

BILL NO. 30 OF 2016

A BILL

FOR AN ACT TO AMEND THE FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION PROMULGATION 2007

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Fiji Independent Commission Against Corruption (Amendment) Act 2016.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Fiji Independent Commission Against Corruption Promulgation 2007 is referred to as the “Promulgation”.

Section 2 amended

2. Section 2 of the Promulgation is amended by inserting the following new definitions—

““Minister” means the Minister responsible for anti-corruption;

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

Section 2A amended

3. Section 2A of the Promulgation is amended by—

- (a) deleting paragraph (*da*);
- (b) in paragraph (*g*), deleting “[Cap. 21]” and substituting “(Cap. 17)”;
- (c) in paragraph (*k*), deleting “,” and substituting “;”; and
- (d) inserting the following new paragraph after paragraph (*k*)—
 - “(l) any offence which the Commissioner may prosecute under any written law.”

Section 5 amended

4. Section 5 of the Promulgation is amended by—

- (a) in subsection (1), deleting “subject to the orders and control of” and substituting “appointed by”; and
- (b) deleting subsection (2).

Section 8 amended

5. The Promulgation is amended by deleting section 8 and substituting the following—

“Appointment of officers

8.—(1) The Commissioner may appoint officers necessary to assist the Commissioner in the performance of his or her functions in accordance with this Promulgation.

- (2) The officers shall be employed—
 - (a) on such terms and conditions as the Commissioner may think fit; and
 - (b) subject to the standing orders made under section 11.”

Section 10 amended

6. Section 10 of the Promulgation is amended by—

- (a) deleting subsection (1) and substituting the following—
 - “(1) An officer authorised in that behalf by the Commissioner may, without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence to which this Promulgation applies, provided that, in respect of the offences under the Crimes Decree 2009 or any law repealed by the Crimes Decree 2009, the power of arrest without warrant is limited to indictable offences.”;
- (b) in subsection (3)(a), deleting “and”;
- (c) in subsection (3)(b), deleting “.” and substituting “; and”; and

(d) in subsection (3), inserting the following new paragraph after paragraph (b)—

“(c) may exercise any other powers given to police officers under Part III of the Criminal Procedure Decree 2009.”

Section 10A amended

7. Section 10A(8) of the Promulgation is amended by deleting “President” and substituting “Commissioner”.

Section 10B amended

8. Section 10B of the Promulgation is amended by inserting “and seize such evidence” after “search such premises or place”.

Section 10D amended

9. Section 10D of the Promulgation is amended by inserting the following new subsection after subsection (4)—

“(5) Any person who, in lawful custody for an offence, refuses to submit to the taking of any of the methods of identification authorised to be taken under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 3 months and after conviction, reasonable force may be used to take such methods of identification.”

New sections 10E, 10F and 10G inserted

10. The Promulgation is amended by inserting the following new sections after section 10D—

“Interception warrants

10E.—(1) An officer acting under the instructions of the Commissioner may apply in writing to the High Court for a warrant if he or she has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit an offence to which this Promulgation applies.

(2) A High Court Judge may, upon receiving a written application under subsection (1), issue a warrant if he or she is satisfied that there are reasonable grounds for such suspicion or belief to authorise the covert monitoring and recording, by any means, of the conduct and communications, including telecommunications, of the person.

(3) A warrant issued under this section may be renewed by further application.

(4) A warrant issued under this section authorises any officer—

(a) to overtly or covertly enter or, in the case of a renewed warrant, re-enter any place specified in the warrant, by force if necessary, for the purpose of executing the warrant; and

(b) in the case of a renewed warrant, to continue monitoring and recording pursuant to the original warrant subject to any variation specified in accordance with subsection (8)(g).

(5) If the circumstances are such that a written application under subsection (1) is not reasonably practicable, an oral application may be made.

(6) An application, whether in writing or made orally, must include the following—

- (a) the facts relied upon to show reasonable grounds for suspicion or belief;
- (b) the manner by which it is proposed to undertake the monitoring;
- (c) the name or names of the person or persons to be monitored, if known;
- (d) the place at which the monitoring and surveillance is intended to take place;
- (e) the identity of any person who may be required by the court to provide assistance for the purpose of giving effect to the warrant;
- (f) the requested duration of the warrant; and
- (g) where the application is made orally, the circumstances said to render a written application not reasonably practicable.

