

RIGHTS OF PERSONS WITH DISABILITIES BILL 2016
(BILL NO. 12 OF 2016)

CLAUSES

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2—NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

3. Establishment of the National Council for Persons with Disabilities
4. Objectives of the Council
5. Functions of the Council
6. Powers of the Council
7. Composition of the Council
8. Term of office
9. Invited members
10. Vacation of office
11. Resignation
12. Advisory committees
13. District committees
14. Executive Director of the Council

PART 3—ADMINISTRATION

15. Meetings of the Council
16. Conduct of meetings
17. Strategic plans
18. Reports to the Minister
19. Remuneration
20. Indemnity

PART 4—REGISTRATION

21. Register of Organisations
22. Registration

PART 5—ACCOUNTS AND FINANCE

23. Funds of the Council
24. Accounts
25. Annual Report
26. Audit

PART 6—DISCRIMINATION ON THE BASIS OF DISABILITY

27. Definition of discrimination on the basis of disability
28. Equality and non-discrimination
29. Accessibility
30. Children with disabilities
31. Disaster and humanitarian emergencies
32. Equal recognition before the law
33. Access to justice
34. Liberty and security of the person
35. Freedom from exploitation, violence and abuse
36. Protecting the integrity of the person
37. Liberty of movement and nationality
38. Living independently and being included in the community
39. Personal mobility
40. Freedom of expression and opinion, and access to information
41. Respect for privacy
42. Respect for home and the family
43. Education
44. Health
45. Work and employment
46. Adequate standard of living and social protection
47. Participation in political and public life
48. Participation in cultural life, recreation, leisure and sport
49. Remedies
50. Enforcement of discriminatory acts

PART 7—MISCELLANEOUS

51. Directives by the Minister
52. Regulations
53. Repeal

SCHEDULE—Registration of organisations affiliated with the National Council for Persons with Disabilities

BILL NO. 12 OF 2016**A BILL**

FOR AN ACT TO MAKE PROVISIONS FOR THE PROTECTION OF THE RIGHTS
OF PERSONS WITH DISABILITIES IN ACCORDANCE WITH THE UNITED
NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES
AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.**—(1) This Act may be cited as the Rights of Persons with Disabilities Act 2016.
- (2) This Act shall come into force on the date or dates appointed by the Minister by notice published in the Gazette.

Interpretation

- 2.** In this Act, unless the context otherwise requires—

“communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Constitution” means the Constitution of the Republic of Fiji;

“Council” means the National Council for Persons with Disabilities established under section 3;

“deemed to be disabled” means all persons in the following categories—

- (a) blind and visual acuity (vision) of 20/200 (6/60) or less in the better eye with best correction possible; and
- (b) persons with the condition known as Down Syndrome;

“impairment” means a condition which may include—

- (a) sensory impairments, such as those affecting sight or hearing;
- (b) impairments with fluctuating or recurring effects such as rheumatoid;
- (c) arthritis, myalgic encephalitis (ME)/chronic fatigue syndrome (CFS);
- (d) fibromyalgia, depression and epilepsy;
- (e) progressive, such as motor neurone disease, muscular dystrophy,
- (f) forms of dementia and lupus (SLE);
- (g) organ specific, including respiratory conditions, such as asthma, and cardiovascular diseases, including thrombosis, stroke and heart disease developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia;
- (h) learning difficulties; or
- (i) mental health conditions and mental illnesses, such as depression, schizophrenia, eating disorders, bipolar affective disorders, obsessive compulsive disorders, as well as personality disorders and some self-harming behaviour;

“language” includes spoken and sign language and other forms of non-spoken languages;

“Minister” means the Minister responsible for women, children and poverty alleviation;

“persons with disability” includes those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others, but does not include—

- (a) tendency to set fires;
- (b) tendency to steal;
- (c) tendency to physically or sexually abuse other persons;

(d) exhibitionism; and

(e) voyeurism;

“reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that persons with disabilities enjoy or exercise on an equal basis with others all human rights and fundamental freedoms;

“Register” means the Register of Organisations established under section 21 of the Act;

“UNCRPD” means United Nations Convention on the Rights of Persons with Disabilities; and

“universal design” means the design of products, environment programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design and shall include assistive devices for particular groups of persons with disabilities where this is needed.

