

# BILL NO. 26 OF 2016

## A BILL

FOR AN ACT TO ESTABLISH LIABILITY FOR THE PROVISION OF FALSE INFORMATION TO ANY OFFICER, AGENT OR REPRESENTATIVE OF THE GOVERNMENT OR AN ENTITY

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 False Information Act 2016.
- (2) This Act comes into force on a date or dates appointed by the Attorney-General by notice in the Gazette.

#### *Interpretation*

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

“benefit” means—

- (a) any advantage, whether pecuniary or otherwise; or
- (b) any claim or entitlement,

in relation to—

(i) any programme, benefit scheme or Government policy initiative where a person receives a direct or indirect advantage; or

(ii) any programme or benefit scheme provided by an entity;

“entity” means an organisation that receives funding from the Government and which the Attorney-General prescribes by notice in the Gazette;

“false information” means information which is false, incorrect, untrue or misleading in whole or part, substance or form;

“false representation” means the provision of false information to any officer, agent or representative of the Government or an entity in any manner including—

(a) a letter, by any form of delivery;

(b) a form;

(c) an application;

(d) a claim;

(e) a statement, whether in writing or otherwise;

(f) a document of any kind;

(g) e-mail correspondence; or

(h) communication in person, by phone or any electronic means; and

“knowingly” has the meaning provided in section 7.

## PART 2—OFFENCES

### *False representation*

**3.—**(1) A person must not knowingly make a false representation to any officer, agent or representative of the Government or an entity.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years, or to both.

### *False representation in order to obtain a benefit*

**4.—**(1) A person must not knowingly make a false representation to any officer, agent or representative of the Government or an entity for the purpose of obtaining a benefit.

(2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 10 years, or to both.

*Purpose*

**5.—(1)** A person must not use any benefit received from the Government or an entity for a purpose other than for which it was granted.

(2) A person who receives any benefit from the Government or an entity must comply with any condition which the Government or entity may determine.

(3) Any person who contravenes this section commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 10 years, or to both.

*Change of circumstances*

**6.—(1)** If the circumstances under which a representation for a benefit was made are subsequently changed in any material way, the recipient of such benefit must—

(a) notify the Government or entity; and

(b) return the unused benefit received to the Government or entity in full,

within 28 days from the date the circumstances changed.

(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 10 years, or to both.

*Meaning of “knowingly”*

**7.** In this Act, a person “knowingly” performs an act if the person—

(a) is aware that the information the person is providing is false information;

(b) is aware that the information the person is providing is likely to be false information and is reckless in that regard; or

(c) provides any information and is reckless as to whether that information is false information.

*Attempts etc*

**8.** The provisions of Part 7 of the Crimes Decree 2009 apply to offences under this Act.

*Absolute liability*

**9.** Absolute liability applies to the offences under this Act in accordance with section 25 of the Crimes Decree 2009.

**PART 3—RECOVERY**

*Recovery*

**10.—(1)** If a person is convicted of an offence under this Act, a court may, in addition to the penalty to be imposed, order that the—

(a) person return any benefit or pay the value of any benefit received;

(b) person return the remainder of any benefit received and pay the value of any unreturned amount;

- (c) property which has been obtained through the benefit received be confiscated and forfeited,

to the Government or entity.

(2) An order under subsection (1) may make provision for the possession of property to which the order applies and for the disposal of such property by or on behalf of the Government or entity.

(3) An application for an order under subsection (1) must be made by the Attorney-General within 28 days of the date of the conviction.

(4) Notwithstanding the provisions of this section, nothing in this Act prevents the Director of Public Prosecutions from making any application under the Proceeds of Crime Act 1997.

*Recovery from third party*

**11.—**(1) An order made under section 10(1) must not be made in respect of property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and has had an opportunity to justify, to the satisfaction of the court, why such an order should not be made.

(2) A person given notice under subsection (1) who seeks to prevent the making of an order under section 10(1) must satisfy the court that the person—

- (a) acted in good faith in relation to the circumstances in which the property came to be held by such person; and
- (b) acted in relation to the property in such a way, that an order in the circumstances would be unjust.

