual services to be provided;
 - (ii) the extent to which the other person will be free to leave the place or area where the other person provides sexual services;
 - (iii) the extent to which the other person will be free to cease providing sexual services;
 - (iv) the extent to which the other person will be free to leave his or her place of residence;
 - (v) if there is a debt owed or claimed to be owed by the other person in connection with the arrangement for the other person to provide sexual services—the quantum, or the existence, of the debt owed or claimed to be owed.

Penalty — Imprisonment for 12 years.

Aggravated offence of domestic trafficking in persons

116.—(1) A person (the first person) commits an aggravated offence of domestic trafficking in persons if the first person commits the offence of domestic trafficking in persons in relation to another person (the victim) and any of the following applies—

- (a) the first person commits the offence intending that the victim will be exploited, either by the first person or by another, after arrival at the place to which the person has been transported;
- (b) the first person, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (c) the first person, in committing the offence—
 - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim; and
 - (ii) is reckless as to that danger.

Penalty — Imprisonment for 20 years.

(2) The offence in sub-section (1) is an indictable offence.

(3) If, on a trial for an offence against this section, the court is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 115, it may find the defendant not guilty of the aggravated offence, but guilty of an offence against that section.

Offence of domestic trafficking in children

117.—(1) A person commits an indictable offence of domestic trafficking in children if—

- (a) the first-mentioned person organises or facilitates the transportation of another person from one place in Fiji to another place in Fiji; and
- (b) the other person is under the age of 18; and
- (c) in organising or facilitating that transportation, the first-mentioned person:
 - (i) intends that the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place; or
 - (ii) is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first-mentioned person or another, during or following the transportation to that other place.

Penalty — Imprisonment for 25 years.

(2) In this section—

“sexual service” means the use or display of the body of the person providing the service for the sexual gratification of others.

Offence of debt bondage

118.—(1) A person commits a summary offence of debt bondage if—

- (a) the person engages in conduct that causes another person to enter into debt bondage; and

- (b) the person intends to cause the other person to enter into debt bondage.

Penalty — Imprisonment for 12 months.

(2) In determining, for the purposes of any proceedings for an offence against sub-section (1), whether a person (the first person) has caused another person (the second person) to enter into debt bondage, a court may have regard to any of the following matters—

- (a) the economic relationship between the first person and the second person;
- (b) the terms of any written or oral contract or agreement between the second person and another person (whether or not the first person);
- (c) the personal circumstances of the second person, including but not limited to—
- (i) whether the second person is lawfully entitled to be in Fiji; and
- (ii) the second person's ability to speak, write and understand English or the language in which the deception or inducement occurred; and
- (iii) the extent of the second person's social and physical dependence on the first person.

(3) Sub-section (2) does not—

- (a) prevent the leading of any other evidence in proceedings for an offence against sub-section (1); or
- (b) limit the manner in which evidence may be adduced or the admissibility of evidence.

Offence of aggravated debt bondage

119.—(1) A person commits an offence of aggravated debt bondage if the person commits an offence of debt bondage in relation to another person (the victim) and the victim is under 18.

Penalty — Imprisonment for 2 years.

(2) In order to prove an offence of aggravated debt bondage, the prosecution must prove that the defendant intended to commit, or was reckless as to committing, the offence against a person under that age.

(3) If, on a trial for an offence against this section, the court is not satisfied that the defendant is guilty of the aggravated offence, but is satisfied that he or she is guilty of an offence against section 118, it may find the defendant not guilty of the aggravated offence but guilty of an offence against that section.

Extended jurisdiction for some offences against this Division

120. A person commits an offence against sections 112 – 114 (inclusive) and sections 118-119—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

Double jeopardy

121. If a person has been convicted or acquitted in a country outside Fiji of an offence against the law of that country in respect of any conduct, the person cannot be convicted of an offence against this Division in respect of that conduct.

Division 7 — People Smuggling and Related offences

Offence of people smuggling

122.—(1) A person (the first person) commits an indictable offence if—

- (a) the first person organises or facilitates the entry of another person (the other person) into a foreign country (whether or not via Fiji); and
- (b) the entry of the other person into the foreign country does not comply with the requirements under that country's law for entry into the country; and
- (c) the other person is not a citizen or permanent resident of the foreign country; and
- (d) the first person organises or facilitates the entry—
- (i) having obtained (whether directly or indirectly) a benefit to do so; or
- (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty — Imprisonment for 10 years or 500 penalty units, or both.

(2) Absolute liability applies to the sub-section (1)(c) element of the offence.

(3) For the purposes of this Decree, an offence against sub-section (1) is to be known as the offence of people smuggling.

Aggravated offence of people smuggling (exploitation etc.)

123.—(1) A person (the first person) commits an indictable offence if the first person commits the offence of people smuggling in relation to another person (the victim) and any of the following applies—

- (a) the first person commits the offence intending that the victim will be exploited after entry into the foreign country (whether by the first person or another);
- (b) in committing the offence, the first person subjects the victim to cruel, inhuman or degrading treatment;
- (c) in committing the offence, the first person's conduct—
 - (i) gives rise to a danger of death or serious harm to the victim; and
 - (ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

Penalty – Imprisonment for 20 years or 1,000 penalty units, or both.

(2) In this section—

“forced labour” means the condition of a person who provides labour or services (other than sexual services) and who, because of the use of force or threats:

- (a) is not free to cease providing labour or services; or
- (b) is not free to leave the place or area where the person provides labour or services.

“sexual servitude” has the same meaning as in section 104.

“slavery” has the same meaning as in section 102.

“threat” means—

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
- (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of labour or services by a person.

Consent of Director of Public Prosecutions required

124.—(1) Proceedings for an offence against this Division require the written consent of the Director of Public Prosecutions.

(2) A person may be arrested, charged, remanded in custody or released on bail in connection with an offence against this Division before the necessary consent has been given.

Division 8 — Document Offences Related to People Smuggling and Unlawful Entry Into Foreign Countries

Meaning of travel or identity document

125.—(1) For the purposes of this Division, a document is a travel or identity document if it is—

- (a) a travel document; or
- (b) an identity document.

Meaning of false travel or identity document

126.—(1) For the purposes of this Division, a travel or identity document is a false travel or identity document if, and only if—

- (a) the document, or any part of the document—
 - (i) purports to have been made in the form in which it is made by a person who did not make it in that form; or

- (ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
- (b) the document, or any part of the document:
 - (i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
- (c) the document, or any part of the document:
 - (i) purports to have been altered in any respect by a person who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or
- (d) the document, or any part of the document:
 - (i) purports to have been made or altered by a person who did not exist; or
 - (ii) purports to have been made or altered on the authority of a person who did not exist; or
- (e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Division, a person is taken to make a false travel or identity document if the person alters a document so as to make it a false travel or identity document (whether or not it was already a false travel or identity document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

Making, providing or possessing a false travel or identity document

127. A person (the first person) commits an indictable offence (which is triable summarily), if—

- (a) the first person makes, provides or possesses a false travel or identity document; and
- (b) the first person intends that the document will be used to facilitate the entry of another person (the other person) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (c) the first person made, provided or possessed the document—
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty — Imprisonment for 10 years or 500 penalty units, or both.

Providing or possessing a travel or identity document issued or altered dishonestly or as a result of threats

128.—(1) A person (the first person) commits an indictable offence (which is triable summarily), if—

- (a) the first person provides or possesses a travel or identity document; and
- (b) the first person knows that—
 - (i) the issue of the travel or identity document; or
 - (ii) an alteration of the travel or identity document;

has been obtained dishonestly or by threats; and

- (c) the first person intends that the document will be used to facilitate the entry of another person (the other person) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and

- (d) the first person provided or possessed the document—
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty — Imprisonment for 10 years or 500 penalty units, or both.

- (2) For the purposes of sub-section (1), a threat may be—
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (3) For the purposes of sub-section (1), dishonest means—
 - (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.

*Providing or possessing a travel or identity document to
be used by a person who is not the rightful user*

129. A person (the first person) commits an indictable offence (which is triable summarily), if—

- (a) the first person provides or possesses a travel or identity document; and
- (b) the first person intends that the document will be used to facilitate the entry of another person (the other person) into a foreign country, where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country; and
- (c) the first person knows that the other person is not the person to whom the document applies; and
- (d) the first person provided or possessed the document—
 - (i) having obtained (whether directly or indirectly) a benefit to do so; or
 - (ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty — Imprisonment for 10 years or 500 penalty units, or both.

Taking possession of or destroying another person's travel or identity document

130. A person (the first person) commits an indictable offence (which is triable summarily), if—

- (a) the first person takes possession of, or destroys, a travel or identity document that applies to another person (the other person); and
- (b) the first person does so intending to conceal the other person's identity or nationality; and
- (c) at the time of doing so, the first person intends to organise or facilitate the entry of the other person into a foreign country—
 - (i) having obtained, or with the intention of obtaining, whether directly or indirectly, a benefit to organise or facilitate that entry; and
 - (ii) where the entry of the other person into the foreign country would not comply with the requirements under that country's law for entry into the country.

Penalty — Imprisonment for 10 years or 500 penalty units, or both.

Division 9 — Other Offences With International Implications

Foreign enlistment

131. —(1) A person (the first person) commits a summary offence if, without the licence, order, command or authority of the President—

- (a) the first person—
 - (i) prepares or fits out any naval or military expedition to proceed against any friendly state; or
 - (ii) engages in or in any way assists such preparation or fitting-out; or
 - (iii) is employed in any capacity in such an expedition; or

- (b) the first person—
 - (i) being a foreign subject, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state; or
 - (ii) whether a foreign subject or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state; or
- (c) the first person—
 - (i) being a foreign subject, quits or goes on board any vessel with a view to quitting Fiji, with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state; or
 - (ii) whether a foreign subject or not, induces any other person to quit or to go on board any vessel with a view of quitting Fiji with similar intent; or
- (d) the first person is the master or owner of any vessel, and the first person knowingly either—
 - (i) takes on board; or
 - (ii) engages to take on board; or
 - (iii) has on board the vessel—

any illegally enlisted person; or
- (e) the first person, with intent or knowledge, or having reasonable cause to believe that the vessel will be employed in the military or naval service of any foreign state at war with any friendly state, builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any vessel, or issues or delivers any commission for any vessel.

Penalty — Imprisonment for 5 years

- (2) A person building, causing to be built, or equipping a vessel in any of the cases provided for in sub-section (1), under a contract made before the commencement of such a war, is not liable to the penalties provided for in this section in respect of the building or equipping, if—
- (i) upon a proclamation of neutrality being issued by the Government of Fiji the person immediately gives notice to the Minister that he or she is building, causing to be built, or equipping such vessel, and furnishes such particulars of the contract and of any matters relating to the contract as may be required by the Minister; and
 - (ii) the person gives such security, and takes and permits to be taken such other measures (if any) as the Minister may prescribe for ensuring that the vessel shall not be despatched, delivered or removed without the licence of the Government until the termination of the war.

Piracy

132.—(1) In this section—

“pirate” includes any person who on the high seas—

- (a) commits, otherwise than as an act of war and under the authority of some foreign state, any act with respect to a ship, or any goods or merchandise belonging to a ship or laden upon it, which, if the act were committed on land, would constitute robbery as defined in this Act; or
- (b) having obtained possession of a ship by means of any such act, retains possession of it; or
- (c) being on board a Fijian ship at any place—
 - (i) turns pirate, enemy, or rebel, and practically runs away with the ship, or any boat, ordnance, ammunition, or goods belonging to it or laden upon it; or
 - (ii) voluntarily yields up the ship or any such thing as last mentioned to a pirate; or
 - (iii) consults or conspires with, or attempts to corrupt, any master or officer of a ship, or any sailor, with intent that the person should run away with or yield up any ship, goods, or merchandise, or turn pirate, or go over to pirates; or

- (iv) lays violent hands on the master of the ship, with intent to hinder the master from fighting in defence of the ship and goods committed to the master's trust; or
- (v) confines the master of the ship; or
- (vi) makes, or endeavours to make, a revolt in the ship; or

(d) any person who is declared by any statute to be a pirate.

(2) An act by any person within the definition in sub-section (1) is called "piracy".

(3) A person commits an indictable offence if he or she, within the territorial jurisdiction of Fiji, commits piracy.

Penalty — Imprisonment for life.

(4) A person commits an indictable offence if he or she, within the territorial jurisdiction of Fiji—

- (a) assaults any person on board of or belonging to the ship, with intent to kill the person or to kill any other person;
- (b) wounds any such person;
- (c) unlawfully does any act by which the life of any such person is endangered;

with intent to commit the crime of piracy with respect to a ship

Penalty — Imprisonment for life.

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

- (a) brings a seducing message from a pirate; or
- (b) consults or conspires with, or attempts to corrupt, any master or officer of a ship or any sailor, with intent that the person should run away with or yield up any ship, goods, or merchandise, or turn pirate, or go over to pirates.

Penalty — Imprisonment for life.

PART 11 — OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY

Division 1 — Corruption and the Abuse of Office

SUB-DIVISION A — BRIBERY AND RELATED OFFENCES

Definitions

133.—(1) In this Division—

"benefit" includes any advantage including political gain and is not limited to property.

(2) For the purposes of this Division, a person is taken to have obtained a benefit for another person if the first-mentioned person induces a third person to do something that results in the other person obtaining the benefit.

(3) The definition of obtaining in section 288 does not apply to this Division.

Bribery of public officials

134.—(1) A person commits an indictable offence (which is triable summarily) if—

- (a) the person without lawful authority or reasonable excuse—
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
- (b) the person does so with the intention of influencing a public official (who may be the other person) in the exercise of the officer's duties as a public official.

Penalty — Imprisonment for 10 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew—

- (a) that the official was a public official; or
- (b) that the duties were duties of a public official.

Receiving a bribe

135.—(1) A public official commits an indictable offence (which is triable summarily) if—

- (a) the public official without lawful authority or reasonable excuse—
 - (i) asks for a benefit for himself, herself or another person; or
 - (ii) receives or obtains a benefit for himself, herself or another person; or
 - (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
- (b) the public official does so with the intention—
 - (i) that the exercise of the official's duties as a public official will be influenced; or
 - (ii) of inducing, fostering or sustaining a belief that the exercise of the official's duties as a public official will be influenced.

Penalty — Imprisonment for 10 years.

Corrupting benefits given to, or received by, a public official

136.—(1) A person commits a summary offence if—

- (a) the person without lawful authority or reasonable excuse—
 - (i) provides a benefit to another person; or
 - (ii) causes a benefit to be provided to another person; or
 - (iii) offers to provide, or promises to provide, a benefit to another person; or
 - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
- (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the other person) in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 10 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew—

- (a) that the official was a public official; or
- (b) that the duties were duties as a public official.

Receiving a corrupting benefit

137.—(1) A public official commits a summary offence if—

- (a) the official without lawful authority or reasonable excuse—
 - (i) asks for a benefit for himself, herself or another person; or
 - (ii) receives or obtains a benefit for himself, herself or another person; or
 - (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
- (b) the receipt, or expectation of the receipt, of the benefit would tend to influence a public official (who may be the first-mentioned official) in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 5 years.

Benefit in the nature of a reward

138. For the purposes of sections 136 and 137, it is immaterial whether the benefit is in the nature of a reward.

Abuse of office

139. A person commits an indictable offence which is triable summarily if, being employed in the public service, the person does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another.

Penalty— 10 years imprisonment

If the act is done or directed to be done for gain – Penalty -17 years imprisonment.

Geographical jurisdiction

140. A person commits an offence against all sections of this Sub-Division—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

SUB-DIVISION B — OTHER OFFENCES INVOLVING OFFICIAL CORRUPTION

Officers charged with administration of property of a special character or with special duties

141. A person commits a summary offence if—

- (a) while being employed in the public service; and
- (b) being charged by virtue of his or her employment with any judicial or ministerial or administrative duties in relation to—
 - (i) property of a special character; or
 - (ii) the carrying on of any manufacture, trade or business of a special character; and
- (c) having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade or business—

commits an act or omission with respect to the property, manufacture, trade or business in which he or she has an interest or with respect to the conduct of any person in relation to it.

Penalty — Imprisonment for 5 years.

False claims by officials

142. A person commits a summary offence if while being employed in the public service, in such a capacity as to require or enable him or her to furnish returns or statements relating to—

- (a) any sum payable or claimed to be payable to him or her or to any other person; or
- (b) any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person—

he or she makes a return or statement or makes a claim verbally or in writing in relation to any such matter which is, to his or her knowledge false in any material particular.

Penalty — Imprisonment for 3 years.

False certificates by public officers

143. A person commits a summary offence if he or she, being authorised or required by law to give any certificate touching any matter by virtue of which the rights of any person are affected gives a certificate which is, to his or her knowledge, false in any material particular.

Penalty — Imprisonment for 10 years.

Unauthorised administration of oaths

144.—(1) A person commits a summary offence if he or she administers an oath, or takes a solemn declaration or affirmation or affidavit, relating to any matter with respect to which he or she has not by law any authority to do so.

Penalty — Imprisonment for 1 year.

(2) This section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate or a justice of the peace in any matter relating to—

- (a) the preservation of the peace or the punishment of offences; or
- (b) to inquiries respecting sudden deaths—

nor to an oath, declaration, affirmation or affidavit administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

False assumption of authority

145. Any person commits a summary offence if he or she—

- (a) not being a judicial officer, assumes to act as a judicial officer; or
- (b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or
- (c) represents himself or herself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised, when he or she is not so authorised.

Penalty — Imprisonment for 3 years.

Personating public officers

146. A person commits a summary offence if he or she—

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his or her employment; or
- (b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment.

Penalty — Imprisonment for 3 years.

Threat of injury to persons employed in public service

147.—(1) A person who holds out any threat of injury to any person employed in the public service, or to any person in whom he or she believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service, commits a summary offence.

Penalty — Imprisonment for 3 years.

(2) Proceedings for an offence under this section require the consent of the Director of Public Prosecutions.

SUB-DIVISION C — SECRET COMMISSIONS AND CORRUPT PRACTICES

Interpretation for purposes of sections dealing with corrupt practices, etc.

148. For the purpose of this Sub-Division—

- “consideration” includes valuable consideration of any kind.
- “agent” includes all public officials, and any person employed by or acting for another.
- “principal” includes an employer.

