

GOVERNMENT OF THE REPUBLIC OF FIJI

**FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION  
(PROMULGATION NO. 11 OF 2007)**

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IN exercise of the powers conferred upon the Interim Government and upon the exercise of my own deliberate judgment as President of the Republic of the Fiji Islands as to what is in the best interest and good for the beloved peoples of the Fiji Islands, and by the executive authority of the State in accordance with Section 85 of the Constitution and all such other powers as may appertain, and with the approval of Cabinet, I, Josefa Iloilovatu Uluivuda, President of the Republic of the Fiji Islands, hereby make this Promulgation -

TO PROVIDE FOR THE ESTABLISHMENT OF THE  
FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION  
AND MATTERS INCIDENTAL THERETO.

**Short title**

1. This Promulgation may be cited as the Fiji Independent Commission Against Corruption Promulgation.

**Interpretation**

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

“Commission” means the Fiji Independent Commission Against Corruption established under section 3;

“Commissioner” means the Commissioner of the Fiji Independent Commission Against Commission appointed by the President and includes the Deputy Commissioner appointed under section 6;

“Minister” means the Minister responsible for anti-corruption<sup>1</sup>;

“officer” means an officer of the Commission appointed under section 8;

“prescribed officer” means—

- (a) any person holding an office of emolument, whether permanent or temporary, under the Government; and
- (b) the following persons (to the extent that they are not persons included in paragraph (a))—
  - (1) any official of the Government appointed by the President or who has sworn an oath of office before the President.
  - (2) Chairman of the Public Service Commission;
  - (3) any member of the staff of the Commission;
  - (4) any judicial officer holding a judicial office and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary.

“President” means the President of the Republic of Fiji <sup>2</sup>

“public body” has the meaning assigned to it in section 2 of the Prevention Bribery Promulgation.

“public servant” has the meaning assigned to it in section 2 of the Prevention of Bribery Promulgation.

**Offences to which this Promulgation applies**

- 2A. This Promulgation applies in relation to <sup>3</sup>—

- (a) any offence under this Promulgation;

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1 Definition of “Minister” is a new addition to the Promulgation in accordance with the Fiji Independent Commission Against Corruption (Amendment) Act 2016

2 Definition of “President” is a new addition to the Promulgation in accordance with the Fiji Independent Commission Against Corruption (Amendment) Act 2016

3 Section 2A has been repealed and substituted with the contents in Section 2 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

- (b) any offence under the Prevention of Bribery Promulgation;
- (c) any offence of corrupt or illegal conduct pertaining to any election;
- (d) any offence of blackmail committed by a prescribed officer by or through the misuse of his office;
- (e) the offence of perverting or obstructing the course of justice;
- (f) the offence of perjury;
- (g) any offence under the Penal Code [Cap. 17<sup>4</sup>] <sup>5</sup>;
- (h) any offence under the Crimes Decree 2009<sup>6</sup>;
- (i) the offence of conspiracy to defraud <sup>7</sup>;
- (j) to the extent that they are not included in the foregoing paragraphs, the offence of conspiracy to commit any of the offences referred to in this section;
- (k) to the extent they are not included in the foregoing paragraphs, any attempt to commit an offence referred to in this section or the offence of aiding, abetting, inciting, counselling or procuring any of those offences;
- (l) any offence which the Commissioner may prosecute under any written law <sup>8</sup>,
- (m) and in this Promulgation the expression “offence to which this Promulgation applies “shall be construed accordingly” <sup>9</sup>.

2B. Repealed. <sup>10</sup>

### **Establishment of the Commission**

3. There is hereby established the Fiji Independent Commission Against Corruption which shall consist of the Commissioner, the Deputy Commissioner and such officers as may be appointed.

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<sup>4</sup> Paragraph (g) ‘**Cap. 21**’ has been deleted and substituted with ‘**Cap. 17**’ in accordance with Section 3(b) of Fiji Independent Commission Against Corruption (Amendment) Act 2016

<sup>5</sup> The contents of paragraph (g) ‘**to the extent they are not included in paragraphs (e) or (f), any offence contrary to Chapters XI to XV of the Penal Code**’ has been deleted and substituted with the contents in Section 2(a) of the FICAC (Amendment) Decree 2010 (Decree No. 22 of 2010) dated 23 April 2010.

<sup>6</sup> The contents of paragraph (h) ‘**any offence contrary to Chapters XXIV-XXVII of the Penal Code**’ has been deleted and substituted with the contents in Section 2(b) of the FICAC (Amendment) Decree 2010 (Decree No. 22 of 2010) dated 23 April 2010.

