

BILL NO. 18 OF 2016

A BILL

FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A COMMITTEE TO EVALUATE THE NEED FOR PROFESSIONALS IN FIJI AND TO PROVIDE FOR SPECIAL REGISTRATION OF THE PROFESSIONALS 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 Registration of Skilled Professionals Act 2016.
- (2) This Act comes into force on the date or dates appointed by the Minister by notice in the Gazette.

Interpretation

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

“applicant” means an individual who makes a written application to the Committee under section 9(1);

“Committee” means the committee established under section 4;

“Prime Minister” means the head of the Government of the Republic of Fiji;

“professional body” means an association or body within a profession, whether or not established by a written law, which is responsible for the registration or licensing of individuals in a profession in Fiji or both, as the case may be; and

“skilled professional” means an individual—

- (a) who is required to have a work permit in order to work in Fiji;
- (b) who is in a profession prescribed by regulations;
- (c) whose experience or qualifications are recognised and accepted by the Committee; and
- (d) who is a fit and proper person.

Objectives

3. The objectives of this Act are to—

- (a) establish a committee to evaluate the need for skilled professionals in Fiji; and
- (b) provide a mechanism to expedite the registration of skilled professionals in Fiji.

PART 2—SKILLED PROFESSIONALS EVALUATION COMMITTEE

Establishment of the Skilled Professionals Evaluation Committee

4.—(1) This section establishes the Skilled Professionals Evaluation Committee.

(2) The Committee is to be constituted by the—

- (a) permanent secretary responsible for industry and trade, who is to be the chairperson;
- (b) permanent secretary responsible for civil service;
- (c) permanent secretary responsible for employment;
- (d) permanent secretary responsible for finance; and
- (e) Solicitor-General.

Powers of the Committee

5. The Committee has all the powers necessary to enable it to perform its functions, including the following—

- (a) issue directives to enable skilled professionals to enter, reside and work in Fiji;
- (b) promote Fiji as a destination for skilled professionals;
- (c) invite any person to provide advice to the Committee; and
- (d) do all things necessary to perform the functions conferred upon it by this Act or as prescribed by regulations.

Functions of the Committee

6. The functions of the Committee are to—

- (a) identify the need for skilled professionals in specialised fields in Fiji;
- (b) evaluate the applications of skilled professionals seeking employment in Fiji; and
- (c) issue directives regarding the employment of skilled professionals in Fiji.

Meetings and proceedings of the Committee

7.—(1) At all meetings of the Committee, 3 members form a quorum.

(2) The chairperson must preside at all meetings of the Committee, and in the absence of the chairperson, the members present must elect one of the members to preside.

(3) All meetings of the Committee must be held at such times and places as the chairperson may determine.

(4) All questions arising at any meeting must be decided by a majority of votes of the members present at the meeting.

(5) At a meeting of the Committee, the chairperson and all of the members present have the right to vote, and in the case of equality of votes, the chairperson, or in the absence of the chairperson the member presiding, has a casting vote.

(6) The validity of any proceedings of the Committee must not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

(7) Subject to the provisions of this Act, the Committee may regulate its own proceedings.

Disclosure of interests

8.—(1) If any member of the Committee is present at a meeting and has a direct or indirect personal, pecuniary or other interest in the matter being discussed or considered, the member must immediately disclose that interest and must not, unless the Committee determines otherwise, take part in the discussion or consideration of the matter.

(2) The disclosure must be recorded in the minutes of the meeting and unless the Committee so determines, the member must not—

- (a) be present during any deliberation of the Committee in relation to the matter; or
- (b) vote on any matter before the Committee in relation to the matter.

PART 3—SPECIAL REGISTRATION

Application for special registration

9.—(1) Notwithstanding any other written law, any individual may apply in writing to the Committee for—

- (a) a permit to enter, reside and work, reside and work or work in Fiji; and

(b) registration or licensing or both, as the case may be, with the relevant professional body, if applicable.

(2) The application under subsection (1) must be accompanied by the prescribed fee, if any.

(3) The Committee must, upon receipt of an application under subsection (1) and the prescribed fee referred to in subsection (2), within 28 days—

(a) assess the application, including any supporting documentation, and determine whether the individual is a skilled professional;

(b) determine whether it is in the public interest for the applicant to be employed in Fiji as a skilled professional; and

(c) approve or reject the application.

(4) The Committee may require an applicant to provide such additional information or documentation related to the applicant's application as the Committee considers necessary.

Effect of special registration

10.—(1) If the Committee approves an application under section 9(3), the Committee must issue a written directive to—

(a) the Director of Immigration to issue to the applicant, within 2 days, a permit to enter, reside and work, reside and work or work in Fiji; and

(b) the relevant professional body, if any, to issue, upon payment of the relevant fee by the applicant, a certificate of registration or licence or both, as the case may be,

subject to terms and conditions as the Committee considers necessary.

(2) The Director of Immigration and the relevant professional body, if any, must comply with the written directive issued under subsection (1) and section 15(2).

(3) Notwithstanding any limitation of liability in any written law or the constituting document of the relevant professional body, if the Director of Immigration or the relevant professional body, if any, contravenes subsection (2), the Director of Immigration and the members of the governing body of the relevant professional body, if any, are severally liable upon conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years, or to both.

(4) If an applicant is issued with a permit under subsection (1)(a) and he or she is duly registered under subsection (1)(b), he or she is subject to, and must comply with, such disciplinary rules, guidelines and procedures as may be prescribed by written law for the profession or as may be issued by the relevant professional body, if any.