Corrupt practices

149. If—

- (a) any agent without lawful authority or reasonable excuse accepts or obtains (or agrees to accept or attempts to obtain) from any person, for the benefit of the agent or any other person, any gift or consideration as an inducement or reward for doing or forbearing to do (or for having done or forborne to do) any act in relation to his principal’s affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

- (b) any person without lawful authority or reasonable excuse gives, or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do (or for having done or forborne to do), any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (c) any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his or her principal, any receipt or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal—

he or she commits a summary offence.

Penalty — Imprisonment for two years or a fine of 20 penalty units, or both.

Secret commission on government contracts

150.—A person who commits an offence against this Sub-Division which involves a transaction relating to—

- (a) a contract or a proposal for a contract with a government entity—
 - (i) having power to impose rates; or
 - (ii) entrusted with the expenditure of any Government funds or grants; or
- (b) a sub-contract to execute any work comprised in a contract to which paragraph (a) applies—

commits an indictable offence which is triable summarily

Penalty—7 years imprisonment or a fine of 50 penalty points or both.

Presumption as to corrupt practices

151.—(1) Where in any proceedings against a person for an offence under Sub-Division A B or C of this Part it is proved that any money, gift, benefit, advantage, or other consideration has been paid to or given to or received by a public official, by or from any person or agent of a person the money, gift, benefit, advantage or consideration shall be deemed to have been paid or given or received without lawful authority or reasonable excuse, unless the contrary is proved, by the defence, on a balance of probabilities. For the avoidance of doubt, Section 62 of this Decree does not apply to an offence under Sub-Division A, B or C of this Part.

(2) In any proceedings for an offence under this Part, it shall not be a defence to show that any money, gift, benefit, or consideration is customary in any profession, trade, vocation, calling, or tradition.

SUB-DIVISION D — FORGERY AND RELATED OFFENCES

Definitions

152.—(1) In this Sub-Division—

- “document” includes any register, book, record, tape-recording, any form of computer input or output, and any other material whether produced mechanically, electrically, or manually or by any other means whatsoever;
- (a) any paper or other material on which there is writing; or
 - (b) any paper or other material on which there are marks, figures, symbols or perforations that are—
 - (i) capable of being given a meaning by persons qualified to interpret them; or
 - (ii) capable of being responded to by a computer, a machine or an electronic device; or
 - (c) any article or material (for example, a disk or a tape) from which information is capable of being reproduced with or without the aid of any other article or device.

“false government document” has the meaning given by section 154.

“false document” has the meaning given by section 153.

“information” means information, whether in the form of data, text, sounds, images or in any other form.

(2) The following are things that are covered by the definition of document in sub-section (1)—

- (a) a credit card;
- (b) a debit card;
- (c) a card by means of which property can be obtained.

False documents

153.—(1) For the purposes of this Sub-Division, a document is a false document if, and only if—

- (a) the document, or any part of the document—
 - (i) purports to have been made in the form in which it is made by a person who did not make it in that form; or
 - (ii) purports to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
- (b) the document, or any part of the document—
 - (i) purports to have been made in the terms in which it is made by a person who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
- (c) the document, or any part of the document—
 - (i) purports to have been altered in any respect by a person who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a person who did not authorise its alteration in that respect; or
- (d) the document, or any part of the document—
 - (i) purports to have been made or altered by a person who did not exist; or
 - (ii) purports to have been made or altered on the authority of a person who did not exist; or
- (e) the document, or any part of the document, purports to have been made or altered on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Sub-Division, a person is taken to make a false document if the person alters a document so as to make it a false document (whether or not it was already a false document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

False government documents

154.—(1) For the purposes of this Sub-Division, a document is a false government document if, and only if—

- (a) the document, or any part of the document—
 - (i) purports to have been made in the form in which it is made by a government entity, or a public official, who did not make it in that form; or
 - (ii) purports to have been made in the form in which it is made on the authority of a government entity, or a public official, who did not authorise its making in that form; or
- (b) the document, or any part of the document—
 - (i) purports to have been made in the terms in which it is made by a government entity, or a public official, who did not make it in those terms; or
 - (ii) purports to have been made in the terms in which it is made on the authority of a government entity, or a public official, who did not authorise its making in those terms; or

- (c) the document, or any part of the document—
 - (i) purports to have been altered in any respect by a government entity, or a public official, who did not alter it in that respect; or
 - (ii) purports to have been altered in any respect on the authority of a government entity, or a public official, who did not authorise its alteration in that respect; or
- (d) the document, or any part of the document—
 - (i) purports to have been made or altered by a government entity, or a public official, who did not exist; or
 - (ii) purports to have been made or altered on the authority of a government entity, or a public official, who did not exist; or
- (e) the document, or any part of the document, purports to have been made or altered by a government entity, or a public official, on a date on which, at a time at which, at a place at which, or otherwise in circumstances in which, it was not made or altered.

(2) For the purposes of this Sub-Division, a person is taken to make a false government document if the person alters a document so as to make it a false government document (whether or not it was already a false government document before the alteration).

(3) This section has effect as if a document that purports to be a true copy of another document were the original document.

(4) A reference in this section to a public official is a reference to a person in the person's capacity as a public official.

Inducing acceptance of false documents

155. If it is necessary for the purposes of this Sub-Division to prove an intent to induce a person in the person's capacity as a public official to accept a false document as genuine, it is not necessary to prove that the defendant intended so to induce a particular person in the person's capacity as a public official.

Forgery

156.—(1) A person commits an indictable offence (which is triable summarily) if the person makes a false document with the intention that the person or another person will use it—

- (a) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and
- (b) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function.

Penalty - Imprisonment for 10 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a public official.

(3) A person commits an indictable offence (which is triable summarily) if the person makes a false document with the intention that the person or another will use it—

- (a) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
- (b) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function;

Penalty — Imprisonment for 10 years.

Using forged document

157.—(1) A person commits an indictable offence (which is triable summarily) if the person knows that a document is a false document and uses it with the intention of—

- (a) dishonestly inducing another person in the other person's capacity as a public official to accept it as genuine; and

- (b) if it is so accepted, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function.

Penalty — Imprisonment for 10 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a public official.

(3) A person commits an indictable offence (which is triable summarily) if the person knows that a document is a false document and uses it with the intention of—

- (a) dishonestly causing a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
- (b) if it is so responded to, dishonestly obtaining a gain, dishonestly causing a loss, or dishonestly influencing the exercise of a public duty or function.

Penalty — Imprisonment for 10 years.

Possession of forged document

158.—(1) A person commits an indictable offence (which is triable summarily) if the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it—

- (a) to dishonestly induce a third person in the third person's capacity as a public official to accept it as genuine; and
- (b) if it is so accepted, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function.

Penalty — Imprisonment for 10 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew that the capacity was a capacity as a public official.

(3) A person commits an indictable offence (which is triable summarily) if the person knows that a document is a false document and has it in his or her possession with the intention that the person or another will use it—

- (a) to dishonestly cause a computer, a machine or an electronic device to respond to the document as if the document were genuine; and
- (b) if it is so responded to, to dishonestly obtain a gain, dishonestly cause a loss, or dishonestly influence the exercise of a public duty or function.

Penalty: Imprisonment for 10 years.

Possession, making or adaptation of devices etc. for making forgeries

159.—(1) A person commits an indictable offence (which is triable summarily) if—

- (a) the person knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and
- (b) the person has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against section 156.

Penalty — Imprisonment for 10 years.

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

- (a) the person makes or adapts a device, material or other thing; and
- (b) the person knows that the device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

- (c) the person makes or adapts the device, material or thing with the intention that the person or another person will use it to commit an offence against section 156.

Penalty — Imprisonment for 10 years.

(3) A person commits a summary offence if—

- (a) the person knows that a device, material or other thing is designed or adapted for the making of a false Government document (whether or not the device, material or thing is designed or adapted for another purpose); and
- (b) the person has the device, material or thing in his or her possession; and
- (c) the person does not have a reasonable excuse for having the device, material or thing in his or her possession.

Penalty — Imprisonment for 2 years.

(4) A person commits a summary offence if—

- (a) the person makes or adapts a device, material or other thing; and
- (b) the person knows that the device, material or other thing is designed or adapted for the making of a false Government document (whether or not the device, material or thing is designed or adapted for another purpose).

Penalty: Imprisonment for 2 years.

Falsification of documents etc.

160.—(1) A person commits a summary offence if —

- (a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and
- (b) the document is—
 - (i) kept, retained or issued for the purposes of any law; or
 - (ii) made by a government entity or a person in the capacity of a public official; or
 - (iii) held by a government entity or a person in the capacity of a public official; and
- (c) the first-mentioned person does so with the intention of:
 - (i) obtaining a gain; or
 - (ii) causing a loss.

Penalty — Imprisonment for 7 years.

(2) Absolute liability applies to the paragraph (1)(b) element of the offence.

(3) A person commits a summary offence if—

- (a) the person dishonestly damages, destroys, alters, conceals or falsifies a document; and
- (b) the person does so with the intention of:
 - (i) obtaining a gain from another person; or
 - (ii) causing a loss to another person; and
- (c) the other person is a government entity.

Penalty: Imprisonment for 7 years.

(4) In a prosecution for an offence against sub-section (3), it is not necessary to prove that the defendant knew that the other person was a government entity.

Giving information derived from false or misleading documents

161.—(1) A person commits a summary offence if—

- (a) the person dishonestly gives information to another person; and

- (b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and
- (c) the document is—
 - (i) kept, retained or issued for the purposes of any law; or
 - (ii) made by a government entity or a person in the capacity of a public official; or
 - (iii) held by a government entity or a person in the capacity of a public official; and
- (d) the first-mentioned person does so with the intention of—
 - (i) obtaining a gain; or
 - (ii) causing a loss.

Penalty — Imprisonment for 7 years.

- (2) Absolute liability applies to the paragraph (1)(c) element of the offence.
- (3) A person commits a summary offence if—
 - (a) the person dishonestly gives information to another person; and
 - (b) the information was derived, directly or indirectly, from a document that, to the knowledge of the first-mentioned person, is false or misleading in a material particular; and
 - (c) the first-mentioned person does so with the intention of -
 - (i) obtaining a gain from another person; or
 - (ii) causing a loss to another person; and
 - (d) the other person is a government entity.

Penalty — Imprisonment for 7 years.

- (4) In a prosecution for an offence against sub-section (3), it is not necessary to prove that the defendant knew that the other person was a government entity.

Geographical jurisdiction

162. A person commits an offence against all sections of this Sub-Division—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in Fiji.

SUB-DIVISION E — OFFENCES RELATING TO COIN AND CURRENCY NOTES

Definitions

163. In this Sub-Division—

- (a) “copper coin” includes any coin of any metal or mixed metal not being a gold or silver coin;
- (b) a coin shall be deemed to be current if—
 - (i) it has been coined in any approved Mint in a Commonwealth country; or
 - (ii) is lawfully current, by virtue of any proclamation or otherwise, in any country or territory of the Commonwealth (whether within Fiji or otherwise); or
 - (iii) is lawfully current in any foreign country;
- (c) a coin apparently intended to resemble or pass for any current coin shall be deemed to resemble that current coin;
- (d) a current coin which has been gilt, silvered, washed, coloured or cased over or in any manner altered so as to resemble any current coin of a higher denomination shall be deemed to be false or counterfeit coin resembling a current gold or silver coin;
- (e) “currency note” includes any currency note used in Fiji or any other country.

Counterfeiting

164.—(1) Any person commits an indictable offence if he or she falsely makes or counterfeits any—

- (a) coin resembling any current coin; or
- (b) any currency note used in Fiji or any other country.

Penalty—

- (a) in a case of any currency note, or where the coin resembles a current gold or silver coin - to imprisonment for life; and
- (b) in a case where the coin resembles a current copper coin - to imprisonment for seven years.

(2) The offence of falsely making or counterfeiting a currency note or a coin is deemed to be complete although—

- (a) the currency note or coin made or counterfeited is not in a fit state to be uttered; or
- (b) the making or counterfeiting of it has not been finished or perfected.

Gilding, silvering, filing and altering coin

165. Any person commits an indictable offence if he or she—

- (a) gilds or silvers, or with any wash or materials capable of producing the colour or appearance of gold or silver or by any means whatsoever, washes, cases over or colours—
 - (i) any coin whatsoever resembling any current gold or silver coin; or
 - (ii) any current copper coin, with intent to make it resemble or pass for any current gold or silver coin; or
 - (iii) any piece of silver or copper or of coarse gold or coarse silver or of any metal or mixture of metals, being of a fit size and figure to be coined, with intent that it shall be coined into false and counterfeit coin resembling any current gold or silver coin; or
- (b) gilds, or, with any wash or materials capable of producing the colour or appearance of gold or by any means whatsoever, washes, cases over or colours, any current silver coin with intent to make it resemble or pass for any current gold coin; or
- (c) files or in any manner alters—
 - (i) any current silver coin with intent to make it resemble or pass for any current gold coin; or
 - (ii) any current copper coin with intent to make it resemble or pass for any current gold or silver coin.

Penalty — Imprisonment for life.

Uttering and possession with intent to utter counterfeit coin or note

166.—(1) A person commits a summary offence if he or she tenders, utters or presents in any commercial transaction any false or counterfeit—

- (a) coin resembling any current coin knowing it to be false or counterfeit; or
- (b) currency note.

Penalty — Imprisonment for 5 years.

(2) A person commits a summary offence if he or she tenders, utters or presents in any commercial transaction any false or counterfeit coin or currency note, knowing it to be false or counterfeit, and -

- (a) at the time of the tendering, uttering or presentation has in his or her possession, besides that coin or currency note, any other such false or counterfeit coin or currency note; or
- (b) on the day of the tendering, uttering or presentation (or within the period of ten days next following), tenders, utters or presents any other false or counterfeit coin or currency note, knowing it to be false or counterfeit.

Penalty — Imprisonment for 2 years.

(3) A person commits a summary offence if he or she has in his or her possession three or more false or counterfeit coins or currency notes—

- (a) knowing them to be false or counterfeit; and
- (b) with intent to utter or put off the said coins or currency notes, or any of them.

Penalty — Imprisonment for 5 years.

Importing and exporting counterfeit coin and notes

167.—(1) A person commits a summary offence if he or she, without lawful authority or excuse (the proof of which lies on the accused)—

- (a) imports or receives into Fiji any false or counterfeit currency note or coin (or coin resembling any current coin), knowing it to be false or counterfeit; or
- (b) exports from Fiji, or puts on board any ship, vessel or boat for the purpose of being so exported, any false or counterfeit currency note or coin (or coin resembling any current coin), knowing it to be false or counterfeit.

Penalty — Imprisonment for 7 years.

(2) Nothing in this section shall affect the provisions relating to the importation of coin and notes and counterfeit coin and notes contained in any Customs Act for the time being in force.

Possession of counterfeiting implements.

168. A person commits a summary offence if he or she, without lawful authority or excuse (the proof of which lies on the accused), knowingly—

- (a) makes or mends; or
- (b) begins or proceeds to make or mend; or
- (c) buys or sells; or
- (d) has in his or her possession—

any implement for counterfeiting coin or currency notes, or otherwise doing any act to a coin or note which is an offence under this Sub-Division.

Penalty — Imprisonment for 7 years.

Evidence of coin or note being counterfeit

169. Where a person is charged with an offence against this Sub-Division the fact that a coin or currency note is produced in evidence against him or her is false or counterfeit may be proved by the evidence of any credible witness.

Defacing and uttering defaced coin

170.—(1) A person commits a summary offence if he or she defaces any current coin, whether the coin is or is not thereby diminished or lightened.

Penalty — Imprisonment for one year.

(2) A tender of payment in money made in any coin which has been defaced is not legal tender.

(3) A person commits a summary offence if he or she tenders, utters or presents in any commercial transaction any coin which has been defaced.

Penalty - A fine of 5 penalty units.

(4) Proceedings under this sub-section require the consent of the Director of Public Prosecutions.

Melting down of currency

171. A person commits a summary offence if he or she melts down, breaks up or uses otherwise than as currency, any coin current for the time being in Fiji.

Penalty — Imprisonment for 6 months.

Mutilating or defacing currency notes

172. A person commits a summary offence if he or she, without lawful authority or excuse (the proof of which lies on the accused), mutilates or in any way defaces a currency note, whether—

- (a) by writing, printing, drawing or stamping on it; or
- (b) by attaching or affixing to it anything in the nature or form of an advertisement.

Penalty — A fine of 10 penalty units.

Imitation of currency

173.—(1) A person commits a summary offence if he or she, without lawful authority or excuse (the proof of it lies on the accused), sells, or offers or exposes for sale, any article which bears a design in imitation of any currency note or bank note or coin in current use in Fiji or elsewhere.

Penalty — Imprisonment for 6 months.

(2) A person commits a summary offence if he or she makes, or causes to be made or uses for any purpose, any document purporting to be, or in any way resembling (or so nearly resembling as to be calculated to deceive) any currency note (or any part of it).

Penalty — A fine of 5 penalty units for each such document.

(3) A person commits a summary offence if his or her name appears on any document the making of which is an offence under this section and he or she refuses to disclose to a police officer the name and address of the person by whom it was printed or made.

Penalty — A fine of 10 penalty units.

(4) Where the name of any person appears on any document in respect of which any person is charged with an offence under this section or on any other document used or distributed in connexion with that document, it shall be prima facie evidence that that person caused the document to be made.

Evidence of counterfeiting, etc.

174. Where a person is charged with an offence against this Sub-Division, a written report in the form of an affidavit by a qualified coin, bank note or currency note expert shall be admitted in evidence.

Forfeiture of forged bank notes, currency notes, etc.

175.—(1) Where any forged bank note, currency note or any counterfeit coin or any implement or material used or intended to be used for the forging of a bank note or currency note or for counterfeiting coin, is seized under a search warrant or by any police officer, the bank note, currency note, counterfeit coin, implement or material, as the case may be, shall be delivered up to the Minister, or to any person authorised by the Minister for the purpose, by order of the court—

- (a) before which the offender is tried; or
- (b) if there is no trial, by the court issuing the search warrant.

(2) A police officer seizing such note, coin, implement or material, shall cause it to be delivered up to the Minister, or to any person authorised by the Minister for that purpose.

(3) Upon delivery to the Minister (or to any person authorised by the Minister) the note, coin, implement or material shall be deemed forfeit.

