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GOVERNMENT OF FIJI

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VOLATILE SUBSTANCE ABUSE CONTROL DECREE 2013
(Decree No. of 2013)

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VOLATILE SUBSTANCE ABUSE CONTROL DECREE 2013
(Decree No. of 2013)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree -

TO PROVIDE FOR THE CONTROL OF VOLATILE SUBSTANCE ABUSE AND THE PROTECTION OF CHILDREN FROM HARM RESULTING FROM VOLATILE SUBSTANCE ABUSE AND FOR RELATED PURPOSES

PART 1 – PRELIMINARY

Short title, commencement and application

1. - (1) This Decree may be cited as the Volatile Substance Abuse Control Decree 2013.
- (2) This Decree shall come into force on a date appointed by the Minister by notice in the *Gazette*.
- (3) This Decree shall bind the State.

Objectives

2. The objectives of this Decree is to provide a legal framework for the –
 - (a) prevention of volatile substance abuse; and
 - (b) protection of persons, particularly children, from harm resulting from volatile substance abuse.

Interpretation

3. In this Decree, unless the contrary intention appears –
 - “abuse of a volatile substance” means the misuse of a volatile substance by deliberately inhaling the fumes or any other form of consumption of a volatile substance for the purpose of intoxication.;
 - ‘Alcohol and Drug Abuse Centre’ means a clinic for the rehabilitation of Alcoholics and Drug dependants.
 - “authorised person” means a person of a class or classes of persons appointed by the Minister as such in section 35;
 - “assessment” means an assessment referred to in section 27;
 - “assessor” means a health professional approved under section 26 to make an assessment;
 - “child” means a person under the age of 18 years;
 - ‘counsellor’ means someone who has acquired the counselling standard of the Ministry of Education, Social Welfare Department and the Ministry of Health???. [Locally & Internationally Recognize Institutions]

“court” means the Magistrate Court;

“health professional” a medical practitioner as defined in the Medical and Dental Practitioner Decree 2010;

“informant” means a person who supplies information to a police officer or other authority in respect of the commission of an offence or suspected offence;

“inhalant” means an item which may be used to inhale a volatile substance;

“instrument” means a standard, code, specification, protocol, method or other document;

“Minister” means the Minister responsible for Education;

“Permanent Secretary” means the Permanent Secretary for Education;

“child at risk”, in relation to an application or a compulsory counselling order, means the person in respect of whom the application or order is made;

“place of safety” means a place declared under section 38 – to be a place appointed in collaboration with the Social Welfare Department.;

“police officer” means a member of the Fiji Police Force;

“possession of a volatile substance or inhalant” includes having control of the volatile substance or inhalant;

“responsible adult” means a person reasonably considered by a police officer or authorised person to be capable of taking care of an apprehended person;

“responsible officer” means a police officer on duty at the police station or where an apprehended person is in protective custody, who is responsible for the care of the person;

“senior officer” means a police officer who is in charge of the police post or station;

“severe harm”, in relation to a person, means a significant deterioration of or damage to any of the following resulting from abuse of a volatile substance –

- (a) physical harm;
- (b) neurological harm
- (c) significant deterioration of or damage to the person’s mental condition

“supply” includes the following –

- (a) give, distribute, sell, make available, administer or transport, whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;
- (b) barter or exchange
- (c) have or keep in possession for supply;
- (d) offering to do an act referred to in paragraph (a) or (b);

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- (e) doing or offering to do an act preparatory to, in furtherance of, or in connection with, an act referred to in paragraphs (a)-(d) inclusive of permitting or assisting in the supply or consumption of a volatile substance on any premises;

“volatile substance” includes –

- (a) plastic solvent, adhesive cement, cleaning agent, glue, nail polish remover, lighter fluid, petrol or any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas;
- (b) a substance listed in Schedule 1;
- (c) a substance declared under section 6 to be a volatile substance; or
- (d) any substance which is intended for consumption or altered to emit fumes for inhalation by a child with intention to become intoxicated.

PART 2 –PROHIBITION AND DECLARATION OF VOLATILE SUBSTANCES

Prohibition on abuse of volatile substances

4. For the purpose of this Decree there shall be a prohibition on the abuse of volatile substances by children.

Prohibition on sale or supply of volatile substance to children

5. - (1) A person must not –

- (a) sell or supply any volatile substance to a child; or
- (b) purchase a volatile substance for the use by a child ..

