

EXTRAORDINARY



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STATE SERVICES DECREE 2009

GOVERNMENT OF FIJI
 (DECREE NO. 6)

IN exercise of the powers vested in me as the President and Commander in Chief of the Republic of the Fiji Military Forces, I hereby make the following Decree:

PART 1 — SHORT TITLE & COMMENCEMENT

Short title and commencement

1. This Decree may be cited as the State Services Decree 2009, and shall be deemed to come into force on 10th April 2009.

PART 2 — STATE OFFICES

2. In any written law, unless the context otherwise requires:

“Public office” means the following:

- (a) an office created by, or continued in existence under, this Decree;
- (b) an office in respect of which this Decree makes provision;
- (c) the office of a member of a commission;
- (d) an office in a state service;
- (e) an office of judge;
- (f) an office of magistrate or an office in a court created by law;
- (g) an office in, or as a member of, a statutory authority; or
- (h) an office established by a written law;

“State service” means the public service, the Fiji Police Force or the Republic of Fiji Military Forces;

“Public service” means the service of the State in a civil capacity but does not include:

- (a) service in the judicial branch;
- (b) service in the office of a member of a commission; or
- (c) service in an office created by, or continued in existence under, this Decree;

“Disciplinary law” means a written law regulating the discipline of an disciplined Force;

“Disciplined Force” means:

- (a) the Republic of Fiji Military Forces;
- (b) the Fiji Police Force;
- (c) the Fiji Prisons Service; or
- (d) a fire or forest guard service established by a written law;

“Department” means a department of the public service;

“Government” means the Government of the State;

“President” means the President of Fiji and the Commander in Chief of Republic of Fiji Military Forces appointed under the Executive Authority of Fiji Decree 2009;

“Written law” means an Act, Decree, or Promulgation or subordinate legislation.

“Act” means an Act of the Parliament or a Decree or a Promulgation;

“Decree” means:

- (a) a Decree made by the President before the convening of the Parliament under the Constitution of 1990; or
- (b) a Decree made before 5 December 1987 by the Commander and Head of the Fiji Military Government;
- (c) a Decree made by the President and the Commander in Chief of the Republic of Fiji Military Forces on or after 10 April 2009

“Promulgation” means the Promulgations, Decrees and Declarations made between 5 December 2006 to 9 April 2009.

PART 3 — ELECTORAL OFFICES

Constituency Boundaries Commission

3.—(1) This section establishes the Constituency Boundaries Commission.

(2) The Constituency Boundaries Commission consists of:

- (a) a chairperson; and
- (b) 2 other members.

(3) The chairperson is appointed by the President, acting in his or her own judgment, following consultation with the Prime Minister.

(4) The 2 other members are appointed by the President, on the nomination of the Prime Minister.

Electoral Commission

4.—(1) The section establishes the Electoral Commission.

(2) The Electoral Commission has general responsibility for the registration of voters for elections of members of the House of Representatives and the conduct of those elections.

(3) The Electoral Commission has such other functions as are conferred on it by a written law.

(4) The Electoral Commission must make an annual report to the President concerning the operations of the Commission and must submit a copy to the Cabinet.

(5) The Electoral Commission may at other times make such reports to the President and the Cabinet as it thinks fit.

(6) The Electoral Commission consists of:

- (a) a chairperson; and
- (b) 3 other members.

(7) The chairperson is appointed by the President, acting in his or her own judgment.

(8) The other members are appointed by the President on the advice of the Prime Minister.

Supervisor of Elections

5.—(1) This section establishes the office of Supervisor of Elections.

(2) The Supervisor of Elections:

- (a) administers the registration of voters for elections of members to a House of Representatives;
- (b) conducts:
 - (i) elections of members to a House of Representatives; and
 - (ii) such other elections as prescribed by law; and
- (c) may perform such other functions as are conferred by a written law.

(3) The Supervisor of Elections has the right to attend meetings of the Electoral Commission and must comply with any directions that the Commission gives him or her concerning the performance of his or her functions.

(4) The Supervisor of Elections is appointed by the President, following consultation by it with the responsible Minister.