PART 2—NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES

Establishment of the National Council for Persons with Disabilities

3.—(1) This section establishes the National Council for Persons with Disabilities.

(2) The Council must operate as a body corporate with perpetual succession and a common seal, and may—

(a) sue and be sued;

(b) acquire, hold, possess, dispose of or otherwise deal with any property;

(c) enter into contracts; and

(d) do all other acts that may be done in law by a body corporate.

Objectives of the Council

4. The objectives of the Council are as follows—

(a) to act as a co-ordinating body for all organisations dealing with the care and rehabilitation of persons with disabilities;

(b) to raise awareness throughout society including awareness at the family level, regarding persons with disabilities and to foster respect for the rights and dignity of persons with disabilities;

(c) to work toward eliminating the causes of disabilities or impairment;

(d) to promote the recognition of skills, merits and abilities of persons with disabilities, and their contributions to the workplace and labour market; and

- (e) to foster at all levels of society and the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities.

Functions of the Council

5.—(1) The functions of the Council are to—

- (a) advise the Minister on all matters relating to persons with disabilities in Fiji;
- (b) formulate a national policy that ensures that services are provided to all persons with disabilities in Fiji;
- (c) draw up a national plan of action for rehabilitation services for approval by Cabinet and implement such a plan;
- (d) seek financial assistance from government and aid donors and support financial assistance applications from registered organisations providing service to persons with disabilities;
- (e) maintain a register of all organisations providing service to persons with disabilities and ensure that the independence of such organisations is maintained;
- (f) organise seminars and workshops relating to the problems and needs of persons with disabilities and assist in the training of personnel involved in the care, training, education and rehabilitation of persons with disabilities;
- (g) regularly inform the appropriate ministries of the government of the problems and needs of persons with disabilities and seek solutions to such needs;
- (h) periodically review the national policy and national plan of action for the purpose of determining their continuing relevance to local, regional and international realities;
- (i) encourage all forms of the media to portray persons with disabilities in a manner consistent with the purpose of this Act;
- (j) promote research and development of universally designed goods, services, equipment and facilities, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (k) to promote research, development of, availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technology, suitable for persons with disabilities;

- (l) to provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- (m) to promote the training of professionals and staff working with persons with disabilities in the rights recognised in the UNCRPD so as to better provide the assistance and services guaranteed by those rights;
- (n) establish and maintain a register of projects designed to assist persons with disabilities and seek to attract national and international expertise, material aid and equipment to be used in completing projects;
- (o) operate as a forum at which all funding applications for disability projects by non-government organisations can be discussed and recommendations be made to the relevant ministry;
- (p) advocate on behalf of persons with disabilities for the implementation of all international conventions and human rights matters in Fiji; and
- (q) operate as the focal point in Fiji for the UNCRPD.

(2) The Council may perform any of its functions in co-operation and consultation with any person, association or organisation in the local, regional or international facet.

(3) The Council may, in relation to the performance of its functions publish documents, organise conferences, support initiatives and establish informal networks to promote the development of persons with disabilities.

Powers of the Council

6. The Council shall have powers to—

- (a) act as the trustee of money or property invested in the Council; and
- (b) do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Composition of the Council

7. The Council must consist of the following persons or their respective representatives—

- (a) the permanent secretary responsible for social welfare as chairperson;
- (b) the permanent secretary for justice;
- (c) the deputy secretary responsible for health;
- (d) the deputy secretary for employment, productivity and industrial relations;
- (e) the deputy secretary for education, heritage and arts;
- (f) the deputy secretary for local government, housing and environment;
- (g) the deputy secretary for infrastructure and transport;
- (h) the deputy secretary for youth and sports;

- (i) the director of social welfare;
- (j) the director of women; and
- (k) three representatives from any non-government organisation appointed by the Minister.

Term of office

8. A member of the Council appointed by the Minister under section 7(k) may hold office for a term of 3 years, and is eligible for reappointment.

Invited members

9.—(1) The Council may invite persons to participate in one or more meetings of the Council if and when the need arises.

(2) A person invited under subsection (1) must be an expert or have special knowledge or experience to provide expert advice to the Council on any matter relating to persons with disabilities.