SUB-DIVISION F — PERJURY AND FALSE STATEMENTS AND DECLARATIONS

Perjury

176.—(1) Any person lawfully sworn as a witness in a judicial proceeding who wilfully makes a statement material in that proceeding which he or she knows to be false or does not believe to be true commits an indictable offence (which is triable summarily) termed perjury.

Penalty — Imprisonment for 7 years.

(2) Any person lawfully sworn as an interpreter, who wilfully in the course of his or her duties as an interpreter—

- (a) makes any misstatement; or
- (b) actively or by omission misinterprets any statement (whether or not that statement is material in any judicial proceeding)—

commits the offence of perjury.

Penalty — Imprisonment for 7 years.

(3) Where a statement made for the purpose of a judicial proceeding is not made before the court or tribunal itself, but is made on oath before a person authorised by law to administer an oath to the person who makes the statement and to record or authenticate the statement it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

(4) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.

False statements on oath made otherwise than in a judicial proceeding

177. A person commits a summary offence if he or she—

- (a) being required or authorised by law to make any statement on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or
- (b) wilfully uses any false affidavit for any purpose required by any Act.

Penalty — Imprisonment for 7 years.

False statements, etc. with reference to marriage

178. A person commits a summary offence if he or she—

- (a) for the purpose of procuring a marriage or a certificate or licence for marriage knowingly and wilfully makes a false oath or makes or signs a false declaration, notice or certificate required under any Act for the time being in force relating to marriage; or
- (b) knowingly and wilfully makes or knowingly and wilfully causes to be made for the purpose of being inserted in any register of marriage a false statement as to any particular required by law to be known and registered relating to any marriage; or
- (c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false.

Penalty — Imprisonment for 7 years.

False statements, etc. as to births or deaths

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

- (a) wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth or death or wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death; or
- (b) wilfully makes any false certificate or declaration under or for the purposes of any Act relating to the registration of births or deaths or, knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person; or
- (c) wilfully makes, gives or uses any false statement or declaration as to a child born alive as having been still-born or as to the body of a deceased person or a still-born child in any coffin or falsely pretends that any child born alive was still-born; or
- (d) makes any false statement with intent to have the same inserted in any register of births or deaths.

Penalty — Imprisonment for 7 years.

(2) A prosecution under this section shall not be commenced more than 3 years after the commission of the offence.

False statutory declarations and other false statements without oath

180. Any person commits a summary offence if he or she knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular and the statement is made—

- (a) in a statutory declaration; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by any Act for the time being in force; or
- (c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any Act for the time being in force.

Penalty — Imprisonment for 1 year.

False declarations, etc. to obtain registration for employment, etc.

181. A person commits a summary offence if he or she—

- (a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any Act for the time being in force of persons qualified by law to practise any vocation or calling; or
- (b) procures or attempts to procure a certificate of the registration of any person on any such register or roll as aforesaid, by wilfully making or producing or causing to be produced, either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent.

Penalty — Imprisonment for 1 year.

Aiders, abettors, suborners, etc.

182.—(1) Every person who aids, abets, counsels, procures or suborns another person to commit an offence under this Sub-Division is liable to be proceeded against, tried and punished as if he or she were a principal offender.

(2) A person commits a summary offence if he or she incites or attempts to procure or suborn another person to commit an offence against this Sub-Division.

Penalty — Imprisonment for 1 year.

Corroboration

183. A person shall not be liable to be convicted on any offence under this Sub-Division, or of any offence declared by any other Act to be perjury or subornation solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

Fabricating evidence

184. A person commits a summary offence if he or she, with intent to mislead any tribunal in any judicial proceeding—

- (a) fabricates evidence by any means other than perjury or subornation of perjury; or
- (b) knowingly makes use of such fabricated evidence.

Penalty — Imprisonment for 7 years.

Inconsistent or contradictory statements

185.—(1) Where two or more inconsistent or contradictory statements of fact or alleged fact, material to the issue or matter in question, have been wilfully made on oath by one and the same witness in any judicial proceeding or proceedings, whether before the same court or tribunal or person or not, such witness shall be guilty of a summary offence.

Penalty — Imprisonment for 1 year.

(2) Upon the trial of any person for an offence under this section, it shall not be necessary to prove the falsity of either of the inconsistent or contradictory statements, but, upon proof that both the statements were made by the witness, the court, if satisfied that the statements, or either of them, were or was made with intent to deceive the court, tribunal or person before whom the statements or either of them were or was made, shall convict the accused.

Proof of certain proceedings on which perjury is assigned

186. In a prosecution—

- (a) for perjury alleged to have been committed during any trial; or
- (b) for procuring or suborning the commission of perjury on any trial—

the fact of the former trial shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the information or complaint and the trial purporting to be signed by the Chief Registrar or other person having the custody of the records of the court where the information was tried without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

Forms and ceremonies of oath immaterial

187. For the purposes of this Sub-Division the forms and ceremonies used in administering an oath are immaterial if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him or her.

SUB-DIVISION G — OTHER OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE

Deceiving witnesses

188. A person commits a summary offence if he or she—

- (a) practices any fraud or deceit; or
- (b) knowingly makes or exhibits any false statement, representation, token or writing—

to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of the person as a witness.

Penalty—Imprisonment for 1 year.

Destroying evidence

189. A person commits a summary offence if he or she, knowing that any book, document or thing of any kind is or may be required in evidence in a judicial proceeding—

- (a) wilfully removes or destroys it; or
- (b) renders it illegible or indecipherable or incapable of identification—

with the intent to prevent it from being used in evidence.

Penalty — Imprisonment for 1 year.

Conspiracy to defeat justice and interference with witnesses

190. A person commits a summary offence if he or she—

- (a) conspires with any other person to knowingly and maliciously accuse any person falsely of any crime; or
- (b) conspires to do anything to obstruct, prevent, pervert or defeat the course of justice; or
- (c) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from appearing and giving evidence, or endeavours to do so; or
- (d) obstructs or in any way interferes with or knowingly prevents the execution of any legal process (civil or criminal); or
- (e) in any way obstructs, prevents, perverts or defeats, or attempts to obstruct, prevent, pervert or defeat, the course of justice.

Penalty — Imprisonment for 5 years.

Compounding serious offences and actions for criminal offences

191.—(1) A person commits a summary offence if he or she asks, receives or obtains (or agrees or attempts to receive or obtain) any property or benefit of any kind for himself or herself or any other person, upon any agreement or understanding that he or she will—

- (a) compound or conceal an indictable offence; or
- (b) abstain from, discontinue or delay a prosecution for such an offence; or
- (c) withhold any evidence in relation to the offence.

Penalty — Imprisonment for 2 years.

(2) A person commits a summary offence if he or she, having brought (or under the pretence of bringing) an action against another person under the provisions of an Act prescribing an offence in order to obtain from the other person a penalty for any offence committed or alleged to have been committed by the other person, compounds the action without the order or consent of the court in which the action is brought or is to be brought.

Penalty — Imprisonment for 1 year.

Advertisements for stolen property

192. A person commits a summary offence if he or she—

- (a) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that “no questions will be asked”, or that the person producing the property will not be arrested or proceeded against; or
- (b) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or
- (c) prints or publishes any such offer.

Penalty — Imprisonment for 1 year.

Corruptly taking a reward

193.—(1) A person commits a summary offence if he or she dishonestly takes any money or reward (directly or indirectly) under pretence or upon account of helping any person to recover any property which has, under circumstances which amount to a criminal offence, been stolen or obtained in any way, or received.

Penalty — Imprisonment for 5 years.

(2) A person is not guilty of an offence under sub-section (1) if he or she has used all due diligence to cause the offender to be brought to trial for the offence committed by that person.

Offences relating to judicial proceedings

194.—(1) A person commits a summary offence against this section if he or she—

- (a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of those premises, shows disrespect, in speech or manner, to or with reference to—
 - (i) the proceedings; or
 - (ii) any person before whom such proceeding is being had or taken; or
- (b) having been summoned to give evidence in a judicial proceeding, fails to attend; or
- (c) being present at a judicial proceeding and being called upon to give evidence, refuses to be sworn or to make an affirmation; or
- (d) having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document; or
- (e) having attended a judicial proceeding to give evidence, remains in the room in which such proceeding is being had or taken after the witnesses have been ordered to leave such room; or
- (f) having been ordered by the court to remain within the premises in which any judicial proceeding is being heard or taken or within the precincts of the premises departs from the premises or precincts without the leave of the court; or

- (g) causes an obstruction or disturbance in the course of a judicial proceeding; or
- (h) while a judicial proceeding is pending, makes use of any speech or writing wilfully and maliciously misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or
- (i) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or
- (j) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or
- (k) dismisses an employee because he has given evidence on behalf of a certain party to a judicial proceeding; or
- (l) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or
- (m) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken.

Penalty — Imprisonment for 3 months.

(2) When an offence against paragraphs (a), (b), (c), (d), (e), (g), (h) or (m) of sub-section (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding 5 penalty units, or in default of payment to imprisonment for a term not exceeding 3 months.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of any court to punish for contempt of court.

SUB-DIVISION H — RESCUES AND ESCAPES AND OBSTRUCTING COURT OFFICERS

Use of force to release person from custody

195.—(1) A person commits a summary offence if he or she uses force to release or attempt to release from lawful custody any other person—

Penalty—

- (a) if the other person is under sentence of imprisonment for life, or charged with an offence punishable with imprisonment for life - Imprisonment for 7 years; and
- (b) if the other person is imprisoned on a charge or under sentence for any offence other than those specified in paragraph (a) – Imprisonment for 5 years.

(2) If the person released was in the custody of a private person, the offender must have had knowledge of the fact that the person rescued was in such custody.

Escape from lawful custody

196. A person commits a summary offence if he or she, being in lawful custody, escapes from lawful custody.

Penalty — Imprisonment for 2 years

Aiding prisoners to escape

197. A person commits a summary offence if he or she—

- (a) aids a prisoner in escaping or attempting to escape from lawful custody; or
- (b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner; or
- (c) being an officer of the Fiji Prisons Service or other person lawfully placed in charge of any prisoner—
 - (i) knowingly or wilfully permits or conspires to permit a prisoner to escape from lawful custody; or

- (ii) contributes by his or her negligence to the escape of a prisoner from lawful custody.

Penalty — Imprisonment for 7 years.

Removal, etc. of property under lawful seizure

198. A person commits a summary offence if he or she knowingly receives, removes, retains, conceals or disposes of any property which has been attached or taken under the process of authority of any court, with intent to hinder or defeat the attachment or process.

Penalty — Imprisonment for 5 years

Obstructing court officers

199. Any person commits a summary offence if he or she wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court.

Penalty — Imprisonment for 1 year.

SUB-DIVISION I — MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

Frauds and breaches of trust by persons employed in the public service

200. A person employed in the public service who, in the discharge of the duties of his or her office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, commits a summary offence.

Penalty — Imprisonment for 5 years.

False information to public servant

201. If a person (the first person) gives to any person employed in the public service any information which he or she knows or believes to be false, and intending to cause, or knowing it to be likely that the first person will cause the person employed in the public service—

- (a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or
- (b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person—

the first person commits a summary offence.

Penalty — Imprisonment for 5 years.

Disobedience of lawful orders

202. Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or person acting in any public capacity and duly authorised in that behalf, commits a summary offence.

Penalty — Imprisonment for 2 years, unless any other penalty or mode of proceeding is expressly prescribed by law in respect of such disobedience.

SUB-DIVISION J — OFFENCES RELATING TO MARRIAGE

Fraudulent pretence of marriage

203. A person commits a summary offence if he or she wilfully and by fraud causes any other person who is not lawfully married to him or her to believe that he or she is lawfully married, and to cohabit or have sexual intercourse in that belief.

Penalty — Imprisonment for 10 years.

Bigamy

204.—(1) A person commits a summary offence if he or she, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife.

Penalty — Imprisonment for 5 years.

(2) This section shall not extend to any person—

- (a) whose marriage with such husband or wife has been declared void by a court of competent jurisdiction; or

- (b) to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of 7 years, and shall not have been heard of by such person as being alive within that time.

Marriage ceremony fraudulently gone through without lawful marriage

205. A person commits a summary offence if he or she dishonestly or with fraudulent intention goes through a ceremony of marriage, knowing that he or she is not thereby lawfully married.

Penalty — Imprisonment for 5 years.

PART 12 — SEXUAL OFFENCES

Definitions

206. In this Part—

(1) The term “consent” means consent freely and voluntarily given by a person with the necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent.

(2) Without limiting sub-section (1), a person’s consent to an act is not freely and voluntarily given if it is obtained—

- (a) by force; or
- (b) by threat or intimidation; or
- (c) by fear of bodily harm; or
- (d) by exercise of authority; or
- (e) by false and fraudulent representations about the nature or purpose of the act; or
- (f) by a mistaken belief induced by the accused person that the accused person was the person’s sexual partner.

(3) The term “penetrate” does not include penetrate for a proper medical, hygienic or law enforcement purpose only.

(4) If “carnal knowledge” is used in defining an offence, the offence, so far as regards that element of it, is complete on penetration to any extent.

(5) “Carnal knowledge” includes sodomy.

(6) The terms—

“genitalia” includes surgically constructed genitalia

“penis” includes a surgically constructed penis, whether provided for a male or female.

“vagina” includes a surgically constructed vagina, whether provided for a male or female.

“vulva” includes a surgically constructed vulva, whether provided for a male or female.

The offence of rape

207.—(1) Any person who rapes another person commits an indictable offence.

Penalty — Imprisonment for life.

(2) A person rapes another person if—

- (a) the person has carnal knowledge with or of the other person without the other person’s consent; or
- (b) the person penetrates the vulva, vagina or anus of the other person to any extent with a thing or a part of the person’s body that is not a penis without the other person’s consent; or
- (c) the person penetrates the mouth of the other person to any extent with the person’s penis without the other person’s consent.

(3) For this section, a child under the age of 13 years is incapable of giving consent.

Attempt to commit rape

208. Any person who attempts to commit a rape commits an indictable offence (which is triable summarily).

Penalty — Imprisonment for 10 years.

Assault with intent to commit rape

209. Any person who assaults another with intent to commit rape commits an indictable offence (which is triable summarily).

Penalty — Imprisonment for 10 years.

Sexual assaults

210.—(1) An person commits an indictable offence (which is triable summarily) if he or she—

- (a) unlawfully and indecently assaults another person; or
- (b) procures another person, without the person's consent—
 - (i) to commit an act of gross indecency; or
 - (ii) to witness an act of gross indecency by the person or any other person.

Penalty — Imprisonment for 10 years.

(2) The offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in sub-section (1)(a) or (1)(b)(i) if the indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person.

(3) Further, the offender is liable to a maximum penalty of life imprisonment if—

- (a) immediately before, during, or immediately after, the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with any other person; or
- (b) for an offence defined in sub-section (1)(a), the indecent assault includes the person who is assaulted penetrating the offender's vagina, vulva or anus to any extent with a thing or a part of the person's body that is not a penis; or
- (c) for an offence defined in sub-section (1)(b)(i), the act of gross indecency includes the person who is procured by the offender penetrating the vagina, vulva or anus of the person who is procured or another person to any extent with a thing or a part of the body of the person who is procured that is not a penis.

Abduction of person under 18 years of age with intent to have carnal knowledge

211.—(1) A person commits a summary offence if he or she, with intent that any unmarried person under the age of 18 years shall be unlawfully and carnally known by any person (whether such carnal knowledge is intended to be with any particular person or generally), takes or causes to be taken the person out of the possession and against the will of his or her father or mother, guardian or any other person having the lawful care or charge of the person under 18 years.

Penalty — Imprisonment for 5 years

(2) It shall be a sufficient defence to any charge under this section if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the other person was of or above the age of 18 years.

Indecent assault

212.—(1) A person commits a summary offence if he or she unlawfully and indecently assaults any other person.

Penalty — Imprisonment for five years.

(2) It is no defence to a charge for an indecent assault on a boy or girl under the age of 16 years to prove that he or she consented to the act of indecency.

(3) It shall be a sufficient defence to a charge for an indecent assault on a boy or girl under the age of 16 years to prove that—

- (a) the boy or girl consented to the act of indecency and that the person so charged had reasonable cause to believe, and did in fact believe, that the boy or girl was of or above the age of 16 years; or

- (b) that the offender was of a similar age to the boy or girl and that consent to the act of indecency was given in the context of a continuing friendship between the offender and the boy or girl.

(4) No person who is on a relationship of control or trust over the boy or girl may rely on a defence provided for in sub-section (3).

Indecently insulting or annoying any person

213.—(1) A person commits a summary offence if he or she, intending to insult the modesty of any person—

- (a) utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by the other person; or
- (b) intrudes upon the privacy of another person by doing an act of a nature likely to offend his or her modesty.

Penalty — Imprisonment for one year.

Defilement of children under 13 years of age

214.—(1) A person commits an indictable offence (which is triable summarily) if he or she unlawfully and carnally knows any child under the age of 13 years.

Penalty — Imprisonment for life.

(2) A person commits a summary offence if he or she attempts to have unlawful carnal knowledge of any child under the age of 13 years.

Penalty — Imprisonment for 5 years.

Defilement of young person between 13 and 16 years of age

215.—(1) A person commits a summary offence if he or she unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any person being of or above the age of 13 years and under the age of 16 years.

Penalty — Imprisonment for 10 years.

(2) It shall be a sufficient defence to any charge under sub-section (1) if it shall be 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 16 years.

(3) It is no defence to any charge under sub-section (1)(a) to prove that the person consented to the act.

Defilement of intellectually impaired persons

216. A person commits a summary offence if he or she unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any intellectually impaired person under circumstances which do not amount to rape but which prove that the offender knew at the time of the commission of the offence that the person was suffering from a mental sub-normality.

Penalty — Imprisonment for 10 years.

Procuration for unlawful purposes

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

- (a) procures or attempts to procure any person under the age of 21 years, not being a common prostitute or of known immoral character, to have unlawful connection, either in Fiji or elsewhere, with any other person or persons; or
- (b) procures or attempts to procure any person to become, either in Fiji or elsewhere, a common prostitute; or
- (c) procures or attempts to procure any person to leave Fiji, with intent that he or she may become an inmate of or frequent a brothel elsewhere; or
- (d) procures or attempts to procure any person to leave his or her usual place of abode in Fiji (such place not being a brothel), with intent that he or she may for the purposes of prostitution become an inmate of or frequent a brothel either in Fiji or elsewhere.

