



**REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE**  
**PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT**

Vol. 11

FRIDAY, 24th SEPTEMBER 2010

No. 110

[1651]

GOVERNMENT OF FIJI  
 (DECREE NO. 49 OF 2010)

COMMERCE COMMISSION DECREE 2010

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## COMMERCE COMMISSION DECREE 2010

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree—

## PART 1 — PRELIMINARY

*Short title and Commencement*

- 1.—(1) This Decree may be cited as the Commerce Commission Decree 2010.
- (2) This Decree shall come into force on a date appointed by the Minister through the *gazette*.

*Objectives of the Decree*

- 2.—(1) The objectives of this Decree shall be to:
- (a) promote the interests of the Consumers;
  - (b) promote effective and efficient development of industry, trade or commerce;
  - (c) promote effective competition in industry, trade or commerce; and
  - (d) ensure equitable returns for businesses with fair and reasonable prices charged to consumers.
- (2) The Commission has the following objectives in relation to regulated industries and access regimes to—
- (a) promote effective competition in the interests of consumers;
  - (b) facilitate an approximate balance between efficiency and environmental and social considerations;
  - (c) ensure non-discriminatory access to monopoly and near monopoly infrastructure or services.

*Application of the Decree*

- 3.—(1) This Decree applies to every person who does an act or makes an omission within Fiji that constitutes a contravention of this Decree provided that an act or omission conducted out of Fiji constitutes a contravention of sections 6,7,8,9,10 and 11 of this Decree.
- (2) Where acts or omissions occur that would constitute a contravention of this Decree if they occurred in Fiji and any of the acts or omissions occur in Fiji the person who does the act or makes the omission shall be taken to have committed that contravention of this Decree.
- (3) Subsections (1) and (2) shall—
- (a) not be construed as limiting any application that this Decree has apart from this section;
  - (b) be construed subject to any provisions of this Decree expressly to the contrary.

*Interpretation*

- 4.—(1) In this Decree, unless the context otherwise requires—
- “Access agreement” means an agreement under an access regime for the granting of access to infrastructure facilities, or to services provided by means of infrastructure facilities;
- “access regime” means a scheme (whether of a legislative or administrative nature, or any other nature) set up to permit third-party access to infrastructure facilities, or to a service provided by means of infrastructure facilities, that are wholly or substantially owned, controlled or operated by a single person;
- “acquire” includes—
- (a) in relation to goods - acquire by purchase or exchange or by taking on lease, on hire or on hire-purchase;
  - (b) in relation to services - accept;
- “arrive at” in relation to an understanding includes reach or enter into;
- “auction” means a sale at which prospective purchasers are invited to bid and includes a sale at which bids are suggested and the suggested amounts progressively reduced until a bid is actually made;
- “authorisation” means an authorisation granted by the Commission under Part 11;

“authority”, in relation to the State, means—

- (a) a body corporate established for a purpose of the State by or under a law of the State; or
- (b) an incorporated company in which the State, or a body corporate referred to in paragraph (a) has a controlling interest;

“Business” includes—

- (a) a business not carried on for profit;
- (b) a trade or profession or vocation, and the expression “in the course of business” shall be construed accordingly;

“charge” includes a charge for the performance of services being in the course of business, including any charge for the application of any process to goods and any rates made or levied by a council under the Local Government Act;

“Chairperson” means the Chairperson of the Commission;

“Chief Executive Officer” may also mean a Permanent Secretary of a government agency;

“Commission” means the Fiji Commerce Commission established by Section 7;

“Competition” includes competition from imported goods or services rendered by persons not resident or not carrying on business in Fiji;

“component part” includes an accessory;

“Corporation” includes a firm, partnership, enterprise, company, or association, (natural or juridical persons), or any combination thereof, irrespective of the mode of creation or control or ownership, private or State, which are engaged in trade or commerce, and includes their branches, subsidiaries, affiliates, or other entities directly or indirectly controlled by them;

“Consumer” refers to a person who in relation to a particular transaction, whether a separate contract or separate transaction within a contract acquires goods or services as a consumer and shall be presumed hereunto unless the contrary is proved;

“Court” means the High Court;

“credit” includes any form of financial accommodation;

“Deputy Chairperson” means the Deputy Chairperson of the Commission;

“determination” means an arbitration determination under section 35;

“document” means a document in any form whether signed or initialed or otherwise authenticated by its maker or not, and includes—

- (a) material on which there is writing or printing;
- (b) information recorded or stored by means of any tape-recorder, computer or other device and material subsequently derived from information so recorded or stored;
  - i. a label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
  - ii. a book, map, plan, graph or drawing; and
  - iii. a photograph, film, negative, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;
- (c) accounts, balance sheets, vouchers, records, minutes of meetings, contracts, files or other materials there is writing or printing, or on which there are marks, symbols or perforations having meaning for persons qualified to interpret them; and;
- (d) a disc, tape or any information recorded or stored by means of any computer or other device whatsoever, and any material subsequently derived from information so recorded or stored.

“employee” means any person who has entered into or works under a contract of service with an employer, whether the contract is for manual labour, clerical work or otherwise, is expressed or implied, is entered into orally or in writing, and whether it is a contract of service or apprenticeship or learnership, or a contract personally to execute any work or labour;

“employer” means any person or any firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person, and includes the Government or any local government authority;

“financial year” in relation to the Commission, means a period of 12 months commencing on 1 January;  
 “giving effect to” in relation to a provision of a contract, agreement or understanding, includes doing an act or thing in pursuance of or in accordance with or enforcing or purportedly enforcing;

“goods” include any article, product or thing which is the subject of trade and commerce and includes—

- (a) ships, aircraft and other vehicles;
- (b) animals, including fish;
- (c) minerals, trees and crops, whether on, under or attached to land or not;
- (d) gas and electricity; and
- (e) any component part of goods.

“government agency” means a government entity, within the meaning of the Public Enterprise Act 1996, that supplies services to the public or any part of the public;

“maximum price” means the maximum price for goods or services fixed under the provisions of section 44;

“member” means a member or an associate member of the Commission;

“hire-purchase agreement” means a letting of goods with an option to purchase;

“occupier” in relation to any building, stall, vehicle, aircraft, or vessel used in navigation or in relation to the use of any place for any purpose means the person for the time being in charge of the building, stall, vehicle, aircraft, or vessel, or, as the case may be, the person for the time being using that place for that purpose.

“officer” when used with reference to an organization, includes any member of the executive committee thereof and any officer of a branch thereof;

“organisation” means a trade union or other association of persons which is representative of employees or employers, as the case may be;

“practice of exclusive dealing” means the practice of exclusive dealing referred to in subsection (2), (3), (4), (5), (6), (7), (8), or, (9) of section 69;

“practice of resale price maintenance” means the practice of resale price maintenance referred to in section 70 or 70A;

“premises” includes—

- (a) a place, whether a building or in the open air where any business, industry, production or trade is carried on by a person whether by himself or through an agent, by whatever name called;
- (b) a place where any books of account or other documents pertaining to any trade or transaction are kept;
- (c) a dwelling house, if any part thereof is used for the purpose of carrying on any business, industry, production or trade;
- (d) a vehicle or vessel or any other mobile device with the help of which any trade or business is carried on;

“price” includes a charge of any description and the cost of obtaining credit as well as any price for the sale of goods, being prices in the course of business;

“provision” in relation to an understanding, means any matter forming part of the understanding;

“published” in relation to a statement includes—

- (a) inserted in a publication;
- (b) publicly exhibited in any place;
- (c) contained in a document or other thing capable of providing information that is given or sent to any person or left at his address;
- (d) broadcast by radio or television or otherwise publicly announced by any means;
- (e) reproduced electronically;

“record” includes any record of information however compiled, recorded or stored and any books, documents or writings;

“referring authority” in relation to a regulated industry, means the Minister having responsibility for that industry;

“regulated industry” means—

- (a) an industry engaged in the supply of electricity, water, sewerage, post, broadcasting, telecommunications, ports or civil aviation services; or
- (b) any other industry that is declared under Section 5 to be a regulated industry.

“related Act or Decree” means an Act or Decree or a provision of an Act or Decree—

- (a) of which the Commission is stated, in that Act or Decree, to have the administration; or
- (b) that is prescribed by regulations to be a related Act or Decree.

“rent”, in relation to the letting or continued letting by any person of any premises under any tenancy, includes—

- (a) any sum payable to that person under that tenancy, notwithstanding that such sum is designated as a payment additional to the rent; and
- (b) any goods or services to which that person is entitled under that tenancy if the value of such goods or services has been quantified in terms of money;

but shall not include any sum attributable to any rates or charges levied under the Local Government Act, Electricity Act, Water Authority Act, Sewerage Act or Drainage Act and paid or payable by that person in respect of, or in connection with, those premises;

“retail” when used in relation to any sale, means a sale by a retailer to a consumer;

“retail price” means the price paid or payable for goods sold by retail;

“retailer” means a trader who sells goods to a consumer;

“send” includes deliver;

“services” includes any rights (including rights in relation to, and interests in, real or personal property) benefits, privileges, accommodation or facilities that are, or are to be, provided, granted or conferred in trade or commerce, and without limiting the generality of the foregoing, includes the rights, benefits, privileges and facilities that are, or are to be, provided, granted or conferred under—

- (a) a contract for or in relation to—
  - i. the performance of work (including building work and work of a professional nature),
  - ii. whether with or without the supply of goods;
  - iii. contract for, or involving, the provision of gas or electricity or the provision of any other form of energy;
  - iv. the provision, or making available for use, of facilities for amusement, entertainment, recreation or instruction; or
  - v. the conferring of rights, benefits or privileges for which remuneration is payable in the form of a royalty, tribute, levy or similar exaction;
  - vi. conferring of rights under an agreement for the provision of board or lodging;
- (b) a contract of insurance;
- (c) a contract between a banker and a customer of the banker entered into in the course of the carrying on by the banker of the business of banking; or
- (d) a contract for or in relation to the lending of money, but does not include rights or benefits being the supply of goods or the performance of work under a contract of service;
- (e) any service supplied or carried on for hire or reward by any person engaged in trade or business;
- (f) any rights under an agreement for the provision of board or lodging;

“Small Claims Tribunal” means a tribunal duly constituted under the Small Claims Tribunals Decree 1991;

“supply” with its cognate expressions, includes to sell, or to agree to sell, to offer, advertise, have in possession for any such purposes, expose, transmit, convey, deliver, make or prepare for sale, or to hire or to exchange or dispose of for any consideration whatsoever, or to transmit, convey or deliver in pursuance of a sale, hiring, exchange or disposal as aforesaid;

“trade or commerce” includes any business or professional activity;

“trading coupons” includes any coupon, stamp, token, cover, package, document, or other thing issued for delivery, either directly or indirectly, to the purchaser of any goods or services which, by itself

or with any other trading coupon or trading coupons, or with any other act, or thing, and whether or not it has to be produced or surrendered to any person, entitles or purports to entitle the holder thereof to receive in respect of the purchase of such goods or services any discount or any other gift, allowance, concession, or benefit of any kind whatsoever;

“trader” means any person who in connection with any business carried on by him sells, has sold, or proposes to sell any goods, or who supplies or who carries on any service;

“unsolicited goods” means goods sent to a person without any request for the goods being made by, or by the authority of, the person;

“unsolicited services” means services supplied to a person without any request for the services being made by, or by the authority of, the person;

“understanding” means agreement, contract, whether verbal or written.

“wholesale” means the sale or supply of goods to a person for the purpose of resale or for use by such person in his trade or business;

“wholesale price” means the price paid or payable for goods sold by wholesale.

(2) For the purposes of the definition of “access regime” in subsection (1) a service includes—

(a) the use of an infrastructure facility (such as a road or railway);

(b) the handling or transporting of things (such as goods or people); and

(c) a communications service or similar service; but does not include—

(d) the supply of goods; or

(e) the use of intellectual property or a production process, except to the extent that supply or use is an integral but subsidiary part of the service.

(3) If two or more persons jointly own, control or operate infrastructure facilities—

(a) a reference in this Act to the ownership, control or operation of infrastructure facilities includes a reference to the jointly owned, controlled or operated infrastructure facilities; and

(b) a reference in this Act to a person who owns controls or operates infrastructure facilities includes a reference to each joint owner, controller or operator;

(4) If two or more persons jointly provide services—

(a) a reference in this Act to the provision of services includes a reference to the jointly provided services; and

(b) a reference in this Act to a person who provides services includes a reference to each joint provider.

(5) In Parts 7, 8, 9, 10, and 11 of the Decree—

(a) a reference to engaging in conduct shall be read as a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;

(b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), shall be read as a reference to the doing of or the refusing to do any act, including the making of, or the giving effect to a provision of, a contract or arrangement, the arriving at, or the giving effect to a provision of, an understanding or the requiring of the giving of, or the giving of, a covenant;

(c) a reference to refusing to do an act includes a reference to—

(i) refraining (otherwise than inadvertently) from doing that act; or

(ii) making it known that that act will not be done; and

(d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

(6) Where a provision of Parts 7,8,9,10 and 11 of this Decree is expressed to render a provision of a contract, or to render a covenant, unenforceable if the provision of the contract or the covenant has or is likely to have a

particular effect, that provision of Parts 7,8,9,10 and 11 of this Decree applies in relation to the provision of the contract or the covenant at any time when the provision of the contract or the covenant has or is likely to have that effect notwithstanding that—

- (a) at an earlier time the provision of the contract or the covenant did not have that effect or was not regarded as likely to have that effect; or
- (b) the provision of the contract or the covenant will not or may not have that effect at a later time.

(7) In this Decree—

- (a) a reference to the acquisition of shares in the capital of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such shares; and
- (b) a reference to the acquisition of assets of a body corporate shall be construed as a reference to an acquisition, whether alone or jointly with another person, of any legal or equitable interest in such assets but does not include a reference to an acquisition by way of charge only or an acquisition in the ordinary course of business.

(8)—(1) For the purpose of this Decree, a body corporate shall, subject to sub-section (3), be deemed to be a subsidiary of another body corporate if—

- (a) that other body corporate—
  - (i) controls the composition of the board of directors of the first-mentioned body corporate;
  - (ii) is in a position to cast, or control the casting of, more than one-half of: the maximum number of votes that might be cast at a general meeting of the first-mentioned body corporate; or
  - (iii) holds more than one-half of the allotted share capital of the first-mentioned body corporate (excluding any part of that allotted share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) the first-mentioned body corporate is a subsidiary of any body corporate that is that other body corporate's subsidiary (including any body corporate that is that other body corporate's subsidiary by another application of other applications of this paragraph).

(2) For the purposes of sub-section (1), the composition of a body corporate's board of directors shall be deemed to be controlled by another body corporate if that other body corporate, by the exercise of some power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other body corporate shall be deemed to have power to make such an appointment if—

- (a) a person cannot be appointed as a director without the exercise in his favour by that other body corporate of such a power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other body corporate.

(3) In determining whether a body corporate is a subsidiary of another body corporate—

- (a) any shares held or power exercisable by that other body corporate in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as a nominee for that other body corporate (except where that other body corporate is concerned only in a fiduciary capacity); or
  - (ii) by, or by a nominee for, a subsidiary of that other body corporate, not being a subsidiary that is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other body corporate;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned body corporate, or of a trust deed for securing any allotment of such debentures, shall be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other body corporate or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other body corporate or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Decree to the holding company of a body corporate shall be read as a reference to a body corporate of which that other body corporate is a subsidiary.

(5) Where a body corporate—

- (a) is the holding company of another body corporate;
- (b) is a subsidiary of another body corporate; or
- (c) is a subsidiary of the holding company of another body corporate, that first-mentioned body corporate and that other body corporate shall, for the purposes of this Decree, be deemed to be related to each other.

(6) In proceedings under this Decree, it shall be presumed, unless the contrary is established, that bodies corporate are not, or were not at a particular time, related to each other.

(9) In this Decree, unless the contrary intention appears—

- (a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods in pursuance, of a supply of the goods;
- (b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services;
- (c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services, or both;
- (d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (e) a reference to the re-supply of goods acquired from a person includes a reference to—
  - (i) a supply of the goods to another person in an altered form or condition; and
  - (ii) a supply to another person of goods in which the first-mentioned goods have been incorporated.

(10)—(1) A provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be taken to be an exclusionary provision for the purposes of this Decree if—

- (a) the contract or arrangement was made, or the understanding was arrived at, or the proposed contract or arrangement is to be made, or the proposed understanding is to be arrived at, between person any two or more of whom are competitive with each other; and
- (b) the provision has the purpose of preventing, restricting or limiting—
  - (i) the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons; or
  - (ii) the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons in particular circumstances or on particular.

by all or any of the parties to the contract arrangement or understanding or of the proposed parties to the proposed contract, arrangement or understanding or, if a party or proposed party is a body corporate, by a body corporate that is related to the body corporate.

(2) A person shall be deemed to be competitive with another person for the purposes of sub-section (1) if, and only if, the first-mentioned person or a body corporate that is related to that person is, or is likely to be, or, but for the provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with the other person, or with a body corporate that is related to the other person, in relation to the supply or acquisition of all or any of the goods or services to which the relevant provision of the contract, arrangement or understanding or of the proposed contract, arrangement or understanding relates.

(11) For the purposes of this Decree, unless the contrary intention appears, "market" means a market in Fiji and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services.

(12) For the purposes of Parts 6, 7, 8 and 11 of this Decree—

- a. a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, or a covenant or of a proposed covenant, shall be deemed to have had, or to have, a particular purpose if—
  - (i) the provision was included in the contract, arrangement or understanding or is to be included in the proposed contract, arrangement or understanding, or the covenant was required to be given or the proposed covenant is to be required to be given, as the case may be for that purpose or for purposes that included or include that purpose; and
  - (ii) that purpose was or is a substantial purpose; and
- b. a person shall be deemed to have engaged or to engage in conduct for a particular purpose or a particular reason if—
  - (i) the person engaged or engages in the conduct for purposes that included or include that purpose or for reasons that, included or include that reason, as the case may be; and
  - (ii) that purpose or reason was or is a substantial purpose or reason.

(13) In Parts 6, 7, 8 and 11 of this Decree—

- (a) a reference to a contract shall be construed as including a reference to a lease of, or a license in respect of, land or a building or part of a building and shall be so construed notwithstanding the express references in this Decree to such leases or licences;
- (b) a reference to making or entering into a contract, in relation to such a lease or license, shall be read as a reference to granting or taking the lease or license; and
- (c) a reference to a party to a contract, in relation to such a lease or license, shall be read as including a reference to any person bound by, or entitled to the benefit of, any provision contained in the lease or license.

(14) In Parts 6, 7, 8 and 11 of this Decree a reference to a joint venture is a reference to an activity in trade or commerce—

- (a) carried on jointly by 2 or more persons, whether or not in partnership; or
- (b) carried on by a body corporate formed by two or more persons for the purpose of enabling those persons to carry on that activity jointly by means of their joint control, or by means of their ownership of shares in the capital, of that body corporate; and

(15) Loss or damage to include injury in this Decree—

- (a) a reference to loss or damage, other than a reference to the amount of any loss or damage, includes a reference to injury; and
- (b) a reference to the amount of any loss or damage includes a reference to damages in respect of an injury.

(16) If the making of a contract after the commencement of this section contravenes this Decree by reason of the inclusion of a particular provision in the contract, then, subject to any order made under section 148 nothing in this Decree affects the validity or enforceability of the contract otherwise than in relation to that provision in so far as that provision is severable.

(17) This Decree does not affect the operation of—

- (a) the law relating to restraint of trade in so far as that law is capable of operating concurrently with this Decree;
- (b) the law relating to breaches of confidence, but nothing in the law referred to in paragraph (a) or (b) affects the interpretation of this Decree.

*Regulated Industries – Declaration*

5.—(1) Any Minister may, by instrument, declares an industry to be a regulated industry for the purposes of this Decree.

- (2) A Minister may make a declaration under subsection (1) if he or she is satisfied that—
- (a) the industry infrastructure facilities are in whole or in part owned, controlled or operated by the State or by a government agency;
  - (b) the industry involves the provision of services in whole or in part by or on behalf of the State or a government agency;
  - (c) the industry infrastructure facilities are wholly or substantially owned, controlled or operated by a single person; or
  - (d) the industry involves the provision of services wholly or substantially by or on behalf of a single person.
- (3) A declaration under subsection (1) must be made by order published in the *Gazette*.

*Application of this Decree to the State*

6.—(1) Subject to this section and Parts 5B and 5C of this Decree where the provisions expressly provides for exemption of the application of this Decree, this Decree binds the State insofar as the State carries on a business, either directly or by an authority of the State.

- (2) Nothing in this Decree renders the State liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (1) and (2) does not apply to an authority of the State.
- (4) For the purposes of subsection (1), the following do not amount to carrying on a business—
- (a) imposing or collecting—
    - (i) taxes;
    - (ii) levies; or
    - (iii) fees for licences; or
  - (b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions).
- (5) Subsection (4) does not limit the things that do not amount to carrying on a business for the purposes of section 6.

*Extension of the application of Part 6 of the Decree*

6A.—(1) Part 6 extends to the engaging in conduct outside Fiji by bodies corporate incorporated or carrying on business within Fiji or by Fiji citizens or persons ordinarily resident within Fiji.

(2) These sections extend to the engaging in conduct outside Fiji by any persons in relation to the supply by those persons of goods or services to persons within Fiji.

(3) Where a claim under Section 149 is made in a proceeding, a person is not entitled to rely at a hearing in respect of that proceeding on conduct to which a provision of this Decree extends by virtue of sub-section (1) or (2) of this section except with the consent in writing of the Minister.

(4) No person is entitled to make an application to the Court for an order under section 149 in a proceeding in respect of conduct to which a provision of this Decree extends by virtue of sub-section (1) or (2) of this section except with the consent in writing of the Minister.

(5) The Minister shall give a consent under sub-section (3) or (4) in respect of a proceeding unless, in the opinion of the Minister it is not in the national interest that the consent be given.

**PART 2 — ESTABLISHMENT OF THE COMMERCE COMMISSION***Commission*

7.—(1) This Section establishes the Fiji Commerce Commission.

(2). Subject to Section 8 (1), members of the Commission appointed prior to the commencement of this Decree shall continue as members of the Commission, as if appointed under this Decree.

## (3). The Commission—

- (a) is a body corporate with perpetual succession;
- (b) must have a common seal;
- (c) may acquire, hold and dispose of real property; and
- (d) may sue and be sued in its corporate name.

(4) The common seal of the Commission is to be kept in such custody as the Commission directs and must not be used except as authorized by the Commission.

(5) All courts, judges and persons acting judicially must take judicial notice of the common seal of the Commission affixed to a document and must presume that it was duly affixed.

*Membership of the Commission*

8.—(1) The Commission consists of not less than 4 or more than 6 members.

(2) The members are appointed by the Minister.

(3) One member is to be appointed as Chairperson and another is to be appointed as Deputy Chairperson.

(4) A person must not be appointed as a member unless, in the opinion of the Minister, he or she is qualified for appointment, having regard to the functions of the Commission, by virtue of his or her knowledge of or experience in industry, commerce, economics, law, accountancy, public administration, and governance or consumer affairs.

(5) A member holds office for such term, not exceeding 5 years, as the Minister specifies in the member's instrument of appointment but is eligible for reappointment for a maximum of 3 years.

(6) A member is entitled to be paid such remuneration by way of fees, salary or allowances as is fixed from time to time by the Higher Salaries Commission.

(7) Members are to be paid such travelling allowances and expenses as the Minister approves from time to time.

(8) An act or decision of the Commission is not invalid merely because of a defect or irregularity, in, or in connection with, the appointment of a member or a vacancy in the office of a member.

(9) Schedule 1 has effect with respect to the members of the Commission.

*Associate members*

9.—(1) The Minister may from time to time appoint a person to be an associate member of the Commission.

(2) An associate member is to be appointed—

- (a) only in relation to a matter or class of matters specified in the member's instrument of appointment; and
- (b) for such period, not exceeding 3 years, as is specified in the instrument.

(3) Subject to subsection (4), an associate member is taken to be a member for the purposes of the performance by the Commission of a function of the Commission and, unless the contrary intention appears, a reference in this Decree to a member includes a reference to an associate member.

(4) An associate member may attend and vote only at a meeting of the Commission relating to the matter or class of matters specified in the member's instrument of appointment (including a meeting at which matters incidental to that matter or class of matters are considered).

*Vacancy of member*

10.—(1) The office of a member becomes vacant immediately if the member—

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- (c) resigns the office by instrument in writing addressed to the Minister;
- (d) is removed from office by the Minister under this subsection;
- (e) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or 28 days in any period of 12 months;

- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (g) becomes mentally incapacitated; or
- (h) is convicted in the Fiji Islands or elsewhere of an offence which is punishable in the Fiji islands by imprisonment for 12 months or more.

(2) The Minister may remove a member from office for misbehaviour, incompetence, incapacity or failure to comply with this section.

*Disclosure of interest*

11.—(1) If a member takes part, or is to take part, in the consideration or determination of a matter or arbitration of a dispute in which the member has a direct or indirect pecuniary interest, the member—

- (a) must disclose the interest in writing to the Minister; and
- (b) must not continue to take part, or take part, in the consideration or determination of the matter.

*Deputy Chairperson and Acting Chairperson*

12.—(1) The Deputy Chairperson may act as Chairperson—

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office;
- (b) during any period, or during all periods, when the chairperson is for any reason unable to perform the functions of the office; or

(2). If the Chairperson considers it not proper or desirable that he or she adjudicate personally on a particular matter.

(3) If subparagraph (1) applies but the Deputy Chairperson is incapable of acting as Chairperson because—

- (a) a vacancy exists in the office of the Deputy Chairperson;
- (b) the Deputy Chairperson is for any reason unable to perform the functions of Chairperson; or
- (c) the Deputy Chairperson considers it not proper or desirable that he or she adjudicate personally on a particular matter, the members may, by resolution, appoint one of their members to act as Chairperson for the period or purpose stated in the resolution.

(4) Anything done by a person purporting to act pursuant to subparagraph (1) or (2) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

*Procedure at meetings*

13. Schedule 2 has effect as to the procedure at meetings.

*Commission not subject to Ministerial control*

14. Except as provided by this Decree, the Commission is not subject to the control or direction of the Minister or any other referring authority in the performance of its functions.

*Functions and powers*

15.—(1) The Commission has the following functions—

- (a) the provision of advice to the Minister about proposed access agreements;
- (b) the maintenance of a register of access agreements;
- (c) the facilitation of negotiations about access to infrastructure facilities or services under access regimes;
- (d) the arbitration of disputes about access to infrastructure facilities or services under access regimes;
- (e) if, under a law relating to a regulated industry, the referring authority delegates to the Commission the power to impose, modify or revoke conditions in respect of licences granted under that law - the imposition, modification and revocation of those conditions in accordance with the relevant delegation;
- (f) to promote the interests of consumers and persons negotiating or considering the acquisition of goods or services as consumers and to assist them to a greater awareness in relation to their assessment and use of goods or services;

- (g) to collect, examine and disseminate information in respect of matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers;
- (h) to receive and consider complaints concerning matters affecting or likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and, if the Commission is of the opinion that such action is warranted, to investigate the complaints and take such action on behalf of the consumers or persons negotiating including legal proceedings in respect thereof as seems proper to the Commission;
- (i) to investigate fraudulent or deceptive practices in relation to matters that affect or are likely to affect the interests of consumers or persons negotiating or considering the acquisition of goods or services as consumers and to take such action in respect of the practices as seems proper to the Commission;
- (j) to advise and assist persons who seek from the Commission information or guidance on matters affecting or likely to affect their interests as consumers or as persons negotiating or considering the acquisition of goods or services as consumers;
- (k) to encourage and undertake the dissemination of information concerning consumer affairs to producers, manufacturers and suppliers of goods or services;
- (l) to keep under review commercial activities carried on and to collect information regarding such activities and the persons by whom they are carried on with a view to becoming aware of, and ascertaining the circumstances relating to;
- (m) to fix and declare maximum prices and where need be, quantities, for goods and services and rents;
- (n) The Commission has such other functions as are conferred on it by or under this Decree or any other written law.

(2) The provisions of this section shall not be construed to require the Commission or any officer of the Commission to give, or hold himself out as ready or competent to give, to any person advice concerning the rights and liabilities in law of the person concerning any matter, or to aid in the enforcement of the rights of the person.