<sup>7</sup> Paragraphs (l), (m) and (n) have been renumbered under Section 2 of the Fiji Independent Commission Against Corruption (Amendment) Decree No 22 of 2010

<sup>8</sup> Paragraph (l) is a new addition to the Promulgation in accordance with Section 3(d) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

<sup>9</sup> Paragraphs (l), (m) and (n) have been renumbered as (i), (j) and (k) in accordance with Section 2(d) of the FICAC (Amendment) Decree 2010 (Decree No. 22 of 2010)

<sup>10</sup> Section 2B repealed in accordance with Section 3 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

### **Maintenance of the Commission**

4. Following consultations with the Attorney-General the expenses of the Commission shall always be met by Government.

### **Office of Commissioner**

5. (1) The Commissioner shall be appointed by President <sup>11</sup>.
- (2) Deleted <sup>12</sup>.
- (3) The Commissioner shall hold office on such terms and conditions as the President may think fit.
- (4) The Commissioner, other than an acting Commissioner, shall not, while he holds the office of the Commissioner, discharge the duties of any other prescribed officer.
- (1)(5) The Commissioner may seek the assistance and input of the Attorney-General.

### **Appointment of Deputy Commissioner**

6. The President may appoint a Deputy Commissioner on such terms and conditions as he may think fit.

### **Acting Commissioner**

7. (1) If the office of the Commissioner is vacant or the Commissioner is absent from duty, the Deputy Commissioner shall, save where the President otherwise directs, act as Commissioner.
- (2) If both the Commissioner and Deputy Commissioner are absent from duty, the President may appoint another person to act as Commissioner during that absence.

### **Appointment of officers<sup>13</sup>**

8. (1) The Commissioner may appoint officers necessary to assist the Commissioner in the performance of his or her functions in accordance with this Promulgation.
- (2) The officers shall be employed -
- (a) on such terms and conditions as the Commissioner may think fit; and
- (b) subject to the standing orders made under section 11.

### **Warrant card**

9. The Commissioner may issue to such officers as he thinks fit a warrant card which shall be prima facie evidence of the officer's appointment as such.

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11 Section 5(1) has been amended by deleting the words 'subject to the orders and control of' and substituted with 'appointed by' in accordance with Section 4(a) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

12 The contents of Section 5(2) is deleted in accordance with Section 4(b) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

13 Section 8 is repealed and substituted with its current content in accordance with Section 5 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

### Power of arrest

10. (1) An officer authorised in that behalf by the Commissioner may, without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence to which this Promulgation applies, provided that, in respect of the offences under the Crimes Decree 2009 or any law repealed by the Crimes Decree 2009, the power of arrest without warrant is limited to indictable offences.<sup>14</sup>
- (2) Repealed<sup>15</sup>
- (3) Any such officer –
- (a) may use such force as is reasonable in the circumstances in effecting an arrest under subsection (1);<sup>16 17</sup>
- (b) may, for the purpose of effecting such an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be arrested; and
- (c) may exercise any other powers given to police officers under Part III of the Criminal Procedure Decree 2009<sup>18</sup>.
- (4)(4) No premises or place shall be entered under subsection (3) unless the officer has first stated that he is an officer and the purpose for which he seeks entry and produced his warrant card to any person requesting its production, but subject as aforesaid any such officer may enter any such premises or place by force, if necessary.
- (5)(5) Repealed<sup>19</sup>

### Procedure after arrest

- 10A. (1) A person arrested under section 10 -

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14 Section 10(1) is amended by deleting 'An officer authorized in that behalf by the Commissioner may without warrant arrest a person if he reasonably suspects that such person is guilty of an offence under this Promulgation or the Prevention of Bribery Promulgation or any statutory offence of corruption or illegal conduct in relation to any election or, being a prescribed officer, is guilty of an offence to which this Promulgation applies' and substituting with its current contents in accordance with Section 6 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016. This amendment supersedes the changes highlighted in Section 4(a) of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) which states 'of blackmail committed by or through the misuse of office' has been deleted and substituted with 'to which this Promulgation applies'

15 Subsection (2) repealed in accordance with Section 4(b) of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

16 Subsection (3)(a) is amended by deleting 'and' in accordance with Section 6(b) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

17 The contents of subsection (3)(a) 'or (2)' has been deleted in accordance with Section 4(c) of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

18 Subsection (3) is amended by inserting a new paragraph (c) in accordance with Section 6(b) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

19 Subsection (5) repealed in accordance with Section 4(d) of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

- (a) may be taken forthwith to a police station and there dealt with in accordance with the Police Act; or
  - (b) may be taken to the offices of the Commission.
- (2) A person arrested under section 10 who is taken to the offices of the Commission may be -
- (a) detained there if an officer of the rank of Chief Commission Against Corruption Officer or above considers it necessary for the purpose of further inquiries;
  - (b) released from custody –
    - (i) on his depositing such reasonable sum of money as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or
    - (ii) on his entering into such recognizance, with such sureties, if any, as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or
    - (iii) on his depositing such a sum of money and entering into such a recognizance.
- (3) A person who has deposited a sum of money for the purposes of subsection (2) and has thereupon been released from custody shall -
- (a) attend at the offices of the Commission at such time as an officer of the rank of Chief Commission Against Corruption Officer or above has specified and, having so attended, shall further attend at such other times thereafter as such an officer may specify; or
  - (b) appear before a magistrate at such time and place as an officer of the rank of Chief Commission Against Corruption Officer or above has specified.
- (3A) A person who has been released from custody under subsection (3) and –
- (a) who attends at the offices of the Commission at a further time as shall have been specified; and
  - (b) who on such attendance advises an officer of the rank of Chief Commission Against Corruption Officer or above that he will refuse to attend at any further time, whether specified or not,
- shall have the sum of money deposited for the purposes of subsection (2) refunded to him and shall not be bound by any recognizance entered into by him with respect to his attendance.