Penalty — Imprisonment for 2 years.

(2) It is no defence to any charge under sub-section (1) to show that the person procured was procured with their consent

Procuring defilement by threats or fraud or administering drugs

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

- (a) by threats or intimidation procures or attempts to procure any person to have any unlawful carnal connection either in Fiji or elsewhere; or
- (b) by false pretences or false representations procures any person, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either in Fiji or elsewhere; or
- (c) applies, administers to, or causes to be taken by any person any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such person.

Penalty — Imprisonment for 5 years.

Householder permitting defilement of a child on premises

219.—(1) A person commits an indictable offence (which is triable summarily) if he or she, being the owner or occupier of premises, or having or assisting in the management or control of premises, induces or knowingly permits any person under the age of 16 years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally.

Penalty — Imprisonment for 12 years.

(2) It shall be a sufficient defence to any charge under sub - section (1) if it shall be 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 16 years.

Householder permitting defilement of a person under 16 years of age on premises

220.—(1) A person commits a summary offence if, being the owner or occupier of premises, or having or acting or assisting in the management or control of premises, induces or knowingly permits any person of or above the age of 13 years and under the age of 16 years to resort to or be upon the premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally.

Penalty — Imprisonment for 10 years.

(2) It shall be a sufficient defence to any charge under sub-section (1) if it shall be 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 16 years.

Conspiracy to defile

221. A person commits a summary offence if he or she conspires with another to induce any person, by means of any false pretence or other fraudulent means, to permit any other person to have unlawful carnal knowledge of him or her.

Penalty — Imprisonment for 10 years.

Unnatural offences with animals

222. A person commits a summary offence if he or she has carnal knowledge of an animal, or attempts to have carnal knowledge of an animal.

Penalty — Imprisonment for 14 years.

Incest by any relative

223.—(1) Any person who has carnal knowledge of another person, who is to his or her knowledge in a relationship to him or her of parent, grandparent, child, sister or brother, is guilty of an indictable offence.

Penalty — Imprisonment for 20 years, but if it is alleged in the information or charge and proved that the person is under the age of 13 years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the other person.

(3) On the conviction by any court of any person of an offence under this section (or of an attempt to commit an offence), against any other person under the age of 21 years, it shall be in the power of the court—

(a) to divest the offender of all parental authority over the other person; and

(b) if the offender is the guardian of the other, to remove the offender from such guardianship—

and in any such case to appoint any person or persons to be the guardian or guardians of the other person during his or her minority, or for any less period

(4) The court may at any time vary or rescind an order made under sub-section (3) by the appointment of any other person as such guardian, or in any other respect.

(5) For the purposes of this section—

“brother” and “sister” respectively include half-brother and half-sister.

(6) The provisions of this section shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

(7) Proceedings for an offence under this section require the consent of the Director of Public Prosecutions.

Knowledge of age is immaterial

224. Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a person under a specified age, that the accused person did not know that the person was under that age, or believed that he or she was not under that age.

PART 13 — PROSTITUTION OFFENCES

Detention with intent or in brothel

225.—(1) A person commits an indictable offence (which is triable summarily) if he or she detains any person against their will—

(a) in or upon any premises with intent that he or she may be unlawfully and carnally known by any person, whether any particular person or generally; or

(b) in a brothel.

Penalty — Imprisonment for 12 years.

(2) No legal proceedings, whether civil or criminal, shall be taken against any such person for taking away or being found in possession of any such wearing apparel as was necessary to enable him or her to leave such premises or brothel.

Selling minors under the age of 18 years for immoral purposes

226.—(1) A parent or any other person having the custody, charge or care of a minor under the age of 18 years commits an indictable offence (which is triable summarily) if he or she sells, lets for hire or otherwise disposes of such minor with intent that the minor shall at any age be employed or used for the purpose of—

(a) prostitution; or

(b) illicit sexual intercourse with any person; or

(c) for any unlawful and immoral purpose—

or knowing it to be likely that such minor at any age will be employed or used for any such purpose

Penalty — Imprisonment for 12 years.

(2) When a minor under the age of 18 years is sold, let for hire or otherwise disposed of to a common prostitute or other person of known immoral character, the parent or person so disposing of the minor shall, until the contrary is proved, be deemed to have disposed of the minor with the intent mentioned in this section.

Buying minors under the age of 18 years for immoral purposes

227.—(1) A person commits an indictable offence (which is triable summarily) if he or she buys, hires or otherwise obtains possession of any minor under the age of 18 years with intent that the minor shall at any age be employed or used for the purpose of—

- (a) prostitution; or
- (b) illicit sexual intercourse with any person; or
- (c) for any unlawful and immoral purpose or knowing it to be likely that the minor at any age will be employed or used for any such purpose

Penalty — Imprisonment for 12 years,

(2) Any common prostitute or other person of known immoral character who buys, hires or otherwise obtains possession of a minor under the age of 18 years shall, until the contrary is proved, be deemed to have obtained possession of the minor with the intent mentioned in this section.

Power of search

228.—(1) If it appears to any judge or magistrate, on information made on oath by any parent, relative or guardian or any person who, in the opinion of the judge or magistrate, is acting bona fide in the interests of any person, that there is reasonable cause to suspect that the person is unlawfully detained for immoral purposes by any person in any place, the court or magistrate may issue a warrant authorising the person named in the warrant to search for, and, when found, to take to and detain in a place of safety such person until he or she can be brought before a Court; and the magistrate before whom the person is brought may cause him or her to be delivered up to parents or guardians, or otherwise dealt with as circumstances may permit and require.

(2) A judge or magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining a person to be apprehended and brought before a court and proceedings to be taken for punishing the offender according to law.

(3) A person shall be deemed to be unlawfully detained for immoral purposes if he or she is detained for the purpose of being unlawfully and carnally known by any person, whether any particular person or generally; and—

- (a) either is under the age of 16 years; or
- (b) if he or she is of or over the age of 16 years and under the age of 21 years, is so detained against his or her will or against the will of his or her father or mother or of any person having the lawful care or charge of him or her; or
- (c) if he or she is of or over the age of 21 years and is detained against his or her will.

(4) Any person authorised by warrant under this section to search for any person so detained may enter (if need be, by force) any house, building or other place mentioned in the warrant, and may remove the person from that place.

(5) Every warrant issued under this section shall be addressed to and executed by a police officer who shall be accompanied by the parent, relative or guardian or other person making the information if such person so desires, unless the judge or magistrate shall otherwise direct.

Authority of court as to custody of young persons

229.—(1) Where on the trial of any offence under the preceding sections of this Part it is proved to the satisfaction of the court that the seduction, prostitution or unlawful detention of any person under the age of 21 years has been caused, encouraged or favoured by his or her father, mother or guardian, the court may divest the father, mother or guardian of all authority over the person, and appoint any person or persons willing to take charge of the young person to act as guardian until he or she has attained the age of 21 years, or any age below this as the court may direct.

(2) The court may from time to time rescind or vary an order made under sub-section (1) by the appointment of any other person or persons as such guardian or in any other respect.

Person living on earnings of prostitution or persistently soliciting

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

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any public place persistently solicits or offers a person for immoral purposes.

Penalty — Imprisonment for 6 months.

(2) Where a person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting or compelling his or her prostitution with any other person (or generally), he or she shall unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Loitering or soliciting for the purposes of prostitution

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

- (a) loiters in a public place for the purpose of offering himself or herself for sex in return for a payment of any nature;
- (b) solicits for immoral purposes in any public place;
- (c) seeks the services of a prostitute in a public place; or
- (d) uses the services of a prostitute in a public place or
- (e) makes arrangements with a prostitute or a person offering the services of a prostitute in order to use his or her services by any communication whatsoever or
- (f) Solicits for an immoral purpose by any communication whatsoever.

Penalty—

- (i) in respect of a first offence - a fine of 5 penalty units;
- (ii) in respect of a subsequent offence - imprisonment for 3 months or a fine of 10 penalty units, or both.

(2) Any police officer may arrest without warrant any person he or she finds in any public place whom he reasonably suspects to be committing an offence under the provisions of this section.

(3) For the purposes of this section, “public place” includes the doorways and entrances of premises abutting on any public way and any ground adjoining and open to any public place.

Suspicious premises

232. If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used for purposes of prostitution, and that any person residing in or frequenting the house—

- (a) is living wholly or in part on the earnings of the prostitute; or
- (b) is exercising control, direction or influence over the movements of the prostitute—

the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

Brothels

233. A person commits a summary offence if he or she—

- (a) keeps or manages, or acts or assists in the management, of a brothel; or
- (b) being the tenant, lessee or occupier of any premises knowingly permits the premises or any part of the premises to be used as a brothel, or for the purposes of habitual prostitution; or
- (c) being the lessor or landlord of any premises (or the agent of such lessor or landlord) lets the premises or any part of them with the knowledge that the premises are or is to be used as a brothel, or is wilfully a party to the continued use of such premises as a brothel

Penalty — Imprisonment for 5 years or a fine of 100 penalty units, or both.

PART 14 — ABORTION OFFENCES

Abortion

234.—(1) A person commits an indictable offence if he or she unlawfully performs an abortion.

Penalty — Imprisonment for 14 years.

- (2) The performance of an abortion by a medical practitioner is not unlawful for the purposes of this section if —
- (a) the abortion is performed by a medical practitioner in good faith and with reasonable care and skill; and
 - (b) the pregnancy is the result of sexual intercourse between —
 - (i) a parent and child; or
 - (ii) a brother and sister (whether of the whole blood or half blood); or
 - (iii) a grandparent and grandchild; or
 - (c) the pregnancy is the result of sexual intercourse that constitutes the offence of rape under this Decree.
- (3) In this section —
 “medical practitioner” means any person lawfully registered under a law of Fiji to practise as a medical practitioner.
- (4) A reference in this section to performing an abortion includes a reference to —
- (a) attempting to perform an abortion; and
 - (b) doing any act with intent to procure an abortion, whether or not the woman concerned is pregnant.
- (5) Subject to sub-section (9), the performance of an abortion is justified for the purposes of this section if —
- (a) serious danger to the physical or mental health of the woman concerned will result if the abortion is not performed; or
 - (b) the pregnancy of the woman concerned is causing serious danger to her physical or mental health.
- (6) Sub-section (5)(a), (b) or (c) do not apply unless the woman has given informed consent, or in the case of paragraphs (b) or (c) it is impracticable for her to do so.
- (7) In this section —
 “informed consent” means consent freely given by the woman where —
- (a) a medical practitioner has properly, appropriately and adequately provided her with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term;
 - (b) a medical practitioner has offered her the opportunity of referral to appropriate and adequate counselling about matters relating to termination of pregnancy and carrying a pregnancy to term, if such counselling is available to the woman.
- (8) A reference in sub-section (7) to a medical practitioner does not include a reference to —
- (a) the medical practitioner who performs the abortion; nor
 - (b) any medical practitioner who assists in the performance of the abortion.
- (9) If at least 20 weeks of the woman’s pregnancy have been completed when the abortion is performed, the performance of the abortion is not justified unless —
- (a) 2 medical practitioners have agreed that the mother, or the unborn child, has a severe medical condition that, in the clinical judgment of those medical practitioners, justifies the procedure; and
 - (b) the abortion is performed in a facility approved by the Minister for Health.

(10) For the purposes of this section—

- (a) subject to sub-section (11), a woman who is a dependant minor shall not be regarded as having given informed consent unless a custodial parent of the woman has been informed that the performance of an abortion is being considered and has been given the opportunity to participate in a counselling process (if such counselling is available) and in consultations between the woman and her medical practitioner as to whether the abortion is to be performed;
- (b) a woman is a dependant minor if she has not reached the age of 16 years and is being supported by a custodial parent or parents; and
- (c) a reference to a parent includes a reference to a legal guardian.

(11) A woman who is a dependant minor may apply to a magistrate for an order that a person specified in the application, being a custodial parent of the woman, should not be given the information and opportunity referred to in sub-section (10)(a) and the magistrate may, on being satisfied that the application should be granted, make an order in those terms.

Abortion by woman with child

235. A woman commits a summary offence if she, being pregnant, with intent to procure her own miscarriage—

- (a) administers to herself any poison or other noxious thing; or
- (b) uses any force of any kind; or
- (c) uses any other means; or
- (d) permits any such thing or means to be administered or used to her.

Penalty — Imprisonment for 7 years.

Supplying drugs or instruments to procure abortion

236. A person commits a summary offence if he or she unlawfully supplies to or procures any thing for any person, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman (whether she is or is not pregnant).

Penalty — Imprisonment for 3 years.

PART 15 — OFFENCES AGAINST THE PERSON

Division 1 — Murder, Manslaughter and Infanticide

Murder

237. A person commits an indictable offence if—

- (a) the person engages in conduct; and
- (b) the conduct causes the death of another person; and
- (c) the first-mentioned person intends to cause, or is reckless as to causing, the death of the other person by the conduct.

Penalty—Mandatory sentence of Imprisonment for life., with a judicial discretion to set a minimum term to be served before pardon may be considered.

Accessory after the fact to murder

238. Any person who becomes an accessory after the fact to murder commits an indictable offence (which is triable summarily).

Penalty — Imprisonment for 7 years.

Manslaughter

239. A person commits an indictable offence if—

- (a) the person engages in conduct; and
- (b) the conduct causes the death of another person; and
- (c) the first-mentioned person—
 - (i) intends that the conduct will cause serious harm; or

- (ii) is reckless as to a risk that the conduct will cause serious harm to the other person

Penalty — Imprisonment for 25 years.

Manslaughter arising from a breach of duty

240. A person commits an indictable offence if—

- (a) the person makes an omission; and
- (b) the omission causes the death of another person; and
- (c) the first-mentioned person—
 - (i) has a duty to the other person in accordance with section 241;
 - (ii) the omission amounts to a negligent breach of the duty, such omission is or is not accompanied by an intention to cause death or bodily harm.

Penalty — Imprisonment for 25 years.

Duties applying to certain persons

241.—(1) Every person having charge of another who—

- (a) is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw from such charge; and
- (b) who is unable to provide himself or herself with the necessaries of life—

whether the charge—

- (i) is undertaken under a contract; or
- (ii) is imposed by law; or
- (iii) arises by reason of any act (whether lawful or unlawful) of the person who has such charge, to provide for that other person the necessaries of life—

shall be deemed to have caused any consequences which adversely affects the life or health of the other person by reason of any omission to perform that duty.

(2) It is the duty of every person who, as head of a family, has charge of a child under the age of 14 years, being a member of his or her household, to provide the necessaries of life for the child; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

(3) It is the duty of every person who as an employee has contracted to provide necessary food, clothing or lodging for any employee or apprentice under the age of 16 years to provide the same; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

(4) It is the duty of every person who, except in a case of necessity, undertakes—

- (a) to administer surgical or medical treatment to any other person; or
- (b) to do any other lawful act which is or may be dangerous to human life or health—

to have reasonable skill and to use reasonable care in doing such act; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

(5) It is the duty of every person who has in his or her charge or under his or her control anything (whether living or inanimate, and whether moving or stationary) of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precaution to avoid such danger; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

Killing with provocation

242.—(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as defined in sub-section (2), and before there is time for the passion to cool, he or she is guilty of manslaughter only.

(2) The term “provocation” means (except as stated in this definition to the contrary) any wrongful act or insult of such a nature as to be likely when—

(a) done to an ordinary person; or

(b) done in the presence of an ordinary person to another person—

(i) who is under his or her immediate care; or

(ii) who is the husband, wife, parent, brother or sister, or child of the ordinary person—

to deprive him or her of the power of self-control and to induce him or her to commit an assault of the kind which the person charged committed upon the person by whom the act or insult is done or offered.

(3) When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as stated in sub-section (2), the former is said to give to the latter provocation for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him or her to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who believes and has reasonable grounds for believing the arrest to be unlawful.

Diminished responsibility

243.—(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair—

(a) the person’s capacity to understand what the person is doing; or

(b) the person’s capacity to control the person’s actions; or

(c) the person’s capacity to know that the person ought not to do the act or make the omission—

the person is guilty of manslaughter only.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section liable to be convicted of manslaughter only.

(3) When 2 or more persons unlawfully kill another, the fact that 1 of such persons is by virtue of this section guilty of manslaughter only shall not affect the question whether the unlawful killing amounted to murder in the case of any other such person or persons

Infanticide

244.—(1) A woman commits the indictable offence of infanticide if—

(a) she, by any wilful act or omission, causes the death of her child; and

(b) the child is under the age of 12 months; and

(c) at the time of the act or omission the balance of her mind was disturbed by reason of—

(i) her not having fully recovered from the effect of giving birth to the child; or

(ii) the effect of lactation consequent upon the birth of the child; or

(iii) any other matter, condition, state of mind or experience associated with her pregnancy, delivery or post-natal state that is proved to the satisfaction of the court.

(2) The onus of proving the existence of any matter referred to in sub-section (1)(c) lies on the accused person and the standard or proof of such matters shall be on the balance of probabilities.

(3) In circumstances provided for in sub-section (1), notwithstanding that they were such that but for the provisions of this section the offence would have amounted to murder, the woman shall be guilty of infanticide, and may be dealt with and punished as if she had been guilty of manslaughter of the child.

When child deemed to be a person

245. A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother—

- (a) whether it has breathed or not; and
- (b) whether it has an independent circulation or not; and
- (c) whether the navel-string is severed or not

Meaning of causes death or harm

246.—(1) In this Division, a person's conduct causes death or harm if it substantially contributes to the death or harm.

(2) Without limiting the right of a court to make a finding in accordance with sub-section (1), a person is deemed to have caused the death of another person although the act is not the immediate or the sole cause of death in any of the following cases—

- (a) if he or she inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. (In this it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;
- (b) if he or she inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical-treatment or had observed proper precautions as to his or her mode of living;
- (c) if by actual or threatened violence he or she causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he or she hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his or her act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

Limitation as to time of death

247.—(1) A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

(2) Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

(3) When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

(4) When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

SUB-DIVISION K — OFFENCES CONNECTED WITH MURDER AND SUICIDE

Suicide is not an offence

248. An act of suicide is not an offence.

Suicide pacts

249.—(1) Where it is shown that a person charged with the murder of another killed the other, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him or her and the other.