(3) The Commission has the following functions in relation to regulated industries—

- (a) the provision of advice to the Minister about proposed access agreements;
- (b) the maintenance of a register of access agreements;
- (c) the facilitation of negotiations about access to infrastructure facilities or services under access regimes;
- (d) the arbitration of disputes about access to infrastructure facilities or services under access regimes;
- (e) if, under a law relating to a regulated industry, the referring authority delegates to the Commission the power to impose, modify or revoke conditions in respect of licenses granted under that law - the imposition, modification and revocation of those conditions in accordance with the relevant delegation;

(4) The Commission shall have power to do all things necessary or convenient to be done in connection with, or incidental to, the performance of its functions.

*Assistance from other Ministries to supply information*

16. The Chief Executive Officer of each Ministry of the State shall co-operate and shall cause the officers under his control to co-operate with the Commission and shall render assistance in the provision of information required by the Commission for the purposes of this Decree.

*Chief Executive Officer*

17.—(1) The Commission has the power to appoint a Chief Executive Officer of the Commission on such terms and conditions as the Commission may determine and at a salary approved by the Higher Salaries Commission.

(2) The Chief Executive Officer of the Commission shall—

- (a) be responsible to the Commission for the proper administration and management of the operations and affairs of the Commission in accordance with the policy laid down by the Commission and this Decree; and
- (b) subject to section 21 of this Decree, perform any functions or duties the Commission delegates.

*Appointment of officers, employees, etc*

18.—(1) The Commission may from time to time appoint employees (or second employees from other organizations) for the efficient performance of its functions and subject to subsection (2), terminate or suspend the employment of an employee in accordance with the Employment Relations Promulgations 2007.

(2) Employees are to be employed on such terms and conditions and are to be paid such salaries and allowances as the Commission from time to time determines.

(3) The Commission has the power to appoint employees as inspectors of the Commission for the purposes of carrying out its functions and powers under this Decree.

(4) The Commission has powers to appoint any person or any public officer, not employed by the Commission under subsection (1), to become inspectors of the Commission for the purposes of carrying out specific functions under the Decree and is to be paid allowances as the Commission determines.

(5) Inspectors appointed by the Commission will report directly to the Commission through the Chief Executive Officer in regards to the performance of its functions and no one apart from the Commission will make any determination regarding the performance of these specific functions.

(6) The Commission must take measures to ensure that no conflict of interests exist between the Commission's functions and its employees or consultants.

*Approval of Commission not to be implied*

19.—(1) A person shall not, without the approval of the Commission, publish, or cause to be published, a statement promoting, or apparently intended to promote, the supply of goods or services or the sale or letting of premises that states, either expressly or by implication, that the Commission has approved or refrained from disapproving—

- (a) the statement;
- (b) any particular contained, or claim made, in the statement; or
- (c) any goods or services referred to in the statement.

(2) Any person who contravenes this section is guilty of an offence.

*Arrangements with other entities*

20.—(1) The Commission may enter into arrangements with any government agency, or other body or person (whether in the public or private sector), for the provision of assistance to the Commission in connection with the performance of the functions of the Commission.

(2) The Commission may engage consultants to assist it in the performance of its functions.

(3) The Commission may arrange for the use of the services of any staff or facilities of a government agency.

*Delegation of Commission's functions*

21.—(1) Subject to this section, the Commission may, in writing, delegate its functions to any member, to the Chief Executive Officer of the Commission or to any committee of persons (whether of members only or members and other persons).

(2) The Commission may not delegate its function for—

- (i) providing advice about proposed access agreements to a committee that includes persons who are not members of the Commission;
- (ii) recommendations for price control orders under Part 5 and Part 5A;
- (iii) approvals sought from the Minister for price fixing and price notification orders under Part 5B and Part 5C.

(3) If the Commission is conducting arbitration, it must not delegate its function of making a determination in relation to the arbitration.

*Bank accounts*

22.—(1) The Commission must open at one or more banks such accounts as are necessary for the performance of its functions.

(2) Money received by the Commission or by any officer or employee on behalf of the Commission, must, as soon as practicable after it has been received, be paid into such bank account opened under subsection (1) as the Commission from time to time determines.

(3) The withdrawal or payment of money from an account opened under subsection (1) must be authorised by prior resolution of the Commission or must be submitted to the Commission for confirmation as soon as practicable after the withdrawal or payment.

(4) The withdrawal or payment of money from an account opened under subsection (1) may be made only by such person or persons as the Commission from time to time authorises.

*Funds of Commission*

23.—(1) The funds of the Commission consist of—

- (a) all money appropriated by the Parliament for the purposes of the Commission and paid to it for those purposes;
- (b) all other money lawfully received by the Commission for the purposes of the Commission; and
- (c) all accumulations of income derived from money referred to in paragraph (a) or (b).

(2) Subject to section 23A (1) until such time where the Commission operates fully on a self funding basis, all fees, salaries, wages, allowances, expenses and other expenditure payable or incurred under, or in administration of, this Decree are payable out of money appropriated by the Parliament for the purpose.

*Commission to operate on self-funding basis*

23A.—(1) Subject to section 23, the Commission may operate on the basis that, as far as is reasonably practicable, the operating costs of the Commission (including fixed costs, variable costs and overheads) are fully met by fees charged by the Commission in respect of the performance of its functions.

(2) In furtherance of that objective—

- (a) fees charged by the Commission in respect of the performance of a function may include amounts representing—
  - (i) the time spent and expertise contributed by the Commission in performing the function;
  - (ii) the expenses incurred by the Commission in performing the function; and
  - (iii) a contribution towards the fixed costs, variable costs and overheads of the Commission; and
- (b) fees may be charged to—
  - (i) any person or enterprise in respect of which the Commission has functions; or
  - (ii) any person or enterprise that is a participant in an industry in respect of which the Commission has functions.

*Matters relating to amount of fees to be charged*

23B.—(1) For the purposes of subparagraph (i) of section 23A (2) (a)—

- (a) the time spent by the Commission includes all time spent by any member or employee of the Commission;
- (b) the amount charged for time spent by a member may be determined by reference to the prevailing rate charged in the private sector by a person of the same qualifications, skills and experience as the member; and
- (c) the amount charged for time spent by an employee may be determined by reference to the salary level of the employee.

(2) For the purposes of subparagraph (ii) of section 23A (2) (a), expenses incurred by the Commission include the professional fees of legal and other experts.

(3) For the purposes of subparagraph (iii) of section 23A (2) (a), the Commission's fixed costs include all those costs incurred by the Commission in the performance of functions that do not directly relate to a particular person or enterprise or to an industry as a whole.

*Matters relating to persons to be charged*

23C. Without limiting the generality of paragraph (b) of section 23A (2), fees may be charged to any person or enterprise—

- (a) that is a recipient of services provided by the Commission;

- (b) that is carrying out an activity in respect of which the Commission has incurred costs or charges.

*Apportionment of fees*

23D.—(1) Where the performance of a function by the Commission relates, in the Commission's opinion, to a particular person or enterprise, the fee in respect of that function may be charged to that person or enterprise.

(2) Where the performance of a function by the Commission relates, in the Commission's opinion, to particular persons or enterprises, the fee in respect of that function may be charged to those persons or enterprises in such proportions as the Commission considers being equitable.

(3) Where the performance of a function by the Commission relates, in the Commission's opinion, to an industry as a whole, the fee in respect of that function may be charged to such participants in the industry, and in such proportions, as the Commission considers being equitable.

*Fees become payable at commencement of matter*

23E.—(1) Fees are payable to the Commission on or before the commencement of the matter to which they relate.

(2) If the exact amount of the fees payable in relation to a matter is not ascertainable at the time they become payable, the Commission may issue an estimate of those fees, and the amount specified in the estimate becomes immediately payable.

(3) The issue by the Commission of such an estimate of fees payable, or the payment of the amount specified in an estimate, does not affect a person's liability for payment of the amount of fees as subsequently ascertained, and any difference between the amount estimated and the amount subsequently ascertained is payable by or refundable to the person.

(4) A person's obligation for payment of fees under this Part in respect of a matter or part of a matter may be satisfied by the payment in advance, by agreement with the Commission, of an amount of fees that may differ from the amount that would otherwise be payable.

*Miscellaneous*

23F.—(1) Fees charged by the Commission are debt due and payable without any set off, retention or counterclaim and are recoverable by summary process.

(2) Where a fee is charged to an enterprise that is not a legal person, the owners of the enterprise are jointly and severally liable for the payment of the fee.

*Exemption from certain taxes and duties*

24.—(1) The income of the Commission is exempt from income tax.

(2) The Commission is exempt from stamp duty on all instruments executed by it or on its behalf.

*Annual report*

25.—(1) Within 4 months after the end of each financial year, the Commission must prepare a report of its activities during that financial year (annual report).

(2) The Commission must send a copy of the annual report to the Minister who must cause it to be laid before parliament as soon as practicable.

(3) The annual report must contain, among other things—

(a) details of—

- (i) advice about proposed access agreements;
- (ii) the number of access agreements notified;
- (iii) arbitration disputes;
- (iv) determinations of arbitration disputes;
- (v) the number of notices issued under section 127;
- (vi) the general use made by the Commission, of information and documents obtained as a result of notices issued under section 123;

(b) information about the activities of the Commission under Part 5, Part 5A, Part 5B and Part 5C;

- (c) information about the performance of the Commission's functions under Part 6, 7, 8; 9 and 11.
- (d) an audited statement of accounts prepared in accordance with generally accepted accounting practice as determined by the Fiji Institute of Accountants;
- (e) a statement of the Commission's financial performance, including a statement of the financial position;
- (f) a statement of cash flows;
- (g) any other information required to give a true and fair view of the Commission's financial affairs; and
- (h) a copy of the auditor's report.

### PART 3 — ACCESS AGREEMENTS

#### *Notice of access agreements*

26.—(1) A person who proposes to enter, vary or amend an access agreement in relation to—

- (a) infrastructure facilities in a regulated industry; or
- (b) services in a regulated industry provided by means of infrastructure facilities,

being facilities or services that are wholly or substantially owned, controlled or operated by the person, must notify the Commission of the proposal at least 30 days before entering, amending or varying the agreement.

(2) A person who notifies the Commission under subsection (1) must, at the request of the Commission, give the Commission a copy of the proposed access agreement and any requested details of the proposal.

(3) The Commission may give advice about the proposal to—

- (a) the person who noticed the proposal; and
- (b) the Minister.

#### *Registration of access agreements*

27.—(1) A person who enters, varies or amends an access agreement in relation to—

- (a) infrastructure facilities in a regulated industry; or
- (b) services in a regulated industry provided by means of infrastructure facilities,

being facilities or services that are wholly or substantially owned, controlled or operated by the person, must notify the Commission of that fact.

(2) A person who notifies the Commission under subsection (1) must, at the request of the Commission, give the Commission a copy of the access agreement and any requested details of the agreement.

(3) The Commission must register an access agreement provided under subsection (2) in the register referred to in section 29, including in the record of registration:

- (a) the names of the parties to the agreement;
- (b) the regulated industry, and the particular services, to which it relates;
- (c) the date on which it was made;
- (d) any other details prescribed by the regulations.

#### *Failure to notify proposals and agreements*

28.—(1) If a person under section 26 fails to notify the Commission of a proposal to enter vary or amend an access agreement, or under section 27 of entering, varying or amending an access agreement, the person commits an offence.

(2) The Commission must give a report to the Minister about a failure to notify a proposal to enter, vary or amend an access agreement or the entering, varying or entering of an access agreement, and include in the report any reasons provided under subsection (1).

(3) A failure to comply with section 26 or 27 renders the agreement invalid and unenforceable.

(4) Either party to an agreement rendered unenforceable or invalid under this Section may seek the assistance of the Commission under section 31 to negotiate the said agreement

(5) if either party disputes over certain terms of the agreement, they may seek arbitration under Part 4.

*Register of agreements*

29.—(1) The Commission must maintain a register of agreements for the purposes of this Part.

(2) The Commission must make the register maintained under subsection (1) available for inspection by any person during the office hours of the Commission or such other hours as are prescribed by the regulations.

## PART 4—ARBITRATION OF ACCESS REGIME DISPUTES

*Interpretation*

30. In this Part—

“access provider” means the person that, under an access regime, wholly or substantially owns controls or operates the infrastructure facilities or services concerned;

“third party”, in relation to infrastructure facilities or services, means a person who desires access to the infrastructure facilities or the services, or desires a change to some aspect of that access.

*Negotiations of access agreements*

31.—(1) If an access provider and a third party propose to negotiate, or are negotiating, with a view to—

(a) agreeing on terms and conditions for access to infrastructure facilities or services; or

(b) agreeing on a variation of an access agreement to which they are parties,

either or both of them may request the Commission to arrange for a representative of the Commission to attend the negotiations.

(2) The Commission must comply with a request or requests under subsection (1) by taking steps to ensure that—

(a) a member of the Commission;

(b) a member of the staff of the Commission; or

(c) a person whose services are made available to the Commission under subsection 20(2), attends the negotiations on its behalf with a view to facilitating agreement between the parties.

*Arbitration of access disputes*

32.—(1) If a dispute exists with respect to an access regime, a party to the dispute may refer the dispute to arbitration under this Part.

(2) The Arbitration Act (Cap. 38) applies to arbitration under this Part subject to this Part and the Regulations.

(3) A dispute is taken to exist with respect to an access regime if—

(a) the third party and the access provider are unable to agree about any aspect of access to the infrastructure facilities or the services provided under that regime; or

(b) the third party and the access provider are unable to agree about a variation of an existing determination.

(4) The parties to a dispute referred to arbitration under this Part are the third party and the access provider.

*Appointment and functions of arbitrator*

33.—(1) The Commission, or a person appointed under subsection (2), may act as arbitrator to hear and determine a dispute referred to arbitration under this Part.

(2) The Commission may appoint one or more persons to act as arbitrators to hear and determine a dispute referred to arbitration under this Part.

(3) If a dispute involves a third party who desires, but does not have, access to infrastructure facilities or services, the arbitrator must give public notice of the dispute. The notice must invite submissions to the arbitrator from the public concerning the dispute and specify when and how those submissions may be made.

(4) In the arbitration of a dispute referred under this Part, or in the variation of an existing determination, the arbitrator must take into account—

(a) the access provider’s legitimate business interests and investment in the infrastructure facilities or services;

- (b) the costs to the access provider of providing access, including any costs of extending the facilities but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the terms of access for the third party;
- (d) the economic value to the access provider of any additional investment that the third party or the access provider has agreed to undertake;
- (e) the interests of all persons holding contracts for use of the facilities;
- (f) firm and binding contractual obligations of the access provider and other persons already using the facilities or services;
- (g) the operational and technical requirements necessary for the safe and reliable operation of the facilities or services;
- (h) the economically efficient operation of the facilities or services;
- (i) the benefit to the public from having competitive markets;
- (j) whether, if the access provider were required or permitted to extend the infrastructure facilities, the extension should be technically and economically feasible and consistent with the safe and reliable operation of the facilities;
- (k) the compensation (if any) which should be paid to the access provider;
- (l) in a case to which subsection (3) applies any submissions made concerning the dispute by the public;
- (m) any other matters that the arbitrator considers relevant.

(5) Parts 4 apply in relation to arbitration as if references in those parts to the Commission were references to the arbitrator.

*Previous activities as member of Commission do not disqualify member from acting as arbitrator*

34. A member is not disqualified from acting as an arbitrator to hear and determine a dispute referred to arbitration under this Part merely because, under section 31, the member represented the Commission at negotiations about the matter for arbitration.

*Determination of dispute by arbitrator*

35.—(1) The arbitrator must determine the dispute by making a written determination on access to the infrastructure facilities or the services by the third party.

(2) A determination under subsection (1) may deal with any matter relating to access by a third party to the infrastructure facilities or the services, including matters that were not the basis for notification of the dispute and matters such as—

- (a) a requirement that the access provider give the third party access to specified infrastructure facilities or services;
- (b) a requirement that the third party accept, and pay for, access to the infrastructure facilities or services;
- (c) a determination of the terms and conditions of access to the infrastructure facilities or services;
- (d) a requirement that the access provider extend the infrastructure facilities; (e) a determination of the extent to which the determination is to override any earlier determination relating to access to the infrastructure facilities or services by the third party.

(3) The determination need not require the provider to provide access to the infrastructure facilities or services by the third party.

*Parties required to give effect to determination*

36.—(1) The parties to arbitration must give effect to a determination under section 35.

(2) If the determination is in favour of the third party's access to infrastructure facilities or services, the access provider must not engage in conduct for the purpose of preventing or hindering the third party's access to the infrastructure facilities or services under the determination.

*Termination of arbitration*

37.—(1) An arbitrator may, without making a determination, terminate the arbitration at any time if the arbitrator thinks that any of the following grounds exists—

- (a) the notification of the dispute was vexatious;

- (b) the subject-matter of the dispute was trivial, misconceived or lacking in substance;
- (c) the party who notified the dispute has not engaged in negotiations in good faith,
- (d) access to the infrastructure facilities or services should continue to be governed by an existing contract between the access provider and the third party;
- (e) if the dispute is about varying an existing determination - there is no sufficient reason why the previous determination should not continue to have effect in its present form.

## PART 5—CONTROL OF PRICES

### *Interpretation*

38. In this Part unless the contrary intentions appears—

“controlled goods or services” means goods or services in respect of which an Order is for the time being in force;

“order” means an order made under section 39.

### *Minister's decision not to be challenged*

38A.—(1) No Court, tribunal, commission or any other adjudicating body shall have the jurisdiction, to accept, hear, determine or in any other way entertain, any challenges whatsoever (including any application for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body, in relation to the validity or legality or propriety or any action or decision of the Minister or the Commerce Commission in making a Price Control Order under either section 39, 40, 44, 45 and Part 5A of the Decree or any action or decision resulting from making such an Order.

(2) Any legal proceeding, appeal or application of any form whatsoever, seeking to challenge the validity or legality of a Price Control Order made under either section 39, 40, 44, 45 and Parts 5A of the Decree or any action or decision resulting from making such an Order shall wholly terminate immediately upon the commencement of this Decree, and a Certificate to that effect shall be issued by the Chief Registrar, tribunal, commission or other relevant adjudicating body to all parties to the proceeding or application.

### *Minister may impose price control in circumstances of restricted competition*

39.—(1) The Minister may, on a recommendation of the Commission, by Order declare that the prices for goods or services specified in the order are controlled in accordance with this part.

(2) The Commission must not make a recommendation under subsection (1) unless it is satisfied that—

- (a) goods or services to which the recommendation relates are or will be supplied or acquired in a market in which competition is limited or is likely to be lessened; and
- (b) it is necessary or desirable for the prices of those goods or services to be controlled in accordance with this Act in the interests of users, consumers or suppliers.

(3) An Order under this section may identify the goods or services to which it relates—

- (a) by a description of the goods or services; or
- (b) by a description of the class to which the goods or services belong.

(4) An Order under this section may apply to goods and, with necessary modifications, to services—

- (a) supplied in or for delivery within specified regions, areas, or localities in the Fiji Islands;
- (b) supplied in different quantities, qualities, grades, or classes; or
- (c) supplied by, or to, or for the use of different persons or classes of persons.

(5) Every Order under this section must specify the date on which it expires.

### *Commission may be required to report to Minister as to price control*

40.—(1) The Minister may, by notice in writing to the Commission, require it to report to the Minister, by such date as the Minister specifies, on whether an order stipulated in section 39 should be extended, amended, varied or revoked.

(2) If the Commission is required by the Minister to report under subsection (1)—

- (a) the Commission must cause to be published, in the *Gazette* and in any other manner as the Commission considers appropriate, a notice—
  - (i) stating that the requirement has been made and specifying the matter to which it relates; and

(ii) inviting interested persons to furnish their views on that matter to the commission, and specifying the time and manner within which they may do so; and

(b) the Commission must not submit a report to the Minister until it has given a reasonable opportunity to interested persons to furnish their views in accordance with paragraph (a) (ii).

(3) The Commission may, of its own motion, recommend to the Minister that an Order in section 39 be extended, amended, varied or revoked.

(4) The Minister must cause a copy of every report submitted to the Minister by the Commission under this section to be published in such manner as he or she considers appropriate.

(5) Nothing in this section limits or affects the powers of the Minister under section 39.

*Controlled goods or services not to be supplied except in accordance with authorised price*

41.—(1) A person must not supply any controlled goods or services unless a price for those goods or services has been authorised by the Commission and the goods or services are supplied in accordance with the authorisation.

(2) A provision of a contract, and any covenant, in contravention of subsection (1) is unenforceable.

(3) Any person who acts or aids and abets another person to act in contravention of this section is guilty of an offence with a maximum fine of \$50,000.

*Records to be kept for pricing purposes*

42.—(1) A supplier of controlled goods or services must retain such accounts and costing records in relation to the controlled goods or services as the Commission from time to time specifies either in relation to suppliers of those goods or services generally or in relation to a particular supplier of the goods or services.

(2) A supplier of controlled goods or services must retain the accounts and records referred to in subsection (1) for a period of 3 years from the date of the revocation or expiry of the Order in respect of the controlled goods or services to which they relate.

(3) Any body corporate or individual who acts or aids and abets another person to act in contravention of this section is guilty of an offence with a maximum fine of \$100,000.

*Price control under Parts 5A, 5B and 5C*

43. Nothing in this Part bars the Commission from exercising its powers to fix maximum prices for goods and services, by an order, with the approval of the Minister in accordance with Parts 5B and 5C of this Decree.

**Part 5A—TELECOMMUNICATIONS SERVICES**

*Functions and powers of the Commission*

43A. Nothing in this Part limits the functions or general powers of the Commission under this Decree.

*Consideration of the burden of regulation*

43B.—(1) The Commission shall, when performing its functions and exercising its powers under this Part, take into account the effect on users and licensees and shall only increase the burden of regulation where the benefits reasonably anticipated to users outweigh the burden reasonably anticipated to be placed on licensees.

(2) The Commission shall regularly consult the Telecommunications Authority on the level of competition in relevant telecommunications market, and each shall forbear from exercising the powers under their respective Acts if the Commission determines that competitive effects of such market are sufficient to achieve the purposes of such powers in their respective Acts.

*Procedural fairness*

43C. In performing its functions and exercising its powers under this Part, each of the Commission must observe the following—

- (a) act transparently and fairly;
- (b) consult in good faith any person who is or is likely to be affected by any action or decision including any Ministry, department, other government entity or any commercial, industrial, consumer and standards body;
- (c) give all such persons the opportunity to make submissions and be heard;
- (d) consider evidence adduced at any such hearing and to the matters contained in any such submissions;

- (e) give reasons in writing for each decision and substantiate such decisions with reference to the objectives in section 2, its functions and powers, and the factors in section 15.

*Control of substantial market power*

43D.—(1) If the Commission has reason to believe that the advancement of the objectives in section 3 of the Telecommunications Promulgation 2008 are not adequately assured by prevailing market conditions, the Commission must—

- (a) identify and review relevant product and service markets for telecommunications services;
- (b) evaluate the level of existing or likely competition in such markets, including taking into account substitution effects of inter-modal competition; and
- (c) determine whether, and the extent to which, an insufficiency of existing or likely competition in such markets is likely to impede the advancement of the objectives in section 3 of the Telecommunications Promulgation 2008.

(2) If the Commission determines that an insufficiency of existing or likely competition in a relevant market reviewed under subsection (1) is reasonably likely to impede the advancement of the objectives in section 3 of the Telecommunications Promulgation 2008, the Commission must identify the telecommunications service licensees having a substantial degree of power in that market.

(3) The term “substantial degree of power” is to be construed in accordance with section 63(3) of this Decree.

(4) Subject to section 43A, if the Commission considers that the imposition, maintenance or amendment of specific regulatory obligations referred to in sections 43D and 43E on licensees having a substantial degree of power in a relevant market reviewed under subsection (1) would be reasonably likely to advance the objectives in section 3 of the Telecommunications Promulgation 2008 it must impose, maintain or amend such obligations accordingly.

(5) The Commission must not impose or maintain the regulatory obligations referred to in sections 43E and 43F, or must remove such obligations as may exist if the Commission considers that such obligations are not reasonably likely to advance the objectives in section 3 of the Telecommunications Promulgation 2008 or if there is sufficient level of existing or likely competition.

*Interconnection principles*

43E.—(1) In performing its functions and exercising its powers under the Commerce Act and Fair Trading Decree with respect to interconnection regimes and interconnection agreements, the Commission must apply the principles contained in subsection (2).

(2) Licensees have a right to be supplied, and when requested by other licensees, an obligation to negotiate in good faith and supply interconnection to any other licensee in accordance with the following principles—

- (a) interconnection must be granted in such manner as to enable customers of each licensee to communicate effectively with customers of another licensee or to obtain services from such other network;
- (b) end to end operability must be maintained in order to facilitate the provisions of services by an interconnecting licensee to the customer notwithstanding that the customer is directly in connected to a different network;
- (c) the licensee must provide the service to the interconnecting licensee in a timely manner; and
- (d) the licensee must provide the interconnection service on non discriminatory terms and conditions that are consistent with those terms and conditions on which it provides the service to itself or its affiliates.

(3) The following factors may be taken into account in applying the principles set out in subsection (2)—

- (a) reasonable technical and operational practicability having regard to the interconnecting licensee’s network;
- (b) network security and safety;
- (c) existing legal duties on the licensee to provide a defined level of service to users of the service;
- (d) the inability, or likely inability, of the interconnecting licensee to comply with any reasonable conditions on which the service is supplied, whether for financial, technical or other reasons; and

(e) any request for a lesser standard of service from an interconnecting licensee.

(4) If a request for interconnection is refused, the licensee shall give written reasons for refusing the request referring to the factors in subsection (3).

(5) The price that may be charged by the licensee for interconnection is a price that reflects the following factors—

- (a) the direct costs incurred in providing the interconnection service;
- (b) a reasonable contribution to fixed and common costs; and
- (c) a reasonable return on the capital employed in providing the service.

(6) Notwithstanding subsection (5), the price for interconnection in relation to national emergency services may reflect the net cost of providing the service.

*Reference interconnection offer*

43F.—(1) The Commission may require licensees designated as having substantial degree of power under section 43D in an interconnection market to provide a reference interconnection offer to other licensees upon request.

(2) The Commission may—

- (a) require the draft reference interconnection offers referred to in subsection (1) to be submitted to it for its approval; and
- (b) specify matters for inclusion in, and may require changes to, such draft reference interconnection offers.

(3) The Commission must include reference interconnection offers in the register of access agreements under section 29 and publish them on its website.

*Indirect access and access to facilities*

43G.—(1) Subject to section 43B, the Minister may, on the recommendation of the Commission, make Regulations under this section requiring a licensee having a substantial degree of power in a market to offer a particular form of indirect access or access to facilities to other licensees if—

- (a) there is a reasonable likelihood of consumer demand for alternative telecommunications licensees;
- (b) the regulations are necessary to introduce such competition; and
- (c) the costs for providing such service are fairly distributed among the licensees providing it and those receiving the service.

(2) Before making any recommendation to the Minister under subsection (1), the Commission shall consult—

- (a) any licensee that would, under regulations made in terms of the recommendation, be required to offer access to other licensees; and
- (b) the owner of any telecommunications network or facilities that would be used in connection with the provision of such access.

*Determination of access deficit charge*

43H. The Commission shall determine the access deficit and access deficit charge which shall be payable in accordance with Schedule 2.

*Interpretation*

43I. In this Part, unless the context otherwise requires—

“indirect access” means the method of access to facilities whereby customers are able to select or pre-select the services of an interconnected licensee’s telecommunications services;

“interconnection” means a specific type of access to facilities involving the physical or logical linking of two networks for communication between customers of one with the other or for transit of communications from the customers of one network across the network of the other, irrespective of the type of signals or information conveyed;

“licence” means a telecommunications service licence issued under the Telecommunications Promulgation 2008;

“licensee” means a holder of a telecommunications service licence, or a provider of any telecommunications service;

“reference interconnection offer” means a publicly available document required to be published by a licensee defining a full set of technical and commercial terms by which the licensee offers interconnection services to other licensees, and forming the basis of a transparent offer by the licensee to contract with another party through an interconnection agreement;

“Telecommunications Appeal Tribunal” means the Telecommunications Appeal Tribunal established under the Telecommunications Promulgation 2008;

“Telecommunications Authority” means the Telecommunications Authority of Fiji established under the Telecommunications Promulgation 2008.”

