

FIJI SERVICE COMMISSIONS DECREE 1988

ARRANGEMENT OF SECTIONS

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In exercise of the powers vested in me as President and Commander-in-Chief of the Republic of Fiji, I hereby make the following Decree—

Short title

1. This Decree may be cited as the Fiji Service Commissions Decree 1988.

Judicial and Legal Services Commission

2.—(1) There shall be a Judicial and Legal Services Commission which shall consist of—

- (a) the Chief Justice who shall be the Chairman;
- (b) the Chairman of the Public Service Commission; and
- (c) two other members (in this section referred to as the appointed members) appointed by the President acting in accordance with the advice of the Chief Justice.

(2) A person shall not be qualified to be appointed as an appointed member unless he is qualified to be appointed as a judge of the High Court.

(3) A person shall not be qualified to be appointed as the appointed member if he is, or has at any time during the three years immediately preceding his appointment been a member of the House of Representatives or an elected member of any local authority.

(4) Subject to the provisions of section 9 of this Decree an appointed member shall vacate his office—

- (a) at the expiration of three years from the date of this appointment; or
- (b) if any circumstances arise that, if he were not an appointed member, would cause him to be disqualified for appointment as such.

(5) If the office of any of the appointed members is vacant or an appointed member is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Chief Justice, may appoint a person qualified for appointment as such to act as an appointed member, and any person so appointed shall continue to act until his appointment is revoked by the President, acting in accordance with the advice of the Chief Justice.

Appointment, etc., of judicial and legal officers

3.—(1) Power to make appointments to the offices to which this section applies (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Judicial and Legal Services Commission:

Provided that—

- (a) before making any appointment to hold or act in the office of a central agricultural tribunal the Commission shall consult the Prime Minister; and
- (b) in the exercise of its power of appointment to any of the offices to which this section applies (including power to confirm appointments), the Judicial and Legal Services Commission shall, if the officer is not a Fiji citizen, act in accordance with the advice of the Prime Minister.

(2) The offices to which this section applies are the offices specified in the schedule to this Decree and such other offices as may be prescribed by the President:

Provided that

- (a) if the name of any such office is changed, or any such office is abolished, the provisions of this section and that schedule shall have effect accordingly;
- (b) this section shall also apply to such other offices, being offices that in the opinion of the Judicial and Legal Service Commission are offices similar to those specified in schedule 1 of this Decree, as may be prescribed by the Commission, acting with the concurrence of the Prime Minister.

(3) In selecting candidates for entry into the government legal services the Judicial and Legal Services Commission shall ensure that so far as practicable there is racial parity at all levels of the government department concerned.

(4) In the exercise of its powers under this section and notwithstanding any provision contained in any Decree as to the protection of the fundamental rights and freedoms of the individual, the Judicial and Legal Services Commission shall ensure that each level of each department in the public service shall comprise of not less than fifty percent Fijians and Rotumans:

Provided that the Judicial and Legal Services Commission shall in the exercise of its functions and duties under this section, act in accordance with any general or special directions as to policy to be followed given to it from time to time by the Minister responsible for the public service acting in accordance with the advice of and after consultation with the Cabinet.

*Appointments, etc of principal representatives
of Fiji abroad and appointment on transfer
of certain other officers*

4.—(1) Power to make appointments to the offices of ambassador or other principal representative of Fiji in any other country or accredited to any international organisation and to remove persons holding or acting in such offices shall vest in the President, acting in accordance with the advice of the Prime Minister:

Provided that before advising the President to appoint to or to act in any such office a person who holds or is acting in some other public office the Prime Minister shall consult the Public Service Commission.

(2) The powers conferred by the preceding subsection shall not be construed as including any power to remove from the public service or any power conferred by any law to require or permit the retirement from the public service of a person who is the holder of an office referred to in that subsection and whose service therein may be taken into account for the purpose of computing his pension under any law relating to the grant of pensions in respect of his service in the public service; and any such power in relation to such a person or to a person who has ceased to be such a person by reason of his removal from office and who has not been appointed to some other public office shall, subject to the provisions of the next following subsection, vest in the Public Service Commission.

