

FIJI SERVICE COMMISSIONS AND PUBLIC SERVICE
(AMENDMENT) DECREE 1987 NO. 10

In exercise of the powers vested in me as Commander and Head of the Military Government of the Republic of Fiji, I hereby make the following decree:

1. This Decree may be cited as the Fiji Service Commissions and Public Service (Amendment) Decree 1987.

2. The Fiji Service Commissions and Public Service Decree 1987 (the Decree) shall be amended as follows:

(a) Delete sub-sections 6 (b) and 11 (a):

(b) Amend sub-sections 6 (c) and 11 (b) by deleting the word "three" and insert in lieu thereof the word "five":

(c) Amend sub-sections 6 (c) and 11 (b) by adding to those sub-sections the following:

"Providing however that upon the expiry of five years a member's appointment may be extended for a further term of three years."

(d) Amend sub-section 8 (4) by adding after the last sub-paragraph the following:

"The Public Service Commission shall ensure that, so far as possible, each level of each Department in the Public Service shall comprise of not less than fifty percent of indigenous Fijians and Rotumans."

(e) Delete section 9 and insert in lieu thereof as follows:

"9.—In so far as appeals are to lie from decisions of the Public Service Commission the provisions relating to appeals as they existed as at 25th September 1987 are hereby repealed. Appeals to lie from decisions of the Public Service Commission are restricted to disciplinary appeals only and no appeal is to be allowed with respect to matters concerning appointments, promotions, transfers and gradings. All pending appeals that have not gone to hearing or have gone to hearing and are awaiting a decision are hereby terminated."

3. The provisions of section 4 of the Decree are deleted and insert in lieu thereof the following section:

"4. The powers and functions of the Public Service Commission together with the regulations for the functioning of the Commission are hereby decreed in the form of the subsidiary instruments annexed to this decree and contained in Schedules 1, 2, 3 and 4."

4. By adding the following subsection to section 8:

"s.8 (1A)—"The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by direction in writing to any member of the Commission, public officer or class of public officer."

5. I hereby confirm all positions in the Public Service of the Military Government of Fiji in so far as that confirmation relates only to a preservation of the status quo of the positions and the terms of appointment held by all officers as at 25th September 1987. Hereafter such officers shall be deemed to be in the Public Service of the Military Government of Fiji.

6. This Decree shall be deemed to have been made on the 4th October, 1987.

Dated this 9th day of October 1987.

COLONEL SITIVENI LIGAMAMADA RABUKA, O.B.E. (Mil.)
Commander and Head of the Fiji Military Government

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 SCHEDULE 1

A SUBSIDIARY INSTRUMENT IN THE FORM OF AN ORDER TO REPLACE THE LAW RELATING TO THE POWERS AND FUNCTIONS OF THE PUBLIC SERVICE COMMISSION AND TO PROVIDE A PROCEDURE FOR APPEALS FROM THE DECISIONS OF THE COMMISSION IN RESPECT OF DISCIPLINARY CASES

PART I—PRELIMINARY

Short Title

1. This Order may be cited as the Public Service Order, 1987 and shall be deemed to have come into force on the 4th October, 1987.

Interpretation

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

“Appeal Board” means the Disciplinary Appeal Board established under section 8:

“Associations” means the staff associations registered pursuant to the Trade Unions Act and recognised by the Commission for the purposes of negotiating with it on behalf of any employee:

“Board” means the Disciplinary Appeal Board:

“Chairman” in relation to the Board, means the person appointed under section 9 to be Chairman of that Board:

“Commission” means the Public Service Commission constituted under section 5 of the Fiji Service Commissions and Public Service Decree 1987 as amended:

“Commissioner” means a member of the Commission:

“Department” means a Portfolio or a division of a Portfolio as may be designated by the Commission:

“Head of Department” means an officer designated by the Commission to exercise supervision over a Portfolio or a division of a Portfolio for the purpose of giving effect to the Order and these Regulations:

“employee” means a person employed in the Public Service:

“Portfolio” means a Portfolio of the Executive Council of the Military Government in the charge of an Executive Councillor pursuant to section 6 of the Constitution, Abrogation—Military Government and Finance Decree 1987:

“officer” means a person employed in the Public Service who is subject to the jurisdiction of the Commission, but does not include a wage earner:

“Permanent Secretary” means the officer responsible for the supervision of a Portfolio, a Department or a group of Departments within a Portfolio pursuant to section 6 of the Decree No. 3, or any officer appointed by the Commission to have the powers and functions of a Permanent Secretary for the purposes of this Order.

- "probation" means the period during which an officer's suitability for permanent appointment is assessed;
- "promotion" means the appointment of an officer to a public office to which is attached a higher salary or higher maximum salary than that attached to the public office he last held;
- "Public Service" means the service in the Military Government of Fiji in any capacity in respect of the Government other than in a military capacity;
- "repealed Act" means the Public Service Act repealed by this Order;
- "statutory body" means any council, board, commission, committee or similar body, whether corporate or unincorporate, established under any written law other than the Companies Act;
- "temporary appointment" means the appointment of a person to a temporary office in the Public Service or the appointment of a person temporarily to a permanent office in the Public Service;
- "wage earner" means a person employed by reference to any rate or remuneration or payment other than an annual one.

PART II—POWERS AND FUNCTIONS OF COMMISSION

Additional powers of the Commission

3.—(1) The powers and functions vested in the Commission under this Order shall be in addition to the powers and functions vested in it under the Decree No. 5.

(2) In the discharge of the powers and functions vested in it by this Order the Commission shall act in accordance with any general directions as to policy given to it by the Executive Council.

Functions of the Commission in respect of the Public Service

4.—(1) The Commission shall in respect of the Public Service, be responsible for—

- (a) advising the Government on the desirability of or need for the creation of new Portfolios or Departments within Portfolios, the amalgamation or abolition of existing Portfolios or Departments, the co-ordination of the activities of Portfolios and Departments and, subject to the provisions of any other written existing law and decree the extent and nature of the controls exercised over the operations of a Portfolio or Department;
- (b) investigating, approving and reviewing establishments as well as creating and cancelling posts in Portfolios and Departments;
- (c) classifying and grading posts in Portfolios and Departments and determining the salaries and terms and conditions of employment to be attached to such posts;
- (d) fostering efficiency and economy in the Public Service, including the discharge by Permanent Secretaries and Heads of Departments of the responsibilities placed on them under this Order;
- (e) acting as the central personnel authority for the Public Service;
- (f) prescribing training programmes for and assisting with the training of employees, co-ordinating training activities of Portfolios and Departments, conducting service examinations and implementing Government scholarship policies;
- (g) providing suitable office accommodation and prescribing and supervising the physical working conditions of all employees;
- (h) providing or causing to be provided management consultation services, including advice on efficient work and control methods and techniques, data processing equipment and problems of organisation.

(2) The Commission is empowered at all times in respect of the Public Service to carry out such inspections and investigations, and is entitled to receive such reports, as it considers necessary to advise any Permanent Secretary or Head of Department or to report to the Executive Council regarding the matters dealt with in this section or on such other matters as the Executive Council may direct.

Functions of the Commission in respect of statutory bodies

5.—(1) The Commission shall, when directed by the Executive Council at the request of an Executive Councillor responsible for any statutory body, associate itself with the head of that statutory body in the investigation of its organisation, methods or procedures.

Provided that, when reporting to the Executive Council, the Commission shall ensure that a copy of its report is sent to the Executive Councillor responsible for the statutory body so investigated.

(2) The Commission shall, when directed by the Executive Council at the request of an Executive Councillor responsible for any statutory body—

- (a) provide or cause to be provided to that statutory body, management consultation services including advice as to efficient work and control methods and techniques, data processing equipment, and problems of organisation; and
- (b) furnish or cause to be furnished advice on and assistance with the training of the staff of that statutory body.

(3) The Commission shall establish a co-ordinating committee for the purpose of advising statutory bodies on levels of remuneration and conditions of service of their employees and in determining such remuneration and conditions of service a statutory body shall consult the co-ordinating committee.

Delegation of powers and functions

6.—(1) The Commission may from time to time, either generally or particularly, delegate in writing any of its powers and functions under this Order to a Commissioner or to any officer.