## PART 5B—FIXING AND DECLARING PRICES

### *Goods and services*

44.—(1) The Commission may, with the approval of the Minister, by order, fix and declare the maximum price or charges by any person (including the State) in the course of business for the sale of goods or the performance of services, either generally or in any specified part of or place in Fiji.

(2) Before making or giving an order or notice under this section (other than one which only removes or lessens a restriction), the Commission shall, give fourteen days’ notice in the manner prescribed in subsection (3) to the person selling the goods or performing the services which would be subject to the restriction, and shall afford to such person an opportunity of making representations to the Commission which, unless the Commission otherwise directs, shall be in writing.

(3) If it appears to the Commission to be impracticable to give notice under subsection (2) to all the persons selling the goods or performing the services, it shall instead give fourteen days’ notice by publication in the Gazette and in such other ways as it may consider appropriate of its intention to make the order and shall afford to all those persons an opportunity of making representations to the Commission which, unless the Commission otherwise directs, shall be in writing.

### *Rents*

45.—(1) Subject to the provisions of Section 46, but notwithstanding the provisions of any other written law, the Commission may, with the approval of the Minister, by order, restrict increases of rent in respect of the letting or continued letting by any person or class of persons (including the State) of any premises under any tenancy.

(2) Any order made under subsection (1) may include provisions excluding, adapting or modifying any provisions contained in, or having effect under, any written law which relates to rent, and in the exercise of any power to make subsidiary legislation under any such written law regard may be had to matters connected with the operation of this section.

(3) A person or body corporate increases rent in contravention of sub-section (1) or (2) is guilty of an offence and is liable to a maximum fine of \$2000.

### *Exclusions*

46.—(1) The provisions of Part 5B and 5C—

- (a) shall not, in so far as it relates to rents, apply to a lease or licence of native land granted by the Native Land Trust Board;
- (b) shall not affect the provisions of the Banaban Lands Act;
- (c) shall not, in so far as it relates to rents, apply to agricultural land as defined in the Agricultural Landlord and Tenant Act;
- (d) shall not affect the provisions of the Rotuma Lands Act;
- (e) shall not apply to any goods or services where such application would be inconsistent with any international agreement or arrangement to which Fiji is a party;
- (f) shall not apply to any charges relating or incidental to international freights and passenger traffic;
- (g) shall not apply to prices paid on the last sale of goods exported or re-exported from Fiji

(2) The Minister may, by order, exclude from the provisions of this Decree or of any part of this Decree such persons or classes of persons as he may consider necessary or desirable.

*Power to require notification of increases*

47.—(1) The Commission may, with the approval of the Minister, in any case or class of case as appears appropriate, by order, make provision to require that at least twelve weeks' written notice is given to it by any person for consideration of any proposed increase in any price or rent in time to consider whether the Commission should exercise the powers conferred by this Decree in order to restrict those increases.

(2) Any order made under the provisions of subsection (1) may provide that, until the end of the period given for consideration of the proposed increase by the Commission, any implementation of the increase constitutes a contravention of the order.

*Inquiries*

48.—(1) The Commission may, with the approval of the Minister, hold such inquiries, either in public or in camera, as it considers necessary or desirable for the discharge of its functions under this Decree; and may at any such inquiry direct that any person appearing as a witness be examined on oath, and administer an oath accordingly, or, instead of so directing, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined.

(2) If any person who is to give evidence at any such inquiry held in public so requests at the hearing, or by a notice in writing served on the Chief Executive Officer of the Commission before the date of the hearing, the public shall be excluded from the hearing while that person gives his evidence.

(3) For the purposes of any inquiry under this Decree, the Commission may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence on any matter so specified, being a matter in question at the inquiry.

(4) Any person required to give evidence under this section or having an interest in the subject-matter of an inquiry shall be permitted to be represented at the inquiry by a legal practitioner or other person of his own choice.

(5) A person who refuses or wilfully neglects to attend in obedience to a summons issued under this section or to give evidence as required by such a summons shall be guilty of an offence.

## PART 5C—PROVISIONS RELATING TO PRICES FOR GOODS AND SERVICES

*Manner in which maximum prices fixed*

49.—(1) In this part a trader refers to a person, sole proprietor, body corporate that retails goods or services or sells goods or services by wholesale from their premises, warehouse, shop, or outlet or place of business.

(2) An order made under the provisions of subsection (1) of section 44 may direct that the maximum price shall not exceed a specified sum or may prescribe the manner in which the maximum price shall be ascertained and may—

- (a) fix different maximum prices for the same classes of goods or services having regard to the terms upon which and the conditions and circumstances in which the goods are manufactured, imported or sold or the services provided; and
- (b) prescribe alternative methods by which the maximum price may be ascertained for the same or different classes of goods.

*Proportionate prices*

50. Where the quantity of goods sold or offered for sale is greater or less than the quantity specified in an order made under the provisions of subsection (1) of section 44 such goods shall, subject to any express provision to the contrary in the order, be sold or offered for sale at the proportionately increased or diminished price as the case may be.

*Commission may vary order*

51. The Commission may, with the approval of the Minister, by order or by notice in writing addressed to any person or body corporate, cancel or vary the terms of any order made under the provisions of subsection (1) of section 44 as regards the goods or services specified in such order or exempt any goods from the operation of such order.

*Prohibited acts*

52. No trader shall—

- (a) sell or buy or agree or offer to sell or buy goods at a greater price than the maximum price fixed and declared by an order made under the provisions of subsection (1) of section 44;
- (b) provide or agree to provide or obtain or agree to obtain services at a greater price than such maximum price;
- (c) in the course of business apply different methods of fixing or ascertaining the prices of goods or services with intent to evade the provisions of this Decree;
- (d) except with the written permission of the Commission sell or agree to sell any goods or provide or offer to provide any service subject to a condition requiring the buying of any other goods or the provisions of any other services.

*Refusal to sell at maximum price*

53.—(1) No person carrying on the business of the sale of goods and having goods available and no person engaged in supplying or carrying on any service shall, except with reasonable cause, the onus of proving which shall be upon him, refuse to sell goods or supply any service to any person tendering immediate payment at the maximum price fixed and declared for such goods or services by an order made under the provisions of subsection (1) of section 44.

(2) A person found guilty is liable to a minimum fine of \$5000 and a body corporate to a minimum fine of \$10,000 provided that where the Commission is of the view that the person or body corporate is guilty of the offence, the Commission may issue an on spot penalty in accordance with section 59.

(3) The Commission may seek additional court orders under Part 8 for any breach of this Part.

*Prices to be indicated*

54.—(1) A trader having goods for sale in respect of which an order has been made under the provisions of subsection (1) of section 44 shall keep displayed in a prominent position on the premises in which such goods are kept or offered for sale a list showing clearly for the information of the public the maximum price of such goods fixed by such order.

(2) The Commission may cause lists of such maximum prices to be printed in such languages as it may deem expedient and may require any trader to exhibit the same in the manner mentioned in subsection (1).

(3) The Commission may with regard to any specified goods, with the approval of the Minister, by order require that a person having such goods for sale by retail shall cause the same to be legibly and conspicuously marked with the price for the information of the public.

(4) The Commission, with the approval of the Minister, may by Order require that the price of any goods in respect of which a Price Control Order under section 44 has not been made and which are offered for sale by retail, shall be either price marked or have the price of those goods clearly displayed.

(5) An Order made under subsection (4) may—

- (a) relate to all goods in respect of which a Price Control Order under section 44 has not been made;
- (b) relate only to such goods as are specified in the Order;
- (c) specify which goods shall be marked and which goods shall have the price displayed;
- (d) specify the manner in which goods shall be marked or displayed; and
- (e) be varied by Order.”

*Invoice*

55. A trader who sells by wholesale any goods the maximum price of which has been fixed by an order made under the provisions of subsection (1) of section 44 shall supply at the time of sale to every purchaser an invoice containing the following particulars and shall retain a copy of such invoice—

- (a) the name and address of the seller and purchaser;
- (b) the date;
- (c) a description of the goods;
- (d) the quantity of goods;

- (e) the price charged;
- (f) delivery costs;
- (g) such other particulars as the Commission may, with the approval of the Minister, by order require generally or with reference to certain goods or classes of goods.

*Records*

56.—(1) Every trader shall keep to the satisfaction of the Commission such records and accounts, including stock and costing records, as are customary and proper in the type of business carried on by him.

(2) The Commission may, by notice in writing, direct any trader to keep such other records and accounts as are specified in the notice.

(3) No trader shall, without the consent of the Commission, destroy any document whatever relating wholly or in part to any business carried on by him or to any goods or services until a period of three years has elapsed since the documents originated.

*Transaction not invalid*

57. A transaction shall not be invalid by reason only that it involves an offence under this Decree; but the person paying a price or charge in excess of that fixed and declared under the provisions of this Decree shall be entitled to recover the excess of any price or charge so paid by him over such fixed and declared price unless he himself has aided, abetted or procured the commission of the offence.

*Certain Orders need not be published in the Gazette*

58.—(1) Notwithstanding section 21 of the Interpretation Act (Cap. 7) an Order made pursuant to section 44(1), 45(1) need not be published in the *Gazette* if, in the opinion of the Board—

- (a) it does not affect the public in general; and
- (b) it is of a personal or private nature.

(2) An Order made by the Board and, pursuant to subsection (1), not published in the *Gazette*—

- (a) shall promptly be delivered to the persons to whom it is directed;
- (b) may be proved in any Court by the *production* of a copy thereof signed by the Board;
- (c) shall come into operation on the date specified in the Order or, if not so specified, on the date of its delivery to the relevant person; and
- (d) shall not cause any person to become liable to any penalty whatsoever in respect of an act committed or of the failure to do anything before the day on which it is delivered.”

*Onspot penalties*

59.—(1) Where an offender breaches section 44, 52, 54, 55 and 56 the Commission may issue an on-spot penalty for a minimum of \$100 to \$1000 for a natural person and between \$100 to \$3000 for a body corporate payable within 21 days in the prescribed form.

(2) If the offender fails to make payments pursuant to subsection (1), the Commission may seek legal proceedings and if proven guilty is liable to pay a sum not exceeding \$15000 for a natural person and \$20,000 for a body corporate.

(3) The liability of an offender in criminal proceedings shall not be a bar to a person seeking civil remedies against the offender.

## PART 6—RESTRICTIVE TRADE PRACTICE

*Contracts, arrangements or understandings restricting dealings or affecting competition*

60.—(1) If a provision of a contract

- (a) is an exclusionary provision; or
- (b) has the purpose, or has or is likely to have the effect, of substantially lessening competition, that provision is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a person.

(2) A person shall not—

- (a) make a contract or arrangement, or arrive at an understanding, if—
  - (i) the proposed contract, arrangement or understanding contains an exclusionary provision; or

- (ii) a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition; or
- (b) give effect to a provision of a contract, arrangement or understanding, whether the contract or arrangement was made, or the understanding was arrived at, before or after the commencement of this section, if that provision—
  - (i) is an exclusionary provision; or
  - (ii) has the purpose, or has or is likely to have the effect, of substantially lessening competition.

(3) For the purposes of this section and section 61 “competition”, in relation to a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding, means competition in any market in which a person that is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a person, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision, supply or acquire, or be likely to supply or acquire, goods or services.

(4) For the purposes of the application of this section in relation to a particular person, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely—

- (a) the other provisions of that contract, arrangement or understanding proposed contract, arrangement or understanding; and
- (b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the person or a body corporate related to such person is or would be a party, together have or are likely to have that effect.

together have or are likely to have that effect.

(4A) Without limiting the generality of subsections (1) to (4), a provision of a contract, arrangement or understanding, including a licence, made or arrived at after the commencement of this subsection, has no effect and is unenforceable if it—

- (a) is an exclusionary provision or has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
- (b) has the purpose, or has or is likely to have the effect, of conferring on any person (whether or not the person is a party to the contract, arrangement or understanding) exclusive rights under any Decree or Act.

(5) This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital, or any assets, of a body corporate.

(6) This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, the only parties to which is or would be bodies corporate that are related to each other.

*Contracts, arrangements or understandings in relation to prices*

61.—(1) Without limiting the generality of section 60, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be deemed for the purposes of that section to have the purpose, or to have or to be likely to have the effect, of substantially lessening competition if the provision has the purpose, or has or is likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or, a discount, allowance, rebate or credit in relation to goods or services supplied or acquired or to be supplied or acquired by the parties to the contract, arrangement or understanding or the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them, in competition with each other.

(2) Sub-section (1) does not apply to a provision of a contract or arrangement made or of an understanding arrived at, or of a proposed contract or arrangement to be made or of a proposed understanding to be arrived at, for the purposes of a joint venture to the extent that the provision relates or would relate to—

- (a) the joint supply by the parties to the joint venture, or the supply by the parties to the joint venture in proportion to their respective interests in the joint venture, of goods jointly produced by those parties in pursuance of the joint venture;
- (b) the joint supply by the parties to the joint venture of services in pursuance of the joint venture, or the supply by the parties to the joint venture in proportion to their respective interests in the joint venture of services in pursuance of, and made available as a result of, the joint venture; or
- (c) in the case of a joint venture carried on by a body corporate as mentioned in Section 4 (11) (a) (ii)—
  - (i) the supply by that body corporate of goods produced by it in pursuance of the joint venture; or
  - (ii) the supply by that body corporate of services in pursuance of the joint venture, not being services supplied on behalf of the body corporate by—
    - (a) a person who is the owner of shares in the capital of the body corporate; or
    - (b) a body corporate that is related to such a person.

(3) Sub-section (1) does not apply in relation to a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, to the extent that the provision recommends or provides for recommending, or would recommend or provide for recommending, the price for, or a discount, allowance, rebate or credit in relation to, goods or services, where the parties to the contract, arrangement or understanding, or the proposed parties to the proposed contract, arrangement or understanding, include—

- (a) not less than 2 persons (bodies corporate that are related to one another being counted as a single person) who supply, in trade or commerce, goods or services to which the provision applies; or
- (b) not less than 2 persons (bodies corporate that are related to one another being counted as a single person) who acquire, in trade or commerce, goods or services to which the provision applies.

(4) Sub-section (1) does not apply to a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding being a provision—

- (a) in relation to the price for goods or services to be collectively acquired; whether directly or indirectly, by parties to the contract, arrangement or understanding or by proposed parties to the proposed contract, arrangement or understanding; or
- (b) for the joint advertising of the price for the re-supply of goods or services so acquired.

(5) For the purposes of this Decree, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall not be taken not to have the purpose, or not to have or to be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of—

- (a) the form of, or of that provision of, the contract, arrangement or understanding or the proposed contract, arrangement or understanding;
- (b) any description given to, or to that provision of, the contract, arrangement or understanding or the proposed contract arrangement or understanding by the parties or proposed parties.

(6) For the purposes of this Decree but without limiting the generality of sub-section (5), a provision of a contract arrangement or understanding, or of a proposed contract, arrangement or understanding, shall not be taken not to have the purpose, or not to have or to be likely to have the effect, of fixing, controlling or maintaining, or providing for the price for, or a discount, allowance, rebate or credit in relation to goods or services by reason only that the provision recommends, or provides for the recommending of, such a price, discount, allowance, rebate or credit if in fact, the provision has that purpose or has or is likely to have that effect.

(7) For the purposes of the preceding provisions of this section but without limiting the generality of those provisions, a provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be deemed to have the purpose, or to have or to be likely to have the effect, of fixing, controlling

or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in sub-section (1) if the provision has the purpose, or has or is likely to have the effect, of fixing, controlling or maintaining, or, providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods or services are or would be supplied by the parties to the contract, arrangement or understanding or the proposed parties to the proposed contract, arrangement or understanding, or by any of them, or by any bodies corporate that are related to any of them.

(8) The reference in sub-section (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

*Covenants affecting competition*

62.—(1) A covenant, whether the covenant was given before or after the commencement of this section, is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a person or any person associated with such person supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services.

(2) An associate of the person shall not—

- (a) require the giving of a covenant, or give a covenant, if the proposed covenant has the purpose, or would have or be likely to have the effect, of substantially lessening competition in any market in which—
  - (i) the person, or any who is an associate with such person by virtue of sub-section 6 (b), supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services; or
  - (ii) any person who is an associate of the first mentioned person by virtue of the operation of sub-section 6 (a) supplies or acquires, is likely to supply or acquire, or would, but for the covenant, supply or acquire, or be likely to supply or acquire, goods or services, being a supply or acquisition in relation to which the associate is, or would be, under an obligation to act in accordance with directions, instructions or wishes of the first mentioned person;
- (b) threaten to engage in particular conduct if a person who, but, for sub-section (1), would be bound by a covenant does not comply with the terms of the covenant; or
- (c) engage in particular conduct by reason that a person who, but for sub-section (1), would be bound by a covenant has failed to comply, or

(3) Where a person—

- (a) issues an invitation to another person to enter into a contract containing a covenant;
- (b) makes an offer to another person to enter into a contract containing a covenant; or
- (c) makes it known that the person will not enter into a contract of a particular kind unless the contract contains a covenant of a particular kind or in particular terms,

the first-mentioned person shall, by issuing that invitation, making that offer or making that fact known, be deemed to require the giving of the covenant.

(4) For the purposes of this section, a covenant or proposed covenant shall be deemed to have, or to be likely to have, the effect of substantially lessening competition in a market if the covenant or proposed covenant, as the case may be, would have, or be likely to have, that effect when taken together with the effect or likely effect on competition in that market of any other covenant or proposed covenant to the benefit of which—

- (a) a person, is or would be, or but for sub-section (1) would be, entitled to the benefit of the first-mentioned covenant or proposed covenant; or
- (b) a person associated with the person referred to in paragraph (a), is or would be, or but for sub-section (1) would be, entitled.

(5) This section does not apply to or in relation to a covenant or proposed covenant where the only persons who are or would be respectively bound by or entitled to the benefit of, the covenant or proposed covenant are persons who are associated with each other or are bodies corporate that are related to each other.

(6) For the purposes of this section and section 63, two persons are taken to be associated with each other in relation to a covenant or proposed covenant if, and only if—

- (a) one of the persons is under an obligation (otherwise than in pursuance of the covenant or proposed covenant), whether formal or informal, to act in accordance with directions, instructions or wishes of the other person in relation to the covenant or proposed covenant; or
- (b) one of the persons is a body corporate in relation to which the other person is in the position mentioned in section 4(5) (a) (ii).

(7) This section does not apply to or in relation to a covenant or proposed covenant if—

- (a) the sole or principal purpose for which the covenant was or is required to be given was or is to prevent the relevant land from being used otherwise than for residential purposes;
- (b) the person who required or requires the covenant to be given was or is a religious, charitable or public benevolent institution or a trustee for such an institution and the covenant was or is required to be given for or in accordance with the purposes or objects of that institution; or
- (c) the covenant was or is required to be given in pursuance of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, being a requirement made for or, in accordance with the purposes or objects of that institution.

*Covenants in relation to prices*

63.—(1) In the application of section 62 (1) in relation to a covenant that, has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who are, or but for that sub-section would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them, in competition with each other, that sub-section has effect.

(2) In the application of section 62(2) in relation to a proposed covenant that has the purpose, or would have or be likely to have the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied or acquired by the persons who would, or would but for section 62 (1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them, in competition with each other, section 62 (2) (a) has effect as if all the words after the words “require the giving of a covenant, or give a covenant” were omitted.

(3) For the purposes of this Decree, a covenant shall not be taken not to have, or not to be likely to have, the effect, or a proposed covenant shall not be taken not to have the purpose, or not to have, or not to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services by reason only of—

- (a) the form of the covenant or proposed covenant; or
- (b) any description given to the covenant by any of the persons who are, or but for section 62 (1) would be, bound by or entitled to the benefit of the covenant or any description given to the proposed covenant by any of the persons who would, or would but for section 62 (1), be bound by or entitled to the benefit of the proposed covenant.

(4) For the purposes of the preceding provisions of this section, but without limiting the generality of those provisions

- (a) a covenant shall be deemed to have, or to be likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in sub-section (1) if the covenant has, or is likely to have, the effect of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods by person to whom the goods are supplied by the persons who are, or but for section 62 (1) would be, bound by or entitled to the benefit of the covenant, or by any of them, or by any persons associated with any of them; and

- (b) a proposed covenant shall be deemed to have the purpose, or to have, or to be likely to have, the effect, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, the price for, or a discount, allowance, rebate or credit in relation to, goods or services supplied as mentioned in sub-section (2) if the proposed covenant has the purpose, or would have or be likely to have the effect, as the case may be, of fixing, controlling or maintaining, or providing for the fixing, controlling or maintaining of, such a price, discount, allowance, rebate or credit in relation to a re-supply of the goods or services by persons to whom the goods are supplied by the persons who would, or would but for section 62 (1), be bound by or entitled to the benefit of the proposed covenant, or by any of them, or by any persons associated with any of them.

(5) The reference in sub-section (1) to the supply or acquisition of goods or services by persons in competition with each other includes a reference to the supply or acquisition of goods or services by persons who, but for a provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would be likely to be, in competition with each other in relation to the supply or acquisition of the goods or services.

*Restriction on conduct that hinders or prevents the supply of goods or services to others.*

64.—(1) Subject to this section, a person shall not in concert with a second person, engage in conduct that hinders or prevents the supply of goods or services by a third person to a fourth person (not being an employer of the first-mentioned person), or the acquisition of goods or services by a third person from a fourth person (not being an employer of the first mentioned person), where—

‘the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing—

- (a) substantial loss or damage to the business of the third person, the fourth person or a body corporate that is related to either of them; or
- (b) a substantial lessening of competition in any market in which the third person, the fourth person or a body corporate that is related to either of them supplies or acquires goods or services.

(2) Subject to this section, a person shall not, in concert with another person, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person (not being an employer of the first-mentioned person) from engaging in trade or commerce—

- (a) between Fiji and places outside Fiji,
- (b) within Fiji.

(3) In a proceeding under this Decree in relation to a contravention of sub-section (2), it is a defence if the defendant proves the dominant purpose for which the defendant engaged in the conduct concerned was to preserve or further a business carried on by him.

(4) The application of sub-section (2) in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that the other person proves any of the matters mentioned in sub-section (3) in respect of that conduct.

(5) Section 4 (9) (b) does not apply in relation to sub-section (1) or (2) of this section but a person shall be deemed to engage in conduct for a purpose mentioned in that sub-section if he engages in that conduct for purposes that include that purpose.

(6) A person shall not be taken to contravene, or to be involved in a contravention of, sub-section (1) or (2) by engaging in conduct where—

- (a) the dominant purpose for which the conduct is engaged in is substantially related to—
  - (i) the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person; or
  - (ii) an employer of that person having terminated, taken action to terminate, the employment of that person or of another person employed by that employer; or
- (b) in the case of conduct engaged in by the following person in concert with each other (and not in concert with any other person), that is to say—
  - (i) an organization or organizations of employees, or an officer or officers of such an organization, or both such an organization or organizations and such an officer or officers; and

(ii) an employee, or 2 or more employees who are employed by the one employer, the dominant purpose for which the conduct is engaged in is substantially related to—

- (iii) the remuneration, conditions of employment, hours of work or working conditions of the employee, or of any of the employees, referred to in sub-paragraph (ii); or
- (iv) the employer of the employee, or of the employees, referred to in sub-paragraph (ii) having terminated, or taken action to terminate, the employment of any of his employees.

(7) The application of sub-section (1) or (2) in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that sub-section (6) operates to preclude the other person from being taken to contravene, or to be involved in a contravention of, sub-section (1) or (2) in respect of that conduct.

(8) If two or more persons (in this subsection referred to as the "participants") each of whom is a member or officer of the same organization of employees (being an organization that exists or is carried on for the purpose, or for purposes that, include the purpose, of furthering the interests of its members in relation to their employment) engage in conduct in concert with one another, whether or not the conduct is also engaged in concert with other persons, the organization shall be deemed for the purposes of this Decree to engage in that conduct in concert with the participants, and so to engage in that conduct for the purpose or purposes for which that conduct is engaged in by the participants, unless the organization establishes that it took all reasonable steps to prevent the participants from engaging in that conduct.

(9) Where an organization of employees engages, or is deemed by sub-section (8) to engage, in conduct in concert with members or officers of the organization in contravention of sub-section (1) or (2)—

- (a) any loss or damage suffered by a person as result of the conduct shall be deemed to have been caused by the conduct of the organization;
- (b) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in sub-paragraph (i) that is instituted under section 142, process may be issued and executed against any property of the organization or of any branch or part of the organization, or any property in which the organization have in their capacity as such members, a beneficial interest, whether vested in trustees or however otherwise held, as if the organization were a body corporate and the absolute owner of the property or interest but no process shall be issued or executed against any other property of members, or against any property of officers, of the organization or of a branch or part of the organization.

(10) Nothing in this section affects the operation of any other provision of this part.

*Prohibition of contracts, arrangements or understandings effecting supply or acquisition of goods or services.*

65.—(1) Subject to this section, a person who has been accustomed, or is under an obligation, to supply goods or services to, or to acquire goods or services from, a second person shall not make a contract or arrangement, or arrive at an understanding, with a third person (being an organization of employees, an officer of such an organization, or another person acting for or on behalf of such an organization or officer) if the proposed contract, arrangement or understanding contains a provision that—

- (a) has the purpose of preventing or hindering the first-mentioned person from supplying or continuing to supply any such goods or services to the second person or, as the case may be, from acquiring or continuing to acquire any such goods or services from the second person;
- (b) has the purpose of preventing or hindering the first-mentioned person from supplying or continuing to supply any such goods or services to the second person except subject to a condition (not being a condition to which the supply of such goods or services by the first-mentioned person to the second person has previously been subject by reason of a provision of a contract existing between those persons) as to the persons to whom, as to the manner in which, or as to the terms on which, the second person may supply any goods or services; or
- (c) has the purpose of preventing or hindering the first-mentioned person from acquiring or continuing to acquire any such goods or services from the second person except subject to a condition (not being a condition to which the acquisition of such goods or services by the first-mentioned person from the second person has previously been subject by reason of a contract existing between those persons) so to the persons to whom, as to the manner in which, or as to the terms on which, the second person may supply any goods or services.

(2) Sub-section (1) does not apply in relation to a contract, arrangement or understanding that is in writing if the second person mentioned in that sub-section is a party to the contract, arrangement or understanding or has consented in writing to the contract or arrangement being made or the understanding being arrived at.

(3) Paragraph (a) of section 4(9) applies in relation to subsection (1) of this section as if subparagraph (a) (ii) were omitted.

(4) Subject to sub-section (6), a reference in this section to a person who has been accustomed to supply goods or services to a second person shall be construed as including a reference to—

- (a) is regular supplier of any such goods or services to the second person;
- (b) the latest supplier of any such goods or services to the second person; and
- (c) a person who at any time during the immediately preceding period of 3 months supplied any such goods or services to the second person.

(5) Where—

- (a) goods or services have been supplied by a person to a second person pursuant to a contract between those persons under which the first-mentioned person was required over a particular period to supply such goods or services;
- (b) that period has expired; and
- (c) after the expiration of that period the second person has been supplied with such goods or services by another person or other persons and has not been supplied with such goods or services by the first-mentioned person,

then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first-mentioned person shall be deemed not to be a person who has been accustomed to supply such goods or services to the second person.

(6) subject to sub-section (8), a reference in this section to a person who has been accustomed to acquire goods or services from a second person shall be construed as including a reference to—

- (a) a regular acquirer of any such goods or services from the second person;
- (b) a person who, when he last acquired such goods or services, acquired them from the second person; and
- (c) a person who at any time during the immediately preceding period of 3 months acquired any such goods or services from the second person.

(7) Where—

- (a) goods or services have been acquired by a person from a second person pursuant to a contract between those persons under which the first-mentioned person was required over a particular period to acquire such goods or services;
- (b) that period has expired; and
- (c) after the expiration of that period the second person has refused to supply such goods or services to the first-mentioned person,

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first-mentioned person shall be deemed not to be a person who has been accustomed to acquire such goods or services from the second person.

