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CHILD WELFARE DECREE 2010
(DECREE NO. 44 OF 2010)

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CHILD WELFARE DECREE 2010
(DECREE NO. 44 OF 2010)

IN exercise of the powers vested in me as the 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—

**A DECREE TO PROMOTE AND PROTECT THE HEALTH
AND WELFARE OF CHILDREN THROUGH MANDATORY REPORTING**

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Child Welfare Decree 2010.
- (2) This Decree shall commence on the 6th day of September, 2010.

Purpose of the Decree

2. The purpose of this Decree is to—

- (a) ensure mandatory reporting of cases of possible, likely or actual harm in relation to events discovered by a professional to be affecting the health and welfare of children;
- (b) emphasise the duty of care of the professional in handling cases of possible child abuse and outlining the reporting requirements of such cases in their care; and
- (c) to protect the confidentiality and integrity of cases and of the professionals handling these cases.

Interpretation

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

“child” means a person below the age of 18 years;

“designated medical officer” means a doctor appointed under section 16;

“Director” means the Director of Social Welfare;

“Permanent Secretary” means the Permanent Secretary for Women and Social Welfare;

“professional” means a health professional as defined in the Medical and Dental Practitioner Decree 2010, a welfare officer as defined in the Juveniles Act (Cap. 56) a Police Officer as defined in the Police Act (Cap. 85) or a legal practitioner as defined in the Legal Practitioners Decree 2009.

PART 2—MANDATORY REPORTING

Professional's duty to report

4. Where a professional—

- (a) becomes aware or reasonably suspects during the practice of his profession, that a child has been or is being, or is likely to be harmed; and
- (b) as far as he is aware, no other professional has notified the Permanent Secretary under this section about the harm or likely harm;

the professional must immediately give notice of the harm or likely harm to such child to the Permanent Secretary in writing or by facsimile, email or other reliable means of communication, where necessary the professional may, subject to section 6 give oral notice under this section.

Contents of report

5.—(1) A notice under section 4 of this Decree must include as much of the following information in each case to the extent that the professional can reasonably obtain it—

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

(2) The professional may seek further information about the harm, likely harm or any other factors the professional deems relevant in forming a reasonable suspicion about the matter.

Follow-up notice

6.—(1) Where a professional has given an oral notice under section 4, he must within 7 days after giving the oral notice, give the Permanent Secretary written notice about the harm or likely harm.

(2) The follow-up notice must include the information set out in section 5 subsections (1) (a) to (g) inclusive at the time that the notice is given.

(3) The professional must give the notice even if he no longer believes or suspects the child has been, is being, or is likely to be harmed.

Further information

7.—(1) The Permanent Secretary upon receiving a notice under sections 4, 5 or 6 and, if he considers that further information is needed to properly assess the harm or likely harm, may ask the professional orally or in writing for further information within a stated time.

(2) The professional must comply with the request of the Permanent Secretary unless the professional is unable, or for proper reason given to the Permanent Secretary, to do so.

Protection from liability

8.—(1) Where a professional or other person—

(a) acting honestly and in good faith gives information to the Permanent Secretary or to another professional that the person giving the information is aware or reasonably suspects that a child has been, is being, or is likely to be harmed; or

(b) gives any information relating to the harm referred to in (a);

that person is not liable civilly, criminally or under an administrative process for giving that information.

(2) Without limiting subsection (1), in a proceeding for defamation the professional or other person has a defence of absolute privilege for publishing the information.

(3) If the professional or other person would otherwise be required to maintain confidentiality about the information under any written law, oath, and rule of law or practice, that person—

(a) does not contravene any written law, oath, rule of law or practice by giving the information; and

(b) is not liable to disciplinary action for giving the information.

(4) Any professional who gives the information required to be given under this Decree is deemed not to have breached any code of professional etiquette or ethics, or to have departed from accepted standards of professional conduct.

Confidentiality

9.—(1) Where any person gives information to a professional on the basis of which a professional may make a report under sections 4, 5 or 6, the professional must not disclose the identity of the person giving the information except—

(a) as permitted by this Decree;

(b) in the course of performing a function under the Juveniles Act (Cap. 56); or

(c) by way of evidence given in a legal proceeding.

(2) Any professional who other than as permitted under this Decree discloses the identity of the person giving information is guilty of an offence and is liable to a default fine of \$5000.

(3) In any legal proceeding the identity of a person giving information relating to possible or actual harm to a child to a professional may not be given in evidence unless the court of tribunal grants leave, having considered whether—

(a) the evidence of the identity of the person is relevant to the proceedings;

(b) disclosure is in the public interest; and

(c) the possible effects of disclosure on the safety or welfare of the child, the person and their respective families.

PART 3—CARE AND TREATMENT ORDERS FOR A CHILD

Powers of medical officers

10.—(1) Where a designated medical officer becomes aware or reasonably suspects that a child at a health centre, hospital, surgery, or other place, where the child—

(a) has been harmed or is at risk of harm; and

(b) is likely to leave or be taken from the facility and suffer harm if the designated medical officer does not take immediate action,

the designated medical officer may order that the child be held at the same or a different health centre, hospital or doctor's surgery and such order shall be called a care and treatment order.

