

Emergency Powers Act 1998

FIJI

EMERGENCY POWERS ACT 1998

No. 28 of 1998

I assent.

[L. S.]

K.K.T. MARA
President

[20 July 1998]

AN ACT

TO EMPOWER THE PRESIDENT TO DECLARE A STATE OF EMERGENCY

ENACTED by the Parliament of Fiji-

Short title and commencement

1.-(1) This Act may be cited as the Emergency Powers Act 1998.

(2) This Act comes into force on the commencement of the Constitution Amendment Act 1997.

Power of President to declare an emergency

2.-(1) The President, acting on the advice of the Cabinet, may by notice in the *Gazette* proclaim a state of emergency in the whole or any part of the Fiji Islands.

(2) The Cabinet may advise the President to proclaim a state of emergency under subsection (1) if, and only if, the Cabinet is satisfied-

(a) that a public emergency has arisen as a result of the imminence of invasion or of armed conflict between the Fiji Islands and a foreign State;

(b) that a public emergency has arisen as a result of a natural disaster in respect of which the provisions of the Natural Disaster Management Act 1998 are inadequate;

(c) that action has been taken or is immediately threatened by any person or group of persons of such a nature and on such a scale as to be likely-

(i) to endanger the public safety;

(ii) to deprive the community or a substantial portion of it of essential supplies or services; or

(iii) to harm the national economy;

(d) that for some other reason a grave emergency exists whereby the security or economic life of the state is threatened.

(3) When advising the President under subsection (2) the Cabinet must indicate which of the circumstances listed in that subsection justifies the proclaiming of a state of emergency and whether the exigencies of the situation are such that they cannot effectively be dealt with without derogating from the Bill of Rights in the Constitution.

(4) A proclamation under subsection (1) must describe the nature of the emergency and indicate whether the Cabinet has advised that measures may be needed which derogate from the Bill of Rights in the Constitution.

Publication of proclamation

3.-(1) Without prejudice to the requirements of section 187(3) of the Constitution, a proclamation by the President under section 2(1) must be published in the *Gazette* as soon as practicable and, subject to subsection (2), comes into force on such publication.

(2) If for any reason publication of a proclamation in the *Gazette* is not practicable the proclamation comes into force when made by the President.

Summoning of Parliament

4. If a state of emergency is proclaimed when Parliament is not sitting, the President must summon Parliament as soon as possible after making the proclamation, and references in section 187(3) of the Constitution to sitting days are to be construed by reference to the day when Parliament first sits after being so summoned.

Emergency regulations

5.-(1) If the President has proclaimed a state of emergency under subsection 2(1), the President may, on the advice of the Cabinet, make regulations relating to the state of emergency.

(2) Regulations under subsection (1) may provide for, but are not limited to-

(a) the evacuation of people from their homes, in order to facilitate the operations of the police or of military personnel;

(b) the entry and search of any premises;

(c) the temporary acquisition or control of any land, building, undertaking, vehicle, ship or aircraft;

(d) the harvesting of crops, exploitation of minerals or any other economic activity;

(e) the maintenance of the means of transportation by land, sea or air and the control of the transport of persons and resources;

(f) control of harbours, ports and airports and the movement of ships and aircraft;

- (g) the maintenance of water and power supplies;
- (h) directing the movement of persons by land, sea or air in the interests of safety or security;
- (i) the supply and distribution of essential relief supplies, medical assistance and shelter and other resources;
- (j) prohibiting the unjustified exploitation of a state of emergency for profit;
- (k) censorship and the control and suppression of publications, writings, maps, plans, photographs, communications and means of communication;
- (l) the arrest, detention and deportation of persons;
- (m) requiring persons to do any work or render any services and providing for remuneration for such work or services;
- (n) mobilising the disciplined forces and directing their deployment;
- (o) prohibition of meetings and public gatherings;
- (p) control of firearms, explosives and ammunition.

(3) Regulations under subsection (1) may-

- (a) provide for the payment of compensation to persons who suffer financial loss as a result of the exercise of the powers conferred by the regulations;
- (b) provide for the arrest, trial and punishment of persons who contravene the regulations and prescribe penalties;
- (c) empower specified persons to make orders and rules and to issue notices, licences, permits, certificates or other documents for the purpose of the regulations;
- (d) prescribe fees for the issue of licences, permits, certificates and other documents;
- (e) contain such incidental and supplementary provisions as appear to the President, on the advice of the Cabinet, to be necessary or expedient for the purposes of the regulations.

(4) Subject to section 187(3) of the Constitution, regulations under subsection (1) may amend any enactment, suspend the operation of any enactment and apply any enactment with or without modification.

(5) A regulation under subsection (1) and any order or rule made under a regulation has effect despite anything inconsistent with it in any enactment, and any provision of an enactment which is inconsistent with such a regulation, order or rule is suspended or modified in its operation to the extent of the inconsistency for as long as the regulation, order or rule remains in force.

(6) In this section, "enactment" means any written law, but includes the Constitution only so far as section 187(3) of the Constitution permits.

(7) Regulations made under subsection (1) are subject to section 189(2) and (3) of the Constitution.

Natural disaster

6. If a state of emergency is proclaimed under section 2(1) as a result of an actual or threatened natural disaster, and the proclamation so declares, the proclamation of a state of emergency is to be treated as also being a declaration of a natural disaster under section 17(1)

of the Natural Disaster Management Act 1998 for the respective part of the Fiji Islands, and the provisions of that Act will apply accordingly in relation to that part.

Passed by the House of Representatives this tenth day of July, in the year of our Lord, One Thousand Nine Hundred and Ninety-Eight.

Passed by the Senate this sixteenth day of July, in the year of our Lord, One Thousand Nine Hundred and Ninety-Eight.