(7) In determining whether a warrant is to be granted under this section, the High Court Judge shall have regard to the following—

- (a) the nature and gravity of the offence in respect of which the warrant is sought;
- (b) the extent to which the privacy of any person is likely to be affected;
- (c) an alternative means of obtaining the information or evidence sought and the extent to which employing such means may prejudice the investigation, through delay or any other reason;
- (d) the extent to which information that may be obtained is likely to assist the investigation of the offence;
- (e) the evidentiary value of any information sought to be obtained;
- (f) any previous warrant sought or issued in connection with the same offence; and
- (g) in the case of an oral application, the circumstances that render a written application not reasonably practicable.

(8) A warrant issued under this section must—

- (a) specify the manner by which monitoring is authorised;
- (b) if known, specify the name of any person or persons who may be monitored;
- (c) specify the place or places at which monitoring and surveillance are authorised;
- (d) specify any condition subject to which place or places may be entered pursuant to the warrant;

- (e) specify any person required to provide assistance for the purpose of giving effect to the warrant and order that person to provide such assistance;
- (f) specify the duration of the warrant;
- (g) in the case of a renewed warrant, specify any variation to the authority conferred by the previous warrant; and
- (h) authorise and require the retrieval of the monitoring and surveillance device.

(9) A warrant issued pursuant to an oral application is valid for 48 hours.

(10) Where in the case of a warrant issued under subsection (2), the Commissioner is satisfied that the grounds upon which a warrant was issued have ceased to exist, the Commissioner may apply to the High Court for the warrant to be revoked.

(11) A High Court Judge may revoke a warrant issued under this section that is in force.

(12) For the purpose of this section, an “oral application” means an application made orally in person or made by telephone, video conferencing or any other electronic means by which words can be heard.

Officer deemed always to be on duty

10F. Every officer is deemed to be on duty at all times and may at any time be detailed for duty in any part of Fiji.

No civil or criminal liability for acts done in good faith

10G.—(1) No civil or criminal action may be brought against any officer with regard to any act done in good faith and in the purported exercise of such officer’s duties under this Promulgation.

(2) Where the defence to any suit or charge instituted against an officer is that the act complained of was done in obedience to a warrant purporting to be issued by a Magistrate or a Justice of the Peace, the production of the warrant is *prima facie* evidence that the act was lawful.”

Section 11 amended

11. Section 11 of the Promulgation is amended by—

- (a) in subsection (1)(b), inserting “appointment, termination,” after “the”; and
- (b) deleting subsection (2) and substituting the following—

“(2) The Commissioner may modify the standing orders concerning the provisions of section 8.”

Section 12 amended

12. Section 12 of the Promulgation is amended by—

- (a) deleting “, on behalf of the President”; and
- (b) deleting paragraph (b) and substituting the following—
 - “(b) investigate the suspected or alleged occurrence of an offence to which this Promulgation applies.”

Section 12A deleted

13. The Promulgation is amended by deleting section 12A and substituting the following—

“Prosecution of offences to which this Promulgation applies

12A. For the avoidance of doubt, the Commissioner may investigate and prosecute an offence specified in section 2A regardless of whether this Promulgation applied to such offence at the time the offence was committed.”

Section 12B amended

14. Section 12B of the Promulgation is amended by inserting the following new subsection after subsection (4)—

“(5) It is lawful for any officer authorised in that behalf by the Commissioner to make a complaint or charge against any person before a Magistrate.”

Section 13 amended

15. Section 13 of the Promulgation is amended by—

- (a) in subsection (1)(c), deleting “.” and substituting “;”;
- (b) in subsection (1), inserting the following new paragraphs after paragraph (c)—
 - “(d) without warrant, arrest or authorise any officer to arrest a person who is suspected to have committed an offence to which this Promulgation applies;
 - (e) prohibit any person against whom an investigation in respect of an offence to which this Promulgation applies has commenced, from leaving the jurisdiction of the Republic of Fiji for a period of up to 30 days and may give the necessary instructions in writing to the Director of Immigration to enforce the order, provided that the power under this paragraph must only be exercised by the Commissioner and a copy of the order must be served on the suspect or at his or her last known residential address within 24 hours of the issuance of the order.”; and

(c) inserting the following new sections after section 13F—

“Divulging official information

13G.—(1) No officer or former officer of the Commission nor any member or former member of the staff of the Commission shall, without the written permission of the Commissioner, publish or disclose to any person otherwise than—

- (a) for an officer or member of the staff of the Commission, in exercise of his or her official functions;
- (b) for a former officer or member of the staff of the Commission, in no circumstance whatsoever,

the contents of any document, communication or information whatsoever relating to or connected with the functions of the Commission which has or had come to his or her knowledge in the course of his or her duties.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and on conviction shall be liable to a fine of \$10,000 and to imprisonment for 2 years.

