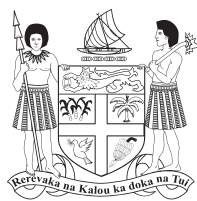


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FIJI ROAD AUTHORITY DECREE 2012
 (DECREE NO. 2 OF 2012)

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FIJI ROAD AUTHORITY DECREE 2012 (DECREE NO. 2 OF 2012)

IN exercise of the powers vested in me as the 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 ESTABLISH THE FIJI ROAD AUTHORITY AND TO PROVIDE FOR ITS FUNCTIONS AND POWERS FOR THE PURPOSE OF MANAGING ROADS, AND FOR RELATED MATTERS.

PART 1—PRELIMINARY

Short title and commencement

1. This Decree may be cited as the Fiji Road Authority Decree 2012 and shall come into force on the date of its publication in the *Gazette*.

Interpretation

2. In this Decree, unless the context otherwise requires—

“Authority” means the Fiji Road Authority established under section 4;

“Change Manager” means the Change Manager appointed by the Minister under section 37;

“Chief Executive Officer” means the person appointed under section 24 and includes the person acting in that office;

“Committee” means the Fiji Road Advisory Committee established under section 34 of this Decree;

“Department” means the Department of National Roads;

“Minister” means the Prime Minister;

“roads” include all national roads, municipal roads and such other public roads as determined by the Authority.

Objectives of this Decree

3. The principal objectives of this Decree are to—
 - (a) give effect to the re-organisation of the Department of National Roads; and
 - (b) make provision for the effective management and administration of the road systems.

PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS

Establishment of the Authority

4. This section establishes the Fiji Road Authority, as a corporate body with perpetual succession and a common seal, and the Authority may—

- (a) sue and be sued;
- (b) acquire, hold and dispose of property;

- (c) enter into contract, agreement or other transactions; and
- (d) do all other acts that may be done in law by body corporate.

Composition of the Authority

5.—(1) The Authority shall consist of a Chairperson and 4 other members appointed by the Minister.

(2) The Chairperson and the other members of the Authority shall hold office for 3 years, and are eligible for re-appointment.

(3) The Chairperson and members may be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.

Functions of the Authority

6. The Authority shall be responsible for all matters pertaining to construction, maintenance and development of roads in Fiji, including but not limited to the following—

- (a) managing (land provision, network planning, designing, constructing, maintaining, renewing and generally managing the use of) all public roads, bridges and jetties;
- (b) traffic management (including road design, traffic signs and markings);
- (c) road safety (relating to provision and management of the road);
- (d) the enforcement of vehicle load limits to avoid road damage (especially logging trucks and cane trucks);
- (e) the issuing of over-width, height and lengths limits;
- (f) Planning and management of Road Survey and Design;
- (g) Provide advice, programme management services, design, supervision services for Capital Works Programme; and
- (h) For such other matters, as the Minister may direct.

Powers of the Authority

7. The Authority shall have all such powers as may be reasonably necessary or convenient for the purpose of carrying out its functions under this Decree and regulating its own procedure, including the power to determine and levy fees and charges, and to make and enforce by-laws.

Delegation of powers

8.—(1) The Authority may from time to time, by writing under the hand of the Chairperson, delegate to any person or committee any of the Authority's powers under this Decree.

(2) A delegation under this section may be made to a specified person or committee or to the holder for the time being of a specified office or to the holders of a specified class.

(3) A delegation may be made subject to such restrictions and conditions as the Authority thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person or committee purporting to exercise any power of the Authority by virtue of a delegation under this section shall, when required to do so, produce evidence of his or her or its authority to exercise the power.

Resignation and removal

9.—(1) A member of the Authority may resign from his or her office by giving 30 days written notice to the Minister.

(2) The Chairperson and members may be removed by the Minister for inability to perform the functions of the Authority (whether arising from infirmity of body or mind, absence, misbehaviour or any other cause) or may be otherwise removed by giving one months' notice or one months' remuneration in lieu of notice.

Vacation of office

10.—(1) The office of a member shall become vacant if the member—

- (a) has been absent, without leave of the Authority, from 3 consecutive meetings of the Authority;
- (b) become or has, in Fiji or elsewhere, been declared bankrupt and has not been discharged;

- (c) has, in Fiji or elsewhere, been convicted of an offence that carries an imprisonment term of more than 1 year; or
- (d) has, in Fiji or elsewhere, been disqualified or suspended from practicing his or her profession by any competent authority by reason of misconduct.

(2) The Authority may act notwithstanding a vacancy in its membership.