PART 5 — AUDITOR GENERAL

Auditor-General

6. This section establishes the office of Auditor-General.

Functions of Auditor-General

7.—(1) At least once in every year, the Auditor-General must inspect and audit, and report to the Cabinet on:

- (a) the public accounts of the State;
- (b) the control of public money and public property of the State; and
- (c) all transactions with or concerning the public money or public property of the State.

(2) In the report, the Auditor-General must state whether, in his or her opinion:

- (a) transactions with or concerning the public money or public property of the State have been authorised by or pursuant to this any written law; and
- (b) expenditure has been applied to the purpose for which it was authorised.

(3) A written law may make further provision in relation to the office of the Auditor-General and may confer further functions and power of the Auditor.

(4) In the performance of his or her duties, the Auditor-General or a person authorised by him or her has access to all records, books, vouchers, stores or other government property in the possession or control of any person or authority.

(5) A law may provide that the accounts of a specified body corporate are not subject to audit by the Auditor-General but are to be audited as prescribed in that law.

(6) If the law so provides, it must also empower the Auditor-General to review those audits and report the results of a review.

(7) The Auditor-General must submit a report made by him or her to the Minister responsible for Finance.

(8) Within 30 days of receipt, the Minister responsible for Finance must present the report to the Cabinet.

Appointment of Auditor-General

8.—(1) The Auditor-General is appointed by the President following consultation with the Prime Minister.

(2) The President may, following consultation by it with the Minister, appoint a person to act as Auditor-General during any period, or during all periods, when the office of Auditor-General is vacant or when the Auditor-General is absent from duty or from Fiji or is, for any reason unable to perform the functions of office.

PART 6 — STATE SERVICES

Recruitment and promotion policy

9. The recruitment of persons to a state service, the promotion of persons within a state service and the management of a state service must be based on the following principles:

- (a) government policies should be carried out effectively and efficiently and with due economy;
- (b) appointments and promotions should be on the basis of merit and equal opportunity;
- (c) men and women should have adequate and equal opportunities for training and advancement;

Public officeholders must be citizens

10. A person or authority exercising power to appoint a person to a public office, (other than the office of judge) must not appoint a person who is not a citizen except with the agreement of the Prime Minister.

Public Service Commission

11.—(1) This section establishes the Public Service Commission.

(2) The Public Service Commission consists of:

- (a) a chairperson; and
- (b) not less than 3 nor more than 5 other members;

appointed by the President, on the advice of the Prime Minister.

(3) If the office of chairperson of an Public Service Commission is vacant or the chairperson is absent from duty or from Fiji, the President may, on the advice of the Prime Minister, appoint a person to act as the chairperson of the Public Service Commission.

(4) The President may, on the advice of the Prime Minister, appoint a person to act as a member of the Public Service Commission during any period, or during all periods, when the member is absent from duty or from Fiji or is, for any other reason, unable to perform the functions of office.

Functions of Public Service Commission

12.—(1) Subject to subsections (2), (3), (4) and (5) of this section, the Public Service Commission has the following functions:

- (a) to make appointments to public offices;
- (b) to remove persons from public offices;
- (c) to take disciplinary action against holders of public offices.

(2) Appointments to positions in the public service at the rank of Director and above shall be made by the Public Service Commission upon the agreement of the Prime Minister.

(3) Appointments to positions in the public service below the rank of Director shall be made by the Permanent Secretary of the Ministry in which the person is employed, following the agreement of the Minister responsible for that Ministry or Department

(4) Disciplinary action against persons employed in the public service including the rank of Director and above shall be initiated by the Permanent Secretary responsible for the Public Service, and any such disciplinary action shall be heard and determined by the Public Service Commission.

(5) Disciplinary action against persons employed in the public service below the rank of Director shall be initiated by the Permanent Secretary of the Ministry in which the person is employed, and any such disciplinary action shall be heard and determined by the Public Service Commission.

