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STATE SERVICES DECREE 2000

INTERIM MILITARY GOVERNMENT DECREE NO. 6 OF 2000

IN exercise of the powers vested in the Interim Military Government under section 2 of the Interim Military Government and Finance Decree No. 3, I, Josaia Voreqe Bainimarama MSD, jssc, psc, the Commander and Head of the Interim Military Government of Fiji, hereby make the following Decree—

Short title and commencement

1. This Decree may be cited as the State Services Decree 2000 and is deemed to have commenced on the 29th day of May 2000.

Public Service Commission

2.—(1) There shall be a Public Service Commission consisting of a chairperson and 2 other members who shall be appointed by the Head of the Military Government and shall perform the functions, powers or duties conferred by this Decree or any other written law.

(2) If a member of the Public Service Commission is for any reason unable to perform the functions, powers or duties of such office, the Head of the Military Government may appoint a person to act during such period.

(3) The Head of the Military Government may confirm a member (including the Chairperson) of the Public Service Commission appointed under the 1997 Constitution to continue as a member of the Public Service Commission established under subsection (1).

Functions of the Public Service Commission

3.—(1) 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) The functions of the Public Service Commission do not extend to—

- (a) an office that is the responsibility of the Judicial Services Commission, the Legal Services Commission or Disciplined Services Commission;
- (b) an office in or a member of the Republic of the Fiji Military Forces;
- (c) an office or person in respect of which this Decree or any other written law makes provision.

(3) Before appointing, removing or taking disciplinary action against any person holding the following offices, the Public Service Commission shall consult—

- (a) in the case of an office under the control of the Ombudsman or Auditor General – the Ombudsman or Auditor General as the case may be;
- (b) in the case of a Permanent Secretary – the Head of the Military Government.

Power to delegate

4. The Public Service Commission may by Order in the *Gazette* delegate all or any of its functions or powers under this Decree to a holder of a public office except—

- (a) its power to appoint or remove or take disciplinary action against—
 - (i) a Permanent Secretary or a head of department;
 - (ii) any other person having the powers of a Permanent Secretary or a head of a department in relation to staff under his or her control;
- (b) the power to take disciplinary action.

Disciplined Services Commission

5.—(1) There shall be a Disciplined Services Commission consisting of a chairperson and 2 other members who shall be appointed by the Head of the Military Government and shall perform the functions, powers and duties conferred by this Decree or any other written law.

(2) If a member of the Disciplined Services Commission is for any reason unable to perform the functions of such office, the Head of the Military Government may appoint a person to act during such period.

(3) For the purpose of subsection (1), the Head of the Military Government may confirm a member (including the Chairperson) of the Disciplined Services Commission appointed under the 1997 Constitution to continue as members of the Disciplined Services Commission.

Functions of the Disciplined Services Commission

6.—(1) The Disciplined Services Commission has the following functions—

- (a) to make appointments to the Fiji Police Force or Fiji Prisons Service;
- (b) to remove officers from the Fiji Police Force or Fiji Prisons Service;
- (c) to take disciplinary action against officers of the Fiji Police Force or Fiji Prisons Service.

(2) The functions of the Disciplined Services Commission do not extend to—

- (a) the office of the Commissioner of Police or the Commissioner of Prisons;
- (b) an officer of the Fiji Police Force having the rank of Inspector (or its equivalent) or a lesser rank; or
- (c) an officer of the Fiji Prison Service having the rank of Chief Prison Officer (or its equivalent) or a lesser rank.

Powers of Commissioner of Police and Commissioner of Prisons

7.—(1) The Commissioner of Police has equivalent powers to the Disciplined Services Commission in respect of officers of the Fiji Police Force having the rank of Inspector (or its equivalent) or a lesser rank.

(2) The exercise by the Commissioner of Police of his or her powers to—

- (a) remove a person from the Fiji Police Force; or
- (b) reduce the rank of an officer of the Fiji Police Force,

requires the approval of the Disciplined Services Commission.

(3) The Commissioner of Prisons has equivalent powers to the Disciplined Services Commission in respect of officers of the Fiji Prisons Service having the rank of Chief Prison Officer (or its equivalent) or a lesser rank.

(4) The exercise by the Commissioner of Prisons of his or her powers to—

- (a) remove a person from the Fiji Prisons Service; or
- (b) reduce the rank of an officer of the Fiji Prisons Service,

requires the approval of the Disciplined Services Commission.