(2) In any case where the Commission has, pursuant to subsection (1), delegated any of its powers to a Commissioner or any officer, that Commissioner or officer may, with the prior approval in writing of the Commission, delegate such of those powers as the Commission approves to any other Commissioner or officer.

(3) Subject to any general or special directions given by the Commission, the Commissioner or officer to whom any powers or functions are so delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred on him directly by this Order and not by delegation.

(4) Every Commissioner and every officer purporting to act pursuant to any delegation under this section, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation to an officer under this section may be made to a specified officer or to officers of a specified class, or to the holder or holders for the time being of a specified office or of specified classes of offices.

(6) Every such delegation shall be revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Commission or by the person otherwise delegating the power or function.

(7) Any such delegation shall, until it is revoked, continue in force notwithstanding any changes in the membership of the Commission.

(8) Any investigation or inquiry which the Commission is empowered to conduct under this Order may be conducted by the Commission acting in its own right or by a Commissioner or by an officer or any other person specially or generally appointed by the Commission to conduct the investigation or inquiry and to report thereon to the Commission and for the purposes of any such investigation or inquiry all of the powers and authority conferred on the Commission by section 7 shall attach to and may be exercised by the officer or other person so appointed and the provisions of the Commissions of Inquiry Act referred to in section 7 shall in like manner apply in relation to the exercise of such powers and authority.

(9) In this section "officer" includes a person subject to the jurisdiction of the Judicial Advisory Committee or the Police Service Commission.

Power to summon witnesses, etc.

7. For the purposes of carrying out its powers, duties and functions under the Decree No. 5 and this Order, the Commission shall have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon the commissioners of a Commission of Inquiry by section 9 of the Commissions of Inquiry Act and the provisions of sections 14 and 17 of that Act shall apply *mutatis mutandis* in relation to the powers and authority vested in the Commission under this section.

PART III—APPEALS FROM DECISIONS OF COMMISSION IN RESPECT OF
DISCIPLINARY CASES

Establishment of the Disciplinary Appeal Board

8.—(1) There is hereby established an Appeal Board to be called the Disciplinary Appeal Board.

(2) The Board shall consist of—

(a) a Chairman;

(b) two officers to be appointed as official members on the nomination of the Commission:

Provided that

(i) two officers employed in the same Department shall not be appointed to serve as official members at the same time; and

(ii) the two official members shall not be entitled to sit on the Board at the same time and the Chairman shall determine which of them shall act as a member of the Board at any appeal;

(c) two officers to be appointed as service members on the nomination of the Associations:

Provided that—

(i) two officers employed in the same Department shall not be appointed to serve as service members at the same time;

(ii) if the Associations fail to nominate any service member, the Executive Councillor shall so nominate; and

(iii) the two service members shall not be entitled to sit on the Board at the same time and the Chairman shall determine which of them shall act as a member of the Board at any appeal.

(3) The members nominated under paragraphs (b) and (c) of subsection (2) shall be appointed by the Executive Councillor and shall hold office for a term not exceeding three years. Such appointment shall not be renewed.

(4) Notwithstanding subsection (3), a member appointed under that subsection shall continue to hold office until his successor is appointed.

(5) The quorum of the Board in respect of any appeal shall be—

(a) the Chairman, or any person appointed under section 9 (6) to perform the functions of the Chairman in relation to the appeal;

(b) one official member appointed under subsection (3) or a temporary member appointed under section 11 (3); and

(c) one service member appointed under subsection (3) or a temporary member appointed under section 11 (4).

Chairman of the Disciplinary Appeal Board

9.—(1) The Executive Councillor, after consultation with the Commission and the Associations, shall appoint a person who shall serve as the Chairman of the Board and who shall perform such other functions as may be assigned to him by or under this Order.

(2) A person shall be disqualified for appointment as Chairman if he is holding or acting in any office in the Public Service.

(3) Subject to subsections (4) and (5) the term of office of the Chairman shall be for a period not exceeding three years, and he shall be eligible for re-appointment.

(4) Notwithstanding subsection (3) the Chairman shall continue to hold office until his successor is appointed.

(5) The Chairman shall vacate his office if any circumstances arise that, if he were not Chairman, would cause him to be disqualified for appointment as such.

(6) Whenever the Chairman is precluded by illness, absence from Fiji or other cause from carrying out any of his functions under this Order either generally or in relation to any particular matter, the Executive Councillor after consultation with the Commission and the Associations may appoint a person qualified for appointment as Chairman to perform the functions of the Chairman, either generally or in relation to any particular matter.

(7) A person appointed under subsection (6) shall act as Chairman in accordance with the terms of his appointment until the expiration of the period of his appointment or until his appointment is revoked by the Executive Councillor whichever is the earlier.

(8) The remuneration payable to—

(a) the Chairman;

(b) any person appointed under subsection (6) to perform any of the functions of the Chairman,

shall be determined by the Commission.

Appeals against disciplinary decisions

10.—(1) An appeal shall lie to the Appeal Board from any decision of the Commission as a result of disciplinary proceedings brought against an officer.

(2) A notice of appeal under subsection (1) setting out the grounds of appeal, and accompanied by the prescribed fee, shall be served on the Appeal Board in the prescribed manner within twenty one days after the date on which the decision of the Commission has been notified to the officer concerned or within such extended time as the Appeal Board may in any case allow after good and sufficient reason has been shown in writing by the appellant.

(3) At the hearing of an appeal the appellant shall be entitled to be present and to be heard, and for this purpose may be represented by a barrister and solicitor, any officer or by a representative of the Associations or by himself.

(4) The Commission may be represented at the hearing of an appeal by its Secretary, or by an officer of the Commission nominated by him, or by a barrister and solicitor.

(5) Upon an appeal under this section the Appeal Board may affirm or set aside the decision appealed against or may substitute any other decision which the Commission could have made not being a punishment of greater severity than that being imposed by the Commission.

Procedure at meetings of the Disciplinary Appeal Board

11.—(1) No nominated member shall act on the Board in an appeal affecting an officer of a Portfolio or Department in which the member is an officer or in an appeal affecting himself or a member of his family.

(2) If a nominated member of the Board dies, or by notice in writing addressed to the Chairman of the Board resigns his office, or refuses or neglects without sufficient cause to attend any duly appointed meeting of the Board, or becomes employed in the Portfolio or Department in which the other nominated member is already employed, then and in any such case his seat shall become vacant and the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made.

(3) In any case where both official members of the Board are precluded by illness, absence from Fiji or other cause from acting on the Board in an appeal, the Executive Councillor shall appoint a duly qualified officer nominated by the Commission to be a temporary member in the place of the official members who are precluded from acting and, for the purposes of such appeal, the temporary member shall be deemed for all purposes to be a member of the Board.

(4) In any case where both service members of the Board are precluded by illness, absence from Fiji or other cause from acting on the Board in an appeal, a duly qualified officer to be nominated by the Associations or, in the absence or failure of such nomination, to be nominated by the Executive Councillor shall be appointed to be a temporary member in the place of the service members who are precluded from acting and, for the purposes of such appeal, the temporary member shall be deemed for all purposes to be a member of the Board.

(5) Notwithstanding anything in the foregoing provisions of this section, the Board, if in its opinion an appeal involves consideration of matters of a professional, technical or specialised nature, may appoint any person who in its opinion has expert knowledge of those matters to be an assessor for the purposes of the appeal; and the assessor shall sit with the Board and in all respects act as an extra member thereof for the hearing and determination of the appeal, except that the assessor shall have no vote in the determination of the appeal.

General powers and duties of the Disciplinary Appeal Board

12.—(1) For the purposes of carrying out the powers, duties and functions imposed on it by this Order, the Board shall have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon the commissioners of a Commission of Inquiry by section 9 of the Commissions of Inquiry Act and the provisions of sections 14 and 17 of that Act shall apply *mutatis mutandis* in relation to the powers and authority vested in the Board under this subsection.