**PART 4—MISCELLANEOUS**

*Protection for informers*

**12.—**(1) Except as provided in subsection (2)—

- (a) no information for an offence under this Act shall be admitted in evidence in any civil or criminal proceeding; and
- (b) no witness in any civil or criminal proceeding shall be obliged—
  - (i) to disclose the name or address of any informer who has given information to the Director of Public Prosecutions with respect to an offence under this Act or of any person who has assisted the Director of Public Prosecutions in any way with respect to such an offence; or
  - (ii) to answer any question if the answer would lead, or would tend to lead, to discovery of the name or address of such informer or person,

if, in either case, such informer or person is not himself or herself a witness in such proceeding, and, if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain an entry in which any such informer

or person is named or described or which might lead to his or her discovery, the court must cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(2) If in any proceeding before a court for an offence under this Act the court, after full inquiry into the case, is satisfied that an informer willfully made a material statement which he or she knew or believed to be false or did not believe to be true, or if in any other proceeding a court is of opinion that justice cannot be fully done between the parties without disclosure of the name of an informer or a person who has assisted the Director of Public Prosecutions, the court may permit inquiry and require full disclosure concerning the informer or such person.

*Regulations*

**13.** The Attorney-General 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 and generally for achieving the purposes of this Act.

April 2016

## FALSE INFORMATION 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 Fijian Government actively seeks to put into place schemes, programmes and initiatives which benefit every Fijian. There are, however, instances where persons have acquired and continue to acquire benefits under false pretences.
- 1.2 The False Information Bill 2016 stems from the need to create a separate legislation which specifically addresses and strengthens the law dealing with the provision of false information to the Government or any entity to which the Government provides funds, particularly where such information is provided for the purpose of obtaining a benefit.
- 1.3 In light of the above, the intention of the Bill is to—
- (i) strengthen and streamline the law related to the provision of false information to the Government and any entity to which the Government provides funds; and
  - (ii) provide for the recovery of property in instances where a person has been convicted of an offence under the Act.

#### **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement.
- 2.2 Clause 2 of the Bill provides a list of terms used in the Act and their definitions.
- 2.3 Clause 3 of the Bill provides for the offence of making false representations to any officer, agent or representative of the Government or any entity to which the Government provides funds and sets out a maximum fine of \$10,000 or imprisonment for 5 years or both, for committing the offence.

- 2.4 Clause 4 of the Bill provides for the offence of making false representations to obtain a benefit and sets out a fine of \$20,000 or imprisonment for 10 years or both, for committing the offence.
- 2.5 Clause 5 of the Bill prohibits the use of a benefit for purposes other than those for which it was granted. The penalty set out for contravening this offence is a fine of \$20,000 or 10 years imprisonment, or both.
- 2.6 Clause 6 of the Bill provides that if the circumstances of a person who has received a benefit are subsequently changed, such person must notify the Government or entity to which the Government provides funds and return the benefit within 28 days. The penalty set out for contravening this offence is a fine of \$20,000 or imprisonment for 10 years, or both.
- 2.7 Clause 7 of the Bill clarifies the meaning of “knowingly” as used in the Act.
- 2.8 Clause 8 of the Bill provides for attempts, complicity, incitement etc, as outlined in the Crimes Decree 2009, to apply to the offences in this Act.
- 2.9 Clause 9 of the Bill provides for absolute liability to apply to offences under the Act in accordance with section 25 of the Crimes Decree.
- 2.10 Clause 10 of the Bill provides the orders that a court may make for the recovery of property.
- 2.11 Clause 11 of the Bill provides for the recovery of property from a third party.
- 2.12 Clause 12 of the Bill provides for the protection of informers.
- 2.13 Clause 13 of the Bill provides for the Attorney-General’s powers to make regulations to give effect to the Act.

### **3.0 MINISTERIAL ASSIGNMENT**

- 3.1 This Act comes under the responsibility of the Attorney-General.

A. SAYED-KHAIYUM  
Attorney-General