(2) A person who sells or supplies a volatile substance to a child in circumstances where it is reasonable to suspect that the child may inhale it or use it to become intoxicated commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding two years or both.

(3) A person entitled or appearing to be in control of any premises whether public or private who allows such premises to be used for the sale or supply of volatile substances to children commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding two years or both.

Declaration of volatile substances

6. Notwithstanding the list of volatile substances set out in Schedule 1 of this Decree, the Minister may, by notice in the *Gazette*, declare other substances to be a volatile substance.

PART 3 – PREVENTING INHALATION OF VOLATILE SUBSTANCES AND PROTECTING HEALTH AND SAFETY OF PERSONS

Division 1 – General provisions relating to exercise of powers

Police power not in derogation of other powers

7. – (1) A power conferred by this PART on a police officer is in addition to and not in derogation of any other power such the police officer may have under any other part of this Decree or any other law in force in the Republic of Fiji.

No warrant required

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8. – (1) A police officer or authorised person may exercise a power under this PART without a warrant.

(2) A police officer or authorised person may use such force as is reasonably necessary when exercising a power under this PART.

Manner of giving information

9. - (1) Any information or request that a police officer or authorised person requires of a person must be given or made in a way that is likely to be understood.

(2) A person commits an offence by failing or refusing to furnish information required under subsection(1) or to produce any records or a copy of any records required by the police officer or authorised officer and is liable to a fine of one hundred dollars (\$100.00) for each day during which the offence continues.

Records to be kept

10. Records must be kept in writing and filed by a Police officer or authorised person of all actions taken under Division 2 and 3 of the Decree.

Division 2 – Powers of search and seizure

Search and seizure of volatile substance or inhalant by authorised officers

11. Notwithstanding any provisions of this Decree if an authorised person has reasonable grounds to believe that a child –

- (a) is in possession of a volatile substance; and
- (b) is inhaling or likely to inhale a volatile substance,

the authorised person may search that child and seize any volatile substances or inhalants in the child's possession.

Search and seizure of volatile substance or inhalant by Police officer

12. – (1) If a Police officer has reasonable grounds to believe that –

- (a) a child is in possession of a volatile substance; and
- (b) is inhaling or likely to inhale a volatile substance; or
- (c) a person has supplied or is supplying or selling volatile substances to children from any premises whether public or private,

the police officer may search that child and any part of the premises aforesaid and seize any volatile substances or inhalants found therein.

(2) Before conducting the search, the police officer must identify him or herself and in the case of an authorised person produce their identity card used under section 35.

(3) This section does not authorise a search that involves the removal of the person's clothes or an examination of the person's body cavities.

(4) This section also applies to persons in charge of or appearing to be in charge of any premises to be searched.

Disposal of volatile substance or inhalant

13. – (1) This section is applied if a police officer or authorised person is given or seizes a volatile substance or inhalant under section 11 and 12.

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(2) The police officer or authorised person must take the volatile substance and any inhalant, to a police station as soon as practicable for disposal or destruction.

(3) If the police officer or authorised person believes that removing the volatile substance or inhalant to a police station may cause a risk to any person's health or safety or is impracticable under the circumstances, he or she may dispose of or destroy the volatile substance or inhalant and file a report as to the circumstances and method of seizure respectfully for such disposal.

Obstruction

14. – (1) A person must not obstruct an authorised officer or police officer in the exercise of his powers under this Decree.

(2) For the purposes of this Decree, a person obstructs an authorised officer or police officer in the exercise of his powers under this Decree if he or she –

- (a) assaults, abuses, intimidates or insults the police officer or authorised officer or any other person assisting in the exercise of his powers under this Decree;
- (b) directly or indirectly deliberately prevents any person from being questioned by an authorised officer or from furnishing under this Decree, any information or records or copies or attempts to do so; or
- (c) in any other way obstructs or attempts to obstruct an authorised officer in the exercise of his powers under this Decree.

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

Division 3 – Powers to detain in protective custody

Interests and welfare of children

15. - (1) In exercising a power under this Division, a police officer must consider the best interests of the child when deciding to take them into protective custody.

(2) The welfare of any child who may be affected by the exercise powers under this Decree is of paramount consideration, whether the child is to be taken into protective custody or if a child whose health and safety may be at risk from the abuse of volatile substances.