- (2) In every appeal the onus of proof shall rest with the appellant.
- (3) The proceedings of the Board shall not be open to the public.
- (4) In proceedings before the Board—
- (a) the procedure of the Board is, subject to this Order, within the discretion of the Board;
 - (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Order and a proper consideration of the matter before the Board permit;
 - (c) the Board is not bound by the rules of evidence.
- (5) Notwithstanding anything to the contrary in this Order or in any other written law the Board may either before the hearing or at any time during the hearing of an appeal summarily dismiss or disallow the appeal without hearing it or without hearing it any further, as the case may be, on the grounds that the appeal is frivolous or vexatious or one that should not otherwise have been brought or made.
- (6) Proceedings before the Board shall not be held bad for want of form. No appeal shall lie from any decision of the Board.
- (7) The Board may state a case for the opinion of the Supreme Court on any question as to the jurisdiction of the Board or on any question of law arising in proceedings before it.

Protection of members, officers and servants of the Disciplinary Appeal Board

13. No matter or thing done by or on behalf of the Board shall if the matter or thing was done in good faith for the purpose of this Order subject any member of the Board or any officer or servant of the Board personally to any action, liability, claim or demand whatsoever in respect thereof.

Offence to attempt to influence the Disciplinary Appeal Board

14.—(1) Except as provided in subsection (3) no person shall in any way attempt to influence the Board or any member of the Board in respect of an appeal.

(2) Any person who contravenes this section is guilty of an offence and is liable to a fine not exceeding \$1000.

(3) Nothing in this section shall be construed as to prohibit any person from giving information or making representations in respect of an appeal at the request of the Board or as a witness or as an appellant before the Board or as the representative of an appellant at a hearing before the Board.

PART IV—MISCELLANEOUS

Annual Report

15.—(1) The Commission shall as soon as is practicable after 31 December in each year furnish to the Executive Councillor a report on the state of the efficiency and economy of the Public Service, and on the operations of the Commission under this Order for the year ending with that date.

(2) The Executive Councillor shall cause a copy of the report to be laid before the Executive Council.

Regulations

16.—(1) The Commission may with the approval of the Executive Council make regulations generally for the purpose of carrying out its functions under this Order.

(2) Different regulations may be made in respect of different classes of employees.

(3) Without prejudice to the generality of subsections (1) and (2) the Commission may in particular make regulations for all or any of the following purposes—

- (a) promoting efficiency and economy in the Public Service;
- (b) prescribing standards of and conditions relating to office accommodation and the physical working conditions of employees;
- (c) facilitating the classification and grading of posts;
- (d) subject to the Higher Salaries Commission Act, 1983, prescribing the remuneration and terms and conditions of service and employment of employees;

- (e) prescribing fees, allowances and expenses that may be paid to any person for carrying out any functions or duties under this Order;
- (f) prescribing the responsibilities and duties of employees;
- (g) providing for the training of employees, the co-ordination of the training activities of Portfolios and Departments, the award of scholarships and the conduct of service examinations.

Rules of the Disciplinary Appeal Board

17. The Executive Councillor may make rules—

- (a) prescribing anything which is permitted or required by this Order to be prescribed;
- (b) for the purpose of regulating and facilitating the performance by the Board of its functions under this Order.

General Orders

18.—(1) The Commission may, in addition to making regulations under section 16, from time to time make general orders covering the work and privileges of employees for their guidance, assistance and conduct.

(2) Different general orders may be made for and in respect of different classes of employees.

(3) It shall not be necessary for general orders made under this section, which shall be for the internal use, guidance, assistance and general conduct of employees, and which shall form part of the conditions of service of employees, to be published in the *Gazette*.

(4) For the avoidance of doubt, it is hereby declared that the General Orders in existence at the commencement of this Order shall be deemed to have been made under this section and shall remain as General Orders made under this section until amended, superseded or revoked.

Instructions

19.—(1) Subject to this Order and any regulations made or continuing in force under this Order, and without restricting the powers of the Commission, it is hereby declared that the Commission may from time to time issue circulars or manuals containing instructions which shall be observed by employees.

(2) The provisions of an instruction issued under subsection (1) shall be deemed to have been communicated to an employee when the instruction has been published in the Public Service Commission Circular, the Fiji Public Service Official Circular or in General Orders or any circular or manual made and issued by the Commission or, failing any such publication or issue, when it has otherwise been brought to his personal notice.

Protection of members of Commission

20. No matter or thing done by or on behalf of the Commission shall if the matter or thing was done in good faith for the purpose of this Order subject any member or agent of the Commission personally to any action, liability, claim or demand whatsoever in respect thereof.

Offence to attempt to influence Commission

21.—(1) Except as provided in subsections (3) and (4), any person who directly or indirectly solicits or endeavours to influence the Commission or any Commissioner (or any officer to whom any of the powers or functions of the Commission have been delegated under section 6) with respect to its or their decisions under the Decree No. 5 as amended or this Order is guilty of an offence.

(2) Any person who is guilty of an offence against this section is liable to a fine not exceeding \$1000.

(3) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission in respect of any matter whatsoever at the request or invitation of the Commission or in compliance with regulations made by or procedures established by the Commission.

(4) Nothing in this section shall be construed so as to prevent any organisation, being a recognised organisation representing employees of the Public Service or any class or classes thereof, from making representation to the Commission on any matter affecting the salaries, wages or conditions of employment of any employee or class of employees.

Termination of Appeals

22. It is hereby declared that all pending appeals, except for cases relating to disciplinary offences, before 25 September, 1987, that have not gone to hearing or have gone to hearing and are awaiting a decision are hereby terminated.

Revocation

23. The Public Service Act, 1974 is hereby repealed.

Dated this 9th day of October 1987.

COLONEL SITTVENI LIGAMAMADA RABUKA, O.B.E. (Mil.)
Commander and Head of the Fiji Military Government

SCHEDULE 2

PUBLIC SERVICE COMMISSION REGULATIONS, 1987

In exercise of the powers conferred upon it by Section 8(1) of the Decree No. 5 as amended, the Public Service Commission has made the following Regulations—

PART I—PRELIMINARY

Short title

1. These Regulations may be cited as the Public Service Commission Regulations, 1987, and shall be deemed to have come into force on the 4th October, 1987.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“Order” means the Public Service Order, 1987;

“appointment” includes—

- (a) the conferment of an office of emolument in the Public Service, whether or not subject to subsequent confirmation, upon a person not in the Public Service;
- (b) the grant of permanent terms of service in a public office to a person recruited and serving on contract or temporary terms of service;
- (c) the engagement in a public office of a person on contract terms of service;
- (d) the appointment of a person to a temporary office in the public service or the appointment of a person temporarily to a permanent office in the public service;
- (e) the appointment of an officer to act in any public office other than the office to which he is for the time being appointed;
- (f) the promotion of an officer to a public office to which is attached a higher salary or a higher maximum salary;
- (g) the transfer of an officer serving in one public office to another office in the Public Service,

but does not include the appointment of a wage earner:

“appropriate form” means a form approved by the Commission for use in any particular case pursuant to these Regulations;

“Chairman” means the Chairman of the Commission;

“Commission” means the Public Service Commission established by section 5 of the Decree No. 5;

“Department” means a Portfolio or a division of a Portfolio as may be designated by the Commission;

“Head of Department” means an officer designated by the Commission to exercise supervision over a Portfolio or a Department within a Portfolio for the purpose of giving effect to the Order and these Regulations;

“Portfolio” means a Portfolio of the Fiji Military Government in the charge of an Executive Councillor pursuant to section 6 of the Decree No. 3;

"office" means an office of emolument in the Public Service power to make an appointment to which vests in the Commission;

"officer" means a person employed in the Public Service who is subject to the jurisdiction of the Commission but does not include a wage earner;

"Permanent Secretary" means the officer responsible for the supervision of a Portfolio, a Department or a group of Departments within a Portfolio or any officer appointed by the Commission to have the powers and functions of a Permanent Secretary for the purposes of these Regulations;

"probation" means the period during which an officer's suitability for permanent appointment is assessed;

"promotion" means the appointment of an officer to a public office to which is attached a higher salary or a higher maximum salary than that attached to the public office he last held;

"Public Service" means the service of the Fiji Military Government in any capacity in respect of the Fiji Military Government other than in a military capacity;

"Public Service Commission Circular" and "Fiji Public Service Official Circular" mean the official publications issued under the authority of the Commission;

"Secretary" means the Secretary of the Commission;

"wage earner" means a person employed in the Public Service by reference to any rate of remuneration or payment other than an annual one.

