

PACIFIC COLLECTION



I assent.

[L.S.]

P. K. GANILAU
 Governor-General
 16th December 1986

AN ACT

TO AMEND THE FIJI NATIONAL PROVIDENT FUND ACT

Cap. 219

ENACTED by the Parliament of Fiji—

Short title

1.—(1) This Act may be cited as the Fiji National Provident Fund (Amendment) (No. 2) Act, 1986, and shall come into force on a date to be notified by the Minister in the Gazette.

(2) In this Act, "principal Act" means the Fiji National Provident Fund Act.

Interpretation

2. Section 2 of the principal Act is amended by—

- (a) inserting after the definition of "amount of wages for the month" the following definition—
 " 'amount standing to the credit of a member' has the meaning assigned to it by section 17;";
- (b) repealing the definition of "contribution" and replacing it by the following definition—
 " 'contribution' means any sum payable to the Fund under section 13, 16, 23, 26, 40, 47, 50, 51 or 56;";
- (c) inserting at the end of paragraph (e) of the definition of "date of entitlement" the word "or";

- (d) inserting after paragraph (e) of the definition of "date of entitlement" the following paragraph—
"(f) has withdrawn from the Fund pursuant to section 30;";
- (e) repealing the words "or (e)" in the definition of "entitled member" and replacing them by the words "(d), (e) or (f)";
- (f) inserting after the definition of "Fund" the following definition—
" 'General Manager' means the General Manager appointed by the Board in accordance with subsection (1) of section 5;";
- (g) repealing the definition of "Manager".

Establishment and Constitution of the Board

3. Section 3 of the principal Act is amended in subsection (1) by repealing paragraphs (b) and (c) and replacing them by the following paragraphs—

- "(b) two representatives of employers not being persons holding an office of emolument under the Crown; and
- (c) two representatives of employees not being persons holding an office of emolument under the Crown."

Powers of the Board

4. Section 5 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection—

- "(1) The Board shall have power to engage and appoint a staff consisting of—
- (a) a General Manager who shall be the chief executive officer of the Board; and
 - (b) such other officers and servants as are in the opinion of the Board necessary for the purpose of carrying out the provisions of this Act:
- Provided that the consent of the Minister shall be required to the appointment of the General Manager."

Rate of interest

5. Section 8 of the principal act is amended by repealing the words "subject to the provisions of subsection (2) of section 18" and replacing them by the words "subject to subsections (6) and (7) of section 18".

Voluntary contributions

6. Section 16 of the principal Act is amended in subsection (3) by repealing the proviso.

Repeal and replacement of section 17

7. Section 17 of the principal Act is repealed and replaced by the following section—

"Amount standing to credit of member"

17. In this Act, "the amount standing to the credit of a member" means a sum equal to—

- (a) the aggregate of all contributions made in respect of that member; and
- (b) interest credited to the account of that member in accordance with subsections (5), (6) and (7) of section 18, less—
 - (i) the aggregate of the sums referred to in paragraph (a) of subsection (2) of section 18;
 - (ii) all deductions made under subsection (8) of section 18;
 - (iii) any money lent or provided in accordance with subsection (1) of section 38; and
 - (iv) any expenses payable by the member in respect of the granting of housing finance assistance, or any application therefor, pursuant to subsection (1) of section 38 or section 39."

Repeal and replacement of section 18

8. Section 18 of the principal Act is repealed and replaced by the following section—

"Contributions to be paid into Fund and credited to members"

18.—(1) Subject to this section, sums recovered or collected on account of contributions are to be paid into the Fund in such manner as the Board directs.

(2) Subject to subsections (3) and (4) the Board shall credit all sums paid to the Fund in accordance with sections 13, 16, 23 and 26—

- (a) as to one-seventh of their amount—to the general revenues of the Fund for the purpose of financing the payment of annuities under orders made in accordance with paragraph (b) of section 64; and
- (b) as to six-sevenths of their amount—to the Fund to the account of the member in respect of whom they are paid.

(3) The Board shall credit sums paid to the Fund in accordance with section 13 in respect of a member who is not an entitled member of the Fund to the Fund to the account of that member without deduction.

(4) The Board shall credit any part of any sum paid to the Fund in accordance with section 23 or 26 that relates to any period of employment of a member of a permitted fund before 1 January 1975 to the Fund to the account of that member without deduction.

