



Constitutional Matters

Monthly Legal News Bulletin

31st March 2011

Introduction

The purpose of this periodical newsletter is to improve access to justice and enhance the rule of law by keeping people informed of changes under new Decrees, judicial news and other significant legal developments in Fiji.

For further information on any of the issues covered in this newsletter, please contact CCF at ccf@kidanet.net.fj

Public Emergency Regulations

Pursuant to the Public Safety Act, on Friday 18 December 2010, the *Extension of the Public Emergency Regulations 2009* was gazetted.

The *Public Emergency Regulations 2009* has been extended for a further period of 30 days with effect from 1200 hours on 15 March 2011.

New Decrees

The following new decrees have been promulgated or published since our last issue:-

- 1) *Native Land Trust (Amendment) Decree 2011 (Decree No. 8 of 2011).*
- 2) *Native Lands (Amendment) Decree 2011 (Decree No. 7 of 2011)*
- 3) *Land Use Decree 2010 (Decree No. 36 of 2010)*
- 4) *Fiji Islands Audio-Visual Commission (Amendment) Decree 2011 (Decree No. 9 of 2011)*
- 5) *Trust Accounts (Amendment) Decree 2011 (Decree No. 10 of 2011)*
- 6) *Prisons & Corrections (Amendment) Decree 2011*
- 7) *Corrections Service Regulations 2011*

Native Land Trust (Amendment) Decree 2011 (Decree No. 8 of 2011).

This Decree amends the Native Land Trust Act by deleting section 1 on the citation of the Act from "*This Act may be cited as the Native Land Trust Act*" to "***This Act may be cited as the i Taukei Land Trust Act***". It further amends the Native Land Trust Act by replacing the word "Native" to "i Taukei" wherever it appears in the Act.

Native Lands (Amendment) Decree 2011 (Decree No. 7 of 2011)

This Decree amends the Principal Act, Native Lands Act by deleting section and substituting section 1 of the Principal Act, i.e. the citation of the Act from "*This Act may be cited as the Native Lands Act*" to "***This Act may be cited as the i Taukei Lands Act***". It further amends the Principal Act by replacing the word "Native" to "i Taukei" wherever it appears in the Act.

Land Use Regulations of the Land Use Decree 2010 (Decree No. 36 of 2010)

This Regulation which commenced on 17th September 2010 is made pursuant to section 14 (1) and (2) of the Land Use Decree 2010. This is the subsidiary legislation of the Land Use Decree which regulates the usage etc of all designated land of the i Taukei population of the Republic of Fiji. It also contains the prescribed forms for the administration of the Land Use Decree 2010.

Fiji Islands Audio-Visual Commission (Amendment) Decree 2011.

This Decree came into force on 15th February 2011 and amended the appointment and membership of the Audio-Visual Commission

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Board with other incidental matters regarding the same.

Trust Accounts (Amendment) Decree 2011

This Decree amended the Trust Accounts Act 1996 by repealing section 22 (1) (b) and substituting with:

“

- (i) 50% to a fund to be known as the Legal Aid Fund to meet the costs and expenses of the Legal Aid Commission established by the Legal Aid Act 1996;
- (ii) 25% to a fund to be known as the Judiciary Fund to meet the costs and expenses for improving court premises, purchasing equipment for various courts in all the divisions, including acquisition of equipment for the Judiciary, implementing electronic recording of court proceedings, and for such other purpose as the Chief Justice may direct;
- (iii) 10% to a fund to be known as the Independent Legal Services Commission Fund to meet the costs and expenses of the Commission, established by the Legal Practitioners Decree 2009;
- (iv) 10% to a fund to be known as the Legal Practitioners Unit Fund to meet the costs and expenses of the Legal Practitioners Unit in the office of the Chief Registrar in the performance of the functions and duties of the Chief Registrar under the Legal Practitioners Decree 2009 and for such other related purpose as the Chief Registrar may direct;
- (v) 5% to a fund to be known as the Fidelity Fund to make payments from such fund which may be lawfully required by the Commission to be paid. Where the amount of the Fidelity Fund, including any interest earned by the Fidelity

Fund, exceeds one million dollars at the end of any quarter, such excess shall be paid proportionately between the other funds established by this sub-section.”

The Decree also amends section 22 (3) of the Trust Accounts Act 1996 by repealing subsection (3) and substituting: “(3) *The Funds may at its discretion apply from the Legal Aid Fund, the Independent Legal Services Commission Fund, the Judiciary Fund, and the Legal Practitioners Unit Fund monies to the Legal Aid Commission or the Commission or the Judicial Department or the Chief Registrar respectively on receipt of such assurances as it may think fit that those monies will be applied for the purposes designated for those funds in sub-section (1) (b) of this section.*”

Prisons & Corrections (Amendment) Decree 2011

This is a Decree to provide for an amendment to the Prisons and Corrections Act 2006 which is referred to as the ‘Principal Act’ which came into force on 27th June 2008. This Decree amends the citation of the Principal Act from *Fiji Prisons and Corrections Services* or *Fiji Prisons Service* to **Corrections Service Act** and wherever it appears in the Principal Act. Likewise, all written laws, documents of any nature whatsoever are consequentially amended from *Fiji Prisons and Corrections Services* to **Corrections Service**.