(8) If—

- (a) a person has, whether before or after the commencement of this section, made a contract or arrangement, or arrived at an understanding, with another person; and
- (b) by reason of a provision included in the contract, arrangement or understanding, the making of the contract or arrangement, or the arriving at the understanding, by the first-mentioned person contravened sub-section (1) or would have or that sub-section if this section had been in force at the time when the contract or arrangement was made, or the understanding was arrived at,

a person shall not give effect to that provision of the contract, arrangement or understanding.

(9) In determining for the purposes of paragraph (9) (b) whether a contract or arrangement made, or understanding arrived at, before the commencement of this section would have contravened sub-section (1) if this section had been in force at the time when the contract or arrangement was made, or the understanding was arrived at, sub-section (2) shall be read as if the words "that is in writing" and the words "in writing" were omitted.

(10) Nothing in this section effects the operation of any other provision of this Part.

*Misuse of market power*

66.—(1) A person that has a substantial degree of power in a market shall not take advantage of that power for the purpose of—

- (a) eliminating or substantially damaging a competitor of such person or of a body corporate that is related to such person in that or any other market;
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(2) If—

- (a) a body corporate that is related to such person has, or 2 or more bodies corporate each or which is related to the person together have, a substantial degree of power in a market; or
- (b) a person and a body corporate that is, or a such person and 2 or more bodies corporate each of which is, related to such person, together have a substantial degree of power in a market,

the person shall be taken for the purposes of this section to have a substantial degree of power in that market.

(3) In determining for the purposes of this section the degree of power that a person or body corporate has in a market, the Court shall have regard to the extent to which the conduct of the person or of any of the body corporate in that market is constrained by the conduct of—

- (a) competitors, or potential competitors, of the person or of any of the body corporate in that market; or
- (b) persons to whom or from whom such person or any of those body corporate supplies or acquires goods or services in that market.

(4) In this section—

- (a) a reference to power is a reference to market power;
- (b) a reference to a market is a reference to a market for goods or services; and
- (c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.

(5) Without extending by implication the meaning of sub-section (1), a person shall not be taken to contravene that sub-section by reason only that such person acquires plant or equipment.

(6) Without in any way limiting the manner in which the purpose of a person may be established for the purposes of any other provision or this Decree, a person may be taken to have taken advantage of its power for a purpose referred to in sub-section (1) notwithstanding that after all the evidence has been considered the existence of that purpose is ascertainable only by inference from the conduct of such person or of any other person or from other relevant circumstances.

*Anti-competitive conduct*

67.—(1) A person engages in prescribed anti-competitive conduct if the person—

- (a) has a substantial degree of power in a market; and
- (b) takes advantage of that power with the effect or like effect, of substantially lessening competition in that or another market.

(2) A person must not engage in prescribed anti-competitive conduct.

*Collective tendering*

68.—(1) Any two or more persons, being wholesalers, retailers or contractors or suppliers of services must not—

- (a) tender for the supply or purchase of any goods or services at prices, or on terms, agreed or arranged between them; or

- (b) in response to an invitation to tender, agree or arrange for all or any of them to abstain from tendering for the supply or purchase of any goods or services'; and
- (2) Subsection (2) is contravened whether or not the circumstances are such—
- (a) that the invitation to tender or the tender was not made or submitted in writing; or
  - (b) that the invitation to tender or the tender was not described as such or was given some other descriptions; or
  - (c) that the invitation to tender was extended to some or all of the parties to the agreement or arrangement at different times; or
  - (d) that the tender of any party to the agreement or arrangement was submitted before that party had consulted with all or some of the other parties to the agreement or arrangement on the prices or the terms that those other parties were to submit or on the question as to whether all or some of those parties should abstain from tendering.

*Exclusive dealing*

69.—(1) Subject to this section, a person must not, in trade or commerce in the practice of exclusive dealing.

(2) A person engages in the practice of exclusive dealing if the person—

- (a) supplies, or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by the corporation,

on the condition that the person to whom such person supplies, or offers or proposes to supply, the goods or services or, if that person is a body corporate, a body corporate related to that body corporate;

- (d) will not, or will not except to a limited extent, acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of such person or from a competitor of a body corporate related to such person; or
- (e) will not, or will not except to a limited extent re-supply goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of such person or from a competitor of, a body corporate related to such person; or
- (f) in the case where the person supplies or would supply goods, will not re-supply the goods to any person, or will not, or will not except to a limited extent, re-supply the goods—

- (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
- (ii) in particular places or classes of places or in places other than particular places or classes of places.

(3) A person also engages in the practice of exclusive dealing if such person refuses—

- (a) to supply goods or services to a person;
- (b) to supply goods or services to a person at a particular price; or
- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services to a person, for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate —
- (d) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of such person or from a competitor of a body corporate related to such person.
- (e) will not, or will not except to a limited extent, re-supply goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of such person or from a competitor or a body corporate related to such person; or
- (f) in the case where the person supplies or would supply goods, will not re-supply the goods to any person, or will not, or will not except to a limited extent, re-supply the goods—
- (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or

(ii) in particular places or classes of places or in places other than particular places or classes of places.

(4) A person also engages in the practice of exclusive dealing if such person—

- (a) acquires, or offers to acquire, goods or services; or
- (b) acquires, or offers to acquire, goods or services at a particular price, on the condition that the person from whom such person acquires or offers to acquire the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will not supply goods or services, or goods or service or a particular kind or description, to any person, or will not, or will not except to a limited extent, supply goods or services, or goods or services of a particular kind or description—
- (c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
- (d) in particular places or classes of places or in places other than particular places or classes of places.

(5) A person also engages in the practice of exclusive dealing if such person refuses—

- (a) to acquire goods or services from a person; or
- (b) to acquire goods or services at a particular price from a person, for the reason that the person or, if the person is a body corporate, a body corporate related to that body corporate has supplied, or has not agreed not to supply, goods or services, or goods or services of a particular kind or description—
- (c) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
- (d) in particular places or classes of places or in places other than particular places or classes of places.

(6) A person also engages in the practice of exclusive dealing if such person—

- (a) supplies, or offers to supply, goods or services;
- (b) supplies, or offers to supply, goods or services at a particular price; or
- (c) gives or allows, or offers to give or allow, a discount, allowance, rebate or credit in relation to the supply or proposed supply of goods or services by such person,

on the condition that the person to whom such person supplies or offers or proposes to supply the goods or services or, if that person is a body corporate, a body corporate related to that body corporate will acquire goods or services of a particular kind or description directly or indirectly from another person.

(7) A person also engages in the practice or exclusive dealing if such person refuses—

- (a) to supply goods or services to a person;
- (b) to supply goods or services at a particular price to a person; or
- (c) to give or allow a discount, allowance, rebate or credit in relation to the supply of goods or services to a person,

for the reason that the person or, if the person to a body corporate, a body corporate related to that body corporate has not acquired, or has not agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person.

(8) A person also engages in the practice of exclusive dealing if such person grants or renews, or makes it known that it will not exercise a power or right to terminate, a lease of, or a license in respect of, land or a building or part, of a building on the condition that another party to the lease or license or, if that other party to a body corporate, a body corporate related to that body corporate—

- (a) will not, or will not except to a limited extent—
  - (i) acquire goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of such person or from a competitor of a body corporate related to such person; or

- (ii) re-supply goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of the, corporation or from a competitor of a body corporate related to such person;
- (b) will not supply goods or services, or goods or services of a particular kind or description, to any person, or will not, or will not except to a limited extent, supply, goods or services, or goods or services of a particular kind or description—
  - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
  - (ii) in particular places or classes of places or in places other than particular places or classes of places; or
- (c) will acquire goods or services of a particular kind or description directly or indirectly from another person not being a body corporate related to such person.

(9) A person also engages in the practice of exclusive dealing if such person refuses to grant or renew, or exercises a power or right to terminate, a lease of, or a license in respect of, land or a building or part of a building for the reason that another party to the lease or license or, if that other party is a body corporate, a body corporate related to that body corporate—

- (a) has acquired, or has not agreed not to acquire, goods or services, or goods or services of a particular kind or description, directly or indirectly from a competitor of such person or from a competitor of a body corporate related to such person;
- (b) has re-supplied, or has not agreed not to re-supply, goods, or goods of a particular kind or description, acquired directly or indirectly from a competitor of such person or from a competitor of a body corporate related to such person;
- (c) has supplied goods or services, or goods or services of a particular kind or description -
  - (i) to particular persons or classes of persons or to persons other than particular persons or classes of persons; or
  - (ii) in particular places or classes of places or in places other than particular places or classes of places; or
- (d) has not acquired, or has not, agreed to acquire, goods or services of a particular kind or description directly or indirectly from another person not being a body corporate, related to such person.

(10) Sub-section (1) does not apply to the person engaging in conduct that constitutes the practice of exclusive dealing unless—

- (a) the engaging by the person in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
- (b) the engaging by the person in that conduct, and the engaging by the person, or by a body corporate related to the person, in other conduct of the same or a similar kind, together have or are likely to have the effect of substantially lessening competition.

(11) Sub-sections (8) and (9) do not apply with respect to—

- (a) conduct engaged in by, or by a trustee for, a religious, charitable or public benevolent institution, being conduct engaged in for or in accordance with the purposes or objects of that institution; or
- (b) conduct engaged in pursuant of a legally enforceable requirement made by, or by a trustee for, a religious, charitable or public benevolent institution, bring a requirement made for or in accordance with the purposes or objects of that institution.

(12) Sub-section (1) does not apply with respect to any conduct engaged in by a body corporate by way of restricting dealings by another body corporate if those bodies corporate are related to each other.

(13) In this section—

- (a) a reference to a condition shall be read as a reference to any condition, whether direct or indirect and whether having legal or equitable force or not, and includes a reference to a condition the existence or nature of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;

- (b) a reference to competition, in relation to conduct to which a provision of this section other than sub-section (8) or (9) applies, shall be read as a reference to competition in any market in which—
  - (i) any person engaging in the conduct or any body corporate related to that person; or
  - (ii) any person whose business dealings are restricted, limited or otherwise circumscribed by the conduct or, if that person is a body corporate, any body corporate related to that body corporate supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services; and
- (c) a reference to competition, in relation to conduct to which sub-sections (8) or (9) applies, shall be read as a reference to competition in any market in which the person engaging in the conduct or any other person the business dealings of which are restricted, limited or otherwise circumscribed by the conduct, or any body corporate related to either of those persons, supplies or acquires, or is likely to supply or acquire goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire goods or services.

*Resale price maintenance*

70.—(1) A person must not engage in the practice of resale price maintenance.

(2) Subject to this section, a person (supplier) engages in the practice of resale price maintenance if the person does an act referred to in any of the paragraphs of subsection (3).

(3) The acts referred to in subsection (2) are the following—

- (a) the supplier making it known to a second person that the supplier will not supply goods to the second person unless the second person agrees not to sell those goods at a price less than a price specified by the supplier;
- (b) the supplier inducing, or attempting to induce, a second person not to sell, at a price less than a price specified by the supplier, goods supplied to the second person by the supplier or by a third person who, directly or indirectly, has obtained the goods from the supplier;
- (c) the supplier entering into an agreement, or offering to enter into an agreement, for the supply of goods to a second person, being an agreement one of the terms of which is, or would be, that the second person will not sell the goods at a price less than a price specified, or that would be specified by the supplier;
- (d) the supplier withholding the supply of goods to a second person for the reason that the second person—
  - (i) has not agreed to sell those goods at a price less than a price specified by the supplier; or
  - (ii) has sold, or is likely to sell, goods supplied to him, or that may be supplied to him, by the second person, at a price less than a price specified by the supplier as the price below which the goods are not to be sold; and
- (f) the supplier using, in relation to any goods supplied, or that may be supplied by the supplier to a second person, a statement of a price that is likely understood by that person as the price below which the goods are not to be sold.

(4) For the purposes of subsection (3)—

- (a) a price that is specified by another person on behalf of the supplier is deemed to have been specified by the supplier;
- (b) if the supplier makes it known, in respect of goods that the price below which those goods are not to be sold is a price specified by another person in respect of those goods, or in respect of goods of a like description, that price is deemed to have been specified; in respect of the first-mentioned goods, by the supplier;
- (c) if a formula is specified by or on behalf of the supplier and a price may be ascertained by calculation from, or by reference to, that formula, that price is deemed to have been specified by the supplier; and
- (d) if the supplier makes it known, in respect of goods, that the price below which those goods are not to be sold is a price ascertained by calculation from, or by reference to, a formula specified by another

person in respect of those goods or in respect of goods of alike description, that price is deemed to have been specified, in respect of the first-mentioned goods by the supplier.

(5) In subsection (4) 'formula' includes a set form or method.

(6) For the purposes of subsection (3), anything done by a person acting on behalf of, or by arrangement with, the supplier is deemed to have been done by the supplier.

(7) A reference in any of (a) to (e) of subsection (3) including a reference in negative form to the selling of goods at a price less than a price specified by the supplier includes a reference to—

- (a) the advertising of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be advertised for sale;
- (b) the displaying of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be displayed for sale; and
- (c) the offering of goods for sale at a price less than a price specified by the supplier as the price below which the goods are not to be offered for sale;

and a reference in paragraph (d) (e) or (f) of subsection (3) to a price below which the goods are not to be sold includes a reference to the price below which the goods are not to be advertised for sale, to the price below which the goods are not to be displayed for sale and to the price below which the goods are not to be offered for sale.

(8) For the purposes of subsection (3) (b), the supplier is not to be taken as inducing or attempting to induce, a second person as mentioned in that paragraph in relation to any goods—

- (a) by reason only of a statement of a price being applied to the goods as mentioned in subsection (12)(a) or being applied to a covering, label, reel or thing as mentioned in paragraph (12)(b), provided that the statement is preceded by the words 'recommended price'; or
- (b) by reason only of the supplier having given notification in writing to the second person (not being a notification by way of a statement being applied as mentioned in paragraph (a)) of the price that he recommends as appropriate for the sale of those goods, provided that there is included in the notification and in each writing that refers, whether expressly or by implication, to the notification, a statement to the following effect—

"The price set out or referred to herein is a recommended price only and there is no obligation to comply with the recommendation."

(9) For the purposes of paragraph (d) or (e) of subsection (3) the supplier is deemed to withhold the supply of goods to another person if—

- (a) the supplier refuses or fails to supply those goods to, or as requested by the other person;
- (b) the supplier refuses to supply those goods except on terms that are disadvantageous to the other person;
- (c) in supplying goods to the other person, the supplier treats that person less favourably, whether in respect of time, method or place of delivery or otherwise, than the supplier treats other persons to whom the supplier supplies the same or similar goods; or
- (d) the supplier causes or procures a person to withhold the supply of goods to the other person as mentioned in paragraph (a), (b) or (c) of this subsection.

(10) Subsection (3) (d) does not apply in relation to the withholding by the supplier of the supply of goods to another person who, within the preceding year, has sold goods obtained, directly or indirectly, from the supplier at less than their cost to that other person—

- (a) for the purpose of attracting to the establishment at which the goods were sold persons likely to purchase other goods; or
- (b) otherwise for the purpose of promoting the business of that other person.

(11) For the purposes of subsection (1), the following must be disregarded—

- (a) a genuine seasonal or clearance sale of goods that were not acquired for the purpose of being sold, at that sale; or
- (b) a sale of goods that took place with the consent of the supplier.

(12) For the purposes of subsection (3) (f), if—

- (a) a statement is applied to goods, whether by being woven in, impressed on, worked into or annexed or affixed to the goods or otherwise;
- (b) a statement is applied to a covering, label, reel or thing in or with which goods are supplied; or
- (c) a statement is used in a sign, advertisement, invoice, catalogue, business letter, business paper, price list or other document or otherwise in a manner likely to lead to the belief that it refers to goods, the statement is taken to have been used in relation to those goods.

(13) For the purposes of subsection (12)—

- “covering” including a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper;
- “label” includes a band or ticket.’

*Resale price maintenance in relation to services*

70A.—(1) Sections 70 and 70B apply to conduct in relation to services in a way that corresponds to the way they apply to conduct in relation to goods.

(2) For the purposes of subsection (1), sections 70 and 70B are to be read with appropriate modifications including—

- (a) references to goods are to be read as references to services;
- (b) references to the sale of goods are to be read as references to the re-supply of services.

*Evidentiary provisions*

70B.—(1) If, in proceedings under this Act by a person (the plaintiff) against another person (the defendant), it is claimed that the defendant has engaged in the practice of resale price maintenance and it is established that—

- (a) the defendant has acted, in relation to the plaintiff, as mentioned in paragraph 70(1)(a), (b), (c) or (d);
- (b) during a period ending immediately before the time when the defendant so acted, the defendant had been supplying goods of the kind withheld to the plaintiff or to another person carrying on a business similar to that of the plaintiff; and
- (c) during the period of 6 months immediately before the time when the defendant so acted, the defendant became aware of a matter or circumstance capable of constituting a reason referred to in paragraph 70(3)(d) or (e) for the defendant’s so acting,

then, subject to subsection (2), that matter or circumstance is, unless the contrary is established, taken to be the reason for the defendant’s so acting.

(2) Subsection (1) does not apply, if the plaintiff establishes the matter mentioned in paragraph 70(1) (b) or (c) but the terms disadvantageous to the plaintiff, or the less favourable treatment of the plaintiff, consisted only of a requirement by the defendant as to the time at which, or the form in which, payment was to be made or as to the giving of security to secure payment.

(3) In the application of this section in proceedings by the Commission for an injunction, references to the plaintiff must be construed as references to a person specified in the application for the injunction as the person in relation to whom the defendant is claimed to have acted as mentioned in paragraph (1)(a).

*Price discrimination*

71.—(1) A person must not, in trade or commerce, discriminate between purchases of goods like grade and quality in relation to—

- (a) the prices charged for the goods;
- (b) any discounts, allowances, rebates or credits given or allowed in relation to the supply of the goods;
- (c) the provision of services in respect of the goods; or
- (d) the making of payments for services provided in respect of the goods,

if the discrimination is of such magnitude or is of such a recurring or systematic character that it has or is likely to have the effect of substantially lessening competition in a market for goods, being a market in which the corporation supplies, or those persons supply, goods.

(2) Sub-section (1) does not apply in relation to a discrimination if—

- (a) the discrimination makes only reasonable allowances for differences in cost or likely cost of manufacture, distribution, sale or delivery resulting from the differing places to which, methods by which or quantities in which the goods are supplied to the purchasers; or
- (b) the discrimination is constituted by the doing of an act in good faith to meet a price or benefit offered by a competitor of the supplier.

(3) In any proceeding for a contravention of sub-section (1), the onus of establishing that that sub-section does not apply in relation to discrimination by reason of sub-section (2) is on the party asserting that sub-section (1) does not so apply.

(4) A person shall not, in trade or commerce—

- (a) knowingly induce or attempt to induce a corporation to discriminate in a manner prohibited by sub-section (1); or
- (b) enter into any transaction that to his knowledge would result in his receiving the benefit of a discrimination that is prohibited by that sub-section.

(5) In any proceeding against a person for a contravention of sub-section (4), it is a defence if that person establishes that he reasonably believed that, by reason of sub-section (2), the discrimination concerned was not prohibited by sub-section (1).

#### *Mergers*

72.—(1) A person must not acquire, directly or indirectly, any shares in the capital, or any assets, of a body corporate if—

- (a) as a result of the acquisition, the person would be, or be likely to be, in a position to dominate a market for goods or services; or
- (b) in a case where the person is in a position to dominate a market for goods or services—
  - (i) the body corporate or another body corporate that is related to that body corporate is, or is likely to be, a competitor of the person or of a body corporate that is related to the person; and
  - (ii) the acquisition would, or would be likely to, substantially strengthen the power of the person to dominate that market.

(2) If—

- (a) a body corporate that is related to or associated with a person is, or two or more bodies corporate each of which is related to or associated with the person together are, in a position to dominate a market for goods or services; or
- (b) a person, and a body corporate that is, or two or more bodies corporate each of which is, related to or associated with that person, together are in a position to dominate a market for goods or services, the person shall be deemed for the purposes of this section to be in a position to dominate that market.

(3) For the purposes of this section, a body corporate shall be taken to be associated with another body corporate (not being another body corporate that is related to the first mentioned body corporate) if one of those bodies corporate (in this sub-section referred to as the “dominant body corporate”) is, either alone or together with another body corporate that is, or other bodies corporate each of which is, related to the dominant body corporate by another applications of this sub-section, in a position to exert, whether directly or indirectly, a substantial degree of influence over the activities of the other body corporate.

(4) For the purposes of sub-section (4), the fact that a body corporate is in a position to exert a substantial degree of influence over the activities of another body corporate by reason only that—

- (a) those bodies corporate are in competition in the same market; or
- (b) one of those bodies corporate supplies goods or services to the other, shall be disregarded.

(4A) If—

- (a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a body corporate;

- (b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted an authorisation to acquire the shares or assets; and
- (c) the person applied for the grant of the authorisation before the expiration of 14 days after the contract was entered into, the acquisition of the shares or assets must not be regarded for the purposes of this Decree as having taken place in pursuance of the contract before-
- (d) the application for the authorisation is disposed of; or
- (e) the contract ceases to be subject to the condition, whichever happens first.

(5) In this section—

- (a) a reference to a market for goods or services shall be construed as a reference to a substantial market for goods or services in Fiji; and
- (b) a reference to dominating a market for goods or services shall be construed as a reference to dominating such a market either as a supplier or as an acquirer of goods or services in that market.

*Acquisition outside Fiji*

73.—(1) Where a person acquire, outside Fiji, otherwise than by reason of the application of paragraph (7) (b), a controlling interest in any body corporate and, by reason, but not necessarily by reason only, of the application of paragraph (7) (b) in relation to the controlling interest, obtains a controlling interests in a corporation of each of 2 or more corporations, the Minister may, on the application of any person is satisfied that—

- (a) as a result of the obtaining by the person of the last-mentioned controlling interest, the person would be, or be likely to be, in a position to dominate a substantial market for goods or services in Fiji;
- (b) in a case where the person is in a position to dominate such a market—
  - (i) the corporate body or another body corporate that is related to that body corporate is, or is likely to be, a competitor of the person or of a body corporate that is related to the person; and
  - (iii) the acquisition would, or would be likely to substantially strengthen the power of the person to dominate that market;
- (c) the obtaining by the person of the last-mentioned controlling interest would not, in all the circumstances, result, or be likely to result, in such a benefit to the public that the obtaining of that controlling interest should be disregarded for the purposes of this section,

make a declaration accordingly.

(2) Where an application under sub-section (1) is made—

(a) the Minister shall give to—

- (i) each corporation in relation to which the application relates, a notice in writing stating that the application has been made; and

(b) the applicant or applicants notice that they are entitled to appear, or be represented at an investigation or inquiry to be conducted under this Decree.

(3) An application under sub-section (1) maybe made at any time within 6 months after the date of the acquisition referred to in that sub-section in relation to which the application is made.

(4) The Minister may, on the application any person or on his own motion, revokes a declaration under sub-section (1).

(5) The Minister shall state in writing its reasons for making, refusing to make or revoking a declaration under sub-section (1)

(6) After the end of 3 months after a declaration is made under sub-section (1) in relation to the obtaining of a controlling interest in a corporation or 2 or more corporations by a person or, of the person, before the end of that period of 3 months, makes an application for an extension of that period (not exceeding 6 months) the corporation or each of the corporations, as the case maybe, shall not, while the declaration remains in force, carry on business in the market to which the declarations relates.

(7) For the purpose of this section—

- (a) a person shall be taken to hold a controlling interest in a body corporate if the body corporate is, or, if the person were a body corporate, would be, a subsidiary of the person [otherwise than by reason of the application of Section 4(5) (1) (b)]; and
- (b) where a person holds a controlling interest (including a controlling interest held by virtue of another application of other applications of this paragraph) in a body corporate and that body corporate—
  - (i) controls the composition of the board of directors of another body corporate;
  - (ii) is in a position to cast, or control the casting of, any votes that might be cast at a general meeting of another body corporate;
  - (iii) holds shares in the capital of another body corporate,
 the person shall be deemed (but not to the exclusion of any other person) to control the composition of that board, to be in a position to cast, or control the casting of, those votes or to hold those shares, as the case may be.

## PART 7—CONSUMER PROTECTION AND UNFAIR PRACTICES

### Division 1—consumer protection

#### *Interpretation*

74.—(1) For the purposes of this Division, where a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

(2) The onus of establishing that a person had reasonable grounds for making a representation to in subsection (1) is on the person.

(3) Subsection (1) shall not be taken to limit by implication the meaning of a reference in this Division to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

#### *Misleading or Deceptive Conduct.*

75.—(1) A person shall not, in trade or commerce engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) Nothing in this Division shall be taken as limiting by implication the generality of subsection (1).

#### *Unconscionable Conduct.*

76.—(1) A person shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services to a person (in this section referred to as the customer), engage in conduct that is, in all the circumstances, unconscionable.

(2) Without limiting the matters to which regard may be had for the purpose of determining whether a supplier has contravened subsection (1) in connection with the supply or possible supply of goods or services, regard may be had to—

- (a) the relative strengths of the bargaining positions of the supplier and the customer;
- (b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier;
- (c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services;
- (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer (or person acting on behalf of the customer) by the supplier in relation to the supply or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and
- (e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier.

(3) A supplier shall not be taken for the purposes of the section to engage in unconscionable conduct in connection with the supply or possible supply of goods or services to a customer only because the supplier institutes legal proceedings in relation to that supply or possible supply or refers a dispute or claim in relation to that supply or possible supply to arbitration.

(4) For the purpose of determining whether a supplier has contravened subsection (1) in connexion with the supply or possible supply of goods or services to a customer—

- (a) regard shall not be had to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
- (b) regard may be had to conduct engaged in, or circumstances existing, before the commencement of this Decree.

(5) Any person who fails to comply or contravenes this section is guilty of an offence.

*False or Misleading Representation.*

77.—(1) A person shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services—

- (a) falsely represent that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use which they do not have;
- (b) represent that services are of a particular standard, quality or grade they do not have;
- (c) represent that goods are new or unused, if they are not or are reconditioned or reclaim;
- (d) represent that a particular person has agreed to acquire goods or services when that other person has not;
- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (f) represent that the person has a sponsorship, approval, or affiliation that person does not have;
- (g) make a representation concerning that a price advantage of goods or services exist if it does not;
- (h) make a representation concerning the availability of facilities for the repair of goods or of spare parts for goods when they are not;
- (i) make false or misleading representation concerning the place of origin of goods;
- (j) make a false or misleading representation concerning the need for any goods or services;
- (k) make representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy that person does not have.

(2) A person who contravenes this section shall be guilty of an offence.

*False or Misleading Advertisement.*

78.—Any person who—

- (a) to promote, directly or indirectly, the supply of any goods or services; or
- (b) to promote any business or trade interest publishes or cause to be published any advertisement containing a false or misleading statement of fact,

shall be guilty of an offence.

*False or misleading representation and other misleading or offensive conduct in relation to land*

79.—(1) A person shall not, in trade or commerce, in connexion with the sale or grant, or the possible sale or grant, of an interest in land or in connexion with the promotion by any means of the sale or grant of an interest in land—

- (a) represent that the person has a sponsorship, approval or affiliation it does not have;
- (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land; or
- (c) offer gifts, prizes or other free items and does not provide them as offered.

(2). A person shall not use physical force or undue harassment or coercion in connection with the sale or grant, or the possible sale or grant, of an interest in land or the payment for an interest in land.

(3) Nothing in this section shall be taken as implying that other provisions of this Division do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

(4) A person who contravenes this section shall be guilty of an offence.

(5) In this section "interest", in relation to land, means—

- (a) a legal or equitable estate or interest in the land;
- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or
- (c) a right, power or privilege over, or in connexion with, the land

*Misleading conduct to which Industrial Property convention applies*

80.—(1) A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.

(2) A person who contravenes this section shall be guilty of an offence.

*Misleading Conduct in Relation to Employment.*

81.—(1) A person shall not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead person seeking employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment.

(2) A person who contravenes this section shall be guilty of an offence.

*Cash Price To Be Stated In Certain Circumstances.*

82.—(1) A person shall not, in connexion with the supply or possible supply of goods or service or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the person also specified the cash price for the goods or services.

(2) A person who contravenes this section shall be guilty of an offence.

*Certain Misleading Conduct In Relation To Goods.*

83.—(1) A person shall not, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity or any goods.

(2) A person who contravenes this section shall be guilty of an offence.