(2) For the purposes of this section “suicide pact” means an agreement between two or more persons having for its object the death of all of them, whether or not each is to take their own life, but nothing done by a person who enters into a suicide pact shall be treated as done by that person in pursuance of the pact unless it is done while he or she has the settled intention of dying in accordance with the pact.

Complicity in the suicide of another

250.—(1) A person commits an indictable offence (which is triable summarily) if he or she wilfully aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide.

Penalty — Imprisonment for 14 years.

(2) If on the trial of an indictment for murder or manslaughter it is proved that the accused aided, abetted, counselled or procured the suicide of the person in question, the accused may be found guilty of that offence.

Concealing the birth of children

251. A person commits a summary offence if she is a woman who has given birth to a child and she endeavours by any secret disposal of the dead body of the child to conceal the birth, whether the child died before, at, or after its birth.

Penalty — Imprisonment for 1 year.

Killing unborn child

252.—(1) A person commits an indictable offence if he or she, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother.

Penalty — Imprisonment for life.

(2) No person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose of preserving the life of the mother.

(3) For the purposes of this section, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more shall be prima facie proof that she was at that time pregnant of a child capable of being born alive.

*Division 3 — Offences Endangering Life and Health**Disabling in order to commit an offence*

253. A person commits an indictable offence if he or she, by any means calculated to choke, suffocate or strangle, and with intent—

- (a) to commit or to facilitate the commission of an indictable or summary offence; or
- (b) to facilitate the flight of an offender after the commission or attempted commission of an indictable or summary offence—

renders or attempts to render any person incapable of resistance.

Penalty—Imprisonment for life.

Stupefying in order to commit an offence

254. A person commits an indictable offence if he or she, with intent to—

- (a) commit or to facilitate the commission of an indictable or summary offence; or
- (b) to facilitate the flight of an offender after the commission or attempted commission of an indictable or summary offence—

administers or attempts to administer any stupefying or overpowering drug or thing to any person.

Penalty — Imprisonment for life.

Acts intended to cause grievous harm or prevent arrest

255. A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

- (a) unlawfully wounds or does any grievous harm to any person by any means; or
- (b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or
- (c) unlawfully causes any explosive substance to explode; or
- (d) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (e) causes any such substance or thing to be taken or received by any person; or
- (f) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person.

Penalty — Imprisonment for life.

Preventing escape from wreck

256. A person commits an indictable offence if he or she unlawfully—

- (a) prevents or obstructs any person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his or her endeavours to save his or her life; or
- (b) obstructs any person in his or her endeavours to save the life of any person so situated.

Penalty — Imprisonment for life.

Intentionally endangering safety of persons travelling by railway

257. A person commits an indictable offence if he or she, with intent to injure or to endanger the safety of any person travelling by any railway, (whether a particular person or not)—

- (a) places anything on the railway; or
- (b) deals with the railway, or with anything whatsoever upon or near the railway, in such manner as to affect or endanger the free and safe use of the railway or the safety of any such person; or
- (c) shoots or throws anything at, into, or upon or causes anything to come into contact with any person or thing on the railway; or
- (d) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
- (e) by any omission to do any act which it is his or her duty to do causes the safety of any person to be endangered—

Penalty — Imprisonment for life.

Grievous harm

258. A person commits an indictable offence (which is triable summarily) if he or she unlawfully and maliciously does grievous harm to another person.

Penalty — Imprisonment for 15 years.

Attempting to injure by explosive substances

259. A person commits an indictable offence (which is triable summarily) if he or she, unlawfully and with intent to do any harm to another, puts any explosive substance in any place.

Penalty — Imprisonment for 14 years.

Maliciously administering poison with intent to harm

260. A person commits an indictable offence (which is triable summarily) if he or she, unlawfully and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his or her life, or does grievous harm.

Penalty — Imprisonment for 14 years.

Unlawful wounding

261. A person commits a summary offence if he or she unlawfully wounds another person.

Penalty — Imprisonment for 5 years.

Unlawful poisoning

262. A person commits a summary offence if he or she unlawfully and with intent to injure or annoy any person causes any poison or other noxious thing to be administered to, or taken by, any person

Penalty — Imprisonment for 3 years.

Witchcraft and sorcery

263. A person commits a summary offence if he or she—

- (a) holds himself or herself out as being able to cause by supernatural means, fear, annoyance or injury to another person in mind, person or property; or
- (b) pretends to exercise or who practises, whether on an isolated occasion or otherwise, witchcraft or sorcery.

Penalty — Imprisonment for 5 years.

Failure to supply necessities

264. A person commits a summary offence if he or she, being charged with the duty of providing for another the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his or her health is or is likely to be permanently injured.

Penalty — Imprisonment for three years.

Surgical operation

265. A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his or her benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time, and to all the circumstances of the case.

Excess of force

266. Any person authorised by law or by the consent of the person injured by him or her to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

No consent possible to death or maiming

267. Notwithstanding anything contained in section 266, consent by a person to the causing of his or her own death or his or her own maim does not affect the criminal responsibility of any person who causes the death or maiming.

SUB-DIVISION 4 — CRIMINAL RECKLESSNESS AND NEGLIGENCE

Reckless or negligent acts

268. A person commits a summary offence if he or she, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person—

- (a) drives any vehicle or rides on any public way; or
- (b) navigates, or takes part in the navigation or working of, any vessel; or
- (c) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his or her possession; or
- (d) omits to take precautions against any probable danger from any animal in his or her possession; or
- (e) gives medical or surgical treatment to any person whom he or she has undertaken to treat; or
- (f) dispenses, supplies, sells, administers or gives away any medicine poisonous or dangerous matter; or
- (g) does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he or she is solely or partly in charge; or
- (h) does any act with respect to, or omits to take proper precautions against any probable danger from, any explosive in his or her possession.

Penalty — Imprisonment for 2 years.

Other negligent acts causing harm

269. A person commits a summary offence if he or she unlawfully does any act, or omits to do any act which it is his or her duty to do, not being an act or omission specified in section 268, by which act or omission harm is caused to any person.

Penalty — Imprisonment for six months.

Dealing in poisonous substances in negligent manner

270. A person commits a summary offence if he or she does any act with any poisonous substance, in a manner so rash or negligent as—

- (a) to endanger human life; or
- (b) to be likely to cause hurt or injury to any other person; or
- (c) knowingly or negligently omits to take such care with any poisonous substance in his or her possession as is sufficient to guard against probable danger to human life from such poisonous substance.

Penalty — Imprisonment for 6 months or a fine of 5 penalty units, or both.

Endangering safety of persons travelling by railway

271. A person commits a summary offence if he or she who, by any unlawful act or omission not specified in section 257, causes the safety of any person travelling by any railway to be endangered.

Penalty — Imprisonment for 6 months or a fine of 5 penalty units, or both.

Exhibition of false light, mark or buoy

272. A person commits a summary offence if he or she exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator or other person relying on the light, mark or buoy.

Penalty — Imprisonment for 7 years.

Conveying person by water for hire in unsafe or overloaded vessel

273. A person commits a summary offence if he or she knowingly or negligently conveys, or causes to be conveyed, for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe.

Penalty — Imprisonment for 2 years or a fine of 50 penalty units, or both.

*Division 5 — Assaults**Common assault*

274.—(1) A person commits a summary offence if he or she unlawfully assaults another person.

Penalty — Imprisonment for 1 year.

(2) The offence under sub-section (1) is to be applied if the assault is not committed in circumstances for which a more serious offence is provided for in this Act.

Assault causing actual bodily harm

275. A person commits a summary offence if he or she commits an assault occasioning actual bodily harm.

Penalty — Imprisonment for 5 years.

Assaults on authorised persons protecting wreck

276. A person commits a summary offence if he or she assaults and strikes or wounds any person lawfully authorised in or on account of the execution of his or her duty in or concerning the preservation —

- (a) of any vessel in distress; or
- (b) of any vessel or goods or effects wrecked, stranded or cast on shore, or lying under water.

Penalty — Imprisonment for 7 years.

Serious assaults

277. A person commits a summary offence if he or she—

- (a) assaults any person with intent to commit an indictable offence, or to resist or prevent the lawful apprehension or detention of himself, herself or of any other person for any offence; or

- (b) assaults, resists or wilfully obstructs any police officer in the due execution of his or her duty, or any person acting in aid of such an officer; or
- (c) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business or manufacture or respecting any person concerned or employed by it; or
- (d) assaults, resists or obstructs any person—
 - (i) engaged in lawful execution of court process; or in
 - (ii) making a lawful distress, with intent to rescue any property lawfully taken under such distress; or
- (e) assaults any person on account of any act done by him or her in the execution of any duty imposed by law.

Penalty - Imprisonment for 5 years.

SUB-DIVISION 6 — OFFENCES AGAINST LIBERTY

Definition of kidnapping and abduction

278. For the purposes of this Sub-Division—

- (a) any person who conveys any person beyond the limits of Fiji without the consent of that person (or of some person legally authorised to consent on behalf of that person) is said to kidnap that person; and
- (b) any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Kidnapping

279. A person commits a summary offence if he or she kidnaps any person.

Penalty - Imprisonment for 7 years.

Kidnapping or abducting in order to murder

280. A person commits an indictable offence (which is triable summarily) if he or she kidnaps or abducts any person in order that such person—

- (a) may be murdered; or
- (b) may be put in danger of being murdered.

Penalty — Imprisonment for 10 years.

Kidnapping or abducting with intent to confine person

281. A person commits a summary offence if he or she kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined.

Penalty — Imprisonment for 7 years.

Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.

282. A person commits an indictable offence (which is triable summarily) if he or she kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to—

- (a) grievous harm; or
- (b) slavery; or
- (c) the unnatural lust of any person—

or knowing it to be likely that such person will be so subjected or disposed of.

Penalty — Imprisonment for 10 years.

Wrongfully concealing a kidnapped or abducted person

283.—(1) A person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, commits a summary offence.

(2) A person found guilty of an offence under sub-section (1) shall be punished in the same manner as if he or she had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he or she conceals or detains such person in confinement.

Child stealing

284.—(1) A person commits a summary offence if he or she unlawfully, either by force or fraud—

- (a) leads; or
- (b) takes away; or
- (c) decoys; or
- (d) entices away; or
- (e) detains—

any child under the age of 14 years.

Penalty — Imprisonment for 7 years.

(2) A person is only guilty of an offence under sub-section (1) if he or she has an intention—

- (a) to deprive any parent, guardian, or other person having the lawful care or charge of such child, or the possession of such child; or
- (b) to steal any article upon or about the person of the child.

(3) A person commits a summary offence if he or she, with any such intent as is required in sub-section (2), receives or harbours any such child, knowing the child to have been by force or fraud led, taken, decoyed, enticed away, or detained.

Penalty — Imprisonment for 7 years:

(4) No person who—

- (a) claims in good faith any right to the possession of such child; or
- (b) is the mother; or
- (c) claims to be the father of the child as an illegitimate child—

is liable to be prosecuted under this section, on account of the getting possession of such child, or taking such child out of the possession of any person having the lawful charge of the child.

Abduction of young persons

285. Any person commits a summary offence if he or she unlawfully takes or causes to be taken any young person, being under the age of 18 years, out of the possession and against the will of his or her father or mother, or of any other person having the lawful care or charge of the young person.

Penalty — Imprisonment for 5 years.

Punishment for wrongful confinement

286. A person commits a summary offence if he or she wrongfully confines any person.

Penalty — Imprisonment for 5 years or to a fine of 10 penalty units, or both.

Unlawful compulsory labour

287. A commits a summary offence if he or she unlawfully compels any person to perform any labour against the will of that person.

Penalty — Imprisonment for 5 years or to a fine of 10 penalty units, or both

PART 16 – OFFENCES AGAINST PROPERTY

*Division 1 – Preliminary**General Definitions*

288. In this Part, unless the context otherwise requires—

“duty” means, in relation to a person who is a public official, any authority, duty, function or power that -

- (a) is conferred on the person as a public official; or
- (b) the person holds himself or herself out as having as a public official; and

“gain” means—

- (a) a gain in property (whether temporary or permanent); or
- (b) a gain by way of the supply of services;

and includes keeping what one has.

“loss” means a loss in property (whether temporary or permanent), and includes not getting what one might get.

“obtaining” includes—

- (a) obtaining for another person; and
- (b) inducing a third person to do something that results in another person obtaining.

“property” includes—

- (a) real property; and
- (b) personal property; and
- (c) money; and
- (d) a thing in action or other intangible property; and
- (e) electricity; and
- (f) a wild creature that is—
 - (i) tamed; or
 - (ii) ordinarily kept in captivity; or
 - (iii) reduced (or in the course of being reduced) into the possession of a person.

“services” includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities, but does not include rights or benefits being the supply of goods.

“supply” includes—

- (a) in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services—provide, grant or confer.

Meaning of property belonging to another

289.—(1) For the purposes of this Part, property belongs to a person if, and only if—

- (a) the person has possession or control of the property; or
- (b) the person has a proprietary right or interest in the property, other than an equitable interest arising only from—
 - (i) an agreement to transfer an interest; or
 - (ii) an agreement to grant an interest; or
 - (iii) a constructive trust.

(2) Sub-section (1) has effect subject to sub – section 317(9) and (10) (which deal with money transfers).

Meaning of Dishonest

290. For the purposes of this Part, dishonest means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

Division 2 — Theft and Other Property Offences

SUB-DIVISION A — THEFT OFFENCES

Theft

291.—(1) A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.

Penalty — Imprisonment for 10 years.

(2) For the purposes of this Decree an offence against sub-section (1) is to be known as the offence of theft.

Special rules about the meaning of dishonest

292.—(1) For the purposes of this Division, a person's appropriation of property belonging to another is taken not to be dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(2) Sub-section (1) does not apply if the person appropriating the property held it as trustee or personal representative.

(3) For the purposes of this Division, a person's appropriation of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

Appropriation of property

293.—(1) For the purposes of this Division, any assumption of the rights of an owner to ownership, possession or control of property, without the consent of the person to whom it belongs, amounts to an appropriation of the property.

(2) Sub-section (1) applies to a case where a person obtains possession of property (innocently or not) without committing theft, and there is a later assumption of rights without consent by keeping or dealing with it as owner.

(3) For the purposes of this Division, if property, or a right or interest in property, is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights which the person had believed himself or herself to be acquiring does not, because of any defect in the transferor's title, amount to an appropriation of the property.

Theft of land or things forming part of land

294.—(1) For the purposes of this Division, a person cannot commit theft of land, except in the following cases—

- (a) the case where the person appropriates anything forming part of the land by severing it or causing it to be severed;
- (b) the case where—
 - (i) the person is a trustee or personal representative, or is authorised (by power of attorney, as liquidator of a company or otherwise) to sell or dispose of land belonging to another; and
 - (ii) the person appropriates the land, or anything forming part of it, by dealing with it in breach of the confidence reposed in the person.

(2) For the purposes of this section, land does not include incorporeal hereditaments.

Trust property

295.—(1) For the purposes of this Division, if property is subject to a trust, the persons to whom the property belongs include any person who has a right to enforce the trust.

(2) Accordingly, for the purposes of this Division, an intention to defeat the trust is an intention to deprive any such person of the property.

Obligation to deal with property in a particular way

296. For the purposes of this Division, if—

- (a) a person receives property from or on account of another; and
- (b) the person is under a legal obligation to the other to retain and deal with that property or its proceeds in a particular way—

the property or proceeds belong (as against the person) to the other.

Property obtained because of fundamental mistake

297.—(1) For the purposes of this Division, if—

- (a) a person gets property by another's fundamental mistake; and
- (b) the person is under a legal obligation to make restoration (in whole or in part) of the property, its proceeds or value—

then, to the extent of that obligation, the property or proceeds belongs (as against the person) to the person entitled to restoration.

(2) For the purposes of this Division, an intention not to make restoration is—

- (a) an intention to permanently deprive the person so entitled of the property or proceeds; and
- (b) an appropriation of the property or proceeds without the consent of the person entitled to restoration.

(3) For the purposes of this section, a fundamental mistake is—

- (a) a mistake about the identity of the person getting the property; or
- (b) a mistake as to the essential nature of the property; or
- (c) a mistake about the amount of any money if the person getting the money is aware of the mistake at the time of getting the money.

(4) In this section—

“money” includes anything that is equivalent to money. (For this purpose, cheques, negotiable instruments and electronic funds transfers are taken to be equivalent to money).

Property of a corporation sole

298. For the purposes of this Division, property of a corporation sole belongs to the corporation despite a vacancy in the corporation.

Property belonging to partners, spouses and to 2 or more persons

299.—(1) If any person, who is a member of any partnership or is one of two or more beneficial owners of any property, steals or embezzles any such property of or belonging to such co-partnership or to such beneficial owners he or she is liable to be dealt with, tried, and punished as if he or she had not been or was not a member of the partnership or one of the beneficial owners of the property.

(2) A husband or wife has the same remedies and redress under this Division for the protection and security of his or her own separate property, and wife doing an act with respect to any property of her husband, which, if done by the husband in respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Division, shall be in like manner liable to criminal proceedings by her husband.

(3) No proceedings under this Division shall be taken by any husband or wife against his or her spouse concerning any property claimed by either of them—

- (a) while they are living together; or
- (b) while they are living apart as to or concerning any act done by either of them while they were living together—

unless the property has been wrongfully taken by the husband or the wife when leaving or deserting or about to leave or desert the other.

(4) If property belongs to 2 or more persons, a reference in this Division to the person to whom the property belongs is a reference to all of those persons.

Intention of permanently depriving a person of property

300.—(1) For the purposes of this Division, if—

- (a) a person appropriates property belonging to another without meaning the other permanently to lose the thing itself; and
- (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights;

the person has the intention of permanently depriving the other of it.

(2) For the purposes of this section, a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(3) For the purposes of this section, if—

- (a) a person has possession or control (lawfully or not) of property belonging to another; and
- (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
- (c) the parting is done for purposes of the person's own and without the other's authority—

the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

General deficiency

301.—(1) For the purposes of this Division, a person may be convicted of theft of all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were appropriated over a period of time.

(2) For the purposes of this Division, a person may be convicted of theft of all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were appropriated over a period of time.