- (4) A recognizance entered into for the purposes of subsection (2) shall be conditioned –
  - (a) for the attendance of the person at the offices of the Commission at such time as may be specified therein and at such other time thereafter as an officer of the rank of Chief Commission Against Corruption Officer or above may specify; or
  - (b) for the appearance of the person before a magistrate at such time and place as may be specified therein.
- (5) If any person fails to attend at the offices of the Commission or to appear before a magistrate in accordance with subsection (3) or a recognizance entered into for the purposes of subsection (2), such sum of money may be forfeited or such recognizance entreated by a magistrate on application by a Commissioner.
- (6) A person who is detained at the offices of the Commission under subsection 2(a) shall be brought before a magistrate as soon as practicable and in any event within 48 hours after his arrest unless he is sooner released, whether under subsection (2)(b) or otherwise.
- (7)
  - (a) A person who is detained at the offices of the Commission under subsection (2)(a) may be taken in the custody of an officer to and from any other place if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary or desirable to do so.
  - (b) Any person who is being taken to and from any such place in the custody of an officer under paragraph (a) shall be deemed to be in lawful custody.
- (8) The Commissioner<sup>20</sup> may by order make such provision as he considers necessary with respect to the treatment of persons detained at the offices of the Commission, whether under subsection (2)(a) or pursuant to the order of a magistrate.

#### **Arrest of persons granted bail**

- 10AA. (1) An officer authorized in that behalf by the Commissioner may arrest without warrant any person who has been released from custody in accordance with section 10A(2), or otherwise admitted to bail following his arrest under section 10 or his appearance on a summons in respect of an offence referred to in that section -
- (a) if the officer has reasonable grounds for believing that any condition on or subject to which such person was so released or otherwise admitted to bail has been or is likely to be broken; or

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<sup>20</sup> Section 10A(8) is amended by deleting 'President' and substituting with 'Commissioner' in accordance with Section 7 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016



(b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surety wishes to be relieved of his obligation as surety.

(2) Any person arrested under subsection (1) shall be brought within the period of 24 hours after his arrest or as soon as practicable after the expiry of that period before a magistrate, except where he was so arrested within the period of 24 hours immediately preceding an occasion on which he is required by virtue of a condition of his release under section 10A(2) or other bail to appear before any court, in which case he shall be brought before that court.

(3) If it appears to the court before which a person is brought under subsection (2) that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the court may -

(a) remand that person in custody; or

(b) admit that person to bail on the same conditions or on such other conditions as it thinks fit,

but if it does not so appear to that court the court shall admit that person to bail on the same conditions.

(4) Nothing in this section shall derogate from or affect any other powers of arrest.

#### **Search warrants**

10B. Without prejudice to section 17(1) of the Prevention of Bribery Promulgation, if a magistrate is satisfied by information on oath that there is reason to believe that there is in any premises or place anything which is or contains evidence of the commission of an offence to which this Promulgation applies<sup>21</sup>, he may by warrant directed to any officer authorized such officer, and any other officers assisting him, to enter and search premises or place and seize such evidence<sup>22</sup>.

#### **Power of search and seizure**

10C. (1) An officer authorized in that behalf by the Commissioner may -

(a) search any person if he reasonably suspects that such person is guilty of an offence to which this Promulgation applies<sup>23</sup>;

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21 The contents of Section 10B 'any of the offences referred to in section 10' has been deleted and substituted with 'an offence to which this Promulgation applies' in accordance with Section 5 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

22 Section 10B is amended by inserting 'and seize such evidence' after 'search such premises or place' in accordance with Section 8 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

23 The contents of Section 10C(1) paragraphs (a) and (c) 'any of the offences referred to in section 10' has been deleted and substituted with 'an offence to which this Promulgation applies' in accordance with Section 6 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

(b) search the premises or place in which any person was arrested under section 10, or the premises or place in which a person who evades arrest therein under section 10 was to be arrested, for evidence of any of the offences referred to in that section;

(c) seize and detain anything which such officer has reason to believe to be or to contain evidence of an offence to which this Promulgation applies<sup>24</sup>;

(2) A person shall not be searched under subsection (1) except by a person of the same sex.

(3) The powers conferred by subsection (1) shall not derogate from the power conferred on any officer by section 17 of the Prevention of Bribery Promulgation or a warrant issued thereunder.

#### **Power to take finger prints and photographs**

10D. (1) Where a person has been arrested under section 10 or, has been served with a summons under the provisions of the Magistrates Act in respect of an offence to which this Promulgation applies<sup>25</sup> may take, or cause to be taken under the supervision of an officer, photographs, finger-prints and the weight and height measurements of that person.