*Certain Misleading Conduct In Relation to Services*

84.—(1) A person shall not, engage in conduct and make representation purporting to be on behalf of some other person that is capable of obtaining services or goods and is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any services.

(2) A person who contravenes this section shall be guilty of an offence.

*Offering Gifts and Prizes*

85.—(1) A person shall not, in trade or commerce, in connexion with the supply or possible supply of goods or services or in connexion with the promotion by any means of the supply or use of goods or services, offer gifts, prizes or other free items and does not provide them as offered shall be guilty of an offence.

*Bait Advertising*

86.—(1) A person shall not, in trade or commerce, advertise goods or services for supply at a specified price if there are reasonable grounds, of which the person is aware, or ought reasonable to be aware, for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) A person who has, in trade or commerce, advertised goods or services for supply at a specified price shall offer the goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(3) A person who contravenes this section shall be guilty of an offence.

(4) In proceedings for an offence in relation to a failure to offer goods or services to a person (in this subsection referred to as the "customer") in accordance with subsection (2), it is a defence if it is established that—

- (a) the defendant offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
- (b) the defendant offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised, and in either case; where the offer was accepted by the customer, the defendant has so supplied, or procured another person to supply, goods or services.

*Referral Selling*

87.—(1) A person shall not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services made, receive a rebate, commission or other or other benefit in return for giving the person the names of prospective customers or other wise assisting the person to supply goods or services to other consumers, if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

(2) A person who contravenes this section shall be guilty of an offence.

*Pyramid Selling Scheme*

87A.—(1) A person must not act as the promoter of, or operate, a pyramid selling scheme.

(2) For the purposes of this section, pyramid selling scheme means a scheme—

- (a) which provides for the sale or distribution of goods or services or both for reward;
- (b) which to many participants in the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to sell goods or services; and
- (c) which is or is likely to be unfair to many of the participants in the scheme in that—
  - (i) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and
  - (ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

(3) For the purposes of this section, pyramid selling scheme includes an arrangement for the supply of goods or services pursuant to an arrangement of the type commonly known as a chain letter arrangement but does not include any scheme or activities (including all or any of the activities of a particular person or a particular class of persons) that is declared by the minister, by notice in the *Gazette*, to be excluded from that term.

*Unlawful actions and representations*

87B.—(1) A creditor, or the agent of a creditor, must not, for the purpose of recovering a trading debt of the creditor—

- (a) make any demand for payment without indicating the creditor's identity and the balance owing to the creditor and, if the demand is made by the agent, the agent's identity and authority to make the demand;
- (b) demand payment of any amount that the creditor or agent does not honestly believe to be due and owing to the creditor;
- (c) persist in demanding payment from a person who has denied liability without making reasonable inquiries to ensure that the demand is based on reasonable grounds;
- (d) make any personal calls or telephone calls for the purpose of demanding payment—
  - (i) on a public holiday; or
  - (ii) between the hours of 10.00 pm of one day and 7.00 am of the next; or
- (e) except as reasonably necessary to determine the debtor's whereabouts, communicate with an employer; acquaintance, friend, relative or neighbour of the debtor (not being a guarantor).

- (2) A creditor, or the agent of a creditor; must not, for the purpose of recovering a trading debt—
- (a) falsely represent that criminal or other proceedings will lie for non-payment of the debt;
  - (b) falsely pretend to be authorised in some official capacity to claim or enforce payment; or
  - (c) falsely represent that a document has some official character that it does not have.

- (3) In this section—

'agent' includes an employee of a creditor whose main duty of employment is to seek to recover trading debts owed to the creditor.

*Collective bidding at auction*

- 87C.—(1) A person who is a wholesaler, retailer or contractor must not enter into—

- (a) an agreement or arrangement with another person who is a wholesaler, retailer or contractor as to the price or prices which either of them will bid at any auction sale of goods or services; or
- (b) an agreement or arrangement under which a party to the agreement or arrangement agrees to abstain from bidding at an auction sale of goods or services.

- (2) A person who contravenes this section shall be guilty of an offence.

*Supply of trading stamps*

- 87D.—(1) A person must not—

- (a) supply, or arrange for the supply of, any coupon, stamp, token, cover, package, document or other things, either directly or indirectly, to—
  - (i) any manufacturer, packer, importer, distributor or seller of goods, or
  - (ii) any seller of services; and
- (b) undertake to redeem that coupon; stamp, token, cover, package, document or thing, or undertake that it will be redeemed, whether or not it has to be produced or surrendered to any person by giving or delivering to its holder any money, goods or services.

(2) Nothing in subsection (1) applies to any coupon, stamp, token, cover, package, document or thing issued directly or indirectly in connection with any goods or services by the manufacturer, packer, importer, distributor or seller of the goods or services, being a coupon, token, cover, package document or thing which by itself or with any other act or thing entitles or purports to entitle the holder to receive any money from the issuer, whether or not it has to be produced or surrendered to any person.

- (3) In this section—

'seller', in relation to any goods mean the person by whom the goods are sold to a person who purchases them for a purpose other than resale.

- (4) A person who contravenes this section shall be guilty of an offence.

*Refusal to sell goods or services unless other goods or services are also purchased*

87E.—(1) A person must not, whether as principal or agent, refuse to sell goods or services except on the condition that other goods or services are also purchased from that person or from any other person, or attempt to impose any such condition.

(2) Nothing in this section renders unlawful any condition against the separate sale of any goods forming part of a set or forming part of a single or composite article.

- (3) A person who contravenes this section is guilty of an offence.

*Adulteration*

- 87F.—(1) A person must not—

- (a) adulterate any goods for supply by way of trade or commerce; or
- (b) supply by way of trade or commerce any adulterated goods.

- (2) A person who contravenes this section shall be guilty of an offence.

(3) In a prosecution of a person under section 129 for an offence against this section, it is a defence if the person establishes that the adulteration was not carried out fraudulently and that the goods were supplied accompanied

by a clear and conspicuous notice stating explicitly the nature of the adulteration, or were supplied in a container displaying such a notice.

(4) It is also a defence if the person establishes that—

- (a) the presence of extraneous matter is an unavoidable consequence of the collection or processing of such goods; and
- (b) the amount of the extraneous matter does not exceed such tolerance as is prescribed by the Minister in regulations under subsection (4).

(5) The Minister may by regulation prescribe in respect of specified goods or a specified class of goods the amount of extraneous matter to be tolerated.

(6) For purposes of this section, goods are deemed to be adulterated—

- (a) if any valuable constituent has been in whole or in part omitted or removed from them;
- (b) if a substance has been substituted wholly or in part for another substance;
- (c) if damage or inferiority has been concealed in any way; or
- (d) if any substance has been added to the goods or mixed or packed with the goods so as to increase their bulk or weight reduce their quality or strength or make them appear better or of greater value than they are.

(7) The regulations may, for the purpose of this section, specify in relation to specified goods, or goods of a specified class, constituents or substances the goods are required to contain.

*Hoarding etc*

87G.—(1) A person who is in possession of goods for mercantile purposes must not destroy or hoard the goods, or refuse to sell the goods or make them available for sale, if the destruction, hoarding or refusal—

- (i) raises, or tends to raise, the cost of other similar goods, or maintains the market price of the goods or
- (ii) is done in order to charge a price higher than the price it is normally sold at a time convenient to the person or immediately before the higher price is fixed in accordance with section 59 or 44 of this Decree.

(2) A person that contravenes this section shall be guilty of an offence.

*Black marketing*

87H.—(1) A person must not, whether as principal or agent, sell any goods for purposes of resale, unless the person is satisfied—

- (a) that the goods are required by the buyer, in good faith, for the legitimate purposes of his business; and
- (b) in particular, that the effect of the transaction whether, by itself or taken in conjunction with transactions of the same or of a similar nature, will not be to increase or will not tend to increase the price to the ultimate buyer of the goods above a fair and reasonable price (whether that price be a lawful price or not).

(2) This section does not apply with respect to the sale of any goods to a retailer for purposes of retail sale.

(3) A person that contravenes this section is guilty of an offence.

*Limited offers and failing to supply as demanded*

87I.—(1) A person must not advertise or offer goods for sale by retail upon condition that not more than a specified or limited quantity or number of the goods may be purchased by any one purchaser.

(2) A person who offers goods for sale by retail must not refuse or fail, on demand of a quantity or number of the goods and tender of the appropriate price, to supply the goods in the quantity or number demanded.

(3) A person that contravenes this section shall be guilty of an offence.

*Statement of price or condition and pull date*

87J.—(1) A person must not offer goods for sale by retail if any statement of price or conditions of sale (relating to the availability of discounts or trade-in or other allowances) imprinted on, attached to or exhibited with the goods

does not set out in a prominent position and in clear and legible figures the price at which the goods can be bought for cash.

(2) A person must not sell, display for sale, or cause to be distributed for the purposes of sale any perishable or semi-perishable goods in package form unless the pull date is marked on the package.

(3) In this section—

'pull date' means the last date on which perishable or semi-perishable goods are to be sold.

(4) A person that contravenes this section shall be guilty of an offence.

*Mandatory trade is prohibited*

87K.—(1) A person must not, in the course of trade, sell goods at retail or supply services if the person, whether as principal or agent, indicates in the course of bargaining with any purchaser or prospective purchaser of those goods or services—

(a) that the goods will be sold or the services will be supplied only if the purchaser or prospective purchaser sells or arranges the sale of secondhand goods to the seller or to a person nominated by the seller; or

(b) that the terms and conditions on which the seller will sell those goods or supply those services will be less favourable than those upon which he would make them available if the purchaser or prospective purchaser were to sell or to arrange the sale of secondhand goods to the seller or to a person nominated by the seller.

(2) A person that contravenes this section shall be guilty of an offence.

*Accepting Payment Without Being Able to Supply as Ordered*

88.—(1) A person shall not, in trade or commerce, accept payment or other consideration for goods or services where, at the time of the acceptance—

(a) the person intends—

(i) not to supply the goods or services; or

(ii) to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is accepted; or

(b) there are reasonable grounds, of which the person is aware, or ought reasonably to be aware, for believing that the person will not be able to supply the goods or services within the period specified by the person or, if no period is specified, within a reasonable time.

(2) A person who contravenes this section shall be guilty of an offence.

*Misleading Representation About Certain Business Activities*

89.—(1) A person shall not, in trade or commerce, make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that the person has represented as one that can be, or can be, or can be to a considerable extent, carried on at or from any place or residence.

(2) Where a person, in trade or commerce, invite, whether by advertisement or otherwise, other persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring the performance by the other persons of work, or the investment of money by the other associated with the investment, the inviter shall not make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

(3) A person who contravenes this section shall be guilty of an offence.

*Harassment and Coercion*

90.—(1) A person shall not use physical force or undue harassment or coercion in connexion with the supply or possible supply of goods or services to a consumer or the payment for goods or services by a consumer.

(2) A person who contravenes this section shall be guilty of an offence.

*Application of Certain Provisions to prescribed Information Providers.*

91.—(1) Nothing in Sections 75, 77, 83, 84, or Section 89 applies to a prescribed publication of matter by a prescribed Information provider, other than—

- (a) a publication of matter in connexion with—
  - (i) the supply or possible supply of goods or services; or
  - (ii) the promotion by any means of the supply of use of goods or services; where—
    - (iii) the goods or services were relevant goods or services, in relation to the prescribed information provider; or
    - (iv) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with—
      - (A) a person who supplies goods or services of that kind; or
      - (B) a body corporate that is related to a body corporate that supplies goods or services of that kind;
- (b) a publication of an advertisement.

(2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if—

- (a) in any case— the publication was made by the prescribed information provider in the course of carrying a business or providing information; or
- (b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of “prescribed information provider” in subsection (3) (whether or not the person is also a prescribed information provider by virtue of another operation of that definition) — the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section—

“prescribed information provider” means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes a person to whom, or each of the members of an organization to which, a license has been granted under.

“relevant goods or services” in relation to a prescribed information provider, means goods or services of a kind supplied by the prescribed information provider or, where the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

#### Division 2—Unsolicited Goods and Service

##### *Assertion of Right to payment for Unsolicited Goods or Services, or for making Entry in Directory*

92.—(1) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited goods unless the person asserting the right has reasonable cause to believe that there is a right to payment.

(2) A person shall not, in trade or commerce, assert a right to payment from another person for unsolicited services unless the person asserting the right has reasonable cause to believe that there is a right to payment.

(3) A person shall not assert a right to payment from another person of a charge for the making in a directory of an entry relating to other persons, or to the profession, business, trade, or occupations of the other persons, unless the person asserting the right knows, or has reasonable cause to believe, that the other person has authorized the making of the entry.

(4) A person is not liable to make any payment to another person and is entitled to recover by actions in a court of competent jurisdictions against another person any payment made by the person to the other person, in full or part satisfaction of a charge for the making of an entry in a directory unless the first-mentioned person has authorized the making of the entry.

(5) For the purposes of this section, a person shall be taken to assert a right to payment from another person for unsolicited goods or unsolicited services, or of a charge for the making of an entry in a directory, if the first-mentioned person—

- (a) makes a demand for the payment or asserts a present or prospective right to the payment;

- (b) threatens to bring any legal proceedings with a view to obtaining the payment;
- (c) places or causes to be placed the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment;
- (d) invokes or causes to be invoked any collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or selling out the price of the goods or services or the charge for the making of the entry and not stating as prominently (or more prominently) that no claim is made to the payment, or to the payment of the price or charge, as the case may be.

(6) A person shall not be taken for the purposes of this section to have authorized the making of an entry in a directory unless—

- (a) a document authorizing the making of the entry has been signed by, or with the authority of, the person;
- (b) the document specified—
  - (i) the name of the directory;
  - (ii) the name address of the person publishing the directory;
  - (iii) particulars of the entry; and
  - (iv) the amount of the charge for the making of the entry or the basis on which the charge is, or is to be, calculated;

and

- (c) a copy of the document has been given to the person before the right to payment of a charge for the making of the entry is asserted.

(7) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person shall be deemed to have been sent by that person unless that contrary is established.

(8) A person who contravenes this section shall be guilty of an offence.

(9) In a proceeding against a person in respect of a contravention of this section—

- (a) in the case of contravention constituted by asserting a right to payment from another person for unsolicited goods or unsolicited services—the burden lies on the defendant of proving that the defendant of proving that the defendant had reasonable cause to believe that there was a right to payment; or
- (b) in the case of a contravention constituted by asserting a right to payment from another person of a charge for the making of an entry in a directory—the burden lies on the defendant of proving that the defendant knew or had reasonable cause to believe that the other person had authorized the making of the entry.

*Liability of Recipient of Unsolicited Goods*

93.—(1) A person to whom unsolicited goods are supplied by another person, in trade or commerce, is not liable to make any payment for the goods and is not liable for the loss of or damage to the goods other than loss or damage resulting from the doing of a wilful and unlawful act in relation to the goods during the period specified in subsection (4).

(2) Subject to subsection (3), where a person sends, in trade or commerce, unsolicited goods to another person—

- (a) neither the person who send the goods nor any person claiming under that person is entitled after the expiration of the period specified in subsection (4) to take action for the recovery of the goods from the person to whom the goods were sent; and
- (b) upon the expiration of that period the goods become, by force of this section, the property of the person to whom the goods were send freed and discharged from all liens and charges of any description.

(3) Subsection (2) does not apply to or in relation to unsolicited goods sent to a person if—

- (a) the person has at any time during the period specified in subsection (4) unreasonably refused to be permitting the sender or the owner of the goods to take possession of the goods;

- (b) the sender or the owner of the goods has within that period taken possession of the goods; or
  - (c) the goods were received by the person in circumstances in which the person knew that the goods were not intended for that person.
- (4) The period referred to in subsection (1), (2) and (3) is—
- (a) if the person who receives the unsolicited goods gives notice with respect to the goods to the sender in accordance with subsection (5)—
    - (i) the period of 30 days next following the day on which the notice is given; or
    - (ii) the period of 90 days next following the day on which the period received the goods, whichever first expires; and
  - (b) in any other case - the period of 90 days next following the day on which the person received the goods.
- (5) A notice referred to in subsection (4) shall be in writing and shall—
- (a) state the name and address of the person who received the goods;
  - (b) state the address at which possession may be for the taking of the goods if it is an address other than that of the person: and
  - (c) contain a statement to the effect that the goods are unsolicited goods.

*False Orders*

- 94.—(1) A person shall not make a request in the name of other person that goods be sent to that other person where, if those goods were sent to that other person, those goods would be unsolicited goods.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence.
- (3) In a prosecution for an offence against this section the burden lies on the defendant to prove his authority to make the request.

*Division 3— Mock Auctions*

*Prohibition on Mock Auctions*

- 95.—(1) A person shall not promote or conduct a mock auction of goods.
- (2) Subject to subsection (3) an auction of goods is a mock auction if, but only if, during the course of the auction—
- (a) goods are sold for less than the highest bid made by the purchaser, or part of the purchase price is repaid or credited to the purchaser;
  - (b) the right to bid for any lot is restricted to persons who have bought or agreed to buy other goods; or
  - (c) any goods are given away or offered as gifts.
- (3) An auction is not a mock auction by virtue of paragraph (a) of subsection (2) if it is proved that the reduction in price or the repayment or credit (as the case may be) was made—
- (a) because of defect of which the auctioneer became aware after the highest bid was made; or
  - (b) because of damage sustained after that bid was made.
- (4) A person who contravenes this section shall be guilty of an offence.
- (5) For the purposes of proceedings for an offence against this section—
- (a) a statement, purporting to be a statement of fact, made by or on behalf of the auctioneer during the course of an auction of goods and tending to show that the auction is a mock auction is admissible as conclusive evidence of the fact stated; and
  - (b) anything done, before or after an auction, in or is to be held, if done in connexion with the auction, shall be taken to be done during the course of the auction.

*Division 4—Door to Door Sales**Interpretation*

96.—(1) In this Division unless the contrary intention appears—

“contract to which this Division applies” means a contract to which this Division applies by virtue of section 97;

“cooling-off period” in relation to a prescribed contract, means the period of 14 days commencing on and including the day on which the contract is made;

“dealer” mean a person who in the course of door-to-door trading—

(a) enters into negotiations with another person with a view to the making of a contract for the supply of goods or services to those other goods;

(b) calls on another person for the purpose of entering into such negotiation; whether or not that person is or is to be that supplier of the goods or services;

“door-to-door trading” means the trading practice under which—

(a) a person—

(i) goes from place to place; or

(ii) makes telephones calls, seeking out persons who may be prepared to enter, as consumers, into contracts for the supply of goods or services; and

(b) that person or some other person then or subsequently enters into negotiations with those prospective consumers with a view to the making of such contracts;

“negotiation” includes any discussion or dealing directed towards the making of a contract (whether or not the terms of the contract are open to negotiation);

“prescribed contract” in relation to a contract to which this Division applies, means—

(a) a contract of guarantee or indemnity that is related to the contract;

(b) an instrument related to the contract that creates a mortgage or change in favour of the supplier or dealer, or a person nominated by the supplier or dealer; or

(c) any other contract or instrument (not being an instrument of the kind referred to in paragraph (b) that is collateral or related to the contract.

(2) In this Division—

(a) a reference to the consumer or supplier under a contract for the supply of goods or services extends to any person to whom the rights of the original consumer or supplier under the contract are assigning or transferred, or pass by operation of law; and

(b) a reference to negotiation of a contract to which this Division applies is a reference to negotiation of a contract that would, on its formation, be a contract to which this Division applies.

(3) For the purposes of this Division, a contract is a contract for the supply of goods or service to a person (being a party to the contract) if it provides for the supply of services wither to that person or to some other person but on the order of that person.

*Contracts to Which This Division Applies.*

97.—(1) Subject to this section, this Division applies to a contract for the supply or goods or services to a consumer (whether or not the law of Fiji is the proper law of the contract) if the following conditions are satisfied—

(a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the consumer and a dealer in each other’s presence in Fiji at a place other than trade premises of the supplier;

(b) the dealer attend at the place—

(i) in the course of door-to-door trading; and

(ii) otherwise than at the unsolicited invitation of the consumer.

(2) For the purposes of paragraph (b) of subsection (1)—

(a) in determining whether an invitation is solicited or unsolicited, any solicitation by way of—

- (i) printed or written material delivered but not addressed personally to the consumer which contains a readily legible and easily understood statement soliciting an invitation; or
- (ii) advertisement addressed to the public or a substantial section of the public,

shall be disregarded;

but

(b) except as provided in paragraph (a), where an invitation arises from a communication initiated by the supplier or dealer, the invitation shall not be regarded as unsolicited.

*Prohibition of Certain Contractual Terms*

98.—(1) A contract to which this Division applies shall not contain—

- (a) A provision purporting to provide that the contract, or any proceeding arising from the contract, is governed by the law of a place other than Fiji;
- (b) a provision purporting to provide that legal proceeding arising out of, or in relation to, the contract are justifiable only by the courts of the place other than Fiji;
- (c) A provision purporting to exclude, restrict, or modified any right conferred on a consumer by this Division; or
- (d) A provision of a kind prohibited by the regulations.

(2) Where a contract to which this Division applies contain a provision contrary to subsection (1), the provision is void and the supplier and the dealer each commit an offence against this Decree.

(3) In this section “contract to which this Division applies” includes a related contract or instrument.

(4) Any person who contravenes this section is guilty of an offence.

*Definition of Prescribed Contract*

99.—(1) Subject to this section, a contract to which this Division applies is a prescribed contract if the total consideration payable by the consumer under, or in respect of, the contract—

- (a) is not ascertainable at the time of the making of the contract; or
- (b) is ascertainable at the time of the making of the contract and exceeds the prescribed amount.

(2) Where—

- (a) two or more contracts relate to substantially the same transaction; and
- (b) the transaction could have been affected by a single contract which would, in that case, have constituted a prescribed contract,

then each of the contracts that would not, if it stood alone, constitute a prescribed contract becomes a prescribed contract and, for the purpose of ascertaining the cooling-off period in relation to such a contract, it shall be deemed to have been made when the last of the contract was made.

(3) The following are not prescribed contracts:—

- (a) a contract of insurance;
- (b) a contract solely for the provision of credit;
- (c) a contract of a kind declared by the regulations not to be prescribed contract.

(4) In this section, “the prescribed amount” means \$500 if another amount is prescribed in the regulations, that other amount.

*Requirements in Relation to Prescribed Contracts*

100.—(1) The following requirements shall be complied with in relation to prescribed contract—

- (a) the contract shall set out in full all the contractual terms, including—
  - (i) the total consideration to be paid or provided by the consumer or, if the total consideration
  - (ii) if the contract provides for the carrying out of work of a prescribed nature - detailed particulars of the work (including any such particulars required by the regulations);

- (b) the contractual terms shall be printed or typewritten (apart from any insertions or amendments to the printer or typewriter form, which may be handwritten);
- (c) the making of the contract shall be completed by the consumer signing the contract after it has already been executed by or on behalf of the supplier;
- (d) the consumer shall be given a duplicate of the contract immediately after the making of the contract;
- (e) where the dealer is not the supplier, the contract shall set out the full name and address of the dealer and identify that person as the dealer;
- (f) the contract shall contain immediately above the place provided for the signature of the consumer the statement "THIS CONTRACT IS SUBJECT TO A COOLING-OFF PERIOD OF 14 DAYS" printed in upper case in type not smaller than 4mm;
- (g) the consumer shall be given 2 notices at or immediately before the making of the contract—
  - (i) one being a notice, the prescribed form, explaining the right of the consumer to rescind the contract; and
  - (ii) the other being a notice, in the prescribed form, which may be used by the consumer to rescind the contract;
- (h) the notice referred to in paragraph (g) shall—
  - (i) be printed or typewritten (apart from any insertion, which may be handwritten);
  - (ii) set out the full name and address of the supplier and identify that person as the supplier; and
  - (iii) be separate from, and not attached to, any other document.
- (i) the printing or typewriting of the contract, the settlement referred to in paragraph (f), and the notices referred to in paragraph (g), shall be readily legible and conform with the requirements of the regulations;
- (j) any handwriting (apart from a signature or initial) in the contract or a notice referred to in paragraph (g) shall be readily legible.

(2) If any of the requirements of subsection (1) is not complied with, the supplier and the dealer each commit an offence against this Decree.

(3) Where a consumer acknowledges, in writing, receipt of a document required to be given under subsection (1), the acknowledgements evidence, but not conclusive evidence, that the document was given to the consumer as required by that subsection.

*No Consideration during Cooling-off Period.*

101.—(1) If a supplier or dealer accepts any money or other consideration from a consumer under a prescribed contract or a related contract or instrument before the expiration of the cooling-off period, the supplier and the dealer each commit an offence against this Decree.

(2) Subject to subsection (3), if services are supplied under a prescribed contract before the expiration of the cooling-off period, the supplier commits an offence against this Decree.

(3) Subsection (2) does not apply to the supply of services of a kind excluded by the regulations from the application of that subsection.

*Prohibited Hours*

102.—(1) Except by prior appointment, a dealer shall not call on a person—

- (a) at any time on a Sunday or a public holiday;
- (b) on a Saturday after 9.00pm
- (c) on any other day—
  - (i) between midnight and 8.00am; or
  - (ii) between 8.00pm and midnight,

for the purpose of negotiating a contract to which this Division applies or for an incidental or related purpose.

(2) Any dealer who calls on a person in contravention of this section is guilty of an offence.

*Duties of Dealers*

103.—(1) A dealer who calls at premises for the purpose of negotiating a contract to which this Division applies or for an incidental or related purpose shall leave the premises at the request of the occupier of the premises or any person acting with the actual or implied authority of the occupier.

(2) A dealer who calls on a person for the purpose of negotiating a contract to which this Division applies or for an incidental or related purpose shall, as soon as it is practicable to do so—

- (a) make known to that person the purpose of the call; and
- (b) produce to that person an identity card setting out—
  - (i) the dealer's full name and address; and
  - (ii) if the dealer is not the supplier, the supplier's full name and address

(3) Any dealer who acts in contravention of this section is guilty of an offence.

*Right of Rescission*

104.—(1) A consumer may rescind a contract to which this Division applies (whether or not the contract is a prescribed contract) within 12 months of the date of the contract—

- (a) if the contract or a related contract or instrument contains a provision contrary to section 94; or
- (b) if the supplier or a dealer commits an offence against section 86, 98 or 99 in the course of, or in relation to, the negotiations leading to the formation of the contract.

(2) A consumer may rescind a prescribed contract—

- (a) at any time before the expiration of the cooling-off period; or
- (b) if there has been a failure to comply with any of the requirements of section 79 in relation to the contract—within 12 months of the date of the contract; or
- (c) if the supplier or dealer commits an offence against section 80 in relation to the prescribed contract or a related contract or instrument—within 12 months of the date of the prescribed contract.

(3) A right of rescission conferred by this section may be exercised—

- (a) notwithstanding affirmation of the contract by the consumer; and
- (b) notwithstanding that the contract has been fully executed.

*Exercise of Right of Rescission*

105.—(1) A consumer exercises a right of rescission conferred by this Division by giving to the supplier a notice of rescission—

- (a) in writing in the form prescribed by the regulations or in a form that clearly indicates an intention on the part of the consumer to rescind the contract; and
- (b) (except in the case of notice in respect of a prescribed contract during the cooling-off period) stating the ground of rescission.

(2) A notice of rescission sent by post to a supplier in accordance with section 101 shall be deemed to have been given to the supplier at the time of posting.

*Restitution*

106.—(1) Where a contract to which this Division applies is rescinded under this Division; restitution shall be made by the parties to the contract as follows—

- (a) the supplier shall return or refund to the consumer any consideration or the value of any consideration given by the consumer under the contract or a related contract or instrument;
- (b) the consumer shall—
  - (i) return or refund to the supplier any goods or the value (as at the date of supply) of any goods received from the supplier under the contract; and
  - (ii) pay to the supplier the value of any service supplied under the contract up to the time of rescission (but not including the value of any such services supplied under a prescribed contract before the expiration of the cooling-off period in contravention of this Division).

(2) Where the consumer makes goods available for collection by the supplier at the place at which they were received from the supplier for the period of 28 days from the date of rescission of the contract and the supplier fails to collect the goods before the expiration of that period, the consumer shall be deemed to have made restitution in respect of those goods as required by subsection (1) and the goods shall become the property of the consumer free of any other right or interest.