(5) Subject to subsections (6) and (7), upon the declaration by the Board, in accordance with section 8, of a rate of interest for a financial year, the Board shall credit to the account of a member in respect of whom sums are paid to the Fund, the amount of interest payable on those sums at that rate.

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interest at that rate calculated on the amount standing to the credit in the Fund of each member at the commencement of that financial year.

(6) Where the authority of the Board is granted under section 30, 31, 32 or 35 for the withdrawal from the Fund of an amount standing to the credit of a member, the amount of interest due on that amount (excluding transfers in excess of contributions on normal wages made in the current six month period) from the first day of the financial year in which the authority is given to the last day of the month preceding that in which the authority is given shall be calculated by the Board at the rate of interest declared by the Board for the previous financial year, and the amount of interest so calculated shall be credited by the Board to the account of the member in the Fund immediately before the withdrawal, and no account shall be taken of the fact that the rate of interest declared by the Board in respect of that financial year may be different from that declared for the previous financial year.

(7) Where during a financial year, money in the Fund standing to the credit of a member is lent or provided in accordance with subsection (1) of section 38 the Board shall—

- (a) for the purposes of subsection (5), calculate interest on the balance standing to the credit of the member at the commencement of that financial year under deduction of the amount so lent or provided during the financial year; and
- (b) add to the interest to be credited to the account of the member pursuant to paragraph (a), interest on the amount so lent or provided during that financial year from the first day of the financial year until the last day of the month preceding that in which it was so lent or provided, calculated at the rate declared by the Board for the previous financial year.

(8) The Board shall deduct from the account of each entitled member, including a member who has re-entered the Fund pursuant to subsection (11) of section 20, in respect of each financial year, such amount as may be prescribed from time to time by the Board either as a lump sum or by instalments and shall credit the sums so deducted to the general revenues of the Fund.

(9) For the purpose of calculating any interest due under this section, any fraction of one dollar in the amount standing to the credit of a member of the Fund shall be disregarded."

Repeal and replacement of section 20

9. Section 20 of the principal Act is repealed and replaced by the following section—

Re-employment and continuation in employment after age 55 or withdrawal
20.—(1) Notwithstanding subsection (1) of section 13 but subject to subsection (12), contributions are not payable in respect of an

employee after the date on which he attains the age of 55 years if on that date he is not a member of the Fund.

(2) Notwithstanding subsection (1) of section 13 but subject to subsection (12), contributions are not payable in respect of an employee who withdrew the amount standing to his credit in the Fund on or after his date of entitlement.

(3) Subject to subsections (4) and (5), no contributions are payable in respect of an employee in the month following that in which his date of entitlement occurs or in any subsequent month.

(4) Contributions continue to be payable in respect of a member while he is an employee until such time as he applies to the Board for the withdrawal of the amount standing to his credit in the Fund.

(5) Where an application is not made in accordance with subsection (4) until more than six months after the date on which a member attained the age of 55 years contributions continue to be payable in respect of him and he is not entitled to withdraw the amount standing to his credit in the Fund until he has given the Board at least six months' notice (or such shorter period as the Board may in any particular case accept) of his intention to withdraw the amount standing to his credit in the Fund.

(6) Where a person who has not attained the age of 55 years but who withdrew the amount standing to his credit in the Fund on the ground—

(a) that he was physically or mentally incapacitated from ever engaging in any further employment; or

(b) that he was about to leave or had left Fiji with no intention of returning,

recommences employment he may, within three months of commencing that employment, (or within such longer period as the Board may in any particular case accept), give notice to the Board and to his employer that he desires to re-enter the Fund, and, subject to subsection (7), he re-enters the Fund from such date as the Board shall authorise.

(7) A person who withdrew the amount standing to his credit in the Fund on the ground that he was physically or mentally incapacitated from ever engaging in any further employment—

(a) may only re-enter the Fund pursuant to subsection (6) on one occasion; and

(b) shall not be permitted to re-enter the Fund unless the notice he serves on the Board in accordance with subsection (6) is accompanied by a certificate from a medical practitioner approved by the Board stating that the person is fit to undertake employment on a permanent basis.

(8) Where an employee who has not attained the age of 55 years but who withdrew the amount standing to his credit in the Fund in accordance with subsection (3) of section 30 recommences employment he may, within three months of commencing that employment, give notice to the Board and to his employer that he desires to re-enter the Fund, and the Board may, subject to such restrictions and conditions as it considers appropriate in his particular circumstances, allow him to re-enter the Fund from such date as the Board shall authorise.