(2) The identifying particulars of a person taken under subsection (1) may be retained by the Commissioner, except that if -

(a) a decision is taken not to charge the person with any offence; or

(b) the person is charged with an offence to which this Promulgation applies<sup>26</sup> but discharged by a court before conviction or acquitted at his trial or appeal,

the identifying particulars, together with any negatives or copies thereof, shall as soon as reasonably practicable be destroyed or, if the person prefers, delivered to that person.

(3) Notwithstanding subsection (2), the Commissioner may retain the identifying particulars of a person who has been previously convicted of any offence to which this Promulgation applies<sup>27</sup>.

(4) In this section -

“ identifying particulars” in relation to a person means photographs, finger-prints and the weight and height measurements of that person;

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24 Ibid

25 The contents of subsection (1) ‘a section 10 offence’ has been deleted and substituted with ‘an offence to which this Promulgation applies’ in accordance with Section 7(a) of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007.

26 Ibid, subsection (2)(b) in accordance with Section 7(b).

27 Ibid, subsection (3) in accordance with Section 7(c).

“section 10 offence” - deleted<sup>28</sup>

- (5)(5) Any person who, in lawful custody for an offence, refuses to submit to the taking of any of the methods of identification authorised to be taken under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 3 months and after conviction, reasonable force may be used to take such methods of identification.<sup>29</sup>

#### **Interception warrants<sup>30</sup>**

- 10E. (1) An officer acting under the instructions of the Commissioner may apply in writing to the High Court for a warrant if he or she has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit an offence to which this Promulgation applies.
- (2) A High Court Judge may, upon receiving a written application under subsection (1), issue a warrant if he or she is satisfied that there are reasonable grounds for such suspicion or belief to authorise the covert monitoring and recording, by any means, of the conduct and communications, including telecommunications, of the person.
- (3) A warrant issued under this section may be renewed by further application.
- (4) A warrant issued under this section authorises any officer -
- (a) to overtly or covertly enter or, in the case of a renewed warrant, re-enter any place specified in the warrant, by force if necessary, for the purpose of executing the warrant; and
  - (b)(b) in the case of a renewed warrant, to continue monitoring and recording pursuant to the original warrant subject to any variation specified in accordance with subsection (8)(g).
- (5) If the circumstances are such that a written application under subsection (1) is not reasonably practicable, an oral application may be made.
- (6) An application, whether in writing or made orally, must include the following -
- (a) the facts relied upon to show reasonable grounds for suspicion or belief;

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28 The contents of subsection (4) – definition of ‘**section 10 offence**’ has been deleted in accordance with Section 7(d) of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

29 Section 10D is amended by inserting a new subsection after subsection (4) in accordance with Section 9 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

30 Section 10 is amended by inserting a new Section 10E in accordance Section 10 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

- (b) the manner by which it is proposed to undertake the monitoring;
  - (c) the name or names of the person or persons to be monitored, if known;
  - (d) the place at which the monitoring and surveillance is intended to take place;
  - (e) the identity of any person who may be required by the court to provide assistance for the purpose of giving effect to the warrant;
  - (f) the requested duration of the warrant; and
  - (g) where the application is made orally, the circumstances said to render a written application not reasonably practicable.
- (7) In determining whether a warrant is to be granted under this section, the High Court Judge shall have regard to the following -
- (a) the nature and gravity of the offence in respect of which the warrant is sought;
  - (b) the extent to which the privacy of any person is likely to be affected;
  - (c) an alternative means of obtaining the information or evidence sought and the extent to which employing such means may prejudice the investigation, through delay or any other reason;
  - (d) the extent to which information that may be obtained is likely to assist the investigation of the offence;
  - (e) the evidentiary value of any information sought to be obtained;
  - (f) any previous warrant sought or issued in connection with the same offence; and
  - (g) in the case of an oral application, the circumstances that render a written application not reasonably practicable.
- (8) A warrant issued under this section must -
- (a) specify the manner by which monitoring is authorised;
  - (b) if known, specify the name of any person or persons who may be monitored;

- (c) specify the place or places at which monitoring and surveillance are authorised;
  - (d) specify any condition subject to which place or places may be entered pursuant to the warrant;
  - (e) specify any person required to provide assistance for the purpose of giving effect to the warrant and order that person to provide such assistance;
  - (f) specify the duration of the warrant;
  - (g) in the case of a renewed warrant, specify any variation to the authority conferred by the previous warrant; and
  - (h) authorise and require the retrieval of the monitoring and surveillance device.
- (9) A warrant issued pursuant to an oral application is valid for 48 hours.
- (10) Where in the case of a warrant issued under subsection (2), the Commissioner is satisfied that the grounds upon which a warrant was issued have ceased to exist, the Commissioner may apply to the High Court for the warrant to be revoked.
- (11) A High Court Judge may revoke a warrant issued under this section that is in force.
- (12) For the purpose of this section, an “oral application” means an application made orally in person or made by telephone, video conferencing or any other electronic means by which words can be heard.