(3) A criminal prosecution and criminal sanction may be effected in addition to any disciplinary action imposed on the officer for the same conduct.

*Equipment and properties of the Commission to be delivered
up upon ceasing to be an officer*

13H.—(1) Any officer who, having ceased to be an officer, must deliver to the person appointed by the Commissioner for that purpose, or to the officer in charge at the place at which he or she was last stationed, all equipment, clothing and property whatsoever which have been supplied to him or her or received by him or her in his or her capacity as an employee of the Commission or at the discretion of the Commissioner pay the value of such property as determined by the Commissioner.

(2) Any person who contravenes subsection (1), shall be guilty of an offence and shall be liable to a fine equivalent to the value of such property not delivered or to \$1,000, whichever is higher and to imprisonment for 2 years, provided that if a fine is imposed under this subsection, the court imposing the fine must direct such fine to be paid to the Commission as compensation.”

Section 16 amended

16. Section 16 of the Promulgation is amended by deleting subsection (1) and substituting the following—

“(1) The Auditor-General may, at any time, have access to the financial and expenditure accounts maintained by the finance department of the Commission.”

Section 17 amended

17. The Promulgation is amended by deleting section 17 and substituting the following—

“Annual report

17.—(1) The Commissioner must submit a copy of the Commission’s annual report to the President and Minister within 3 months after the end of the financial year.

(2) The Minister must, as soon as reasonably practicable, cause a copy of the annual report to be laid before Parliament.”

Section 17A amended

18. Section 17A of the Promulgation is amended by deleting subsection (3) and substituting the following—

“(3) The fund must be controlled by the Commissioner and applied to the following purposes—

- (a) procurement for officers’ gratuity, or other allowances, comforts, conveniences or other benefits as the Commissioner thinks fit;
- (b) granting loans to officers as the Commissioner thinks fit; and
- (c) such other matter as may, in the Commissioner’s opinion, be necessary to assist officers or maintain the fund.”

Consequential

19.—(1) The Proceeds of Crime Act 1997 is amended by inserting the following new section after section 4—

“References to the Director of Public Prosecutions

4A. The powers vested in the Director of Public Prosecutions by virtue of this Act are deemed to be vested in the Director of Public Prosecutions and the Commissioner of the Fiji Independent Commission Against Corruption, and any reference made in this Act to the Director of Public Prosecutions shall be construed as a reference to the Director of Public Prosecutions or the Commissioner of the Fiji Independent Commission Against Corruption.”

(2) Section 3 of the Fiji Independent Commission Against Corruption (Amendment) Promulgation 2008 is hereby repealed.

**FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) 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 Fiji Independent Commission Against Corruption (**'FICAC'**) was established on 4 April 2007 under the Fiji Independent Commission Against Corruption Promulgation 2007 (**'Promulgation'**) and continues in existence by virtue of section 115 of the Constitution of the Republic of Fiji (**'Constitution'**).
- 1.2 FICAC was established to eradicate the prevalence of corruption and systematic abuse, and the misuse of public funds and office throughout the public sector. The Promulgation gives FICAC investigatory, advisory and prosecutorial powers covering *inter alia* corruption, election, bribery and fraud related offences.
- 1.3 On 14 May 2008, Fiji further fortified its stance against corruption by acceding to the United Nations Convention Against Corruption of 2003 (**'UNCAC'**).
- 1.4 Under the Promulgation, FICAC is guided by UNCAC standards, which canvass a broad spectrum of powers in fighting corruption, the principles of which have not been fully encapsulated in the Promulgation as of yet.
- 1.5 For that reason, the Fiji Independent Commission Against Corruption (Amendment) Bill 2016 (**'Bill'**) seeks to amend the Promulgation in order to strengthen FICAC's operative powers. The Bill proposes amendments to remove existing legal challenges faced by FICAC which in turn would help streamline FICAC's effort in combating corruption in Fiji.

