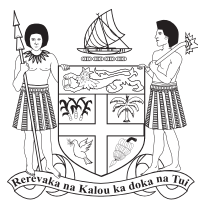


EXTRAORDINARY



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FIJI NATIONAL PROVIDENT FUND DECREE 2011  
 (DECREE NO. 52)

## ARRANGEMENT OF SECTIONS

## SECTION

## PART 1—PRELIMINARY

1. Short title
2. Objectives of this Decree
3. Commencement, application and repeals
4. Interpretation

## PART 2—THE BOARD

*Division 1—The Board*

5. Continuation of the Board
6. Functions and powers of the Board
7. Board members—appointment and qualifications
8. Chairman and Deputy Chairman
9. General duties of Board, Board members and staff members
10. Board and Board members entitled to indemnity
11. Period of office
12. Remuneration of Board members
13. Other terms and conditions of office
14. Board meetings
15. Resolutions without meetings
16. Board committees
17. Code of Conduct
18. Review of decisions
19. General forums
20. Staff etc
21. Disclosure of interests
22. Delegations

*Division 2—Accounts, audits and reports*

23. Financial Management Act 2004
24. Records
25. Financial reports
26. Audit
27. Annual report
28. Annual reports to be published

## PART 3—THE FNPF

*Division 1—Operation of the FNPF*

- 29. Continuation of FNPF
- 30. What must be credited to the FNPF
- 32. Application of the FNPF
- 32. Solvency requirements for FNPF

*Division 2—Registration of employers and admission of FNPF members*

- 33. Certain persons taken to be employers
- 34. Registration of employers
- 35. Returns to be made when employees engaged
- 36. Admission of FNPF members, and ceasing to be a FNPF member

*Division 3—Contributions to the FNPF*

- 37. Mandated contributions
- 38. Additional contributions
- 39. Recovery of contributions from employee
- 40. Penalty amounts

*Division 4—Reporting to FNPF members and employers*

- 41. Member annual statements for FNPF members
- 42. Member exit reports for FNPF members
- 43. Employer annual reports

## PART 4—MEMBERS' ENTITLEMENTS AND ACCOUNTS IN THE FNPF

- 44. FNPF members' accounts
- 45. FNPF members allocating contributions to preserved and general accounts
- 46. Other payers allocating contributions to preserved and general accounts
- 47. Crediting rates
- 48. Amounts to be credited to FNPF members' entitlements
- 49. What can be debited from FNPF members' entitlements

## PART 5—PAYMENTS FROM THE FNPF

*Division 1—Board approval*

- 50. Board approval required

*Division 2—Payment on entitlement events*

- 51. Payment on entitlement events
- 52. Withdrawals on reaching prescribed age—preserved entitlements to be withdrawn
- 53. Withdrawals on physical or mental incapacity, leaving Fiji or death—preserved and general entitlements to be withdrawn
- 54. How payments on reaching prescribed age or on physical or mental incapacity are to be paid
- 55. Withdrawals must not be used to buy retirement income products that are not approved
- 56. Nominations as to payment of entitlements on death
- 57. Payment on FNPF member's death

*Division 3—Other withdrawals*

- 58. Housing finance assistance
- 59. Early withdrawals
- 60. Withdrawals amounts invested for certain minors

## PART 6—RETIREMENT INCOME PRODUCTS

*Division 1—Board to provide retirement income products*

- 61. Board to provide certain retirement income products
- 62. Other retirement income products

*Division 2— Retirement Income Fund*

- 63. Retirement Income Fund
- 64. What must be credited to the Retirement Income Fund
- 65. Application of the Retirement Income Fund

*Division 3—Additional retirement income products*

- 66. Approval of additional retirement income products
- 67. Suspension or revocation of approval on request
- 68. Suspension or revocation of approval
- 69. Existing rights on suspension or revocation
- 70. Notice of approvals, suspensions and revocations

*Division 4—Disclosure obligations and unfair practices*

- 71. Disclosure requirements
- 72. Requirements for applications for approved retirement income products
- 73. Prohibition of false and misleading statements
- 74. Code of Fair Practice
- 75. Unfair practices
- 76. Repayments of amounts paid for approved retirement income products

## PART 7—SPECIAL DEATH BENEFITS

- 77. Special death benefit premiums etc
- 78. Special death benefits
- 79. The Special Death Benefits Fund
- 80. What must be credited to the Special Death Benefits Fund
- 81. Application of the Special Death Benefits Fund
- 82. Board not an insurer
- 83. Special death benefit not to be considered in certain cases

## PART 8—OTHER PROVISIONS APPLICABLE TO FUNDS

- 84. Supplementary Fund
- 85. What must be credited to the Supplementary Fund
- 86. Application of the Supplementary Fund
- 87. Estimates of liabilities
- 88. Funding and solvency certificates
- 89. Board not subject to direction
- 90. Investments
- 91. Investment guidelines
- 92. Derivatives
- 93. Certain transactions prohibited

## PART 9—PROTECTION OF ENTITLEMENTS

- 94. Amounts etc not subject to sequestration
- 95. Bankruptcy of employee
- 96. Bankruptcy, liquidation, etc, of employer

## PART 10—ENFORCEMENT

*Division 1—Inspectors and their powers*

- 97. Appointment
- 98. Identity cards
- 99. Powers to monitor compliance
- 100. Powers to investigate suspected offences against this Decree
- 101. Entry and search, etc
- 102. Self-incrimination not a reasonable excuse, and legal professional privilege
- 103. Warrants

*Division 2—Departure from Fiji*

- 104. Departure prohibition orders
- 105. Contravening a departure prohibition order
- 106. Departure authorities
- 107. Revocation of departure prohibition orders

*Division 3—Proceedings*

- 108. Recovery of unpaid contributions
- 109. Prosecutions
- 110. Evidence
- 111. Orders to third parties to recover unpaid contributions
- 112. Court may order payment of contribution and interest

*Division 4—Other provisions*

- 113. False or misleading statements
- 114. Incorrectly keeping records etc.
- 115. Falsifying or concealing identity with intention of deceiving or misleading etc
- 116. Liability of directors etc

## PART 11—SUPERVISION BY THE RESERVE BANK

*Division 1—Preliminary*

- 117. Operation of this Part with other laws
- 118. Matters that the Reserve Bank must take into account in exercising powers and performing functions under this Part

*Division 2—Prudential standards*

- 119. Prudential standards

*Division 3—Actuaries and auditors*

- 120. Appointment of actuary and auditor
- 121. Role of actuary
- 122. Financial condition reports
- 123. Assistance, etc, to auditor and actuary
- 124. Undue pressure or influence, etc, on auditor and actuary

*Division 4—Reports to Reserve Bank*

- 125. Reports to Reserve Bank
- 126. Reserve Bank may require other reports

- 127. Report to Minister
- 128. Protection for reports

*Division 5—Examinations and directions*

- 129. Examinations
- 130. Reserve Bank's powers of direction

*Division 6—Statutory management*

- 131. Reserve Bank may appoint statutory manager
- 132. Role, powers and duties of statutory manager
- 133. Removal of statutory managers
- 134. Protections for statutory managers

PART 12—MISCELLANEOUS

- 135. Secrecy
- 136. Matrimonial property
- 137. Extension of certain provisions to providers of additional retirement income products
- 138. Board etc, not liable to tax
- 139. Victimisation of employees prohibited
- 140. Advances from Government
- 140A. State exempted from prosecution and investigation
- 141. Consequential amendments
- 142. Savings
- 143. Regulations
- 144. Rules

SCHEDULE 1—CODE OF CONDUCT

SCHEDULE 2—REVIEW OF DECISIONS AND DETERMINATIONS

SCHEDULE 3—HOUSING FINANCE ASSISTANCE

SCHEDULE 4—RETIREMENT INCOME PRODUCTS PROVIDED BY THE BOARD

SCHEDULE 5—CODE OF FAIR PRACTICE

—————  
GOVERNMENT OF FIJI  
—————

FIJI NATIONAL PROVIDENT FUND DECREE 2011  
(DECREE NO. 52 OF 2011)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

A DECREE TO REFORM THE FIJI NATIONAL PROVIDENT FUND, TO MAKE PROVISION TO SECURE  
RETIREMENT SAVINGS AND RETIREMENT INCOMES, AND FOR RELATED PURPOSES

PART 1—PRELIMINARY

*Short title*

- 1. This Decree may be cited as the Fiji National Provident Fund Decree 2011.

*Objects of this Decree*

2. The principal objects of this Decree are to—

- (a) ensure that workers will accumulate savings throughout their working lives to provide income after they cease working; and
- (b) improve the operation and governance of the Fiji National Provident Fund.

*Commencement, application and repeals*

3.—(1) Except as set out in the following table, this Decree shall come into force on the date this Decree is published in the *Gazette*.

<i>Provision</i>	<i>Date on which provision comes into force</i>
section 38 ( <i>Additional contributions</i> )	1 January 2013
Part 4 ( <i>Members' entitlements and accounts in the FNPF</i> ) (except sections 44 ( <i>FNPF members' accounts</i> ) and 47 ( <i>Crediting rates</i> ))	1 January 2013
Part 5 ( <i>Payments from the FNPF</i> ) except section 55	1 January 2013
section 42 ( <i>Member exit reports for FNPF members</i> )	1 July 2012
Part 6 ( <i>Retirement income products</i> )	1 March 2012
Part 7 ( <i>Special Death Benefits</i> ) (except for section 82 ( <i>Board not an insurer</i> ))	1 July 2012
sections 87 ( <i>Estimates of liabilities</i> ), 88 ( <i>Funding and solvency certificates</i> ) and 90 ( <i>Investments</i> )	1 March 2012

(2) Section 19 (General forums), Division 2 of Part 2 (Accounts, audits and reports), Division 2 of Part 3 (Registration of employers and admission of FNPF members) and Division 4 of Part 3 (Reporting to FNPF members and employers) (except section 42) apply for the 2012–2013 financial year and later financial years.

(3) Except as set out in the following table, the Fiji National Provident Fund Act (Cap. 121) is repealed with effect from the date that this Decree is published in the *Gazette*.

<i>Provision</i>	<i>Date of repeal</i>
Part V ( <i>Allocation of payments into the Fund</i> )	1 June 2012
Part VI ( <i>Elderly employees and members re-employed after withdrawal</i> )	1 June 2012
section 29 ( <i>Option to become or remain a member of the Fund</i> )	1 June 2012
Part VIII ( <i>Withdrawal of contributions</i> )	31 December 2012
Part IX ( <i>Housing Finance Assistance</i> )	31 December 2012
Part IXA ( <i>Share Investment Scheme</i> )	the date on which regulations made for the purposes of Division 2 of Part 3 of the Transition Decree come into force
section 49 ( <i>Offences and penalties</i> )	1 June 2012
section 50 ( <i>Notice of unpaid contributions</i> )	
section 51 ( <i>Further powers of court</i> )	
section 53 ( <i>Repayment to employee of illegal deductions</i> )	
section 57 ( <i>Loss of benefit through default of employer</i> )	
Part XIII ( <i>Regulations</i> )	31 December 2012
section 64(b)	29 February 2012

(4) If—

- (a) a person commits an offence against a provision of the Fiji National Provident Fund Act (Cap. 121) and against a provision of this Decree; and
- (b) the offences arise out of the same set of facts and circumstances;

the person is not to be convicted of both offences.

(5) The repeal of a provision that is not mentioned in the table to subsection (4) does not affect the continued operation of the provision for so long as is necessary for the purposes of the provisions mentioned in the table to subsection (4).

*Interpretation*

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

“account based pension” means a pension payable by a person (the “annuity provider”) to another person (the “annuitant”) out of an account maintained by the annuity provider in respect of the annuitant, where the arrangements for the pension comply with the requirements of regulations made for this definition;

“actuary” means a person who—

- (a) is qualified to be appointed to be an actuary under the Insurance Act 1998; and
- (b) is appointed under subsection 120(1);

“additional contribution” means an amount paid to, and accepted by, the Board as an additional contribution in respect of an FNPF member;

“annuitant” means—

- (a) in relation to an annuity—the annuitant as defined in the definition of “annuity” in this subsection; or
- (b) in relation to an account based pension—the annuitant as defined in “account based pension”;

“annuity” means a contract under which a person (the “annuity provider”) undertakes, for valuable consideration, to provide a series of payments by way of annuity (“annuity payments”) to another person (the “annuitant”) and, to avoid doubt, includes an account based pension;

“annuity provider” has the meaning given to that term in “annuity”;

“approved retirement income product” means—

- (a) a basic annuity; or
- (b) an account based pension provided by the Board under section 61; or
- (c) a retirement income product approved under section 66;

“auditor” means a person who—

- (a) is a member of an international firm of chartered accountants represented in Fiji by a public practising member of the Fiji Institute of Accountants; and
- (b) is appointed under section 120(2);

“balance”, at a particular time, means—

- (a) for a fund, an FNPF member’s FNPF account or an FNPF member’s preserved or general entitlement—the amount standing to the credit of the fund or account, or the amount of the entitlement, at that time; and
- (b) for an account based pension—the amount standing to the credit of the account referred to “account based pension” at that time;

“basic annuity” means an annuity provided by the Board under section 61;

“Board” means The Fiji National Provident Fund Board continued in existence by section 5;

“Board member” means a person holding office as a Board member under section 7;

“Chairman” means the Board member holding office as Chairman under section 8;

“Chief Executive Officer” means the person for the time being holding office or acting as Chief Executive Officer under section 20(2);

“child”, of a person, includes an ex-nuptial child of the person;

“Code of Conduct” means a code formulated under section 17;

“Code of Fair Practice” means a code formulated under section 74;

“conversion factor” means a percentage specified in the table to clause 4 of Schedule 4 or in the table to clause 10 of that Schedule or, if a conversion factor has been amended under section 61, the amended factor;

“conversion threshold” means the amount prescribed by regulations for the purposes of this definition;

“crediting rate” means a rate determined under section 47(1)(c);

“Deputy Chairman” means the Board member holding office as Deputy Chairman under section 8;

“disqualified person” means a person—

- (a) who has been convicted or found guilty of an offence punishable by imprisonment of 12 months or more;
- (b) who has been convicted or found guilty of an offence involving dishonesty;
- (c) in respect of whom a receiving order under the Bankruptcy Act (Cap. 48) has been made;
- (d) who is a voluntary or involuntary patient in a mental hospital or facility under the Mental Health Decree 2010;
- (e) who has become incapable of being appointed as, or is prohibited from acting as, a director of a company because of sections 187 or 190 of the Companies Act (Cap. 247) or another written law;
- (f) who has been, either in Fiji or overseas, disqualified from acting as a director or executive officer of a body corporate under a law relating to companies or to the provision of financial services.

“document” includes—

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

and includes a document created or stored electronically;

“employee” has a meaning affected by subsections (2), (3) and (4);

“employer” has a meaning affected by subsections (2), (3) and (4);

“entitlement event”, for an FNPF member, means any of the following—

- (a) the member reaches the age prescribed by regulations for this section;
- (b) the member becomes physically or mentally incapacitated from ever engaging in any further employment;
- (c) the member has left, or is about to leave Fiji permanently to reside in another country;
- (d) the death of the member;

“executive officer”, for a body corporate, means a person who takes part in the management of the body corporate;

“exempt employee”, for an employer for a month, means any of the following—

- (a) an employee of the employer who, at any time during the month—
  - (i) is less than 15 years old; or
  - (ii) is an outworker as defined in the Employment Relations Promulgation 2007; or
  - (iii) is detained in a prison, approved school under the Juveniles Act (Cap. 56) or is a voluntary or involuntary patient in a mental health hospital or facility under the Mental Health Decree 2010;



- (b) an employee of the employer whose total wages payable by the employer for the month are less than the prescribed amount;
- (c) an employee of the employer, not being a resident of Fiji, upon whom have been conferred, who has been accorded or who is entitled to, immunities and privileges under the Diplomatic Privileges and Immunities Act (Cap. 8);
- (d) a person who is employed in Fiji but is not a citizen of Fiji, unless the person has applied to become a member and his or her employer has agreed under section 36(2);
- (e) a person declared by the Board under subsection (5) to be an exempt employee of the employer;

“financial condition report” means a report required by section 122;

“financial crime” means any of the following—

- (a) an offence that involves fraud or dishonesty relating to the assets or money of the Board or a fund;
- (b) financing or facilitating, or being involved in financing or facilitating, an offence relating to the assets or money of the Board or a fund;
- (c) dealing with the proceeds of crime as defined in the Proceeds of Crime Act, 1997 (otherwise than in accordance with that Act), whether or not related to the Board or a fund;
- (d) an offence under the Financial Transactions Reporting Act 2004, whether or not related to the Board or a fund;

“financial year” means the period from 1 July in a year to 30 June in the next year or any other period declared by the Board;

“FNPF” means the Fiji National Provident Fund continued in existence by section 29;

“FNPF account”, for an FNPF member, means the account required in respect of the member by section 44(1), and includes a preserved account and a general account;

“FNPF member” means a person—

- (a) who was, immediately before the day on which this Part comes into force, a member of the FNPF in respect of whom contributions were or were required to be made under the former law; or
  - (b) admitted as an FNPF member under this Decree;
- until the person ceases to be an FNPF member under this Decree;

“former law” means the Fiji National Provident Fund Act (Cap. 219);

“fund”, in relation to the Board, means—

- (a) the FNPF;
- (b) the Retirement Income Fund;
- (c) the Special Death Benefits Fund; and
- (d) any other fund established by the Board;

and, in relation to another retirement income product provider, means a fund that a condition of the approval under this Decree of a retirement income product provided by the provider, or a prudential standard, requires the provider to establish and maintain;

“funding and solvency certificate”, for a fund, means a certificate referred to in section 88 in respect of the fund;

“general account”, for an FNPF member, means the account for the member provided for in section 44(2)(b);

“general entitlement”, for an FNPF member at a particular time, means the balance of the member’s FNPF account at that time less the amount of the member’s preserved entitlement at that time;

“holding company” of a company has the same meaning as in section 156 of the Companies Act (Cap. 247);

“inadmissible asset”, in respect of a fund, means any of the following—

- (a) goodwill;
- (b) a deferred taxation credit;
- (c) deferred acquisition costs;
- (d) management rights;
- (e) computer software;
- (f) any other intangible asset;
- (g) any surplus in another fund that may be transferred to the fund under this Decree;
- (h) if the value of an asset of the Board used in the conduct of business of the fund, as recorded in the Board’s accounts, is more than the amount that the asset would reasonably be expected to be sold for—the asset, to the extent of the difference between the 2 amounts;
- (i) any asset prescribed by prudential standards for the purposes of this paragraph;

“inspector” means a person appointed by the Board under section 97(1);

“investment guidelines”, for a fund, means an investment guideline in force under section 91;

“key features statement”, for a retirement income product, means a statement for the product required by section 71;

“mandated contribution” means an amount required by section 37 to be paid as a contribution;

“minimum sum” means the amount prescribed by regulations for the purposes of this definition;

“Minister” means the Minister for Finance;

“nomination” means a nomination under section 56(1);

“penalty amount” means an amount required by section 40(1) to be paid as a penalty amount;

“personal representative”, of a person who has died, has the same meaning as in the Succession, Probate and Administration Act (Cap. 60);

“preserved account”, for an FNPF member, means the account for the member provided for in section 44(2) (a);

“preserved entitlement”, for an FNPF member, means the amount calculated under subsections (7) and (8) in respect of the member;

“pro-rata crediting rate” means a rate determined under section 47(1)(d) or section 47(3);

“provider”, in relation to an account based pension, has the meaning given to that term in “account based pension”;

“prudential standard” means a standard made under section 119;

“public official” means a person who—

- (a) is an employee in the public service (within the meaning of the Public Service Act 1999); or
- (b) holds an office in the Republic of Fiji Military Forces, the Fiji Police Force or the Fiji Correctional Service; or
- (c) holds a full-time office in, or is a full-time employee of, a commercial statutory authority or a government company (both as defined in the Financial Management Act 2004 (except the Board));

but a person is not a public official merely because he or she is a Board member or the Chairman of the Board;

“RBF inspector” means a person appointed by the Reserve Bank under section 129;

“related company”, for a company (the “first company”), means a company that is—

- (a) a subsidiary or a holding company of the first company; or
- (b) a subsidiary of a holding company of the first company; or
- (c) a holding company of a subsidiary of the first company;

“relevant document or thing” means a document or thing that—

- (a) an employer is required to keep under this Decree or the Employment Relations Promulgation 2007; or
- (b) an inspector reasonably considers may be relevant for a purpose mentioned in section 99(1) or 100(1);

“relevant person” means—

- (a) an employer;
- (b) a person who an inspector has grounds to suspect may be an employer;
- (c) when the employer or suspected employer is a body corporate—an executive officer of the body corporate;
- (d) an employee; or
- (e) a person who an inspector has grounds to suspect may be an employee.