(3) Where the consumer returns goods to the supplier under this section but has failed to take reasonable care of the goods, the consumer is liable to pay compensation to the supplier for the damage to or depreciation in the value of the goods, but the consumer is not liable for any such damage or depreciation attributable to normal use of the goods or circumstances beyond the control of the consumer.

(4) Where restitution of goods is not possible (because the goods have been consumed or affixed to land, because a third party has acquired an interest in the goods, or for any other reason), the impossibility of restitution of the goods is not a bar to rescission under this Division but, in that event, the consumer is liable to pay to the supplier the value of the goods as at the date of supply.

(5) The obligation imposed by this section may be enforced by action in any court of competent jurisdiction.

(6) A court convicting a supplier of an offence against this Division is competent to make orders, on the application of the prosecutor, for the enforcement of obligations imposed by this section.

(7) A person who fails to comply with an order under subsection (6) commits an offence against this Decree.

*Related Contracts or Instruments*

107. Where a contract to which this Division applies is rescinded under this Division, any related contract or instrument is void.

*Consumer not Competent to Waive Rights*

108. The consumer under a contract to which this Division applies is not competent to waive any right conferred by this Division.

*Prohibition of Certain Actions*

109.—(1) Where a contract to which this Division applies has been rescinded, or is capable of being rescinded, under this Division, no person shall, for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract on instrument—

- (a) bring, or assert an intention to bring, legal proceeding against the consumer;
- (b) place the name of the consumer, or cause the name of the consumer to be placed, on any list of defaulters or debtors, or assert an intention of placing the name of the consumer to be placed, on any such list; or
- (c) take any other action against the consumer.

(2) Subsection (1) (a) does not prohibit—

- (a) the bringing of, or the asserting of an intention to bring, legal proceedings to determine whether or not a contract to which this Division applied has been, or is capable of being rescinded under this Division; or
- (b) the continuation of such proceedings (for the purpose of recovering an amount alleged to be payable by the consumer under the contract or a related contract or instrument) where it is determined that the contract has been, or is not capable of being, so rescinded.

(3) Where a person is convicted of an offence against subsection (1) (b), the court may order the person responsible for keeping any list on which the name of the consumer has been wrongfully placed to remove the name from that list.

(4) A person who fails to comply with an order under subsection (3) commits an offence against this Decree.

*Evidentiary Matters Concerning This Division*

110. Where it is alleged in any proceedings that—

- (a) a contract for the supply of goods or services is a contract to which this Division applies or a prescribed contract it shall be presumed, unless the contrary is proved, that the contract is such a contract;

- (b) a contract is a related contract to a contract to which this Division applies it shall be presumed, unless the contrary is proved, that the contract is such a contract;
- (c) a person was acting as a dealer within the meaning of this Division it shall be presumed, unless the contrary is proved, that the person was so acting.

## PART 8—CONDITIONS AND WARRANTIES IN CONSUMER TRANSACTIONS

### *Division 1—Warranty*

#### *Interpretation*

#### 111. In this Division—

“express warranty”, in relation to goods, means an undertaking, assertion or representation in relation to—

- (a) the quality, performance or characteristics of the goods;
- (b) the provision of services that are or may at a time be required in respect of the goods
- (c) the supply of parts that are or may at any time be required for the goods; or
- (d) the future availability of identical goods, or of goods constituting or forming part of a set of which the goods in relation to which the undertaking, assertion or representation is given or made form part, given or made in connection with the supply of the goods or in connection with promotion by any means of the supply or use of the goods, the natural tendency of which is to induce persons to acquire the goods.

#### *Actions in respect of unsuitable goods*

#### 112.—(1) Where—

- (a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;
- (c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the corporation, either directly, or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connection with the acquisition of the goods were conducted;
- (d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied; and
- (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not reasonably fit for that purpose,

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

#### (2) Sub-section (1) does not apply—

- (a) if the goods are not reasonably fit for the purpose referred to in that sub-section by reason of—
  - (i) an act or default of any person (not being a corporation or a servant or agent of the corporation); or
  - (ii) a cause independent of human control, occurring after the goods have left the control of the corporations; or
- (b) where the circumstances show that the consumer did not rely, or that it was unreasonable for the consumer to rely, on the skill or judgment of the corporation.

#### *Actions in respect of false descriptions*

#### 113.—(1) Where—

- (a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;

- (b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer by description;
- (c) the goods do not correspond with description; and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods do not correspond with the description;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) Sub-section (1) does not apply if the goods do not correspond with the description referred to in that sub-section by reason of—

- (a) an act or default of any person (not being the corporation or servant or agent of the corporation); or
- (b) a cause independent of human control, occurring after the goods has left the control of the corporations.

(3) A corporation is not liable to compensate a person for loss or damage suffered by the person by reason that goods do not correspond with a description unless the description was applied to the goods—

- (a) by or on behalf of the corporation; or
- (b) with the consent of the corporation, whether express or implied;

(4) If the goods referred to in sub-section (1) are supplied to the consumer by reference to a sample as well as by description, it is not a defence to an action under this section that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

*Action in respect of goods of unmerchantable quality*

114.—(1) Where—

- (a) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re- supply;
- (b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;
- (c) the goods are not of merchantable quality; and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the goods are not of merchantable quality;

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) Sub-section (1) does not apply—

- (a) if the goods are not of merchantable quality by reason of—
  - (i) an act or default of any person (not being the corporation a servant or agent of the corporation); or
  - (ii) a cause independent of human control, occurring after the goods have left the control of the corporation;
- (b) as regards defects specifically drawn to the consumer's attention before the making of the contract for the supply of the goods to the consumer; or
- (c) if the consumer examines the goods before that contract is made, as regards defect that the examinations ought to reveal.

(3) Goods of any kind are of merchantable quality within the meaning of this section if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to—

- (a) any description applied to the goods by the corporation;
- (b) the price received by the corporation for the goods (if relevant); and

- (c) all the other relevant circumstances.

*Actions in respect of non-correspondence with samples*

115.—(1) Where—

- (a) a corporation in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer
- (c) the goods are supplied to the consumer by reference to a sample;
- (d) the bulk of the goods does not correspond with the sample in quality or the goods have a defect, rendering them unmerchantable, that is not, or would not be, apparent on reasonable examination of the sample; and
- (e) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damage by reason that the bulk does not correspond with the sample in quality or by reason that the goods have that defect,

the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the loss or damage by action against the corporation in a court of competent jurisdiction.

(2) Sub-section (1) does not apply where—

- (a) the sample is not supplied by the corporation;
- (b) the supply by sample is made without the express or implied concurrence of the corporation; or
- (c) the failure of the bulk of the goods to correspond with the sample in quality or the existence of the defect is due to—
  - (i) an act or default of any person, (not being the corporation or a servant or agent of the corporation) or a cause independent of human control, occurring after the goods have left the control of the corporation; or
  - (ii) other circumstances that were beyond the control of the corporation and that it could not reasonably be expected to have foreseen.

*Actions in respect of non-compliance with express warranty*

116.—(1) Where—

- (a) a corporation, in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the corporation to a consumer; or
- (b) a corporation, in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply and a person (whether or not the person who acquires the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer, and
- (c) the corporation fails to comply with an express warranty given or made by the corporation in relation to the goods; and
- (d) the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer suffers loss or damages by reason of the failure, the corporation is liable to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

(2) For the purposes of any action instituted by a person against a corporation under this section, where—

- (a) an undertaking, assertion or representation was given or made in connection with the supply of goods or in connection with the promotion by any means of the supply of use of goods; and
- (b) the undertaking, assertion or representation would, if it had been given or made by the corporation or a person acting on its behalf, have constituted an express warranty in relation to the goods,

it shall be presumed that the undertaking, assertion or representation was given or made by the corporation or a person acting on its behalf unless the corporation proves that it did not give or make, and did not cause or permit the giving or making of, the undertaking, assertion or representation.

*Division—2 Manufacturer and Importer-Liability*

*Actions Against Manufacturer and Importer*

117.—(1) In this Division—

- (a) a reference to the quality of goods includes a reference to the sale of condition of the goods;
- (b) a reference to antecedent negotiations in relation to the acquisition of goods by a consumer shall be read as a reference to any negotiations or arrangements conducted or made with the consumer by another person in the course of a business carried on by the other person whereby the consumer was induced to acquire the goods or which otherwise promoted the acquisition of the goods by the consumer; and
- (c) a reference to the person by whom any antecedent, negotiations were conducted shall be read as a reference to the person by whom the negotiations or arrangements concerned were conducted or made.
- (d) “Manufactured” includes grown, extracted, produced, processed and assembled.

(2) Corporation Deemed to be a Manufacturer Where:—

- (a) a corporation holds itself out to the public as the manufacturer of goods;
- (b) a corporation causes or permits the name of the corporation a name by which the corporation carries on business or a brand or mark of the corporation to be applied to goods supplied by the corporation; or
- (c) a corporation causes or permits another person, in connexion with the supply or possible supply of goods by that other person, or in connexion with the promotion by that other person by any means of the supply or use of goods, to hold out the corporation to the public as the manufacture of the goods.

(3) Importer Deemed to be a manufacturer where:—

- (a) goods are imported into Fiji by a corporation that was not the manufacturer of the goods; and
- (b) at the time of the importation the manufacturer of the goods does not have a place of business in Fiji,

the corporation shall be deemed, for the purposes of this Division, to have manufactured the goods.

(4) Application of name, brand or mark.

For the purpose of paragraph (3) (b)—

- (a) a name, brand or mark shall be deemed to be applied to goods if it—
  - (i) is woven in, impressed on, worked into or annexed or affixed to the goods; or
  - (ii) is applied to a covering, label, or reel or thing in or with which the goods are supplied; and
- (b) if the name of a corporation, a name in which a corporation carries on business or a brand or mark of corporation is applied to goods, it shall be presumed, unless the corporation caused or permitted the name, brand or mark to be applied to the goods.

(5) “Covering” the reference in sub-section (4) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that sub-section to a label includes a reference to a brand or ticket.

(6) Corporation deemed to be Importer. If goods are imported into Fiji on behalf of a corporation, the corporation shall be deemed, for the purposes of this Division, to have imported the goods into Fiji.

(7) Compensation for Unfit Goods.

(1) Where—

- (a) a corporation in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply;
- (b) a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer;

- (c) the goods are acquired by the consumer for a particular purpose that was, expressly or by implication, made known to the corporation, either directly, or through the person from whom the consumer acquired the goods or a person by whom any antecedent negotiations in connexion with the acquisition of the goods were conducted;
- (d) the goods are not reasonably fit for that purpose, whether or not that is a purpose for which such goods are economically supplied.

the corporation is liable to compensate the consumer or that other person for the loss of damage and the consumer or that other person may recover the amount of the loss or damage by action against the corporation in a court of competent jurisdiction.

*Supply of facilities for repair or parts*

118.—(1) Where—

- (a) a corporation in trade or commerce, supplies goods (otherwise than by way of sale by auction) manufactured by the corporation to a consumer; or
- (b) a corporation in trade or commerce, supplies goods manufactured by the corporation to another person who acquires the goods for re-supply and a person (whether or not the person who acquired the goods from the corporation) supplies the goods (otherwise than by way of sale by auction) to a consumer, and
- (c) at a time (in this section referred to as the “relevant time”) after the acquisition of the goods by the consumer—
  - (i) the goods required to be repaired but facilities for their repair are not available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer; or
  - (ii) a part is required for the goods but the part is not reasonably available to the consumer or a person who acquires the goods from, or derives title to the goods through or under, the consumer.
- (d) the corporation acted unreasonably in failing to ensure that facilities for the repair of the goods were, or that the part was, reasonably available to the consumer or that other person at a relevant time; and
- (e) the consumer or that other person suffers loss or damage by reason of the failure of the corporation to ensure that facilities for the repair of the goods were, or that the part was, reasonably available to the consumer or that other person at the relevant time,

the corporation is to compensate the consumer or that other person for the loss or damage and the consumer or that other person may recover the amount of the compensation by action against the corporation in a court of competent jurisdiction.

PART 9—INFORMATION

*Power to obtain Information*

119.—(1) In relation to any matter relevant to the operation or enforcement of this Decree, an officer of the Commission may require a person (either by oral or written requisition) to furnish—

- (a) any information;
- (b) any records or a copy thereof,

in the person's possession.

(2) For the purpose of subsection (1) a person shall be taken to be in possession of—

- (a) information, if he has the information or is entitled to access to the information;
- (b) records, if he has them in his possession or if he has them under control in any place whether for his own use of benefit or for another's use or benefit and although another person has the actual possession or custody of the records.

(3) A requisition made under subsection (1) may require that the information or records or copy thereof be furnished—

- (a) to the officer or inspector of the Commission;
- (b) at the place the requisition is made or at another place;

- (c) forthwith or at, by or within a time specified;
- (d) in person, or by certified mail or in another manner specified;
- (e) by means of, or accompanied by, verification in the form of, a statutory declaration made in accordance;
- (f) in the case of information, orally or in writing.

(4) A person shall not—

- (a) refuse or fail to furnish any information, records or a copy thereof as required of him under this section;
- (b) in response to a requisition made under this section furnish information, records or copies thereof that is or are false or misleading in a material particular,

is guilty of an offence under this Decree. If the offender is a natural person—\$1,000 and imprisonment for 12 months and if the offender is a body corporate—\$5,000.

(5) A person shall not be entitled to refuse or fail to furnish information or records or a copy thereof on the ground only that the information, or records or copy thereof would tend to incriminate him.

(6) If in response to a requisition authorized by paragraph (a) of subsection (1), a person furnishes information that would tend to incriminate him in any offence, other than an offence defined in paragraph (b) of subsection (4), the information furnished shall not be admissible in evidence against him in proceedings in any court or tribunal other than the Small Claims Tribunal.

This subsection does not apply to information as to the name and address of the person or as to his ownership of, control over or position in, any business.

(7) Where a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters shall be construed as including a duty to produce the matters in written form if that is demanded.

The duty imposed by this section to produce a copy of any records shall be construed as a duty to produce a clear reproduction.

(8) An inspector or officer of the Commission may take notes or copies of or extracts from records or a copy thereof produced under this section.

(9) Records furnished under this section may be retained for so long as it is necessary to do so for the purposes of this Decree, but the person otherwise entitled to possession thereof, if he so requests it, is entitled to be furnished as soon as practicable with a copy thereof certified by the Commission to be a true copy and such a certified copy shall be received in all courts and elsewhere as evidence of the matters contained therein as if it were the original.

(10) It is a reasonable excuse for the purposes of subsection (3) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.

(11) The Commission may, if satisfied that for any reason it is desirable to do so, give directions prohibiting or restricting the disclosure of matters contained in documents or information given to the Commission.

(12) A person who contravenes subsection 1 is guilty of an offence. For a natural person a fine of \$1000 or for 12 months and for a body corporate \$5000.

*Restrictions on publication*

120.—(1) The Commission may, if satisfied that for any reason it is desirable to do so, give directions prohibiting or restricting the disclosure of matters contained in documents or information given to the Commission.

(2) A person must not contravene a direction under subsection (1).

Penalty:

- (a) if the offender is a natural person—\$1,000 and imprisonment for 12 months,
- (b) if the offender is a body corporate—\$5,000.

*Inspection of documents*

121.—(1) Notwithstanding section 120, the Commission must make a document (including any statement or document given to the Commission under section 119) available for inspection on request by a person unless—

- (a) the document contains confidential information, and its disclosure is not otherwise permitted by this Part; or
- (b) the Commission considers that the disclosure of information in the document could reasonably be expected to damage the commercial or other interests of the State, of the person who supplied the document or of a person who provides regulated services.

(2) In making a document available under subsection (1), the Commission may, if it considers that paragraph (a) or (b) of that subsection applies to any information in the document, do either or both of the following—

- (a) make a part or parts only of the document available, or make the document available with a part or parts deleted, in order not to disclose that information;
- (b) impose conditions on the availability of part or the entire document (for example, conditions limiting the availability to certain classes of persons or requiring persons not to reveal the contents of the part or document).

(3) A person must not contravene a condition imposed under subsection (2) (b).

*Penalty:*

- (a) if the offender is a natural person—\$1,000;
- (b) if the offender is a body corporate—\$5,000.

*Disclosure of confidential information*

121.—(1) A person must not disclose any confidential information obtained in carrying out the person's functions in relation to this Act, except in accordance with subsection (3).

*Penalty:*

- (a) if the offender is a natural person—\$1,000 and imprisonment for 12 months,
- (b) if the offender is a body corporate—\$5,000.

(2) A person must not use any confidential information obtained in carrying out the person's functions in relation to this Act to obtain, directly or indirectly, a pecuniary or other advantage for himself or herself or any other person, except in accordance with subsection (3).

*Penalty:*

- (a) if the offender is a natural person—\$1,000 and imprisonment for 12 months;
- (b) if the offender is a body corporate—\$5,000.

(3) A person may disclose or use confidential information if

- (a) the disclosure or use is made in the performance of a function in relation to this Act or any other law permitting such disclosure or use;
- (b) the disclosure or use is made with the consent of the person who supplied the information;
- (c) the disclosure or use is made in legal proceedings at the direction of a court; or
- (d) the information is in the public domain at the time that it is disclosed.

(4) For the avoidance of doubt, subsection (3) does not override any right another person may have with regard to the disclosure or use of the information.

(5) All information obtained pursuant to section 119 for the purposes of investigations required under Parts 6 and 7 of the Decree are deemed confidential information and only section 121 applies in regards to disclosure.

*Confidential information - notice to show cause*

122.—(1) If the Commission proposes to disclose confidential information under section 119, it must first give any affected person written notice inviting the person to show cause, within 28 days after the date the notice is given, why the confidential information should not be disclosed.

(2) A notice under subsection (1) must contain—

- (a) particulars of the proposed disclosure, including details of the person or persons to whom the confidential information is to be disclosed;

- (b) particulars of the facts and circumstances relied upon by the Commission to justify the disclosure; and
- (c) a statement to the effect that the affected person may, within 28 days after the day on which the notice is given, give the Commission particulars of the facts and circumstances relied on to show cause why the proposed disclosure ought not to be carried out.

(3) In this section—

“affected person” means—

- (a) the supplier of the confidential information to the Commission; or
- (b) any person who provided the confidential information to that supplier, if the Commission is aware of the identity and address of that person.

*Confidential information - general disclosure*

123.—(1) Subject to section 120, the Commission may only disclose confidential information if—

- (a) it is of the opinion—
  - (i) that the disclosure would not cause detriment to the person who provided the information or document; or
  - (ii) that, although the disclosure would cause such detriment, the public benefit in disclosure outweighs the detriment;
- (b) it is of the opinion, in relation to any other person who is aware of the information or the contents of the document—
  - (i) that the disclosure would not cause detriment to that person; or
  - (ii) that, although the disclosure would cause detriment to the person the public benefit in disclosure outweighs the detriment;
- (c) it gives a notice to show cause in relation to the information or document under section 120; and
- (d) 28 days have elapsed since the notice was given.

(2) In making a decision under subsection (1), the Commission must take into account any representation made in accordance with the invitation in the notice under section 120.

(3) For the purposes of this section, the disclosure of anything that is in the public domain at the time the Commission proposes to disclose it is not to be taken to cause detriment to any person referred to in subsection (1)(a) or (b).

*Confidential information-disclosure within the Commission*

124.—(1) The Commission may disclose confidential information to any of the following persons for the purposes of the performance of its functions—

- (a) a delegate of the Commission, or a member of a committee that is a delegate of the Commission;
- (b) a member of staff of the Commission;
- (c) a person, body or consultant with which or whom the Commission has entered into an arrangement as referred to in section 20 (2).

(2) A person to whom confidential information is disclosed under subsection (1) may disclose the information to another person referred to in that subsection for the purposes of the performance of the functions of the Commission.

(3) Notwithstanding subsections (1) and (2) and section 123, confidential information obtained by the Prices and Incomes Board prior to the commencement of this Decree, can only be disclosed to employees and inspectors, Commission members and consultants empowered to perform functions under Part 5B and 5C of the Decree at the commencement of this Decree.

*Cabinet documents*

125. Nothing in this Act entitles the Commission—

- (a) to require a person to give any statement or information or answer any question which relates to Cabinet proceedings;
- (b) to require any person to produce an official record of Cabinet; or
- (c) to inspect an official record of Cabinet.

## PART 10—ENFORCEMENT AND REMEDIES

*Division 1—Powers of Officers of the Commission**Powers of Officers of the Commission*

126.—(1) For the purpose of the discharge by the Commission of any of its functions under this Decree, or for any other purposes of this Decree, an Officer of the Commission may at all reasonable times—

- (a) enter any premises he knows or reasonably suspects—
  - (i) are being used for the production, manufacture, assembly, preparation, storage or supply of goods or the supply of services; or
  - (ii) have been or are being or are likely to be used by any person in connexion with a contravention of this Decree;
- (b) enter any premises where he knows or reasonable suspects that records are kept relating to supply of goods or services or relating to a contravention of this Decree;
- (c) enter any premises that he knows or reasonable suspects to be used by any person for printing or as an office in connexion with the trade or commerce of printing any newspaper or other publication, which he knows or reasonably suspects to be associated with any contravention of this Decree;
- (d) enter any commercial broadcasting or television station, which he knows or reasonably suspects to be associated with any contravention of this Decree;
- (e) in any premises entered by him—
  - (i) search for, examine, take possession of or make copies of or extracts from records relating to goods or services supplied or to be supplied or relating to any matter the subject of an inspection under this Decree;
  - (ii) search for and examine goods found thereon;
  - (iii) exercise any power under this Decree to seize goods without payment or take any goods found thereon, upon payment or tendering of a reasonable price therefore;
  - (iv) seize without payment any brochures, leaflets, books, writing, documents or other materials that he knows or reasonably suspects have been, are being, or are likely to be used to advertised, promote or likely to be used to advertise, promote or make representations with respect to any matter in contravention of this Decree;
  - (v) open any room, place or container or package that he knows or reasonably suspects to contains goods;
  - (vi) question with respect to matters under this Decree any person he finds there on;
- (f) make such inquiry and examination as he believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Decree or to ascertain whether any contravention of this Decree has been, is being, or is likely to be committed.

No provision of this subsection shall be taken to authorize forcible entry by an officer of the Commission to any premises save under the authority of a warrant obtained by him pursuant to subsection (3).

(2) Before an Officer of the Commission enters any part of premises which part is used as a dwelling he shall, save where he has the permission of the occupier of that part of his entry, obtain from a Resident Magistrate a search warrant to enter.

(3) A Resident Magistrate who is satisfied upon the information of an officer of the Commission that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connexion with a contravention of this Decree or for the keeping of records relating to a contravention of this Decree or for the keeping of records relating to a contravention of this Decree may issue his search warrant directing the officer of the Commission to enter the place specified in the search warrant for the purpose of his exercising therein the powers conferred on an inspector by this Decree.

(4) A search warrant issued under this section shall be for a period of one month from its issue, sufficient authority:

- (a) to the officer of the Commission to whom it is directed and to all persons acting in aid of him to enter the place specified in the search warrant; and

(b) to the officer of the Commission to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an officer of the Commission by this Decree.

(5) For the purpose of gaining entry to any place an officer of the Commission may call to his aid such persons as he considers necessary and such persons, while acting in aid of an officer of the Commission in the lawful exercise by him of his power of entry, shall have a like power of entry.

(6) Where an officer of the Commission has taken possession of records or of other property for the purposes of his Decree he may —

- (a) in the case of any records, retain the same for so long as is necessary for those purposes, but the person otherwise entitled to possession thereof, if he so requests it is entitled to be furnished as soon as practicable with a copy thereof certified by the Commission to be a true copy and such a certified copy shall be received in all court and elsewhere as evidence of the matters contained therein as if it were the original;
- (b) in the case other properties, subject to the express provisions of this Decree, retain the property for so long as is necessary for those purposes, and thereafter dispose of it as the Commission directs.

*Obstruction*

128.—(1) A person shall not obstruct an officer of the Commission in the exercise of his powers under this Decree.

(2) For the purposes of this Decree a person shall be deemed to obstruct an Inspector in the exercise of his powers under this Decree if he —

- (a) assaults, abuses, intimidate or insult an Inspector or any other person assisting an Inspector in the exercise of his powers under this Decree;
- (b) directly or indirectly deliberately prevents any person from being questioned by an Inspector or from furnishing under this Decree any information or records or copies thereof or attempts to do so; or
- (c) in any other way obstructs or attempts to obstruct an Inspector in the exercise of his powers under this Decree.

(3) Any person who contravenes this section shall be guilty of an offence.

*Division 2—Offences, Court Enforcement and Remedies*

*Penalties*

129.—(1) Subject to subsections (2) and (3), a person who —

- (a) contravenes;
- (b) aids, abets, counsels or procures a person to contravene;
- (c) induces, or attempts to induce, a person whether by threats or promises or otherwise, to contravene;
- (d) is in anyway, directly or indirectly, knowingly concerned in, or party to the contravention by a person of; or
- (e) conspires with others to contravene, a provision of Part 6, other than section 67,

is guilty of an offence punishable on conviction by a fine not exceeding \$10,000.

(1A) Subject to subsections (2) and (3), a person found guilty of an offence under this Decree for which no other penalty is provided is punishable on conviction by a fine not exceeding \$5,000 for a first offence and \$10,000 for a second or subsequent offence.

(2) Where a person is convicted of any offence against this Decree and the court by which he is convicted is of opinion that the offence was committed to defraud, that person shall be liable, in addition to or instead of any other penalty, to imprisonment for a term not exceeding three years.

(3) The maximum penalty for an offence under a provision of this Decree committed by a body corporate is a fine that is five times the fine provided for in the provision or, as the case may be, a fine that is five times the fine provided for in subsection (1).

(4) If a person is convicted of an offence under this Decree and the court considers that the commission of the offence caused another person to suffer pecuniary loss, the court may order the convicted person to pay to the other person a specific amount of compensation for the loss.

(5) The court may make such an order whether or not it imposes a penalty for the offence.

(6) The amount ordered to be paid may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

(7) Unless otherwise expressly provided, any goods or articles in connection with which any offence against this Decree is committed may, on conviction of any person guilty of the offence, be forfeited to the State by order of the court, and such forfeiture may, in the case of articles, extend to the whole of any similar articles found on the defendant's premises or in his possession at the time the offence was committed.

*Continuing Offences*

130.—(1) Where a person commits an offence defined in section 119, by failing to furnish information or to produce records or a copy thereof—

- (a) his obligation to furnish the information or produce the records or a copy thereof, as the case may be, continues until he complies with the requirement notwithstanding that in a particular case a time was specified at, by or within which compliance was required and that time has passed;
- (b) he shall commit a continuing offence in respect of each day after the day of conviction during which the failure to comply with the requisition continues;
- (c) he shall be liable to a penalty not less than \$1000 for each day during which the offence continues; and
- (d) he may be prosecuted from time to time in respect thereof.

*Powers to Institute and Conduct proceedings*

131. An authorized officer or an inspector of the Commission may, although he is not a legal practitioner, institute, conduct or defend before a court any charge, information, complaint or other proceeding arising under this Decree or in accordance with any regulations or orders made.

*Liability of Employer, Agent and Employee*

132.—(1) Any manager, agent or employee who in the course of his duties does or omits to do any act which if done or omitted to be done by his principal or employer would be an offence against any of the provisions of this Decree or of any regulations or orders made thereunder shall himself be guilty of such offence, and shall be liable to the penalties provided therefor under this Decree or, as the case may be, such regulations or orders.

(2) Every principal or employer shall be answerable for the acts or omissions of his manager, agent or employee in relation to the matters provided for by this Decree and any regulations or orders made thereunder, and if any manager, agent or employee commits an offence against any of the provisions of this Decree or of such regulation or orders the principal or employer shall also be guilty of such offence and shall be liable to the penalties provided therefor under this Decree or, as the case may be, such regulations or orders, unless he proves that the offence was committed without his consent, and connivance and that he took all reasonable steps to prevent its commission.

*Officers of Corporate Bodies*

133. Where any offence against this Decree or against any regulations or orders made thereunder is committed by a company, firm or other association of individuals, every person who at the time of the offence was a director, manager, secretary or other similar officer of such company, firm or association, or who was at that time concerned in or purported to act, in the management of it, affairs, shall be severally liable in prosecution and punishment, in like manner as if he had himself committed the offence, unless he proves that the offence was committed without his consent and connivance and that he took all reasonable steps to prevent its commission.