(9) Where an employee who has attained the age of 55 and who withdrew the amount standing to his credit in the Fund on the ground that he had reached that age continues in, or recommences employment he may, at any time, give notice to the Board and to his employer that he desires to re-enter the Fund, and he shall thereupon re-enter the Fund from such date as the Board shall authorise.

(10) An employee who re-enters the Fund in accordance with subsection (9) may withdraw from the Fund the amount standing to his credit in the Fund at any time after the expiry of one year from the date of his re-entry to the Fund but following any such withdrawal shall not again be entitled to apply for re-entry to the Fund under subsection (9).

(11) Where a married woman who withdrew the amount standing to her credit in the Fund on the ground of her marriage continues in, or recommences employment after her marriage, she may, at any time, give notice to the Board and to her employer that she desires to re-enter the Fund and she shall thereupon re-enter the Fund from such date as the Board shall authorise; a married woman after re-entering the Fund pursuant to this subsection shall not again be entitled to withdraw the amount standing to her credit in the Fund during the subsistence of the marriage which was the ground for her previous withdrawal from the Fund.

(12) Notwithstanding subsections (1) and (2) where a person becomes or continues to be a member of the Fund in accordance with this section contributions are payable in respect of him in accordance with subsection (1) of section 13.

(13) A provision of an agreement that provides that a person—
(a) shall not give a notice referred to in this section; or
(b) shall apply to withdraw the amount standing to his or her credit in the Fund—
(i) on or after attaining the age of 55; or
(ii) in the case of a woman—on or after marriage,
is void.”

Winding up of permitted funds

10. Section 26 of the principal Act is amended by repealing all of the words after “at such date as is agreed”

Withdrawal to be approved by Board

11. Section 30 of the principal Act is amended by repealing subsections (2), (3) and (4) and replacing them by the following subsections—

“(2) The Board shall not give its authority under subsection (1) before the date of entitlement of the member of the Fund.

(3) The Board may, on the application of a member, having regard to his age or other circumstances, permit that member to withdraw all or part of the money in the Fund standing to his credit at that time.”

Repeal and replacement of section 35

12. Section 35 of the principal Act is repealed and replaced by the following section—

“Procedure where there is no nominee or a nominee is a minor

35.—(1) If, at the time of the death of a member of the Fund, there is no person nominated under section 34 the Board, on being notified of the death of the member, shall pay into Court the amount standing to the credit of the member in the Fund for disposal in accordance with the law.

(2) If, at the time of the death of a member of the Fund—

(a) a sole nominee under section 34 is dead; or

(b) a nomination under section 34 is of no effect,

the Board, on being notified of the death of the member, shall pay into Court such proportion of the amount standing to the credit of the member in the Fund as is indicated in the nomination for disposal in accordance with the law.

(3) Where no claim is made in respect of money paid into Court in accordance with subsection (1) or (2) within one year of being so paid in to Court, the Court shall repay the money to the Board and the Board shall credit it to the general reserves of the Fund.

(4) Where a person, other than a spouse, is—

(a) nominated under section 34; or

(b) entitled by virtue of subsection (1) or (2) to receive all or part of the amount standing to the credit of a deceased member of the Fund,

and the person so nominated or entitled is under the age of 18 at the time of payment of the amount payable out of the Fund, the amount to be paid shall be paid by the Board or the Court, as the case may be, to the Public Trustee for the benefit of the person so nominated or entitled.

(5) Where no claim is made in respect of money paid to the Public Trustee in accordance with subsection (4) within one year of being so paid to the Public Trustee, the Public Trustee shall repay the money to the Board and the Board shall credit it to the general reserves of the Fund.

(6) Subsections (3) and (5) do not prejudice the right of any person found to be entitled to receive any amount paid into the general reserves of the Fund in accordance with those subsections.

(7) Where a person is found entitled to receive any amount which has been credited to the general reserves of the Fund pursuant to subsection (3) or (5) the Board shall, subject to subsection (8), pay interest on that amount calculated from date upon which it was credited to the general reserves of Fund until the date upon which payment is made by the Board to the person entitled thereto at the maximum rate of interest being offered by licensed banks in Fiji for savings deposits on the date of such payment by the Board.

(8) Nothing in subsection (7) shall be construed as requiring the Board to pay interest upon interest.”.