2.0 FEATURES OF THE BILL

- 2.1 Clause 1 of the Bill provides for the short title and commencement provisions.
- 2.2 Clause 2 of the Bill amends section 2 of the Promulgation by inserting the definitions of 'Minister' and 'President' for the purpose of clarity.

- 2.3 Clause 3 of the Bill amends section 2A of the Promulgation by deleting paragraph (*da*) and inserting a new paragraph (*l*) to allow FICAC to prosecute any offence which empowers the Commissioner to do so under any written law.
- 2.4 Clause 4 of the Bill amends section 5 of the Promulgation to comply with section 115(6) of the Constitution which states that FICAC must be independent and not “subject to the direction or control” of any person or authority. The amendment seeks to remove the provision that the Commissioner is subject to the orders, direction and control of the President.
- 2.5 Clause 5 of the Bill amends section 8 of the Promulgation to enable the Commissioner to appoint officers on terms and conditions set out by him or her and subject to the standing orders made under section 11 of the Promulgation.
- 2.6 Clause 6 of the Bill amends section 10 of the Promulgation to empower FICAC officers to arrest a person without a warrant if he or she reasonably suspects that such person committed an offence. The power to arrest however, is limited to indictable offences.
- 2.7 Clause 6 also amends section 10(3) of the Promulgation by inserting a new paragraph to empower FICAC officers to exercise the same powers given to police officers under Part III of the Criminal Procedure Decree 2009.
- 2.8 Clause 7 of the Bill amends section 10A of the Promulgation to ensure that the Commissioner has comprehensive administration of the Promulgation.
- 2.9 Clause 8 of the Bill amends section 10B of the Promulgation to allow FICAC to seize evidence when conducting a search authorised by a search warrant.
- 2.10 Clause 9 of the Bill amends section 10D of the Promulgation to provide a penalty provision for persons who refuse to submit to the taking of any method of identification authorised to be taken under section 10D(1).
- 2.11 Clause 10 of the Bill amends the Promulgation by inserting 3 new sections that deal with interception warrants to help strengthen the investigative powers of FICAC.
- 2.12 Clause 11 of the Bill amends section 11 of the Promulgation to allow the Commissioner to modify the standing orders concerning the provisions of section 8.
- 2.13 Clause 12 of the Bill amends section 12 of the Promulgation by deleting section 12(*b*) and substituting it with a new provision to enable the Commissioner to investigate the suspected or alleged occurrence of an offence to which the Promulgation applies.

- 2.14 Clause 13 of the Bill amends the Promulgation by deleting section 12A and substituting a new provision to clarify the Commissioner’s powers dealing with investigating and prosecuting offences specified in section 2A.
- 2.15 Clause 14 of the Bill amends section 12B of the Promulgation by inserting a new subsection to allow any officer authorised by the Commissioner to make a complaint or charge against anyone before any Magistrate.
- 2.16 Clause 15 of the Bill amends section 13 of the Promulgation to empower the Commissioner and his or her officers to arrest without a warrant and to empower the Commissioner to prohibit any person under investigation by FICAC from leaving Fiji. It also inserts new provisions to help safeguard the confidentiality of information circulated within FICAC.
- 2.17 Clause 16 of the Bill amends section 16 of the Promulgation for the purpose of restricting the Auditor-General’s freedom to view sensitive and confidential information in FICAC. The proposed clause confines the Auditor-General’s access to only financial and expenditure accounts maintained by FICAC’s finance department.
- 2.18 Clause 17 of the Bill amends section 17 of the Promulgation to ensure that an annual report is submitted to the President and the Minister responsible for anti-corruption at the end of each financial year within a 3-month timeframe. The amendment also includes a provision to ensure that the annual report is presented in Parliament by the Minister.
- 2.19 Clause 18 of the Bill amends section 17A of the Promulgation to remove the facilitation of financial requests to former officers with regard to welfare funds. It provides a tailor made provision based on FICAC’s current economic status.
- 2.20 Clause 19 of the Bill consequentially amends the Proceeds of Crime Act 1997 to give the Commissioner powers equivalent to that of the Director of Public Prosecutions within that Act. It also repeals section 3 of the Fiji Independent Commission Against Corruption (Amendment) Promulgation 2008.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 This Act comes under the Minister responsible for anti-corruption.

A.SAYED-KHAIYUM
Attorney-General