(6) The functions of the Public Service Commission do not extend to:

- (a) an office of judge or that is the responsibility of the Judicial Service Commission;
- (b) an office that is the responsibility of another body prescribed by written law;
- (c) an office in the Republic of Fiji Military Forces, Fiji Police Force or Fiji Prisons Service;
- (d) an office in respect of which this Decree makes provision; or
- (e) an office or class of office prescribed for the purposes of this paragraph by the Prime Minister by *Gazette* Notice to which the functions of the Public Service Commission do not extend to.

Appointment of ambassadors, etc.

13.—(1) The President may, on the advice of the Prime Minister, make appointments to offices of ambassador, or of other principal representative, of Fiji to another country or an international organisation.

(2) The President may, on the advice of the Prime Minister, remove a person from an Office referred to in subsection (1).

(3) The Prime Minister must consult the Public Service Commission in relation to the appointment to an office referred to in subsection (1) of a person who is a member of a state service.

(4) Nothing in subsection (2) permits the President to remove from a state service a person who was, immediately before his or her appointment under subsection (1), the holder of a public office.

(5) A written law may prescribe provisions relating to:

- (a) the pension entitlements of a person referred to in subsection (4); and
- (b) the making by the Prime Minister, or by another Minister specified by the Prime Minister, of appointments by way of transfer to:
 - (i) certain offices in the department responsible for the foreign affairs of Fiji; and
 - (ii) specified public offices the holders of which are required to live outside Fiji in order to properly discharge their duties.

Public Service Commission may delegate

14. Subject to conditions prescribed by the Parliament, the Public Service Commission may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to a member or officer of the Commission or to the holder of a public office all or any of the functions or powers of the Commission, other than its power to appoint or remove, or to take disciplinary action against:

- (a) an agricultural tribunal established under the Agricultural Landlord and Tenant Act;
- (b) a Secretary of a department or the Secretary to the Cabinet; or
- (c) any other person having the powers of a Secretary of a department in relation to staff under his or her control.

Retirement Age in the Public Service

15.—(1) Notwithstanding anything contained in any written law, the retirement age in the public service shall be 55 years.

(2) The retirement age of 55 years in subsection (1) above, shall extend to the civil service, Fiji Police Force and the Fiji Prisons Service.

(3) Any person employed in the civil service, Fiji Police Force and the Fiji Prisons Service, who is already over the age of 55 years, shall retire on 30 April 2009.

(4) Nothing in this section prevents, upon retirement, the continued employment of a person on a fixed term contractual employment, if his or her services are required in the Government.

Contractual Appointments of New Recruits in the Public Service

16. Notwithstanding any provisions contained in any written law or any subsidiary legislation or Orders, the appointment and promotion of all employees in the public service shall be made on fixed term contractual appointment, and shall be eligible for re-appointment.

Removal of the Public Service Appeal Board

17.—(1) The Public Service Appeal Board, established under the Public Service (Amendment) Act 1998 and the Public Service Act 1999 is hereby abolished.

(2) All members of the Public Service Appeal Board shall cease to be members, from the commencement of this Decree.

(3) All appeals pending before the Board but not yet determined, including all hearings pending, as well as appeals pending for decision, before the Public Service Appeal Board shall immediately terminate upon the commencement of this Decree, and the Permanent Secretary responsible for public service shall inform all parties to the appeal accordingly.

Secretaries of departments

18.—(1) Each department for which a Minister has responsibility for general direction and control is managed by a person designated as a Permanent Secretary, Secretary, head of department or other appropriate name (*Secretary*).

(2) The Secretary of a department is responsible to the Minister concerned for the efficient, effective and economical management of the department.

(3) In this section:

department does not include the Fiji Police Force or the Republic of Fiji Military Forces, or the Fiji Prisons Service.

Solicitor-General

19.—(1) This section establishes the office of Solicitor-General.

(2) The Solicitor-General must be a person who is qualified to be appointed as a judge.

(3) The Solicitor-General is appointed by the President following consultation with the Attorney-General.

Director of Public Prosecutions

20.—(1) This section establishes the office of the Director of Public Prosecutions.

(2) The Director of Public Prosecutions must be a person who is qualified to be appointed as a judge.