When a child may be taken into protective custody

16. – (1) An authorised officer exercising the powers under section 11 –

- (a) being aware that the child is so intoxicated from; and
- (b) may continue to abuse a volatile substance,

must inform the nearest officer or police station for the child to be taken into protective custody.

(2) A police officer may take a child into protective custody if the police officer has reasonable grounds to believe the child –

- (a) is inhaling or has recently inhaled a volatile substance; and
- (b) should be taken into protective custody to protect the health and safety of the child or other persons.

(3) When taking a child into protective custody or as soon as practicable, the police officer must follow the procedures in section 17 unless the police officer believes on reasonable grounds that –

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- (a) the child in question is unable to understand the information referred to in that section because of the effects of inhaling a volatile substance; or
- (b) it is otherwise impracticable to do so.

Procedures when taking a child into protective custody

17. - (1) If a police officer takes a child into protective custody under section 16, he or she must –

- (a) inform the child of his or her rank and the police station to which he or she is stationed; and
- (b) if not in uniform, must show the child his or her police identification card;

(2) If an authorised person takes a child in, the authorised person must inform the child of his or her identity by showing the person his or her identity card issued under section 43.

(3) The police officer or authorised person must inform the child that –

- (a) the child is not under arrest in relation to any alleged offence;
- (b) the child is being apprehended to protect his or her health and safety or other persons; and
- (c) the police officer or authorised person intends to take the child to a place of safety or to a responsible adult.

Taking person to place of safety

18. - (1) As soon as practicable after taking a child into protective custody under section 16, the police officer or authorised officer must take the child to a place of safety, where a person may be released into the care of his or her parents or guardians at that place.

(2) The child apprehended must not be released into the care of any other responsible adult without first getting the approval, whether written or verbal, of the parents or guardians.

Protective Custody

When a person may be released or taken into protective custody

19. - (1) This section applies if, after making all reasonable efforts, the police officer or authorised person is unable to –

- (a) take the child to a place of safety or responsible adult; or
- (b) finds a responsible adult who will consent to take care of the child.

(2) If the police officer or authorised person considers that the child no longer poses a risk, he or she may release the child in a place he or she considers suitable under the circumstances.

(3) If the police officer or authorised person considers that the child continues to pose a risk, he or she may take the apprehended child to a police station to be held in protective custody in accordance with Division 4.

(4) If a child is taken to a police station to be held in protective custody, the police officer or authorised person must, if practicable, inform a parent or guardian as soon as possible.

Division 4 – Protective custody

Child or young person not to be kept in police station cell

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20. A child who has been apprehended by the police officer or authorised person under section 16, must not be held inside a cell at a police station.

Searching the child in custody

21. - (1) A responsible officer may –

- (a) search the child apprehended or cause an apprehended child's premises to be searched; and
- (b) remove or cause to be removed from the apprehended person or premises, for safe keeping until the person is released from protective custody –
 - i. money and valuables found on or about the apprehended person or premises; and
 - ii. items on or about the apprehended person or premises that are likely to cause harm, or could be used by any person to cause harm, either to the apprehended person or any other person.

(2) All money and valuables taken from an apprehended person must be recorded in a register kept for that purpose and must be returned to the apprehended person on receipt of a signature or other mark made in the register by the apprehended person.

Period of protective custody

22. - (1) Subject to this Division, a child who has been apprehended may be held in protective custody only until it reasonably appears to a responsible officer that the child no longer poses a risk, the officer must release the child or cause the child to be released from protective custody.

(2) A child who is in protective custody after midnight and before 7:30am on a particular day may be held in custody until 7:30am of that day even if the person no longer poses a risk during the period.

Release from protective custody

23. - (1) A responsible officer must take into account section 21 (2) before allowing an apprehended child to be released into the care of a person the officer reasonably believes in is capable of taking care of the apprehended person.

(2) Subsection (1) does not apply if the apprehended child is-a child who objects for good reason to being released into the care of the other person and the responsible officer is satisfied the child or young person is 16 years of age, and has understanding and in a condition to make an informed opinion.

Continued protective custody

24. - (1) A period of continued protective custody will continue if –

- (a) a child is held in protective custody for 6 hours; and
- (b) after the 6 hours expires, it reasonably appears to a responsible officer that the child continues to pose a risk.