**Officer deemed always to be on duty<sup>31</sup>**

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

**No civil or criminal liability for acts done in good faith<sup>32</sup>**

- 10G. (1) No civil or criminal action may be brought against any officer with regard to any act done in good faith and in the purported exercise of such officer’s duties under this Promulgation.
- (2) Where the defence to any suit or charge instituted against an officer is that the act complained of was done in obedience to a warrant purporting to be issued by a Magistrate or a Justice of the Peace, the production of the warrant is prima facie evidence that the act was lawful.

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31 Section 10 is amended by inserting a new Section 10F in accordance with Section 10 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

32 Section 10 is amended by inserting a new Section 10G in accordance with Section 10 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

### Standing orders

11. (1) The Commissioner may make orders, which shall be known as Commission standing orders, providing for -
- (a) the control, direction and administration of the Commission;
  - (b) the appointment, termination<sup>33</sup>, discipline, training, classification and promotion of officers;
  - (c) the duties of officers;
  - (d) the financial regulation of the Commission;
  - (e) such other matter as may, in his opinion, be necessary or expedient for preventing abuse or neglect of duty and for upholding the integrity of the Commission.
- (2) The Commissioner may modify the standing orders concerning the provisions of section 8.<sup>34</sup>
- (3) No Commission standing order shall be inconsistent with any of the provisions of this Promulgation.

### Duties of the Commissioner

12. It shall be the duty of the Commissioner, through the Deputy Commissioner and/or through his officers to -
- (a) receive and consider complaints alleging corrupt practices and investigate such of those complaints as he considers practicable;
  - (b) investigate the suspected or alleged occurrence of an offence to which this Promulgation applies.<sup>35</sup>
  - (c) investigate any conduct of a prescribed officer which, in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the President;

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33 Section 11(1)(b) is amended by inserting the words '**appointment, termination**' after 'the' in accordance with Section 11(a) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

34 Subsection (2) is amended by deleting '**The Commissioner may, with the prior approval of the President, by standing order modify the application to officers of Public Service or Government regulations or administrative rules applicable by virtue of section 8(4)**' and substituting with the current contents in accordance with Section 11(b) of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

35 Section 12 is amended by deleting paragraph (b) 'investigate -

- (i) **any alleged or suspected occurrence of an offence specified in paragraphs (a) to (d) of section 2A;**
- (ii) **any alleged or suspected offence of conspiracy to commit any of the offences specified in paragraphs (a) to (d) of section 2A; and**
- (iii) **any alleged or suspected attempt to commit any of the offences specified in paragraphs (a) to (d) of section 2A, or any alleged or suspected offence of aiding, abetting, inciting, counselling or procuring any of those offences.**

and substituting with the current contents in accordance with Section 12 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016. This amendment supersedes the changes highlighted in Section 8 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007 which states Subparagraphs (i) to (vii) have been deleted and substituted with the contents in accordance with Section 8 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

- (d) examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Commissioner, may be conducive to corrupt practices;
- (e) instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- (f) advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- (g) educate the public against the evils of corruption; and
- (h) enlist and foster public support in combating corruption.

**Prosecution of offences to which this Promulgation applies** <sup>36</sup>

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

12B. (1) **Power of the Commissioner to prosecute, etc in his own name**  
The Commissioner may in his own name and in any court institute and conduct proceedings in relation to any offence to which this Promulgation applies.

(2) The power conferred by subsection (1) includes the power to institute and conduct proceedings in relation to offences that were committed before the commencement of this Promulgation.

(3) The bringing of a prosecution for an offence in the exercise of the power conferred under this section does not, notwithstanding any provision of the Penal Code or any other law to the contrary, require the consent of the Director of Public Prosecutions.

(4)(4) In any court proceedings to which the Commissioner is a party the Commissioner is not required, unless otherwise directed by the court, to appear in person but may appear by his representative. <sup>37</sup>

(5)(5) It is lawful for any officer authorized in that behalf by the Commissioner to make a complaint or charge against any person before a Magistrate. <sup>38</sup>

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<sup>36</sup> Section 12A is amended by deleting 'The Commissioner may, in addition to any of the any alleged or suspected offences specified in section 12(b), investigate any other suspected or alleged occurrence of an offence to which this Promulgation applies' and substituting with the current contents in accordance with Section 13 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016. This amendment supersedes the changes highlighted in Section 9 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

<sup>37</sup> Section 12A is a new addition in accordance with Section 9 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

<sup>38</sup> Section 12B is amended by inserting a new subsection after subsection (4) in accordance with Section 14 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016.