(2) Other words and expressions shall have the same meaning as in Decree No. 3

(3) The Interpretation Act shall apply to the interpretation of these regulations as it applies to the interpretation of any written law within the meaning of that Act.

Application

3. Unless the context otherwise requires, these Regulations shall apply to all officers.

Instrument of delegation to be published

4.—(1) Whenever the Commission delegates any of its powers in accordance with subsection (1A) of section 8 of the Decree No. 5, the Secretary shall cause notice of such delegation to be published in the *Gazette*.

(2) A notice published under subregulation (1) shall contain the following information—

- (a) the powers delegated;
- (b) the person or persons to whom such delegation is made;
- (c) the extent of such delegation;
- (d) the terms and conditions of such delegation.

(3) Any powers delegated shall be exercised in such manner as the Commission may direct.

(4) Every delegation under this regulation shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Commission.

Knowledge of Regulations, etc.

5. Every officer shall acquaint himself with the relevant provisions of the Decree No. 5 as amended relating to the composition, powers and functions of the Commission and to all regulations made under the Decree No. 5, the Order and all regulations made thereunder, General Orders and any general instructions issued by the Commission, and ignorance of any provision of these shall not excuse a breach thereof. For this purpose each Permanent Secretary or Head of Department shall ensure that copies of the Decree No. 5 as amended and all regulations made thereunder, the Order and all regulations made thereunder, General Orders, and any general instructions of the Commission are available for perusal by officers.

Departmental instructions

6. In any Portfolio or Department in which Departmental instructions are issued under the authority of the Permanent Secretary or Head of Department a copy of such instructions, and any subsequent amendments thereto, shall be submitted to the Commission. Departmental instructions shall not be at variance with regulations and orders made on the authority of the Commission; and the Commission may cause the withdrawal or modification of any Departmental instructions. The

Permanent Secretary or Head of Department shall ensure that sufficient copies are kept available in each branch of his Portfolio or Department for perusal by any officer affected by them, and that suitable provision is made for the publication of amendments thereto. Where this has been done, the Departmental instruction shall be deemed to have been communicated to every officer of that Portfolio or Department, and ignorance of any such Departmental instruction shall not excuse a breach thereof.

Communications to the Commission

7.—(1) All communications from Portfolios or Departments intended for the Commission shall be addressed to the Secretary at the headquarters of the Commission in Suva and signed by the Permanent Secretary or Head of Department or an officer deputed to sign on his behalf.

(2) An officer shall be entitled to communicate with the Commission but shall address all communications to the Secretary and submit them through his senior officer and Permanent Secretary or Head of Department. Every such communication shall be transmitted promptly at each stage.

Production of documents and appearance before Commission

8.—(1) The Commission may require an officer to attend and give information before it concerning any matter which it is required to consider in the exercise of its functions.

(2) The Commission may require the production of any official document relevant to an exercise of its functions.

(3) Any officer who submits any matter for the consideration of the Commission shall ensure that all relevant documents and papers are made available to the Commission.

(4) Any officer who without reasonable excuse fails to appear before the Commission when notified to do so, or who fails to comply with any request lawfully and properly made by the Commission, shall be guilty of a breach of discipline and the Commission may direct that disciplinary proceedings should be instituted against him.

PART II—APPOINTMENTS, PROMOTIONS AND TRANSFERS

Notification of vacancies

9. As soon as it is known that a vacancy will occur the Permanent Secretary or Head of Department shall notify the Secretary on the appropriate form.

Application for appointment

10. The Secretary may, whenever possible and practicable, give public notice of vacancies and prospective vacancies in the Public Service and any person may make application for appointment.

Principles of selection for promotion

11.—(1) In considering the eligibility and merit rating of officers for promotion, the Commission shall take into account any relevant previous experience, educational qualifications, ability, personal qualities, together with the relative efficiency of such officers.

(2) In the performance of its functions under subregulation (1), the Commission shall take into account as respects each officer—

- (a) his general ability and attitude to work;
- (b) any relevant special qualifications;
- (c) any relevant special courses of training that he may have undergone;
- (d) the evaluation of his overall work and conduct as reflected in annual staff reports;
- (e) any letters of commendation or special reports in respect of any relevant work done by the officer;
- (f) any previous employment of the officer that can be related to the office to be filled;
- (g) his ability to perform the duties of the vacant office;
- (h) any specific recommendation of the Permanent Secretary or Head of Department for filling the particular office;
- (i) any special reports for which the Commission may call.

(3) Notwithstanding subregulations (1) and (2) of this Regulation, the Commission shall ensure that, so far as possible, each level of each Department in the Public Service shall comprise of not less than fifty percent of indigenous Fijians and Rotumans.

Civil lists

12.—(1) The Commission shall keep up-to-date lists of all officers holding offices in the Public Service.

(2) The Permanent Secretary or Head of Department shall keep, on the appropriate form, up-to-date lists of all officers in his Portfolio or Department showing the date of each officer's first appointment to the Public Service and the date of his appointment to the particular grade within the classification in which he is serving.

Commencing salary

13. The Commission may authorise payment to an officer of a commencing salary according to his qualification and experience relating to the office to which he is appointed or promoted.

Dual appointments

14. A person who at any time holds an office of Permanent Secretary or Head of Department may be appointed to hold another office of Permanent Secretary or Head of Department and shall not, by reason only of being so appointed, cease to hold the first mentioned office.

Acting appointments

15.—(1) The Permanent Secretary or Head of Department shall submit, recommendations for acting appointments to permit of their consideration by the Commission at least 14 days before the date on which the acting appointment is intended to become effective, but the Commission may waive the provisions of this regulation where the necessity to submit recommendations has been occasioned by sudden illness, or other special circumstances which the Commission may consider appropriate.

(2) In submitting recommendations for acting appointments Permanent Secretaries and Heads of Departments shall state the reasons for their recommendations.

Contract appointments

16. The Commission may offer an appointment on contract for a fixed period to any person, whether or not that person already holds an appointment, and may make the acceptance of such an offer a condition of appointment of such a person.

Temporary employment

17.—(1) When in the opinion of the Permanent Secretary or Head of Department the prompt despatch of the business of his department renders temporary assistance necessary and the Commission is satisfied that such temporary assistance is necessary but is unable to arrange for such assistance from other departments the Commission may select such person or persons as may appear to it to be best qualified for such work.

(2) Such person or persons may be employed to perform such work and shall be paid at the rates and terms and conditions fixed by the Commission as applicable to the work performed.

(3) No person shall be so employed for a longer period than six months without the prior approval of the Commission.

Transfers

18.—(1) In these Regulations the expression "transfer" does not include—

- (a) the posting of an officer by a Permanent Secretary or Head of Department between posts within the same Portfolio or Department; or
- (b) the transfer by the Commission of an officer in the common user class from one Portfolio or Department to another Portfolio or Department.

unless such posting or transfer necessitates a relocation of residence by that officer.

(2) Where the Commission proposes to transfer an officer, the Commission shall, except where the exigencies of the service do not permit, make an order of transfer in writing and shall give not less than 28 days' notice to an officer who is to be transferred.

(3) An officer who is aggrieved by an order under subregulation (2) may make representations to the Commission for a review of the order within 14 days of the date of issue of the transfer notice.

(4) The Commission shall consider the representations of the officer and shall communicate its decision in writing to the officer within 14 days from the date of receipt of the representations. Such a decision shall be final.

Date of appointment

19. The date of appointment to an office in the Public Service shall, unless the Commission otherwise determines, be the date on which the officer assumes the duties of the office to which he has been appointed.

Period of probation on first appointment

20. Except as otherwise provided in this Part, an officer on first appointment to the Public Service shall be required to serve on probation for a period of one year:

Provided always that the Commission may at any time in writing, confirm or annul the appointment to the Public Service of any probationer.

Waiver of portion of period of probation

21. Where an officer is promoted before he has completed the full period of probation in the lower office, the unserved portion of his period of probation shall be deemed to be waived and his appointment to the service shall be deemed to be confirmed.

Confidential reports on officer on probation

22.—(1) The Permanent Secretary or Head of Department shall submit to the Secretary confidential reports on an officer on probation as follows—

- (a) a first report six months before the period of probation expires;
- (b) a second report one month before the period of probation expires.