Meetings and proceedings of the Authority

11.—(1) The Chairperson shall preside at all meetings of the Authority, and if the Chairperson is not present at a meeting then the members present may for that particular meeting choose a member to preside as the Acting Chairperson in the absence of the Chairperson.

(2) At a meeting, 3 members shall form a quorum.

(3) Any issues raised or to be decided shall be decided by a majority of the votes of the members present and voting, and in the event of equality of votes, the Chairperson, or in his or her absence, the member presiding shall have a casting vote.

(4) The validity of any proceedings of the Authority shall not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

Authority may invite others to meetings

12. The Authority may invite a person to attend a meeting of the Authority for the purpose of advising it on any matter under discussion, but the person so attending shall have no vote at the meeting.

Disclosure of interest

13.—(1) A member of the Authority who is, directly or indirectly, interested in a matter under discussion by the Authority shall disclose to the Authority the fact and nature of his or her interest.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Authority.

(3) After a disclosure under subsection (1) the member in question—

- (a) shall not take part in nor be present during any discussion, deliberation or decision of the Authority; but
- (b) may be counted for the purpose of forming a quorum of the Authority.

(4) A member who fails to disclose his or her interest as required by subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 and to imprisonment of 5 years or to both.

Minutes

14.—(1) The Authority shall keep minutes of all meetings in a proper form.

(2) Any minutes, if duly signed by the Chairperson or person presiding, shall, in any legal proceedings, be admissible as evidence of the facts stated in them and a meeting of the Authority in respect of which the minutes have been so signed is deemed to have been duly convened and held and the member present at it to have been duly appointed to act.

Common seal

15.—(1) The Authority shall have a common seal of such design as it may decide.

(2) The common seal shall be kept by the Chairperson and its affixing shall be authenticated by any two members generally or specifically authorised by the Authority for the purpose, or by one such member and the Chairperson.

(3) All deeds, documents, and other instruments purporting to be sealed with the common seal and authenticated in accordance with subsection (2) shall, unless the contrary is proved, be presumed to have been validly executed.

(4) The common seal of the Authority shall be officially and judicially noticed for all purposes.

Procurement process and plan

16.—(1) The Authority shall establish and implement a procurement process and plan for the procurement of all goods and services by the Authority.

(2) All goods and services procured by the Authority shall be in accordance with the procurement process and plan established by the Authority under subsection (1).

(3) The provisions of the Procurement Regulations 2010 shall not apply to the Authority.

Minister may give directions

17. The Minister may, in his discretion, give such directions to the Authority, with respect to the performance of the functions of the Authority by the Committee, and the Committee shall comply with any such directions issued by the Minister.

PART 3—TRANSFER AND ACQUISITIONS OF ASSETS AND LIABILITIES

Transfer of assets and liabilities

18.—(1) As from the commencement of this Decree, all moveable property vested in the State immediately before that date and used or managed by the Department, and all assets, interests, rights, privileges, liabilities and obligations of the State relating to the Department shall be transferred to and shall vest in the Authority without conveyance, assignment or transfer.

(2) Every right and liability vested in subsection (1) in the Authority may, on and after the commencement of this Decree, be sued on, recovered or enforced by or against the Authority in its own name and it shall not be necessary for the Authority or the State to give notice to any person whose right or liability is affected by the vesting.

(3) On and after the commencement of this Decree, any agreement relating to any property, rights and liabilities transferred to and vested in the Authority under subsection (1) to which the State was a party immediately before the commencement of this Decree, whether in writing or otherwise, and whether or not of such a nature that rights and liabilities could be assigned by the state, shall have effect as if the Authority had been a party to the agreement.

(4) If a question arises as to whether any particular property, asset, interest, right, privilege, liability or obligation has been transferred to or vested in the Authority under subsection (1), a certificate signed by the Minister shall be conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or was not so transferred or vested.

Transfer of employees

19.—(1) As from the commencement of this Decree, all persons employed immediately before that date in the Department shall be transferred to the Authority.

(2) Until such time as terms and conditions, including rules as to the conduct and discipline of its employees are drawn up by the Authority, the terms and conditions of employees shall continue to apply to every person transferred under subsection (1).

Rights of transferred employees

20. For the purposes of every enactment, law, award, determination, contract and agreement relating to the employment of a transferred employee, the contract of employment of that employee is deemed to have been unbroken and the period of employment is for all purposes deemed to have been a period with the Authority.