“Reserve Bank” means the Reserve Bank of Fiji;

“Retirement Income Fund” means the fund required by section 65 to be established by the Board;

“retirement income product” means—

- (a) an annuity; or
- (b) an account based pension;

“retirement income product provider” means an annuity provider (as defined in “annuity”) or the provider of an account based pension;

“rules” means rules made by the Board under section 142;

“solvency requirement”, for the FNPF, means the solvency requirement in section 32;

“Special Death Benefit Fund” means the fund required by section 79 to be established by the Board;

“staff member” means a member of the Board’s staff;

“statutory manager” means a person appointed under section 131 as a statutory manager;

“subsidiary” of a company has the same meaning as in section 156 of the Companies Act (Cap. 247);

“this Decree” includes the regulations;

“Transition Decree” means the Fiji National Provident Fund Transition Decree 2011;

“wages”, for an employee for a period—

- (a) includes all amounts payable in money to the employee by his or her employer in respect of the period under the relevant contract of employment, ignoring deductions and withholdings (whether or not required by written law); and
  - (b) does not include amounts payable to the employee by way of reimbursement for amounts that the employee had paid, or is liable to pay, in connection with the employment;
- and otherwise has a meaning affected by subsection (6).

(2) In addition to their ordinary meanings—

“employee” also means a person specified in Column 1 of the following Table; and

“employer”, in relation to such an employee, also means the person specified in Column 2 of the Table.

<i>Column 1</i>	<i>Column 2</i>
An individual who, being in Fiji, is engaged under a contract to perform manual labour (whether as an individual or as one of a group of persons).	The person with whom the employee entered into the contract or arrangement.
An individual who, being a resident of Fiji, is employed under an employment contract or as an apprentice outside Fiji by a person who has a place of business in Fiji.	The person who has a place of business in Fiji.
An individual who, being a resident of Fiji, is engaged under a contract or arrangement entered into in Fiji as a master or member of the crew of a vessel, or as captain or member of the crew of an aircraft, the owner of which has a place of business in Fiji.	The owner of the vessel or aircraft.
An individual engaged to provide services under a contract or arrangement under which the person is remunerated (wholly or partly) by commission, success fees or similar payments.	The person with whom the employee entered into the contract or arrangement.
An individual who was a Member of the Legislative Council, the House of Representatives or the Senate after 21 October 1966	The Government.
An apprentice.	His or her master.
An individual declared to be an employee under subsection (4).	The Government.

(3) In determining whether a person is an employee, it does not matter whether the contract of employment is written or oral, or express or implied.

(4) The Minister may, on the recommendation of the Board, make a written declaration that a specified person is, for the purposes of this Decree, an employee of the Government.

(5) If, on application by an employee or his or her employer, the Board is satisfied of all the following in relation to an employee, the Board may make a written declaration that the employee is an exempt employee—

- (a) the employee is employed by an employer whose principal place of business is outside Fiji;
- (b) the contract of employment was entered into outside Fiji;
- (c) the employee is not a resident of Fiji;
- (d) either—
  - (i) contributions are being made and will continue to be made in respect of the employee to a superannuation, pension or retirement scheme, or a social security scheme, in some country other than Fiji; or
  - (ii) the employee will be entitled, under a superannuation, pension or retirement scheme associated with his or her employment, to benefits that are at least as favourable to the employee as those provided for by this Decree.

(6) For this Decree, if an individual—

- (a) holds the percentage prescribed by regulations made for this section, or a smaller percentage, by number of the shares in a company;
- (b) is engaged by the company to provide services to the company; and
- (c) is remunerated by way of dividend from the company or a related company of the company;

the amounts of the dividend are taken to be wages.

(7) An FNPF member's preserved entitlement on the day on which Part 4 comes into force is equal to 70% of the balance of the member's account at that day.

(8) An FNPF member's preserved entitlement at any time after the day on which Part 4 comes into force is the sum of—

- (a) the member's preserved entitlement at that day; and
- (b) 70% of all contributions credited to the account after that day (not contributions to which a notice under sections 45 or 46 applies); and
- (c) contributions that, because of section 48, are to be credited to the member's preserved entitlement; and
- (d) 70% of all amounts credited to the account under section 48(9) after that day;

less amounts lawfully withdrawn from the member's preserved entitlement under this Decree after that day.

(9) Nothing in this Decree renders the Government liable to prosecution for an offence.

(10) If—

- (a) this Decree requires or provides for an application, notice, report or return, or a similar document, to be provided to the Board; and
- (b) the Chief Executive Officer has approved a form for the purpose;

the application, notice, report, return or document must be given to the Board in that form, properly filled up in accordance with the instructions in the approved form.

(11) If the Chief Executive Officer approved a form as mentioned in section (10)(b), the Board must provide the form to any person who wants to make the application, or provide the notice, report or return or document, to the Board.

(12) If—

- (a) the form actually used in a particular case is not an approved form; and
- (b) the differences between it and the approved form are minor;

the Board must not reject the application, notice, report, return or document on the basis that the approved form has not been used.

(13) The Chief Executive Officer may determine in writing that a specified application, notice, report or return, or a similar document, for this Decree is to be provided to the Board electronically, in the way and using a system designated in the determination. The Board must publicise the determination.

## PART 2—THE BOARD

### *Division 1—The Board*

#### *Continuation of the Board*

5. The Fiji National Provident Fund Board, established by the former law, is continued in existence as a body corporate under the same name.

#### *Functions and powers of the Board*

6.—(1) The functions of the Board are to—

- (a) collect and manage contributions;
- (b) hold, invest and manage the funds in accordance with this Decree;
- (c) develop and offer financial products and services in accordance with this Decree;
- (d) conduct education and information programs, and carry out other activities, to encourage people in Fiji to make informed and appropriate arrangements, through saving and effective money management, for income after they retire from the paid workforce;
- (e) provide to the Government of Fiji and its agencies information and advice on matters affecting retirement savings policy and post retirement income policy;

- (f) conduct and promote research into matters affecting retirement savings and post retirement income and other matters that relate to its functions;
- (g) publish material on matters that relate to its functions; and
- (h) carry out other functions conferred on the Board by written law.

(2) The Board has all the powers necessary and convenient for carrying out its functions.

(3) The Board does not hold any fund assets on any trust.

(4) The Board shall strive to manage the affairs of the Board in an efficient and effective way, and shall strive to establish and implement appropriate and effective governance systems and processes, including quality assurance processes and process for measuring the performance of the Board, Board members and staff members, having regard, among other things, to internationally accepted standards in these matters.

*Board members—appointment and qualifications*

7.—(1) The Board shall consist of 7 members appointed by the Minister.

(2) The regulations may prescribe a process for appointments under subsection (1), including the process for nominations or applications to be sought, the criteria for selection for consideration for appointment and the process to be undertaken to select persons for appointment under that subsection.

(3) The Minister is not to appoint a person to be a Board member unless—

- (a) the Reserve Bank has reported to the Minister that there is no reason to believe that the person is not a fit and proper person to be a Board member;
- (b) if the appointment were to be made, no more than one of the Board members would be a public official; and
- (c) the Minister is satisfied that, if the appointment were to be made, the Board members would between them have appropriate skills and expertise in—
  - (i) investment management;
  - (ii) corporate governance;
  - (iii) accounting and auditing;
  - (iv) finance and banking;
  - (v) risk management;
  - (vi) law;
  - (vii) acting as an actuary or an auditor; and
  - (viii) information technology or a similar engineering discipline.

(4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

*Chairman and Deputy Chairman*

8.—(1) The Minister is to appoint one of the Board members (but not a public official) to be Chairman of the Board.

(2) The Board shall elect a Board member to be Deputy Chairman of the Board.

*General duties of Board, Board members and staff members*

9.—(1) The Board shall have the following duties, in addition to the duties that it otherwise has—

- (a) to act honestly in all matters related to its functions;
- (b) to exercise, in all matters related to its functions, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;

- (c) to ensure that its duties and powers are performed and exercised solely in the best interests of the FNPf members and annuitants under approved retirement income products provided by the Board;
  - (d) to ensure that the money and other assets of the Board are recorded so that the fund to which they have been allocated can be separately identified;
  - (e) not to enter into any contract, agreement or understanding, or do anything else, that would prevent it from, or hinder it in, properly performing or exercising its functions and powers.
- (2) The duty under section (1) (c) includes —
- (a) the duty to prefer the interests of FNPf members and annuitants under basic annuities to the interests of any other person;
  - (b) to treat different classes of FNPf members equitably; and
  - (c) to treat FNPf members and annuitants equitably.
- (3) Each Board member shall have the following duties, in addition to his or her other duties —
- (a) to act honestly in all matters related to the Board’s functions;
  - (b) to exercise his or her powers, and discharge his or her duties —
    - (i) in good faith;
    - (ii) for a proper purpose; and
    - (iii) with the degree of care and diligence that a reasonable person in the Board member’s position would exercise;
  - (c) to comply with the Code of Conduct.
- (4) A Board member must not improperly use his or her position to —
- (a) gain an advantage for the Board member or someone else; or
  - (b) cause a detriment to the Board’s ability to perform its functions; or
  - (c) cause a detriment to another person.
- (5) A staff member must not improperly use his or her position to —
- (a) gain an advantage for the staff member or someone else; or
  - (b) cause a detriment to the Board’s ability to perform its functions; or
  - (c) cause a detriment to another person.
- (6) A person who obtains information because he or she is or has been a Board member or a staff member must not improperly use the information to —
- (a) gain an advantage for the person or someone else; or
  - (b) cause a detriment to the Board’s ability to perform its functions; or
  - (c) cause a detriment to another person.
- (7) To avoid doubt, the duty under subsection (6) continues after the person ceases to be a Board member or a staff member.
- (8) If a person contravenes, or is involved in a contravention of, this section, the Board is entitled to recover compensation from the person for any loss suffered by the Board or by a fund because of the contravention.
- (9) In this section —
- “advantage” and “detriment” are not limited to financial advantage or detriment.

*Board, Board members and staff entitled to indemnity*

10.—(1) The Board is entitled to be fully indemnified against any liability (including any liability as to costs) properly incurred in keeping and administering, or purporting to keep and administer, a fund or in carrying out its functions.



(2) Each member of the Board is entitled to be fully indemnified against any liability (including any liability as to costs) properly incurred in performing his or her duties as a Board member.

(3) An indemnity under this section is to be paid out of the FNPF.

(4) No proceedings, civil or criminal shall lie against the Board for anything they it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or with reasonable care.

(5) No proceedings, civil or criminal shall lie against any member, officer, or employee, or Board member for anything done or said, or any failure to do or say anything in the course of the operation and management of the FNPF, unless it is shown that it did not act in good faith or with reasonable care.

*Period of office*

11.—(1) A Board member holds office for—

(a) 4 years from the date of his or her appointment; or

(b) if a shorter period is specified in the instrument of appointment—that shorter period;

but may be re-appointed in accordance with this Decree.

(2) A person may not hold office as a Board member for more than 2 consecutive terms. However, a person who has held office as a Board member for 2 consecutive terms may be reappointed, in accordance with this Decree, after 2 years after ceasing to hold office as a Board member.

(3) A person may resign office as a Board member by giving a written resignation to the Minister.

(4) A Board member's appointment terminates immediately when the Board member becomes a disqualified person.

(5) If the Reserve Bank reports to the Minister that any of the following have occurred in relation to a Board member, the Minister shall terminate the member's appointment forthwith—

(a) the Board member has ceased to be fit and proper to be a Board member;

(b) the Board member is guilty of misbehaviour warranting removal from office;

(c) the Board member is suffering from a mental or physical condition such that he or she cannot properly carry out the duties of the office;

(d) the Board member has become insolvent;

(e) the Board member has failed, without leave of the Board, to attend more than 3 consecutive meetings of the Board;

(f) the Board member, either in Fiji or overseas, has been disqualified from acting as a director or executive officer of a body corporate under a law relating to corporations or to the provision of financial services; or

(g) the Board member has committed a serious contravention of the Code of Conduct.

(6) The Reserve Bank must not report as mentioned in any of sections (5)(a), (b), (c), (d), (e) or (g) unless—

(a) it has given the Board member—

(i) a draft of the report;

(ii) so far as they do not appear from the draft—a statement of the material facts on which the report's conclusions are based; and

(iii) a written notice asking the member to show cause within a specified period (which must be a reasonable period) why the member should not be removed from the Board; and

(b) it has taken into account, in deciding whether to report to the Minister, any representations or submissions made by or for the Board member.



*Remuneration of Board members*

12. Subject to the Higher Salaries Commission (Revocation) Decree 2011, a Board member is to be paid remuneration and allowances determined by the Board with the approval of the Minister.

*Other terms and conditions of office*

13. A Board member holds office on terms and conditions (if any) in relation to matters not covered by this Decree that are determined by the Minister. The terms and conditions must not be inconsistent with this Decree.

*Board meetings*

14.—(1) The Board members must hold at least 8 meetings in each financial year and such other meetings as are necessary for the efficient performance and exercise of the Board's functions and powers.

(2) At a Board meeting, 4 Board members shall form a quorum.

(3) Subject to this Decree—

(a) the Chairman is to preside at all Board meetings;

(b) if the Chairman is not present at a Board meeting—the Deputy Chairman is to preside;

(c) if neither the Chairman nor the Deputy Chairman is present at a Board meeting—the Board members present at the meeting must elect one of the members present to preside at the meeting.

(4) A question arising at a Board meeting is to be determined by a majority of the votes of the Board members present and voting.

(5) The person chairing a Board meeting has a deliberative vote and, if necessary, also a casting vote.

(6) Subject to this Decree, the Board members may regulate proceedings at Board meetings as they consider appropriate.

(7) The Board must keep written minutes of all its meetings, and of all meetings of committees of the Board.

*Resolutions without meetings*

15.—(1) If—

(a) the Board has determined—

(i) that resolutions may be passed in accordance with this section; and

(ii) the method by which Board members are to indicate agreement with a resolution proposed to be passed in accordance with this section; and

(b) without meeting, a majority of the Board members indicate agreement with the resolution in accordance with the method determined by the Board; and

(c) either—

(i) all the Board members were informed of the resolution; or

(ii) reasonable efforts were made to inform all the Board members of the resolution;

the resolution is taken to have been passed at a meeting of the Board on the date on which the last Board member indicated his or her agreement.

(2) Section (1)(b) does not apply in relation to a Board member who would have been prevented by section 21(2) from deliberating on the resolution if the resolution had been put to a meeting of the Board.

*Board committees*

16.—(1) The Board must establish the committees of the Board specified in the regulations, with the functions specified in the regulations.

(2) The Board may establish other committees of the Board, with specified functions, as it thinks appropriate.

(3) Each committee shall include at least one Board member.

(4) A committee may determine its own procedures, but must comply with any direction of the Board and the procedures must otherwise be consistent with the procedures of the Board and this Decree.

*Code of Conduct*

17.—(1) The Board must formulate a Code of Conduct applicable to Board members, staff members and persons mentioned in section 20(1)(b) or (c).

(2) The Code of Conduct must—

- (a) be consistent with this Decree and other written laws;
- (b) make provision for at least the matters set out in Schedule 1; and
- (c) apply to Board members and, to the extent set out in the Code, staff members and persons mentioned in section 20(1)(b) or (c).

(3) The Board must review the Code at least once every 3 years.

(4) Each Board and staff member must comply with the Code as it applies to the Board member or staff member.

(5) Failure to comply with the Code is not an offence, but may form the basis for disciplinary action, up to dismissal (for Board staff), or for action under section 11(5)(g) (for Board members).

*Review of decisions*

18.—(1) The Board must make rules establishing a scheme for reviewing decisions and determinations made by staff members in respect of FNPF members and annuitants.

(2) The scheme must comply with the requirements of Schedule 2.

(3) The Board must publicise the scheme.

(4) The Board must give effect to the scheme.

*General forums*

19.—(1) The Board must hold a forum for FNPF members and annuitants in each financial year in accordance with this section.

(2) A forum for a financial year must be held no earlier than 4 months, and no later than 8 months, after the start of the financial year, or at a later time approved by the Reserve Bank.

(3) The Board must give at least 1 month public notice of a forum. The notice must be publicised by the Board.

(4) The purpose of a forum is to give FNPF members and annuitants an opportunity—

- (a) to consider the Board's most recent annual report; and
- (b) to receive an address by the Chairman or Chief Executive Officer concerning:
  - (i) the funds' performance in the financial year to which the annual report relates;
  - (ii) the outlook for the next financial year;
  - (iii) the Board's intended activities in the next financial year; and
- (c) to question the Board members about any aspect of the Board's activities during the financial year to which the annual report relates and any aspect of the Board's intended activities.

(5) Subject to this Decree, the Board may make rules with respect to any procedural matter concerning a forum.

(6) The following are entitled to attend and participate in a forum—

- (a) the Board members;
- (b) the Chief Executive Officer;
- (c) the FNPF members;
- (d) the annuitants;
- (e) any person invited by the Board to attend the meeting; and
- (f) any employees and consultants of the Board, as the Chairman determines.

- (7) The Chairman or a nominee of the Chairman must preside at a forum.
- (8) The Board must keep a record of the proceedings of a forum.
- (9) The costs incurred by the Board in holding a forum are payable out of the FNPF.

*Staff etc*

20.—(1) The Board may, on terms it thinks fit—

- (a) employ staff;
- (b) engage other persons to provide advice to it or perform functions or services for it; and
- (c) make arrangements with a department of the public service for the services of officers or employees of the department to be made available to the Board.