(5) If the Committee rejects an application under section 9(3), the Committee must inform the applicant of the decision, including the reasons for the decision, in writing.

PART 4— APPEAL

Right of appeal

11. An applicant whose application has been rejected by the Committee under section 9(3) may appeal, subject to the provisions of this Act, to the Prime Minister against the decision of the Committee.

Lodgement of appeal

12.—(1) Any appeal made under this Act must be made within 20 working days of notification of the decision to the applicant except where the Prime Minister may, for good cause, extend the period of 20 working days.

(2) An appeal by an applicant under this Act must—

- (a) be in writing;
- (b) clearly and concisely set out the grounds for the appeal;
- (c) be accompanied by the prescribed fee, if any; and
- (d) be sent to the Prime Minister.

Prime Minister to inquire

13. The Prime Minister must, upon receiving an appeal under section 12, refer a copy of it to the Committee within 5 working days and request a written statement from the Committee for the decision appealed against.

Committee to respond

14. The Committee must, within 10 working days of receiving a copy of an appeal under section 13, provide to the Prime Minister a written statement setting out the reasons for the decision appealed against.

Decision of the Prime Minister

15.—(1) The Prime Minister must, within 10 working days of receipt of the Committee's written statement under section 14, either—

- (a) affirm the Committee's decision;
- (b) vary the Committee's decision; or
- (c) set aside the Committee's decision and make a new decision in its place.

(2) The Prime Minister must, as soon as practicable after an appeal has been determined, forward the decision in writing to the applicant, and if applicable, issue a written directive to—

- (a) the Director of Immigration to issue to the applicant, within 2 days, a permit to enter, reside and work, reside and work or work in Fiji; and
- (b) the relevant professional body to issue, upon payment of the relevant fee by the applicant, a certificate of registration or licence or both, as the case may be,

subject to terms and conditions as the Prime Minister considers necessary.

(6) The Prime Minister may, when considering an appeal, obtain relevant information from any person.

(7) The decision of the Prime Minister on an appeal made under this Act is final and conclusive, and not subject to any appeal.

PART 5—MISCELLANEOUS

Act to prevail

16. This Act has effect notwithstanding any provision of any other written law, and accordingly to the extent that there is any inconsistency between this Act and any other written law, this Act prevails.

Regulations

17. The Prime 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.

Office of the Attorney-General
Suvavou House
Suva

February 2016

REGISTRATION OF SKILLED PROFESSIONALS 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 In Fiji today, most of the professions and professionals are regulated by statute. For instance, doctors and dentists are regulated by the Medical and Dental Practitioner Decree 2010, optometrists and dispensing opticians are regulated by the Optometrist and Dispensing Optician Decree 2012, nurses and midwives are regulated by the Nursing Decree 2011, allied health practitioners are regulated by the Allied Health Practitioners Decree 2011, accountants are regulated by the Fiji Institute of Accountants Act (Cap. 259) and lawyers are regulated by the Legal Practitioners Decree 2009, to name a few.
- 1.2 These statutes have established councils, boards and associations for the registration or licensing of professionals. Given that a professional body would mostly consist of professionals within that same profession, the question of impartiality usually arises, particularly with the registration or licensing of foreign professionals in Fiji.
- 1.3 With the shortage of professionals in the country and also to prevent anti-competitive measures within a profession, it is imperative that an independent and impartial committee be established to evaluate the need for foreign professionals in Fiji and to assess the applications of foreign professionals to practise in Fiji. If the committee determines that there is indeed a need for such foreign professionals, these professionals would be issued with a work permit and with certificates of registration or licences or both, as the case may be.

2.0 FEATURES OF THE BILL

- 2.1 Part 1 of the Bill provides the preliminary provisions. These provisions outline the short title and commencement of the new Act, the interpretation of terms and the objectives of the Bill.

- 2.2 Part 2 of the Bill establishes the Skilled Professionals Evaluation Committee (**‘Committee’**) which will consist of certain permanent secretaries. This part also provides for the powers and functions of the Committee, and provisions on the meetings and proceedings of the Committee.
- 2.3 Part 3 of the Bill provides the process for applying for special registration. Under this part, a foreign professional can apply, with the prescribed fee, to the Committee for special registration. The Committee will—
- (a) assess the application, including any supporting documentation, and determine whether the individual is a skilled professional;
 - (b) determine whether it is in the public interest for the professional to be employed in Fiji as a skilled professional; and
 - (c) either approve or reject the application.
- 2.4 If the Committee approves an application, the Committee will issue a written directive to the Director of Immigration to issue, within 2 days to the foreign professional, a permit to enter, reside and work, reside and work or work in Fiji. The Committee will also issue a written directive to the relevant professional body (if any) to issue, upon payment of the relevant fee by the foreign professional, a certificate of registration or licence or both, as the case may be, subject to terms and conditions as the Committee considers necessary.
- 2.5 The Director of Immigration and the relevant professional body must comply with the written directives of the Committee.
- 2.6 Part 4 of the Bill provides for an appeal process to the Prime Minister.
- 2.7 Part 5 of the Bill provides the miscellaneous provisions. The Prime Minister is empowered to make regulations, and where there is any inconsistency between the new Act and any other written law, the new Act will prevail.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new Act comes under the responsibility of the Prime Minister.

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Attorney-General