House Sarah Resource

Legislation on Violence Against Women

Fiji

**Relevant Legislation**

Cr

Do

Family Law Act 2003

Employment Relations Promulgation 2007

Human Rights Commission Decree 2009

**VAW Offences**

Common Assault - Crimes Decree - section 274

AOABH - Crimes Decree - Section 275

Rape - Crimes Decree - Section 207

Sexual Assault - Crimes Decree - section 210

Assault with intent to commit rape - section 209

Abduction of person under 18 years of age with intent to have carnal knowledge - section 211

Indecently insulting or annoying any person - section 213

Murder - Crimes Decree - section - 237

Manslaughter - Crimes Decree - section 239

Acts intended to cause grievous harm or prevent arrest - Crimes Decree - section 255

Grievous Harm - Crimes Decree - section 258

Maliciously administering poison with intent to harm - Crimes Decree - section 260

Unlawful wounding - Crimes Decree - section 261

Unlawful poisoning - Crimes Decree - section 261

**Protection Orders**

**Can victims of Domestic Violence obtain protection orders? If so, under what legislation?**

Yes, under the ***Domestic Violence Decree*** (Part 3) (called Domestic Violence Restraining Orders, or

DVRO) and the ***Family Law Act*** (section 202)

**Who can apply for a Protection Order?**

***Domestic Violence Decree*** (section 19):

For an adult - the victim or her/his normal or current caregiver

For a child - parent or guardian; an adult the child is residing with; child themselves if over 16 and

married, or where court allows the child to do so

For all - a police officer, Director of Social Welfare or welfare officer, Public trustee (for adults of

unsound mind) or any other person authorised by the court (this includes NGO's such as the FWCC)

***Family Law Act***:

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Only a party to a marriage can apply for a PO, under s.202, which reasonably implies that only an

adult can apply.

**On what grounds?**

***Domestic Violence Decree***:

Section 23 sets out the grounds for making a DVRO. These are:

1. The victim is or has been in a family or domestic relationship;

2. The respondent has committed, is committing, or is likely to commit domestic

violence against the victim; and

3. The Order is for the safety and well being of the victim or another person

Where the making of an order is discretionary, the following relevant criteria apply;

1. Whether there are grounds to believe that the respondent’s behaviour may be

repeated;

2. the nature and seriousness of the respondent’s behaviour;, as perceived by the victim and other

protected persons.

3. The effect of the respondent’s behaviour on the victims including the effect on their ability to lead

normal lives.

Section 24: It is mandatory to make a DVRO where:

1. A person is charged with a domestic violence offence;

2. For the safety and well being of the victim in a case where the alleged perpetrator is

charged with a domestic violence offence;

3. A person is found guilty or pleads guilty to a domestic violence offence;

4. Where the court intends to stay or terminate proceedings.

The court will only not be required to make such an Order if the court is satisfied that it is not

necessary for the safety and well being of the victim.

No grounds are specified by the Family Law Act.

**What type of orders can you get?**

***Domestic Violence Decree***:

Non contact order (section 27,29)

Protection of spouse (section 30)

Protection of children (section 31)

Division or use of possessions (section 32)

Restrict use of weapons (section 33)

Urgent monetary relief (section 34)

Occupancy/Tenancy Orders (sections 35-6)

Order for Respondent to attend counselling (section 37)

***Family Law Act***: a Protection Order can be granted for ‘personal protection’ and/ or:

To restrain the respondent from access or staying in the shared home and area or

neighbourhood surrounding home or occupancy (s.202 ss.(b), ss(f));

To restrain the respondent from access to applicant’s place of work (s.202 ss.(c));

To determine property (s.202 ss. (e));

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**Sexual Assaults**

**How is Rape Defined?**

Section 207 defines rape as

2(a) - carnal knowledge (which means penetration by the penis, and includes sodomy) of a person

without that person's consent

2 (b) - penetration of the vulva, vagina or anus of a person with a thing or bodily part (not the penis)

without that person's consent

2(c) - penetration of the mouth of a person with the penis, without that person's consent.

**What is the maximum punishment for rape?**

Life imprisonment (section 207)

**Is "Rape" only penile-vaginal penetration or does it include other forms of sexual assault?**

Rape includes all **non consensual** sexual acts involving penetration of the vagina or anus, whether by

the penis or another body part ie a finger or the tongue or by an object, or penetration of the

mouth by the penis.

**Can there be "marital rape" ie can a woman be "raped" by her husband?**

Yes - the definition of rape does not exclude the husband from being the perpetrator, as long as

there is an absence of consent.