Disciplined Services Commission may delegate

8. Subject to conditions prescribed by any other written law, the Disciplined Services Commission may, with the approval of the Head of the Military Government, by order in the *Gazette*, delegate—

- (a) to the Commissioner of Police all or any of its functions or powers in relation to the Fiji Police Force; or
- (b) to the Commissioner of Prisons all or any of its functions or powers in relation to the Fiji Prisons Service.

Legal Services Commission

9.—(1) There shall be a Legal Services Commission consisting of—

- (a) the Chief Justice as the Chairperson;
- (b) the Chairperson of the Public Service Commission; and
- (c) the President of the Fiji Law Society.

(2) The Secretary to the Legal Services Commission shall be appointed by the Public Service Commission.

Functions of the Commission

10.—(1) The Legal Services Commission has the functions to make appointments to or remove persons from or take disciplinary action against the following offices—

- (a) Director of Public Prosecutions;
- (b) Solicitor General;
- (c) Supervisor of Elections;

- (d) Director, Fiji Law Reform Commission;
- (e) Administrator-General;
- (f) Agricultural Tribunal established under the Agricultural Landlord and Tenant Act (other than the Central Agricultural Tribunal);
- (g) Deputy Solicitor-General;
- (h) Deputy Director of Public Prosecutions;
- (i) First Parliamentary Counsel;
- (j) Assistant Director of Public Prosecutions;
- (k) Chief Investigating Officer (Ombudsman's Office);
- (l) State Solicitor;
- (m) Second Parliamentary Counsel;
- (n) Registrar of Titles;
- (o) Public Legal Adviser;
- (p) Principal Legal Officer;
- (q) Senior Legal Officer;
- (r) Legal Officer;

(2) Subject to section 16, before appointing, removing or taking of disciplinary action against, the Director of Public Prosecutions, the Supervisor of Elections and the Solicitor General, the Legal Services Commission shall consult the Head of the Military Government.

(3) The Director of the Public Prosecutions and the Solicitor General shall be persons qualified to be appointed as a judge.

(4) The Supervisor of Elections shall be a person qualified to practise as a legal practitioner in Fiji and has practised as a legal practitioner for at least 5 years.

(5) The offices of the Solicitor General and the Supervisor of Elections continue as if such offices were established by and the holders appointed under this Decree.

(6) The power to appoint (other than the power to dismiss or to take disciplinary action) persons up to Principal Legal Officer (or its equivalent) may be delegated by the Legal Services Commission to the Solicitor-General, the Director of Public Prosecutions and the Permanent Secretary for Justice, as the case may be.

Appointment of Ambassador, etc

11.—(1) The Head of the Military Government may appoint ambassadors or other principal representatives of the State to another country or an international organisation on the advice of the Executive Council.

(2) If a person appointed (including acting appointment) under subsection (1) is a holder of a public office, the Executive Council shall consult the Public Service Commission before advising the Head of the Military Government to make such appointment.

(3) Subsection (2) does not empower the Head of the Military Government to remove from the public service a person who was, immediately before his or her appointment under subsection (1), the holder of a public office.

Secretaries of departments

12. A Permanent Secretary including a head of department is responsible for general direction and control of a Ministry or department and to the Minister concerned for the efficient, effective and economical management of such Ministry or department.

Appointment of independent offices, etc

13.—(1) The following offices established under the 1997 Constitution continue in existence except that the powers to appoint such offices vest in the Head of the Military Government—

- (a) Ombudsman – on the advice of the Judicial Service Commission;
- (b) Commissioner of Police – on the advice of the Public Service Commission;
- (c) Auditor General – on the advice of the Public Service Commission;
- (d) Secretary-General to Parliament – on the advice of the Public Service Commission;
- (e) Governor of the Reserve Bank – on the advice of the Public Service Commission following consultation with the Board of the Reserve Bank.

(2) The person appointed as Ombudsman shall be a person who has held the office of a judge or qualified to be appointed a judge.

(3) The office of the Director of Public Prosecutions established under the 1997 Constitution continues as if it were established under this Decree, subject to section 10.

(4) The holders of the following offices are not subject to the direction or control by any person in the exercise of their powers, duties and functions, except by a court in accordance with the law—

- (a) Ombudsman;
- (b) Commissioner of Police;
- (c) Director of Public Prosecutions;
- (d) Auditor General;
- (e) Supervisor of Elections;
- (f) Secretary General to Parliament;
- (g) members of the Prerogative of Mercy Commission;
- (h) members of the Public Service Commission;
- (i) members of the Disciplined Services Commission;
- (j) members of the Judicial Services Commission; and
- (k) members of the Legal Services Commission.

(5) The performance of any functions or powers by the holders of an office under subsection (4) after the 29th of May 2000 is deemed to have been performed or exercised under this Decree.