SUB-DIVISION B — THEFT OF POSTAL ARTICLES

Theft offences involving postal articles

302. A person commits a summary offence if he or she—

- (a) steals a mail bag; or
- (b) steals from a mail bag, post office, office of the post office, or mail, any postal packet in course of transmission by post; or
- (c) steals any chattel, money or valuable security out of a postal packet in course of transmission by post; or
- (d) stops a mail with intent to rob the mail.

Penalty — Imprisonment for 5 years.

Embezzlement by officer of post office

303. A person commits a summary offence if he or she, being an officer of the post office, steals or embezzles a postal packet in course of transmission by post.

Penalty—

- (a) if the postal packet contains any chattel, money or valuable security - Imprisonment for 10 years; and
- (b) in all other cases — Imprisonment for 5 years.

Definitions relating to larceny and embezzlement of postal packets

304. For the purposes of sections 302 and 303—

- (a) a postal packet shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to, or collected by, the person to whom it is addressed;
- (b) the delivery of a postal packet of any description to a letter carrier or other person authorised to receive postal packets of that description for the post shall be a delivery to a post office; and
- (c) the delivery of a postal packet at the house or office of the person to whom the packet is addressed or to him or her (or to his or her employee or agent or other person considered to be authorised to receive the packet) according to the usual manner of delivering that person's postal packets shall be a delivery to the person addressed.

SUB-DIVISION C — OTHER PROPERTY OFFENCES

Sacrilege

305. A person commits an indictable offence (which is triable summarily) if he or she—

- (a) breaks and enters any place of worship (of any religion) and commits any offence in that place; or
- (b) breaks out of any place of worship (of any religion) having committed any offence in that place; or
- (c) enters any place of worship (of any religion) and commits any act of intentional disrespect in that place of worship.

Penalty — Imprisonment for 14 years.

Receiving

306.—(1) A person commits a summary offence if he or she dishonestly receives stolen property, knowing or believing the property to be stolen.

Penalty — Imprisonment for 10 years.

(2) For the purposes of this Decree, an offence against sub-section (1) is to be known as the offence of receiving.

(3) For the purposes of this section, property is stolen property if, and only if —

- (a) it is original stolen property (as defined by sub-section (5)); or
- (b) it is previously received property (as defined by sub-section (6)); or
- (c) it is tainted property (as defined by sub-section (8)).

This sub-section has effect subject to sub-sections (4) and (7).

(4) For the purposes of this section, stolen property does not include land obtained in the course of an offence against sections 317.

(5) For the purposes of this section, original stolen property is—

- (a) property, or a part of property, that—
 - (i) was appropriated in the course of theft (whether or not the property, or the part of the property, is in the state it was in when it was so appropriated); and
 - (ii) is in the possession or custody of the person who so appropriated the property; or
- (b) property, or a part of property, that—
 - (i) was obtained in the course of an offence against section 317 (whether or not the property, or the part of the property, is in the state it was in when it was so obtained); and
 - (ii) is in the possession or custody of the person who so obtained the property or the person for whom the property was so obtained.

(6) For the purposes of this section, previously received property is property that—

- (a) was received in the course of an offence against sub-section (1); and
- (b) is in the possession or custody of the person who received the property in the course of that offence.

(7) For the purposes of this section, property ceases to be original stolen property or previously received property—

- (a) after the property is restored—
 - (i) to the person from whom it was appropriated or obtained; or
 - (ii) to other lawful possession or custody; or
- (b) after—
 - (i) the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property; or
 - (ii) a person claiming through the person from whom the property was appropriated or obtained ceases to have any right to restitution in respect of the property.

(8) For the purposes of this section, tainted property is property that—

- (a) is (in whole or in part) the proceeds of sale of, or property exchanged for
 - (i) original stolen property; or
 - (ii) previously received property; and
- (b) if sub-paragraph (a)(i) applies—is in the possession or custody of—
 - (i) if the original stolen property was appropriated in the course of theft—the person who so appropriated the original stolen property; or
 - (ii) if the original stolen property was obtained in the course of an offence against section 317 - the person who so obtained the property or the person for whom the property was so obtained; and
- (c) if sub-paragraph (a)(ii) applies - is in the possession or custody of the person who received the previously received property in the course of an offence against sub-section (1).

(9) For the purposes of this section, if, as a result of the application of sub-section 317(9) or (10), an amount credited to an account held by a person is property obtained in the course of an offence against section 317—

- (a) while the whole or any part of the amount remains credited to the account, the property is taken to be in the possession of the person; and
- (b) if the person fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled—the person is taken to have received the property; and
- (c) sub-section (7) of this section does not apply to the property.

Alternative verdicts

307.—(1) If, in a prosecution for an offence of theft or an offence against section 317, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of the offence of receiving, the court may find the defendant not guilty of the offence of theft or the section 317 offence but guilty of the offence of receiving.

(2) If, in a prosecution for an offence of receiving, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of the offence of theft or an offence against section 317, the court may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the offence under section 317.

Receiving property stolen before commencement

308. For the purposes of this section—

- (a) it is to be assumed that sections 291 and 317 had been in force at all times before the commencement of this section; and
- (b) property that was appropriated or obtained at a time before the commencement of this section does not become original stolen property unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a law in force at that time.

Definitions relating to receiving

309.—(1) For the purposes of section 308—

“account” has the same meaning as in section 316.

(2) The definition of obtaining in section 288 does not apply to section 308.

Robbery

310.—(1) A person commits an indictable offence (which is triable summarily) if he or she commits theft and—

- (a) immediately before committing theft, he or she—
 - (i) uses force on another person; or
 - (ii) threatens to use force then and there on another person—
 - with intent to commit theft or to escape from the scene; or
- (b) at the time of committing theft, or immediately after committing theft, he or she—
 - (i) uses force on another person; or
 - (ii) threatens to use force then and there on another person—
 - with intent to commit theft or to escape from the scene.

Penalty — Imprisonment for 15 years.

(2) For the purposes of this Decree, an offence against sub-section (1) is to be known as the offence of robbery.

Aggravated robbery

311.—(1) A person commits an indictable offence if he or she—

- (a) commits a robbery in company with one or more other persons; or
- (b) commits a robbery and, at the time of the robbery, has an offensive weapon with him or her.

Penalty — Imprisonment for 20 years.

(2) For the purposes of this Decree, an offence against sub-section (1) is to be known as the offence of aggravated robbery.

(3) In this section—

“offensive weapon” includes—

- (a) an article made or adapted for use for causing injury to, or incapacitating, a person; or
- (b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

Burglary

312.—(1) A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building.

Penalty — Imprisonment for 13 years.

(2) For the purposes of this Decree, an offence against sub-section (1) is to be known as the offence of burglary.

(3) A person commits an indictable offence (which is triable summarily) if he or she—

- (a) enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and
- (b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more.

Penalty — Imprisonment for 13 years.

(4) In a prosecution for an offence against sub-section (3), it is not necessary to prove that the defendant knew that the offence referred to in sub-section (3)(a) is an offence against any law.

(5) In a prosecution for an offence against sub-section (3), it is not necessary to prove that the defendant knew that the offence referred to in sub-section (3)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(6) A person is commits an indictable offence (which is triable summarily) if he or she

- (a) enters, or remains in, a building, as a trespasser, with intent to commit an offence in the building that involves causing harm to another person or damage to property; and
- (b) the offence referred to in paragraph (a) is punishable by imprisonment for life or for a term of 5 years or more; and

Penalty — Imprisonment for 13 years.

(7) In a prosecution for an offence against sub-section (6), it is not necessary to prove that the defendant knew that the offence referred to in sub-section (6)(a) is an offence against any law.

(8) In a prosecution for an offence against sub-section (6), it is not necessary to prove that the defendant knew that the offence referred to in sub-section (6)(a) is punishable by imprisonment for life or for a term of 5 years or more.

(9) For the purposes of this section, a person is taken not to be a trespasser

- (a) merely because the person is permitted to enter, or remain in, a building for a purpose that is not the person's intended purpose; or
- (b) if the person is permitted to enter, or remain in, a building as a result of fraud, misrepresentation or another person's mistake.

(10) In this section—

“building” includes—

- (a) a part of a building; or
- (b) a mobile home or a caravan; or
- (c) a structure (whether or not movable), a vehicle, or a vessel, that is used, designed or adapted for residential purposes.

Aggravated burglary

313.—(1) A person commits an indictable offence if he or she—

- (a) commits a burglary in company with one or more other persons; or
- (b) commits a burglary, and at the time of the burglary, has an offensive weapon with him or her.

Penalty — Imprisonment for 17 years.

(2) For the purposes of this Decree, an offence against sub-section (1) is to be known as the offence of aggravated burglary.

(3) In this section

“offensive weapon” includes

- (a) an article made or adapted for use for causing injury to, or incapacitating, a person; or
- (b) an article where the person who has the article intends, or threatens to use, the article to cause injury to, or to incapacitate, another person.

Making off without payment

314.—(1) A person is commits a summary offence if he or she, knowing that immediate payment for any goods or services supplied by another person is required or expected from him or her, dishonestly makes off—

- (a) without having paid; and
- (b) with intent to avoid payment of the amount due.

Penalty — Imprisonment for 2 years.

(2) For the purposes of this section, immediate payment includes payment at the time of collecting goods in respect of which a service has been provided.

Going equipped for theft or a property offence

315.—(1) A person is commits a summary offence if he or she, when not at home, has with him or her any article with intent to use it in the course of, or in connection with, theft or a property offence.

Penalty — Imprisonment for 3 years.

(2) In this section—

“property offence” means:

- (a) robbery; or
- (b) aggravated robbery; or
- (c) burglary; or
- (d) aggravated burglary; or
- (e) an offence against section 317.

PART 17 — FRAUDULENT CONDUCT

Division 1 — Preliminary

Definitions

316. In this Part—

“account” means an account (including a loan account, a credit card account or a similar account) with a bank or other financial institution.

“deception” means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes—

- (a) a deception as to the intentions of the person using the deception or any other person; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

Division 2 — Obtaining Property or a Financial Advantage by Deception

Obtaining property by deception

317.—(1) A person commits a summary offence if he or she, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property.

Penalty — Imprisonment for 10 years.

(2) For the purposes of this section (and for the purposes of the application of section 306 to this section), the person is taken to have obtained property if, and only if—

- (a) the person obtains ownership, possession or control of it for himself or herself or for another person; or

- (b) the person enables ownership, possession or control of it to be retained by himself or herself; or
- (c) the person induces a third person to pass ownership, possession or control of it to another person; or
- (d) the person induces a third person to enable another person to retain ownership, possession or control of it; or
- (e) sub-section (7) or (8) applies.

(3) For the purposes of this section, a person's obtaining of property belonging to another may be dishonest even if the person or another person is willing to pay for the property.

(4) For the purposes of this section, if—

- (a) a person obtains property belonging to another without meaning the other permanently to lose the thing itself; and
- (b) the person's intention is to treat the thing as the person's own to dispose of regardless of the other's rights—

the person has the intention of permanently depriving the other of it.

(5) For the purposes of sub-section (4), a borrowing or lending of a thing amounts to treating the thing as the borrower's or lender's own to dispose of regardless of another's rights if, and only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal.

(6) For the purposes of sub-section (4), if—

- (a) a person has possession or control (lawfully or not) of property belonging to another; and
- (b) the person parts with the property under a condition as to its return that the person may not be able to perform; and
- (c) the parting is done for purposes of the person's own and without the other's authority—

the parting is taken to amount to treating the property as the person's own to dispose of regardless of the other's rights.

(7) For the purposes of this section (and for the purposes of the application of section 306 to this section), if a person (the first person) causes an amount to be transferred from an account held by another person (the second person) to an account held by the first person—

- (a) the amount is taken to have been property that belonged to the second person; and
- (b) the first person is taken to have obtained the property for himself or herself with the intention of permanently depriving the second person of the property.

(8) For the purposes of this section (and for the purposes of the application of section 306 to this section), if a person (the first person) causes an amount to be transferred from an account held by another person (the second person) to an account held by a third person—

- (a) the amount is taken to have been property that belonged to the second person; and
- (b) the first person is taken to have obtained the property for the third person with the intention of permanently depriving the second person of the property.

(9) For the purposes of this section (and for the purposes of the application of section 306 to this section), if—

- (a) a credit is made to an account (the credited account); and
- (b) a debit is made to another account (the debited account); and
- (c) either—
 - (i) the credit results from the debit; or

(ii) the debit results from the credit—

the amount of the credit is taken to be transferred from the debited account to the credited account.

(10) For the purposes of this section (and for the purposes of the application of section 306 to this section), a person is taken to cause an amount to be transferred from an account if the person induces another person to transfer the amount from the account (whether or not the other person is the holder of the account).

(11) A person may be convicted of an offence against this section involving all or any part of a general deficiency in money even though the deficiency is made up of any number of particular sums of money that were obtained over a period of time.

(12) A person may be convicted of an offence against this section involving all or any part of a general deficiency in property other than money even though the deficiency is made up of any number of particular items of property that were obtained over a period of time.

(13) If, in a prosecution for an offence of theft, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against this section, the court may find the defendant not guilty of the offence of theft but guilty of the offence against this section.

(14) If, in a prosecution for an offence against this section, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence of theft, the court may find the defendant not guilty of the offence against this section but guilty of the offence of theft.

Obtaining a financial advantage by deception

318. A person commits a summary offence if he or she, by a deception, dishonestly obtains a financial advantage from another person.

Penalty — Imprisonment for 10 years.

Division 3 — Frauds by Trustees and Persons in a Position of Trust, and False Accounting

Conversion

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

- (a) being entrusted either solely or jointly with any other person with any power of attorney for the sale or transfer of any property, fraudulently sells, transfers, or otherwise converts the property or any part of it to his or her own use or benefit, or the use or benefit of any person other than the person by whom he or she was entrusted; or
- (b) being a director, member or officer of any company or other body incorporated by or under the provisions of any Act, fraudulently takes or applies for his or her own use or benefit, or for any use or purposes other than the use or purposes of such company or other body, any of the property of the company or other body; or
- (c)
 - (i) being entrusted either solely or jointly with any other person with any property in order that he or she may retain in safe custody or apply, pay, or deliver, for any purpose or to any person, the property or any part of it or any proceeds from it; or
 - (ii) having either solely or jointly with any other person received any property for or on account of any other person—
fraudulently converts to his or her own use or benefit, or the use or benefit of any other person, the property or any part of it, or any proceeds from it.

Penalty — Imprisonment for 7 years.

(2) Nothing in paragraph (c) of sub-section (1) applies to or affects any trustee under any express trust created by a deed or will, or any mortgage of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

Conversion by a trustee

320.—(1) A person commits a summary offence if he or she, being a trustee of any property—

- (a) for the use or benefit (either wholly or partially) of some other person; or
- (b) for any public or charitable purpose—

with intent to defraud converts or appropriates the property or any part of it to or for—

- (i) his or her own use or benefit; or
- (ii) the use or benefit of any other person; or
- (iii) for any purpose other than the public or charitable purpose which applies to it; or
- (iv) otherwise disposes of or destroys the property or any part of it.

Penalty — Imprisonment for 7 years:

(2) No prosecution for any offence under this section shall be commenced—

- (a) by any person - without the consent of the Director of Public Prosecutions; or
- (b) by any person who has taken any civil proceedings against such trustee - without the sanction also of the court or judge before whom such civil proceedings have been had, or are pending.

Director, etc. of any body corporate or public company wilfully destroying books, etc.

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

- (a) being a director, manager, public officer or member of any body corporate or public company, with intent to defraud—
 - (i) destroys, alters, mutilates or falsifies any book, paper, writing, or valuable security belonging to the body corporate or public company; or
 - (ii) makes or concurs in the making of any false entry, or omits or concurs in omitting any material particular in any book of account or other document; or
- (b) being a director, manager or public officer of any body corporate or public company, receives or possesses himself or herself of any of the property of the body corporate or public company (otherwise than in payment of a just debt or demand), and with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry of the receipt or possession in the books and accounts of the body corporate or public company; or
- (c) being a director, manager or public officer of any body corporate or public company, makes, circulates or publishes (or concurs in making, circulating or publishing) any written statement or account which he or she knows to be false in any material particular, with intent—
 - (i) to deceive or defraud any member, shareholder or creditor of the body corporate or public company; or
 - (ii) to induce any person to become a shareholder or partner in the body corporate or public company; or
 - (iii) to induce any person to entrust or advance any property to the body corporate or public company; or
 - (iv) to induce any person to enter into any security for the benefit of the body corporate or public company.

Penalty — Imprisonment for 7 years.

(2) Nothing in this section shall enable or entitle any person to refuse to make a full and complete discovery by answer to any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matter in bankruptcy or insolvency.

(3) A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible against that person in any proceeding in respect of any of the offences under this section.

(4) Nothing contained in this section (or any proceeding, conviction or judgment to be had or taken against any person under this section) shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against this section might have had if this section had not been passed, but—

- (i) no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him or her; and
- (ii) nothing in this section shall affect or prejudice any agreement entered into, or security given, by any trustee having for its object the restoration or repayment of any trust property that has been misappropriated.

Fraudulent falsification of accounts

322.—(1) A clerk, officer or employee (or any person employed or acting in the capacity of a clerk, officer or employee) commits a summary offence if he or she wilfully and with intent to defraud—

- (a) destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which—
 - (i) belongs to or is in the possession of his or her employer; or
 - (ii) which has been received by him or her for or on behalf of his or her employer
- (b) makes, or concurs in omitting or altering, any material particular from or in any such book or document or account.

Penalty — Imprisonment for 7 years.

(2) It shall be sufficient in any information under this section to allege a general intent to defraud without naming any particular person intended to be defrauded.

Division 4 — Other Offences Involving Fraudulent Conduct

General dishonesty - Obtaining a gain

323. A person commits a summary offence if he or she does anything with the intention of dishonestly obtaining a gain from another person.

Penalty — Imprisonment for 5 years.

General dishonesty - Causing a loss

324.—(1) A person commits a summary offence if he or she does anything with the intention of dishonestly causing a loss to another person.

Penalty — Imprisonment for 5 years.

(2) A person commits a summary offence if he or she—

- (a) dishonestly causes a loss, or dishonestly causes a risk of loss, to another person; and
- (b) person knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty — Imprisonment for 5 years.

General dishonesty — Influencing a public official

325.—(1) A person commits a summary offence if he or she does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 5 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew—

- (a) that the official was a public official; or
- (b) that the duties were duties as a public official.