(3) Where a person—

- (a) has been removed from his office under subsection (1) of this section but has not been removed from the public service and his service in that office may be taken into account for the purpose mentioned in the preceding subsection; and
- (b) he is not appointed, within such time as the Public Service Commission considers to be reasonable, to some other public office—
 - (i) that, in the opinion of the Commission, is a comparable office, and
 - (ii) that is an office service in which, in the circumstances of his appointment thereto, may be taken into account as aforesaid,

that person shall be deemed to have retired from the public service on such date as the Public Service Commission may specify for the purposes of any law relating to the grant of pensions in respect of his service in the public service, and he shall be eligible for the grant of a pension thereunder notwithstanding that he may not have attained any qualifying age specified therein or that he may not have completed any qualifying period of service specified therein:

Provided that where a person such as is mentioned in paragraph (a) of this subsection accepts, within such time as the Public Service Commission considers to be reasonable, appointment to some other public office that is not such an office as is mentioned in paragraph (b)(i) of this subsection, he may elect that the provisions of this subsection shall not apply to him.

(4) The power to make appointments to any office to which this subsection applies on transfer from another such office carrying the same salary shall vest in the Prime Minister or such other Minister as the Prime Minister may designate by directions in writing.

(5) The Minister in whom the power referred to in the preceding subsection is for the time being vested may, subject to such conditions and in respect of such offices as he thinks fit, delegate that power by directions in writing to any public officer.

(6) The offices to which subsection (4) of this section applies are—

- (a) such public offices (other than those referred to in subsection (1) of this section) the holders of which are required to reside outside Fiji for the proper discharge of their functions; and
- (b) such public offices in the department responsible for the foreign affairs of Fiji, as may be prescribed by the Prime Minister.

Public Service Commission

5.—(1) There shall be a Public Service Commission which shall consist of a Chairman and not less than three nor more than five other members appointed by the President.

(2) A person shall not be qualified to be appointed as a member of the Public Service Commission if he is a member of the Police Service Commission:

Provided that a person shall not be disqualified for appointment as the Chairman of the Public Service Commission if he is the Chairman of the Police Service Commission.

(3) Subject to the provisions of section 9 of this Decree, a member of the Public Service Commission shall vacate his office—

- (a) at the expiration of three years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(4) Whenever the office of Chairman of the Public Service Commission is vacant or the Chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the other members of the Commission as the President may appoint.

(5) If at any time there are less than three members of the Public Service Commission besides the Chairman or if any such member is acting as Chairman or is for any reason unable to perform the functions of his office, the President may appoint a person qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection 3(b) of this section, continue to act until his appointment is revoked by the President.

(6) The functions of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister.

Appointment, etc., of public officers

6.—(1) Subject to the provisions of this Decree, power to make appointments to public offices (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

(2) No appeal shall lie against decisions of the Public Service Commission with respect to matters concerning appointments, promotions and transfers.

(3) Except in relation to any office referred to in subsection (4) or (5) of this section, the Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or, subject to any limitations that may be prescribed, to any public officer or class of public officer.

(4) The provisions of this section shall not apply in relation to—

- (a) the office of any judge of the High Court, the Fiji Court of Appeal or the Supreme Court of Fiji;
- (b) except for the purpose of making appointments thereto or to act therein, the office of Auditor-General;
- (c) the office of Ombudsman;
- (d) any office appointments to which are within the functions of the Judicial and Legal Services Commission;
- (e) any office referred to in section 4(1) of this Decree;
- (f) the office of any member of the Police Force or of any naval, military or air force; or
- (g) any office or class of office in the public service prescribed by regulations made by the Public Service Commission with the concurrence of the Prime Minister as being an office or class of office to which this section does not apply.