### **Powers of the Commissioner**

13. (1) For the purpose of the performance of his functions under this Promulgation the Commissioner through the Deputy Commissioner and/or through his officers, may-
- (a) authorize in writing any officer to conduct an inquiry or examination;
  - (b) enter any Government premises and require any prescribed officer to answer questions concerning the duties of any prescribed officer or public servant and require the production of any standing orders, directions, office manuals or instructions relating thereto;
  - (c) authorize in writing any person to perform any of his duties to exercise such powers under this Promulgation and the Prevention of Bribery Promulgation as he may specify;
  - (d) without warrant, arrest or authorize any officer to arrest a person who is suspected to have committed an offence to which this Promulgation applies;
  - (e) prohibit any person against whom an investigation in respect of an offence to which this Promulgation applies has commenced, from leaving the jurisdiction of the Republic of Fiji for a period of up to 30 days and may give the necessary instructions in writing to the Director of Immigration to enforce the order, provided that the power under this paragraph must only be exercised by the Commissioner and a copy of the order must be served on the suspect or at his or her last known residential address within 24 hours of the issuance of the order.<sup>39</sup>
- (2) The Commissioner or any officer authorized for the purposes of this subsection in writing by the Commissioner shall have the following powers, namely-
- (a) as regards the performance of any of the Commissioner's functions under this Promulgation, access to all records, books and other documents relating to the work of any Government department in the possession or under the control of any prescribed officer;
  - (b) in so far as is necessary for the performance of any of the Commissioner's functions under section 12(d) or (f), access to such records, books and other documents in the possession or under the control of a public body as the Commissioner or such officer reasonably considers will reveal the practices and procedures of the public body;

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<sup>39</sup> Section 13 is amended by inserting new paragraphs (d) and (e) in accordance with Section 15 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016.



(c) as regards any such records, books and other documents, power to photograph or make copies of them.

(2A) For the purpose of obtaining advice and assistance in relation to the exercise of his powers and the performance of his functions under this Promulgation, the Commissioner may instruct and retain any legal practitioner.<sup>40</sup>

(3)(  
3 ) In this section “documents” has the meaning assigned to ‘document’ in section 2 of the Prevention of Bribery Promulgation.

#### **Powers of Commission officers**

13AA. All officers of the Commission shall have, in addition to any power or privileges provided for by this or any other law, the powers and privileges of a police officer of the rank equivalent to that which they hold within the Commission.”<sup>41</sup>

#### **Resisting or obstructing officers**

13A. Any person who resists or obstructs an officer in the execution of his duty shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000 and to imprisonment for 6 months.

#### **False reports to officers**

13B. Any person who knowingly –

- (a) makes or causes to be made to an officer a false report of the commission of any offence; or
- (b) misleads an officer by giving false information or by making false statements or accusations,

shall be guilty of an offence and shall be liable on conviction to a fine of \$20,000 and to imprisonment for 1 year.

#### **Falsely pretending to be an officer, etc**

13C. Any person who falsely pretends-

- (a) that he is an officer or has any of the powers of an officer under this Promulgation or the Prevention of Bribery Promulgation or under any authorization or warrant under either of those Promulgations; or
- (b) that he is able to procure an officer to do or refrain from doing anything in connection with the duty of such officer,

shall be guilty of offence and shall be liable on conviction to a fine of \$20,000 and imprisonment for 1 year.

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40 Subsection (2A) is a new addition in accordance with Section 10 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

41 Section 13AA is a new addition in accordance with Section 11 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

### **Disposal of property connected with offences**

- 13D. A magistrate or any other court shall have power to order the disposal of property connected with offences in the possession of the Commissioner or any officer as it applies with respect to property in the possession of a court or the police.

### **Time limit for prosecution of offences under section 13B or 13C**

- 13E. Notwithstanding any statutory provision prescribing the time limit for the prosecution of any offences a complaint may be made or an information laid in respect of an offence under section 13B or 13C within 1 year from the time when the matter of such complaint or information respectively arose.

### **Transfer of proceedings from the Commission to the police or the Director of the Public Prosecutions**

- 13F. (1) The conduct of any proceedings being conducted in the name of the Commissioner may, by agreement between the Commissioner and the police or the Director of the Public Prosecutions, be transferred to be conducted in the name of a police officer or the Director of Public Prosecutions (where provision otherwise exists for that matter to be conducted in the name of a police officer or the Director of Public Prosecutions, as the case may be), instead of in the name of the Commissioner.
- (2) Where such a transfer in the conduct of proceedings takes place then –
- (a) the proceedings shall stand for all purposes as if they had been initiated in the name of the police officer or the Director of Public Prosecutions as the case may be; and
  - (b) For the purpose of those proceedings or any further proceedings that may be instituted or conducted by the police or Director of Public Prosecutions arising out of the investigation carried out before the transfer by an officer of the Commission, that investigation shall be regarded as having been carried out by a police officer.
- (3) In particular, and without limiting the generality of subsection (2)(b)-
- (a) any statement taken from any person by an officer of the Commission shall be regarded as having been taken by a police officer;
  - (b) any interview of any person conducted or recorded by an officer of the Commission shall be regarded as having been conducted or recorded by police officer;
  - (c) anything seized or detained by an officer of the Commission shall be regarded as having been seized or detained by a police officer;
  - (d) any entry or search of any premises or place undertaken by an officer of the Commission shall be regarded as having been undertaken by a police officer;