(3) The Director of Public Prosecutions is appointed by the President, following consultation with the Attorney-General.

(4) The Director of Public Prosecutions may:

(a) institute and conduct criminal proceedings;

(b) take over criminal proceedings that have been instituted by another person or authority; and

(c) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public Prosecutions or another person or authority.

(5) The powers of the Director of Public Prosecutions may be exercised by him or her in person or through other persons acting on his or her instructions.

(6) In this section:

“criminal proceedings” means criminal proceedings before any court of law (other than a military court), and includes an appeal, case stated or question of law reserved.

Commissioner of Police

21.—(1) This section establishes the office of Commissioner of Police.

(2) The Commissioner of Police is appointed by the President following consultation by it with the Prime Minister.

(3) The Fiji Police Force is under the command of the Commissioner of Police.

(4) The Commissioner of Police is responsible for:

- (a) the organisation and administration of the Fiji Police Force; and
- (b) its deployment and the control of its operations;

and, subject to subsection (5), is not subject to direction or control by any other person or authority in relation to those matters.

(5) The Minister may from time to time issue general Policy directions with respect to the maintenance of public safety and public order and, if such a direction has been issued, the Commissioner of Police must act in accordance with it.

(6) A written law may prescribe provisions relating to the Fiji Police Force.

(7) For the avoidance of doubt, the retirement age in the Fiji Police Force (excluding the Commissioner of Police) shall be 55 years.

(8) Notwithstanding anything to the contrary in any written law, the Commissioner of Police has the following powers in relation to the Fiji Police Force for all ranks and members of the Fiji Police Force:

- (a) to make appointments in the Fiji Police Force
- (b) to remove officers in the Fiji Police Force
- (c) to take disciplinary action in the Fiji Police Force

and all written law governing the Fiji Police Force shall be construed accordingly.

Commissioner of Prisons

22.—(1) This section establishes the Office of the Commissioner of Prisons.

(2) The Commissioner of Prisons is appointed by the President on the advice of the Prime Minister, and any provision in any written law on the appointment of the Commissioner of Prisons is amended accordingly.

(3) The Fiji Prisons Service is under the command of the Commissioner of Prisons.

(4) The Commissioner of Prisons is responsible for:

- (a) the organisation and administration of the Fiji Prisons Service; and
- (b) its deployment and the control of its operations;

and, subject to subsection (4), is not subject to direction or control by any other person or authority in relation to those matters.

(5) The Minister may from time to time issue general Policy directions with respect to the Fiji Prisons Service and, if such a direction has been issued, the Commissioner of Prisons must act in accordance with it.

(6) A written law may prescribe provisions relating to the Fiji Prisons Service.

(7) For the avoidance of doubt, the retirement age in the Fiji Prisons Service (excluding the Commissioner of Prisons) shall be 55 years.

(8) Notwithstanding anything to the contrary in any written law, the Commissioner of Prisons has the following powers in relation to the Fiji Prisons Service for all ranks and members of the Fiji Prisons Service:

- (a) to make appointments in the Fiji Prisons Service
- (b) to remove officers in the Fiji Prisons Service
- (c) to take disciplinary action in the Fiji Prisons Service

and all written law governing the Fiji Prisons Service shall be construed accordingly.

Republic of Fiji Military Forces

23.—(1) This section establishes the military force called the Republic of Fiji Military Forces.

(2) The President, acting on the advice of the Minister, must appoint a Commander of the Republic of Fiji Military Forces to exercise military executive command of the Forces, subject to the control of the Minister.

(3) The Commander of the Republic of Fiji Military Forces is responsible for:

- (a) making appointments of members of the Forces;
- (b) taking disciplinary action against members of the Forces; and
- (c) removing members from the Forces.

(4) For the avoidance of doubt, the retirement age in the Republic of Fiji Military Forces (excluding the Commander of the Republic of Fiji Military Forces) shall be 55 years.

(5) A written law may govern provisions relating to the Republic of Fiji Military Forces.

Governor of the Reserve Bank of Fiji

24.—(1) This section establishes the office of the Governor of the Reserve Bank of Fiji.