(2) In the second report the Permanent Secretary or Head of Department shall make a firm recommendation—

- (a) that the officer be confirmed in the appointment;
- (b) that the period of probation be extended; or
- (c) that the appointment of the officer be terminated.

Officer may make representations

23. Before any recommendation is made to the Commission for the extension of the period of probation of an officer or for the termination of his appointment, the Permanent Secretary or Head of Department shall inform the officer of this recommendation and of the specific reasons thereof and he shall invite the officer to submit within 14 days of the date of receipt of such notice any representations he may wish to make.

Commission to confirm or terminate appointment

24.—(1) If, after consideration of the second report of the Permanent Secretary or Head of Department, the Commission is satisfied that the service of an officer on probation has been satisfactory and that he has passed such service examinations as may be necessary, the Commission shall confirm his appointment.

(2) If the Commission is not satisfied that the service of an officer on probation has been satisfactory, the Commission may extend the period of probation for a period not exceeding six months or terminate the probationary appointment.

(3) If an officer's period of probation is extended in accordance with subregulation (2) the Permanent Secretary or Head of Department shall submit a final report one month before the extended period of probation expires, and in that report shall make a firm recommendation that the officer be confirmed in his appointment or, subject to regulation 23, that his appointment be terminated.

(4) No probationary appointment shall be considered confirmed unless the confirmation is approved in writing by the Commission.

(5) No merit increase in salary shall be paid during a probationary period.

Commission may arrange for tests and examinations

25. The Commission may from time to time arrange for the taking of tests or examinations—

- (a) by applicants for appointment to the Service, or by applicants included in a particular class of such applicants; or
- (b) by officers who wish to become eligible for promotion or transfer to particular offices, or to offices included in a particular class of offices.

PART III—TERMINATION OF APPOINTMENTS AND RETIREMENTS

Reasons for termination of appointment

26. The appointment of an officer may be terminated for the following reasons—

- (a) where the officer holds a permanent appointment—
- (i) on dismissal or removal in consequence of disciplinary proceedings;
 - (ii) on compulsory retirement;
 - (iii) for medical reasons;
 - (iv) on the abolition of his office;
 - (v) in the public interest;
 - (vi) in effecting economy and facilitating responsible management of government resources;
 - (vii) in facilitating the commercialisation, corporatisation and privatisation of government activities;
 - (viii) notwithstanding the provisions of section 4 of the Decree No. 5, the Commission shall have the absolute and sole discretion to terminate appointment to any office if it is in the national interest to do so;
 - (ix) any other reason specified by the Commission.
- (b) where the officer holds a temporary appointment—
- (i) on the expiry of an appointment for a specified period;
 - (ii) where the appointment itself is of a temporary nature and is no longer necessary;
 - (iii) on the termination of appointment in the case of an officer on probation;
 - (iv) on dismissal or removal in consequence of disciplinary proceedings;
 - (v) for medical reasons;
 - (vi) in effecting economy and facilitating responsible management of government resources;
 - (vii) any other reason specified by the Commission.
- (c) where the officer is on contract his appointment shall be terminated in accordance with the terms of his contract.

Compulsory and voluntary retirement

27. An officer—

- (a) shall be required to retire on attaining the age of fifty-five years:

Provided however that where it is considered appropriate in the opinion of the Commission or the Permanent Secretary or Head of Department that an officer who has attained the compulsory retiring age should regardless of his age be retained to ensure the prompt despatch of his department's business then, the Commission may retain the services of the officer. The conditions upon which such offer shall be made are to be in accordance with Regulation 16—*Contract appointments* or Regulation 17—*Temporary Employment* of these Regulations.

- (b) may retire voluntarily on attaining the age at which he can lawfully retire under the provisions of any written law relating to the grant of pensions, gratuities or compensation.

Notification to Secretary

28. A Permanent Secretary or Head of Department shall notify the Secretary of all officers in his Portfolio or Department who are within one year of the compulsory retirement age.

Compulsory retirement

29.—(1) If it appears to the Commission that an officer should be called upon to retire pursuant to paragraph (b) of subsection (1) of section 9 of the Pensions Act, 1983, the Commission shall advise the officer accordingly.

(2) Any such officer shall be afforded the opportunity of submitting to the Commission any representations he may wish to make regarding his proposed retirement.

(3) If the Commission, after considering the representations, if any, made by the officer is of the opinion that, having regard to all the circumstances of the case, the officer should be retired, the Commission shall require the officer to retire on such date as the Commission shall determine and the officer shall be retired accordingly.

Retirement in the public interest

30.—(1) Where it is represented to the Commission or the Commission considers that any officer should be required to retire in the public interest on the grounds that cannot suitably be dealt with under any other of these Regulations, it shall call for a full report on the officer from the Permanent Secretary or Head of Department of the Portfolio or Department in which he is serving.

Provided that in the case of a Permanent Secretary or Head of Department the report shall be prepared by the Chairman assisted by one Permanent Secretary nominated by the Commission.

(2) If, after considering such report and such record and giving the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest to do so, it shall require the officer to retire on such date as the Commission shall determine, and he shall be retired accordingly.

Retirement on grounds of ill-health

31.—(1) A Medical Board appointed by the Permanent Secretary for Health shall be held whenever the Commission considers it necessary for an officer to be examined with a view to ascertaining whether or not the officer should be retired on grounds of ill-health.

(2) An officer may be required by the Commission to undergo a Medical Board at any time.

(3) The report embodying the findings and recommendations of the Medical Board shall be made known to the Commission without delay. The contents of the report shall not be made known to the officer or to any other officer, person or body except with the permission of the Commission.

(4) Unless the Commission considers it necessary to institute, or cause to be instituted, further enquiry into any matter bearing on the officer's capacity, if an officer is found unfit for further service by a Medical Board the Commission shall forthwith give the officer notice of retirement on medical grounds to take effect on a date not earlier than a date which shall allow the officer to enjoy the balance of any approved leave on account of sickness to which he might otherwise have been entitled by virtue of his conditions of service.

PART IV—CONDUCT

General Conduct

32. An officer shall conduct himself at all times in such a manner that he does not bring the Public Service into disrepute.

Absence without leave

33.—(1) If an officer is absent from duty without leave or reasonable excuse, the Commission may require that he shall forfeit the whole or any part of the remuneration relating to the period of such absence.

(2) If an officer is absent from duty without leave or reasonable excuse and has not notified the Commission within 7 (seven) days of the beginning of such absence of his intended date of return to duty and the reason for his absence he shall be deemed, unless the Commission otherwise determines, to have resigned from his appointment and to have ceased to be employed in the Public Service.

Officer to report legal proceedings

34. An officer who becomes subject to legal proceedings in a court of civil or criminal jurisdiction shall report the matter forthwith to his Permanent Secretary or Head of Department for the information of the Commission.

PART V—DISCIPLINE

Disciplinary offences

35. An officer commits a disciplinary offence for the purposes of disciplinary proceedings who—

- (a) by any wilful act or omission fails to comply with the requirements of the Order, these regulations, any General Order of the Commission or any other official instruction

given under the authority of the Commission or of the Permanent Secretary or Head of the Department in which the officer is employed:

- (b) in the course of his duties disobeys, disregards, or makes wilful default in carrying out any lawful order or instructions given by any person having authority to give the order or instruction;
- (c) by word or conduct displays insubordination;
- (d) is negligent, careless, indolent, inefficient, or incompetent in the discharge of his duties;
- (e) behaves in a manner calculated to cause unreasonable distress to other employees or to affect adversely the performance of their duties;
- (f) uses intoxicating liquors or drugs to excess or in such manner as to affect adversely the performance of his duties;
- (g) improperly uses or removes property or stores for the time being in his official custody or under his control, or fails to take reasonable care of any such property or stores;
- (h) without the consent in writing of the Commission makes public or communicates to the press or radio, or any other person, or makes private copies of documents of which he may have become possessed either in the course of his duties or in his official capacity;
- (i) otherwise than in the proper discharge of his duties directly or indirectly discloses or for private purposes uses any information acquired by him either in the course of his duties or in his official capacity;
- (j) absents himself from his office or from his official duties during hours of duty without leave or valid excuse or is habitually irregular in the time of his arrival or departure from his place of employment;
- (k) leaves Fiji without the consent in writing of the Commission;
- (l) having made or subscribed an oath, affirmation or declaration for the purposes of his office does or says anything in violation of that oath, affirmation or declaration;
- (m) uses, without the consent given personally of the Permanent Secretary or Head of Department, any property or facilities provided for the purposes of the Public Service for some purpose not connected with his official duties;
- (n) engages in any gainful occupation outside the public service or accepts or continues to hold an office in any local authority without the consent in writing of the Commission;
- (o) is convicted of any criminal charge;
- (p) seeks the influence or interest of any person in order to obtain promotion, transfer or other advantage;
- (q) except with the approval of the Commission, demands, asks, or receives for his own use any fee, reward, gratuity, remuneration, gift, present, or benefit of any kind whatsoever other than his official salary and allowances, for services performed or to be performed by him while in the Public Service, either in or out of office hours;
- (r) publicly or adversely comments upon the administration of any Portfolio or Department of the Government;
- (s) takes active part in political affairs otherwise than by the exercise of his official functions or franchise;
- (t) is guilty of any improper conduct in his official capacity, or of any other improper conduct which is likely to affect adversely the performance of his duties or is likely to bring the Public Service into disrepute or be prejudicial to the conduct of the Public Service;
- (u) any other offences specified by the Commission.

Officer liable to disciplinary proceedings

36. An officer who is alleged to have committed a disciplinary offence is liable to disciplinary proceedings in accordance with the procedure prescribed in these Regulations.

Criminal offences

37. Where an offence against any law appears to have been committed by an officer the Permanent Secretary or Head of Department shall ascertain from the Commissioner of Police or other enforcement agency concerned whether criminal proceedings are contemplated against the officer

and if this is confirmed no disciplinary action against the officer shall be instituted before the determination of the criminal proceedings.

Transfer or suspension by Commission

38.—(1) When the Commission becomes aware of any act of indiscipline or misconduct and the Commission is of the opinion that the public interest or the repute of the Public Service requires it, the Commission may—

- (a) transfer the officer to other duties; or
- (b) direct the officer in writing to cease to report for duty until further notice from the Commission, and an officer so directed shall cease to perform the duties of his office forthwith.

(2) An officer directed to cease to perform the duties of his office in accordance with subregulation (1) shall continue to draw full salary until notice is given to him by the Commission under regulation 41.

Minor offences

39.—(1) If a Permanent Secretary or Head of Department, or any officer acting properly with the authority of the Permanent Secretary or Head of Department has reason to believe that an officer of his Portfolio or Department has committed a disciplinary offence which the Permanent Secretary or Head of Department regards as a minor offence, he may charge the officer with having committed the alleged offence and require the officer to furnish an explanation.

(2) If after considering the explanation and any evidence bearing on the alleged offence, the Permanent Secretary or Head of Department is satisfied that the offence has been proved he may caution or reprimand the officer and may, in addition, order that a sum not exceeding \$50 be deducted from the officer's salary.

(3) Any action taken under this regulation shall forthwith be reported to the Commission by the Permanent Secretary or Head of Department.

(4) Any officer aggrieved by a decision of his Permanent Secretary or Head of Department under this regulation may appeal therefrom to the Commission in writing so that his appeal is received by the Commission within fourteen days, or within such period as the Commission may allow in special circumstances, after the date on which the decision of the Permanent Secretary or Head of Department has been communicated to him.

(5) Upon any such appeal the Commission shall, subject to subregulation (6) confirm, annul, or vary by reducing or increasing the penalty imposed by the Permanent Secretary or Head of Department.

(6) A fine imposed for a minor offence shall not exceed \$50.

(7) Nothing in this regulation shall prevent a Permanent Secretary or Head of Department from treating one of a series of minor offences as a major offence under regulation 40.

Major offences

40.—(1) If a Permanent Secretary or Head of Department, or any officer acting properly with the authority of the Permanent Secretary or Head of Department has reason to believe that an officer of his Portfolio or department has committed a disciplinary offence which the Permanent Secretary or Head of Department regards as a major offence (or one of a series of minor offences which should be treated as a major offence) he shall forthwith serve the officer with a written copy of the charge against him and the particulars of the alleged offence, in which event the following provisions of this regulation will apply.

(2) The officer charged shall by notice in writing be required to state in writing within a reasonable time to be specified in such notice whether he admits or denies the charge and shall be allowed to give the Permanent Secretary or Head of Department any explanation he may wish.

(3) Where an officer fails to state in writing under subregulation (2) whether he admits or denies the charge, he shall be deemed to have admitted the charge.

(4) The Permanent Secretary or Head of Department shall require those persons who have direct knowledge of the allegation to make written statements concerning it.

(5) The Permanent Secretary or Head of Department shall forthwith forward to the Commission the original statements and relevant documents, and a copy of the charge and of any reply thereto, together with his own report on the matter and the Commission shall thereupon proceed to consider and determine the matter.

(6) If the truth of the charge is admitted by the officer concerned, or if the Commission, after consideration of the reports and documents submitted to it under subregulation (5) and after such further investigation or inquiry as it considers necessary, is satisfied as to the truth of the charge it may, after taking into account the service record of the officer, impose any of the penalties specified in regulation 50.

(7) If any charge is established under the provisions of this regulation and the Commission is satisfied that any act, omission or default involved in that finding resulted in ascertained or assessable damage to property or loss to the Military Government of Fiji, the Commission may recommend to the Permanent Secretary for Finance that, in addition to any penalty that may lawfully be imposed under regulation 50, recovery of an amount not exceeding the amount of such damage or loss be effected by the Executive Councillor responsible for Finance under the powers vested in him by virtue of section 63 of the Finance Act, 1981.

(8) Where the Commission is not satisfied as to the truth of the charge it shall appoint a disciplinary tribunal in accordance with regulation 43.

Interdiction

41.—(1) Where there have been instituted against an officer—

- (a) disciplinary proceedings in respect of a major offence; or
- (b) criminal proceedings,

and where the Commission is of the opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission shall interdict him from such performance.

(2) The effective date of interdiction shall be—

- (a) where an officer has continued to perform the functions of his office, or in accordance with regulation 38(1)(a), has been transferred to other duties, the date of receipt by him of the notification of his interdiction;
- (b) where in accordance with regulation 38(1)(b), an officer has ceased to perform the duties of his office, such date as the Commission may direct.

(3) An officer so interdicted shall, subject to regulation 54, be permitted to receive such proportion of salary, if any, as the Commission may determine.

(4) An officer under interdiction shall not have access to any official premises and shall not remove, destroy or add to, or cause to be removed, destroyed or added to, any official document, instrument or matter.

(5) If disciplinary proceedings against any such officer result in his exoneration he shall be entitled to the full amount of the remuneration which he would have received if he had not been interdicted but if the proceedings result in any punishment other than dismissal the officer shall be allowed such salary as the Commission may in the circumstances determine.

(6) An officer who is under interdiction from duty shall not leave Fiji without the permission of the Commission and any such officer who leaves Fiji without such permission is liable to summary dismissal.

Officer on charge not permitted leave

42. An officer who is charged with an alleged disciplinary offence shall not, without the written approval of the Commission, take leave, other than sick leave or maternity leave until the determination of the case.

Appointment of disciplinary tribunal

43.—(1) Where an officer charged with an alleged disciplinary offence denies the charge, and the Commission is not satisfied in terms of regulation 40(8) as to the truth of the charge, the Commission shall appoint a disciplinary tribunal to hear the evidence and find the facts.

(2) A disciplinary tribunal which the Commission appoints under subregulation (1) may be constituted of—

- (a) one officer, or
- (b) an uneven number of officers not being fewer than three.

(3) An officer selected under subregulation (2) shall be of a grade higher than that of the person charged but in no case shall be of a grade lower than AD02 or equivalent.

(4) It shall be the duty of every officer appointed under this regulation to hear the evidence, find the facts and make a report to the Commission within 28 days, or within such extended time as the Commission may approve.

(5) For the purposes of subregulations (2), (3) and (4) the expression "officer" includes a person employed in the Public Service who is subject to the jurisdiction of the Judicial Advisory Committee established by section 2 of the Decree No. 4.