(2) The Board must appoint a staff member to be the Chief Executive Officer, with functions specified in this Decree, and other functions as may be determined by the Board.

(3) The Board may determine the remuneration for staff members taking into account the applicable market practice.

*Disclosure of interests*

21.—(1) Each Board member must disclose in writing to each other Board member all interests that the Board member has that could conflict with the proper performance of the functions of his or her office. The disclosure must be given as soon as practicable after the Board member becomes aware of the interest.

(2) A Board member who has an interest in relation to a particular matter that could conflict with the proper performance of the functions of his or her office must not perform those functions unless—

- (a) the Board member has complied with subsection (1) in relation to the interest; and
- (b) each of the other Board members has consented to the Board member performing those functions in relation to the matter despite the possible conflict of interest.

(3) For subsections (1) and (2), it does not matter whether an interest is direct, indirect, pecuniary or non-pecuniary, and it does not matter when the interest was acquired.

(4) For the purposes of this section, if—

- (a) a related party of a Board member has an interest; and
- (b) if the Board member had the interest, it could conflict with the proper performance of the functions of his or her office;

the Board member is taken to have the interest, and this section applies accordingly.

(5) In subsection (4)—

“related party” of a Board member means any of the following—

- (a) a spouse, child or parent of the Board member;
- (b) a company of which the Board member is a director or executive officer, and a subsidiary of such a company;
- (c) a company of which a spouse, child or parent of the Board member is a director or executive officer;
- (d) if the Board member, or a spouse, child or parent of the Board member, owns, or controls the exercise of votes attached to, more than the percentage of shares of a company prescribed by regulations—the company;
- (e) if the Board member and another person are parties to a contract, arrangement or understanding, whether formal or informal, written or not and whether or not enforceable—
  - (i) to acquire, hold, sell or otherwise deal in securities in concert; or
  - (ii) to exercise voting rights in a specified person in concert;
 the other party to the contract, arrangement or understanding.

(6) The Board must take reasonable steps to ensure that members of the Board's staff, persons otherwise engaged by the Board and other persons performing or exercising functions or powers of the Board make proper and adequate disclosure of their interests.

(7) A person's membership of the FNPF, or entitlement under a retirement income product provided by the Board, is not an interest for the purposes of this section.

(8) The Board must record, and maintain a register of, all disclosures under this section.

*Delegations*

22.—(1) The Board may, subject to this section, by resolution, delegate to any Board member, the Chief Executive Officer, any staff member or any subsidiary of the Board any of its powers and functions, but not this power of delegation.

(2) The Chief Executive Officer may, by instrument in writing, delegate to any staff member all or any of the Chief Executive Officer's powers and functions, but not this power of delegation.

(3) A delegation may be subject to conditions specified in the resolution or instrument of delegation.

(4) A delegated power or function must be exercised or performed in accordance with the resolution or instrument of delegation.

(5) A delegation may be varied or revoked at will and does not prevent the Board or the Chief Executive Officer from exercising the delegated power or performing the delegated function.

*Division 2—Accounts, audits and reports*

*Financial Management Act 2004*

23.—(1) This Division applies in addition to any application of the Financial Management Act 2004.

(2) If there is an inconsistency between a provision of this Division and a provision of the Financial Management Act 2004, the provision of this Division prevails to the extent of the inconsistency.

*Records*

24.—(1) The Board must keep written financial records that—

- (a) correctly record and explain the transactions, and the financial position and performance, of itself and the funds; and
- (b) will enable true and fair financial reports about itself and the funds to be prepared and audited;

and must keep them for at least 7 years after the date of the transactions to which they relate.

(2) The records are to be kept in English, and at the Board's principal place of business. They may be kept electronically, but must be able to be converted into hard copy.

*Financial reports*

25.—(1) The Board shall prepare, for each financial year, financial reports for each fund and the Board that consist of—

- (a) balance sheets, profit and loss accounts and other financial statements for the year, as required by and consistent with, applicable accounting standards;
- (b) notes to the financial statements, as required by applicable accounting standards; and
- (c) a declaration under subsection (4).

(2) The financial reports may be in a single document.

(3) The financial statements and the notes together must include all information necessary to ensure that the financial report gives a true and fair view of the financial position and performance of each fund and the Board.

- (4) A declaration by the Board members whether, in their opinion—
  - (a) there are reasonable grounds to believe that the Board will be able to pay its debts as and when they become due and payable, including its debts in relation to each fund; and
  - (b) the financial statement and notes are in accordance with this Decree.
- (5) A declaration must—
  - (a) be made in accordance with a resolution of the Board;
  - (b) specify the date on which it is made; and
  - (c) be signed by a Board member.

*Audit*

26.—(1) The Board must ensure that each financial report is audited by an auditor, and that the auditor provides a report, in accordance with this section.

- (2) If the Board does not comply with subsection (1), each Board member commits an offence.

Penalty—50 penalty units.

- (3) Strict liability applies to subsection (2).
- (4) It is a defence to a prosecution for an offence against subsection (2) that the defendant—
  - (a) was not involved in the offence; and
  - (b) exercised all due diligence to ensure that the Board complied with subsection (1).

(5) For the purposes of an audit, the auditor has a right of access at all reasonable times to the books and financial records of the Board and of any entity that is a subsidiary of the Board.

- (6) If—
  - (a) an auditor requires a Board member or a staff member to give information, explanations or other assistance in connection with an audit;
  - (b) the requirement is reasonable; and
  - (c) the Board member or staff member fails to comply with the requirement;

the Board member or staff member commits an offence.

Penalty—100 penalty units.

- (7) A registered employer commits an offence if—
  - (a) the auditor makes a written request of the employer for information relevant to the audit of the FNPF; and
  - (b) the request is a reasonable request; and
  - (c) the person fails to comply with the request.

Penalty—20 penalty units.

- (8) An auditor's report under this Division on financial reports must state whether, in the auditor's opinion—
  - (a) the reports are in accordance with this Decree, including, in particular, whether the reports give a true and fair view of the state of the affairs of the Board and the funds as at the end of the financial year to which they relate;
  - (b) he has obtained all the information and explanations that, to the best of the auditor's knowledge and belief, were necessary for the purposes of the audit; and
  - (c) the Board, Board members and staff members have given the auditor all the information, explanations and assistance that the auditor needed to conduct the audit.
- (9) If the auditor is not of that opinion, the report must state so with reasons.
- (10) An auditor's report under this section must specify the date on which it is made.

*Annual report*

- 27.—(1) The Board must prepare for each financial year, an annual report for each fund and for the Board.
- (2) The annual reports may be in a single document.
- (3) The annual reports for a financial year must include—
- (a) all the information prescribed in the regulations for this subsection; and
  - (b) all other information that FNPF members would reasonably require to make an informed assessment of the operations and financial position of the Board and each fund.
- (4) An annual report may omit material that would otherwise be included if its inclusion is likely to result in unreasonable prejudice to the commercial position of a fund but, if material is omitted, the report must say so.

*Annual reports to be published*

- 28.—(1) The Board must—
- (a) within 4 months after the end of a financial year or a longer period approved by the Reserve Bank— give the Minister and the Reserve Bank a copy of the financial reports and annual reports for the financial year, and the auditor's report on them;
  - (b) as soon as practicable thereafter, publish the reports; and
  - (c) ensure that a summary of the reports is published in a national publication in Fiji.
- (2) If the Financial Management Act (Amendment) Promulgation 2007 has expired, the Board must not publish the reports or summary until after it has complied with section 51(2)(b) of the Financial Management Act 2004 in relation to the reports.

## PART 3—THE FNPF

*Division 1—Operation of the FNPF**Continuation of FNPF*

- 29.—(1) The Fiji National Provident Fund established under the former law continues in existence under that name, subject to the other provisions of this Decree and any provision of the Transition Decree.
- (2) The principal purpose of the FNPF is to manage and invest FNPF members' savings for their retirement.
- (3) The Board must keep and administer the FNPF.
- (4) The assets of the FNPF are property of the Board.

*What must be credited to the FNPF*

30. The following are to be credited to the FNPF—
- (a) amounts paid to or recovered by the Board as mandated contributions, additional contributions or penalty amounts;
  - (b) interest, profits and other returns from investments or assets of the Board, to the extent that the investments were made or the property acquired with money or other property of the FNPF;
  - (c) amounts paid to the Board as fees or charges for services provided by the Board in relation to the FNPF;
  - (d) amounts of surplus in another fund that are, in accordance with the regulations, to be transferred to the FNPF;
  - (e) amounts that another provision of this Decree requires to be paid to the FNPF;
  - (f) amounts paid to the Board for the purposes of the FNPF; and
  - (g) amounts lawfully paid to the Board not required by this Decree to be paid into another fund.

*Application of the FNPF*

31. Amounts standing to the credit of the FNPF are to be applied only as follows—
- (a) in paying withdrawals in respect of FNPF members as provided in this Decree;
  - (b) in making investments authorised under this Decree;
  - (c) in meeting the expenses of the Board properly incurred in the administration of the funds and the Board;
  - (d) in repaying amounts paid in error to the Board or into the FNPF; and
  - (e) as expressly authorised by or under this Decree.

*Solvency requirement for FNPF*

32.—(1) The Board must ensure that the FNPF at all times meets the solvency requirement.

(2) The solvency requirement is that the value of the assets of the FNPF must at be at least equal to the percentage of the total value of the liabilities of the Board referable to the FNPF that is prescribed by regulations.

(3) For subsection (2), the prescribed percentage is—

- (a) 110%; or
- (b) if the actuary recommended a higher percentage in the most recent financial condition report — that higher percentage; or
- (c) if a prudential standard specifies a higher percentage for this subsection — that higher percentage.

(4) In determining whether the solvency requirement is met—

- (a) the value of an asset is the market value of the asset; and
- (b) the following must be ignored—
  - (i) the value of the Board’s assets in respect of which the Board has a liability that is not recorded in the FNPF’s balance sheet; and
  - (ii) the value of any inadmissible assets of the FNPF.

(5) A contravention of subsection (1) is not an offence but may be the basis for supervisory action by the Reserve Bank under Part 11.

*Division 2—Registration of employers and admission of FNPF members**Certain persons taken to be employers*

33.—(1) If—

- (a) a person (the “principal”) engages another person (the “contractor”) under an agreement (the “contract”) to carry out work for the principal; and
- (b) the contractor is not registered as an employer under this Decree;

then, for the purpose of securing payment of FNPF contributions in respect of the employees of the contractor, the principal as well as the contractor is taken for the purposes of this Decree to be the employer of the contractor’s employees engaged in the work and is jointly liable with the contractor to pay contributions in respect of those employees in respect of the work.

(2) Subject to any agreement between the contractor and the principal—

- (a) the contractor is liable to repay to the principal all amounts paid by the principal because of this section in respect of those employees; and
- (b) except to the extent that the repayment has been made, the principal may deduct from money payable to the contractor under the contract the amounts paid by the principal because of this section in respect of those employees.



*Registration of employers*

34.—(1) If, on the day in which this Part comes into force—

- (a) a person (in this section, the “employer”) is an employer of another person; and
- (b) the employer is not registered under the former law as an employer of the person;

the employer must, no later than 6 months after this Part comes into force (the “amnesty period”), give the Board a return with the information and documents prescribed by regulations for this section.

Penalty—100 penalty units.

(2) Strict liability applies to subsection (1).

(3) It is a defence to a prosecution for an offence against subsection (1) that the employee was an exempt employee of the employer.

(4) As soon as practicable after an employer gives the Board the return, the Board must register the employer as an employer.

*Returns to be made when employees engaged*

35.—(1) A person commits an offence if the person—

- (a) engages another person as an employee; and
- (b) fails to give to the Board, within the prescribed period after the employment commences, a return with the information and documents prescribed by regulations for this section.

Penalty—50 penalty units.

(2) Strict liability applies to subsection (1).

(3) It is a defence to a prosecution for an offence against subsection (1) that the employee was an exempt employee of the person.

(4) As soon as practicable after a person gives the Board the return, if the person is not already registered as an employer, the Board must register the person as an employer.

*Admission of FNPF members, and ceasing to be a FNPF member*

36.—(1) If an employee mentioned in a return by an employer under section 34 or 35—

- (a) is not an FNPF member; and
- (b) is not an exempt employee of the employer;

then, as soon as practicable after the Board receives the return, the Board must admit the employee as an FNPF member.

(2) If—

- (a) a person who is employed in Fiji but is not a citizen of Fiji applies to be admitted as an FNPF member; and
- (b) his employer agrees to the application;

the Board must admit the person as an FNPF member.

(3) If a court makes an order under section 136(2)(a) in respect of a spouse of an FNPF member, the Board must admit the spouse as an FNPF member.

(4) If arrangements under section 27(3) of the Fiji Public Trustee Corporation Act 2006 include provision under which entitlements of a minor may be invested for the minor by the Board, the Board must admit the minor as an FNPF member.

(5) A person who is not an FNPF member but who, under the regulations, is eligible to be an FNPF member, may, on application to the Board, be admitted as an FNPF member.



- (6) If—
- (a) an entitlement event occurs in relation to an FNPF member; and
  - (b) after a payment or payments are made in relation to the event, the balance of the member's preserved and general accounts is zero dollars;

the member ceases to be an FNPF member. However, the member may be readmitted as an FNPF member in accordance with this Decree.

*Division 3—Contributions to the FNPF*

*Mandated contributions*

- 37.—(1) No later than 14 days after the end of each month an employer must—
- (a) pay to the Board, for each person who was an employee of the employer for all or part of the month, the amount of contributions calculated in accordance with this section; and
  - (b) give the Board a remittance statement complying with the requirements of the regulations in relation to those payments.

Penalty—50 penalty units.

- (2) Strict liability applies to subsection (1).
- (3) It is a defence to a prosecution for an offence against subsection (1) in respect of an employee that the employee was an exempt employee of the employer.
- (4) The amount of contributions for an employee for a month is the amount equal to 16% of the total wages payable to the employee by the employer for the month. The amount must be rounded up to the nearest cent.
- (5) The percentage of contribution under subsection (4) shall be paid as an 8% deduction from the total wages of the employee and an 8% contribution by the employer.

*Additional contributions*

- 38.—(1) An FNPF member may at any time give a written direction to his or her employer to deduct from his or her wages additional amounts specified in the notice and pay them as additional contributions to the Board.
- (2) The member may, by notice to the employer, amend or revoke the direction at any time.
  - (3) The employer must comply with the direction, and pay the amount deducted as contributions for the FNPF member at the same time as the employer is required to pay mandated contributions for the member.

Penalty—100 penalty units.

- (4) An FNPF member may, at any time, pay an amount to the Board as additional contributions for the member.
- (5) Any other person (including an employer of an FNPF member) may, with the Board's approval, at any time, pay an amount to the Board as additional contributions for an FNPF member.
- (6) The total amount of additional contributions for an FNPF member for a financial year must not exceed the limit (if any) prescribed.

*Recovery of contributions from employee*

- 39.—(1) Despite any provision of a written law or contract to the contrary, an employer may recover from the employee an amount equal to 50% of the amount paid as mandated contributions for the month, rounded up to the nearest cent. The amount may be recovered only by deduction from the employee's wages for the month in respect of which the contributions are paid.
- (2) A person commits an offence if—
    - (a) the person recovers an amount from an employee of an employer;
    - (b) the recovery is on account of a payment of mandated contributions, or a payment of additional contributions as required by subsection 38(3), by the employer or a related company of the employer; and

- (c) the contributions in respect of which the amount was recovered are not paid as required by this Division.

Penalty—250 penalty units, or imprisonment for 3 years, or both.

- (3) Strict liability applies in respect of sections (2)(a) and (c).

*Penalty amounts*

40.—(1) If an employer fails to pay, in full, the contributions for a particular month required by this Division, the employer must also pay to the Board, as penalty, for each employee concerned, for each month or part of a month during which the contributions are unpaid—

- (a) \$100 for each employee concerned, for each month or part of a month during which the contributions are unpaid; or  
 (b) if a higher amount is prescribed by the regulations—the higher amount for each employee concerned, for each month or part of a month during which the contributions are unpaid.

(2) If a penalty amount is due and payable under this section, the Board may, on application by an employer, remit some or all of the amount.

(3) If the amount due is recovered from an employer under this section for a failure to pay contributions, the employer may not be prosecuted for an offence against sections 37 or 38(3) (as relevant) in respect of the failure.

*Division 4—Reporting to FNPF members and employers*

*Member annual statements for FNPF members*

41. For each financial year, the Board must give a member annual statement that includes the prescribed information to each person who was an FNPF member at any time during the financial year. The statement must be given as soon as possible, and in any event no later than 4 months, after the end of the financial year.

*Member exit statements for FNPF members*

42.—(1) If an FNPF member dies, the Board must give a member exit statement that includes the information prescribed by regulations to—

- (a) the member’s personal representative; and  
 (b) any nominee of the member who has been paid an amount in respect of the member under section 57.

The statement must be given at the same time as a payment is made in respect of the member under section 57.

*Employer annual reports*

43. For each financial year, the Board must give an employer annual statement that includes the prescribed information to each person who was a registered employer at the end of the financial year. The statement must be given as soon as possible, and in any event no later than 4 months, after the end of the financial year.

**PART 4—MEMBERS’ ENTITLEMENTS AND ACCOUNTS IN THE FNPF**

*FNPF members’ accounts*

44.—(1) The Board must establish an account (the “FNPF account”) for each FNPF member.

(2) The Board must, as soon as practicable, establish subaccounts in each FNPF member’s FNPF account—

- (a) 1 subaccount (the “preserved account”), for the member’s preserved entitlement; and  
 (b) 1 subaccount (the “general account”), for the member’s general entitlement.

*FNPF members allocating contributions to preserved and general accounts*

45.—(1) An FNPF member may, by notice to the Board, allocate a specified percentage of contributions paid in respect of the member to his or her preserved entitlement. The percentage must be more than 70%.

(2) Unless the notice specifies otherwise, a notice under subsection (1) applies to—

- (a) mandated contributions; and

(b) contributions made as required by section 38(3).

(3) The Board may make rules with respect to notices under this section. Subject to those rules, an FNPF member may revoke the notice by notice to the Board.

*Other payers allocating contributions to preserved and general accounts*

46.—(1) A person who pays contributions in respect of an FNPF member may, by notice to the Board when the contributions are paid, specify the allocation of the contributions as between the member's preserved and general entitlements.

(2) Subsection (1) does not apply to mandated contributions or contributions paid as required by section 38(3).

(3) The Board may make rules with respect to notices under this section. Subject to those rules, a person who gives a notice under subsection (1) may revoke a notice by notice to the Board.

*Crediting rates*

47.—(1) For each financial year, the Board must determine, in accordance with the regulations—

- (a) whether there has been an increase in value of the assets of the FNPF since the last determination;
- (b) if there has been an increase—how much of the increase is available to be allocated to FNPF members (the “available amount”);
- (c) if there is an available amount—the percentages by which preserved and general entitlements are to be increased to distribute the available amount (the “crediting rate”); and
- (d) if a crediting rate has been determined—a pro-rata crediting rate to apply until the next crediting rate is determined.

