



[1623]

## INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) PROMULGATION 2007  
(PROMULGATION No. 28 OF 2007)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgement as President of the Republic of the Fiji Islands as to what is best and good for the people of Fiji, and by the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the advice of Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation—

TO AMEND THE FIJI INDEPENDENT COMMISSION AGAINST  
CORRUPTION PROMULGATION 2007.

*Short title*

1.—(1) This Promulgation may be cited as the Fiji Independent Commission Against Corruption (Amendment) Promulgation 2007.

(2) In this Promulgation, the Fiji Independent Commission Against Corruption Promulgation No. 11 of 2007 is referred to as “the principal Promulgation”.

*Section 2A repealed and replaced*

2. The principal Promulgation is amended by repealing section 2A and substituting—

*“Offences to which this Promulgation applies*

2A. This Promulgation applies in relation to—

- (a) any offence under this Promulgation;
- (b) any offence under the Prevention of Bribery Promulgation;
- (c) any offence of corrupt or illegal conduct pertaining to any election;
- (d) any offence of blackmail committed by a prescribed officer by or through the misuse of his office;
- (e) the offence of perverting or obstructing the course of justice;
- (f) the offence of perjury;
- (g) to the extent they are not included in paragraphs (e) or (f), any offence contrary to Chapters XI to XV of the Penal Code;
- (h) any offence contrary to Chapters XXIV-XXVII of the Penal Code;
- (i) any offence contrary to Chapters XXX-XXXIV of the Penal Code;
- (j) any offence contrary to Chapter XXXVII of the Penal Code;
- (k) any offence contrary to Chapters XXXIX-XLIII of the Penal Code;
- (l) the offence of conspiracy to defraud;

(m) to the extent they are not included in the foregoing paragraphs, the offence of conspiracy to commit any of the offences referred to in this section;

(n) to the extent they are not included in the foregoing paragraphs, any attempt to commit an offence referred to in this section or the offence of aiding, abetting, inciting, counselling or procuring any of those offences,

and in this Promulgation the expression "offence to which this Promulgation applies" shall be construed accordingly."

*Section 2B repealed*

3. The principal Promulgation is amended by repealing section 2B.

*Section 10 amended*

4. The principal Promulgation is amended in section 10—

(a) in subsection (1), by deleting "of blackmail committed by or through the misuse of office" and substituting "to which this Promulgation applies";

(b) by repealing subsection (2);

(c) in subsection (3)(a), by deleting "or (2)"; and

(d) by repealing subsection (5).

*Section 10B amended*

5. The principal Promulgation is amended in section 10B by deleting "any of the offences referred to in section 10" and substituting "an offence to which this Promulgation applies".

*Section 10C amended*

6. The principal Promulgation is amended in section 10C(1) paragraphs (a) and (c), by deleting "any of the offences referred to in sections 10" and substituting "an offence to which this Promulgation applies".

*Section 10D amended*

7. The principal Promulgation is amended in section 10D—

(a) in subsection (1), by deleting "a section 10 offence" and substituting "an offence to which this Promulgation applies";

(b) in subsection (2)(b), by deleting "a section 10 offence" and substituting "an offence to which this Promulgation applies";

(c) in subsection (3), by deleting "any section 10 offence" and substituting "any offence to which this Promulgation applies"; and

(d) in subsection (4), by deleting the definition of "section 10 offence".

*Section 12 amended*

8. The principal Promulgation is amended in section 12(b) by deleting subparagraphs (i) to (vii) and substituting—

"(i) any alleged or suspected occurrence of an offence specified in paragraphs (a) to (d) of section 2A;

(ii) any alleged or suspected offence of conspiracy to commit any of the offences specified in paragraphs (a) to (d) of section 2A; and

(iii) any alleged or suspected attempt to commit any of the offences specified in paragraphs (a) to (d) of section 2A, or any alleged or suspected offence of aiding, abetting, inciting, counselling or procuring any of those offences".

*New section 12A and 12B added*

9. The principal Promulgation is amended by adding after section 12 the following sections —

*“Power of the Commissioner to investigate any offence to which this Promulgation applies*

- 12A. The Commissioner may, in addition to any of the any alleged or suspected offences specified in section 12(b), investigate any other suspected or alleged occurrence of an offence to which this Promulgation applies.

*Power of the Commissioner to prosecute etc in his own name*

- 12B.—(1) The Commissioner may in his own name and in any court institute and conduct proceedings in relation to any offence to which this Promulgation applies.

(2) The power conferred by subsection (1) includes the power to institute and conduct proceedings in relation to offences that were committed before the commencement of this Promulgation.