(2) The responsible officer must take the following actions -

- (a) notify a senior officer that it reasonably appears from his observations that the apprehended child continues to pose a risk;
- (b) if instructed to do so by the senior officer to hold the apprehended child in protective custody until –

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- (i) the expiry of 10 hours after the child was taken into custody; or
 - (ii) at any earlier time if it reasonably appears to the responsible officer the child no longer poses a risk;
- (c) make a record in the custody log (however, described) of the time at which and manner in which the responsible officer notified the senior officer, the content of the notification and the instruction the senior officer gave to the responsible officer;
- (d) if instructed to hold the child in protective custody, arrange for a health professional to examine the person as soon as practicable.
- (e) Notification under subsection (2) (a) may be –
- (i) made orally, whether in person or by radio, telephone or any other available means of communication; or
 - (ii) made in writing by facsimile transmission or any other available electronic means of communication.
- (f) After an apprehended person has been examined by a health professional –
- (i) if the health professional is of the opinion the person requires medical treatment, the child may be released into the care of the health professional; or
 - (ii) if the health professional is of the opinion the child does not require medical treatment, the responsible officer must continue to hold the person in custody until the expiry of the period referred to in subsection (2)(b).

Informing parent or guardian of child's or young person's release to another person

25. If a child is released from protective custody into the care of a person who is not the child's or young person's parent or guardian, a responsible officer must, if practicable, inform a parent or guardian of the child or young person of that action.

PART 4 – COMPULSORY COUNSELLING ORDER FOR PERSON AT RISK AND PARENTS OR GUARDIANS

Division 1 – Assessments of persons believed to be at risk of severe harm

Request for counselling order

26. - (1) If one of the following persons reasonably believes a child, young person or adult is at risk of severe or progressive harm, and the child/young person at risk refuses the offer of voluntary counselling that person may apply to a Magistrate for a compulsory counselling order for the child or young person and their parents or guardians.

(2) If the child/young person who is at risk of severe or progressive harm and the persons listed in subsection 3 may apply for a counselling order

(3) The following may make an application in accordance with subsection (1) for a counselling order

- (a) the Permanent Secretary;
- (b) a police officer or authorised person;
- (c) a health professional approved by the Minister;

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- (d) a member of the family who lives with the child, young person or adult believed to be at risk of severe harm;
- (e) in respect of a child or young person believed to be at risk of severe harm – the responsible adult

(4) The request should be in the approved form in Schedule 2.

Comment [t1]: Where is schedule 2? If the form does not exist please formulate a form accordingly.

(5) The Magistrate may require additional information from the person making the request.

(6) The request may be made irrespective of whether the person named in the request has committed any offence.

(7) The Magistrate may on compelling evidence refuse the request for the compulsory counselling order for the person named as well their parents and guardians in the request and, if the Magistrate does so, must give the person who made the request written reasons for the refusal.

Assessment

27. - (1) If the Magistrate is satisfied the information provided under section 26 indicates the person named in the request may be at risk of severe or progressive harm, the Magistrate may in writing approve –

- (a) an assessment of the person's physical, neurological or mental or physiological condition;
- (b) a health professional to examine the person and make the assessment; and
- (c) a counselling course approved by the Permanent Secretary.

(2) The approval must specify the name of the assessor, the name and last known address of the person to be assessed and the place where the assessment is to take place.

(3) The assessor must, as soon as practicable, provide the Magistrate with a written assessment in respect of the person believed to be at risk of severe or progressive harm.

(4) If the person is assessed to be at risk of severe harm, the assessor must include in the assessment a recommendation for an appropriate treatment program and specify the place or places where such a program is administered.

(5) It would be appropriate if the assessor found that the person assessed to be at risk of severe harm to recommend that the person be treated at the Alcohol and Drug Abuse centre

(6) If the Magistrate considers it appropriate, the Magistrate may approve additional assessments and assessors in respect of a person believed to be at risk of severe or progressive harm.

(7) If an assessment recommends a compulsory counselling order for a child or young person's parents or guardians, the Magistrate must, before applying for a compulsory counselling order, be satisfied that –

- (a) the compulsory counselling order will be in the best interests of the child; and
- (b) the child cannot be adequately protected from severe or progressive harm by some other means.

(8) If a child named in a request under section 26 is assessed as not being at risk of severe or progressive harm, the Magistrate must refuse the request to apply for a compulsory counselling order and give the person who made the request written reasons for the refusal.