*Offence Due to Fault of Other Person*

134. Where the commission by any person of an offence against this Decree or against any regulations or orders made thereunder is due to the act or default of some other person that other person shall be guilty of an offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

*Defence of Mistake, Accident, etc*

135.—(1) In any proceedings for an offence against this Decree or against any regulations or orders made thereunder it shall, subject to subsection (2), be a defence for the person charged to prove—

- (a) that the commission of the offence was due to a mistake or to reliance on information supplied to him or to the act or default of another person, an accident or some other cause beyond his control; and

- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(2) If in any case the defence provided by subsection (1) involve the allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within a period ending seven clear days before the hearing, he had served on the prosecutor a notice in writing giving all information in his possession identifying or assisting in the identification of that other person.

*Forfeiture Proceedings*

136.—(1) The Commission may, without instituting any prosecution, apply to the court for the forfeiture of any goods seized under this Decree, and the court in its discretion may make such an order; but if the court declines to make such an order, the Commission shall return such goods to the owner.

(2) Where any goods have been seized under this Decree and at the expiration of six months from such seizure—

- (a) no prosecution has been instituted in relation thereto; or  
 (b) no application has been made for an order under subsection (1),

the Commission shall return them to the owner thereof on the receipt of an application in that behalf made in writing by such owner.

(3) Upon conviction of a person guilty of an offence against this Decree, the court may, if it thinks fit, in addition to or without inflicting any other penalty, order that any goods in respect of which the offence was committed shall be forfeited to the State, unless the owner of such goods or any person acting on his behalf or having a right in those goods shows cause to the contrary.

(4) All goods forfeited to the State under this Decree shall be dealt with or disposed of as the Minister may direct.

*Compensation Provisions*

137. Where the offence in respect of which any person is convicted is an offence whereby the accused has gained advantage over any other person in consequence of that offence, the court may, if it thinks fit, whether in addition to or without inflicting any other penalty, order the convicted person to pay to the other person such sum as may in the opinion of the court serve to compensate him for the loss sustained in consequence of the offence and for any loss of time and expenses which he may have incurred.

*Proceedings other Than Under This Decree*

138.—(1) No proceeding or conviction for any offence punishable under this Decree shall effect any civil remedy to which, the person aggrieved by the offence may be entitled.

(2) This Decree shall not exempt any person from any other proceeding for an offence which is punishable otherwise than under this Decree, so however, that no person shall be punished twice for the same offence.

*Protection of officers*

139. No suit, prosecution or other legal proceedings shall lie against the Director, any inspector or any other officer administering this Decree, for anything done in good faith under the provisions of this Decree or of any regulations or orders made thereunder.

*Innocent Publication of Advertisement*

140. In proceedings for an offence committed against any regulations or orders made thereunder, by the publication of an advertisement, it shall be a defence for the person charged to prove, that he is a person whose business it is to publish or arrange for the publication of advertisements and that he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence.

*Presumption*

141. Where any goods are found in the possession or control of any person carrying on trade or any premises which are used for trade, that person or, as the case may be, the occupier of those premises shall be deemed for the purposes of this Decree, unless the contrary is proved, to have those goods in his possession for supply.

*Conduct by Directors, Servants or Agents*

142.—(1) If, in a proceeding under this Decree in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate—

(a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Decree, to have been engaged in also by the body corporate.

(3) If, in a proceeding under this Decree in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than body corporate—

(a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent,

shall be deemed, for the purposes of this Decree, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

(6) For the purposes of this section, the term "conduct" also includes the making or any omission, inadvertently or otherwise.

*Vicarious Liability*

143. If a body corporate commits an offence against this Decree, each director or member of the governing body of the body corporate shall, subject to section 140, be deemed also to have committed the offence and is liable to be proceeded against and punished accordingly.

*Defence in Proceedings for an Offence against this Decree.*

144.—(1) Subject to subsection (3), in a prosecution for an offence against this Decree it is a defence if the defendant establishes—

(a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake; or

(b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or

(c) that—

(i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and

(ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) In subsection (1) (b) and (1) (c), "another person" does not include a person who was—

(a) a servant or agent of the defendant; or

(b) in the case of a defendant being a body corporate, a Director, servant or agent of the defendant, at the time when the contravention occurred.

(3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the court, entitled to rely on that defence unless the defendant has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in the defendant's possession.

(4) In a proceeding under this Decree in relation to a contravention of a provision of this decree committed by the publication of an advertisement, it is a defence if it is established that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the defendant received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Decree.

(5) The provisions of section 19 of the Crimes Decree 2009, to the extent that it provides exculpation from criminal responsibility for an act or omission that constitutes an offence against this Decree, and the provisions of section 35 of the Crimes Decree 2009 do not apply in respect of any offence against this Decree.

*Pecuniary penalties*

144A.—(1) If the Court is satisfied that a person—

- (a) has contravened a provision of Part 6;
- (b) has attempted to contravene such a provision;
- (c) has aided, abetted, counselled or procured a person to contravene such a provision;
- (d) has induced, or attempted to induce, a person whether by threats or promises or otherwise, to contravene such a provision;
- (e) has been in any way, directly or indirectly knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) has conspired with others to contravene such a provision,

the Court may order the person to pay to the State such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the Court determines to be appropriate having regard to all relevant matters, including the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission, the circumstances in which the act or omission took place and whether the person has previously been found by the Court in proceedings under this Part to have engaged in any similar conduct.

(2) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed \$1 million for each act or omission to which this section applies.

(3) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed \$300,000 for each act or omission to which this section applies.

(4) If conduct constitutes a contravention of two or more provisions of Part 6, a proceeding may be instituted under this Act against a person in relation to the contravention of one or both of the provisions but a person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

*Civil action for recovery of pecuniary penalties*

144B.—(1) The Commission may institute a proceeding in the Court or the recovery on behalf of the State of a pecuniary penalty referred to in section 144A.

(2) A proceeding under subsection (1) may be commenced within six years after the contravention.

*Criminal proceedings not to be brought for contravention of Part 6*

144C. Criminal proceedings do not lie against a person by reason only that the person—

- (a) has contravened a provision of Part 6;
- (b) has attempted to contravene such a provision;
- (c) has aided, abetted, counselled or procured a person to contravene such a provision;
- (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise to contravene such a provision;

- (e) has been, in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
- (f) has conspired with others to contravene such a provision.'

*Injunctions*

145.—(1) An injunction under this section may be granted by the Court—

- (a) against a person in the course of proceedings against that person for an offence against this Decree; or
- (b) at any other time.

(2) If the Court is satisfied, on the application of the Commission or any other person that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of a provision of this Decree;
- (b) attempting to contravene such a provision;
- (c) aiding, abetting, counseling or procuring a person to contravene such a provision;
- (d) inducing or attempting to induce, whether by threats promises or otherwise, a person to contravene such a provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
- (f) conspiring with others to contravene such a provision,

the Court may grant an injunction in such terms as the Court determines to be appropriate.

(3) The power of the Court conferred by subsection (2) to grant an injunction restraining a person from engaging in conduct—

- (a) includes, but is not limited to, the power to grant an injunction restraining a person from carrying on a business of supplying goods or services (whether or not as part of, or incidentals to, the carrying on of another business)—
  - (i) for a specified period;
  - (ii) except on specified terms and conditions;
- (b) does not include the power to grant an injunction restraining a person from engaging in conduct that constitutes or would constitute a contravention solely of sections 76 or 77 unless—
  - (i) the application is made by the Commission on the grounds that a consumer is, or consumers generally are, or would be, adversely affected by the conduct; or
  - (ii) the application is made by a person who is, or would be, adversely affected by the conduct.

(4) If the Court is satisfied, on application by the Commission that a person has engaged in conduct constituting a contravention or a provision of of this Decree the Court may grant an injunction requiring that person to take specified action (which may include the disclosure of information or the publication or advertisements) to remedy any adverse consequences of his contravening any provision of this Decree.

This subsection does not apply in relation to conduct that constitutes a contravention solely of section 76.

(5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(5A) A person other than the Commission is not entitled to make an application under subsection (2) for an injunction by reason that a person has contravened or attempted to contravene or is proposing to contravene, or has been or is proposing to be involved in a contravention of, section 67.

(6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fall again, or to continue to refuse or fail, to do that act or thing;
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or falls to do that act or thing.

(7) An interim injunction may be granted under this section pending the final determination of the application.

(8) A final injunction may, by consent of the parties, be granted under this section without proof that proper grounds for the injunction exist.

(9) Where the Minister or the Director applies for an injunction under this section, no undertaking as to damages or costs will be required.

(10) The Minister or the Director may give an undertaking as to damages or costs on behalf of some other applicant and, in that event, no further undertaking will be required.

(11) An injunction under this section may be rescinded or varied at any time.

*Actions for Damages*

146.—(1) A person who suffers loss or damage by an act, or omission of another person that, is a contravention of Part. 6 and 7 of this Decree may recover the amount of the loss or damage by action against the other person or against any person involved in the contravention.

(2) An action under subsection (1) may be commenced at any time within 3 years after the date on which the cause of action accrued.

(3) Subsection (1) does not apply—

- (a) in relation to a contravention of section 75 unless the loss or damage is suffered by a consumer; or
- (b) in relation to a contravention of section 76.

*Compensation and other Remedial orders*

147.—(1) If in proceedings instituted under, or for an offence against, this Decree the Court is satisfied that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by reason of a contravention of this Decree, then whether or not any other order is made or relief granted in those proceeding, the Court may, for the purpose of compensating that person or preventing or reducing the extent of the loss or damage, make orders under this section against the person committed the contravention of a person involved in the contravention.

(2) Whether or not other proceedings have been instituted under this Decree in relation to a contravention of this Decree, the Court may—

- (a) on the application of a person who has suffered, or is likely to suffer, loss or damage by reason of the contravention; or
- (b) on the application of the Commission on behalf of one or more such persons made with the written consent of each such person,

make orders under this section, for the purpose of compensating such a person or preventing or reducing the extent of the loss or damage, against the person who committed the contravention or a person involved in the contravention.

Without limiting the foregoing, an application referred to in paragraph (b) may be brought in the course of proceeding in which a person is found guilty of an offence against this Decree constituted by the contravention.

(3) An application under subsection (2) may be commenced—

- (a) in the case of a contravention of section 76 at any time within two years after the day on which the cause of action accrued; or
- (b) in any other cases at any time within three years after the day on which the cause of action accrued.

(4) For the purpose of determining whether to make an order under this section in relation to a contravention of section 75, the Court may have regard to the conduct of the parties to the proceedings since the contravention occurred.

(5) The orders that may be made under this section are of the following kinds:—

- (a) an order for payment of the amount of the loss or damage;
- (b) an order avoiding, or refusing to enforce, in whole or part, a contract or instrument;
- (c) an order for the variation of a contract or instrument;
- (d) an order directing the refund of money or the return of property;
- (e) an order directing the repair of, or provision of parts, for goods or the supply of specified services;
- (f) an order directing the payment of an amount of money in lieu of some other act required by an order being done;
- (g) any other order the Court thinks appropriate.

An order may be expressed to take effect from a date prior to the making of the order.

(6) It shall not be competent to the Court to make an order under this Section by reason only of loss or damages suffered or likely to be suffered by a person because of a contravention of section 75 or section 76 unless the person is a consumer.

*Mode of Enforcement of Compensation*

148.—(1) Without derogating from any other right to enforce an order made under section 147—

- (a) if an order made under section 148 orders a person to pay an amount of money, upon the filing of that order in the registry of a court that has amount, the order shall be enforceable as an order made by that Court;
- (b) any other amount of money a person is liable to pay as a consequence of an order made under section 148 may be recovered from him by action as for a debt in any court of competent jurisdiction.

*Power of Court to Prohibit Payment or Transfer of Money or Other Property*

149.—(1) Where—

- (a) Proceedings have been brought in the Court against a person for an offence against this Decree;
- (b) an application has been made under section 145 for an injunction against a person in relation to a contravention of a provision of this Decree;
- (c) an action has been commenced under section 146 against a person in relation to a contravention of a provision of this Decree; or
- (d) an application for an order under section 147 has been or maybe made against a person in relation to a contravention of a provision of this Decree,

the Court may, on the application of the Commission, make an order or orders specified in subsection (2) if the Court is satisfied that—

- (e) it is necessary or desirable to do for the purpose of preserving money or other property held by or on behalf of a person referred to in paragraph (a), (b), (c), or (d), as the case maybe (in this section referred to as the “relevant person”), if the relevant person is liable or may become liable under this Decree to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or return other property; and
- (f) it will not unduly prejudice the rights and interests of any other person.

(2) The orders referred to in subsection (1) are:

- (a) an order prohibiting, either absolutely or subjects to conditions a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or on behalf of an associate of the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property is held;

- (c) an order prohibiting, either absolutely or subject to conditions the taking or sending by any person of money of the relevant person or of an associate of the relevant person to a place outside the State;
- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the State; and
- (e) an order appointing, where the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant persons with such powers as are specified in the order.

(3) Subject to subsection (4), an order under this section may be expressed to operate—

- (a) for a period specified in the order; or
- (b) under any proceedings under any other provision of this Decree in relation to which the order was made have been concluded.

(4) An order under this section made on an application *ex parte* shall not be expressed to operate for a period exceeding 30 days.

(5) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to the person commits an offence against this Decree.

(6) Nothing in this section affects the powers that the Court has apart from this section.

- (a) a person holding money or other property on behalf of the relevant person; or
- (b) if the relevant person is a body corporate- a wholly owned subsidiary of the relevant person.

*Enforcement of Arbitration Determinations*

150.— (1) This section applies where

- (a) a person contravenes, or is, in the opinion of the Commission, likely to contravene, a determination issued under section 35 of Part 4 of the Decree; and
- (b) the Commission considers that the contravention or likely contravention is not trivial,

(2) If this Section applies in relation to a person, the Commission may serve an order on the person requiring the person to comply with the determination.

(3) If the Commission proposes to make an order in respect of a person, it must first give the person written notice inviting the person to show cause, within 28 days after the date of the notice, why the order should not be made.

(4) A notice under subsection (3) must contain—

- (a) particulars of the proposed order;
- (b) particulars of the facts and circumstances relied upon by the Commission to justify the order;
- (c) a statement to the effect that the person may, within 28 days after the day on which the notice is given, give the Commission particulars of the facts and circumstances relied on to show cause why the proposed order should not be made.

(5) In considering whether to make an order in respect of a person, the Commission must take into account any representation made by the person pursuant to the invitation in the notice under subsection (3).

(7) The Commission must, as soon as possible after serving an order on a person, publish a copy of the order in the *Gazette*.

(8) A person must not, without reasonable excuse, contravene an order served on the person under subsection (1).

Penalty:

- (a) in the case of a natural person—\$2,000;
- (b) in the case of a body corporate—\$10,000.

(9) If a person is convicted of an offence against subsection (6) in relation to the contravention of an order, the person is, in respect of each day after the service of the order during any part of which that contravention continues, guilty of an offence punishable on conviction by a fine of—

- (a) in the case of a natural person - \$200;
- (b) in the case of a body corporate - \$1,000.

## PART 11 — AUTHORISATIONS AND NOTIFICATION

### *Division 1 — Authorisations*

#### *Power of Commission to grant authorisations*

150A.—(1) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorisation to the person—

- (a) to make a contract or arrangement, or arrive at an understanding, when a provision of the proposed contract, arrangement or understanding would be or might be, an exclusionary provision or would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 60; or
- (b) to give effect to a provision of a contract, arrangement or understanding when the provision is, or may be, an exclusionary provision or has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 60,

and, while such an authorisation remains in force—

- (c) in the case of an authorisation to make a contract or arrangement or to arrive at an understanding—subsection 60(2) does not prevent the person from making the contract or arrangement or arriving at the understanding in accordance with the authorisation and giving effect in accordance with the authorisation to any provision of the contract or arrangement so made or of the understanding so arrived at;
- (d) in the case of an authorisation to give effect to a provision of a contract—
  - (i) the provision is not unenforceable by reason of subsection 60(1); and
  - (ii) subsection 60(2) does not prevent the person from giving effect to the provision in accordance with the authorisation; or
- (e) in the case of an authorisation to give effect to a provision of an arrangement or understanding—subsection 57(2) does not prevent the person from giving effect to the provision in accordance with the authorisation.

(2) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorisation to the person—

- (a) to require the giving of, or to give, a covenant when the proposed covenant would have the purpose, or would have or might have the effect of substantially lessening competition in a market referred to in paragraph 62(2)(a); or

- (b) to enforce the terms of a covenant,

and, while such an authorisation remains in force:

- (c) in the case of an authorisation to require the giving of or to give a covenant—
  - (i) the covenant is not unenforceable by reason of subsection 62(1); and
  - (ii) subsection 62(2) does not apply in relation to the covenant; and
- (d) in the case of an authorisation to enforce the terms of a covenant—
  - (i) the covenant is not unenforceable by reason of subsection 62(1) and
  - (ii) paragraphs 62(2)(b) and (c) do not apply in relation to the covenant.

(3) An authorisation granted by the Commission to a person under this section to—

- (a) make a contract or arrangement or arrive at an understanding;
- (b) give effect to a provision of a contract, arrangement or understanding;
- (c) require the giving of, or give, a covenant; or
- (d) enforce the terms of a covenant,

has effect as if it were also an authorisation in the same terms to every other person named or referred to in the application for the authorisation as a party to the contract, arrangement or understanding, or as a proposed party to the proposed contract, arrangement or understanding, or as a person who is or would be bound by, or entitled to the benefit of the covenant or the proposed covenant, as the case may be.

(4) Subject to this part, the Commission may, upon application by a person, grant an authorisation to the person, and to any other person acting in concert with the first-mentioned person, to engage in conduct to which section 64 or 65 would or might apply and, while such an authorisation remains in force, that section does not apply in relation to the engaging in that conduct by the applicant and by any person acting in concert with the applicant.

(5) Subject to this Part, the Commission may, upon application by a person, grant an authorisation to the person to engage in conduct that constitutes (or may constitute) the practice of exclusive dealing and while such an authorisation remains in force, section 69 does not prevent the person from engaging in that conduct in accordance with the authorisation.

(6) Subject to this Part, the Commission may, upon application by a person, grant an authorisation to the person to engage in conduct that constitutes (or may constitute) the practice of resale price maintenance. While the authorisation remains in force, section 70, 70A and 70B does not prevent the person from engaging in that conduct in accordance with the authorisation.

(7) Subject to this Part, the Commission may, upon application by a person, grant an authorisation to the person to acquire shares in the capital of a body corporate or to acquire assets of a body corporate and, while such an authorisation remains in force, section 72 does not prevent the person from acquiring shares or assets in accordance with the authorisation.

(8) An authorisation to a person under subsection (1) may be expressed so as to apply to or in relation to another person who—

- (a) in the case of an authorisation to make a contract or arrangement or at an understanding becomes a party to the proposed contract or arrangement at a time after it is made or becomes a party to the proposed understanding at a time after it is arrived at; or
- (b) in the case of an authorisation to give effect to a provision of a contract, arrangement or understanding becomes a party to the contract, arrangement or understanding at a time after the authorisation is granted.

(9) An authorisation under subsection (2) may be expressed so as to apply to or in relation to another person who—

- (a) in the case of an authorisation to require the giving of, or to give, a covenant becomes bound by, or entitled to the benefit of, the proposed covenant at a time after the covenant is given; or
- (b) in the case of an authorisation to enforce the terms of a covenant becomes bound by, or entitled to the benefit of, the covenant at a time after the authorisation is granted.

(10) The Commission does not have power to grant an authorisation to a person to make a contract or arrangement, to arrive at an understanding or to require the giving of, or to give, a covenant if the contract or arrangement has been made, the understanding has been arrived at or the covenant has been given before the Commission makes a determination in respect of the application.

(11) An application made to the Commission under this section for an authorisation in relation to a particular contract or proposed contract may be expressed to be made also in relation to another contract or proposed contract that is or will be, or in relation to two or more other contracts or proposed contracts that are or will be, in similar terms to the first-mentioned contract or proposed contract and if an application is so expressed, the Commission may grant a single authorisation in respect of all the contracts or proposed contracts or may grant separate authorisations in respect of any one or more of the contracts or proposed contracts.

(12) When an application made to the Commission under this section for an authorisation in relation to a particular contract or proposed contract is expressed in accordance with subsection (11) to be made also in relation to another contract or contracts or proposed contract or proposed contracts—

- (a) the application must set out—
  - (i) the names of the parties to each other contract; and

- (ii) the names of the parties to each other proposed contract if those names are known to the applicant at the time when the application is made; and
  - (b) if an authorisation is granted in respect of a proposed contract the names of the parties to which were not so known to the applicant, the authorisation is, by force of this subsection, deemed to be expressed to be subject to a condition that any party to the contract will, when so required by the Commission, furnish to the Commission the names of all the parties to the contract.
- (13) In subsections (11) and (12)—
- (a) contract includes an arrangement, understanding or covenant, and proposed contract has a corresponding meaning; and
  - (b) the reference to the parties to a contract or proposed contract is, for the purposes of the application of those subsections in relation to a covenant or proposed covenant by reason of paragraph (a) of this subsection, to be read as a reference to the persons who are or will be, or but for subsection 29(1) would be, respectively bound by, or entitled to the benefit of, the covenant or proposed covenant.
- (14) A person who has made an application to the Commission for an authorisation may at any time, by notice in writing to the Commission, withdraw the application.

*Procedure for application*

150B.—(1) An application for an authorisation must be made in writing as prescribed.

(2) The Commission must cause to be made public in such manner as it thinks fit notice of the receipt by the Commission of an application for an authorisation.

(3) The Commission must keep a register of applications for authorisations received by it (including applications that have been withdrawn).

(4) Subject to this section, the register kept under subsection (3) must include—

- (a) any document furnished to the Commission in relation to an application for an authorisation;
- (b) any draft determination, and any summary of reasons, by the Commission furnished to any person under section 150C;
- (c) any document relating to—
  - (i) the revocation by the Commission of an authorisation; or
  - (ii) the substitution of an authorisation for an authorisation previously in force;
- (d) any record of a conference made in accordance with subsection 150C(8) and any certificate in relation to a conference given under subsection 150C(9);
- (e) particulars of any oral submissions made to the Commission in relation to such an application; and
- (f) the determination of the Commission on such an application and the statement of the reasons given by the Commission for that determination.

(5) When a person furnishes a document to the Commission in relation to an application for an authorisation or makes an oral submission to the Commission in relation to such an application, he or she may, at the time when the document is furnished or the submission is made, request that the document or a part of the document, or that particulars of the submission or of part of the submission, be excluded from the register kept under subsection (3) by reason of the confidential nature of any of the matters contained in the document or submission.

(6) When such a request is made—

- (a) if the document or the part of the document, or the submission or the part of the submission, to which the request relates contains particulars of—
  - (i) a secret formula or process;
  - (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
  - (iii) the current costs of manufacturing, producing or marketing goods or services, the Commission must exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from the register kept under subsection (3); and

(b) in any other case, the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of the matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register.

(7) If the Commission refuses a request to exclude a document or part of a document from the register kept under subsection (3), the Commission must, if the person who furnished the document to the Commission so requires, return the document or part of the document to him or her and, in that case, paragraph (4) (a) does not apply in relation to the document or part of the document.

(8) if the Commission refuses a request to exclude particulars of an oral submission or of part of an oral submission from the register kept under subsection (3), the person who made the submission may inform the Commission that he or she withdraws the submission or that part of the submission and, in that case, paragraph (4) (e) does not apply in relation to the submission or that part of the submission as the case may be.

(9) If the Commission is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or submission, the Commission may exclude a document or part of a document referred to in paragraph (4) (e) or particulars referred to in paragraph (4) (e) from the register kept under subsection (3).

(10) If a person requests, in accordance with subsection (5) that a document or a part of a document, or that particulars of a submission or of part of a submission, be excluded from the register kept under subsection (3), the document or part of the document, or particulars of the submission or of the part of the submission, must not be included in that register until the Commission has made a determination in relation to the request.

*Determination of applications for authorisations*

150C.—(1) The Commission must, in respect of an application for an authorisation:—

- (a) make a determination in writing granting such authorisation as it considers appropriate; or
- (b) make a determination in writing dismissing the application.

(2) The Commission must take into account any submissions in relation to the application made to it by the applicant, by the State or by any other person.

(3) The Commission must state in writing its reasons for a determination made by it.

(4) Before making a determination in respect of an application for an authorisation, the Commission must comply with the requirements of section 129D.

(5) The Commission must not make a determination granting an authorisation under subsection 150A(1), (2) or (5) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a proposed contract, arrangement or understanding, in respect of a proposed covenant, or in respect of proposed conduct unless it is satisfied in all the circumstances that the provision of the proposed contract, arrangement or understanding, the proposed covenant, or the proposed conduct, as the case may be, would result, or be likely to result, in a benefit to the public and that that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if—

- (a) the proposed contract or arrangements were made, or the proposed understandings were arrived at, and the provision concerned was given effect to;
- (b) the proposed covenant were given, and were complied with; or
- (c) the proposed conduct was engaged in, as the case may be.

(6) The Commission must not make a determination granting an authorisation under subsection 150A(1) or (2) in respect of a provision (not being a provision that is or may be an exclusionary provision) of a contract, arrangement or understanding or, in respect of a covenant, unless it is satisfied in all the circumstances that the provision of the contract, arrangement or understanding, or the covenant, as the case may be, has resulted, or is likely to result, in a benefit to the public and that that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from giving effect to the provision or complying with the covenant.

(7) The Commission must not —

(a) make a determination granting—

- (i) an authorisation under subsection 150A (1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision;
- (ii) an authorisation under subsection 150A (4) in respect of proposed conduct; or
- (iii) an authorisation under subsection 150A (6) for proposed conduct to which section 47 applies,

unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or the proposed conduct should be allowed to take place, as the case may be; or

(b) make a determination granting an authorisation under subsection 129A (1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied that all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

(8) The Commission must not make a determination granting an authorisation under subsection 150A(7) in respect of a proposed acquisition of shares in the capital of a body corporate or of assets of a person or in respect of the acquisition of a controlling interest in a body corporate within the meaning of section 69 unless it is satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that the acquisition should be allowed to take place.

(9) In determining what amounts to a benefit to the public for the purposes of subsection (8)—

(a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph)—

- (i) a significant increase in the real value of exports;
- (ii) a significant substitution of domestic products for imported goods; and

(b) without limiting the matters that maybe taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Fiji Islands industry.

(10) Subject to subsections (11), (14), (15), (16) and (17), if—

- (a) the Minister, by notice published in the Gazette, fixes a date for the purposes of the application of this subsection in relation to applications for authorisations under subsection 150A(1), (2), (4), (5) or (6); and
- (b) the Commission does not determine an application for an authorisation under a subsection in relation to which a date is so fixed within 4 months from that date or the date on which the application was or is received by the Commission, whichever is the later,

the Commission is deemed to have granted, at the expiration of that period, the authorisation applied for.

(11) If, within the latest occurring 4 month period referred to in subsection (10)(b) in relation to an application for an authorisation, the Commission gives to the applicant a written notice requesting the applicant to give to the Commission additional information relevant to the determination of the application, the reference in that paragraph to 4 months is to be read as a reference to a period consisting of 4 months increased by the number of days in the period commencing on the day on which the notice is given to the applicant and ending on the day on which the applicant gives to the Commission such of the additional information as the applicant is able to provide.

(12) Subject to subsections (14), (15) and (17), if the Commission does not determine an application for an authorisation under subsection 150A (7) within,-

- (a) 30 days from the day on which the application is received by the Commission; or
- (b) if the Commission, before the end of that period of 30 days gives to the applicant a notice in writing requesting the applicant to give to the Commission additional information relevant to the determination of the application - the period consisting of 30 days from the day on which the application is received

by the Commission increased by the number of days in the period commencing on the day on which the notice is given to the applicant and ending on the day on which the applicant gives to the Commission such of the additional information as the applicant is able to provide, the Commission is deemed to have granted, at the end of that period, the authorisation applied for.

(13) The Commission may, within the 30-day period mentioned in subsection (12), notify the applicant in writing that the Commission considers that the period should be extended to 45 days due to the complexity of the issues involved. If the Commission so notifies the applicant, the references in subsection (12) to 30 days are to be read as references to 45 days.