Vacation of office

10. The office of a member becomes vacant if that member—

- (a) dies;
- (b) is absent without the leave of the Council for three consecutive meetings of the Council; or
- (c) conducts himself or herself in a manner which amounts to misconduct.

Resignation

11. A member of the Council appointed by the Minister may resign from his or her office by giving one month's written notice to the Minister.

Advisory committees

12.—(1) The Council may, from time to time, appoint advisory committees for the purposes of assisting the Council in the performance of its functions.

(2) An advisory committee must consist of the following persons who must be appointed by the Council—

- (a) a Chairperson who is a member of the Council;
- (b) a Secretary; and
- (c) other members as ascertained by the Council who have relevant knowledge and expertise.

(3) An advisory committee must—

- (a) advise and assist the Council in the formulation of strategic and national policies concerning persons with disabilities;
- (b) conduct research and recommend suitable activities or projects relevant to improving the life of persons with disabilities in Fiji; and

(c) act on such directions given by the Council to assist the development of persons with disabilities in Fiji.

(4) The members of an advisory committee may receive such allowances as the Council determines, subject to the approval of the Minister.

(5) The membership of a member of the advisory committee ceases if he or she is absent without the leave of the chairperson for more than 3 consecutive meetings of the Committee.

District committees

13.—(1) The Council may establish a district committee in any district as the Council deems fit.

(2) Each district committee shall have a chairperson, a secretary and such other members all of whom must be appointed by the Council and who must hold office for a term of 2 years and shall be eligible for reappointment.

(3) The Council may, from time to time, appoint to each district committee such members as it deems appropriate.

(4) A district committee is to have the functions of making recommendations and proposals to and giving advice on the needs, problems and activities of the persons with disabilities in their respective districts in accordance with the objects of the UNCRPD and the World Health Organization Community Rehabilitation Guidelines to the Council.

Executive Director of the Council

14.—(1) The Council must, with the approval of the Minister, appoint a suitably qualified person as the Executive Director of the Council in accordance with any terms and conditions the Council may approve.

(2) The Executive Director may be appointed for a term of up to 3 years and is eligible for re-appointment.

(3) The Executive Director may be remunerated in a manner and at a rate determined by the Council with the approval of the Minister.

(4) The Executive Director is to—

(a) be responsible to the Council for its management and the execution of its policies;

(b) assist the Council in the implementation of its strategic plans and national policies concerning persons with disabilities; and

(c) do all things necessary or convenient to be done in connection with, or incidental to, the performance of his or her duties under this Act or any other written law.

(5) The Executive Director may, in consultation with the Council, appoint such officers, servants or agents as it considers necessary for the efficient exercise, performance and discharge of the duties of the Council.

(6) Such officers or agents appointed under subsection (5) must be remunerated in a manner and at rates subject to terms and conditions determined by the Council on the approval of the Minister.

PART 3—ADMINISTRATION

Meetings of the Council

15.—(1) The Council must convene monthly meetings and may call special meetings as and when necessary.

(2) Any issue raised in those meetings must be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the presiding member shall have a casting vote.

Conduct of meetings

16. Six members of the Council constitute a quorum at a meeting.

Strategic plans

17.—(1) The Council must—

- (a) formulate a 5 year strategic plan setting out the manner in which the Council proposes to perform its functions; and
- (b) review and revise the strategic plan on an annual basis.

(2) A strategic plan, or a revision of a strategic plan, has no effect until approved by the Minister.

(3) The first strategic plan shall be submitted to the Minister within 6 months after the commencement of this Act.

(4) The Council shall perform its functions in accordance with its strategic plan.

Reports to the Minister

18. The Council must—

- (a) from time to time, inform the Minister on the general conduct of its activities; and
- (b) upon request by the Minister, furnish to the Minister such information in relation to its activities as the Minister requests.

Remuneration

19. A member of a committee, the Council and invited members, other than members who are public officers, are entitled to remuneration determined by the Council and approved by the Minister.

Indemnity

20.—(1) The Council, Committee and any member of the Council or Committee or any officer, invited member or staff engaged by the Council, must not be held liable for any action, suit, proceeding, dispute or challenge in any court, tribunal or any other

adjudicating body for or in respect of any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under the provisions of this Act or any other written law.