Warrant for assessment

28. - (1) An authorised officer may, within a reasonable time after an assessment has been approved, apply to a Magistrate for a warrant if the child to be assessed is –

- (a) a child or young person of sufficient age and understanding to form an informed opinion and fails or refuses to submit to the assessment; and
- (b) a child or young person and no responsible adult has taken the child or young person for assessment or permitted the assessment.

(2) The Magistrate may issue a warrant to the authorised officer if the Magistrate is satisfied the assessment and assessor have been approved and all other grounds for the application are established.

(3) The warrant may authorise the authorised officer to –

- (a) enter, at any reasonable time, a place where the officer reasonably believes the child to be assessed is to be found;
- (b) search the place in order to find the child;
- (c) remain at the place for as long as the officer considers reasonably necessary to find the child; and
- (d) if the person is found – to apprehend the child and take the person to the approved assessor for assessment.

(4) The warrant remains in force for 30 days after the day on which it is issued.

(5) In executing the warrant, the authorised officer –

- (a) may use reasonable force or assistance; and
- (b) must produce the warrant (or a copy of the warrant) to a person at the place where the warrant is executed.

(6) Any person assisting the authorised officer to execute the warrant may also use reasonable force in doing so.

Division 2 – Compulsory Counselling Order

Application for counselling order

29. - (1) The applicant may apply to the court for an order that the child at risk named in the application as well their parents or guardians must participate in a counselling program approved by the Minister.

(2) The application must be in a form approved by the Magistrate and accompanied by the assessment in respect of the child at risk.

(3) No fee is payable on the filing of the application at the Magistrate Court.

Notice of application

30. - (1) The applicant must give notice to the following persons that the application has been made –

- (a) the person who requested the application for a compulsory counselling order;
- (b) if the person at risk is an adult – the person at risk;
- (c) if the person at risk is a child or young person and the applicant believes that the child or young person is capable of understanding the notice – the person at risk;

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- (d) if the person at risk is a child and a responsible adult did not request the application for a compulsory counselling order – a responsible adult.

(2) The notice must include a statement of the requirements of this Division, including a statement about the persons who may be in attendance at the court for the hearing of the application.

(3) The notice must be accompanied by a copy of the application endorsed with particulars of the time, date and place of the hearing of the application and a copy of the assessment that accompanied the application.

Hearing of application

31. - (1) The Court may hear the application in the absence of the applicant if the applicant is represented at the hearing.

(2) Any of the following persons may represent the applicant at the hearing of the application –

- (a) the child at risk;
- (b) any other person given notice of the application;
- (c) any member of the family of the child at risk.

(3) If the applicant is required by section 30 to give notice to the parents or guardians and is unable to find such a person, the court may hear the application in the absence of the parents or guardians if satisfied reasonable investigations have been made to find such a person.

(4) Unless the court orders otherwise, the hearing must be in closed court.

Jurisdiction and procedure of court

32. - (1) The court has jurisdiction in all matters relating to an application and may-

- (a) hear and determine the application as it sees fit;
- (b) adjourn the application, including in the absence of the applicant or the applicant's representative;
- (c) make a compulsory counselling order, with or without conditions;
- (d) review, amend, or revoke the compulsory counselling order; or
- (e) make any other order or give any direction it considers appropriate, including provisions for further assessments, reports, opinions or other information relating to the person at risk.

(2) Subject to this Division and any direction of the Magistrate, the court may regulate its own procedure in respect to an application.

Compulsory counselling order

33. -(1) In deciding whether to make a compulsory counselling order, the primary consideration of the court are as follows:

- a. protect the person at risk from immediate harm arising from the use of Volatile Substance .
- b. protect others who are at risk of harm from the person at risk where the risk of harm arises from continued use of volatile substance from the person at risk.
- c. in the opinion of the court parental negligence associate with the child use of Volatile Substance.

(2) That the Social Welfare Officer must give a report to court regarding the social background of the person and the person's family.

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3. A compulsory counselling order must specify the place where the person at risk and his or her parents or guardians is to participate in the compulsory counselling program.
4. That the person at risk should be given the freedom to choose a Counsellor with the court's approval; colleagues of counsellors shall be made known and available to the person at risk of severe harm.
5. A compulsory counselling order remains in force for 6 months, after which time it lapses.
6. Before or after a compulsory counselling order has lapsed, and on condition that the magistrate has satisfied about the progress report of the person , the court may –
 - (a) approve a further assessment of the person at risk; and
 - (b) if satisfied of the results of such an assessment, make a further application for a counselling order.
7. A further assessment may be made by the assessor who made the previous assessment or by another assessor.