(2) The Board must not determine a crediting rate or a pro-rata crediting rate for the FNPF unless the solvency requirement for the FNPF is met.

(3) The Board must not determine a crediting rate or a pro-rata crediting rate for the FNPF if an amount of an advance under section 140 has not been repaid.

(4) If the Board has determined a crediting rate for a financial year, it may, at any time during the year, determine a lower pro-rata crediting rate.

*Amounts to be credited to FNPF members' entitlements*

48.—(1) Subject to this section, the Board must credit 70% of the amount of contributions received by the Board in respect of an FNPF member to the member's preserved entitlement.

(2) Subject to subsections (3), (4) and (6), if a notice under section 45(1) is in force for an FNPF member, the Board must credit contributions received by the Board to the member's preserved entitlement in accordance with the notice.

(3) Subject to subsections (4) and (6), if a notice under section 46(1) is in force for an FNPF member, the Board must credit contributions received by the Board to which the notice applies to the member's preserved and general entitlements, in accordance with the notice.

(4) If an amount is withdrawn from an FNPF member's preserved entitlement under section 58, then, despite any other provision of this Decree and any notice, all contributions received by the Board in respect of the member must be credited to the member's preserved entitlement for the 5 years after the amount is withdrawn or until the amount so credited equals the amount withdrawn from the preserved entitlement (whichever comes first).

(5) If the Board has recovered a penalty amount in respect of an FNPF member, the Board must credit to the member's preserved entitlement with the proportion of the amount recovered determined by the Board.

(6) If payment has been made from an FNPF member's preserved entitlement under section 52, all contributions received by the Board thereafter in respect of the member must be credited to the member's general entitlement.

(7) The Board must credit all contributions and penalty amounts received by the Board in respect of an FNPF member that are not required to be credited to the member's preserved entitlement to the member's general entitlement.

(8) The Board may make arrangements under which an FNPF member may, by notice to the Board, direct that a specified amount be transferred from his or her general entitlement to his or her preserved entitlement. The Board must comply with a direction made in accordance with those arrangements.

(9) If the Board has determined a crediting rate for a financial year, the Board must credit each preserved entitlement and each general entitlement with the amount calculated as—

crediting rate x average of amounts of the entitlement at intervals in the year determined by the Board.

*What can be debited from FNPF members' entitlements*

- 49.—(1) The Board must debit an FNPF member's preserved entitlement with the following—
- (a) amount withdrawn or deducted from the entitlement in accordance with this Decree; and
  - (b) fees and charges payable by the member in respect of the FNPF, to the extent that they cannot be met from the member's general entitlement.
- (2) Amounts are not otherwise to be debited from an FNPF member's preserved entitlement.
- (3) The Board must debit an FNPF member's general entitlement with—
- (a) amount withdrawn or deducted from the entitlement in accordance with this Decree; and
  - (b) fees and charges that this Decree or the regulations authorises to be debited to the entitlement.

PART 5—PAYMENTS FROM THE FNPF

*Division 1—Board approval*

*Board approval required*

50.—(1) Despite any other provision of this Decree, an amount may not be withdrawn from an FNPF member's preserved or general entitlement unless the Board, on application, authorises the withdrawal. The Board must authorise the withdrawal if the amount is, under this Decree, payable.

- (2) An application for a withdrawal must be made—
- (a) by the member;
  - (b) if the member is a voluntary or involuntary patient in a mental hospital or facility under the Mental Health Decree 2010—by or with the authority of the person's manager appointed under that Decree;
  - (c) if the member has died—by a nominee of the member ; or
  - (d) otherwise—by a person specified in the regulations for this section.

*Division 2—Payment on entitlement events*

*Payment on entitlement events*

51. Subject to this Decree, an FNPF member's preserved entitlement and general entitlement are payable in respect of the member if the Board is satisfied, on application, that an entitlement event has occurred in relation to the member.

*Withdrawals on reaching prescribed age—preserved entitlements to be withdrawn*

52. For the entitlement event that an FNPF member reaches the age prescribed for paragraph (a) of the definition of “entitlement event” in section 4(1), an application for withdrawal of the member's preserved entitlement must be for the whole of the entitlement on the date of withdrawal.

*Withdrawals on physical or mental incapacity, leaving Fiji or death—preserved and general entitlements to be withdrawn*

- 53.—(1) For the entitlement event—
- (a) that an FNPF member becomes physically or mentally incapacitated from engaging in any further employment; or
  - (b) that an FNPF member has left, or is about to leave, Fiji permanently to reside in another country; or

(c) the FNPF member dies;

an application for withdrawal must be for the whole of the member's preserved and general entitlements at the date of withdrawal.

*How entitlements on reaching prescribed age or on physical or mental incapacity are to be paid*

54.—(1) This section applies for the entitlement events —

- (a) that an FNPF member reaches the age prescribed for paragraph (a) of the definition of “entitlement event” in section 4(1); and
- (b) that an FNPF member becomes physically or mentally incapacitated from engaging in any further employment.

(2) If the amount of the member's entitlements that is withdrawn is less than the conversion threshold, the amount is to be paid as a lump sum.

(3) The member's application to withdraw his or her entitlements must specify whether the amount withdrawn is to be paid —

- (a) as a lump sum; or
- (b) in accordance with subsection (4); or
- (c) as to part, in a lump sum, and as to the balance, in accordance with subsection (4) (and if it does this, the application must specify the amount of the lump sum).

(4) Payment in accordance with this subsection is made as follows —

If the amount to be paid in accordance with this subsection is ...	the amount is to be paid in any 1 or more of the following ways, as directed by the member in the withdrawal application ...
equal to or more than the conversion threshold but less than or equal to the minimum sum	<ul style="list-style-type: none"> <li>(a) to the Board—as payment for the basic annuity specified in the withdrawal application;</li> <li>(b) to the provider of an approved retirement income product specified in the withdrawal application—as payment or part payment for the product.</li> </ul>
more than the minimum sum	<ul style="list-style-type: none"> <li>(a) for so much of the amount as equals the minimum sum—               <ul style="list-style-type: none"> <li>(i) to the Board—as payment or part payment for the basic annuity specified in the withdrawal application;</li> <li>(ii) to the provider of an approved retirement income product specified in the withdrawal application—as payment or part payment for the product; and</li> </ul> </li> <li>(b) for the excess over the minimum sum—               <ul style="list-style-type: none"> <li>(i) to the Board—as payment or part payment for the basic annuity specified in the withdrawal application;</li> <li>(ii) to the provider of an approved retirement income product specified in the withdrawal application—as payment or part payment for the product.</li> </ul> </li> </ul>

(5) Payments to the Board under subsection (4) are to be made by transferring the amount of the payment from the FNPF to the Retirement Income Fund.

*Withdrawals must not be used to buy retirement income products that are not approved*

55.—(1) The Board must not pay an amount withdrawn from the FNPF in respect of an FNPF member as payment or part payment for a retirement income product unless the product is an approved retirement income product.

- (2) A person commits an offence if—
- (a) the person accepts, or offers to accept, from the Board an amount in respect of an FNPF member;
  - (b) the amount is paid by the Board as set out in section 54 as payment or part payment for a retirement income product; and
  - (c) the retirement income product is not an approved retirement income product.

Penalty—200 penalty units.

- (3) Strict liability applies to subsections (2)(b) and (c).

*Nominations as to payment of entitlements on death*

56.—(1) An FNPF member may give the Board a nomination, signed by the member, giving directions as to payment of the member’s entitlements out of the FNPF on his or her death.

- (2) The nomination may deal with any or all of—
- (a) the member’s preserved or general entitlement;
  - (b) Special Death Benefit payable in respect of the member; and
  - (c) amounts payable under an annuity in respect of the member after the member dies, as set out in Schedule 4.

(3) The nomination must specify how much of the amounts to which the nomination relates is to be paid to each nominee. Without limiting how it may do this, it may do this by specifying, for a nominee, a percentage of the amount concerned.

- (4) A nomination for subsection (2)(c) is effective only if only 1 person is nominated.

- (5) An FNPF member’s nomination is revoked only as follows—

- (a) by giving the Board written notice of the revocation;
- (b) by a later nomination; or
- (c) on the member’s marriage.

- (6) A nomination of a person ceases to have effect on the person’s death.

*Payment on FNPF member’s death*

57.—(1) In paying an FNPF member’s preserved and general entitlements on his or her death, the Board must comply with any current nomination by the member. However, the Board may only pay a nominee who was, at the time of the member’s death—

- (a) the spouse of the member;
- (b) a parent or child of the member;
- (c) an individual who was financially dependent on the member; or
- (d) a person specified in rules made by the Board for this section.

(2) If a nominee of an FNPF member (not the surviving spouse of the member) is under 18 on the date of determination of the application for withdrawal, the Board must pay the amount for that nominee to the High Court.

- (3) If—

- (a) a nomination by an FNPF member does not cover all of the amount payable in respect of the member on his or her death; or
- (b) because of subsection (1), the Board cannot pay some or all of the amount payable in respect of an FNPF member on his or her death;

(the amount not covered, or that cannot be paid, is the “unallocated amount”), the Board must pay the unallocated amount into the High Court for disposition according to law.

(4) The High Court may, on application, make such orders as are just for the disposition of an amount paid in under subsection (1) or (2).

- (5) If—
- (a) the High Court makes an order in favour of a person under subsection (4); and
  - (b) the person is under 18;

then, the High Court shall hold the amount to be paid in trust for the benefit of the person.

- (6) Subsection (5) does not apply if the person is the spouse of the deceased FNPF member.

(7) Where no application is made in respect of an amount paid into the High Court under subsection (1) or (2) within one year after it is so paid, the amount is to be repaid to the Board, and credited to the FNPF.

(8) If a person is found to be entitled to some or all of an amount credited to the FNPF under subsection (7), the Board must pay the person the amount to which he or she is entitled, together with an amount equal to the amount that would have been credited under section 48 if the amount credited to the FNPF under subsection (7) had been credited to an account in the FNPF for the person paid.

### *Division 3— Other withdrawals*

#### *Housing finance assistance*

58. Subject to this Decree, amounts in respect of an FNPF member are payable, out of the member's preserved entitlement, for housing finance assistance in accordance with Schedule 3.

#### *Early withdrawals*

59.—(1) The Board may make rules making provision for the withdrawal of amounts of FNPF members' general entitlement by way of assistance—

- (a) for any of the following—
  - (i) medical expenses;
  - (ii) education expenses;
  - (iii) funeral expenses; and
  - (iv) other matters prescribed in regulations;

in respect of the FNPF member concerned or in respect of any of the member's parents, spouse or children; or

- (b) by way of housing assistance.

(2) The Board must publicise rules made under subsection (1).

(3) If the Board, on application by an FNPF member, approves, in accordance with rules made under subsection (1), the withdrawal of an amount from the member's general entitlement, the amount is payable to the member out of the FNPF.

#### *Withdrawals amounts invested for certain minors*

60. If—

- (a) a person is an FNPF member under section 36(4); and
- (b) the person applies to the Board, within 2 years after turning 18, for payment of an amount from the person's preserved or general entitlement (or both); and
- (c) at the time of the application, the person is not employed by a registered employer;

the amount is payable to the person—

- (d) out of the person's general entitlement; and
- (e) to the extent that the general entitlement is insufficient—out of the person's preserved entitlement.



## PART 6— RETIREMENT INCOME PRODUCTS

*Division 1—Board to provide retirement income products**Board to provide certain retirement income products*

61.—(1) The Board must provide the following (“basic annuities”)—

- (a) a single life annuity, which provides annuity payments in respect of 1 person for his or her life;
- (b) a joint life annuity, which provides—
  - (i) an annuity for a person for his or her life; and
  - (ii) after the person’s death, for his or her spouse for the spouse’s life;
- (c) a term annuity, which provides an annuity for a specified period (which must be at least 5 years and not more than 15 years).

(2) For subsection (1)(b)(ii), the reference to the person’s spouse is reference to his or her spouse at the time when the annuity was purchased.

(3) The terms on which those annuities are provided must comply with any requirements of Schedule 4. The Board may determine other terms, not inconsistent with those in Schedule 4, for a basic annuity.

(4) The Board must review the conversion factors for basic annuities at least once a year, and may review them more frequently, to ensure that they are sustainable and will not imperil the solvency of the Retirement Income Fund or the FNPF.

(5) The Board may, by written instrument, amend the conversion factors. The Board must not do so unless the actuary has determined that the amendment is necessary to ensure that solvency of the Retirement Income Fund and the solvency of the FNPF will not be imperilled.

(6) The Board must publish any amendment to conversions in the *Gazette*, and otherwise publicise the amendment.

(7) An instrument amending conversion factors comes into force—

- (a) on the date of its Gazettal; or
- (b) if a later date is specified in the instrument as the date on which it comes into force—that later date.

(8) An instrument amending conversion factors is not a legislative instrument for the purposes of the Interpretation Act (Cap. 7).

*Other retirement income products*

62. The Board may provide additional retirement income products, in accordance with Division 3 of this Part.

*Division 2—Retirement Income Fund**Retirement Income Fund*

63.—(1) The Board must, as soon as practicable after day on which this Part comes into force, establish a fund to be called the Retirement Income Fund.

(2) The principal purpose of the Retirement Income Fund is to support the obligations of the Board to make payments under basic annuities.

(3) The Board must keep and administer the Retirement Income Fund in accordance with this Decree.

(4) The assets of the Retirement Income Fund are property of the Board.

*What must be credited to the Retirement Income Fund*

64. The following are to be credited to the Retirement Income Fund—

- (a) amounts withdrawn from the FNPF and used to buy basic annuities;



- (b) amounts of interest, profits and other returns from investments or property of the Board, to the extent that the investments were made or the property acquired with money or other property of the Retirement Income Fund;
- (c) amounts that another provision of this law requires to be paid to the Retirement Income Fund;
- (d) amount recovered as overpayments in respect of basic annuities; and
- (e) amounts paid to the Board for the purposes of the Retirement Income Fund.

*Application of the Retirement Income Fund*

65. Amounts standing to the credit of the Retirement Income Fund are to be applied only as follows—
- (a) in making payments under basic annuities;
  - (b) in making investments authorised under this Decree;
  - (c) in meeting the expenses of the Board properly incurred in managing and administering the Retirement Income Fund;
  - (d) by transferring surplus in the Retirement Income Fund to the FNPF in accordance with the regulations; and
  - (e) in repaying amounts paid in error into the Retirement Income Fund.

*Division 3—Additional retirement income products*

*Approval of additional retirement income products*

66.—(1) The Reserve Bank may, on application by a person who proposes to provide a retirement income product (the “proposed provider”), approve the product for the purposes of this Decree.

- (2) The person must be—
- (a) the Board;
  - (b) a bank licensed under the Banking Act 1995;
  - (c) an insurer as defined in the Insurance Act 1998; or
  - (d) a person prescribed by regulations for this section,

whereby Government approval shall be required before any person under subsections (2) (b), (c) and (d) makes an application under subsection (1).

- (3) The Reserve Bank may determine requirements and processes for applications under subsection (1).

(4) The Reserve Bank may require an applicant to provide additional information in connection with the application, including reports from an actuary or an auditor in relation to the application. The Reserve Bank is not bound to deal further with the application until the requirement is satisfied.

- (5) The Reserve Bank is not to approve a retirement income product unless satisfied that—

- (a) the proposed provider—
  - (i) in providing the product, will act with integrity, prudence and professional skill;
  - (ii) has and will maintain a sound financial position and not cause or promote instability in Fiji’s financial system; and
  - (iii) has sufficient capital, or has made arrangements satisfactory to the Reserve Bank, to ensure that it can meet its payment obligations in respect of the product; and
- (b) the proposed provider otherwise meets and will continue to meet the requirements of the prudential standards;
- (c) the arrangements for administering the retirement income product (including for maintaining accounts and delivering payments to annuitants) are adequate and appropriate; and
- (d) the terms on which the retirement income product is to be provided—
  - (i) meet the requirements of the prudential standards; and
  - (ii) are otherwise reasonable and appropriate.

- (6) Section (5)(a) does not apply to the Board.
- (7) A prudential standard may prescribe additional criteria, not inconsistent with this Decree, for approvals.
- (8) An approval of a retirement income product may be subject to conditions specified in the instrument of approval. The conditions may include—
  - (a) a condition that the proposed provider establish and maintain a fund, in accordance with the requirements of the Reserve Bank, to support its obligations referable to the product; and
  - (b) a condition that the proposed provider adopt the Code of Fair Practice, with modifications (if any) specified in the instrument of approval, and include in the terms on which the product is provided an undertaking by the provider to comply with its obligations under the Code of Fair Practice.
- (9) If—
  - (a) the Board is the proposed provider for a proposed retirement income product; and
  - (b) the Reserve Bank requires a fund to be established as mentioned in subsection (8) in respect of the product; and
  - (c) after considering a report from the actuary on the matter, the Reserve Bank approves a transfer of a specified amount from the FNPF to the proposed fund;

the specified amount is payable out of the FNPF to the proposed fund.

*Suspension or revocation of approval on request*

67. The Reserve Bank may, on written request by the person to whom the approval of a retirement income product was given, by notice to the person—

- (a) suspend the approval for the period specified in the notice; or
- (b) revoke the approval.

*Suspension or revocation of approval*

68.—(1) This section applies if it appears to the Reserve Bank that—

- (a) the provider of an approved retirement income product—
  - (i) has not provided the product within 12 months after the date of the approval;
  - (ii) in providing the product, is not acting act with integrity, prudence and professional skill;
  - (iii) does not have a sound financial position or may cause or promote instability in Fiji’s financial system;
  - (iv) does not or will not have sufficient capital, and has not made arrangements, satisfactory to the Reserve Bank, to ensure that it can meet its payment obligations in respect of the product;
  - (v) does not meet or will not meet a requirement of the prudential standards; or
  - (vi) gave false or misleading information in relation to the application for approval or in relation to the product (either before or after the approval);
- (b) the arrangements for administering an approved retirement income product (including for maintaining accounts and delivering payments to annuitants) are not adequate or appropriate;
- (c) the terms on which a retirement income product is to be provided—
  - (i) do not meet the requirements of this Decree or the prudential standards; or
  - (ii) are not otherwise reasonable and appropriate; or
- (d) an event or circumstance prescribed for this section has occurred in relation to an approved retirement income product.

(2) The Reserve Bank may, by notice to the provider of an approved retirement income product—

- (a) suspend the approval of the product for the period specified in the notice; or
- (b) revoke the approval;

but must not do so unless—

- (c) it has given the provider written notice—
  - (i) of its intention to take the proposed action;
  - (ii) stating the reasons for the proposed action; and
  - (iii) requiring the provider to show cause within a specified period (at least 21 days) why the action should not be taken; and
- (d) it has taken into account any representations made by or for the provider.

(3) The Reserve Bank may suspend an approval without giving notice as required by section (2)(c) if satisfied on reasonable grounds that it is necessary to do so urgently to prevent or mitigate damage to the interests of financial institutions, clients of financial institutions, potential buyers of the retirement income product or Fiji’s financial system, but the Reserve Bank must—

- (a) give the provider the notice as soon as practicable; and
- (b) having considered any representations made by or for the provider—rescind the action taken, or take any action that may be taken under subsection (2).