Obtaining financial advantage

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

- (a) engages in conduct; and
- (b) as a result of that conduct, obtains a financial advantage for himself or herself from another person; and
- (c) knows or believes that he or she is not eligible to receive that financial advantage.

Penalty — Imprisonment for 10 years.

(2) A person commits a summary offence if he or she—

- (a) engages in conduct; and
- (b) as a result of that conduct, obtains a financial advantage for another person from a third person; and
- (c) knows or believes that the other person is not eligible to receive that financial advantage.

Penalty—Imprisonment for 10 years.

(3) For the purposes of sub-section (2), a person is taken to have obtained a financial advantage for another person if the first-mentioned person induces the third person to do something that results in the other person obtaining the financial advantage.

Conspiracy to defraud - Obtaining a gain

327. A person commits a summary offence if he or she conspires with another person with the intention of dishonestly obtaining a gain from a third person.

Penalty Imprisonment for 10 years.

Conspiracy to defraud - Causing a loss

328.—(1) A person commits a summary offence if he or she conspires with another person with the intention of dishonestly causing a loss to a third person.

Penalty Imprisonment for 10 years.

(2) A person commits a summary offence if he or she—

- (a) conspires with another person to dishonestly cause a loss, or to dishonestly cause a risk of loss, to a third person; and
- (b) knows or believes that the loss will occur or that there is a substantial risk of the loss occurring.

Penalty — Imprisonment for 10 years.

Conspiracy to defraud — Influencing a public official

329.—(1) A person commits a summary offence if he or she conspires with another person with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official.

Penalty—Imprisonment for 10 years.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew—

- (a) that the official was a public official; or
- (b) that the duties were duties as a public official.

General provisions relating to conspiracy to defraud

330.—(1) For a person to be guilty of an offence of conspiracy to defraud—

- (a) the person must have entered into an agreement with one or more other persons; and
- (b) the person and at least one other party to the agreement must have intended to do the thing pursuant to the agreement; and
- (c) the person or at least one other party to the agreement must have committed an overt act pursuant to the agreement.

- (2) A person may be found guilty of an offence of conspiracy to defraud even if—
- (a) obtaining the gain, causing the loss, causing the risk of loss, or influencing the public official, as the case may be, is impossible; or
 - (b) the only other party to the agreement is a body corporate; or
 - (c) each other party to the agreement is a person who is not criminally responsible; or
 - (d) subject to sub-section (3), all other parties to the agreement have been acquitted of the offence.
- (3) A person cannot be found guilty of an offence of conspiracy to defraud if—
- (a) all other parties to the agreement have been acquitted of such an offence; and
 - (b) a finding of guilt would be inconsistent with their acquittal.
- (4) A person cannot be found guilty of an offence of conspiracy to defraud if, before the commission of an overt act pursuant to the agreement, the person—
- (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the doing of the thing.
- (5) A court may dismiss a charge of an offence against this section if the court thinks that the interests of justice require the court to do so.
- (6) Proceedings for an offence of conspiracy to defraud require the consent of the Director of Public Prosecutions, but before the necessary consent has been given, a person may be—
- (a) arrested for an offence against this section; or
 - (b) charged with an offence against this section; or
 - (c) remanded in custody or released on bail in connection with an offence against this section.

Division 5 — False or Misleading Statements and Documents

Definitions

331. In this Division—

“benefit” includes any advantage and is not limited to property.

False or misleading statements in applications

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

- (a) makes a statement (whether orally, in a document or in any other way); and
- (b) does so knowing that the statement—
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
- (c) the statement is made in, or in connection with—
 - (i) an application for a passport, licence, permit or authority; or
 - (ii) an application for registration; or
 - (iii) an application or claim for a benefit; and
- (d) any of the following sub-paragraphs applies—
 - (i) the statement is made to a government entity;
 - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, any law;
 - (iii) the statement is made in compliance or purported compliance with any law.

Penalty — Imprisonment for 2 years.

- (2) Absolute liability applies to each of the sub-paragraph (1)(d)(i), (ii) and (iii) elements of the offence.
- (3) A person commits a summary offence if he or she—
- (a) makes a statement (whether orally, in a document or in any other way); and
 - (b) does so reckless as to whether the statement—
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the statement is misleading; and
 - (c) the statement is made in, or in connection with—
 - (i) an application for a passport, licence, permit or authority; or
 - (ii) an application for registration; or
 - (iii) an application or claim for a benefit; and
 - (d) any of the following sub-paragraphs applies—
 - (i) the statement is made to a government entity;
 - (ii) the statement is made to a person who is exercising powers or performing functions under, or in connection with, any law;
 - (iii) the statement is made in compliance or purported compliance with any law.

Penalty — Imprisonment for 1 year.

- (4) Absolute liability applies to each of the sub-paragraph (3)(d)(i), (ii) and (iii) elements of the offence.
- (5) Sub-section (3) does not apply as a result of sub-paragraph (3)(b)(i) if the statement is not false or misleading in a material particular.
- (6) Sub-section (3) does not apply as a result of sub-paragraph (3)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.
- (7) If, in a prosecution for an offence against sub-section (1), the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence against sub-section (3), court may find the defendant not guilty of the offence against sub-section (1) but guilty of the offence against sub-section (3).

False or misleading information

- 333.—(1) A person commits a summary offence if he or she—
- (a) gives information to another person; and
 - (b) does so knowing that the information
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information is misleading; and
 - (c) any of the following sub-paragraphs applies—
 - (i) the information is given to a government entity;
 - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, any law;
 - (iii) the information is given in compliance or purported compliance with any law.

Penalty — Imprisonment for 1 year.

- (2) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

Obtaining credit, etc. by false pretences

334. A person commits a summary offence if he or she—
- (a) in incurring any debt or liability obtains credit by any false or misleading statement or representation, or by means of any other fraud; or

- (b) with intent to defraud his or her creditors (or any of them), makes or causes to be made any gift, delivery or transfer of or any charge on his or her property; or
- (c) with intent to defraud his or her creditors (or any of them), conceals, sells or removes any part of his or her property, after or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him or her.

Penalty — Imprisonment for 5 years.

False or misleading documents

335. A person commits a summary offence if he or she—

- (a) produces a document to another person; and
- (b) does so knowing that the document is false or misleading; and
- (c) the document is produced in compliance or purported compliance with any law.

Penalty — Imprisonment for 5 years.

Division 6 — Computer Offences

Definitions

336.—(1) In this Division—

“access to data held in a computer” means—

- (a) the display of the data by the computer or any other output of the data from the computer; or
- (b) the copying or moving of the data to any other place in the computer or to a data storage device; or
- (c) in the case of a program—the execution of the program.

“electronic communication” means a communication of information in any form by means of guided or unguided electromagnetic energy.

“impairment of electronic communication to or from a computer” includes—

- (a) the prevention of any such communication; or
- (b) the impairment of any such communication on an electronic link or network used by the computer—

but does not include a mere interception of any such communication.

“modification”, in respect of data held in a computer, means -

- (a) the alteration or removal of the data; or
- (b) an addition to the data.

“unauthorised” access, modification or impairment has the meaning given in section 337.

(2) In this Division, a reference to—

- (a) access to data held in a computer; or
- (b) modification of data held in a computer; or
- (c) the impairment of electronic communication to or from a computer—

is limited to such access, modification or impairment caused (whether directly or indirectly) by the execution of a function of a computer.

Meaning of unauthorised access, modification or impairment

337.—(1) In this Division—

- (a) access to data held in a computer; or
- (b) modification of data held in a computer; or

- (c) the impairment of electronic communication to or from a computer; or
- (d) the impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means—
by a person is unauthorised if the person is not entitled to cause that access, modification or impairment.

(2) Any such access, modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.

(3) For the purposes of an offence under this Division, a person causes any such unauthorised access, modification or impairment if the person's conduct substantially contributes to it.

(4) For the purposes of sub-section (1), if—

- (a) a person causes any access, modification or impairment of a kind mentioned in that sub-section; and
- (b) the person does so under a warrant issued under any law for the purpose of authorising such an action—

the person is entitled to cause that access, modification or impairment.

Geographical jurisdiction

338. A person commits an offence against all sections of this Division—

- (a) whether or not the conduct constituting the alleged offence occurs in Fiji; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs on Fiji.

Saving of other laws

339. This Division is not intended to exclude or limit the operation of any other law.

Serious computer offences

340.—(1) A person commits an offence if he or she—

- (a) causes—
 - (i) any unauthorised access to data held in a computer; or
 - (ii) any unauthorised modification of data held in a computer; or
 - (iii) any unauthorised impairment of electronic communication to or from a computer; and
- (b) knows the access, modification or impairment is unauthorised; and
- (c) intends to commit, or facilitate the commission of, a serious offence against a law (whether by that person or another person) by the access, modification or impairment.

(2) In a prosecution for an offence against sub-section (1), it is not necessary to prove that the defendant knew that the offence was—

- (a) an offence against a law; or
- (b) a serious offence.

(3) A person who commits an offence against this section is punishable by a penalty not exceeding the penalty applicable to the serious offence.

(4) A person may be found guilty of an offence against this section even if committing the serious offence is impossible.

(5) It is not an offence to attempt to commit an offence against this section.

(6) In this section—

“serious offence” means an offence that is punishable by imprisonment for life or a period of 5 or more years.

Unauthorised modification of data to cause impairment

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

- (a) causes any unauthorised modification of data held in a computer; and
- (b) knows the modification is unauthorised; and
- (c) is reckless as to whether the modification impairs or will impair—
 - (i) access to that or any other data held in any computer; or
 - (ii) the reliability, security or operation, of any such data.

Penalty — Imprisonment for 10 years.

(2) A person may be guilty of an offence against this section even if there is or will be no actual impairment to—

- (a) access to data held in a computer; or
- (b) the reliability, security or operation, of any such data.

(3) A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 342 (unauthorised impairment of electronic communication).

Unauthorised impairment of electronic communication

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

- (a) causes any unauthorised impairment of electronic communication to or from a computer; and
- (b) knows that the impairment is unauthorised.

Penalty — Imprisonment for 10 years.

(2) A conviction for an offence against this section is an alternative verdict to a charge for an offence against section 341 (unauthorised modification of data to cause impairment).

Unauthorised access to, or modification of, restricted data

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

- (a) causes any unauthorised access to, or modification of, restricted data; and
- (b) intends to cause the access or modification; and
- (c) knows that the access or modification is unauthorised.

Penalty — Imprisonment for 2 years.

(2) In this section—

“restricted data” means data—

- (a) held in a computer; and
- (b) to which access is restricted by an access control system associated with a function of the computer.

Unauthorised impairment of data held on a computer disk, etc.

344. A person commits a summary offence if he or she—

- (a) causes any unauthorised impairment of the reliability, security or operation of data held on—
 - (i) a computer disk; or
 - (ii) a credit card; or
 - (iii) another device used to store data by electronic means; and
- (b) intends to cause the impairment; and
- (c) knows that the impairment is unauthorised.

Penalty — Imprisonment for 2 years.

Possession or control of data with intent to commit a computer offence

- 345.—(1) A person commits a summary offence if he or she—
- (a) has possession or control of data; and
 - (b) has that possession or control with the intention that the data be used, by the person or another person, in:
 - (i) committing an offence against sections 341 to 343 (inclusive); or
 - (ii) facilitating the commission of such an offence.

Penalty – Imprisonment for 3 years.

(2) A person may be found guilty of an offence against this section even if committing the offence against sections 341- 343 (inclusive) is impossible.

(3) It is not an offence to attempt to commit an offence against this section.

(4) In this section, a reference to a person having possession or control of data includes a reference to the person—

- (a) having possession of a computer or data storage device that holds or contains the data; or
- (b) having possession of a document in which the data is recorded; or
- (c) having control of data held in a computer that is in the possession of another person (whether inside or outside Fiji).

Producing, supplying or obtaining data with intent to commit a computer offence

- 346.—(1) A person commits a summary offence if he or she—
- (a) produces, supplies or obtains data; and
 - (b) has the intention that the data be used, by himself, herself or another person, in—
 - (i) committing an offence against sections 341-343 (inclusive); or
 - (ii) facilitating the commission of such an offence.

Penalty — Imprisonment for 3 years.

(2) A person may be found guilty of an offence against this section even if committing the offence against sections 341-343 (inclusive) is impossible.

(3) It is not an offence to attempt to commit an offence against this section.

(4) In this section, a reference to a person producing, supplying or obtaining data includes a reference to the person—

- (a) producing, supplying or obtaining data held or contained in a computer or data storage device; or
- (b) producing, supplying or obtaining a document in which the data is recorded.

*Division 7 – Financial Information Offences**Definitions*

347.—(1) In this Division—

“ADI” (authorised deposit-taking institution) means a corporation that is a bank or financial institution registered as such under a law of Fiji.

“dealing” in personal financial information includes supplying or using financial information.

“deception” means an intentional or reckless deception (whether by words or other conduct, and whether as to fact or as to law), and includes—

- (a) a deception as to the intentions of the person using the deception or any other person; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

“dishonest” has the meaning given by section 348.

“obtaining” personal financial information includes possessing or making personal financial information.

“personal financial information” means information relating to a person that may be used (whether alone or in conjunction with other information) to access funds, credit or other financial benefits.

(2) For the purposes of this Division, a person is taken to obtain or deal in personal information without the consent of the person to whom the information relates if the consent of that person is obtained by any deception.

(3) This Division extends to personal information relating to—

- (a) an individual; or
- (b) a corporation; or
- (c) a living or dead person.

Dishonest

348. For the purposes of this Division, dishonest means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

Dishonestly obtaining or dealing in personal financial information

349. A person commits a summary offence if he or she—

- (a) dishonestly obtains, or deals in, personal financial information; and
- (b) obtains, or deals in, that information without the consent of the person to whom the information relates.

Penalty — Imprisonment for 5 years.

Possession or control of thing with intent to dishonestly obtain or deal in personal financial information

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

- (a) has possession or control of any thing; and
- (b) has that possession or control with the intention that the thing be used—
 - (i) by the person; or
 - (ii) by another person—

to commit an offence against section 349 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty - Imprisonment for 3 years.

(2) A person may be found guilty of an offence against sub-section (1) even if committing the offence against section 349 (dishonestly obtaining or dealing in personal financial information) is impossible.

(3) It is not an offence to attempt to commit an offence against sub-section (1).

Importation of thing with intent to dishonestly obtain or deal in personal financial information

351. A person commits a summary offence if the person—

- (a) imports a thing into Fiji; and
- (b) does so with the intention that the thing be used—
 - (i) by the person; or
 - (ii) by another person—

in committing an offence against section 349 (dishonestly obtaining or dealing in personal financial information) or to facilitate the commission of that offence.

Penalty — Imprisonment for 3 years.

*Division 8 – Unwarranted Demands**Unwarranted demand with menaces*

352.—(1) For the purposes of this Division, a person (the first person) makes an unwarranted demand with menaces of another person if, and only if—

- (a) the first person makes a demand with menaces of the other person; and
- (b) the first person does not believe that he or she has reasonable grounds for making the demand; and
- (c) the first person does not reasonably believe that the use of the menaces is a proper means of reinforcing the demand.

(2) This Division applies to a demand whether or not it is for property.

(3) This Division applies to a demand with menaces, whether or not the menaces relate to conduct to be engaged in by the person making the demand.

Menaces

353.—(1) For the purposes of this Division, menaces includes—

- (a) a threat (whether express or implied) of conduct that is detrimental or unpleasant to another person; or
- (b) a general threat of detrimental or unpleasant conduct that is implied because of the status, office or position of the maker of the threat.

(2) For the purposes of this Division, a threat against an individual is taken not to be menaces unless—

- (a) both—
 - (i) the threat would be likely to cause the individual to act unwillingly; and
 - (ii) the maker of the threat is aware of the vulnerability of the individual to the threat; or
- (b) the threat would be likely to cause a person of normal stability and courage to act unwillingly.

(3) For the purposes of this Division, a threat against a person who is not an individual is taken not to be menaces unless—

- (a) the threat would ordinarily cause an unwilling response; or
- (b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

Unwarranted demands of a public official

354. A person commits an indictable offence (which is triable summarily) if he or she—

- (a) makes an unwarranted demand with menaces of another person; and
- (b) the demand or the menaces are directly or indirectly related to—
 - (i) the other person's capacity as a public official; or
 - (ii) any influence the other person has in the other person's capacity as a public official; and
- (c) the first-mentioned person does so with the intention of—
 - (i) obtaining a gain; or
 - (ii) causing a loss; or
 - (iii) influencing the official in the exercise of the official's duties as a public official.

Penalty — Imprisonment for 12 years.

Unwarranted demands made by a public official

355. A public official commits an indictable offence (which is triable summarily) if he or she—

- (a) makes an unwarranted demand with menaces of another person; and
- (b) the demand or the menaces are directly or indirectly related to—
 - (i) the official's capacity as a public official; or
 - (ii) any influence the official has in the official's capacity as a public official; and

- (c) the official does so with the intention of—
- (i) obtaining a gain; or
 - (ii) causing a loss; or
 - (iii) influencing another public official in the exercise of the other official's duties as a public official.

Penalty — Imprisonment for 12 years.

Sub-Division 9 — Personation

Personation in general

356. A person commits a summary offence if he or she, with intent to defraud any person, falsely represents himself or herself to be some other person (living or dead).

Penalty — Imprisonment for 1 year, but if the representation is that the offender is a person entitled by operation of law to any specific property and he or she commits the offence to obtain the property or possession of it, he or she is liable to imprisonment for 7 years.

Falsely acknowledging deeds, recognisances, etc.

357. A person commits a summary offence if he or she, without lawful authority or excuse (the proof of which lies on him or her) makes, in the name of any other person, before—

- (a) any court; or
- (b) person lawfully authorised to take such an acknowledgment—
an acknowledgment of liability of any kind, or an acknowledgment of a deed or other instrument.

Penalty — Imprisonment for 7 years.

Personation of a person named in a certificate

358. A person commits a summary offence if he or she utters any document which—

- (a) has been issued by lawful authority to another person; and
- (b) certifies that other person to be a person—
 - (i) possessed of any qualification recognised by law for any purpose; or
 - (ii) to be the holder of any office; or
 - (iii) to be entitled to exercise any profession, trade, or business; or
 - (iv) to be entitled to any right or privilege; or
 - (v) to enjoy any rank or status—

and falsely represents himself to be the person named in the document.