(2) A member of the Council or Committee must not act unilaterally by using his or her membership advantage to personally gain from outside dealings apart from that which will benefit the Council or the Committee.

PART 4—REGISTRATION

Register of Organisations

21.—(1) This section establishes the Register of Organisations which is to be maintained by the Council in accordance with this part and the Schedule.

(2) The Register must contain a record of all organisations established to provide services to persons with disabilities for the purpose of—

- (a) implementing any projects which contribute to the wellbeing, development and care of persons with disabilities;
- (b) establishing an umbrella body to streamline and benchmark standards regarding the development of persons with disabilities in relation to international practice; and
- (c) affiliation of the Council to international agencies.

(3) The Register must include, in relation to each organisation on the Register,—

- (a) the organisation's registered name and registered contact address;
- (b) the qualifications held by members of the organisation established to provide services to persons with disabilities;
- (c) relevant qualifications or awards obtained by the organisation; and
- (d) any other information that the Council deems appropriate.

(4) Any organisation providing service to persons with disabilities or intending to provide service to persons with disabilities must be duly registered as provided by this part.

(5) For the purposes of this Act, an organisation is not to be registered on the Register unless—

- (a) it is fully functional as an organisation providing services to persons with disabilities; and
- (b) it satisfies the Council as to why it should continue in existence.

Registration

22.—(1) An application to be registered under section 21(4) must—

- (a) be made to the Council in the prescribed form;

(b) be accompanied by a fee approved by the Minister in consultation with the Council; and

(c) include any other documentary information required by the Council.

(2) The Minister must, in accordance with the Schedule, set such terms and conditions as the Minister deems fit and proper for the registration of organisations.

(3) If the Council is satisfied that the prescribed criteria are complied with, the Council must grant a certificate of registration to an applicant which may include such terms and conditions as the Council sees fit, including any terms and conditions as may be prescribed by the Minister.

(4) In the case where an application for registration is not accepted by the Council, the decision of the Council must be given to the applicant in writing, stating the reasons why it is not accepted.

(5) The Council may, subject to the approval of the Minister, cause the name of any organisation to be removed from the Register—

(a) if it ceases for any reason to function or to be authorised to function as an organisation providing service to persons with disabilities;

(b) if it fails to meet certain terms and conditions prescribed by the Minister;

(c) if it fails to adhere to the requirements and standards being implemented by the Council through its national policy for persons with disabilities; or

(d) for any other reasons prescribed in the Schedule.

(6) Where the Council intends to remove the name of an organisation from the Register for any reason stated under subsection (5), the Council must forthwith give written notice to the said organisation and consider any representation made in that matter.

(7) Any organisation providing services to persons with disabilities that is not registered in accordance with this section commits an offence and is liable on conviction to a fine not exceeding \$100,000.

PART 5—ACCOUNTS AND FINANCE

Funds of the Council

23. The funds of the Council must comprise of any—

(a) money appropriated by the Government for the purpose of this Act;

(b) contributions or donations to the Council;

(c) fees received by the Council under this Act;

(d) money borrowed by the Council; and

(e) money received by or on behalf of the Council.

Accounts

24. The Council has a duty to keep proper accounts and other records in respect of its operations in accordance with standard business practices.

Annual report

25.—(1) The Council has a duty to prepare and submit to the Minister an annual report, including its accounts for the preceding year, before the end of every financial year.

(2) The Minister must present the annual report to Cabinet, as soon as practicable after receiving it.

Audit

26.—(1) The Council is required to be audited once a year.

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

(3) The audit is to be conducted by—

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

(4) The person appointed by the Council under subsection (3)(b) is to be—

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

PART 6—DISCRIMINATION ON THE BASIS OF DISABILITY

Definition of discrimination on the basis of disability

27.—(1) For the purposes of this part, “discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

(2) Affirmative action laws, programmes and policies to promote equality for persons with disabilities shall not be discrimination, as long as such laws, programmes and policies are proportionate to the aim of promoting equality for persons with disabilities.

(3) In applying any right under this part, if the State claims that it does not have the resources to implement the right, it is the duty of the State to show that the resources are not available.