(5) Before making any appointment to hold or act in the office of Auditor-General or to an agricultural tribunal, the Public Service Commission shall consult the Prime Minister.

(6) The Public Service Commission shall not make any appointment to hold or act in the office of Secretary to the Cabinet or of a Permanent Secretary or of any other supervising officer within the meaning of section 19 of the Head of State and Executive Authority of Fiji Decree 1988 unless the Prime Minister concurs in the appointment.

(7) Before making any appointment to hold or act in any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(8) The Public Service Commission shall not exercise any of its powers in relation to any office on the personal staff of the President or in relation to any person holding or acting in any such office without the concurrence of the President, acting in his own deliberate judgment.

(9) In selecting candidates for entry into the public service the Public Service Commission shall—

- (a) give preference, other things being equal, to local candidates who, in its opinion, are suitably qualified and shall not select persons who are not citizens of Fiji except to the extent that the Prime Minister has agreed that such persons may be selected; and

- (b) ensure that, so far as possible, each community in Fiji receives fair treatment in the number and distribution of offices to which candidates of that community are appointed on entry.

(10) In the exercise of its powers under this section and notwithstanding any provision contained in any Decree as to the protection of the fundamental rights and freedoms of the individual, the Public Service Commission shall ensure that each level of each department in the public service shall comprise of not less than fifty percent Fijians and Rotumans:

Provided that the Public Service Commission shall in the exercise of its functions and duties under this section, act in accordance with any general or special directions as to policy to be followed given to it from time to time by the Minister responsible for the public service acting in accordance with the advice of and after consultation with the Cabinet.

Police Service Commission

7.—(1) There shall be a Police Service Commission which shall consist of a Chairman and two other members appointed by the President.

(2) The Chairman and at least one other member shall be Fijians.

(3) A person shall not be qualified to be appointed as a member of the Police Service Commission if he is a member of the Public Service Commission:

Provided that a person shall not be disqualified for appointment as the Chairman of the Police Service Commission if he is the Chairman of the Public Service Commission.

(4) Subject to the provisions of section 9 of this Decree, a member of the Police Service Commission shall vacate his office—

(a) at the expiration of three years from the date of his appointment; or

(b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) Whenever the office of Chairman of the Police Service Commission is vacant or the Chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the other members of the Commission as the President may appoint.

(6) If the office of a member of the Police Service Commission other than the Chairman is vacant or if any such member is acting as Chairman or is for any reason unable to perform the functions of his office, the President may appoint a person qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to subsection (4)(b) of this section, continue to act until his appointment is revoked by the President.

(7) The functions of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister.

Appointment, etc., of members of the Police Force

8.—(1) Power to make appointments to offices in the Police Force above the rank of Senior Inspector (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Police Service Commission:

Provided that before making any appointment to hold or act in the office of Commissioner of Police or Deputy Commissioner of Police the Police Service Commission shall consult the Prime Minister.

(2) Power to make appointments to offices in the Police Force of or below the rank of Senior Inspector (including power to confirm appointments) and to remove and to exercise disciplinary control over persons holding or acting in such offices shall vest in the Commissioner of Police:

Provided that the Commissioner of Police shall not remove such a person from office or reduce him in rank unless the Police Service Commission concurs in the removal or reduction.

(3) The Police Service Commission may, subject to such conditions as it thinks fit, delegate by directions in writing—

(a) any of its powers under this section to any member of the Commission; or

(b) to such extent as the Prime Minister may prescribe by directions in writing, any of its powers under subsection (1) of this section to the Commissioner of Police.

(4) The Police Service Commission or the Commissioner of Police shall not select for appointment to hold any office in the Police Force a person who is not a citizen of Fiji and is not a public officer unless the Prime Minister has agreed that such a person may be so selected.

(5) If provision is made by or under any law altering the ranks into which the Police Force is divided, the Police Service Commission may by order specify some other rank in the Police Force as being equivalent to the rank of Senior Inspector as it existed before such alteration, and the references in subsections (1) and (2) of this section to the rank of Senior Inspector shall then be construed as if they were references to the rank for the time being so specified.