Penalty — Imprisonment for 10 years.

Lending, etc. certificate for personation

359. A person commits a summary offence if he or she, being a person to whom any document has been issued by lawful authority which certifies that person to be a person—

- (a) possessed of any qualification recognised by law for any purpose; or
- (b) to be the holder of any office or to be entitled to exercise any profession, trade or business; or
- (c) to be entitled to any right or privilege; or
- (d) to enjoy any rank or status—

sells, gives or lends the document to another person with intent that that other person may represent himself to be the person named in it.

Penalty — Imprisonment for 6 months.

Personation of person named in a testimonial of character

360. A person commits a summary offence if he or she, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person.

Penalty — Imprisonment for 1 year.

Lending, etc. testimonial for personation

361. A person commits a summary offence if he or she, being a person to whom any such document as is mentioned in section 360 has been given, gives, sells or lends the document to another person with intent that that other person may utter the document for the purpose of obtaining any employment.

Penalty — Imprisonment for 6 months.

PART 18 — OTHER MISCELLANEOUS OFFENCES

*Division 1 — Offences Causing Injury to Property**Arson*

362. A person commits an indictable offence if he or she wilfully and unlawfully sets fire to—

- (a) any building or structure (whether completed or not); or
- (b) any vessel (whether completed or not); or
- (c) any commercial plantation of trees;
- (d) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (e) a mine, or the workings, fittings or appliances of a mine.

Penalty — Imprisonment for life.

Attempts to commit arson

363. A person commits an indictable offence if he or she—

- (a) attempts unlawfully to set fire to any such thing as is mentioned in section 362; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in section 362 is likely to catch fire from it.

Penalty — Imprisonment for 14 years.

Setting fire to crops and growing plants

364. A person commits a summary offence if he or she wilfully and unlawfully sets fire to—

- (a) a crop of cultivated produce (whether standing, picked or cut); or
- (b) a crop of hay or grass under cultivation (whether the natural or indigenous product of the soil or not, and whether standing or cut); or
- (c) any standing trees, saplings, or shrubs (whether indigenous or not) under cultivation.

Penalty — Imprisonment for 10 years.

Attempting to set fire to crops, etc.

365. A person commits a summary offence if he or she—

- (a) attempts unlawfully to set fire to any such thing as is mentioned in section 364; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in section 364 is likely to catch fire from it.

Penalty — Imprisonment for 7 years.

Casting away vessels

366. A person commits a summary offence if he or she—

- (a) wilfully and unlawfully casts away or destroys any vessel (whether completed or not); or
- (b) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

- (c) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark or signal used for purposes of navigation, or exhibits any false light or signal.

Penalty — Imprisonment for 10 years.

Attempts to cast away vessels

367. A person commits a summary offence if he or she—

- (a) attempts unlawfully to cast away or destroy a vessel (whether completed or not); or
 (b) attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress.

Penalty — Imprisonment for 7 years.

Injuring animals

368. A person commits a summary offence if he or she wilfully and unlawfully kills, maims or wounds any animal or bird capable of being stolen.

Penalty — Imprisonment for 5 years.

Punishment for malicious injuries in general

369.—(1) A person commits a summary offence if he or she wilfully and unlawfully destroys or damages any property.

Penalty — Imprisonment for 2 years, if no other punishment is provided under any other provision of this section.

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if—

- (a) any person is in the dwelling-house or vessel; or
 (b) the destruction or damage actually endangers the life of any person,
 the offender commits an indictable offence.

Penalty — Imprisonment for life.

(3) If the property in question—

- (a) is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building; or
 (b) is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway or canal passes, and the property is destroyed; or
 (c) being a railway, or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part of it, dangerous or impassable, and it or any part of it is rendered dangerous or impassable—

the offender commits an indictable offence.

Penalty — Imprisonment for life.

(4) If the property in question—

- (a) is a testamentary instrument (whether the testator is living or dead); or
 (b) is a register (or a copy of any part of a register which is required by law to be sent to any public officer) which is authorised or required by law to be kept for—
 (i) authenticating or recording the title to any property; or
 (ii) recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register—

the offender commits an indictable offence.

Penalty — Imprisonment for 14 years.

- (5) If the property in question is—
- (a) a vessel in distress or wrecked, or stranded; or
 - (b) anything which belongs to such vessel—

the offender commits a summary offence.

Penalty — Imprisonment for 7 years.

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender commits an indictable offence (which is triable summarily).

Penalty — Imprisonment for 14 years.

- (7) If the property in question—
- (a) being a vessel (whether completed or not) is
 - (i) destroyed; or
 - (ii) damaged, and the damage is done with intent to destroy it or render it useless; or
 - (b) is a light, beacon, buoy, mark or signal used for the purposes of navigation, or for the guidance of persons engaged in navigation; or
 - (c) is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for the purpose of lading or unloading goods; or
 - (d) being a railway, or being a bridge, viaduct or aqueduct which is constructed over a highway, railway or canal, or over which a highway, railway or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct or aqueduct, or the highway, railway or canal passing over or under the same, or any part of it, dangerous or impassable; or
 - (e) being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is —
 - (i) destroyed; or
 - (ii) damaged, and the damage is done with intent to destroy the thing in question, or to render it useless; or
 - (f) is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or
 - (g) if the property in question is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not; or
 - (h) being a rope, chain or tackle of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is—
 - (i) destroyed; or
 - (ii) damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or
 - (i) is a well, or bore for water, or the dam, bank, wall or floodgate of a millpond or pool—
- the offender commits a summary offence.

Penalty — Imprisonment for 7 years.

- (8) If the property in question is a document which is —
- (a) deposited or kept in a public office; or

- (b) evidence of title to any land or estate in land—
the offender is guilty of a summary offence.

Penalty — Imprisonment for 7 years.

Attempts to destroy property by explosives

370. A person commits an indictable offence (which is triable summarily) if he or she, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place.

Penalty — Imprisonment for 14 years.

Spreading infectious diseases to animals

371. A person commits a summary offence if he or she wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen.

Penalty — Imprisonment for 7 years.

Removing boundary marks with intent to defraud

372. A person commits a summary offence if he or she wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land.

Penalty - Imprisonment for 3 years.

Wilful damage, etc. to survey and boundary marks

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

- (a) wilfully removes, defaces or injures any survey mark or boundary mark which shall have been made or erected by or under the direction of any Government department or in the course of or the purposes of a Government survey; or
- (b) being under an obligation to maintain in repair any boundary mark made or erected as stated in paragraph (a), neglects or refuses to repair the same; or
- (c) wilfully removes, defaces, or injures any survey mark erected by or under the authority of any licensed surveyor or any mark erected by an intending applicant for any lease, licence or right under any Act relating to mines or minerals.

Penalty — Imprisonment for 3 months or to a fine of 20 penalty units, or both.

(2) A person found guilty of an offence under sub-section (1) may be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect.

Penalties for damage, etc. to railway works

374. A person commits a summary offence if he or she—

- (a) wilfully damages, injures or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material, or plant, acquired for or belonging to any railway works; or
- (b) pulls up, removes, defaces, or destroys, or in any way interferes with, any poles, stakes, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones or buildings, or any other material, belonging to any railway works; or
- (c) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or
- (d) wilfully molests, hinders or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway.

Penalty — Imprisonment for 3 months or to a fine of 20 penalty units, or both.

Criminal intimidation

375.—(1) A person commits a summary offence if he or she, without lawful excuse—

- (a) threatens another person or other persons (whether individually or collectively) with any injury to—
- (i) their person or persons; or
 - (ii) their reputation or property; or
 - (iii) to the person, reputation or property of anyone in whom that person is or those persons are interested—

with intent –

- (iv) to cause alarm to that person or those persons; or
- (v) to cause that person or those persons to do any act which that person is or those persons are not legally bound to do; or
- (vi) to omit to do any act which that person is or those persons are legally entitled to do—
as the means of avoiding the execution of such threat; or

- (b) directly or indirectly, knowingly causes a threat to be made to another person or other persons (whether individually or collectively) of any injury to

- (i) their person or persons; or
- (ii) their reputation or property; or
- (iii) to the person, reputation or property of anyone in whom that person is or those persons are interested—

with intent –

- (iv) to cause alarm to that person or those persons; or
- (v) to cause that person or those persons to do any act which that person is or those persons are not legally bound to do; or
- (vi) to omit to do any act which that person is or those persons are legally entitled to do—
as the means of avoiding the execution of such threat.

Penalty — Imprisonment for 5 years.

(2) If the threat is—

- (a) to cause death or grievous hurt; or
- (b) to cause the destruction of any property by fire; or
- (c) to cause an offence punishable with death or with imprisonment for a term which may extend to 7 years or more; or
- (d) impute on chastity to a woman

the offender commits an indictable offence (which is triable summarily).

Penalty — Imprisonment for 10 years.

*Division 2 — Nuisances and Other Miscellaneous Offences**Common nuisance*

376.—(1) A person commits a summary offence if he or she does an act not authorised by law or omits to discharge a legal duty and by that act or omission—

- (a) causes any common injury; or
- (b) causes any danger or annoyance; or
- (c) obstructs or causes inconvenience to the public in the exercise of common rights.

Penalty — Imprisonment for 1 year.

(2) For the purposes of sub-section(1) it is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

Traffic in obscene publications

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

- (a) for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his or her possession any one or more obscene writing, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects, or any other object tending to corrupt morals; or
- (b) for any of the purposes stated in paragraph (a), and in relation to any matters or things described in paragraph (a)—
 - (i) imports, conveys or exports; or
 - (ii) causes to be imported, conveyed or exported; or
 - (iii) or in any manner puts any of them in circulation; or
- (c) in relation to any matters or things described in paragraph (a)—
 - (i) carries on or takes in any business (whether public or private) concerned with any such matters or things; or
 - (ii) deals in any such matters or things in any manner; or
 - (iii) distributes any of them or exhibits any of them publicly; or
 - (iv) makes a business of lending any of them; or
- (d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in any matters or things described in paragraph (a), that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured (either directly or indirectly); or
- (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals.

Penalty — Imprisonment for 5 years or a fine of 40 penalty units, or both.

(2) If, in respect of any of the offences specified in paragraphs (a), (b), (c), or (d) of sub-section (1), any constituent element of the offence is committed in Fiji, such commission shall be sufficient to render the person accused of such offence triable in Fiji for the offence.

(3) A court, on convicting any person of an offence against this section, may order that any matter or thing made, possessed or used for the purpose of such offence be destroyed.

(4) A court may, on the application of the prosecution, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of the obscene matter or thing.

Offences in connection with street and house to house collections

378.—(1) In this section—

“collection” means an appeal to the public or any class of the public, made—

- (a) by means of visits from house to house; or
- (b) by soliciting in public ways or other public places—

(or by both such means) to give money or other property, not being money or property due or about to fall due from the donors under or by virtue of any written law, contract or other legal obligation;

“collector” means, in relation to a collection, a person who makes such an appeal by either of the said means;

“house” includes a place of business;

“promoter” means, in relation to a collection, a person who causes others to act as collectors for the purposes of a collection.

(2) No person may assist or take part in a collection without the written authority of the promoter (if any) of collection to which this section relates, and every person so authorised shall produce the written authority for inspection on a demand being made by any police officer or any person solicited by such collector.

(3) No collection shall be made in any part of the carriageway of any street.

(4) No collection shall be made in any place to the obstruction, annoyance or intimidation of any person.

(5) Except with the permission of a gazetted officer of the police or district officer not more than two persons shall act as collectors at the same place.

(6) No collector shall carry any collecting box, receptacle or tray which does not bear displayed prominently on it the name of the fund for which the collection is being made.

(7) No person in connexion with any collection shall display or use a written authority or other document or thing intended, calculated or likely to cause any person to believe that the person displaying or using the same is an authorised collector for the purposes of a collection when such is not the case.

(8) A police officer in uniform may require any person whom he or she believes to be acting as a collector for the purposes of a collection to immediately provide his or her name and address.

(9) A police officer may arrest without warrant any person contravening or failing to comply with the provisions of sub-section (3), (4), (5) or (8).

(10) A person commits a summary offence if he or she contravenes or fails to comply with any of the provisions of this section.

Penalty — Imprisonment for 6 months or a fine of 20 penalty units, or both.

Oppressive selling

379. A person commits a summary offence if he or she offers goods or services for sale (in public or private) and he or she unreasonably exerts oppressive or unfair pressure on any person in a manner which causes annoyance to that person.

Penalty—

(a) for a first offence - a fine of 5 penalty units; and

(b) for a second or subsequent offence – Imprisonment for 1 year or a fine of 50 penalty units, or both.

Unlawful use of locomotives, etc.

380. A person commits a summary offence if he or she unlawfully or without the permission of some person authorised to give it uses or travels upon any locomotive, carriage or truck in or upon any railway or tramline.

Penalty — Imprisonment for 2 months or a fine of 5 penalty units, or both.

Inciting dogs to attack

381. A person commits a summary offence if he or she incites a dog or other animal to attack, worry or put in bodily fear any other person or any animal.

Penalty — Imprisonment for two months or a fine of 5 penalty units, or both.

Wearing of uniform without authority, etc.

382.—(1) A person commits a summary offence if he or she, not being a person serving in a disciplined service or police force of Fiji or any other Commonwealth country, wears—

(a) the uniform of any of those services or forces; or

(b) any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform.

Penalty — Imprisonment for one month or a fine of 5 penalty units, or both.

(2) Nothing in sub-section (1) shall prevent any person from wearing any uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance, or in the course of any bona fide military representation.

(3) A person commits a summary offence if he or she—

(a) unlawfully wears—

- (i) the uniform of any of the services or forces described in sub-section (1); or
- (ii) any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform; or

(b) employs any other person so to wear such uniform or dress—

in such a manner or in such circumstances as to be likely to bring contempt on that uniform.

Penalty — Imprisonment for 3 months or a fine of 5 penalty units, or both.

(4) A person commits a summary offence if he or she, not being in the service of Fiji or having previously received the written permission of the Minister so to do—

(a) imports or sells; or

(b) has in his or her possession for sale any such uniform described in sub-section (1), or the buttons or badges appropriate to the uniform.

Penalty — Imprisonment for 6 months or to fine of 10 penalty units, or both.

(5) When any person has been found guilty of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited, unless the Minister otherwise orders.

Negligent act likely to spread infection of disease dangerous to life

383. A person commits a summary offence if he or she unlawfully or negligently does any act which is, and which he or she knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life.

Penalty — Imprisonment for 2 years.

Adulteration of food or drink intended for sale

384. A person commits a summary offence if he or she subjects any article of food or drink to such treatment as to make such article noxious as food or drink or of less nutritive value—

(a) intending to sell such article as food or drink; or

(b) knowing it to be likely that it will be sold as food or drink.

Penalty — Imprisonment for 1 year.

Sale of noxious food or drink

385.—(1) A person commits a summary offence if he or she sells, or offers or exposes for sale, as food or drink, any article which—

(a) has been rendered or has become noxious; or

(b) is in a state unfit for food or drink—

knowing or having reason to believe that the same is noxious as food or drink.

Penalty — Imprisonment for 1 year.

(2) Any person selling any article which has been rendered or has become noxious shall be taken to have knowledge that the same is noxious until the contrary is proved by that person.

Fouling air

386. A person commits a summary offence if he or she intentionally pollutes the atmosphere in any place so as to make it noxious to the health of persons—

- (a) in general dwelling; or
- (b) carrying on business in the neighbourhood; or
- (c) passing along a public way.

Penalty — Imprisonment for 2 years or a fine of 20 penalty units, or both.

Criminal trespass

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

- (a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate or annoy any person lawfully in possession of such property;
- (b) having lawfully entered into or upon such property unlawfully remains there with intent to intimidate, insult or annoy any such person or with intent to commit any offence; or
- (c) unlawfully persists in coming or remaining upon such property after being warned not to come thereon or to depart from the property.

Penalty — Imprisonment for 3 months, but if the property upon which the offence is committed is any building, tent or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property, the offender is liable to imprisonment for 1 year.

(2) The Minister responsible for Fijian affairs may certify that a person or persons are lawfully in possession of native land for the purposes of paragraph (a).

(3) The Minister responsible for Fijian affairs may give such a warning in relation to native land for the purposes of paragraph (c).

(4) A person commits a summary offence if he or she enters by night, and without lawful excuse—

- (a) any dwelling-house; or
- (b) any verandah or passage attached to a dwelling-house; or
- (c) any yard, garden or other land adjacent to a dwelling-house.

Penalty — Imprisonment for 1 year.

PART 19 — ACCESSORIES AFTER THE FACT

Definition of accessories after the fact

388.—(1) A person who receives or assists another who has, to his or her knowledge, committed an offence, in order to enable him or her to escape punishment, is said to become an accessory after the fact to the offence.

(2) A wife does not become an accessory after the fact to an offence committed by her husband by—

- (a) receiving or assisting him in order to enable him to escape punishment; or
- (b) receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part in order to enable that other person to escape punishment.

(3) A husband does not become an accessory after the fact to an offence committed by his wife, by receiving or assisting her in order to enable her to escape punishment.

Punishment of accessories after the fact to indictable offences

389. Any person who becomes an accessory after the fact to an indictable offence (whether or not it is triable summarily) commits a summary offence.

Penalty — Imprisonment for 3 years.

Punishment of accessories after the fact to summary offence

390. Any person who becomes an accessory after the fact to a summary offence commits a summary offence.

Penalty — Imprisonment for 1 year.

CHAPTER IV – REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal of the Penal Code

391.—(1) The Penal Code is repealed.

(2) This section shall apply subject to sections 392 and 393.

Savings provisions

392.—(1) Nothing in this Decree affects the validity of any court proceedings for an offence under the Penal Code which has been commenced or conducted prior to the commencement of this Decree.

(2) When imposing sentences for any offence under the Penal Code which was committed prior to the commencement of this Decree, the court shall apply the penalties prescribed for that offence by the Penal Code.

Transitional provisions

393.—(1) For all purposes associated with the application of section 392, the Penal Code shall still apply to any offence committed against the Penal Code prior to the commencement of this Decree, and for the purposes of the proceedings relating to such offences the Penal Code shall be deemed to be still in force.

Given under my hand this 4th day of November 2009.

EPELI NAILATIKAU
Vice-President of the Republic of Fiji