(4) The rights set out in this part are the rights of all persons with disabilities, including those who are deemed to be disabled.

Equality and non-discrimination

28.—(1) All persons with disabilities are entitled to the equal protection and equal benefit of the rights and freedoms under Chapter 2 of the Constitution.

(2) Specific measures which are necessary to accelerate or achieve equality of persons with disabilities shall not be considered as discrimination.

Accessibility

29. All persons living with disabilities shall have the following rights—

- (a) to reasonable access to all indoor and outdoor places, public transport and information;
- (b) to use sign language, Braille or other appropriate means of communication;
- (c) to reasonable access to necessary materials, substances and devices relating to the person's disability;
- (d) to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights;
- (e) in buildings and other facilities open to the public, information, signage and forms in Braille and in easy to read and understand modes; and
- (f) to forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public.

Children with disabilities

30.—(1) In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

(2) Children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.

Disaster and humanitarian emergencies

31. All persons living with disabilities have the right to reasonable accommodation with regard to the protection and safety of their persons in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

Equal recognition before the law

32.—(1) All persons with disabilities have the right to enjoy legal capacity on an equal basis with others in all aspects of life, special measures to promote such equality and to support access to justice for persons with disabilities shall not be discrimination.

(2) All persons with disabilities have equal right with others to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.

(3) All persons living with disabilities have the right not to be arbitrarily deprived of his or her property.

Access to justice

33.—(1) All persons with disabilities have the right to the provision of procedural and age-appropriate accommodations to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

(2) Special measures in court proceedings for vulnerable witnesses shall be available for persons with disabilities.

Liberty and security of the person

34. All persons with disabilities have the right—

- (a) not to be deprived of their personal liberty on the basis of the existence of a disability;
- (b) to reasonable accommodation if kept in custody; and
- (c) to the protection of national and international law on conditions of custody for persons with disabilities.

Freedom from exploitation, violence and abuse

35.—(1) All persons with disabilities, both within and outside the home, have the right to be protected from all forms of exploitation, violence and abuse, including gender-based violence.

(2) All persons with disabilities who are victims of any form of exploitation, violence or abuse shall have the right to protective services which foster the health, welfare, self-respect, dignity and autonomy of such persons and takes into account gender and age specific needs.

(3) All persons with disabilities who are victims of any form of exploitation, violence or abuse shall have the right to have the exploitation, violence or abuse investigated by the appropriate State authorities, and where relevant, prosecuted.

Protecting the integrity of the person

36. All persons with disabilities have a right to respect for their physical and mental integrity on an equal basis with others.

Liberty of movement and nationality

37. All persons with disabilities have the right to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including—

- (a) the right to acquire and change a nationality and the right not to be deprived of their nationality arbitrarily or on the basis of disability;

- (b) the right not to be deprived, on the basis of disability, of their ability to obtain, possess and utilise documentation of their nationality or other documentation of identification, or to utilise relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- (c) the right to leave Fiji unless prevented from doing so by a lawful act or order;
- (d) the right not to be deprived, arbitrarily or on the basis of disability, of the right to enter Fiji; and
- (e) the right of children with disabilities to be registered immediately after birth and to have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

Living independently and being included in the community

38.—(1) All persons with disabilities have the right to live in the community, with choices equal to others, and to full enjoyment of this right and of their full inclusion and participation in the community, including the right to be given the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.

(2) All persons with disabilities have the right to access a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

(3) All persons with disabilities have the right to community services and facilities which are available for the general population on an equal basis and in a way that is responsive to their needs.

Personal mobility

39. All persons with disabilities have the right to personal mobility and the greatest possible independence, including—

- (a) personal mobility in the manner, time and affordable cost of their choice;
- (b) access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost; and
- (c) training in mobility skills to persons with disabilities and specialist staff to work with persons with disabilities.

Freedom of expression and opinion, and access to information

40. All persons with disabilities have the right to exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, including—

- (a) information intended for the general public in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice in official interactions; and
- (c) the right to the use of sign language.

Respect for privacy

41.—(1) No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation.

(2) Persons with disabilities have the right to the protection of the law against such interference or attacks.

(3) The State shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

Respect for home and the family

42.—(1) All persons living with disabilities have the right to freedom from discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that—

- (a) the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised;
- (b) the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided; and
- (c) persons with disabilities, including children, retain their fertility on an equal basis with others.