- (e) any arrest made by the officer of the Commission shall be regarded as having been made by a police officer;
  - (f) any authorization for the searching of any premises or place issued to an officer of the Commission shall be regarded as having been issued to a police officer;
  - (g) any search of a person undertaken by an officer of the Commission shall be regarded as having been undertaken by a police officer.
- (4)(4) Any matter arising from an investigation that has been carried out by an officer of the Commission, whether or not proceedings have been instituted by the Commissioner arising out of that investigation, may be transferred from the Commission to the police or the Director of Public Prosecutions for further investigation, or for consideration as to the institution of criminal proceedings, and subsection 2(b) shall apply in relation to such transferred investigation as it applies to investigations in respect of transferred proceedings.
- (5)(5) For the purposes of this section, the transfer of any proceedings being conducted before a court in the name of the Commissioner shall have effect at such time as the court is informed by the Commissioner, the police or the Director of Public Prosecutions that a transfer has been agreed.<sup>42</sup>

#### **Divulging official information<sup>43</sup>**

- 13G. (1) No officer or former officer of the Commission nor any member or former member of the staff of the Commission shall, without the written permission of the Commissioner, publish or disclose to any person otherwise than -
- (a) for an officer or member of the staff of the Commission, in exercise of his or her official functions;
  - (b) for a former officer or member of the staff of the Commission, in no circumstance whatsoever,
- the contents of any document, communication or information whatsoever relating to or connected with the functions of the Commission which has or had come to his or her knowledge in the course of his or her duties.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and on conviction shall be liable to a fine of \$10,000 and to imprisonment for 2 years.
- (3) A criminal prosecution and criminal sanction may be effected in addition to any disciplinary action imposed on the officer for the same conduct.

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<sup>42</sup> Section 13F is a new addition in accordance with Section 12 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

<sup>43</sup> Section 13 is amended by inserting a new Section 13G in accordance with Section 15 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016.

**Equipment and properties of the Commission to be delivered up upon ceasing to be an officer** <sup>44</sup>

- 13H. (1) Any officer who, having ceased to be an officer, must deliver to the person appointed by the Commissioner for that purpose, or to the officer in charge at the place at which he or she was last stationed, all equipment, clothing and property whatsoever which have been supplied to him or her or received by him or her in his or her capacity as an employee of the Commission or at the discretion of the Commissioner pay the value of such property as determined by the Commissioner.
- (2) Any person who contravenes subsection (1), shall be guilty of an offence and shall be liable to a fine equivalent to the value of such property not delivered or to \$1,000, whichever is higher and to imprisonment for 2 years, provided that if a fine is imposed under this subsection, the court imposing the fine must direct such fine to be paid to the Commission as compensation.

**Estimates**

14. (1) In each financial year, before a date appointed by the President, the Commissioner shall forward to the President, for his approval, estimates of the expenditure of the Commission for the next financial year.
- (2) The estimates shall be in such form and contain such information as the President may require.

**Accounts**

15. (1) The Commissioner shall maintain proper accounts of such expenditure by the Commission as the President may require.
- (2) As soon as may be convenient after the end of each financial year, the Commissioner shall cause a statement of accounts during the previous financial year to be prepared.

**Audit**

16. (1) The Auditor-General may, at any time, have access to the financial and expenditure accounts maintained by the finance department of the Commission. <sup>45</sup>
- (2) The Auditor General shall audit the statement of accounts prepared under section 15(2) and report thereon to the President.

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<sup>44</sup> Section 13 is amended by inserting a new Section 13H in accordance with Section 15 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016.

<sup>45</sup> Section 16(1) is amended by deleting 'The Auditor General shall at anytime be entitled to have access to all accounts maintained under section 15(1) and he may require such information and explanation thereon as he thinks fit' and substituting with the current content in accordance with Section 16 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

### Annual report

17. (1) The Commissioner must submit a copy of the Commission's annual report to the President and Minister within 3 months after the end of the financial year.<sup>46</sup>
- (2) The Minister must, as soon as reasonably practicable, cause a copy of the annual report to be laid before Parliament.<sup>47</sup>

### Welfare fund

- 17A. (1) There shall be established a fund to be known as the "Fiji Independent Commission Against Corruption Welfare Fund".
- (2) The fund shall consist of –
- (a) such donations and voluntary contributions as may be made thereto;
  - (b) such sums as may, from time to time, be voted thereto by Parliament ; and
  - (c) such sums as may accrue by way of dividend or interest from the investment of the fund or any part thereof.
- (3) The fund must be controlled by the Commissioner and applied to the following purposes-
- (a) procurement for officers' gratuity, or other allowances, comforts, conveniences or other benefits as the Commissioner thinks fit;
  - (b) granting loans to officers as the Commissioner thinks fit; and
  - (c) such other matter as may, in the Commissioner's opinion, be necessary to assist officers or maintain the fund.<sup>48</sup>

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46 Section 17(1) is amended by deleting 'The Commissioner shall, on or before 31 March in each year after 2007, or by such later date as the President may allow, submit to the President a report on the activities of the Commission in the previous year' and substituting with the current content in accordance with Section 17 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

47 Section 17(2) is amended by deleting 'The President shall cause the report to be laid on the table of Parliament' and substituting with the current content in accordance with Section 17 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016

48 Section 17A(3) is amended by deleting 'The fund shall be controlled by the Commissioner and applied to the following purposes-