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Corrections Service Regulations 2011

This Regulation which is supposedly to come into effect on the same day as the Corrections Service Act 2006 is made pursuant to **section 54 of the Corrections Service Act 2006** to give effect to the provisions of the Corrections Service Act 2006 and in particular in relation to:

- (a) *the regulation and government of prisons, and the maintenance of security and good governance in prisons;*
- (b) *the recognition and implementation of human rights and applicable international standards;*
- (c) *the appointment, discharge and duties of officers and employees of the Prisons Service, consistent with the determinations and procedures of the Disciplined Services Commission;*
- (d) *prescribing offences against discipline applying to officers and prisoners;*
- (e) *prescribing rights of prisoners whilst in custody, including matters related to:*
 - (i) *visits from friends, relatives and other prescribed persons;*
 - (ii) *communications by post, or other prescribed means;*
 - (iii) *procedures for complaint and representation to prison authorities, the Human Rights Commission and the Ombudsman;*
 - (iv) *exercise and recreation; and*

(v) any other rights applying to prisoners awaiting trial;

(f) the duties and functions of Medical Officers, visiting justices and committees, and other persons authorised to undertake official prison visits, including the payment of allowances and the reimbursement of expenses consistent with any relevant law;

(g) the admission and classification of prisoners, including procedures applying to the detention or transfer of persons in accordance with Fiji's obligations under international conventions;

(h) interviews of prisoners by police officers in course of their investigations, which:

(i) may include arrangements for taking prisoners to crime scenes and their participation in identification processes; and

(ii) shall have regard to the constitutional rights of the prisoners and the role of their legal practitioners;

(i) the transfer of prisoners and the responsibilities of officers and other persons in relation to the security of prisoners when being transferred;

(j) separation of prisoners, and the review of prisoners under separation;

(k) the use of dogs in maintaining good order and security, and other arrangements for the response to unrest and violence within prisons;

(l) schemes for early release and other appropriate arrangements for the rehabilitation of prisoners;

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(m) schemes providing support for prisoners after their release, including cooperative arrangements with the Fijian Affairs Board, other relevant Ministries and agencies, religious bodies and community based groups;

(n) the provision of medical and related services within prisons, and arrangements for dealing with infectious diseases;

(o) arrangements for female prisoners and their children consistent with the rights and obligations of CEDAW and CRC, and in particular the rights of mothers to feed and care for their infant children whilst in prison;

(p) the encouragement and administration of prison enterprises and training programmes;

(q) arrangements for unconvicted and civil prisoners, including procedures applying to the periodic review of orders for the detention of any unconvicted person made under any law;

(r) reporting, investigating and otherwise dealing with the death of prisoners in custody;

(s) procedures for prison visits and dealing with matters relating to the taking of items, articles and things into prisons during visits; and

(t) offences for breach of any Regulations, which may provide for penalties of fines not exceeding \$1,000 or imprisonment for a term not exceeding 6 months, or for both.

Other News

1. The newly appointed Land Force Commander Colonel Mosese Tikoitoga is granted the Powers of Appropriate Superior Authority (ASA) for the Republic of Fiji Military Forces with effect from 19th November 2010.

2. The duo Dansukh Lal Bhika and Suliasi Sorovakatini were found guilty of 3 counts of **official corruption** charges by Thurairaja J on 14th March 2011 and consequently imprisoned for 3 ½ and 4 years respectively.

3. The Fiji Independent Commission against Corruption (FICAC) have commenced trial against the former Post Fiji Ltd Executives namely Peni Mau (former CEO) and Mahendra Motibhai Patel (former Chairman) with **abuse of office** which is in relation to the purchase of a Seiko Clock alleged to have been made during the duo's term in office without approval of the Post Fiji Board from 'Prouds' a company alleged to be partly owned by Mr Patel. The trial continues in the High Court and has been adjourned to a later date for further hearing.

4. The Fiji Independent Commission Against Corruption has laid charges against a former Trustee of the Mataqali Navusabalavu in the Lautoka Magistrates Court yesterday.

Ovini Bokini Uqeue was charged with three counts of Conversion by Trustee.

It is alleged that between September 2006 and December 2008, the accused being a Trustee of the Mataqali Navusabalavu (Tavua) had on three separate occasions with the intent to defraud converted or appropriated for his own use a total sum of \$13,632 from the Trust Account of the said Mataqali and later deposited the money into his personal bank Account for the use of a purpose other than the benefit of the Mataqali Navusabalavu.

The accused was unrepresented and asked Magistrate Siddiq Koya for time to seek engage a private lawyer.

FICAC Prosecutor Sanjeewa Dissanayake asked

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the court for the accused to surrender travel documents.

Magistrate Koya imposed a \$1000 bail bond on the accused and ordered that the accused surrender his travel documents to the court.

The matter is adjourned to 22 March 2011 for the accused to enter his plea.