*Existing rights on suspension or revocation*

69.—(1) A revocation or suspension of approval of an approved retirement income product does not affect the retirement income product provider’s obligations in relation to the product assumed before the revocation or suspension.

(2) If the Reserve Bank suspends or revokes the approval of an approved retirement income product, it must also give such directions to the provider as are, in the opinion of the Reserve Bank, necessary or desirable to protect the interests of the annuitants.

(3) The provider must comply with the directions.

Penalty—100 penalty units.

*Notice of approvals, suspensions and revocations*

70. The Reserve Bank must notify all approvals, and all suspensions and revocations of approvals, under this Division in the *Gazette*, as soon after the event as practicable.

*Division 4—Disclosure obligations and unfair practices*

*Disclosure requirements*

71.—(1) A person (the “provider”) commits an offence if the provider—

- (a) provides an approved retirement income product to another person; and
- (b) did not, at least 7 days before providing the product, give the other person a current key features statement for the product.

Penalty—200 penalty units.

(2) A person (the “provider”) commits an offence if the provider—

- (a) provides an approved retirement income product to another person; and
- (b) gave the other person a key features statement for the product that did not comply with the requirements of the regulations.

Penalty—200 penalty units.

(3) Strict liability applies to subsections (1) and (2).

(4) It is a defence to a prosecution for an offence under subsection (2) that the defendant—

- (a) made all inquiries that were reasonable in the circumstances; and
- (b) after doing so, believed on reasonable grounds that the key features statement complied with the requirements of the regulations.

*Requirements for applications for approved retirement income products*

72.—(1) A person must not provide an approved retirement income product to another person except on written application by the other person.

Penalty—200 penalty units.

(2) A person must not provide an approved retirement income product to another person unless the application form used for the application for the product was a form attached to or formed part of a current key features statement for the product.

Penalty—200 penalty units.

*Prohibition of false and misleading statements*

73.—(1) A person commits an offence if—

- (a) the person engages in conduct in relation to an approved annuity; and
- (b) the conduct is misleading or deceptive or is likely to mislead or deceive.

Penalty—100 penalty units.

(2) Strict liability applies to section (1)(b).

(3) Without limiting subsection (1), the following conduct in relation to an approved retirement income product is misleading or deceptive—

- (a) falsely representing that the product is of a particular standard, quality, value or grade;
- (b) falsely representing that a particular person has agreed to acquire the product;
- (c) representing that the product has a sponsorship, approval, performance characteristics, use or benefits that it does not have;
- (d) representing that the product has a sponsorship, approval or affiliation that it does not have;
- (e) making a false or misleading representation with respect to the cost of the product;
- (f) making a false or misleading representation concerning the need for the product; or
- (g) making a false or misleading representation concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy in relation to the product.

*Code of Fair Practice*

74.—(1) The Board must formulate a Code of Fair Practice in accordance with the requirements of Schedule 5.

(2) The Code must be consistent with this Decree and other written laws.

(3) The Board must submit the Code to the Reserve Bank for approval.

(4) If the Reserve Bank approves the Code, the Board must—

- (a) publicise the Code; and
- (b) comply with the Code.

(5) The Board must review the Code at least once every 3 years, but must not amend the Code without the Reserve Bank's approval. The Board must publicise any approved amendments to the Code.

(6) If an FNPF member or an annuitant suffers loss because of a failure by the Board to comply with an obligation under the approved Code, the member or annuitant may recover the amount of the loss from the Board by action in a court of competent jurisdiction.

(7) The amount recoverable by an FNPF member or an annuitant under subsection (6)—

- (a) is reduced to the extent that the loss was caused by an act or omission of the member or annuitant; and
- (b) is payable out of the FNPF.

*Unfair practices*

75.—(1) The Reserve Bank may, by notice in the *Gazette*, determine that a specified practice in relation to an approved retirement income product is an unfair practice.

(2) The Reserve Bank must not do so unless satisfied that the practice is unfair to annuitants or prospective annuitants, or is misleading or deceptive.

(3) A person commits an offence if—

- (a) the person engages in a practice; and
- (b) the conduct is an unfair practice.

Penalty—100 penalty units.

(4) Strict liability applies to subsection (3)(b).

*Repayments of amounts paid for approved retirement income products*

76.—(1) This section applies if—

- (a) a person (the “provider”) issues an approved retirement income product to another person; and
- (b) either—
  - (i) the key features statement provided to the other person in relation to the provision of the product did not comply with the requirements of this Decree; or
  - (ii) the other person was induced to acquire the product by conduct that contravened sections 73 or 75(3).

(2) The other person has a right to cancel the approved retirement income product.

(3) The other person may only exercise the right by giving the provider written notice within 2 months after the other person becomes aware, or should reasonably have become aware, that the key features statement did not comply, or that the conduct contravened sections 73 or 75(3), whichever is relevant. The right expires at the end of 3 years after the product was acquired.

(4) If the other person cancels the retirement income product, the provider must repay the amount paid to acquire the product, and must do so within 1 month after it receives the notice of cancellation.

(5) The other person is not to be subject to any liability in respect of exercising a right to cancel the retirement income product.

(6) If the provider is a company and does not repay the amount as required by subsection (4), then, in addition to the provider, each executive officer of the provider is personally liable to repay the amount.

(7) The other person may, by action in a court of competent jurisdiction, recover from the provider, and from any person involved in the contravention referred to in subsection (1)(b), the amount of any loss that the annuitant suffers because of the contravention.

## PART 7—SPECIAL DEATH BENEFITS

*Special death benefit premiums etc*

77.—(1) For each financial year, the Board must determine, in accordance with the regulations and on the advice of the actuary—

- (a) the amount of special death benefit in respect of the financial year;
- (b) amounts or rates of special death benefit premium for the financial year; and
- (c) the instalments by which the amount of the special death benefit premium is to be deducted from FNPF members’ entitlements.

(2) Different amounts of special death benefit may be determined for different circumstances or different classes of FNPF members.

(3) Amounts of special death benefits premium so determined must be deducted from FNPF members' general entitlement and credited to the Special Death Benefits Fund.

*Special death benefits*

78.—(1) Subject to this Decree, special death benefit is payable, in accordance with the Board's determination under section 79 for the relevant financial year, in respect of an FNPF member who dies and who, immediately before he or she died, met the eligibility criteria prescribed by the regulations.

(2) Special death benefits in respect of an FNPF member are payable in the same way as entitlements on the death of the member are payable.

*The Special Death Benefits Fund*

79.—(1) The Board must, as soon as practicable after this Part comes into force, establish a fund to be called the Special Death Benefits Fund.

(2) The principal purpose of the Special Death Benefits Fund is to support the obligations of the Board in respect of special death benefits under this Decree.

(3) The Board must keep and administer the Special Death Benefits Fund.

(4) The Board must allocate to the Special Death Benefits Fund such of the assets of the Board as will ensure that an actuary is able to issue a funding and solvency certificate for the fund.

(5) The assets of the Special Death Benefits Fund are property of the Board.

*What must be credited to the Special Death Benefits Fund*

80. The following are to be credited to the Special Death Benefits Fund—

- (a) amounts deducted from FNPF members' general entitlement as special death benefits premium;
- (b) interest, profits and other returns from investments or property of the Board, to the extent that the investments were made or the property acquired with money or other property of the Special Death Benefits Fund;
- (c) amounts paid to the Board as fees or charges for services provided by the Board in relation to the Special Death Benefits Fund;
- (d) amounts that another provision of this Decree requires to be paid to the Special Death Benefits Fund; and
- (e) amounts paid to the Board for the purposes of the Special Death Benefits Fund.

*Application of the Special Death Benefits Fund*

81. Amounts standing to the credit of the Special Death Benefits Fund are to be applied only as follows—

- (a) in paying special death benefit as provided in this Decree;
- (b) in making investments authorised under this Decree;
- (c) by transferring surplus in the Special Death Benefits Fund to the FNPF in accordance with the regulations;
- (d) in meeting the costs necessarily and properly incurred by the Board in managing and administering the Special Death Benefits Fund; and
- (e) in repaying amounts paid in error into the Special Death Benefits Fund.

*Board not an insurer*

82. The Board is not an insurer for the purposes of the Insurance Act 1998.

*Special death benefit not to be considered in certain cases*

83. An amount paid as special death benefit in respect of an FNPF member must not be taken into consideration in assessing compensation or damages payable to the dependants or beneficiaries of the member under the Compensation to Relatives Act (Cap. 29).

## PART 8—OTHER PROVISIONS APPLICABLE TO FUNDS

*Supplementary Fund*

84.—(1) The Board must, as soon as practicable after this Part comes into force, establish a fund to be called the Supplementary Fund.

(2) The Board must keep and administer the Supplementary Fund.

(3) The Board must allocate to the Supplementary Fund any assets that a written law provides are to be allocated to the Fund.

(4) The assets of the Supplementary Fund are property of the Board.

*What must be credited to the Supplementary Fund*

85. The following are to be credited to the Supplementary Fund—

- (a) amounts required by this Decree or another written law to be credited to the Supplementary Fund;
- (b) amounts of interest, profits and other returns from investments or property of the Board, to the extent that the investments were made or the property acquired with money or other property of the Supplementary Fund; and
- (c) amounts paid to the Board for the purposes of the Supplementary Fund.

*Application of the Supplementary Fund*

86. Amounts standing to the credit of the Supplementary Fund are to be applied only as follows—

- (a) in making payments authorised or required by this or another written law to be paid from the Supplementary Fund;
- (b) in making investments authorised under this Decree;
- (c) in meeting the expenses of the Board properly incurred in managing and administering the Supplementary Fund;
- (d) by transferring surplus in the Supplementary Fund to the FNPF in accordance with the regulations; and
- (e) in repaying amounts paid in error into the Supplementary Fund.

*Estimates of liabilities*

87.—(1) For each fund (not the FNPF), the actuary must prepare estimates of the Board's liabilities referable to the fund.

(2) The estimates must be as at—

- (a) the date of the fund's establishment; and
- (b) the date of each later funding and solvency certificate for the fund.

(3) In making an estimate for a fund, the actuary must—

- (a) apply relevant professional standards and actuarial principles; and
- (b) take into account—
  - (i) the fund's investment guidelines;
  - (ii) the nature and quality of the assets of the fund;
  - (iii) the likely financial position of the fund and the payment obligations of the fund over time; and
  - (iv) any other matter that a prudent actuary would take into account.

*Funding and solvency certificates*

88.—(1) The Board must ensure that there is in force at all times, for each fund (not the FNPF), a funding and solvency certificate from the actuary.



- (2) A funding and solvency certificate for a fund is a certificate that—
- (a) certifies that, in the actuary’s opinion, the value of the assets of the fund as at the date of the certificate, together with other assets that the actuary considers will become assets of the fund while the certificate is in force, will be sufficient to enable the Board to meet the Board’s liabilities referable to the fund, including under a range of adverse conditions specified by the actuary;
  - (b) states the period for which it is in force; and
  - (c) otherwise complies with the requirements of the regulations.
- (3) A funding and solvency certificate ceases to be in force for—
- (a) at the end of 3 years from the date of its issue;
  - (b) if the certificate specifies a shorter period for the certificate—at the end of the specified period;
  - (c) if a prudential standard specifies a shorter period for the certificate—at the end of the specified period; or
  - (d) if the certificate states that a specified event will require the solvency of the fund to be re-examined—if the event occurs.
- (4) In determining whether to issue a funding and solvency certificate for a fund, the actuary must—
- (a) apply relevant professional standards and actuarial principles; and
  - (b) take into account—
    - (i) the fund’s investment guidelines;
    - (ii) the nature and quality of the assets of the fund;
    - (iii) the likely financial position of the fund and the payment obligations of the fund over time; and
    - (iv) any other matter that a prudent actuary would take into account; and
  - (c) not take into account any inadmissible assets of the fund.

(5) A contravention of subsection (1) is not an offence but may be the basis for supervisory action by the Reserve Bank under Part 11.

*Board not subject to direction*

89.—(1) Except as expressly provided by this Decree, the Board’s powers in relation to the management, investment and application of a fund are not subject to direction by any other person, and its discretions in relation to the management, investment and application of the fund are not to be exercised by any other person.

- (2) Subsection (1)—
- (a) does not prevent the Board from delegating a power or function or engaging a person to provide services to the Board, including agency and investment management services; and
  - (b) does not apply to—
    - (i) a direction given by a court; or
    - (ii) a direction given under section 48(8) or 56(1).

*Investments*

90.—(1) Subject to this Decree, property of a fund that is not immediately required to be paid may be invested or applied consistently with applicable investment guidelines.

(2) Despite any rule of law or principle of equity to the contrary, for the purpose of investment, property of a fund may be mixed with property of another fund.

*Investment guidelines*

91.—(1) The Board must formulate investment guidelines for each fund, and must review the guidelines at least once every 12 months.

- (2) The investment guidelines for a fund must:
  - (a) be consistent with, and be formulated with a view to achieving, the principal purpose of the fund set out in this Decree;
  - (b) conform to the requirements of this Decree and applicable prudential standards; and
  - (c) specify—
    - (i) the classes of investments that are permitted investments of the fund;
    - (ii) the classes of investments that are not permitted investments of the fund;
    - (iii) the classes of investments that the fund is required to hold;
    - (iv) the maximum and minimum percentages of each class of investment that the fund may or must hold; and
    - (v) the criteria for selection of particular investments.
- (3) For subsection (2)(c)(v), criteria may include—
  - (a) requirements as to ratings by recognised ratings agencies in respect of investments or assets;
  - (b) the period for which the fund may hold an investment; and
  - (c) criteria related to risk management, including the risks associated with a lack of diversity in the fund's assets and, for overseas investments, sovereign risk, foreign exchange risk.
- (4) In formulating and reviewing investment guidelines for a fund—
  - (a) the Board must obtain and take into account the advice of an actuary; and
  - (b) the matters that the Board must have regard to include—
    - (i) the asset allocation and composition of the investments of the fund;
    - (ii) the risks involved in the investments proposed to be authorised by the guidelines;
    - (iii) how those risks are to be managed;
    - (iv) the likely return from investments proposed to be authorised by the guidelines;
    - (v) the desirability of maintaining the real value of the capital of the fund;
    - (vi) the extent to which the risks associated with the fund's investments are concentrated (for example, by sector or by counterparty);
    - (vii) the extent to which the investments are diverse or expose the fund to risk from inadequate diversification;
    - (viii) the liquidity and term of the fund's investments, having regard to its expected cash flow requirements; and
    - (ix) the ability of the Board to discharge its existing and prospective liabilities in relation to the fund.
- (5) The Board must not invest any money or assets of a fund in a way that is inconsistent with the investment guidelines for the fund in force at the time the investment is made.
- (6) The Board may—
  - (a) obtain and consider advice reasonably required for the management or investment of a fund's assets, including in relation to the formulation of investment guidelines, from a person who the Board reasonably believes is competent to give the advice; and
  - (b) pay out of the fund the reasonable costs of obtaining the advice.
- (7) The Board must make publicly available the asset allocations for a fund made in accordance with the investment guidelines for the fund.

*Derivatives*

92.—(1) The Board may acquire a derivative only for the purpose of—

- (a) protecting the value of an investment of a fund (other than a derivative); or
- (b) protecting the return on an investment of a fund (other than a derivative);

and must not acquire a derivative for the purpose of speculation or leverage.

(2) In this section—

“derivative” means a financial asset or liability the value of which depends on, or is derived from, other assets, liabilities or indexes.

*Certain transactions prohibited*

93.—(1) The Board must not, directly or indirectly—

- (a) undertake a liability by way of guarantee or other credit enhancement; or
- (b) give a security interest (however described) over assets of a fund.

(2) The Board must not lend money of the Retirement Income Fund or the Special Death Benefits Fund.

(3) A loan made with the money or property of the FNPF cannot be money or property of the Retirement Income Fund or the Special Death Benefits Fund.

(4) The Board must not lend money of the FNPF, or use assets of the FNPF to give any financial assistance to an FNPF member, or a relative of an FNPF member, except in accordance with the regulations.

(5) Subsections (1), (2) and (4) extend to acts carried out through agents of the Board (such as investment managers).

(6) The Board must not do anything mentioned in subsection (1), (2) or (4) through a subsidiary of the Board unless the Reserve Bank has approved.

## PART 9—PROTECTION OF ENTITLEMENTS

*Amounts etc not subject to sequestration*

94.—(1) Except as provided by this Decree, none of the following—

- (a) amounts paid under this Decree as mandated or additional contributions;
- (b) amounts of an FNPF member’s preserved or general entitlement;
- (c) an FNPF member’s entitlements under this Decree;
- (d) amounts paid as an FNPF member’s entitlements under this Decree, so long as they retain that character;
- (e) amounts payable to a person as special death benefit under this Decree;
- (f) amounts payable to a person under an approved retirement income product;

and no right of a person in relation to those amounts and entitlements—

- (i) are capable of being assigned or otherwise disposed of; or
- (ii) are capable of being pledged, charged or otherwise being made subject to a security interest (however described); or
- (iii) are liable to be attached, sequestrated or levied upon for or in respect of any debt or claim.

(2) A person commits an offence if—

- (a) the person engages in conduct; and
- (b) the conduct has the effect of recognising or giving effect to an assignment, disposition, pledge, charge, attachment, sequestration or levy; and

- (c) the assignment, disposition, pledge, charge, attachment, sequestration or levy was contrary to subsection (1).

Penalty—100 penalty units.

- (3) Strict liability attaches to subsection (2)(c).

*Bankruptcy of employee*

95. Despite any other written law, the bankruptcy of an employee does not affect the liability of his or her employer to pay mandatory contributions in accordance with this Decree.

*Bankruptcy, liquidation, etc., of employer*

96.—(1) This section applies if a trustee in bankruptcy, liquidator, receiver, personal representative or similar person (a “trustee”) is dealing with the property, business or estate of an employer who has failed to pay contributions as required by this Decree.

(2) The Board must, on application by the trustee, determine the amount payable to discharge the employer’s liability in respect of unpaid contributions. A determination has effect according to its terms.

(3) Despite any other written law, the trustee must not distribute any of the property, business or estate of the employer unless the Board has determined an amount under subsection (2) and certified that that amount has been paid.

(4) If the trustee makes a distribution contrary to subsection (3), the trustee is personally liable to discharge the employer’s liability in respect of unpaid contributions.

PART 10—ENFORCEMENT

*Division 1—Inspectors and their powers*

*Appointment*

97.—(1) The Chief Executive Officer may, in writing, appoint a staff member as an inspector.

(2) A person must not interfere with or impede an inspector performing functions under this Part.

Penalty—50 penalty units, or imprisonment for 1 year, or both.

*Identity cards*

98.—(1) The Chief Executive Officer must issue an identity card, in an approved form, to each inspector.

(2) If a person—

(a) ceases to be an inspector; and

(b) does not, as soon as practicable after so ceasing, return the identity card to the Chief Executive Officer.

he commits an offence.

Penalty—1 penalty unit.

(3) It is a defence to a prosecution for an offence against subsection (2) that the identity card is lost or destroyed.