(2) In cases of the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or child abduction the best interests of the child shall be paramount.

(3) Children with disabilities have equal rights with respect to family life and in realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, the State shall provide early and comprehensive information, services and support to children with disabilities and their families.

(4) A child must not be separated from his or her parents or guardians against the child's will, except in accordance with Family Court procedures under the Family Law Act 2003 and only on the ground that such separation is necessary for the best interests of the child.

(5) A child must not be separated from their parents or guardians on the basis of a disability of either the child or one or both of the parents or guardians.

(6) The State must, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

Education

43.—(1) All persons living with disabilities have the right to an education.

(2) Pursuant to subsection (1), all persons living with disabilities have a right to education without discrimination and on the basis of equal opportunity, and such education shall be inclusive and lifelong.

(3) In accordance with subsection (2), such a right shall ensure that—

- (a) the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) enabling persons with disabilities to participate effectively in a free society;
- (d) persons with disabilities are not excluded from the general education system, including tertiary education on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, or from tertiary education on the basis of disability;
- (e) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (f) reasonable accommodation of the individual's requirements is provided;
- (g) persons with disabilities receive the support required, within the general education system, to facilitate their effective education; and
- (h) effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

(4) Persons with disabilities have the right to learn life and social development skills to facilitate their full and equal participation in education and as members of the community including—

- (a) the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (b) the learning of sign language and the promotion of the linguistic identity of the deaf community;
- (c) ensuring that the education of persons, and in particular children, who are blind, deaf or deaf and blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximise academic and social development;
- (d) to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others; and
- (e) the right to reasonable accommodation while pursuing education.

Health

44.—(1) All persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

(2) All persons with disabilities have the right to the same range, quality and standard of free or affordable health care and programmes, including in the area of sexual and reproductive health and population-based public health programmes.

(3) All persons with disabilities have the right to special health care including early identification and intervention as appropriate, and services designed to minimise and prevent further disabilities, including among children and older persons.

(4) All persons with disabilities have the right to health services as close as possible to their own communities, including in rural areas.

(5) All persons with disabilities have the right to health care of the same quality as is given to others, including on the basis of free and informed consent, patient autonomy and medical and nursing ethics.

(6) All persons with disabilities have the right to freedom from discrimination in the provision of health insurance, and life insurance where such insurance is permitted by law, which shall be provided in a fair and reasonable manner.

(7) All persons with disabilities have the right to freedom from the discriminatory denial of health care or health services or of food and fluids on the basis of disability.

Work and employment

45.—(1) All persons with disabilities have the right to work, on an equal basis with others.

(2) The right under subsection (1) includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

(3) All persons with disabilities have the right to be free from discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.

(4) All persons with disabilities, have the right on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe working conditions, including protection from harassment, and the redress of grievances.

(5) All persons with disabilities have the right to exercise their labour and trade union rights on an equal basis with others.

(6) All persons with disabilities have the right to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training.

(7) Programmes policies and laws shall not be discriminatory if they are proportionate to the objects and rights set out in this section and if they are intended to—

- (a) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- (b) promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- (c) employ persons with disabilities in the public sector;
- (d) promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- (e) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (f) promote the acquisition by persons with disabilities of work experience in the open labour market; and
- (g) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

(8) Persons with disabilities shall be protected from servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Adequate standard of living and social protection

46.—(1) Persons with disabilities have the right to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

(2) Pursuant to subsection (1), the right to an adequate standard of living and social protection includes—

- (a) access to clean water;
- (b) access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- (c) access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care;
- (d) access by persons with disabilities to public housing programmes; and
- (e) equal access by persons with disabilities to retirement benefits and programmes.