5. Mr. Jocketani Cokanasiga the Minister for Primary Industries & was also appointed the Minister for Defence, National Security and Immigration by the President on 5th March 2011.

6. Two Executives of the National Fire Authority of Fiji John Low and Jone Koroi have both been charged by FICAC with one count of forgery and one count of false pretence each. On the count of **Forgery**, it is alleged that between August and September 2007, whilst being employed in the National Fire Authority as the Chairman of the Board of Directors and the Board Secretary respectively, with intent to defraud made a false document namely a Board Minute, without the authority of the Board of Directors, to state that at the Board of Directors Meeting held on 8th August 2007 it was resolved that John Low be remunerated with his existing remuneration as Executive Chairman for providing coaching and guidance to the Chief Executive Officer, in order that such board minute may be used as genuine.

On the count of **False Pretence**, it is alleged that between August 2007 and April 2008, the duo by false pretence namely, that the Board of Directors approved with the concurrence of the line Minister that John Low be remunerated with his existing remuneration as Executive Chairman for providing coaching and guidance to the Chief Executive Officer, with intent to defraud, caused the National Fire Authority to pay \$45,961.47 to John Low for his benefit.

Magistrate Thushara Rajasinghe granted John Low and Jone Koroi bail on the condition that they not travel out of the country without the courts permission, warned not to enter the National Fire Authority premises without prior approval, warned not to interfere with prosecution witnesses and ordered to report once every Monday to the FICAC Office in Suva.

He also ordered that the duo produce two sureties for \$15,000.00 to the court Registry then they will be granted bail.

7. At its 5th Scheduled meeting, Cabinet has approved the establishment of a Resident Diplomatic Mission in Suva by the Government of the Republic of Vanuatu.

Cabinet based its decision on a submission by the Prime Minister, in his capacity as the Acting Minister for Foreign Affairs and International Cooperation.

Cabinet also approved the provision of the appropriate diplomatic privileges to the High Commission of the Republic of Vanuatu under the **Fiji Diplomatic Privileges and Immunities Act (1971)** for the intents and purposes directly associated with the establishment and operation of the Resident Diplomatic Mission.

Fiji established diplomatic relations with Vanuatu when the latter became independent on 30th July, 1980.

Although this relationship continued to flourish, it was further cemented when Fiji joined the Melanesian Spearhead Group in 1996.

Senior officials from the Vanuatu Ministry of Foreign Affairs have visited Fiji on an exploratory mission to expedite planning for the establishment of a Mission.

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The Prime Minister said that the establishment of the Resident Diplomatic Mission will allow Vanuatu to cater for the sizeable Ni-Vanuatu community in Fiji, many of whom reside and/or study at the University of the South Pacific (USP) and other tertiary institutions.

8. Cabinet has approved new designs for Fiji's currency.

The designs were selected by the Currency Design Committee appointed by Cabinet, to replace the portrait of Her Majesty Queen Elizabeth II on Fiji's five banknotes and five coin denominations.

Cabinet has also approved designs selected by the committee for both the obverse and reverse of the new \$2 coin to replace the \$2 banknote.

Cabinet based its decision on a submission by the Prime Minister and Minister for Finance, Commodore Voreqe Bainimarama.

The Prime Minister said designs selected were specific to Fiji and constituted endemic flora and fauna.

"Important and iconic flora and fauna of Fiji has been selected to replace Her Majesty Queen Elizabeth II's portrait and to feature on the obverse side of the new \$2 coin," Commodore Bainimarama said.

"A *tanoa*, which was previously featured on the Fiji 1cent coin, has been selected for the reverse side of the new \$2 coin, in line with the cultural items featured on other existing Fiji coins."

The Prime Minister said that to align with the naming convention for the existing \$1 coin (*Saqamoli*), traditional *iTaukei* names will be included against the illustrations for designs on notes and coins.

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With the removal of the \$2 "green" note from the banknote structure and its inclusion in the coin structure, there will be a change in colour for the existing \$5 "brown" note to adopt the "green" colour.

He said the Reserve Bank would issue the new \$5 "green" notes after the \$2 banknotes have been recalled and withdrawn from circulation.

The new design notes and coins, including the new \$2 coin, will be introduced into circulation around June 2012.

9. Cabinet has approved a change in name for the Fiji Islands Revenue and Customs Authority (FIRCA).

FIRCA will now be known as the Fiji Revenue and Customs Authority (FRCA).

Cabinet based its decision on a submission by the Prime Minister and Minister for Finance, Commodore Voreqe Bainimarama.

The Prime Minister said the name change was in view of the change to the title used for our country, which was now referred to as the Republic of Fiji.

The name change is reflected in the ***Fiji Islands Revenue and Customs Authority (Amendment) Decree 2011***, which amends all written laws by deleting all references to the word 'Fiji Islands Revenue and Customs Authority' wherever it appears and inserting 'Fiji Revenue and Customs Authority'.

All State documents, of any nature whatsoever, will also be consequentially amended in a similar manner, unless the context otherwise requires.