Removal from office of members of Commissions

9.—(1) A person holding an office to which this section applies (in this section referred to as "a Commissioner") may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(2) A Commissioner shall be removed from office by the President if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(3) If the President considers that the question of removing a Commissioner ought to be investigated, then—

- (a) the President shall appoint a tribunal in accordance with the provisions of subsection (6) of this section; and
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the Commissioner ought to be removed under this section.

(4) If the question of removing a Commissioner has been referred to a tribunal under this section, the President may suspend the Commissioner from performing the functions of his office, and any such suspension may at any time be revoked by the President, and shall in any case cease to have effect if the tribunal advises the President that the Commissioner should not be removed.

(5) The offices to which this section applies are those of appointed members of the Judicial and Legal Services Commission, members of the Public Service Commission and members of the Police Service Commission.

(6) A tribunal appointed under this section shall consist of a chairman and two other members, and—

- (a) in the case of a tribunal to investigate the removal of the appointed member of the Judicial and Legal Services Commission, all members of the tribunal shall be persons who hold or have held high judicial office in Fiji or in any other country as may be prescribed by the President; and
- (b) in any other case, the chairman and one other member shall be persons who hold or have held such office.

(7) Except as provided in subsection (2) of this section, the functions of President under this section shall be exercised by him—

- (a) in relation to an appointed member of the Judicial and Legal Services Commission, in accordance with the advice of the Chief Justice; and
- (b) in relation to a member of the Public Service Commission or the Police Service Commission, in accordance with the advice of the Prime Minister.

*Tenure of office of Director of Public
Prosecutions and Auditor-General*

10.—(1) Subject to the provisions of this section, a person holding or acting in an office to which this section applies shall vacate that office on attaining the age of sixty years:

Provided that the President, acting after consultation with the Prime Minister and the Public Service Commission may permit an Auditor-General to continue in office for a period not exceeding six months after he has attained that age.

(2) Any person holding an office to which this section applies may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) Any such person shall be removed from office by the appropriate Commission if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has advised the Commission that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the appropriate Commission considers that the question of removing any such person ought to be investigated then—

- (a) the Commission shall appoint a tribunal which shall consist of a chairman and not less than two other members, being persons who hold or have held high judicial office in Fiji or any other country as may be prescribed by the President; and
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Commission and advise the Commission whether he ought to be removed under this section.

(5) If the question of removing any such person has been referred to a tribunal under this section, the appropriate Commission may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the Commission and shall in any case cease to have effect if the tribunal advises the Commission that he should not be removed.

(6) Any person appointed to act in an office to which this section applies shall, subject to the provisions of subsection (1) of this section, continue to act until his appointment is revoked by the appropriate Commission.

(7) The offices to which this section applies are those of Director of Public Prosecutions and Auditor-General.

(8) In this section "the appropriate Commission" means—

- (a) in relation to the office of Director of Public Prosecutions, the Judicial and Legal Services Commission; and
- (b) in relation to the office of Auditor-General, the Public Service Commission.

(9) Except as provided in subsection (3) of this section, the functions of any Commission under this section shall be exercised by it after consultation with the Prime Minister.

Pensions laws and protection of pension rights

11.—(1) The law to be applied with respect to any pensions benefits that were granted to any person before 10th October, 1970 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which the preceding subsection applies) shall—

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 10th October 1970, be the law that was in force immediately before that date; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 9th October 1970, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section "pension benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or the widows, children, dependents or personal representatives of such persons in respect of such service, and references to service as a public officer do not include references to service in any naval, military or air force.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

Power of Commissions in relations to pensions, etc.