Warrant to participate in compulsory counselling program

34. - (1) During the time a compulsory counselling order is in force, if the child at risk or their parents or guardians do not participate in the counselling program at the place specified in the order, a Police officer or an authorised officer may apply to a magistrate for a warrant.

(2) The Magistrate may issue a warrant to the Police officer or authorised officer if the Magistrate is satisfied the compulsory counselling order is in force and all other grounds for the application are established.

(3) The warrant must authorise the authorised officer –

- (a) to enter, at any reasonable time, a place where the officer reasonably believes the child at risk or his or her parents or guardians to be;
- (b) to search the place in order to find the child at risk, his or her parents or guardians; whoever has been failing to attend the counselling program;
- (c) to remain at the place for as long as the officer considers reasonably necessary to find the child at risk, his or her parents or guardians; and
- (d) if the person at risk or his or her parents or guardians is found – to apprehend the person and take the child to the place specified in the counselling order to participate in the treatment program.

(4) The warrant remains in force for the lesser of the following periods –

- (a) 30 days after the day on which it is issued;
- (b) Until
- (c) the counselling order lapses

(5) In executing the warrant, the authorised officer –

- (a) may use reasonable force or assistance; and
- (b) must produce the warrant (or a copy of the warrant) to the parent, guardian or responsible adult at the place where the warrant is executed.

(6) Any person assisting the authorised officer to execute the warrant may also use reasonable force in doing so.

PART 5 - ADMINISTRATION

Authorised officer

35. - (1) The Minister by written notice may appoint a person within the civil service or any personnel trained for these purposes as an authorised person who may exercise powers under Part 2 of the Decree.

(2) The notice must specify the following –

- (a) whether the authorised person or police officer may exercise powers under —
 - i. Part 3, Division 2 of the Decree;
 - ii. Part 3, Division 3 of the Decree; or
 - iii. Part 3, Divisions 2 and 3 of the Decree,
- (b) the area in which the authorised person may exercise those powers, which may be the whole of the Fiji; and
- (c) any conditions set forth by the Minister to which the appointment is subject.

Identity card for authorised person

36. - (1) The Minister must issue to each authorised person an identity card containing-

- (a) a photograph and the signature of the authorised person;
- (b) a statement of the powers the person is authorised to exercise; and
- (c) any other information prescribed by the Regulations.

(2) A person who ceases to be an authorised person must return their identity card to the Minister as soon as practically possible.

(3) Any authorised person failing to comply with subsection (2) is liable to a fine not exceeding \$2,000 penalty points.

Guidelines and policies for exercise of powers by authorised person

37. - (1) In relation to the exercise of powers by authorised persons under Part 2 of the Decree the Minister may issue guidelines and policies to –

- (a) specify the qualifications required of persons to be appointed as authorised persons and the standards authorised persons are expected to meet when exercising their powers; and
- (b) refer to or incorporate (wholly or partially and with or without modification) a standard, code or other document in force at the time the guideline is issued or as in force from time to time.

(2) The Minister must give notice in the *Gazette* of the issuing of guidelines and policies.

(3) The notice in the *Gazette* must specify –

- (a) the place at which copies of the guidelines or policies will be available, and
- (b) all documents referred to or incorporated in those guidelines or policies.

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(4) The Guidelines and policies referred to in subsection (3) may be inspected or obtained free of charge by members of the public and authorised persons during normal business hours.

Declaration of place of safety

38. The Minister by notice in the *Gazette* may declare a—

- (a) place
- (b) premises; or
- (c) a class of places or premises,

to be a place of safety to which a child taken into custody under Part 3, Division 3 may be placed.

Delegations

39. - (1) The Minister in writing may delegate to an employee any of the Minister's powers or functions under this Decree.

(2) The Permanent Secretary in writing may delegate to an employee any of the Permanent Secretary's powers or functions under this Decree.

(3) The Commissioner of Police in writing may delegate to a police officer or an employee any of the Commissioner's powers or functions under this Decree.

Protection from liability

40. - (1) This section applies to a person who is or has been —

- (a) A police officer; or
- (b) an authorised person.