(2) The President has the function of making the appointment, in accordance with this Decree, to the Governor of the Reserve Bank of Fiji.

(3) Before making an appointment to the office of Governor of the Reserve Bank of Fiji, the President must consult the Minister.

(4) The office of Governor of the Reserve Bank of Fiji is not a public office.

PART 7 — GENERAL PROVISIONS RELATING TO CERTAIN STATE OFFICES

Interpretation

25. This Part applies to:

- (a) the Supervisor of Elections;
- (b) the Commissioner of Prisons;
- (c) the Auditor-General;
- (d) the Director of Public Prosecutions;
- (e) the Commissioner of Police;
- (f) the Commander of the Republic of Fiji Military Forces;
- (g) the members of the Electoral Commission;
- (h) the members of the Constituency Boundaries Commission;
- (i) the members of the Commission on the Prerogative of Mercy referred to in this Decree;
- (j) the members of the Public Service Commission; and

Terms and conditions of office

26.—(1) Subject to this section, a person to whom this Part applies referred to in any of paragraphs 25(a) to (f) inclusive holds office for any period up to 5 years and is eligible for re-appointment.

(2) Subject to this section, a person to whom this Part applies referred to in paragraph 25(g) to (j) holds office for 2 years, and is eligible for re-appointment.

(3) The term of appointment of a person to whom this Part applies referred to in any of paragraphs 25(a) to (f) inclusive expires upon his or her reaching the age of 65, and a person must not be appointed or re-appointed if he or she has reached that age.

(4) The appointment of a person to whom this Part applies is subject to the terms and conditions (if any) set out in it.

(5) In the performance of his or her duties or functions or the exercise of his or her powers, a person to whom this Part applies is not subject to direction or control by any person or authority.

(6) Subsection (5) does not limit:

- (a) the obligation of the Supervisor of Elections to act in accordance with directions of the Electoral Commission; or
- (b) the obligation of the Commissioner of Police to act in accordance with general policy directions of the Minister.

Remuneration and allowances

27. A person to whom this Part applies referred to in any of paragraphs 25(a) to (f) inclusive is entitled to such remuneration and allowances as fixed by law, and the remuneration and allowances must not reduce during his or her term of office.

Removal from office for cause

28. A person to whom this Part applies may be removed from office by the President for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or may otherwise be removed by giving 1 months notice or 1 months remuneration in lieu of notice.

Performance of functions of commissions and tribunals

29.—(1) A commission may by regulation make provision for regulating and facilitating the performance of its functions.

(2) A decision of a commission requires the concurrence of a majority of its members and the commission may act despite the absence of a member but, if, in a particular case, a vote is taken to decide a question and the votes cast are equally divided, the person presiding must exercise a casting vote.

(3) Subject to this section, a commission may regulate its own procedure.

(4) In the performance of its functions or the exercise of its powers, a commission is not subject to the direction or control of any other person or authority, except as otherwise provided by this Decree.

(5) Nothing in subsection (4) limits the responsibility of the Government for the structure of the public service or the Fiji Police Force, nor the Government's general policy responsibility for the management of the public service or the Fiji Police Force.

(6) In addition to the functions conferred upon it by or under this Decree, a commission has such powers and other functions (if any) as are prescribed by a written law.

(7) The validity of the transaction of business of a commission is not affected if someone who was not entitled to do so took part in the proceedings.

PART 8 — PREROGATIVE OF MERCY

Prerogative of mercy

30.—(1) The President may:

- (a) grant to a person convicted of an offence under the law of the State a pardon or a conditional pardon;
- (b) grant to such a person a respite, either indefinitely or for a specified period, of the execution of the punishment imposed for the offence;