(4) An inspector must carry his or her identity card at all times when exercising powers or performing functions under this Part.

*Powers to monitor compliance*

99.—(1) An inspector may exercise any power set out in subsection (2) for any of the following purposes—

(a) to find out whether this Decree has been complied with; and

(b) to assess the correctness of information provided under this Decree.

(2) The powers are to—

(a) enter any place where persons are believed to be engaged as employees; and

(b) enter, at any reasonable time, any premises used or apparently used by a relevant person for business purposes and search for relevant documents or things;

- (c) take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
- (d) question a relevant person, either alone or in the presence of another person;
- (e) if—
  - (i) a relevant person has possession or control of; or
  - (ii) the inspector reasonably suspects that a relevant person has possession or control of:  
a relevant document or thing—
  - (iii) the power to require (orally or in writing) the relevant person to produce it to the inspector as specified in the direction; and
  - (iv) the power to examine, and make copies of or take extracts from, it; and
  - (v) the power to require a relevant person or a person who apparently is a relevant person to give the inspector information about it;
- (f) require a relevant person to attend at a time and place specified by the inspector in writing to be questioned; and
- (g) require a person who makes a statement to the inspector to sign a declaration as to its truth.

(3) Subsections (2)(a) and (b) do not authorise an inspector to enter a place or premises used as a dwelling without the consent of the occupier of the place or premises.

(4) If an inspector questions a person under this section, the person must answer the question to the best of the person's knowledge, information and belief.

Penalty—50 penalty units.

(5) Subject to this Decree, a person must not fail or refuse to comply with a requirement under this section.

Penalty—50 penalty units.

*Powers to investigate suspected offences against this Decree*

100.—(1) If an inspector suspects on reasonable grounds that a person has committed an offence against this Decree, that or another inspector may exercise any power set out in subsection (2) for the purpose of investigating the suspected offence.

(2) The powers are—

- (a) to enter and search any place or premises if an inspector suspects on reasonable grounds that a thing that may afford evidence of the offence may be found there;
- (b) in conducting a search under subsection (2)(a)—the power to take photographs, make video or audio recordings or make sketches of the premises or any thing in the place or premises;
- (c) if—
  - (i) a relevant person has possession or control of; or
  - (ii) an inspector suspects on reasonable grounds that a relevant person has possession or control of;  
a thing that may afford evidence of the offence—
  - (iii) the power to require (orally or in writing) the relevant person to produce it to the inspector as specified in the direction; and
  - (iv) the power to examine, and make copies of or take extracts from, it; and
- (d) to question a relevant person, either alone or in the presence of another person;
- (e) to require a relevant person to attend at a time and place specified by the inspector in writing to be questioned;
- (f) to require a person who makes a statement to the inspector to sign a declaration as to its truth.

- (3) An inspector may not enter and search a place or premises under this section unless—
- (a) the occupier of the place or premises consents; or
  - (b) the entry and search is authorised by a warrant issued by a magistrate.
- (4) Subject to this Decree, a person must not fail or refuse to comply with a requirement under this section.

Penalty—50 penalty units.

(5) If an inspector questions a person under this section at a time when the inspector, or another inspector, suspects or ought reasonably to have suspected that the person was involved in an offence against this Decree, the inspector must warn the person that the person does not have to answer the question, or do anything else in response to the question, but that anything the person does say or do may be used in evidence.

(6) In a prosecution of a person for an offence against this Decree, evidence of anything that the person said or did when questioned in circumstances set out in subsection (5) is not admissible unless it is established that, before the question was asked, the warning required by that subsection was given. This subsection does not limit the grounds on which the evidence may be inadmissible.

*Entry and search, etc*

101.—(1) An inspector must, before entering a place or premises under sections 99 or 100, if the occupier of the place or premises asks, show the occupier his or her identity card.

(2) If a place or premises are being searched under section 99 or 100, the occupier of the premises is entitled to observe the search.

(3) Subsection (2) does not apply if the occupier impedes, or attempts to impede, the search.

(4) In this section—

“occupier”, of a place or premises, means a person who is apparently at least 18 years old and is apparently the occupier of the place or premises.

*Self-incrimination not a reasonable excuse, and legal professional privilege*

102.—(1) If a person is required under this Decree to answer a question or produce a document or thing, the person is not excused from compliance on the ground that compliance will tend to incriminate the person or make the person liable to a penalty in a proceeding.

(2) However, if the person objects to complying on that ground, the information, document or other evidence that the person gives compliance with the requirement is not admissible against the person in a prosecution for an offence (except a prosecution for an offence of failing or refusing to comply with the requirement, or giving false or misleading information in purported compliance with the requirement).

(3) This Part does not affect the law relating to legal professional privilege, or like privileges.

*Warrants*

103.—(1) A magistrate is not to issue a warrant as mentioned in section 100(3)(b) except on application by an inspector.

(2) The application is to be in writing and accompanied by a statement in writing setting out information in support of the application. The magistrate may require further information.

(3) All information, oral or in writing, in support of the application must be given on oath or affirmation.

(4) The regulations may make provision for applications to be made by fax, or telephone, or in other ways.

(5) The magistrate is not to issue the warrant unless satisfied that there are reasonable grounds to suspect that a person has committed an offence against this Decree and that there is, in the place or premises specified in the application, a thing that will afford evidence of the offence.

(6) A warrant is to:

- (a) name the inspector who applied for the warrant;

- (b) specify the place or premises to be entered and searched;
- (c) describe the offence in respect of which it is issued;
- (e) specify the conditions, if any, to which the warrant is subject; and
- (f) specify a day (not more than 7 days after its issue), on which it ceases to be in force.

(7) Another warrant may be issued before or after a warrant has ceased to be in force.

(8) Subject to any conditions in the warrant, a warrant may be executed at any time of the day or night.

(9) A warrant is taken to authorise the inspector named in the warrant, and any other inspector, to execute the warrant with such assistance as is necessary.

(10) In executing a warrant—

- (a) the inspector may obtain such assistance; and
- (b) the inspector, or a person who is assisting in executing the warrant may use such force against persons and things;

as is necessary and reasonable in the circumstances.

(11) If—

- (a) a warrant in respect of a place or premises is being executed; and
- (b) the occupier of the place or premises, or another person who apparently represents the occupier, is present;

the inspector must, on request by the occupier or other person, make a copy of the warrant available to the occupier or other person. The copy need not include the signature of the issuing magistrate or a court seal.

### *Division 2—Departure from Fiji*

#### *Departure prohibition orders*

104.—(1) If—

- (a) a person is liable to pay an amount as, or on account of, mandated contributions or additional contributions required to be paid by subsection 38(3);
- (b) the amount is due and payable but has not been paid; and
- (c) the Chief Executive Officer believes on reasonable grounds that it is desirable to prevent the person from departing from Fiji to another country without—
  - (i) fully satisfying the liability; or
  - (ii) making arrangements satisfactory to the Board for the liability to be fully satisfied;

the Chief Executive Officer may, by written order, prohibit the departure of the person from Fiji.

(2) A departure prohibition order remains in force until revoked, or set aside by a court.

(3) A departure prohibition order in respect of a person does not prevent the deportation of the person under the Deportation Act (Cap. 90) or the deportation or removal of the person from Fiji under the Immigration Act 2003.

(4) The Chief Executive Officer must, as soon as practicable after making a departure prohibition order in respect of a person—

- (a) send a copy of the order to the person at the address of the person last known to the Board; and
- (b) give a copy of the order, and such information as the Chief Executive Officer considers is likely to help facilitate the identification of the person, to the Permanent Secretary or the Director of the Department of Immigration.

(5) The Chief Executive Officer may give a copy of the order and information described in subsection (4) (b) to any other department of the public service if, in the Chief Executive Officer's opinion, to do so will assist in giving effect to the order.



*Contravening a departure prohibition order*

- 105.—(1) A person commits an offence if—
- (a) a departure prohibition order is in force in respect of the person; and
  - (b) the person knows that the order is in force; and
  - (c) the person departs from Fiji to another country;

Penalty—100 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) that the departure is authorised by a departure authority.

*Departure authorities*

106.—(1) The Chief Executive Officer may, on application made by a person in respect of whom a departure prohibition order is in force, issue a written departure authority authorising the person to depart from Fiji to a specified country.

(2) A departure authority is subject to conditions specified in the authority.

(3) Without limiting subsection (2), conditions may include—

- (a) the time when the person must return to Fiji; and
- (b) security to be provided by the person.

(4) The Chief Executive Officer must, as soon as practicable after issuing a departure authority in respect of a person—

- (a) send a copy of the authority to the person; and
- (b) give a copy of the instrument to the Permanent Secretary of the Department of Immigration and any other person who was given a copy of the order under section 104(5).

*Revocation of departure prohibition orders*

107.—(1) The Chief Executive Officer may revoke a departure prohibition order at any time.

(2) If—

- (a) the liability to which a departure prohibition order relates is fully satisfied; or
- (b) arrangements satisfactory to the Board have been made for the liability to which a departure prohibition order relates to be fully satisfied; or
- (c) the Chief Executive Officer determines that the liability to which a departure prohibition order relates is uneconomical to recover;

the Chief Executive Officer must, by written instrument, revoke the order.

(3) The Chief Executive Officer must, as soon as practicable after revoking a departure prohibition order in respect of a person—

- (a) send a copy of the instrument revoking the order to the person at the address of the person last known to the Board; and
- (b) give a copy of the instrument to the Permanent Secretary of the Department of Immigration and any other person who was given a copy of the order under section 104(5).

*Division 3—Proceedings**Recovery of unpaid contributions*

108.—(1) Contributions, additional contributions and penalty amounts due under this Decree may, without affecting any other remedy, be recovered by the Board as a civil debt from a person liable to pay them.

(2) Proceedings for the recovery of contributions, additional contributions or penalty contributions as a civil debt—

- (a) are to be commenced and continued by the Chief Executive Officer in the name of the Board; and

- (b) may, despite anything in any other written law to the contrary, be commenced at any time within 6 years after the date when the contribution or penalty amount became due.

*Prosecutions*

109.—(1) A prosecution for an offence against or arising under this Decree may be commenced and continued by the Chief Executive Officer in the name of the Board.

- (2) Subsection (1) does not limit the operation of any other written law.

*Evidence*

110.—(1) In any criminal or civil legal proceedings under or arising out of this Decree, a certificate of the Chief Executive Officer as to any of the following matters is admissible as evidence of the matter—

- (a) that a specified person is an employer of another specified person for the purposes of this Decree;
- (b) that a specified person is or is not a registered employer;
- (c) that a specified person is or is not an FNPF member;
- (d) the amount paid by a specified person as contributions, additional contributions or penalty amounts; and
- (e) the amount due by a specified person as contributions, additional contributions or penalty amounts;

and, unless the contrary is established, is conclusive evidence of the matter.

*Orders to third parties to recover unpaid contributions*

111.—(1) If—

- (a) an employer is liable to pay an amount as, or on account of, mandated contributions or additional contributions required to be paid by section 38(3) (the “amount owed”); and
- (b) another person (the “third party”) owes money to, or may owe money to, the employer (the “debt”);

the Chief Executive Officer may give the third party a notice requiring the third party to pay to the Board, on account of the amount owed, the amount specified in the notice. The amount must not be more than the lesser of the debt and the amount owed.

(2) A notice under subsection (1)—

- (a) must specify the time for payment (which must be a reasonable time); and
- (b) may require the third party to make payments by instalments of specified amounts.

(3) The Chief Executive Officer must send a copy of the notice to the employer.

(4) A person commits an offence if—

- (a) the Chief Executive Officer gives the person a notice under subsection (1); and
- (b) the person fails to comply with the notice.

Penalty—50 penalty units.

(5) If a person other than the third party pays an amount to the Board that satisfies some or all of the employer’s liability to pay the amount owed—

- (a) the Chief Executive Officer must notify the third party and the employer of the payment; and
- (b) the amount owed is reduced accordingly.

(6) For this section, a third party is taken to owe money to an employer in the following cases—

- (a) the money is due or accruing by the third party to the employer;
- (b) the third party holds the money for or on account of the employer;
- (c) the third party holds the money on account of some other person for payment to the employer; or
- (d) the third party has authority from some other person to pay the money to the debtor;

and it does not matter that some condition must be fulfilled before the money becomes payable to the employer.

(7) An amount that the third party pays to the Board under this section is taken to have been authorised by the employer and any other person who is, apart from this section, entitled to all or a part of the amount, and the third party is indemnified by them for the payment.

*Court may order payment of contribution and interest*

112. If a person is convicted or found guilty of an offence as a result of not paying contributions in respect of an FNPF member, the court may, in addition to any other order that the court may make (whether by way of penalty or not), order the person to pay to the Board a specified amount on account of the difference between the amounts that have been credited to the member's entitlements and the amount that would have been so credited had the contributions been paid when due.

*Division 4—Other provisions*

*False or misleading statements*

113.—(1) A person is guilty of an offence if—

- (a) the person makes a statement (whether orally, in a document or in any other way) to an inspector; and
- (b) the statement is false or misleading in a material particular.

Penalty—50 penalty units.

(2) In subsection (1), absolute liability applies to the circumstance, that the statement is false or misleading in a material particular.

(3) A person is guilty of an offence if—

- (a) the person makes a statement to an inspector; and
- (b) the person omits some matter or thing from the statement; and
- (c) the statement is misleading in a material particular because of the omission.

Penalty—50 penalty units.

(4) In subsection (3), absolute liability applies to—

- (a) the conduct, that the person omits a matter or thing; and
- (b) the circumstance, that the statement is misleading in a material particular.

(5) It is a defence to a prosecution for an offence against subsection (1) or (3) that the defendant did not know, and could not reasonably be expected to have known, that the statement to which the prosecution relates was false or misleading.

*Incorrectly keeping records etc.*

114.—(1) A person is guilty of an offence if—

- (a) the person is required by or under this Decree to keep accounts, accounting records or other records; and
- (b) the person keeps the accounts or records; and
- (c) the accounts, accounting records or other records do not correctly record and explain the matters, transactions, acts or operations to which they relate.

Penalty—20 penalty units.

(2) An offence under subsection (1) is an offence of absolute liability.

(3) It is a defence to a prosecution for an offence against subsection (1) that the defendant—

- (a) did not know that the accounts, accounting records or other records to which the prosecution relates did not correctly record and explain the matters, transactions, acts or operations to which they relate; and
- (b) he took reasonable precautions and exercised all due diligence to ensure that the accounts, accounting records or other records correctly recorded and explained those things.

- (4) A person is guilty of an offence if—
- (a) the person is required by or under this Decree to keep any accounts, accounting records or other records; and
  - (b) the person keeps the accounts or records; and
  - (c) the accounts or records do not correctly record and explain the matters, transactions, acts or operations to which they relate; and
  - (d) either—
    - (i) the person knew that, or was reckless whether, the accounts or records correctly recorded and explained the matters, transactions, acts or operations to which they relate; or
    - (ii) the person intended thereby to deceive or mislead the Board or an inspector; or
    - (iii) the person intended thereby to hinder or obstruct the Board or an inspector in performing duties under this Decree, or otherwise to hinder or obstruct the investigation of an offence under this decree.

Penalty—100 penalty units.

(5) In subsection (4), strict liability applies to the circumstance, that the person is required by or under this Decree to keep the accounts, accounting records or other records.

*Falsifying or concealing identity with intention of deceiving or misleading etc*

115. A person is guilty of an offence if—

- (a) he engages in conduct that results in the falsification or concealing of the identity of, or the address or location of a place of residence or business of, the person or another person; or
- (b) he does or omits to do any act or thing the doing or omission of which makes it easier to falsify or conceal the identity of, or the address or location of a place of residence or business of, the person or another person;

with any of the intentions set out in sections 115(4)(d)(ii) or (iii).

Penalty—100 penalty units.

*Liability of directors etc*

116.—(1) In a prosecution for an offence against this Decree, if it is established that—

- (a) particular conduct was engaged in by a director, servant or agent of a body corporate within the scope of his or her actual or apparent authority; and
- (b) the director, servant or agent had a particular state of mind in relation to the conduct;

it is presumed that the body corporate engaged in the conduct and had the state of mind in relation to the conduct unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(2) Conduct engaged in on behalf of an employer who is not a body corporate by an employee or agent of the employer within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Decree, also to have been engaged in by the employer unless the employee establishes that he or she took reasonable precautions and exercised all due diligence to avoid the conduct.

(3) A reference in this section to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(4) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

## PART 11—SUPERVISION BY THE RESERVE BANK

*Division 1—Preliminary**Operation of this Part with other laws*

117.—(1) This Part applies in addition to the Banking Act 1995, the Insurance Act 1998 and other written laws.

(2) If a provision of this Part is inconsistent with a provision of another written law, the provision of this Part prevails to the extent of the inconsistency.

*Matters that the Reserve Bank must take into account in exercising powers and performing functions under this Part*

118. The Reserve Bank must exercise its powers and perform its functions under this Part in relation to the Board for the purposes of ensuring that—

- (a) the interests of FNPf members and annuitants are appropriately protected;
- (b) the Board manages its affairs in a prudent manner, including by appropriate internal controls and risk management and accounting systems; and
- (c) the Board appropriately understands and manages the risks associated with the conduct of its business.

*Division 2—Prudential standards**Prudential standards*

119.—(1) The Reserve Bank may, by notice in the *Gazette*, determine standards (“prudential standards”), not inconsistent with this Decree or the regulations, imposing requirements with respect to any of the following—

- (a) the conduct of the affairs of the Board with a view to ensuring that each fund remains in a sound financial position; and
- (b) the conduct of the Board’s affairs with integrity, prudence and professional skill.

(2) Without limiting what a prudential standard may deal with, it may impose requirements with respect to any of the following—

- (a) fit and proper person requirements for—
  - (i) Board members;
  - (ii) staff members; and
  - (iii) auditors, actuaries and their officers and employees;
- (b) solvency and capital requirements;
- (c) reporting, and giving returns, to the Reserve Bank;
- (d) the governance of the Board;
- (e) liquidity requirements for funds;
- (f) the use of financial instruments (including derivatives) and off balance sheet transactions;
- (g) valuations;
- (h) the performance by the actuary of his or her functions in relation to a fund;
- (i) insurance and re-insurance;
- (j) outsourcing; and
- (k) risk management.

(3) A person must comply with an applicable prudential standard. Contravention of this subsection is not an offence.

*Division 3— Actuaries and auditors**Appointment of actuary and auditor*

120.—(1) The Board must ensure that at all times an actuary is appointed for the Board.

(2) The Board must ensure that at all times an auditor approved by the Reserve Bank is appointed for the Board.

(3) The Reserve Bank must not withhold approval under subsection (2) unless satisfied, after due inquiry, that the proposed appointee—

- (a) is not a disqualified person;
- (b) does not meet the eligibility criteria for auditors (as relevant) set out in a prudential standard or this Decree; and
- (c) is otherwise not a fit and proper person.

(4) An actuary or auditor ceases to hold office if—

- (a) he or she resigns, by notice to the Board and to the Reserve Bank;
- (b) the Board, by notice to the actuary or auditor and to the Reserve Bank, terminates the appointment;
- (d) he or she becomes a disqualified person; or
- (e) for an auditor—his or her approval by the Reserve Bank is revoked.