(14) If the applicant for an authorisation informs the Commission in writing before the expiration of the period referred to in subsection (10) or (12) (in this subsection and in subsection (15) referred to as the base period) that the applicant agrees to the Commission taking a specified longer period for the determination of the application, that longer period is deemed, for the purposes of the application, to be substituted in subsection (10) or (12), as the case may be, for the base period.

(15) For the purposes of any application of subsection (14), a reference in that subsection to the base period is to be read, if another period is deemed by any other application or applications of that subsection to have been substituted in subsection (10) or (12) for the base period, as a reference to that other period.

(16) If a person to whom a notice has been sent under subsection 150D(2) in relation to a draft determination in respect of an application for an authorisation notifies the Commission in accordance with subsection 150D(6) that he or she wishes the Commission to hold a conference in relation to the draft determination, the period referred to in subsection (10) of this section is deemed to be increased by a period equal to the period commencing on the day on which the first notification in relation to the draft determination was received by the Commission and ending on the seventh day after the day specified in the certificate given by a member of the Commission in pursuance of subsection 146D(9) as the day on which the conference terminated.

(17) If a party to a joint venture makes at the one time two or more applications for authorisations, being applications each of which deals with a matter relating to the joint venture—

- (a) the Commission must not make a determination in respect of any one of those applications unless it also makes determinations at the same time in respect of the other applications; and
- (b) if the Commissioner does not make a determination in respect of any one of the applications within the period referred to in whichever of subsections (10) and (12) is applicable in relation to that application, the Commission is deemed to have granted, at the expiration of that period, all the authorisations applied for.

*Commission to afford opportunity for conference before determining application for authorisation*

150D.—(1) Before determining an application for an authorisation (other than an application for an authorisation under subsection 150A (7)), the Commission must prepare a draft determination in relation to the application.

(2) The Commission must, by notice in writing sent to the applicant and to each other interested person, invite the applicant or other person to notify the Commission, within 14 days after a date fixed by the Commission being not earlier than the day on which the notice is sent, whether the applicant or other person wishes the Commission to hold a conference in relation to the draft determination.

(3) If—

- (a) the draft determination provides for the granting of the application unconditionally; and
- (b) no person has made a written submission to the Commission opposing the application, each notice by the Commission under subsection (2) must inform the person to whom the notice is sent that the draft determination so provides.

(4) If—

- (a) the draft determination does not provide for the granting of the application or provides for the granting of the application subject to conditions; or
- (b) the draft determination provides for the granting of the application unconditionally but a written submission has, or written submissions have, been made to the Commission opposing the application, the Commission must send with each notice under subsection (2) a copy of the draft determination; and

- (c) in a case to which paragraph (a) applies - a summary of the reasons why the Commission is not satisfied that the application should be granted or why it is not satisfied that the application should be granted unconditionally; or
- (d) in a case to which paragraph (b) applies a summary, of the reasons why it is satisfied that the application should be granted unconditionally.

(5) If each of the persons to whom a notice was sent under subsection (2)—

- (a) notifies the Commission within the period of 14 days mentioned in that subsection that he or she does not wish the Commission to hold a conference in relation to the draft determination; or
- (b) does not notify the Commission within that period that he or she wishes the Commission to hold such a conference, the Commission may make the determination at any time after the expiration of that period.

(6) If any of the persons to whom a notice was sent under subsection (2) notifies the Commission in writing within the period of 14 days mentioned in that subsection that he or she wishes the Commission to hold a conference in relation to the draft determination, the Commission must appoint a date (being not later than 3 days after the expiration of that period), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom a notice was sent under subsection (2).

(7) At a conference held under subsection (6)—

- (a) the Commission must be represented by a member or members of the Commission (being a member or
- (b) members who participated in the preparation of the draft determination) nominated by the Chairperson;
- (c) each person to whom a notice was sent under subsection (2) and any other interested person whose presence at the conference is considered by the Commission to be appropriate is entitled to attend and participate personally or, in the case of a body corporate, may be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate;
- (d) person participating in the conference in accordance with paragraph (a) or
- (b) is entitled to have another person or other persons present to assist him or her but a person who so assists another person at the conference is not entitled to participate in the discussion; and
- (e) no other person is entitled to be present.

(8) A member of the Commission participating in the conference must make a record of the discussions sufficient to set out the matters raised by the persons participating in the conference;

(9) The member of the Commission who represents the Commission at the conference, or, if the Commission is represented by more than one member of the Commission, one of those members appointed by the Chairperson—

- (a) may exclude from the conference any person who uses insulting language at the conference, creates, or takes part in creating or continuing, a disturbance at the conference or repeatedly interrupts the conference;
- (b) may terminate the conference when he or she is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference (other than persons excluded from the conference under paragraph (a)); and
- (c) must give a certificate certifying the day on which the first notification under subsection (b) in relation to the draft determination was received by the Commission and the day on which the conference terminated, and any such certificate must be received in all courts as evidence of the matters certified.

(10) A document purporting to be a certificate referred to in subsection (9) is, unless the contrary is established, deemed to be such a certificate and to have been duly given.

(11) The Commission must take account of all matters raised at the conference and may at any time after the termination of the conference make a determination in respect of the application.

(12) For the purposes of this section, interested person means a person who has notified the Commission in writing that he or she, or a specified unincorporated association of which he or she is a member, claims to have an interest in the application, being an interest that, in the opinion of the Commission, is real and substantial.

(13) If the Commission considers that two or more applications for authorisations that are made by the same person, or by persons being bodies corporate that are related to each other, involve the same or substantially similar issues, the Commission may treat the applications as if they constituted a single application and may prepare one draft determination in relation to the applications and hold one conference in relation to that draft determination.

*Grant, revocation and variation of authorisation*

150E.—(1) An authorisation may be expressed to be in force for a period specified in the authorisation and, if so expressed, remains in force for that period only.

(2) An authorisation, other than an authorisation deemed to have been granted under subsection (10) or (12) of section 150C, comes into force on the day specified for the purpose in the authorisation.

(3) If the Commission considers that it is appropriate to do so—

- (a) for the purpose of enabling due consideration to be given to an application for an authorisation; or
- (b) for any other reason,

an authorisation granted in respect of the application may be expressed to be an interim authorisation and the Commission may at any time revoke an authorisation so expressed.

(4) Subsections (3) to (8) of section 150C do not apply in relation to an authorisation that is expressed to be an interim authorisation.

(5) An authorisation may be expressed to be subject to such conditions as are specified in the authorisation.

(6) If, at anytime after the Commission has granted an authorisation, it appears to the Commission that the authorisation was granted on the basis of evidence or information that was false or misleading in a material particular, that a condition to which the authorisation was expressed to be subject has not been complied with or that there has been a material change of circumstances since the authorisation was granted—

- (a) the Commission must give notice accordingly to the person to which the authorisation was given and any other persons who appear to the Commission to be interested and afford them a reasonable opportunity of making submissions to the Commission in the matter; and
- (b) when, after so notifying the person and other persons (if any) and considering any submissions made by those persons, the Commission is satisfied that the authorisation was granted on the basis of evidence or information that was false or misleading in a material particular, that the condition has not been complied with or that there has been such a material change of circumstances, the Commission may make a determination revoking the authorisation and, if it considers it appropriate to do so, granting a further authorisation in substitution for the authorisation so revoked.

*Division 2—Notifications*

*Notification of exclusive dealing*

150F.—(1) Subject to subsection (2), a person who engages, or proposes to engage, in conduct of a kind referred to in subsection (2), (3), (4), (5), (6), (7), (8) or (9) of section 69 may give to the Commission notice, as prescribed, setting out particulars of the conduct or proposed conduct.

(2) A person may not give a notice for conduct or proposed conduct if—

- (a) the person applied for an authorisation for the conductor proposed conduct; and
- (b) the Commission made a determination dismissing the application or granting an authorisation (whether or not the authorisation is still in force).

(3) If the Commission is satisfied that the engaging by a person in conduct or proposed conduct of a kind referred to in subsection (2), (3), (4), (5), (6), (7), (8) or (9) of section 69 the subject of a notice given by the person to the Commission under subsection (1) has or would have the purpose or has or is likely to have, or would have or

be likely to have, the effect of substantially lessening competition within the meaning of section 69 and that in all the circumstances—

- (a) the conduct has not resulted or is not likely to result, or the proposed conduct would not result or be likely to result, in a benefit to the public; or
- (b) any benefit to the public that has resulted or is likely to result from the conduct, or would result or be likely to result from the proposed conduct, would not outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct or would result or be likely to result from the proposed conduct; the Commission may at any time give notice in writing to the person stating that the Commission is so satisfied and accompanied by a statement setting out its reasons for being so satisfied.

(4) Before giving a notice under subsection (3), the Commission must comply with the requirements of section 150G.

(5) In satisfying itself for the purposes of subsection (3) in relation to any conduct or proposed conduct referred to in a notice given to the Commission by a person under subsection (1), the Commission must seek such relevant information as it considers reasonable and appropriate and may make a decision on the basis of any information so obtained and any other information furnished to it by the person or any other person or otherwise in its possession.

(6) A person who has given a notice to the Commission under this section in relation to any conduct or proposed conduct may, at anytime before the Commission has given to the person a notice under subsection (3) in relation to the conduct or proposed conduct, by notice in writing to the Commission, withdraw the first-mentioned notice.

(7) When a person has given notice to the Commission under subsection (1), the engaging by the person in the conduct referred to in the notice after the giving of the notice must not be taken, for the purposes of section 46, to have the purpose, or to have or be likely to have the effect, of substantially lessening competition within the meaning of that section unless—

- (a) the Commission has given notice to the person under subsection (3) of this section in relation to the conduct and the conduct takes place more than 30 days (or such longer period as the Commission by writing permits) after the day on which the Commission gave the notice; or
- (b) the notice has been, or is deemed to have been, withdrawn and the conduct takes place after the day on which the notice was, or is deemed to have been, withdrawn.

(8) If—

- (a) a person gives a notice to the Commission under subsection (1) in relation to any conduct or proposed conduct;
- (b) before or after the notice is given the person makes an application to the Commission for an authorisation to engage in that conduct; and
- (c) the Commission—
  - (i) makes a determination dismissing the application; or
  - (ii) makes a determination granting an authorisation in respect of the application,

the notice is deemed to be withdrawn the notice is thereupon deemed to be withdrawn.

(9) If—

- (a) a person has given a notice to the Commission under subsection (1) in relation to conduct or proposed conduct and the Commission has given notice to the person in writing under subsection (3) in relation to the conduct or the proposed conduct; or
- (b) a notice given by a person to the Commission under subsection (1) in relation to conduct or proposed conduct is withdrawn or deemed to be withdrawn,

the person is not entitled to give a further notice under subsection (1) to the Commission in relation to the same conduct or proposed conduct or in relation to conduct or proposed conduct to the like effect.

*Commission to afford opportunity for conference before giving notice in relation to exclusive dealing*

150G.—(1) Before giving a notice under subsection 150F(3) in relation to any conduct or proposed conduct, the Commission must prepare a draft notice in relation to that conduct or proposed conduct.

(2) The Commission must, by notice in writing sent to the person in relation to whose conduct or proposed conduct the draft notice relates and to each other interested person, invite the person or other person to notify the Commission, within 14 days after a date fixed by the Commission being not earlier than the day on which the notice is sent, whether the person or other person wishes the Commission to hold a conference in relation to the draft notice.

(3) The Commission must send with each notice under subsection (2) a copy of the draft notice and a summary of the reasons why it proposes to give the notice under subsection 150F (3).

(4) If each of the persons to whom a notice was sent under subsection (2)—

- (a) notifies the Commission in writing within the period of 14 days mentioned in that subsection that the person does not wish the Commission to hold a conference in relation to the draft notice; or
- (b) does not notify the Commission within that period that he or she wishes the Commission to hold such a conference,

the Commission must decide after the end of that period whether or not to give the notice under subsection 150F (3).

(5) If any of the persons to whom a notice was sent under subsection (2) notifies the Commission in writing within the period of 14 days mentioned in that subsection that he or she wishes the Commission to hold a conference in relation to the draft notice, the Commission must appoint a date (being not later than 30 days after the expiration of that period), time and place for the holding of the conference and give notice of the date, time and place so appointed to each of the persons to whom a notice was sent under subsection (2)

(6) At a conference held under section (5)—

- (a) the Commission must be represented by a member or members of the Commission (being a member or members who participated in the preparation of the draft notice) nominated by the Chairperson;
- (b) each person to whom a notice was sent under subsection (2) and any other interested person whose presence at the conference is considered by the Commission to be appropriate is entitled to attend and participate personally or, in the case of a body corporate, may be represented by a person who, or by persons each of whom, is a director, officer or employee of the body corporate;
- (c) a person participating in the conference in accordance with paragraph (a) or
- (b) is entitled to have another person or other persons present to assist him or her but a person who so assists another person at the conference is not entitled to participate in the discussion; and
- (d) no other person is entitled to be present.

(7) A member of the Commission participating in the conference must make such record of the discussions as is sufficient to set out the matters raised by the persons participating in the conference.

(8) The member of the Commission who represents the Commission at the conference, or, if the Commission is represented by more than one member of the Commission, one of those members appointed by the Chairperson—

- (a) may exclude from the conference any person who uses insulting language at the conference, creates, or takes part in creating or continuing, a disturbance at the conference or repeatedly interrupts the conference;
- (b) may terminate the conference when he or she is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference (other than persons excluded from the conference under paragraph (a)); and
- (c) must give a certificate certifying the day on which the first notification under subsection (5) in relation to the draft notice was received by the Commission and the day on which the conference terminated, and any such certificate is to be received in all courts as evidence of the matters certified.

(9) A document purporting to be a certificate referred to in subsection (8) is, unless the contrary is established, deemed to be such a certificate and to have been duly given.

(10) The Commission must take account of all matters raised at the conference.

(11) After the conference, the Commission must decide whether or not to give a notice under subsection 150F (3).

(12) For the purposes of this section, interested person means a person who has notified the Commission in writing that he or she, or a specified unincorporated association of which he or she is a member, claims to have an interest in the matter, being an interest that, in the opinion of the Commission, is real and substantial.

(13) If the Commission is of the opinion that two or more notices given to the Commission under subsection 150F(1) by the same person, or by persons being bodies corporate that are related to each other, deal with substantially similar conductor proposed conduct, the Commission may treat the notices as if they constituted a single notice and may prepare one draft notice in relation to the notices so given to the Commission and hold one conference in relation to that draft notice.

*Register of notification*

150H.—(1) The Commission must keep a register containing—

- (a) draft notices, and summaries of reasons, by the Commission furnished any person under section 150G;
- (b) records of conferences made in accordance with section 150G(7) and certificates in relation to conferences given under section 150G(8);
- (c) notices (including notices that have been withdrawn) given to the Commission under section 150F;
- (d) documents furnished to the Commission in relation to such notices;
- (e) particulars of any oral submissions made to the Commission in relation to such notices;
- (f) particulars of notices given by the Commission to persons by which notices under section 150F were given; and
- (g) particulars of any permits given by the Commission under paragraph (a) of section 150F (7).

(2) If a person furnishes a document to the Commission in relation to a notice given to the Commission under section 150F or makes an oral submission to the Commission in relation to the notice, he or she may, at the time when the document is furnished or the submission is made, request that the document or a part of the document; or that particulars of the submission or of part of the submission, be excluded from the register kept under subsections (1) by reason of the confidential nature of any of the matters contained in the document or submission.

(3) If a request is made under subsection (2) then—

- (a) if the document or part of the document, or the submission or part of the submission, to which the request relates contains particulars of—
  - (i) a secret formula or process;
  - (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or of assets of a person; or
  - (iii) the current costs of manufacturing, producing or marketing goods or services,

the Commission must exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from the register kept under subsection (1); and

- (b) in any other case the Commission may, if it is satisfied that it is desirable to do so by reason of the confidential nature of matters contained in the document or the part of the document, or in the submission or the part of the submission, exclude the document or the part of the document, or particulars of the submission or of the part of the submission, as the case may be, from that register.

(4) If the Commission refuses a request to exclude a document or a part of a document from the register kept under subsection (1), the Commission must, if the person who furnished the document to the Commission so requires, return the document or part of the document to him or her and; in that case, subsection (1) (d) does not apply in relation to the document or part of the document.

(5) Subsection (4) does not apply in relation to a document that was produced to the Commission in pursuance of a notice under section 146.

(6) If the Commission refuses a request to exclude particulars of an oral submission or of part of an oral submission from the register kept under subsection (1), the person; who made the submission may inform the

Commission that he or she withdraws the submission or that part of the submission and, in that case, subsection (1) (e) does not apply in relation to the submission or that part of the submission, as the case may be.

(7) If the Commission is satisfied that it is desirable to do so for any reason other than the confidential nature of matters contained in a document or submission, the Commission may exclude a document or part of a document referred to in subsection (1) (d) or particulars referred to in subsection (1) (e) from the register kept under subsection (1).

(8) If a person requests in accordance with subsection (2) that a document or part of a document, or that particulars of a submission or of part of a submission, be excluded from the register, kept under subsection (1), the document or the part of the document, or particulars of the submission or of the part of the submission, must not be included in that register until the Commission has made a determination in relation to the request.

## PART 12—GENERAL

### *Impersonation*

151. A person shall not falsely represent that he is an Inspector or that he is an officer or employee of the Commission.

### *Savings of Rights and Remedies*

152. Nothing in this Decree derogates from any right of action or other right or remedy that a person has apart from this Decree.

### *Contracting out Prohibited*

153. This Decree has effect notwithstanding that any provision in any contract or agreement purportedly provides expressly or implied to the contrary.

### *Limitation of Action*

154.—(1) No liability shall be incurred by the State or any person or the Commission—

- (a) on account of any disclosure made to the Commission or an officer of the Commission; or
- (b) on account of any disclosure of information or confidential information or publications made by the Commission under section 119.

concerning—

- (c) the supply of goods or services;
- (d) the commercial or business reputation of any person associated with the supply of goods or services;
- (e) the quality or standard of goods or services supplied by any person;
- (f) a contravention or alleged contravention of this Decree or the operation or enforcement of this Decree.

(2) Without derogating from the foregoing provisions, no liability shall be incurred by the State, or the Commission on account of any act or thing of the Commission on account of any act or thing—

- (a) done or omitted to be done pursuant to this Decree; or
- (b) done or omitted to be done bona fide for the purposes of this Decree and without negligence.

(4) The provisions of this Decree shall be read and construed subject to the provisions of any other Decree that limit the liability of the State or any other person.

### *Preservation of Secrecy*

155.—(1) A person who is or was at any time a member of the Commission or an officer of the Commission or an inspector of the Commission or appointed by the Commission for the purposes of performing the Commission's specified functions shall not, save in the course of his duty under this Decree or where it is competent to him so to do by reason of a provision of this Decree, directly or indirectly, communicate information that came to his knowledge indirectly, communicate information that came to his knowledge as a consequence of his holding that appointment or position.

(2) It is competent—

- (a) to the officer of the Commission to communicate to a person whose complaint concerning any matter has been investigated by the Commission, or to a Small Claims Tribunal, information concerning that matter, which has come to his knowledge as a result of the investigation and which is of a class

of information that the officer of the Commission has authorized, wither generally or in a particular case, to be co communicated;

- (b) to the officer of the Commission to make a disclosure or publication concerning any of the matters referred to in paragraphs (c) to (f) (both inclusive) of section 123 or 119 (1);
- (c) to the officer of the Commission to communicate to the appropriate Minister or official of the State in right of the Republic of Fiji information which the officer of the Commission considers should be communicated for the purpose of the administration of any law of the Republic of Fiji.

(3) The provisions of subsection (1) shall not be construed to prohibit any person referred to in that subsection when called as a witness in any legal proceeding from answering any question that he is compellable to answer in those proceedings.

(4) In no case shall a person referred to in subsection (1) disclose or be compelled to disclose the source or information that came to his knowledge in consequence of his holding an appointment or position under this Decree.

This subsection does not apply in any case where the person or the body that is the source of the information consents to the disclosure.

*Service of Documents, etc*

156.—(1) Where under this Decree a document or a notice may be, or is required to be, given to a person, the document or notice may be given—

- (a) in the case of a person who is neither a body corporate nor a firm—
  - (i) by delivering it to him personally
  - (ii) by leaving it at that person's place of residence last known to the person giving the document or notice with someone who apparently resides there, or at that person's place of business or employment last known to the person giving the document or notice with someone who is apparently employed there.
  - (iii) by sending it by post to that person's place of residence, business or employment last known to the person giving the document or notice;
- (b) in the case of a body corporate—
  - (i) by delivering it to the secretary of the body corporate personally;
  - (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Fiji with a person apparently employed there.
  - (iii) by sending it by post to the registered office of the body corporate or to the place or principle place of business; or
- (c) in the case of a firm—
  - (i) by delivering it to a member of the firm personally;
  - (ii) by leaving it at the place or principal place of business of the firm in Fiji last known to the person giving the document or notice with a person apparently employed there.
  - (iii) by sending it by posy to the place or principal place of business of the firm in Fiji last known to the person giving the document or notice.

(2) A reference in subsection (1) to the registered office of a body corporate includes a reference to a registered office that is outside Fiji.

*Evidence*

157.—(1) In any proceedings under this Decree—

- (a) where
  - (i) a published statement is intended, or apparently intended, to promote the supply or use of any goods or services; and
  - (ii) a name, business name, address, telephone number, post office number, facsimile number, telex number, or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who—
    - A) is the owner, whether alone or jointly with another person or other persons, of such goods;

- B) is a supplier of such goods or services
  - C) has an interest, otherwise than as owner, in such goods, or
  - D) has an interest, otherwise than as supplier, in the supply of such services, it shall be presumed, unless the contrary is proved, that the person or agent, as the case may be, caused the statement to be published;
- (b) in which it is alleged that a person in contravention of section 73 falsely represented that a vehicle as at a particular time had not travelled more than a specified distance—
- (i) the distance shown on the odometer of the vehicle at any time shall be deemed, unless the contrary is proved, to be a representation to all persons that the vehicle had not travelled more than the distance so shown;
  - (ii) evidence that at anytime before the representation was made that the distance shown on the odometer of the vehicle was greater than the distance specified in the representation shall be evidence and, unless the contrary is proved, conclusive evidence that the representation was false;
- (c) in relation to an offence against section 123 in respect of a failure to furnish information or to produce records or a copy thereof, an allegation or averment in a charge that a person failed as required to furnish information, or produce records or a copy thereof shall be evidence and, unless the contrary is proved, conclusive evidence of the matter so alleged or averred;
- (d) it shall not be necessary to prove the appointment of an inspector or other officer or his authority to do any act, make any requirement or give any order;
- (e) the authority of any person to take any proceeding shall be presumed unless the contrary is proved;
- (f) a printed document that purports—
- (i) to be a standard, rule, code or specification of an association or body referred to in, or prescribed under, the regulations; and
  - (ii) to have been published or issued by or on behalf of that association or body, is evidence of that standard, rule code or specification.

(2) In a proceeding against a person under section 142 or in an application under section 146 for an order against a person, a finding of any fact by the court made in proceedings under section 141 or for an offence against this Decree in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Decree is evidence of that fact and the finding may be proved by production of a document under the seal of the court from which the finding appears.

*Regulations*

158.—(1) The Minister may make regulations not inconsistent with this Decree with respect to—

- (a) all matters required or permitted by this Decree to be prescribed by regulation or to be prescribed and in respect of which no other means of prescription is specified; and
- (b) all matters necessary or expedient to be prescribed for the proper administration of this Decree or to achieve the objects and purposes of this Decree.
- (c) prescribing a penalty for any offence against any regulation not exceeding—
  - (i) a fine of \$5,000 for a first offence or a fine of \$10,000 for a second or subsequent offence;
  - (ii) where a court is of opinion that an offence under the regulations of which a person is convicted was committed to commit fraud, imprisonment for a term not exceeding three years in addition to or instead of any fine; and
  - (iii) where an offence has been committed by a body corporate a fine which is five times the fine provided for under sub-paragraph (i) of this paragraph;
  - (iv) fees;
  - (v) the procedure of the Commission;
  - (vi) the arbitration of disputes under Part 4.

(2) The regulations may require the payment of fees—

- (a) by recipients of services provided by the Commission; or

- (b) to meet the costs of the arbitration of access disputes.

*Review of this Decree*

159. This Decree shall be reviewed within 5 years from the commencement of this Decree.

*Consequential amendments*

160.—(1) The following legislations are repealed:

- (a) Fair Trading Decree 1992;
- (b) Fair Trading Amendment Act 1998;
- (c) Fair Trading Amendment Act 2005;
- (d) Commerce Act 1998;
- (e) Commerce Amendment Promulgation 2008;
- (f) Counter inflation Act 1978.

*Continuation of Proceedings*

161.—(1) This section applies to any action, arbitration, proceedings or cause of action that relates to a transferred asset or liability and that immediately before the commencement is pending or existing by, against, or in favor of the Prices and Incomes Board or the Department of Fair Trading and Consumer Affairs, or to which they are a party to.

(2) Any action, arbitration, proceedings or cause of action to which this section applies shall vest in the Commission and may be prosecuted or institute prosecution and, without amendment of any writ, pleading or other document, continued and enforced by, against, or in favor of the Commission.

*Subsidiary Legislation and orders*

162. Any orders or subsidiary legislations made under the Counter Inflation Act, Commerce Act 1998, Fair Trading Decree 1992 insofar as it applies to the repealed provisions of the Counter Inflation Act, Commerce Act 1998, Fair Trading Decree 1992 continues in force as if it were made under this Decree, until replaced by subsidiary legislation made under this Decree.

*Vesting of rights and liabilities etc. of Department of Fair Trading and Prices and Incomes Board in the Commerce Commission*

163.—(1) On such day as the Minister may by order appoint for the purposes of this Part (in this Decree referred to as "the transfer date"), all the property, rights and liabilities to which the Prices and Incomes Board was entitled or subject immediately before that date shall, without further assurance (subject to the following provisions of this section) become by virtue of this section property, rights and liabilities of the Commerce Commission.

(2) All the rights and liabilities to which the Department of Fair Trading and Consumer Affairs was entitled or subject immediately before that date shall, without further assurance (subject to the following provisions of this section) become by virtue of this section rights and liabilities of the Commerce Commission.

(3) All officers employed by the Prices and Incomes Board and the Department of Fair Trading and Consumer Affairs immediately before the transfer date, shall be transferred to the Commission and are deemed to become officers of the Commission at the date of transfer.

(4) It is hereby declared for the avoidance of doubt that—

- (a) any reference in this Decree to property of the Prices and Incomes Board is a reference to property situated in Fiji or elsewhere;
- (b) any such reference to rights or liabilities of the Prices and Incomes Board and the Department is a reference to rights to which the Prices and Incomes Board and the Department are entitled to, or (as the case may be) liabilities to which they are subject to, whether under the law of Fiji or otherwise and shall include—
  - (i) all property (real or personal) which before the appointed day is vested in the Prices and Incomes Board (or in any public officer in that Board).

(5) Reference to property does not include leave entitlements, gratuity or pensions that an officer of the Prices and Incomes Board or the Department is entitled to prior to the transfer date.

- (6) Where immediately before the transfer date there is in force an agreement which—
- (a) confers or imposes on the Prices and Incomes Board any rights or liabilities which vest in the Commission by virtue of this Decree; and
  - (b) refers (in whatever terms and whether expressly or by implication) to a public officer employed in the Prices and Incomes Board,

the agreement shall have effect, in relation to anything failing to be done on or after that date, as if for that reference there were substituted a reference to such person as the Commission may appoint or, in default of appointment, to the officer of that Commission who corresponds as nearly as may be to the public officer in question.

(7) Public records and copyright shall be accepted from the operation of subsection (1).

(8) Any transfer effected by or made under this section shall be binding on all other persons, and notwithstanding that it would apart from this section have required the consent or concurrence of any other person.

(9) Where any property, rights or liabilities which fail to be transferred under this section cannot be properly vested hereunder because transfers thereof are governed otherwise than by the laws of Fiji, the person from whom such property, right or liability is transferred shall take all practicable steps for the purpose of securing that such property, right or liability is effectively transferred under this section.

GIVEN UNDER MY HAND this 10th day of September 2010.

EPELI NAILATIKAU  
President of the Republic of Fiji