Repeal and replacement of Part IX

13. Part IX of the principal Act is repealed and replaced by the following Part—

“PART IX—HOUSING FINANCE ASSISTANCE

Interpretation

37. In this Part, unless the context otherwise requires—

“appropriate date” for the purposes of section 41 means—

- (a) where an application is made on or after 1 July in any year—that 1 July; or
- (b) where an application is made before 1 July in any year—the 1 January in that year;

“approved lender” means—

- (a) the Housing Authority;
- (b) the Home Finance Company Limited;
- (c) a bank in possession of a valid licence under the Banking Act 1983; or
- (d) a lender approved under section 42;

“approved purpose”, in respect of a loan to a member, means a loan acquired or required by that member for one or more of the following purposes—

- (a) to purchase a dwelling house;
- (b) to purchase land on which to erect a dwelling house;
- (c) to erect a dwelling house;
- (d) to alter or improve a dwelling house;

where—

- (i) the dwelling house is or is to be occupied by the member;
- (ii) title to the dwelling house is, or is to be, vested in the member absolutely or jointly with other persons.

- and may include expenses associated with any such purpose or in respect of the loan application;
- “dwelling house” includes a part of a building to be occupied as a separate dwelling;
- “loan” includes any arrangement by which credit is made available;
- “native land” has the meaning assigned to it in the Native Land Trust Act;
- “village” has the meaning assigned to it in the Fijian Affairs (Interpretation) Regulations.

Power of Board to give housing finance assistance

38.—(1) Subject to this section and to section 41, the Board may, following receipt from a member of an application for housing finance assistance made in accordance with section 39, at its discretion either—

- (a) lend to the member money in the Fund standing to the credit of that member—
 - (i) for an approved purpose; or
 - (ii) for transfer to an approved lender to reduce the amount owed by the member to that approved lender under a loan for an approved purpose; or
- (b) provide to the member money in the Fund outstanding to the credit of the member.

(2) Subject to subsection (4), the Board shall not lend money under paragraph (a) of subsection (1) unless the loan is secured by a charge on the relevant property pursuant to subsection (3).

(3) For the purposes of subsection (2)—

- (a) a charge on the relevant property shall be registered by the Registrar of Titles against the title of the land charged upon the filing with him by the General Manager, or any officer of the Fund authorised in writing by the General Manager, of a memorandum setting forth the description of the land charged and the amount of the loan;
- (b) when any such charge has been satisfied the General Manager, or any officer of the Fund authorised in writing by the General Manager, shall deposit with the Registrar of Titles a Memorandum of Satisfaction and the Registrar of Titles shall register the same against the title of the land.

(4) Where the relevant property for the purposes of subsection (2) is native land or a dwelling house constructed or to be constructed on native land, the loan shall be secured by a mortgage, charge or other security over any real property of the member or any other person which, in the opinion of the Board is of sufficient value, or by a guarantee given by a bank in possession of a valid licence under the Banking Act, 1983.

(5) A loan under paragraph (a) of subsection (1) may be granted subject to such conditions as the Board considers appropriate in each case to safeguard the Fund and the future financial security of the member.

(6) Without prejudice to the generality of subsection (5), a loan under paragraph (a) of subsection (1) may be granted subject to a provision that if the member withdraws from the Fund after his date of entitlement occurs, the loan then outstanding shall become the absolute property of the member.

(7) Where the Board makes a loan under paragraph (a) of subsection (1) it may require the member to repay by instalments the amount so lent.

(8) Where a member is required to make repayments pursuant to subsection (7) the member shall enter into a deed in a form approved by the Board providing for the member to make regular monthly repayments to the Board or to the approved lender as the case may be.

(9) Every payment received by an approved lender under subsection (8) shall be transferred to the Board by the approved lender before the end of the month following the month in which such payment is received by the approved lender.

(10) Any approved lender failing to transfer payments in accordance with subsection (9) shall be liable to pay a surcharge on the total amount of all payments not so transferred to the Board at the rate of two per cent in respect of each month or part of a month after the expiration of the month following the month during which any such payment was received by the approved lender.

(11) For the purposes of subsection (10)—

- (a) if the amount of surcharge is less than two dollars, the surcharge payable shall be two dollars;
- (b) if the amount of surcharge exceeds two dollars the surcharge payable shall be calculated to the next highest multiple of two dollars;
- (c) the Board may in any case in which it thinks fit remit in whole or in part the payment of any surcharge for which an approved lender has become liable.