Participation in political and public life

47. All persons with disabilities have the right to effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, including by—

- (a) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- (b) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
- (c) guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (d) to promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including participation in non-governmental organisations and associations concerned with the public and political life of the country, and in the activities and administration of political parties; and

- (e) forming and joining organisations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Participation in cultural life, recreation, leisure and sport

48.—(1) All persons with disabilities have the right to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities—

- (a) enjoy access to cultural materials in accessible formats;
- (b) enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats; and
- (c) enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

(2) All persons with disabilities have the right to have the opportunity to develop and utilise their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

(3) All persons with disabilities have the right on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

(4) All persons with disabilities are to have the opportunity to—

- (a) participate, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- (b) have an opportunity to organise, develop and participate in disability-specific sporting and recreational activities on an equal basis with others, and to have access to appropriate instruction, training and resources;
- (c) ensure access to sporting, recreational and tourism venues;
- (d) where children have disabilities to have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system; and
- (e) have access to services from those involved in the organisation of recreational, tourism, leisure and sporting activities.

Remedies

49.—(1) If a person considers that any of the provisions of this part has been or is likely to be contravened in relation to him or her, that person may apply to the High Court for remedies for breach of their rights under this Act.

(2) The right to make application to the High Court under subsection (1) is without prejudice to any other action with respect to the matter that the person concerned may have including one for constitutional redress under the Constitution.

(3) The High Court has original jurisdiction to hear and determine applications under this part and may make such orders and give such directions as it considers appropriate including—

- (a) injunctions, including injunctions against the State;
- (b) declarations;
- (c) damages; and
- (d) compensation.

(4) The High Court may exercise its discretion to grant relief in relation to an application or referral made under this section in addition to constitutional redress where an application is made for constitutional redress under the Constitution.

(5) If in any proceedings in a subordinate court any question arises as to the contravention of any of the provisions of this Part, the member presiding in the proceedings may, and must if a party to the proceedings so requests, refer the question to the High Court unless, in the member's opinion (which is final and not subject to appeal), the raising of the question is frivolous or vexatious.

(6) When the High Court gives its decision on a question referred to it under this section, the court in which the question arose must dispose of the case in accordance with—

- (a) the decision; or
- (b) if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court—the decision of the Court of Appeal or the Supreme Court, as the case may be.

(7) The Attorney-General may, on behalf of the State, intervene in proceedings before the High Court that relate to a matter concerning a provision in this part.

(8) If the proceedings before the High Court relate to a matter concerning a provision of this part, the High Court must not proceed to hear and determine the matter until it is satisfied that notice of the matter has been given to the Attorney-General and a reasonable time has elapsed since the giving of the notice for consideration by the Attorney-General of the question of intervention in the proceedings.

(9) A notice under subsection (8) is not required to be given to the Attorney-General if the Attorney-General or the State is a party to the proceedings.

(10) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications are to be made to the High Court).

Enforcement of discriminatory acts

50.—(1) The rights guaranteed under this Act may be enforced by—

- (a) the Council;
- (b) any person living with disabilities or a non-government organisation representing persons with disabilities; or
- (c) the Human Rights and Anti-Discrimination Commission.

(2) The rights under this Act may be enforced in addition to the rights under the Constitution, the Human Rights Commission Decree 2009, the HIV/AIDS Decree 2011, the Mental Health Decree 2010 and any other law applicable to persons with disabilities.

(3) The rights guaranteed under this Act may be enforced by way of constitutional redress where the breach of a right under the Constitution is also alleged in the same action.

PART 7—MISCELLANEOUS*Directives by the Minister*

51.—(1) The Minister may give directives, not inconsistent with the provisions of this Act, as to the performance of the functions and duties and exercise of the powers and functions of the Council.

(2) The Council must comply with any directive given by the Minister under subsection (1).