- (c) substitute a less severe form of punishment for the punishment imposed; or
- (d) remit the whole or a part of:
 - (i) the punishment imposed; or
 - (ii) a penalty or forfeiture otherwise due to the State in respect of the offence.
- (2) This subsection establishes a Commission on the Prerogative of Mercy consisting of:
 - (a) the Attorney-General who is to be its chairperson; and
 - (b) 2 other members appointed by the President, acting in his or her own judgment.
- (3) In exercise of his or her powers under subsection (1), the President acts on the advice of the Commission.
- (4) If a person is sentenced to death for an offence otherwise than by a court martial, the Commission must:
 - (a) consider a report on the case prepared by:
 - (i) the judge who presided at the trial; or
 - (ii) if the report cannot be obtained from that judge - the Chief Justice;
 - (b) consider such other information derived from the record of the case or elsewhere as is available to the Commission; and
 - (c) advise the President whether or not to exercise his or her power under subsection (1).

PART 9 — INTERPRETATION, REPEALS, TRANSITION etc

- 31.—(1) A reference in this Decree to a power to make appointments to a public office includes a reference to:
- (a) a power to make appointments on promotion and transfer to the office; and
 - (b) a power to appoint a person to act in the office while it is vacant or its holder is unable to perform the functions of the office.
- (2) In this Decree, unless the contrary intention appears, a reference to the holder of an office by the term designating his or her office includes a reference to any person for the time being acting in the office.
- (3) A person who has been appointed to an office established by this Decree may resign from the office by notice in writing signed by him or her addressed to the person or authority by whom he or she was appointed, and the resignation takes effect:
- (a) at the time or on the date specified in the notice; or
 - (b) when the notice is received by the person or authority to whom it is addressed;
- whichever is the later.
- (4) A reference in this Decree to a power to remove a person from a public office includes a reference to:
- (a) a power to require or permit the person to retire from office;
 - (b) a power to terminate the contract on which the person is employed; and
 - (c) a power not to renew the contract on which the person is employed.

(5) A person, authority or body upon which functions are conferred by this Decree has power to do everything necessary or convenient to be done for, or in connection with, performance of those functions.

(6) A reference in this Decree to the Minister in relation to the doing of anything, participation in any consultation or the receipt of any report is a reference to the Minister who, for the time being, has been assigned responsibility for the part of the business of the Government relating to the subject matter of the activity concerned.

(7) Unless the contrary intention appears, a reference in this Decree to a Minister includes a reference to the Minister for the time being acting for and on behalf of the first mentioned Minister.

(8) All proceedings before a commission or person referred to in the Constitution Amendment Act 1997 that had commenced but had not been determined, before that repeal continue, on and after that repeal, as if they had commenced before the corresponding commission or person referred to in this Decree.

(9) All delegations that:

(i) had been given before that repeal by a commission or person referred to in the Constitution Amendment Act 1997; and,

(ii) were in force immediately before that repeal;

continue in force, on and after that repeal, as if given by the corresponding commission or person referred to in this Decree;

(10) Subject to subsection 12, every person who immediately before the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 held or acted in a position in Fiji Military Forces, Fiji Police Force, and Fiji Prisons Service shall continue to hold or act in that position, as if appointed under this Decree or any written law.

(11) Subject to subsection 12, every person who immediately before Fiji Constitution Amendment Act 1997 Revocation Decree 2009 holds or acts in a position established and appointed by the Public Service Commission (or its delegate), shall continue to hold or act in that position, as if appointed under this Decree or any written law.

(12) For the avoidance of doubt, the persons holding or acting in the following positions immediately before the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 shall immediately cease to hold or act in these positions:

- (a) members of the Constituency Boundaries Commission;
- (b) members of the Electoral Commission;
- (c) Supervisor of Elections;
- (d) Ombudsman;
- (e) Auditor-General;
- (f) Members of the Public Service Commission;
- (g) Solicitor-General;
- (h) Director of Public Prosecutions;
- (i) Commissioner of Police;
- (j) Commander of the Republic of Fiji Military Forces;
- (k) Commissioner of Prisons;
- (l) Governor of the Reserve Bank of Fiji;
- (m) Secretary General to Parliament; and
- (n) Members of the Commission on the Prerogative of Mercy.

DATED this 14th day of April 2009

RATU J. I. ULUIVUDA
President and Commander in Chief
of the Republic of the Fiji Military Forces