(12) The Board shall not provide any money to a member under paragraph (b) of subsection (1) unless it is satisfied—

- (a) that the money is to be used to construct, alter or improve a dwelling house on land within a village; and
- (b) that the dwelling house is or is to be occupied by the member.

Application for housing finance assistance

39.—(1) An application for housing finance assistance under subsection (1) of section 38 shall—

- (a) be made on a form provided for the purpose by the Board; and
- (b) be accompanied by such supporting documents as the Board may need to satisfy itself in respect of any matter under this Part.

(2) The Board shall not approve an application for housing finance assistance under this section—

- (a) unless the applicant has been a member of the Fund for two years and has at least \$1,000 standing to his credit in the Fund; or
- (b) subject to section 41, if the applicant has on a previous occasion had money lent or provided to him under subsection (1) of section 38.

(3) The Board may require a person who has made an application under this section to supply to it such further evidence as the Board may consider necessary to satisfy itself in respect of any matter under this Part.

Withdrawals and repayments

40.—(1) Where money in the Fund standing to the credit of a member is lent or provided in accordance with subsection (1) of section 38 the money in the Fund standing to the credit of that member shall be reduced by an amount equivalent to the amount so lent or provided.

(2) Notwithstanding subsection (1), where money is lent or provided in accordance with subsection (1) of section 38 it shall not be deemed to be a withdrawal for the purposes of—

- (a) the definition of "entitled member" in section 2;
- (b) paragraph (c) of subsection (2) of section 16; or
- (c) section 20.

(3) Payments received by the Board—

- (a) pursuant to the provisions of a loan made under subsection (1) of section 38;
- (b) pursuant to subsection (9) of section 38,

shall be paid into the Fund by the Board, without deduction, and shall be credited to the account of the member concerned as if they were contributions paid in respect of the half year in which they were received.

(4) Where pursuant to the provisions of—

- (a) a loan made under subsection (1) of section 38; or
- (b) a deed made under subsection (8) of section 38,

a member is required to make regular monthly payments and, in the opinion of the Board, is failing to make those payments, the Board may at any time disallow the member from making any further payments in respect of that loan or pursuant to that deed except with the Board's approval.

(5) The provisions of subsection (4) shall apply notwithstanding any provision of the relevant loan agreement or deed to the contrary.

General limitations on loans, etc.

41.—(1) Subject to subsection (2), the Board may lend or provide money to a member under subsection (1) of section 38 on a second or subsequent occasion—

- (a) if the whole amount previously lent or provided has been transferred back to the member's account with the Fund;
- (b) in the case of a loan, if the purpose of such loan is to enable a member to erect a dwelling house on land which was purchased with the assistance of money previously lent to that member pursuant to paragraph (a) of subsection (1) of section 38; or
- (c) where, after examination of a member's personal circumstances, the Board is satisfied that special grounds exist for lending or providing money on a second or subsequent occasion.

(2) Notwithstanding subsection (1), the Board shall not in respect of a member lend or provide under this Part an amount which is more than—

- (a) two thirds of the amount standing to the credit of that member at the appropriate date;
- (b) the amount by which the amount standing to the credit of the member in the Fund on the appropriate date exceeds \$100, whichever is the less.

Approval of lenders

42. The Minister may, by notice in the Gazette, approve a lender to be an approved lender for the purposes of this Part and any such approval may be general or limited to a specified case."

Members' credits not subject to sequestration

14. Section 43 of the principal Act is amended in subsection (1) by repealing the words "under the provisions of section 31, 32 or 35" and replacing them by the words "in accordance with section 30, 31, 32 or 35".

Bankruptcy liquidation, etc. of employer

15. Section 47 of the principal Act is amended by inserting after subsection (3) the following subsection—

"(4) Nothing in this section affects the operation of section 312 of the Companies Act, 1983, and section 35 of the Bankruptcy Act."

Definition of General Manager

16. The principal Act is amended by repealing the word "Manager" and replacing it by the words "General Manager" wherever that word occurs in sections 4(1) and (2), 5(1A), 8, 9, 47(2), 50, 54, 56(3), 60 and 62.

Passed by the House of Representatives this twenty-fifth day of November, in the year of our Lord one thousand, nine hundred and eighty-six.

Passed by the Senate this eleventh day of December, in the year of our Lord one thousand, nine hundred and eighty-six.