12.—(1) Where under any law any person or authority has a discretion—

- (a) to decide whether or not any pensions benefits shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted, those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of any judge of the High Court the Fiji Court of Appeal, the Supreme Court of Fiji, Supervisor of Elections, Director of Public Prosecutions, Ombudsman or Auditor-General has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission" means—

- (a) In the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial and Legal Services Commission, that Commission;
- (b) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was a member of the Police Force, the Police Service Commission; and
- (c) in any other case, the Public Service Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Fiji may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji:

Provided that nothing in this subsection shall be construed as preventing—

- (a) the attachment, by order of a Court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a Court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or
- (b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.

(6) In this section "pensions benefits" has the same meaning as in the preceding section.

Interpretation

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

"high judicial office" means the office of judge of a Court having unlimited jurisdiction in civil and criminal matters or a Court having jurisdiction in appeals from any such Court;

"House of Representatives" means the House of Representatives provided for under the 1970 Constitution;

"Fiji" means the territories which immediately before 10th October 1970 constituted the colony of Fiji and includes any other territories declared by Parliament to form part of Fiji;

"the President" means the President and Commander-in-Chief of Fiji;

"local authority" means the Council of Rotuma, a city council, town council, township board or provincial council;

"the Police Force" means the Fiji Police Force;

"prescribed" means prescribed in a law;

"public office" means subject to the provisions of the next following section, an office of emolument in the public service;

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

"the public service" means the service of the Republic of Fiji whether in a civil or military capacity, in respect of the Government of Fiji;

"State" means the Republic of Fiji;

(2) Save as otherwise provided in this Decree, the Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Decree and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of United Kingdom.

References to public office, etc.

14.—(1) In this Decree the expression "public office" shall be construed—

- (a) as including the office of any judge of the High Court or the Fiji Court of Appeal on Supreme Court of Fiji and the office of member of any other Court of law in Fiji, unless the context otherwise requires;
- (b) as not including—
 - (i) the office of any Minister or Assistant Minister;
 - (ii) the office of member of any Commission established by this Decree; or
 - (iii) except in so far as may be otherwise prescribed, the office of member of any council, board, panel, committee or other similar body (whether incorporated or not) established by or under any law.

(2) For the purposes of this Decree a person shall not be considered as holding a public office by reason only that he is in receipt of a pension or other like allowance in respect of service under the State.

*Appointment to certain offices
for terms of years*

15.—(1) It shall be lawful for a suitably qualified person to be appointed to hold any office to which this section applies for such term, not being less than three years and not expiring after the day on which he would attain the retiring age applicable to that office, as may be specified in the instrument of appointment, and the provisions of this Decree shall have effect in relation to any person so appointed as if he would attain the retiring age applicable to that office on the day on which the specified term expires.

(2) This section applies to the office of any judge of the High Court, Director of Public Prosecutions, Auditor-General, and such other offices as may be prescribed.

(3) In this section "retiring age" means, in relation to any office, the age upon the attainment of which a person holding that office is required by the provisions of this Decree to vacate that office.

Powers of appointment and acting appointments

16.—(1) Any reference in this Decree to power to make appointments to any public office shall be construed as including a reference to power to make appointments on promotion and transfer to that office and to power to appoint a person to act in that office during any period during which it is vacant or the holder thereof is unable to perform the functions of that office.

(2) In this Decree, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office.

(3) Where power is vested by this Decree in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

Reappointments and concurrent appointments

17.—(1) Where any person has vacated any office established by this Decree, he may, if qualified, again be appointed to hold that office in accordance with the provisions of this Decree.

(2) Where a power is conferred by this Decree upon any person to make an appointment to any office, a person may be appointed to that office, notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

Removal from office

18.—(1) References in this Decree to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that—

- (a) nothing in this subsection shall be construed as conferring on any person or authority power to require any judge of the High Court or the Fiji Court of Appeal, Supreme Court of Fiji, the Ombudsman, the Director of Public Prosecutions or the Auditor-General to retire from the public service: and

- (b) any power conferred by any law to permit a person to retire from the public service, shall in the case of any officer mentioned in the preceding paragraph or an officer who may be removed from office by some person or authority other than a Commission established by this Decree, vest in the Commission that, if that officer had retired, would be the appropriate Commission in relation to the pensions benefits of that officer under section 12(4) of this Decree.