(3) The bringing of a prosecution for an offence in the exercise of the power conferred under this section does not, notwithstanding any provision of the Penal Code or any other law to the contrary, require the consent of the Director of Public Prosecutions.

(4) In any court proceedings to which the Commissioner is a party the Commissioner is not required, unless otherwise directed by the court, to appear in person but may appear by his representative.”

*Section 13, amended*

10. The principal Promulgation is amended in section 13 by adding the following subsection—

“(2A) For the purpose of obtaining advice and assistance, in relation to the exercise of his powers and the performance of his functions under this Promulgation, the Commissioner may instruct and retain any legal practitioner.”

*New section 13AA added*

11. The principal Promulgation is amended by adding immediately after section 13 the following section—

*“Powers of Commission officers*

- 13AA. All officers of the Commission shall have, in addition to any powers or privileges provided for by this or any other law, the powers and privileges of a police officer of the rank equivalent to that which they hold within the Commission.”

*New section 13F added*

12. The principal Promulgation is amended by adding immediately after section 13E the following section—

*“Transfer of proceedings from the Commission to the police or the Director of Public Prosecutions*

- 13F. (1) The conduct of any proceedings being conducted in the name of the Commissioner may, by agreement between the Commissioner and the police or the Director of Public Prosecutions, be transferred to be conducted in the name of a police officer or the Director of Public Prosecutions (where provision otherwise exists for that matter to be conducted in the name of a police officer or the Director of Public Prosecutions, as the case may be), instead of in the name of the Commissioner.

(2) Where such a transfer in the conduct of proceedings takes place then—

(a) the proceedings shall stand for all purposes as if they had been initiated in the name of the police officer or the Director of Public Prosecutions as the case may be; and

(b) for the purpose of those proceedings or any further proceedings that may be instituted or conducted by the police or the Director of Public Prosecutions arising out of the investigation carried out before the transfer by an officer of the Commission, that investigation shall be regarded as having been carried out by a police officer.

- (3) In particular, and without limiting the generality of subsection (2)(b)—
- (a) any statement taken from any person by an officer of the Commission shall be regarded as having been taken by a police officer;
  - (b) any interview of any person conducted or recorded by an officer of the Commission shall be regarded as having been conducted or recorded by a police officer;
  - (c) anything seized or detained by an officer of the Commission shall be regarded as having been seized or detained by a police officer;
  - (d) any entry or search of any premises or place undertaken by an officer of the Commission shall be regarded as having been undertaken by a police officer;
  - (e) any arrest made by the officer of the Commission shall be regarded as having been made by a police officer;
  - (f) any authorization for the searching of any premises or place issued to an officer of the Commission shall be regarded as having been issued to a police officer;
  - (g) any search of a person undertaken by an officer of the Commission shall be regarded as having been undertaken by a police officer.
- (4) Any matter arising from an investigation that has been carried out by an officer of the Commission, whether or not proceedings have been instituted by the Commissioner arising out of that investigation, may be transferred from the Commission to the police or the Director of Public Prosecutions for further investigation, or for consideration as to the institution of criminal proceedings, and subsection (2)(b) shall apply in relation to such transferred investigation as it applies to investigations in respect of transferred proceedings.
- (5) For the purposes of this section, the transfer of any proceedings being conducted before a court in the name of the Commissioner shall have effect at such time as the court is informed by the Commissioner, the police or the Director of Public Prosecutions that a transfer has been agreed.”.

*New section 19 added*

13. The principal Promulgation is amended by adding the following section—

*“Regulations and forms*

- 19.— (1) The Minister may make regulations to give effect to the provisions of this Promulgation, and in particular to prescribe matters required to be prescribed under this Promulgation.
- (2) Regulations made under subsection (1) may prescribe forms for use in connection with this Promulgation; and a form so prescribed may, with such variations as the circumstances of the case may require, be used for the purpose mentioned in the form, and if used shall be sufficient.”.

*New section 20 added*

14. The principal Promulgation is amended by adding the following section—

*“Validity of search warrants etc. issued before the commencement date of amendments*

20. No information for a search warrant made by an officer of the Commission under this Promulgation before the commencement of the Fiji Independent Commission Against Corruption (Amendment) Promulgation 2007, or search warrant issued pursuant to such an information, shall be regarded as defective, invalid or void by reason only of the fact that it is in the form of, or purports to be, an information or search warrant made or issued under the Penal Code or any other Act.”.

GIVEN UNDER MY HAND this 14th day of September 2007.

J. I. ULUIVUDA  
President of the Republic of Fiji