**Are there different offences for the rape/sexual assault of children? What are these?**

Yes - the Decree creates various offences for the rape and sexual assault of children.

Under section 207 (rape), it is stated that a child under the age of 13 years is incapable of giving

consent. Therefore, if someone has sex with a child under 13, he will be charged with rape and

subject to life imprisonment. The offender can also be charged under section 214 "*Defilement of*

*children under 13 years of age*", which also carries a life sentence.

If the child (or young person) is between the ages of 13 and 16, then the offender can also be

charged under section 215 "*Defilement of young person between 13 and 16 years of age*". It is a

defence to a charge under this section, where the sex was consensual, if the offender had

reasonable cause to believe and actually believed that the young person was over 16. If the sex was

non-consensual, then belief in age does not matter, and the charge should be brought under section

207, since section 215 has a maximum sentence of 10 years only.

Other offences which differentiate based on age are:

Section 211 "*Abduction of person under 18 years of age with intent to have carnal knowledge*" -

taking a person away without their parent/guardian's consent for the purpose of sex. Maximum

sentence - 5 years.

Section 212 "*Indecent Assault*" - where an indecent assault is committed on a girl or boy under 16,

then consent is not a defence, unless the offender had reasonable cause to believe and actually

believed that the girl or boy was above 16; or unless the offender was of a "similar age" to the victim

and the consent was given during a "continuing friendship" between the two.

Section 223 - "*incest by any relative"* - sentence is higher (life) if victim is below 13.

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**Is trafficking of women and children a crime?**

Yes. Division 6 - Trafficking in Persons and Children - of the ***Crimes Decree*** is relevant.

Sections 111- 120 create offences in respect of the trafficking of persons, into and out of Fiji, and

within Fiji, for the purpose of exploiting the victim.

Section 112 is in respect of international trafficking, where the victim is brought into Fiji, or taken

out of Fiji, for the purposes of exploitation, sexual services or debt bondage.

Section 115 is in respect of domestic trafficking, where the victim is taken from one place in Fiji to

another place in Fiji, for the purpose of exploitation, sexual services or debt bondage.

Trafficking may also be proved where the person being trafficked is aware and has consented to

being transported for the purposes of providing sexual services, but has been deceived about any of

the following:

- the nature of sexual services to be provided;

- the extent to which s/he will be free to leave the place where s/he provides sexual services

- the extent to which s/he will be free to stop providing sexual services

- the extent to which s/he will be free to leave her/his place of residence

- if there is a debt owed by the trafficked person in connection with the arrangement, the existence

or amount of the debt owed or claimed to be owed.

(section 112(8) and 115(4))

The penalties for trafficking range from 12 years for offences against section 112 and 115, to 20

years for aggravated offences (sections 113 and 116)

Sections 114 and 117 specifically relate to trafficking in children, and the transportation of children

for sexual services or to otherwise exploit them. The maximum penalty for trafficking in children is

25 years.

Section 217 (d) "procuring a person to leave his or her usual abode in Fiji with intent that s/he may

for the purposes of prostitution, live in or frequent a brothel in Fiji or elsewhere." Penalty - 2 years

imprisonment.

**How is sexual harassment dealt with under the law?**

Fiji has national policy guidelines on sexual harassment. All Employers are required to develop and

maintain policies consistent with the national guidelines to prevent sexual harassment in the

workplace. If an employer fails to take steps to prevent sexual harassment in the workplace, the

employer is liable along with the harasser. (Section 76, ***Employment Relations Promulgation 2007***)

There is no offence of "Sexual Harassment" in the criminal legislation, but offenders can be charged

if their actions violate any section of the Crimes Decree, including :

Section 213 "*Indecently insulting or annoying any person*" - summary offence if an offender "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 intrudes upon the

privacy of another person by doing an act of a nature likely to offend his or her modesty."

Also, the ***Human Rights Commission Decree 2009*** makes sexual harassment a

…..transforming the lives of those who come seeking help… 6 Desvouex Road, Road Suva 6793100665

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**5. Family Violence and the Law**

**The information below has been prepared by the Fiji Women’s Crisis Centre and the House of Sarah thanks them for permission to use it.**

**Legislation on Violence Against Women - Fiji**

**Relevant Legislation**

Crimes Decree 2009

Domestic Violence Decree 2009

Family Law Act 2003

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Also, the ***Human Rights Commission Decree 2009*** makes sexual harassment a civil offence by making sexual harassment a prohibited ground of discrimination (Section 19 (2))