(6) The Governor of the Reserve Bank and the Secretary-General to Parliament may be dismissed from office for inability to exercise the powers, duties and functions of such office or for misbehaviour, and may only be dismissed on the advice of the Public Service Commission following consultation with the Board of the Reserve Bank in the case of the Governor of the Reserve Bank.

Functions of independent offices

14.—(1) The Commissioner of Police is responsible for—

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

and, subject to the general policy directions that may be issued by the Head of the Military Government, is not subject to direction and control by any other person or authority in relation to those matters.

(2) 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.

(3) 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.

(4) In subsection (2) '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.

(5) The Ombudsman—

- (a) shall investigate action, being action that relates to a matter of administration, taken either before or after the commencement of this Decree by a department or by a prescribed authority and in respect of which a complaint has been made to the Ombudsman;
- (b) may, on his or her own motion or at the request of a Minister investigate any action, being action that relates to a matter of administration, taken either before or after the commencement of this Decree by a department or by a prescribed authority; and
- (c) shall be Chairperson of the Human Rights Commission.

(6) The Auditor General shall inspect and audit, and report to the Executive Council—

- (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.
- (7) In the report, the Auditor-General shall state whether, in his or her opinion—
- (a) all transactions with or concerning the public money or public property of the State have been authorised by or pursuant to this Decree or any other written law; and
 - (b) expenditure has been applied to the purpose for which it was authorised.
- (8) In the performance of his or her functions under subsection (6), the Auditor General or any person authorised by the Auditor General shall have access to all records, books, vouchers, stores or government property in the possession or control of any person or authority.
- (9) The Auditor General shall submit a report required under subsection (6) within 8 months after the close of each financial year to the Executive Council and the Head of the Military Government and thereafter such report shall become a public report.
- (10) The Auditor-General may engage a person under contract to carry out, or assist in the carrying out of, any audit or investigation that the Auditor-General is required to or may carry out.
- (11) The office of Supervisor of Elections established under the 1997 Constitution continues in existence.
- (12) The Supervisor of Elections—
- (a) administers the registration of voters for elections of members of the House of Representatives;
 - (b) conducts—
 - (i) elections of members of the House of Representatives; and
 - (ii) such other elections as prescribed in a written law; and
 - (c) may perform such other functions as are conferred by a written law.
- (13) 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.

Terms of office

15. The holders of the following offices hold office for 5 years and are eligible for re-appointment—
- (a) the Ombudsman;
 - (b) the Director of Public Prosecutions;
 - (c) the Auditor-General;
 - (d) the Commissioner of Police;
 - (e) the Supervisor of Elections; and
 - (f) the Secretary-General to Parliament,
- and expire upon their reaching 65 years, and a person must not be appointed or re-appointed if such person has reached that age.

Removal of holders of Independent offices

- 16.—(1) The holders of the following offices may be removed from office for inability to perform the functions of such office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed—
- (a) the Ombudsman;
 - (b) the Director of Public Prosecutions;
 - (c) the Auditor General;
 - (d) the Commissioner of Police;
 - (e) the Supervisor of Elections.
- (2) If the relevant authority considers the question of removal from office of a person under subsection (1), the Judicial Services Commission shall appoint a tribunal consisting of a chairperson (from among persons who hold or have held high judicial office in the Fiji or in another country) and 2 other members.
- (3) The function of the tribunal is to inquire into the matter and furnish a written report of the facts to the relevant authority and advise the relevant authority whether or not such person should be removed from office.
- (4) If the tribunal advises the relevant authority that the person should be removed, the relevant authority may remove the person from office.

(5) A person who is subject to inquiry under this section may be suspended during the period of inquiry and the suspension shall cease to have effect if the tribunal advises the relevant authority that the person should not be removed from office.

(6) In this section, 'relevant authority' means—

- (a) in the case of the Ombudsman – the Head of the Military Government on the advice of the Judicial Services Commission;
- (b) in the case of the Commissioner of Police and the Auditor General, – the Head of the Military Government on the advice of the Public Service Commission; and
- (c) in the case of the Director of Public Prosecutions and Supervisor of Elections – the Legal Services Commission.

Prerogative of Mercy

17.—(1) The Head of the Military Government 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 period; or
 - (ii) a penalty or forfeiture otherwise due to the State in respect of the offence.

(2) There shall be a Prerogative of Mercy Commission consisting of—

- (a) the Attorney-General who shall be the chairperson; and
- (b) 2 other members appointed by the Head of the Military Government, acting in his own judgement.

(3) In the exercise of his powers under subsection (1), the Head of Military Government acts on the advice of the Commission.