Witnesses

44.—(1) An officer who is charged with an alleged disciplinary offence shall be allowed to state the names and addresses of any witnesses to relevant facts whom he may desire to give evidence at the hearing of the case by the disciplinary tribunal.

(2) Any such witness who is an officer shall be ordered by the Commission to attend at the hearing of the case and any other witness shall be given due notice that his attendance is desired and of the time and place of the hearing.

Procedure at hearing

45.—(1) The following procedure shall apply to the hearing by a disciplinary tribunal of a charge of an alleged disciplinary offence—

(a) the hearing shall be held in private;

(b) evidence may be taken on oath or affirmation and for this purpose a disciplinary tribunal may administer an oath or affirmation;

(c) the officer shall be summoned to appear at the hearing and shall be given full opportunity to defend himself;

(d) the officer shall be entitled to be assisted in the presentation of his case, and the officer or his representative may cross-examine the witnesses called in support of the case against him;

(e) no documentary evidence shall be adduced against the officer unless he has previously been supplied with a copy thereof or been given access thereto.

(2) Subject to this regulation a disciplinary tribunal may regulate its own procedure at the hearing.

Hearing in absence of accused officer

46. If the officer does not attend the hearing of the charge without good reason, the hearing may be proceeded with and concluded in his absence, but if good reason is given to the disciplinary tribunal by or on behalf of the officer why the officer is unable to attend the hearing, the hearing shall be postponed or adjourned, as the case may be.

Tribunal to report

47.—(1) The disciplinary tribunal shall make a report to the Commission and the report shall contain its findings of fact and an expression of opinion as to the meaning and value of the facts found.

(2) The disciplinary tribunal shall not disclose the contents of the report made under subregulation (1) to the officer charged or to any officer not authorised by the Commission to receive such report.

(3) An officer who contravenes this regulation is guilty of misconduct.

Disciplinary tribunal to report evidence of other misconduct or indiscipline disclosed in hearing of charges

48. Where the disciplinary tribunal hearing the evidence is of the opinion that such evidence discloses other misconduct or indiscipline, the disciplinary tribunal shall report the matter to the Commission and if the Commission thinks fit to proceed against the officer in respect of a disciplinary offence, it shall cause the officer to be informed in writing of any further charges and the procedure prescribed in these Regulations in respect of the original charge shall apply in respect of such charge.

Commission to inform officer of decision

49.—(1) Where after consideration of the report submitted by a disciplinary tribunal the Commission is of the opinion that—

(a) the officer should be exonerated, the Commission shall exonerate the officer;

- (b) the officer should be dismissed, the Commission shall dismiss the officer; or
- (c) some penalty other than dismissal should be imposed on the officer, the Commission may impose any one or more of the penalties specified in paragraphs (b) to (f) of subregulation (1) of regulation 50.

(2) The Commission shall as soon as possible after the hearing of the charge inform the officer in writing of its findings and the penalty imposed upon him.

(3) Where the Commission under subregulation (1) imposes the penalty of dismissal, the officer, notwithstanding that he gives notice of appeal within the time specified in section 10(2) of the Order, shall not receive any salary or other allowance from the date on which the Commission informs the officer of his dismissal.

Penalties

50.—(1) Any one or more of the following penalties may be imposed by the Commission by disciplinary proceedings brought against an officer in respect of ~~misconduct~~ conduct or indiscipline—

- (a) dismissal, that is termination of appointment;
- (b) reduction in rank, that is, removal to another grade with an immediate reduction in salary;
- (c) reduction of remuneration;
- (d) no merit increase in salary for a specified period;
- (e) fine not exceeding \$100;
- (f) reprimand.

(2) Where a fine is imposed the amount of such fine shall be deducted from the salary of the officer in such manner as may be specified at the time the penalty is imposed.

No disciplinary action while criminal proceedings pending

51.—(1) Where criminal proceedings have been instituted in any court against an officer, the Commission shall not take proceedings against the officer upon any grounds arising out of the criminal charge until the court has determined the matter and the time allowed for an appeal from the decision of the court has expired; but where an officer on conviction has appealed, the Commission may commence proceedings after the withdrawal or determination of the appeal.

(2) Nothing in this regulation shall prevent the officer from being interdicted from duty pursuant to regulation 41.

Disciplinary action after acquittal of a criminal charge

52. An officer acquitted of a criminal charge in any court shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.

Officer convicted of criminal charge

53. If an officer is convicted in any court of a criminal charge, the Commission may consider the relevant proceedings on such charge and if it is of the opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary proceedings under these Regulations.

Non-payment of remuneration on conviction of a criminal charge

54.—(1) An officer convicted of a criminal charge and sentenced to imprisonment without the option of a fine or convicted of a criminal charge involving—

- (a) dishonesty;
- (b) fraud; or
- (c) moral turpitude.

shall not receive any salary or allowance after the date of conviction pending consideration of his case by the Commission.

(2) The Commission may direct that an officer convicted of a charge described in subregulation (1) shall cease to perform the duties of his office forthwith.

(3) Notwithstanding that an officer convicted of a charge described in subregulation (1) has appealed against the conviction, such officer shall not receive any salary or allowance after the date of conviction pending consideration of his case by the Commission.

Offences by Permanent Secretary

55.—(1) If in any case the Commission has grounds to suspect that any Permanent Secretary or Head of Department may have been guilty of a disciplinary offence, it may notify the Permanent Secretary or Head of Department accordingly and institute an investigation.

(2) In any such investigation the provisions of regulations 39 and 40 shall apply with necessary modifications, references in those regulations to the Permanent Secretary or Head of Department being construed where necessary for the purposes of this regulation as references to the Commission.

(3) In any case where the Commission decides to appoint a disciplinary tribunal to investigate an alleged disciplinary offence by a Permanent Secretary or Head of Department such tribunal shall consist of not more than 3 persons appointed by the Commission, at least one of whom shall be a public officer.

(4) Save as provided in this regulation, the provisions of this Part shall apply *mutatis mutandis* to every Permanent Secretary and Head of Department.

Instructions by Commission

56. The Permanent Secretary or Head of Department shall report any case not covered by these Regulations to the Secretary and the Commission may issue instructions on how the case shall be dealt with and the case shall be dealt with accordingly.

PART VI—MISCELLANEOUS

Protection of members of Commission

57. No matter or thing done, if the matter or thing was done in good faith for the purpose of these Regulations shall subject any member, officer or agent of the Commission personally to any action, liability, claim or demand in respect thereof.

Oath of Office

58.—(1) The Commission shall require an officer, whether appointed before or after the commencement of these Regulations, to take an Oath of Office as set out in the Schedule.

(2) An Oath of Office under this regulation shall be witnessed by a person, or member of a class of persons, authorised in that behalf by the Commission.

Revocation

59. The Public Service Commission (Constitution) Regulations (published at page 6 of the subsidiary legislation made under the Public Service Act, 1974) are hereby repealed.

Dated this 9th day of October 1987.

POSECI W. BUNE
Secretary, Public Service Commission

SCHEDULE
(REGULATION 58)

OATH OF OFFICE

I being appointed do swear that I will to the best of my judgement, at all times when so required, freely give my counsel and advice to the Military Government of the Republic of Fiji its Head and Commander and all persons acting under him, for the good management of the public affairs of the Republic of Fiji, and I do further swear that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion nor will I discuss with any other officer or person except with the express authority of my superior and to such extent as may be required for the good management of the affairs of the Republic of Fiji, directly or indirectly reveal the business or proceedings of the Public Service of the Republic of Fiji or the nature or contents of any documents communicated to me as or any matter coming to my knowledge in my capacity as such and that in all things I will be a true and faithful officer in the Public Service of the Republic of Fiji.

I further swear to be bound by the oath and acknowledgement executed by me on
pursuant to the Official Secrets Act 1911, and 1920.

So help me God.

Taken before me this day of 19

.....
Authorised Officer

Dated this day of 19

.....
Public Service Commission

SCHEDULE 3

PUBLIC SERVICE ORDER REGULATIONS, 1987

In exercise of the powers conferred upon it by section 16 of the Public Service Order, 1987, the Public Service Commission with the approval of the Executive Council has made the following Regulations—

PART I—PRELIMINARY

Short title

1. These Regulations may be cited as the Public Service Order Regulations, 1987, and shall be deemed to have come into force on the 4th October, 1987.