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

Resignation

19. Any person who has been appointed to any office established by this Decree may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed, and the resignation shall take effect, and the offices shall accordingly become vacant—

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

Meaning of "Fijian", and "Rotuman"

20. For the purposes of this Decree—

- (a) a person shall be regarded as a Fijian if, and shall not be so regarded unless, his father or any of his earlier male progenitors in the male line is or was the child of parents both of whom are or were indigenous inhabitants of Fiji and his name is registered or is eligible to be registered in the "Vola ni Kawa Bula". The eligibility or otherwise of a person under this subsection shall be determined or confirmed by the Native Lands Commission:

Provided that, where the identity of the father of any person cannot be ascertained, the male progenitors of that person may instead be traced through that person's mother;

- (b) "Rotuman" means any person of Rotuman or part-Rotuman descent. If any dispute arises as to whether a person is or is not Rotuman the Council of Rotuma shall decide, but any person aggrieved by the Council's decision may appeal to the Minister responsible for the administration of the Rotuma Act whose decision shall be final.

*Performance of functions of Commissions
and tribunals*

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

(2) Any decision of any such Commission shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided the chairman shall have and shall exercise a casting vote.

(3) Subject to the provisions of this section, any such Commission may regulate its own procedure.

(4) In the exercise of its functions under this Decree, no such Commission shall be subject to the direction or control of any other person or authority, except where otherwise provided by this Decree.

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

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

(7) The provisions of subsections (1), (2), (3) and (4) of this section shall apply in relation to a tribunal established for the purposes of sections 9(3) and 10(4) of this Decree as they apply in relation to a Commission established by this Decree, and any such tribunal shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

Saving for jurisdiction of courts

22. No provision of this Decree that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Decree shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Decree or any other law or should not perform those functions.

Power to amend and revoke instruments, etc.

23. Where any power is conferred by this Decree to make any decree, order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such decree, order, regulation, rule or direction.

Consultation

24. Where any person or authority other than the President is directed by this Decree to exercise any function after consultation with any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

Repeals

25. The provisions of the following Decrees so far as they are inconsistent with this Decree are hereby repealed:—

- Fiji Judicature Decree 1987;
- Fiji Service Commissions and Public Service Decree 1987;
- Fiji Service Commissions and Public Service (Amendment) Decree 1987, and Schedules thereto;
- Fiji Judicature (Amendment) Decree 1987;
- Fiji Service Commissions and Public Service (Amendment) Decree 1987;
- Fiji Judicature Amendment (No. 2) Decree 1987;

Savings

26. Subject to the provisions of this Decree, every person who immediately before this Decree holds or is acting in a public office shall, as from the making of this Decree, continue to hold or act in the like office as if he had been appointed thereto in accordance with the provisions of this Decree.

Coming into force

27. This Decree shall be deemed to have come into force on 5th December, 1987.

Dated this 13th day of January, 1988.

PENAIA K. GANILAU
President and Commander-in-Chief

SCHEDULE

Central Agricultural Tribunal.
 Chief Registrar of the Supreme Court.
 Deputy Registrar of the Supreme Court.
 Assistant Registrar of the Supreme Court.
 Solicitor-General.
 Deputy Solicitor-General
 First Parliamentary Counsel
 Second Parliamentary Counsel
 Crown Solicitor.
 Chief Legal Officer
 Chief Magistrate.
 First Class Magistrate.
 Second Class Magistrate.
 Third Class Magistrate.

Principal Legal Officer.
Senior Legal Officer.
Legal Officer.
Administrator General.
Registrar-General.
Registrar of Titles.
Public Legal Adviser.
Registrar of Magistrates' Courts.
Court Officer.
Senior Court Officer.
Assistant Public Trustee.
Senior Assistant Registrar.
Assistant Registrar.