Saving

18.—(1) Any delegation and regulations made under the 1997 Constitution continue until varied, amended or revoked.

(2) Any pending appeal proceeding in respect of any appointment or promotion relating to any public office before the commencement of this Decree continues.

Appointment of expatriates

19. The person or authority exercising power to appoint a person to a public office (other than the office of judge or Justice of Appeal) shall not appoint a person who is not a citizen of Fiji except with the approval of the Head of the Military Government.

Power to remove

20.—(1) 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.

(2) Any provision in this Decree that vests in any person or authority power to remove any public officer from such office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

Resignations

21. Any person who has been appointed to any office established by this Decree may resign from that office by notice in writing addressed to the person or authority by whom such person was appointed; and the resignation shall take effect, and the office shall accordingly become vacant—

- (a) at such time or on such date (if any) as may be specified in the notice; or
- (b) when the notice is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later.

Performance of functions of Commissions

22.—(1) Any Commission established by this Decree may by regulations make provision for regulating and facilitating the performance by the Commission of its functions.

(2) Subject to this section, any such Commission, may regulate its own procedure.

(3) In addition to the functions conferred upon it by or under this Decree any such Commission shall have such powers and other functions (if any) as may be prescribed in a written law.

(4) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

Terms of office, etc of members of Commissions

23.—(1) A member of a Commission established by this Decree holds office for 2 years but is not eligible for re-appointment except *ex-officio* members.

(2) A member of a Commission established by this Decree is subject to other conditions (including allowances) imposed by the Head of the Military Government on the advice of the Public Service Commission

Power to amend and revoke instruments, etc

24. Where any power is conferred by this Decree to make any regulation, rule or order or to give any direction, the power shall be construed as including the power to amend or revoke any such regulation, rule, order or direction.

Consultation

25. Where any person or authority other than the Head of the Military Government is required by this Decree to exercise any function after consultation with any other person or authority, that person or authority is not obliged to exercise that function in accordance with the advice of that other person or authority.

Continuation of public offices

26. Every person who immediately before the 29th day of May, 2000 holds or is acting in a public office shall, as from that date hold or act in that office established by the 1997 Constitution as if he or she had been appointed to do so in accordance with this Decree and shall be deemed to have taken any oaths required upon such appointment by any existing law—

Provided that any person who under any existing law would have been required to vacate such office at the expiration of any period or on the attainment of any age shall vacate such office under this Decree upon the expiration of that period or upon the attainment of that age.

Interpretation

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

“1997 Constitution” means the Constitution Amendment Act 1997;

“Executive Council” means the Executive Council established by section 6 of the Interim Military Government and Finance Decree No. 3;

“Head of the Military Government” means the Commander and Head of the Interim Military Government of Fiji;

“Judicial Services Commission” means the Judicial Services Commission established by section 2 of the Administration of Justice Decree No. 5 of 2000;

“Legal Services Commission” means the Legal Services Commission established by section 9;

“local authority” has the meaning ascribed to it under the Local Government Act;

“Permanent Secretary” means the person designated as such who is directly responsible to a Minister but does not include a head of department;

“public office” means—

- (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 the public service, the Fiji Police Force or the Republic of Fiji Military Forces;
- (e) an office of judge;
- (f) an office of magistrate or an office in a court created by a written law;
- (g) an office in, or as a member of, a statutory authority; or
- (h) an office established by a written law.

“public officer” means a person holding or acting in any public office;

"public service" means the service of the State in a civil capacity, in respect of the Government of Fiji, but does not include—

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

"State" means the Republic of Fiji.

(2) Subject to this Decree, the Interpretation Act applies with the necessary adaptations, for the purpose of interpreting this Decree and otherwise in relation thereto as it applies for the purpose of interpreting any written law.

(3) In this Decree the expression "public office" does not include—

- (a) the office of a Minister; or
- (b) except insofar as may be otherwise prescribed, the office of member of any council, board, panel, committee or other similar body (whether incorporated or not established by or) under any written law;
- (c) Governor of the Reserve Bank.

(4) A reference in this Decree to a Minister or the Attorney-General is a reference to the member of the Executive Council established under section 6 of the Interim Military Government and Finance Decree No. 3 who is assigned the responsibility of a ministerial portfolio.

(5) For the purposes of this Decree, a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that the person is in receipt of a pension or other like allowance in respect of service under the Government or a local authority.

(6) If there is any inconsistency with this Decree and any other written law, this Decree shall prevail.

Made at Suva this 13th day of June 2000.

COMMODORE J.V. BAINIMARAMA.
Commander and Head of the Interim Military Government.