Interpretation

2. In these Regulations unless the context otherwise requires—

“General Orders” means general orders made, or deemed to have been made, under section 18 of the Order;

“Merit increase in salary” means an increase in salary based on an officer’s performance. A consistent above average performance may qualify an officer for a merit increase in salary.

“Officer” means a person employed in the public service but does not include a wage earner.

PART II—CLASSIFICATION, GRADING AND SALARY

Occupational classes and salary scales

3.—(1) The permanent staff of the Public Service shall consist of officers.

(2) The Commission shall determine occupational classes according to the nature of the duties required to be performed by the permanent staff:

Provided that—

(a) the Commission may determine such miscellaneous occupational classes otherwise than according to the nature of the duties as may be necessary to enable it to classify officers where so few are engaged in any occupation that the prescription of an occupational class according to the nature of their duties would not in the view of the Commission be warranted;

(b) to facilitate the administration of this regulation occupational classes may be grouped together in any related field.

3) No person shall be eligible for appointment to any occupational class determined in accordance with the the provisions of subregulation (2) unless he has such minimum educational or other qualifications as are appropriate to the duties normally performed by members of that class unless in any particular case the Commission shall otherwise decide.

(4) The Commission shall subdivide each occupational class into grades according to its assessment of the relative degrees of responsibility and skill which are or may be required to be exercised by

officers of the occupational class, and shall determine a salary rate or range with a maximum salary rate for each grade.

(5) The Commission shall exercise its power to determine occupational classes in accordance with subregulations (2) and (4) by issuing Public Service decisions. Every such decision shall be published in the Public Service Commission Circular or the Fiji Public Service Official Circular and shall come into force on a date to be specified therein in that behalf or, if no date is specified, shall come into force on the day on which it is made.

Review of classification and grading by levels

4.—(1) The Commission shall be responsible for keeping classification and grading within the Public Service under continuous review, having regard to the general level of remuneration and terms and conditions of employment in Fiji, and in discharging this responsibility shall—

- (a) ascertain whether or not there is need to change the content, or salary scale or grading pattern of any occupational class;
- (b) ensure that all posts are included in the occupational class most closely related to the duties involved;
- (c) ensure that every post in each occupational class is placed in a grade appropriate to the degree of responsibility and skill required in the discharge of its functions.

(2) If the grading of a post is altered in accordance with paragraph (c) of subregulation (1) and the new grading does not coincide with the grading of the officer for the time being holding the post the Commission may either appoint the holder to the post at its new grading or it may declare the post vacant and fill it in any manner it deems appropriate.

(3) Any regrading pursuant to paragraph (c) of subregulation (1) shall take effect from such date as the Commission shall specify.

Merit increase in salary

5.—(1) Except as otherwise prescribed merit increase in salary shall be regarded as an incentive towards the highest performance level and shall not be granted to an officer unless the officer's Permanent Secretary or Head of Department and the Commission are satisfied that such merit increase in salary may be granted, having taken into account all the criteria set out in Regulation 11(2) of the Public Service Commission Regulations, 1987.

(2) A report on an officer's performance shall be submitted to the Commission in the prescribed form at least three months before the date on which an officer's eligibility for a merit increase in salary in accordance with subregulation (1) is determined by the Commission.

Revocation

6. The Public Service Commission (Statutory) Regulations (published at page 1 of the subsidiary legislation made under the Public Service Act, 1974) are hereby repealed.

Dated this 9th day of October 1987.

POSECI W. BUNE
Secretary, Public Service Commission

SCHEDULE 4

DISCIPLINARY APPEAL BOARD RULES, 1987

In exercise of the powers conferred upon me by section 17 of the Public Service Order, 1987, I have made the following Rules—

PART I—PRELIMINARY

Short title

1. These Rules may be cited as the Disciplinary Appeal Board Rules, 1987, and shall be deemed to have come into force on the 4th October, 1987.

Interpretation

2. In these Rules, unless the context otherwise requires—

"Chairman" means the Chairman of the Disciplinary Appeal Board appointed under section 9 of the Order;

"General Orders" means general orders made, or deemed to have been made, by the Commission under section 18 of the Order;

"the regulations" means the Public Service Commission Regulations, 1987;

"Secretary" means the Secretary of the Disciplinary Appeal Board.

Secretary

3. The Commission shall appoint an officer to be Secretary of the Disciplinary Appeal Board.

PART II—APPEALS

Appeals procedure

4. The Disciplinary Appeal Board shall meet at such time or times and in such place or places as may be fixed by the Chairman. The Chairman shall ensure meetings are so convened that appeals are heard expeditiously.

Minutes

- 5.—(1) A minute book shall be kept in which such particulars as the Disciplinary Appeal Board may consider appropriate shall be recorded.

- (2) The minutes of the proceedings of the Disciplinary Appeal Board shall be confirmed no later than its next meetings, and when confirmed shall be signed by the Chairman.

Lodging of appeal

- 6.—(1) An appeal by an officer under section 10 of the Order shall be served on the Secretary either personally or by registered post and shall set out clearly and concisely the grounds for his dissatisfaction with the decision appealed against. The Secretary shall acknowledge receipt of the appeal forthwith in writing and shall forward a copy of the appeal to the Commission.

- (2) In any case in which the Secretary is not satisfied that an appeal lies he shall refer the submission to the Disciplinary Appeal Board for its decision.

Notice of hearing

7. As soon as practicable after being satisfied that an appeal lies, the Secretary shall formally accept the appeal and advise the appellant and the Commission in writing of the time and place fixed for its hearing. The notice given to the appellant shall be by registered post and shall give sufficient time to allow for transmission of the notice of acceptance and for the appellant to travel to the hearing.

Appeal out of time

8. In any case in which an appeal is lodged out of time the Disciplinary Appeal Board shall determine whether good and sufficient reason has been adduced for its acceptance and the Secretary shall formally convey that decision.

Appellant may give evidence

9. The Disciplinary Appeal Board may treat the appellant as a witness in order to admit and receive evidence under the powers conferred upon it by subsection (1) of section 12 of the Order.

Documentary evidence

10. In the matter of an appeal against a penalty imposed for a disciplinary offence, any documentary evidence to be considered by the Disciplinary Appeal Board which is additional to that produced during disciplinary proceedings under the Regulations shall, in like manner to the provisions of paragraph (c) of subregulation (1) of regulation 45 of the Regulations, be first supplied to, or made available to the appellant.

Want of prosecution

11. If the appellant fails to appear at the hearing at the appointed time the Disciplinary Appeal Board may dismiss the appeal for want of prosecution.

Evidence by affidavit

- 12.—(1) Where the evidence of a witness is required and his attendance in the opinion of the Chairman is impossible or possible only most inconveniently, the Chairman may authorise that an affidavit concerning the matter of appeal be sworn before a Commissioner for Oaths and submitted in evidence.

- (2) Nothing in these Rules shall prevent the Disciplinary Appeal Board subsequently summoning the witness to attend a hearing.

Decision and reasons to be forwarded to both parties

13. The Secretary shall forthwith after an appeal has been considered furnish, in writing, to the appellant and to the Commission a copy of—

- (a) the decision of the Disciplinary Appeal Board; and
- (b) the reasons for that decision.

PART III—FEES AND EXPENSES

Deposit on appeal

14. The fee to be deposited with the Secretary in accordance with subsection (2) of section 10 of the Order shall be \$50.

Expenses of witnesses

15. The Disciplinary Appeal Board shall in each case determine what, if any, sum by way of expenses shall be paid to a witness called by the Disciplinary Appeal Board. The Disciplinary Appeal Board shall not be responsible for the payment of any costs incurred by the appellant calling a witness.

Expenses of officers

16. The reimbursement of expenses incurred by an officer who is called upon to perform any function or duty under these Rules shall be limited to that provided in General Orders.

Dated this 9th day of October 1987.

COLONEL SITIVENI LIGAMAMADA PABUKA, O.B.E. (Mil.)
Commander and Head of the Fiji Military Government