Existing Contracts

21. All deeds, bonds, agreements, instruments and arrangements to which the Department is a party subsisting immediately before the commencement of this Decree shall continue in force after that date and shall be enforceable by or against the Authority as if the Authority had been named therein or had been a party thereto instead of the Department.

Continuation of proceedings

22. Any action, arbitration, proceedings or cause of action that relates to a transferred asset, liability or employee and that immediately before the commencement of this Decree is pending or existing by, against, or in favour of the Department, or to which the Department is a party, may be prosecuted and, without amendment of any writ, pleading or other documents, continued and enforced against, or in favour of the Authority.

No benefit in respect of abolition or re-organisation of office

23. A person who is transferred to the Authority is not entitled to claim any benefit on the ground that he or she has been retired from the Department on account of abolition or re-organisation of office in consequence of the establishment and incorporation of the Authority.

PART 4—MANAGEMENT AND FINANCE OF AUTHORITY

Appointment of Chief Executive Officer

24.—(1) The Authority may appoint a suitably qualified person as the Chief Executive Officer of the Authority, in accordance with other terms and conditions the Authority may approve.

(2) The Chief Executive Officer may be appointed for a term not exceeding three years and is eligible for re-appointment.

(3) The Chief Executive Officer may be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.

Functions of the Chief Executive Officer

25.—(1) The Chief Executive Officer shall be responsible to the Authority for the Management of the Authority.

(2) The Chief Executive Officer shall attend every meeting of the Authority, and if he or she, for any reason, is unable to attend a meeting, the Chief Executive Officer may, in consultation with the Chairperson, nominate an officer to attend on his or her behalf.

(3) The Chief Executive Office shall not engage in any other business without the prior consent of the Authority.

Appointment of staff

26.—(1) The Authority shall appoint such officer, servants or agents as it considers necessary for the efficient exercise, performance and discharge of its duties.

(2) The officers appointed under this section shall be remunerated in a manner, and at rates subject to terms and conditions determined by the Authority and approved by the Minister.

Funds of the Authority

27.—(1) The Funds of the Authority for the purposes of this Decree shall consist of—

- (a) any money appropriated by Government;
- (b) rates, fees and other charges received by or on behalf of the Authority by virtue of this Decree; and
- (c) any other money received by or on behalf of the Authority.

PART 5—REPORTING AND ACCOUNTABILITY

Financial year

28. The Authority's financial year shall be from the 1st day of January to the 31st day of December of each year.

Half yearly reports

29.—(1) The Authority shall furnish to the Minister a report on its activities for the first half of each financial year.

(2) The half yearly report shall include the information required by the Authority's statement of corporate intent to be given in the report.

Annual Reports

30.—(1) Within 3 months after the end of each financial year, the Authority shall in accordance with its statement of corporate intent prepare a report of its activities during that financial year.

(2) The Authority shall send a copy of the Annual Report to the Minister who shall cause it to be laid before Cabinet as soon as practicable.

(3) The annual report required by subsection (1) shall contain, among other things—

- (a) an audited statement of accounts prepared in accordance with generally accepted accounting practice as determined by the Fiji Institute of Accountants;
- (b) a statement of financial performance, including a statement of the financial position of the Authority;
- (c) a statement of cash flows;
- (d) such other information as is required to give a true and fair view of the Authority's financial affairs; and
- (e) a copy of the auditor's report.

(4) The Annual Report shall include the information required by the Authority's statement of corporate intent to be given in it.

Corporate Plan

31.—(1) The Authority shall in each year publish a corporate plan setting out plans for the future operations of the Authority and shall act in accordance with it.

(2) The Minister may issue guidelines as to the format and content of the corporate plan and the Authority shall comply with the guidelines except as otherwise agreed in writing by the Minister.

(3) A corporate plan shall, except as otherwise agreed in writing by the Minister, contain—

- (a) a forecast of profit and loss accounts, balance sheets and cash flows for the current and following 2 financial years; and
- (b) a statement of the assumptions on which the forecasts are based.

(4) The corporate plan shall be consistent with the Authority's statement of corporate intent.

Authority to have statement of corporate intent

32.—(1) The Authority shall, in each year, publish a statement of corporate intent containing a summary of the corporate plan and setting out the financial and non-financial performance targets of the Authority for that year.