(5) If an actuary or auditor ceases to hold office, subsection (1) or (2) is not contravened merely because a replacement appointment is not made within the next 6 months.

(6) The Reserve Bank may revoke an approval of an auditor under subsection (2) if it considers that—

- (a) the auditor does not, or will not be able to, meet the requirements of the prudential standards or this Decree; or
- (b) the auditor is not a fit and proper person to be an auditor.

(7) A revocation takes effect when notice of it is given by the Reserve Bank to the auditor, and to the Board.

(8) If a person—

- (a) acts as auditor for the Board; and
- (b) the Reserve Bank has not approved the appointment, or has revoked the approval;

the person commits an offence.

Penalty—200 penalty units.

(9) Strict liability applies to subsection (8)(b).

*Role of actuary*

121.—(1) The actuary must—

- (a) perform for the Board the functions of the actuary set out in this Decree and the prudential standards; and
- (b) prepare, and give to the Board, the reports and certificates required by this Decree or the prudential standards to be prepared or given by the actuary.

(2) The Board must make the arrangements that are necessary to enable the actuary to do those things.

(3) A report that this Decree or a prudential standard requires the actuary to prepare must—

- (a) deal with all the matters that this Decree or the prudential standards require are to be dealt with in the report; and
- (b) be prepared in accordance with applicable professional standards and the requirements of the prudential standards.

*Financial condition reports*

122.—(1) The actuary must, for each fund, at least once every 3 years and otherwise as directed by the Reserve Bank—

- (a) investigate all or a specified part of the liabilities of the fund; and
- (b) prepare, and give to the Board and the Reserve Bank, a written report (“financial condition report”) in respect of each of the funds.

(2) A financial condition report for a fund must be signed by the actuary and contain a statement of the actuary's opinion about each of the following—

- (a) the adequacy of the assets of the fund having regard to the nature and timing of the liabilities of the Board referable to the fund;
- (b) the amount that would be adequate in the circumstances to hold in the fund to meet those liabilities;
- (c) the accuracy of any relevant valuations made or relied on by the actuary;
- (d) the assumptions used by the actuary;
- (e) the relevance, appropriateness and accuracy of the information on which those assumptions were based; and
- (f) any other matter in respect of which the prudential standards require a statement of the actuary's opinion to be included in the report.

(3) A financial condition report must state that it has been prepared in accordance with the standards and requirements of section 121(3)(b) and this section.

*Assistance, etc, to auditor and actuary*

123.—(1) If any of the following persons—

- (a) the Board;
- (b) a Board member;
- (c) a staff member; or
- (d) a person who has at any time in the 2 years before the relevant time, been a Board member or a staff member;

fails to cooperate with an auditor or an actuary in connection with the auditor or actuary performing duties or exercising powers under this Decree, the person commits an offence.

Penalty—100 penalty units.

(2) The obligations of a person under subsection (1) include the obligations—

- (a) to comply with any request by the auditor or actuary to produce to the auditor or actuary any document that he or she has in his or her possession or control; and
- (b) to give full and truthful answers to questions asked by the auditor or actuary.

*Undue pressure or influence, etc, on auditor and actuary*

124.—(1) A person commits an offence if—

- (a) the person engages in conduct; and
- (b) the conduct—
  - (i) unduly influences the auditor or actuary for the Board; or
  - (ii) coerces, manipulates or misleads an auditor or actuary for the Board; or
  - (iii) otherwise interferes with an auditor or actuary for the Board;

in connection with the performance of duties, or the exercise of powers, under this Decree.

Penalty—200 penalty units.

(2) An auditor or actuary who becomes aware of circumstances that may amount to a contravention or a potential contravention of subsection (1) must notify the Reserve Bank in writing of those circumstances as soon as practicable.

Penalty—50 penalty units.



*Division 4—Reports to Reserve Bank**Reports to Reserve Bank*

125.—(1) If any of the following (each a “relevant person”)—

- (a) the Board;
- (b) a Board member;
- (c) a staff member; or
- (d) the actuary or the auditor for the Board;

has reason to believe any of the following—

- (e) that the Board or a fund is or is likely to become unable to meet its obligations as they fall due or is or is likely to suffer serious financial difficulties;
- (f) that a Board member, a staff member or a person mentioned in sections 20(1)(b) or (c), is involved in financial crime;
- (g) that losses have been incurred in respect of a fund that substantially and adversely affect the financial position of the fund; and
- (h) that serious irregularities have occurred in relation to a fund, including irregularities that jeopardise the interest of FNPF members, annuitants or creditors of the Board;

the relevant person must, as soon as practicable, give to the Reserve Bank a written report about the matter.

Penalty—50 penalty units.

(2) If the person reporting to the Reserve Bank is not the Board, he or she may also report the matter to the Board.

(3) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) another person mentioned in that subsection informed the defendant that the matter had been reported to the Reserve Bank; and
- (b) the defendant had no reason to disbelieve that information.

*Reserve Bank may require other reports*

126.—(1) The Reserve Bank may, by notice to the Board, require the Board to give the Reserve Bank—

- (a) information or reports about it or a fund, as specified in the notice;
- (b) a report from an auditor, an actuary or another person nominated by the Reserve Bank on such matters as may be specified in the notice; or
- (c) a certificate from the auditor verifying the accuracy of a return or information given to the

*Reserve Bank as required by this Decree or a prudential standard.*

(2) The Reserve Bank may, by notice to the Board’s actuary, require the actuary to give to the Reserve Bank a report on any matter related to the Board or a Board fund as is specified in the notice.

(3) The Reserve Bank may, by notice to the Board’s auditor, require the auditor to give to the Reserve Bank a report on any matter related to the Board or a Board fund as is specified in the notice.

(4) A notice under subsection (1), (2) or (3) must specify a reasonable period for preparing and giving the report.

(5) The Reserve Bank is, on request by the Board, to reimburse the Board the reasonable cost incurred by the Board of compliance with a notice under this section.

*Report to Minister*

127. The Reserve Bank must report to the Minister any matter of which it becomes aware that may, in its opinion, threaten the financial viability of a fund.

*Protection for reports*

128. No civil, criminal or disciplinary proceedings lie against a person arising from a report made to or by the Reserve Bank in good faith, being a report that is required or permitted under this Decree, or that relates to a matter in respect of which the Reserve Bank has functions under this Decree, whether or not the person or Reserve Bank is required to make the report.

*Division 5—Examinations and directions*

*Examinations*

129.—(1) The Reserve Bank may at any time, through a person appointed by it for the purpose (an “RBF inspector”), conduct an examination of the Board’s affairs.

(2) An examination may extend to subsidiaries of the Board.

(3) The Board must ensure that any request by the RBF inspector for records, accounts, documents or other information and things that the examiner requires for the examination is complied with.

(4) An RBF inspector may make copies of, and take away for further examination, any thing produced under subsection (3).

*Reserve Bank’s powers of direction*

130.—(1) The Reserve Bank may give a direction to the Board if the Reserve Bank is of the opinion, because of an examination or otherwise, that—

- (a) the Board is following, has followed or is likely to follow unsound or unsafe practices in the management of a fund that those practices are likely to—
  - (i) jeopardise the interests of FNPF members, or creditors of the Board or annuitants); or
  - (ii) affect adversely the operation or stability of Fiji’s financial system; or
- (b) the Board is not complying, has not complied or is likely not to comply with a provision of this Decree or a prudential standard; or
- (c) a Board member, a staff member or a person mentioned in section 20(1)(b) or (c) is, has been or is likely to be involved in financial crime.

(2) A direction may require the Board to do any or all of the following—

- (a) to stop following, or not follow, the practices;
- (b) to comply with the provision of this Decree or a prudential standard;
- (c) to arrange for the auditor or another expert chosen or approved by the Reserve Bank to prepare a report on the affairs of the Board or a fund of the Board;
- (d) to ensure that the auditor or other expert mentioned in subsection 2(c) provides the report to the Reserve Bank;
- (e) to ensure that a specified Board member, staff member or person mentioned in section 20(1) (b) or (c) does not take part in the management or conduct of a specified fund except as permitted by the Reserve Bank;
- (f) to appoint a specified person to a specified office in the Board for a period specified in the direction;
- (g) to remove a specified staff member from office, but only if the Reserve Bank is satisfied that the person has committed, or been knowingly concerned in the commission of, a contravention of this Decree, another law to do with financial products or a law to do with financial crime;
- (h) to remove the auditor or actuary from office;
- (i) not to pay or transfer a specified amount to a specified person, or create an obligation (contingent or otherwise) to do so;
- (j) not to undertake a specified financial obligation (contingent or otherwise);
- (k) to take any other specified action that the Reserve Bank considers necessary or desirable to deal with the case in the interests of the members of the relevant fund or annuitants or the stability of Fiji’s financial system.

(3) The Reserve Bank is, on request by the Board, to reimburse the Board the reasonable cost incurred by the Board of compliance with a direction under subsection (2)(c).

(4) A direction under subsection (2)(i) does not apply to—

- (a) a payment or transfer of money under an order of a court or a process of execution; or

- (b) a payment on a withdrawal by or in respect of an FNPF member under this Decree from the member's FNPF entitlements.

(5) The Reserve Bank must consult the Board before giving a direction unless the Reserve Bank determines that, because of the circumstances, the objective of the direction would not be achieved if it were to consult.

(6) The Board must comply with a direction under this section, and must do so despite any contract or arrangement to which it is a party.

(7) A direction under this section is not a ground on which a person may terminate, repudiate or cancel a contract with the Board, accelerate a debt owed by the Board or close a transaction with the Board, despite any provision to the contrary in any document.

(8) The High Court may, on application by a party to a contract mentioned in subsection (7) (other than the Board), make an order relating to the effect of the direction on the contract. Without limiting what the order may do, the order may require the Board—

- (a) to perform its obligations under the contract; or
- (b) to compensate the applicant, as specified in the order;

but may not require a person to take action that would contravene the direction.

- (9) The Reserve Bank may revoke a direction at any time, by written notice to the Board.

#### *Division 6—Statutory management*

##### *Reserve Bank may appoint statutory manager*

131.—(1) The Reserve Bank may appoint a person to be statutory manager of a fund of the Board but only if it appears to the Reserve Bank that—

- (a) in relation to the fund, the Board is not complying with this Decree or a prudential standard; or
- (b) the fund is or is likely to be in an unsound financial position; or
- (c) a Board member, staff member or person mentioned in sections 20(1)(b) or (c) is or may be involved in financial crime;

and that it is necessary to appoint a statutory manager to protect the interests of the members of the fund or the stability, fairness, efficiency and orderliness of Fiji's financial system.

- (2) An appointment under subsection (1) takes effect immediately.

##### *Role, powers and duties of statutory manager*

132.—(1) A statutory manager for a fund—

- (a) has the management of the affairs of the fund to the exclusion of the Board;
- (b) has the duties and powers that the Board has in respect of the fund;
- (c) has power to repudiate a contract that relates to the fund and to which the Board is a party, but only if the statutory manager considers the contract detrimental to the interests of members of the fund or annuitants; and
- (d) is entitled to be paid such remuneration from the Board as is specified in the instrument of appointment.

(2) The statutory manager's remuneration is payable out of the fund to which his or her appointment relates or, if there is no such fund, the FNPF.

(3) A statutory manager must manage the affairs of the Board in relation to the relevant fund with the greatest economy practicable compatible with efficiency and must, as soon as practicable, report to the Reserve Bank what steps should be taken to ensure that—

- (a) the Board complies with this Decree;
- (b) Board members, staff members or persons mentioned in sections 20(1)(b) or (c) will not be involved in financial crime; and
- (c) the fund will be in a financially sound position.

(4) A statutory manager must comply with written directions from the Reserve Bank in relation to his or her functions.

*Removal of statutory managers*

133.—(1) The Reserve Bank may, at any time, remove a statutory manager from office, and appoint a replacement.

(2) The Reserve Bank may revoke the appointment of a statutory manager if it is satisfied that it is no longer necessary to have a statutory manager for the fund.

(3) The High Court may, on application by a person who has an interest in the matter otherwise than merely as an FPNF member or annuitant, make an order setting aside the appointment of a statutory manager, but only if satisfied that the Reserve Bank was not entitled to make the appointment, or that no grounds for making the appointment exist. It may also make any other related order that it considers just, including as to costs.

*Protections for statutory managers*

134. A statutory manager is not liable for a loss that the Board or a fund suffers unless it is established that the loss was caused by the statutory manager's fraud, dishonesty, negligence or wilful failure to comply with a law.

PART 12—MISCELLANEOUS

*Secrecy*

135.—(1) In this section—

“officer” means a person:

- (a) who is or has at any time been a Board member or a staff member;
- (b) to whom powers or functions have been delegated by the Board or the Chief Executive Officer;
- (c) although not appointed or employed by the Board, is engaged to perform services for the Board; or
- (d) who is or has at any time been an RBF inspector;

“protected document”, means a document that contains protected information (even if it also contains other information);

“protected information”, in relation to an officer, means information about a person's affairs obtained by the officer because of the officer's appointment, employment or engagement.

(2) An officer must not, directly or indirectly—

- (a) make a record of any protected information; or
- (b) disclose any protected information to another person;

Penalty—150 penalty units, or imprisonment for 2 years, or both.

(3) It is a defence to a prosecution for an offence against subsection (2) that the act concerned was done unless—

- (a) for the purposes of this Decree; or
- (b) in the performance of the person's duties or functions as an officer; or
- (c) in accordance with an arrangement referred to in subsection (6) or (7).

(4) It is a defence to a prosecution for an offence against subsection (2) related to disclosure of protected information about a person that the disclosure was made with the written consent of the person.

(5) Except when it is necessary to do so for the purpose of administering this Decree, an officer is not to be required:

- (a) to produce any protected document in or to a court, tribunal, commission or other adjudication body; or
- (b) to divulge or communicate to a court, tribunal, commission or other adjudication body a matter or thing with respect to information disclosed or obtained under or for the purposes of this Decree.

(6) Despite any other written laws (including section 4 of the Income Tax Act (Cap. 201)), the Board, the Commissioner of Inland Revenue and each department and statutory authority (each as defined in the Financial Management Act 2004) is authorised to enter into and give effect to written arrangements for the sharing of information relevant to the administration of this Decree between the Board on the one hand and the Commissioner, department or statutory authority on the other.

(7) Despite any other written laws (including section 4 of the Income Tax Act (Cap. 201)), the Board is authorised to enter into and give effect to written arrangements for the sharing of information relevant to the administration of this Decree between the Board and a department or agency of a foreign country.

(8) Arrangements mentioned in subsection (6) or (7) must include provisions to ensure, so far as is practicable and consistent with the object of the arrangements, the secrecy of the information to which the arrangements relate.

*Matrimonial property*

136.—(1) This section applies in proceedings under the Family Law Act 2003 between the parties to a marriage—

- (a) with respect to existing title or rights in respect of property; or
- (b) with respect to the property of the parties to a marriage or either of them; or
- (c) with respect to maintenance;

where one or both of the parties is an FNPF member.

- (2) The powers of the court extend to making an order requiring the Board—
  - (a) if 1 of the parties is not an FNPF member—to admit the party as an FNPF member and make an order under subsection (2)(b); and
  - (b) to credit a specified amount to an FNPF entitlement of a party, and debit a specified entitlement of the other party, accordingly; and
  - (c) to require a specified part of payments under an annuity payable to 1 of the parties to be paid to the other party.
- (3) The Board must comply with an order under subsection (2).
- (4) This section does not affect any other power of the court.

*Extension of certain provisions to providers of additional retirement income products*

137.—(1) Part 8, 10 and 11 extend to providers of additional retirement income products (not the Board) in relation only to those products.

- (2) For subsection (1)—
  - (a) a reference in those Parts to the Board is to be read as a reference to the provider of the additional retirement income product;
  - (b) references to a fund are to be read as references to any fund that is required to be established or maintained by the provider in connection with the additional annuity; and
  - (c) a reference to a Board member is to be read as a reference to a director of the body corporate that provides the additional retirement income product.

*Board etc., not liable to tax*

138.—(1) Despite any law to the contrary, none of the following are liable to tax or to any withholding or deduction on account of or in connection with tax—

- (a) the income of the Board and of the FNPF, the Retirement Income Fund, the Supplementary Fund and the Special Death Benefits Fund;
- (b) amounts payable to the Board in connection with any of those funds;
- (b) amounts paid as entitlements of FNPF members or annuitants from or referable to any of those funds; and
- (d) payments under approved retirement income products purchased with members' entitlements as set out in section 55.

- (2) In this section—  
 “tax” includes levies, charges, duties and other imposts imposed by law, however described but does not include a prescribed tax.

*Victimisation of employees prohibited*

- 139.—(1) If—
- (a) an employer subjects, or threatens to subject, an employee to a detriment in his or her employment; and
  - (b) the employer did so on the ground that, or on grounds that include the ground that, the employee has taken or proposes to take a step to protect his or her entitlements, or to ensure that the employer complied with the employer’s obligations, in relation to this Decree or the former law;

the employer commits an offence.

Penalty—200 penalty units, or imprisonment for 2 years, or both.

(2) The reference in subsection (1)(b) to taking a step is not limited to taking or threatening to take legal proceedings, but extends to making a complaint or an application, giving information to the Board and taking similar action.

- (3) For this section, an employer subjects an employee to a detriment in his or her employment if the employer—
- (a) dismisses the employee from the employment; or
  - (b) injures the employee in the employment; or
  - (c) prejudicially alters the position of the employee in the employment.

- (4) If—
- (a) an employer contravenes subsection (1) in respect of an employee; and
  - (b) the employee suffers loss or damage because of the contravention;

the employee may recover the amount of the loss or damage by action against the employer.

- (5) In such an action—
- (a) it is not necessary for the employee to establish the employer’s reason for the alleged action; and
  - (b) it is a defence that the action concerned was not taken on the ground mentioned in subsection (1).

*Advances from Government*

140.—(1) If the Board is unable to satisfy a liability of the Board referable to a fund (the "relevant fund") out of the relevant fund, the Minister must, on written request by the Board, advance to the Board the amount needed to enable the Board to satisfy the liability.

(2) The amount of the advance shall be credited to the relevant fund.

(3) The Minister and the Board may enter into written arrangements for repayment of an advance. Subject to those arrangements, the Board must repay the amount of the advance as soon as practicable. The liability to repay the advance is a liability referable to the relevant fund.

(4) The Consolidated Fund is appropriated to the extent needed to make advances under this section.

*State exempted from prosecution and investigation*

140A.—(1) The State shall not be liable to be prosecuted or subject to any investigation for an offence under this Decree.

*Consequential amendments*

141.—(1) The Bankruptcy Act (Cap. 48) is amended by adding at the end of section 2—

- “(2) For the purposes of this Act, amounts paid as contributions under the Fiji National Provident Fund Act (Cap. 219) or the Fiji National Provident Fund Decree 2011 in respect of a bankrupt by the bankrupt’s employer do not form part of the bankrupt’s after-acquired property.”.