Regulations

52. The Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Repeal

53. The Fiji National Council for Disabled Persons Act 1994 is hereby repealed.

SCHEDULE

REGISTRATION OF ORGANISATIONS AFFILIATED WITH THE NATIONAL
COUNCIL FOR PERSONS WITH DISABILITIES

1. The conditions for registration under this Act are that an organisation must—
 - (a) be created specifically to represent the rights and interests of persons with disabilities;
 - (b) be registered as a charitable trust or a body corporate under the relevant laws in Fiji;
 - (c) comprise of trustees or directors of a Board and members;
 - (d) conduct regular meetings of the board of management and members;
 - (e) conduct an annual audit of accounts and prepare an annual report, a copy of which is to be provided to the Council; and
 - (f) have a corporate governance policy according to international best practices standards.
2. Evidence of service delivery and good governance.
3. The Council may require at any time information from an organisation in relation to the factors set out under paragraph 1 of this Schedule and may also require proof of standards of service delivery and efficiency as the Council thinks fit.
4. Reasons for removal of an organisation from the register are—
 - (a) that the affairs of the organisation are wound up through a vote to do so at an annual general meeting or extraordinary meeting held for this purpose;
 - (b) the organisation becomes bankrupt;
 - (c) the organisation is brought before the courts for any matter;
 - (d) conduct of the organisation brings the Council or its affiliates into disrepute;
 - (e) the organisation fails to provide acquittal of any Government allocations;
 - (f) the organisation fails to publish an annual audit of finances and an annual report;
 - (g) makes no attempt to comply with services delivery standards set; and
 - (h) fails to comply with regulations set by the Minister.
5. Record of removal from and of re-entry to the Register.
6. The Council shall record in its annual report the names of organisations that have been removed from the register and give the date from which they were removed and reasons for their removal.

7. The name of an organisation may be re-entered into the Register, and become eligible to receive allocations of funds once the organisation is able to demonstrate to the Council that it is efficient in its operation, meeting reasonable standards of service delivery, complying with the regulations set by the Minister, and approved by the Minister to be registered.
8. The Council shall record in its annual report the names of organisations that have, with the Minister's approval, been replaced on the Register and give the date on which they were replaced.

RIGHTS OF PERSONS WITH DISABILITIES BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Rights of Persons with Disabilities Bill 2016 (**‘Bill’**) seeks to provide for, uphold and enforce the rights of persons with disabilities in Fiji as provided for under the United Nations Convention on the Rights for Persons with Disabilities (**‘UNCRPD’**).
- 1.2 The 22 year old Fiji National Council for Disabled Persons Act 1994 (**‘Act’**) is the only legalisation which relates directly to persons with disabilities in Fiji. This Act is mainly outdated and does not sufficiently address the needs of persons with disabilities. The Act mainly, establishes the Fiji National Council for Disabled Persons and provides for the administrative role of the Council, but is very limited in that it does not convey, uphold or enforce the individual or collective rights of persons with disabilities in Fiji.
- 1.3 Therefore this Bill captures a bulk of the salient features of UNCRPD and is envisaged to empower and allow persons with disabilities to realise their rights under a sound legal framework for the betterment of Fiji and all Fijians.
- 1.4 The Bill also provides a conduit for persons with disabilities to be protected, promoted and recognised in the social, economic, political, cultural, civil and in all other relevant facets of our society.

2.0 PROVISIONS OF THE BILL

- 2.1 Part 1 of the Bill contains the short title, the commencement provision and the interpretation provision.
- 2.2 Part 2 of the Bill provides for the establishment of the National Council for Persons with Disabilities (**‘Council’**).

- 2.3 The objective of the Council is to act as the mediator in all pertinent issues in regards to the care and rehabilitation of the disabled, community awareness on the fostering of respect and showing dignity for the persons with disabilities and working towards the elimination of causes of disabilities.
- 2.4 The Council will be responsible for articulating and effectively implementing the provisions of the Bill.
- 2.5 Part 3 of the Bill provides for the administration of the Council in terms of its meetings, the conduct of those meetings, the strategic plan of the Council, remuneration of Council members and indemnity.
- 2.6 Part 4 of the Bill establishes a register for all organisations providing services to persons with disabilities.
- 2.7 Part 5 of the Bill provides for the accounts and finances of the Council including provisions on the funds of the Council, annual reporting requirements and the auditing requirements.
- 2.8 Part 6 of the Bill outlines the following—
- (a) how the rights of Fijians with disabilities may be realised;
 - (b) acts which may be deemed as unlawful discrimination against any Fijian with disabilities; and
 - (c) the avenues through which an act of unlawful discrimination against any Fijian with disabilities may be remedied.
- 2.9 Part 7 of the Bill provides for the miscellaneous provisions, including the powers of the Minister to give directives and make regulations.
- 2.10 Also attached to the Bill is a schedule which provides for the registration of all organisations that provide services to all persons with disabilities in Fiji.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the minister responsible for women, children and poverty alleviation.

A. SAYED-KHAIYUM
Attorney-General