(2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Decree.

PART 6 - CONFIDENTIALITY

Confidentiality of informant's identity

41. - (1) An informant's identity must be kept confidential at all times.

(2) A person who discloses the name of an informant, or any other particular that may be likely to lead to the informant's identification, is guilty of an offence and is liable upon conviction to a fine not exceeding 50 penalty points or imprisonment for a term not exceeding two years or both.

(3) A person is not criminally responsible for an offence against subsection (2) if it is proven the disclosure was made in good faith for the protection of the interests of the informer or for the public good.

Protection of informant's identity in proceedings

42. - (1) This section applies to the following persons appearing in proceedings in respect of an offence —

- (a) the prosecutor;
- (b) a person who appears as a witness for the prosecution; and
- (c) a police officer who appears as a witness for the defence.

(2) The person must not be asked, and if asked must not be compelled, to disclose —

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- (a) the name of an informer or other particular that may be likely to lead to the informer's identification;
- (b) the fact that, in respect of the offence, the informer, the prosecutor or a police officer who appears as a witness for the prosecution received information from an informer or gave information to an informer; or
- (c) the nature of any such information.

Protection in proceedings of report by or to police officer

43. In proceedings in respect of an offence, a police officer appearing as a prosecutor or witness must not be compelled –

- (a) to produce a report or document made or received in his or her official capacity or containing confidential information in relation to the offence; or
- (b) to make a statement in relation to such a report or document or such information.

When information may be disclosed

44. Sections 50 and 52 do not apply to the extent the defendant satisfies the court it is in the interest of justice, in the particular circumstances, that the disclosure, production or statement be made.

Court may prohibit publication of proceedings

45.- (1) In proceedings in respect of an offence, the magistrate or judge conducting the proceedings may make a prohibition order prohibiting the publication of the whole or any part of the proceedings and the name and address of any witness appearing in the proceedings .

(2) A prohibition order remains in force for the time the magistrate or judge specifies in the order.

(3) An application for a prohibition order may be made in the presence of the persons the magistrate or judge thinks fit.

(4) At the hearing of an application for a prohibition order, the magistrate or judge may receive and act on information as he or she thinks fit.

(5) When considering an application for a prohibition order, the magistrate or judge must have regard to the –

- (a) safety of any person;
- (b) extent to which the detection of offences of a similar nature may be affected; and
- (c) the need to guarantee the confidentiality of information given by an informer.

(6) Any person who contravenes this section is liable to a fine not exceeding 50 penalty points or imprisonment for a term not exceeding two years or both.

PART 7- MISCELLANEOUS

Regulations

46. - (1) The Minister may make Regulations, not inconsistent with this Decree prescribing matters –

- (a) required or permitted by this Decree to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Decree.

(2) The Regulations may provide for the handling, transportation, storage and disposal or destruction of volatile substances and inhalants.

(3) The Regulations may –

- (a) be of general or limited application;
- (b) differ according to differences in time, place or circumstance;
- (c) confer powers or discretions or impose duties on any person; and
- (d) provide that a matter in respect of which regulations may be made may be determined, regulated or prohibited according to a management plan.

Regulations may incorporate other instruments

47. - (1) The Regulations may apply, adopt or incorporate (either wholly or in part or with or without modification) an instrument, as in force at a particular time or as in force from time to time, prescribed or published by any authority or body.

(2) An instrument applied, adopted or incorporated under this section may require anything referred to in that instrument to be in accordance with another instrument to which that instrument refers.

GIVEN unto my hand this day of 2013

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EPELI NAILATIKAU
PRESIDENT OF THE REPUBLIC OF FIJI

SCHEDULE 1

(Section 6)

List of Volatile Substances

1. Paint Thinner
2. Correction Fluids
3. Correction-Fluid Thinner
4. Petrol or any other volatile substance derived from petroleum
5. Dunlop Glue
6. PVC Glue
7. Polish Remover (Nail-Varnish Removers)
8. Cigarette Lighter Refills
9. Hair Sprays
10. Deodorants & Air Fresheners
11. Aerosol Spray
12. Pain Relief Sprays
13. Adhesive and Cleaning Products
14. Volatile product derived from petroleum
15. Lacquer Thinner (cleaning paint tool)
16. Anaesthetic Gas
17. Elter
18. Benzene