(2) A care and treatment order must be in written form and must contain—

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

(3) A designated medical officer must, where a child is capable of understanding it, explain to the child the purpose and effect of the order.

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

Procedure

11.—(1) Any child held in a medical facility in accordance with a care and treatment order must within 48 hours of the time of the making of the order be—

- (a) released into the custody of a parent or guardian;
- (b) referred to the Permanent Secretary or the Director to exercise his or her powers under the Juvenile's Act (Cap 56.); or
- (c) transferred to another health facility.

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

- (a) the initial designated medical officer has consulted with another designated medical officer who agrees that the order should be extended; and
- (b) a written record of the extension is made by the initial designated medical officer, including in the record—
 - (i) the initial designated medical officer's name, address and telephone number;
 - (ii) the reasons for the extension of the order;
 - (iii) the name, address and telephone number of the consulted designated medical officer; and
 - (iv) the date and time to which the order is extended.

(3) A designated medical officer extending the care and treatment order for a child must advise the person in charge of the health centre or facility about the extension of the order and provide to such person a copy of the notice under subsection (1) (b) of this section.

(4) A designated medical officer extending the care and treatment order must forthwith inform the Permanent Secretary in writing of the extension of the order.

(5) A designated medical officer extending the care and treatment order must inform the parents or guardian of the child about the extension of the order the reasons for it and the time when the order lapses and if applicable the right of the parents to receive back custody of the child.

Enforcement

12. A designated medical officer may request any person to provide such assistance as is reasonably necessary to hold any child at a health facility or to transfer a child to another health facility.

Duration and Release

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

(2) A child must be released at the end of a care and treatment order or during such order.

(3) Upon release, the designated medical officer must make a written record of the release recording—

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

(4) Not more than one care and treatment order and one extension thereof may be made in respect of a child where the risk of harm, arises from the same event or circumstances that give rise to the care and treatment order and, where applicable the extension thereof.

Medical examinations and information

14.—(1) A child held under a care and treatment order at any health facility may be medically examined with or without the consent of the child's parents, at the discretion of the designated officer.

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

(3) A medical officer requested to give information for treatment of a child under subsection 2 may give the requested information, and is not thereby in breach of any written law, rule of law or practice or code of professional ethics.

(4) A designated medical officer may transfer a child who is the subject of a care and treatment order to another health facility should he sees fit.

(5) The care and treatment order continues to apply to the child during and after the transfer referred to in subsection (3).

(6) The designated medical officer must inform the parents of the child of the transfer and the reasons for it, unless the designated medical officer believes on reasonable grounds that the parent or parents may be charged with a criminal offence for harming or harm caused to the child.

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

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

Best interests of the child

15.—(1) This Decree is to be administered subject to the principle that at all times the welfare and best interests of the child are paramount and under the following principles—

- (a) every child has a right to protection from harm or likely harm;
- (b) families have the primary responsibility for the physical, psychological and emotional well-being of their children;
- (c) the preferred way of ensuring a child's well-being is through the support of the child's family and extended family;
- (d) any powers exercised under this Decree must be exercised in a way that is open, fair, and respects the rights of people affected by their exercise, and in particular in a way that ensures—
 - (i) the views of a child and a child's immediate and extended family are considered; and
 - (ii) a child and the child's parents have the opportunity to take part in making decisions affecting the well-being of the child;
- (e) a child should be kept informed of matters affecting or her in a way and to an extent that is appropriate having regard to the child's age and ability to understand.

(2) The Permanent Secretary may issue guidelines further enunciating these principles.

Designated medical officers

16.—(1) The person in charge of a health centre, hospital or any other health facility may appoint a doctor to be a designated medical officer.

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

PART 4—OFFENCES

Failure to give notice

17. Any professional who fails to give a notice under sections 4, 5 or 6 of this Decree commits an offence and is liable to a fine not exceeding \$5000.

Failure to give requested information

18. Any professional who refuses to or fails to give the requested information under section 7(1) and (2) of this Decree, commits an offence and is liable to a fine not exceeding \$5000, but a professional is not liable to be prosecuted for an offence hereunder unless the Permanent Secretary, when making a request, warns the professional it is an offence to comply with the request in the absence of a justifiable and reasonable excuse.

Obstruction

19. Any person who—

- (a) obstructs a designated medical officer or any person authorised by a designated medical officer under section 15 subsection (1) in holding a child under a care and treatment order; or
- (b) removes a child from a health facility knowing that the child is the subject of a care and treatment order; or
- (c) keeps a child in his or her custody knowing that the child is the subject of a care and treatment order;

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

Decree binds the State

20. This Decree binds the State.

Given under my hand this 8th day of September 2010.

EPELI NAILATIKAU
President of the Republic of Fiji