- (a) procuring for officers of the Commission and other persons employed by the Commission or former officers or persons so employed who have ceased employment or retired on pension, gratuity, or other allowance, comforts, conveniences or other benefits not chargeable to the general revenue;
- (b) granting loans to officers of the Commission and other persons employed by the Commission or former officers of the Commission and other persons formerly employed by the Commission who have ceased to be employed or retired on pension, gratuity or other allowance;
- (c) making grants to persons who were wholly or partially dependent at the time of his death on-
  - (i) a deceased officer or a deceased former officer of the Commission who had ceased to be employed or had retired on pension, gratuity or other allowance; or
  - (ii) a deceased person employed by the Commission or a deceased person who was at any time employed by the Commission and who had ceased to be employed or had retired on pension, gratuity or other allowance,

and who are in need of financial assistance, whether towards the payment of funeral expenses of the deceased or otherwise

and substituting with the current contents in accordance with Section 18 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016.

### **Saving of certain common law privileges**

18. Nothing in this Promulgation shall prejudice any claim to privilege which any person may have at common law in relation to any communication, document or other thing made or given to a solicitor or counsel.

### **Regulations and forms**

19. (1) The Minister may make Regulations to give effect to the provisions of this Promulgation, and in particular to prescribe matters required to be prescribed under this Promulgation.
- (2) Regulations made under subsection (1) may prescribe forms for use in connection with this Promulgation; and a form so prescribed may, with such variations as the circumstances of the case may require, be used for the purpose mentioned in the form, and if used shall be sufficient.<sup>49</sup>

### **Validity of search warrants etc. issued before the commencement date of amendments**

20. No information for a search warrant made by an officer of the Commission under this Promulgation before the commencement of the Fiji Independent Commission Against Corruption (Amendment) Promulgation 2007, or search warrant issued pursuant to such an information, shall be regarded as defective, invalid or void by reason only of the fact that it is in the form of, or purports to be, an information of search warrant made or issued under the Penal Code or any other Act.<sup>50</sup>

\*51

GIVEN UNDER MY HAND this 4th day of April 2007.

J. I. ULUIVUDA  
President of the  
Republic of Fiji Islands

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49 Section 19 is a new addition in accordance with Section 13 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

50 Section 20 is a new addition in accordance with Section 14 of the FICAC (Amendment) Promulgation 2007 (Promulgation No. 28 of 2007) dated 14 September 2007

51 Section 4 of the Proceeds of Crimes Act 1997 is amended by 19 of the Fiji Independent Commission Against Corruption (Amendment) Act 2016 by inserting the following new section- " 4A. The powers vested in the Director of Public Prosecutions by virtue of this Act are deemed to be vested in the Director of PUBLIC Prosecutions and the Commissioner of the Fiji Independent Commission Against Corruption, and any reference made in this Act to the Director of Public Prosecutions shall be construed as a reference to the Director of Public Prosecutions or the Commissioner of the Independent Commissions Against Corruption."

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION  
PROMULGATION 2007  
(PROMULGATION NO. 11 OF 2007)

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION  
(FORMS) REGULATIONS 2007

In exercise of the powers conferred upon me by section 19 of the Fiji Independent Commission Against Corruption Promulgation 2007, I make these Regulations –

**Citation**

1. These Regulations may be cited as the Fiji Independent Commission Against Corruption (Forms) Regulations 2007.

**Forms**

2. The forms set out in the Schedule are prescribed for use in connection with the Fiji Independent Commission Against Corruption Promulgation 2007.

DATED this 14<sup>th</sup> day of September 2007.

A. SAYED-KHAIYUM  
Attorney General and Minister for Justice,  
Electoral Reform and Anti-Corruption



SCHEDULE  
(Regulation 2)

—  
FORMS

FORM NO. 1

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION PROMULGATION

FORM 1

**INFORMATION TO OBTAIN A SEARCH WARRANT**  
(Section 10B)

In the Magistrates' Court at Fiji.

The information of (name and description of informant) of (address of informant) who upon oath states:

THAT he believes that in (description of premises or place) at (address of premises or place) of (name of owner, occupier or person in charge of premises or place, if known) there are (description of things) which are or which contain evidence of (description of offence), being an offence to which the Fiji Independent Commission Against Corruption Promulgation applies.

AND THAT the grounds of such belief are (statement of grounds of belief).

(Signature of informant)

Sworn before me this                      day of                      20

(Signature and description of witness)





FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION PROMULGATION

FORM #

**SEARCH WARRANT**  
(Section 10B)

In the Magistrates' Court at Fiji.

To. (name of officer of Fiji Independent Commission Against Corruption), an officer of the Fiji Independent Commission Against Corruption.

Whereas it is made to appear to me by information laid this day by (name of informant under the Information) that there is reason to believe that in (description of premises or place) at (address of premises or place) of (name of owner, occupier or person in charge of premises or place, if known) ("specified premises or place") there are (description of things) which are or which contain evidence of (description of offence), being an offence to which the Fiji Independent Commission Against Corruption Promulgation applies.

You, and any other officers of the Fiji Independent Commission Against Corruption who may be assisting you, are hereby authorized to enter and search the specified premises or place.

Dated this        day of        20

(Signature of Magistrate)