(2) In addition to the matters mentioned in subsection (1), the statement of a corporate intent shall include—

- (a) an outline of the objectives of the Authority;
- (b) an outline of the nature and scope of the activities proposed to be undertaken by the Authority;
- (c) an outline of the Authority's main undertakings;
- (d) an outline of the borrowings made and proposed to be made by the Authority, and the corresponding sources of funds;
- (e) an outline of the Authority's policies and procedures relating to the acquisition and disposal of major assets;
- (f) a description of the Authority's accounting policies;
- (g) a description of the financial information to be given to the Minister in the half yearly and Annual Report;
- (h) a description of measures by which the performance of the Authority may be judged in relation to its objectives, in addition to the performance targets required by subsection (1); and
- (i) such other matters as are agreed by the Minister and the Authority or are directed by the Minister to be included in the statement of corporate intent.

(3) The Minister may, in writing, exempt the Authority from including in its statement of corporate intent any matter, or any aspect of a matter, mentioned in subsection (2).

Audit

33.—(1) The Authority is required to be audited at least once a year.

(2) The audit is to be conducted in accordance with the Audit Act (Cap. 70) and the Financial Management Act 2004, except where the audit is conducted by a person appointed by the Authority under subsection 3.

(3) The audit is to be conducted by—

- (a) the Auditor General or a person authorised or contracted under the Audit Act (Cap. 70) to carry it out, unless the Authority is exempted from audit under that Act by the Regulations; or
- (b) a person appointed by the Authority, if the Authority is so exempted from audit under the Audit Act (Cap. 70)

(4) The person appointed by the Authority under section 3(b) is to be—

- (a) a person that the Minister for Finance directs the Authority in writing to appoint; or
- (b) if the Minister for Finance gives no such directions, the person chosen by the Authority.

PART 6—TRANSITIONAL AND SAVINGS

Establishment of the Fiji Road Advisory Committee

34.—(1) Until such time as the members of the Authority are appointed by the Minister under Part 2 of this Decree, the functions of the Authority shall be performed, and the powers of the Authority shall be exercised, by the Fiji Road Advisory Committee which shall consist of the Permanent Secretary for the Prime Minister's Office as the Chairperson and 4 other members appointed by the Minister.

(2) The Chairperson and members of the Committee shall hold office until such time as the Authority is appointed.

(3) The Minister may, in his discretion, give directions to the Committee with respect to the performance of the functions of the Authority by the Committee, and the Authority shall comply with any such directions issued by the Minister.

Meetings and Proceedings

35.—(1) At all meetings, 4 members shall form a quorum.

(2) The Chairperson shall preside at all meetings of the Committee.

(3) Any issues raised or to be decided shall be decided by a majority of the votes of the members present and voting, and in the event of equality of votes, the chairperson, shall have a casting vote.

(4) The validity of any proceedings of the Authority shall not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

Committee may invite others to meetings

36. The Committee may invite a person to attend a meeting of the Committee for the purpose of advising it on any matter under discussion, but the person so attending shall have no vote at the meeting.

Appointment of Change Manager

37.—(1) Following consultation with the Committee, the Minister shall, immediately upon the commencement of this Decree appoint a Change Manager on such terms and conditions as determined by the Minister.

(2) The Change Manager appointed under subsection (1) shall be responsible for the management of the functions of the Authority and exercise such powers and perform such duties as directed by the Committee, including but not limited to the following—

- (a) full Executive Management responsibility for the Authority;
- (b) recommend a staff structure for the Authority including redundancy plans, and new appointment processes;
- (c) identify the future financial management, information technology, asset management systems and records requirements;
- (d) identify office accommodation, office furniture, plant and vehicle requirements;
- (e) prepare a procurement plan for the Committee's consideration;
- (f) review the current road classification system, the continuing appropriateness of the definition of each classification, and the roads that have been allocated to each classification;
- (g) review the current technical service standards;
- (h) review the adequacy or otherwise of, any insurance protection approach, including the clarification of any potential liability should the cause of an accident be a result of the road condition;
- (i) review or prepare a business continuity and emergency response plan; and
- (j) identify and manage disposal of any surplus assets of the Authority.

(3) In the performance of any functions or exercising any powers under the Decree, the Change Manager shall report to and take instructions from the Committee.

(4) The Change Manager shall perform such additional functions and exercise such additional powers as the Committee may delegate to the Change Manager in writing.

(5) The provisions of this Decree shall be applicable and binding on the Change Manager appointed by the Minister under subsection (1).

PART 7—MISCELLANEOUS

Regulations

38. The Minister may make regulations to give effect to the provisions of this Decree.

Consequential

39. This Decree has effect notwithstanding any provision of any written law, and accordingly, to the extent that there is any inconsistency between this Decree and any other written law, this Decree prevails.

Given under my hand this 5th day of January 2012.

EPELI NAILATIKAU
President of the Republic of Fiji