(2) Section 154 of the Family Law Act 2003 is amended by omitting the definition of “property” and substituting the following definition—

“‘property’, of a party, without limiting its definition in section 2, does not include—

- (a) amounts standing to the credit of the party’s accounts in the Fiji National Provident Fund; or
- (b) any interest of the party in real or leasehold property that is inalienable;”.

(3) Section 172 of the Insurance Act 1998 is repealed.

(4) Section 2(2) of the Regulation of Pensions and Retirement Allowances Decree 2010 is amended by omitting “under the Fiji National Provident Fund Act (Cap. 219)” and substituting “under the Fiji National Provident Fund Act (Cap. 219) or the Fiji National Provident Fund Decree 2011”.

*Savings*

142.—(1) The persons who are Board members on day on which Part 2 comes into force continue in office as Board members for the unexpired portion of their respective terms of office, on the same terms and conditions, but their appointments may be terminated in accordance with the new Decree.

(2) To avoid doubt, the Chairman and Deputy Chairman of the Board continue in office in accordance with subsection (1).

(3) The person who is General Manager on day on which Part 2 comes into force continues in office as Chief Executive Officer, subject to his contract of employment with the Board.

(4) A person who is a staff member on day on which Part 2 comes into force continues to be a staff member, subject to his or her contract of employment with the Board.

(5) A person appointed as an inspector on day on which Part 2 comes into force continues to be an inspector, as if he or she had been so appointed under this Decree.

*Regulations*

143. The Minister may, after considering advice from the Board, make regulations, not inconsistent with this Decree and the Transition Decree, to give effect to the provisions of this Decree, and in particular to make provision in relation to any of the following—

- (a) the registration of employers;
- (b) the admission of persons as FNPF members;
- (c) procedures for the payment and collection of contributions and any matters incidental thereto;
- (d) procedures for withdrawing amounts from the FNPF, including:
  - (i) evidence to be provided to the Board to verify the applicant’s identity and entitlement; and
  - (ii) in the case of the entitlement event that an FNPF member becomes physically or mentally incapacitated from ever engaging in any further employment for which the member is fitted by training or experience—medical reports (including by medical boards);
- (e) information to be included in member annual statements, member exit statements and employer annual statements;
- (f) fees for applications for approval of retirement income products;
- (g) requirements for making and keeping records, returns, registers, books, accounts and other documents;
- (h) information and returns to be provided by employers to the Board;
- (i) information and returns to be provided to the Reserve Bank by providers of retirement income products ;
- (j) how amounts in the FNPF that are unclaimed or that cannot be allocated to an FNPF member’s entitlement are to be dealt with;
- (k) matters of a transitional nature;



(l) penalties not exceeding 50 penalty units for offences against the regulations.

*Rules*

144.—(1) The Board may make rules, not inconsistent with this Decree or the Transition Decree, with respect to any matter for which it make rules under this Decree.

(2) To avoid doubt, rules are subordinate legislation under the Interpretation Act (Cap. 7).

SCHEDULE 1—CODE OF CONDUCT  
(*section 17*)

1. The Code of Conduct must make provision for the following matters—

- (a) the ethical standards and principles adopted by the Board, including—
  - (i) its core values; and
  - (ii) expected standards of conduct by Board members and staff members;
- (b) transparency and accountability, including encouraging reporting of unlawful or unethical behaviour and actively promoting ethical behaviour;
- (c) the circumstances in which Board members and staff members may accept gifts and other benefits, including reporting and recording them;
- (d) the use of Board resources, including phones, cars and other property;
- (e) Board-related business travel, including its relationship to personal travel;
- (f) conflicts of interests, including procedures for identifying, reporting and resolving them;
- (g) managing breaches of the Code, including monitoring compliance and reporting breaches;
- (h) using and disclosing information by Board members and staff members;
- (i) reducing or eliminating improper influence on the Board, on Board members and staff members in carrying out their functions under or in relation to this Decree;
- (j) trading in and ownership of securities or other financial instruments by Board members or staff members; and
- (k) the application of provisions of the Code to persons mentioned in section 20(1)(b) or (c).

SCHEDULE 2—REVIEW OF DECISIONS AND DETERMINATIONS  
(*section 18*)

*Object of scheme*

1. The scheme must be designed to ensure that decisions or determinations of the Board in relation to FNPF members and annuitants can be reviewed fairly, impartially, consistently and in a timely way to ensure that decisions and determinations are made in accordance with this Decree.

*Decisions and determinations that can be reviewed*

2. The decisions and determinations that can be reviewed are—

- (a) a determination of the amount of an entitlement of an FNPF member;
- (b) a determination of an amount to be charged to, or debited from, an FNPF member's preserved or general entitlement; or
- (c) a decision on an application or claim under this Decree by an FNPF member or annuitant;

being a decision or determination made by a staff member or a delegate of the Board.

*Scheme contents*

3. Without limiting clause 1, the scheme must—

- (a) require that notifications of decisions and determinations that can be reviewed under the scheme include or be accompanied by—
  - (i) a clear statement of the reasons for the decision or determination; and

- (ii) a statement that the decision or determination can be reviewed under the scheme, and how to apply for review;
- (b) set out clear and simple procedures for applying for review of the decision or determination;
- (c) set out procedures that ensure that the decision or determination is reviewed by another, more senior staff member or by the Board;
- (d) provide that the reviewer must do 1 of the following:
  - (i) confirm the decision;
  - (ii) set the decision aside and make another decision instead; or
  - (iii) refer the matter to another, more senior staff member or the Board for decision; and
- (e) set out time frames within which reviews of decisions and determinations are to be conducted.

SCHEDULE 3—HOUSING FINANCE ASSISTANCE  
(section 60)

*Purpose of withdrawals*

1.—(1) The purposes for which amounts are payable under this Schedule from an FNPF member's preserved entitlement are limited to—

- (a) the purchase by the member of an existing dwelling house in Fiji for use by the member as a residence for the member and his or her family;
- (b) the construction of a dwelling house in Fiji for use by the member as a residence for the member and his or her family.

(2) To avoid doubt, amounts from an FNPF member's preserved entitlements are not payable under this Schedule for any of the following purposes—

- (a) renovations to an existing building or dwelling house;
- (b) loan repayments, including repayments of a loan secured on an existing building or dwelling house or on land intended to be used for a dwelling house;
- (c) the purchase of land, building or dwelling house by way of investment.

*Maximum amounts of payments*

2.—(1) The maximum amount payable from an FNPF member's preserved entitlement is 30% of the balance of the entitlement at the date of the application under clause 5.

(2) The maximum amount payable from an FNPF member's general entitlement is 100% of the balance of the entitlement at the date of the application under clause 5.

*Payments limited to first home buyers or builders*

3. Amounts are not payable under this Schedule in respect of an FNPF member unless the Board is satisfied that the member has not previously owned a dwelling house in Fiji.

*Payment restrictions*

4.—(1) A payment under this Schedule in respect of the purchase by an FNPF member of an existing dwelling house may only be made to the seller of the dwelling house, on completion of the sale.

(2) A payment under this Schedule in respect of the construction of a dwelling house may only be made in instalments, in accordance with a schedule of payments approved by the Board. A schedule of payments must provide for the instalment to be made only on satisfactory completion of stages of the construction specified in the approval.

*Board approval required*

5.—(1) Amounts are not to be paid under this Schedule unless the Board, on application, approves.

(2) The application must be made as set out in rules made by the Board, and accompanied by the documents and statements required by those rules.

- (3) The Board may require the FNPF member to give it further information in connection with the application. The Board is not bound to deal further with the application until the requirement is satisfied.
- (4) The Board is not to approve the payment of amounts under this Schedule unless satisfied that—
  - (a) the FNPF member is entitled to the payment; and
  - (b) adequate arrangements are in place to ensure that the payments will be made and applied in accordance with this Schedule.

SCHEDULE 4—RETIREMENT INCOME PRODUCTS PROVIDED BY THE BOARD  
(section 61)

PART 1—SINGLE LIFE ANNUITY

*What the single life annuity product is*

1. The single life annuity product is a promise by the Board to pay the annuitant a specified amount each month for as long as the annuitant lives.

*Who is eligible for a single life annuity?*

- 2. To be eligible for this product—
  - (a) the annuitant must be, when he or she applies for the product, an FNPF member; and
  - (b) the annuitant must withdraw all the balance of his or her preserved and general entitlements on the ground that he or she—
    - (i) has reached the age prescribed for the purposes of paragraph (a) of the definition of “entitlement event” in subsection 4(1); or
    - (ii) is physically or mentally incapacitated from engaging in any further employment.

*The purchase price*

3.—(1) The purchase price of the annuity is the amount that the annuitant nominates in the application form for the annuity.

(2) Only withdrawals from the annuitant’s preserved and general entitlements in the FNPF can be used as purchase price for the annuity. These amounts must be transferred to the Retirement Income Fund directly from the annuitant’s account in the FNPF.

*How much will the annuity be?*

4. The amount that the annuitant is to be paid each month is to be worked out using the following table.

If the annuitant, on the date of the application for the annuity, had turned ...	the monthly amount is ...
55, but not 56	8.7% of the purchase price ÷ 12
56, but not 57	8.9% of the purchase price ÷ 12
57, but not 58	9.0% of the purchase price ÷ 12
58, but not 59	9.2% of the purchase price ÷ 12
59, but not 60	9.4% of the purchase price ÷ 12
60, but not 61	9.6% of the purchase price ÷ 12
61, but not 62	9.8% of the purchase price ÷ 12
62, but not 63	10.0% of the purchase price ÷ 12
63, but not 64	10.3% of the purchase price ÷ 12
64, but not 65	10.5% of the purchase price ÷ 12
65, but not 66	10.8% of the purchase price ÷ 12
66, but not 67	11.1% of the purchase price ÷ 12
67, but not 68	11.4% of the purchase price ÷ 12
68, but not 69	11.7% of the purchase price ÷ 12
69, but not 70	12.1 % of the purchase price ÷ 12
70, but not 71	12.3% of the purchase price ÷ 12

If the annuitant, on the date of the application for the annuity, had turned ...	the monthly amount is ...
71, but not 72	
72, but not 73	
73, but not 74	
74, but not 75	
75, but not 76	
76, but not 77	
77, but not 78	
78, but not 79	
79, but not 80	

*What happens if the annuitant dies?*

5.—(1) If the annuitant dies within 5 years after the date of purchase of the annuity—

- (a) subject to this Schedule, payments under the annuity must continue until the end of the 5 years;
- (b) those payments are payable in accordance with a nomination current at the annuitant's death to the annuitant's spouse at the date of purchase of the annuity, a parent or child of the annuitant or an individual who was financially dependent on the annuitant; and
- (c) if there is no relevant nomination current at the annuitant's death—the Board must pay the amount of the payments for the rest of the 5 years, commuted in accordance with this Schedule, into the High Court for disposition according to law.

(2) If the annuitant dies after 5 years after the date of purchase of the annuity, no further amounts are payable under the annuity.

**PART 2—JOINT LIFE ANNUITIES**

*What the joint life annuity product is*

6. The joint life annuity product is a promise by the Board to pay—

- (a) the annuitant who applied for the product (the “first annuitant”) a specified amount each month for as long as the first annuitant lives; and
- (b) the annuitant's spouse (the “spouse”) the same amount each month after the annuitant dies, for as long as the spouse lives.

*Who is eligible for a joint life annuity?*

7. To be eligible for this product—

- (a) the first annuitant must be, when he or she applies for the product, an FNPF member; and
- (b) the first annuitant must withdraw all the balance of his or her preserved and general entitlements on the ground that he or she—
  - (i) has reached the age prescribed for the purposes of paragraph (a) of the definition of “entitlement event” in subsection 4(1); or
  - (ii) is physically or mentally incapacitated from engaging in any further employment.

*The purchase price*

8.—(1) The purchase price of the annuity is the amount that the first annuitant nominates in the application form for the annuity.

(2) However, if—

- (a) the first annuitant’s spouse is also an FNPF member; and
- (b) at the time the first annuitant applies for the product, the spouse also withdraws all the balance of his or her preserved and general entitlements on the ground that he or she—
  - (i) has reached the age prescribed for the purposes of paragraph (a) of the definition of “entitlement event” in subsection 4(1); or
  - (ii) is physically or mentally incapacitated from engaging in any further employment;

the amounts withdrawn may be combined into a single amount to form the purchase price.

(3) Only withdrawals from the first annuitant’s (and, if subclause (2) applies, the spouse’s) preserved and general entitlements in the FNPF can be used as purchase price for the annuity. These amounts must be transferred to the Retirement Income Fund directly from the annuitant’s or spouse’s account in the FNPF.

*How much will the annuity be?*

9.—(1) The amount that the first annuitant (and, after his or her death, the spouse) is to be paid each month is to be worked out using the following table.

If the first annuitant, on the date of the application for the annuity, had turned ...	the monthly amount is ...
55, but not 56	7.5% of the purchase price ÷ 12
56, but not 57	7.6% of the purchase price ÷ 12
57, but not 58	7.7% of the purchase price ÷ 12
58, but not 59	7.8% of the purchase price ÷ 12
59, but not 60	7.9% of the purchase price ÷ 12
60, but not 61	8.0% of the purchase price ÷ 12
61, but not 62	8.1% of the purchase price ÷ 12
62, but not 63	8.3% of the purchase price ÷ 12
63, but not 64	8.4% of the purchase price ÷ 12
64, but not 65	8.6% of the purchase price ÷ 12
65, but not 66	8.8% of the purchase price ÷ 12
66, but not 67	9.0% of the purchase price ÷ 12
67, but not 68	9.2% of the purchase price ÷ 12
68, but not 69	9.4% of the purchase price ÷ 12
69, but not 70	9.7% of the purchase price ÷ 12
70, but not 71	9.8 % of the purchase price ÷ 12
71, but not 72	
72, but not 73	
73, but not 74	
74, but not 75	
75, but not 76	
76, but not 77	
77, but not 78	
78, but not 79	
79, but not 80	

(2) However, if the spouse of the first annuity is more than 7 years younger than the first annuitant, the amount to be paid each month is to be the amount determined by the actuary.

*What happens if an annuitant dies?*

10.—(1) If the first annuitant dies before the spouse dies, annuity payments are to continue to be made, but to the spouse.

(2) If—

- (a) the spouse dies before the first annuitant dies; and
- (b) the first annuitant dies within 5 years after the date of purchase of the annuity;

then—

- (c) subject to his Schedule, payments under the annuity must continue until the end of the 5 years; and
- (d) those payments are payable in accordance with a nomination current at the first annuitant's death to a parent or child of the annuitant or an individual who was financially dependent on the annuitant; and
- (e) if there is no relevant nomination current at the annuitant's death—the amount of the payments for the rest of the 5 years, commuted in accordance with this Schedule, is payable into the High Court for disposition according to law.

(3) If—

- (a) the spouse dies before the first annuitant dies; and
- (b) the first annuitant dies after 5 years after the date of purchase of the annuity;

no further amounts are payable under the annuity.

(4) If the spouse dies after the first annuitant dies but within 5 years after the date of purchase of the annuity—

- (a) subject to this Schedule, payments under the annuity must continue until the end of the 5 years; and
- (b) if the spouse was an FNPF member—those payments are payable in accordance with a nomination by the spouse current at the spouse's death to a parent or child of the spouse or an individual who was financially dependent on the spouse; and
- (c) if there is no relevant nomination current at the spouse's death—the amount of the payments for the rest of the 5 years, commuted in accordance with this Schedule, is payable into the High Court for disposition according to law.

(5) If the spouse dies after the first annuitant dies and after 5 years after the date of purchase of the annuity, no further amounts are payable under the annuity.

### PART 3—TERM ANNUITIES

#### *What the term annuities product is?*

11. A term annuity product is a promise by the Board to pay the annuitant who applied for the product a specified amount each month for a specified period.

#### *Who is eligible for a term annuity?*

12. To be eligible for this product—

- (a) the annuitant must be, when he or she applies for the product, an FNPF member; and
- (b) the annuitant must withdraw all his or her preserved and general entitlements in the FNPF on the ground that he or she—
  - (i) has reached the age prescribed for the purposes of paragraph (a) of the definition of “entitlement event” in subsection 4(1); or
  - (ii) is physically or mentally incapacitated from engaging in any further employment.

#### *The purchase price*

13.—(1) The purchase price of the product is the amount that the annuitant nominates in the application form for the annuity.

(2) Only withdrawals from the annuitant's preserved and general entitlements can be used as purchase price for the product. These amounts must be transferred to the Retirement Income Fund directly from the annuitant's account in the FNPF.

#### *How much will the annuity be?*

14. The amount that the annuitant is to be paid each month is worked out as—

(purchase price x term conversion rate) ÷ 12

where:

“term conversion rate” means the rate determined by the Board on the advice of the actuary as the conversion rate for annuities of that term.

*What happens when the annuitant dies?*

15. If the annuitant dies—
- (a) subject to this Schedule, payments under the annuity must continue until the end of the period of the annuity; and
  - (b) those payments are payable in accordance with a nomination current at the annuitant's death to the annuitant's spouse at the time of purchase of the annuity, a parent or child of the annuitant or an individual who was financially dependent on the annuitant; and
  - (c) if there is no relevant nomination current at the annuitant's death—the amount of the payments for the rest of the 5 years, commuted in accordance with this Schedule, is payable into the High Court for disposition according to law.

## PART 3—GENERAL

*Amounts may be commuted*

16.—(1) If under this Schedule, payments in respect of an annuity are to be made to a person under paragraph 5(1)(b), 10(1)(b) or 15(b), the Board must, on application by the person, pay the person the commuted value of the outstanding payments.

- (2) The payment discharges the Board's liability to the person for the payments.

*Commutation*

17.—(1) The actuary must determine conversion factors to be used in commuting payments for the purposes of this Schedule.

(2) The Board must give a copy of the most recently determined conversion factors to any FNPF member on request.

(3) The commuted value of outstanding payments under this Schedule is to be determined by the actuary on a fair value basis, using the most recently determined conversion factors and allowing a reasonable amount for the costs and expenses of dealing with the application for commutation.

## SCHEDULE 5—CODE OF FAIR PRACTICE

*(section 74)*

1.—(1) The Code of Fair Practice must set out the principal commitments of the Board as to the standards and methods it will use to ensure that FNPF members and annuitants are treated fairly in their dealings with the Board.

- (2) Without limiting subclause (1), the Code must set out how the Board will ensure—
- (a) that its dealings with FNPF members and annuitants are open and transparent;
  - (b) that those dealings are fair and do not prefer one group over another, or take advantage of individuals or particular groups;
  - (c) that it deals with applications, claims and queries promptly, accurately and efficiently, and provides clear and understandable reasons if applications or claims are refused;
  - (d) that its dealings with employers are conducted professionally, with due respect for the rights of employers;
  - (e) that it is timely, courteous and honest in all its communications with FNPF members and annuitants;
  - (f) that all information it provides (including reports) is provided in a clear and easily understandable form; and
  - (g) that the privacy of FNPF members and annuitants will be respected, consistently with the Board's obligations under this law.

GIVEN under my hand this 25th day of November 2011.

EPELI NAILATIKAU  
President of the Republic of Fiji