



REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 11

MONDAY, 29th NOVEMBER 2010

No. 135

[2082]

GOVERNMENT OF FIJI

THE FIJI NATIONAL UNIVERSITY (AMENDMENT) DECREE 2010 (DECREE NO. 58 OF 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 of Fiji Decree 2009, I hereby make the following Decree—

A DECREE TO AMEND THE FIJI NATIONAL UNIVERSITY DECREE 2009 TO ENABLE THE MERGER OF THE TRAINING AND PRODUCTIVITY AUTHORITY OF FIJI INTO THE FIJI NATIONAL UNIVERSITY.

PART 1—PRELIMINARY

Citation and commencement

1. This Decree may be cited as the Fiji National University (Amendment) Decree 2010 and shall commence on the date it is published in the *Gazette*.

Interpretation

2. In this Decree, the Fiji National University Decree 2009 is referred to as “the Decree”.

PART 2—AMENDMENTS

Table of Provisions amended

3. The ‘Table of Provisions’ of the Decree is amended by—

- (1) deleting the word ‘Member’s’ under section 22, and substituting “Members”
- (2) inserting new section “35A” after section ‘35’ —
“35A. Establishment of the National Training and Productivity Centre”,
- (3) inserting new section “40A” after section ‘40’ —
“40A. Regulations”,
- (4) inserting after section ‘42’ a new “Part VII” with the following words—
“Part VII – Levy Order and Apprentices
 - 42A. Levy Order
 - 42B. Consequences upon failure to comply with the Levy Order
 - 42C. Apprenticeship and Training
 - 42D. Apprentices
 - 42E. Arrangements where apprentice not engaged
 - 42F. Exemptions
 - 42G. Training Orders for other persons
 - 42H. Obstruction
 - 42I. Authorised officers
 - 42J. Penalties”
- (5) renumbering ‘Part VII’ as “Part VIII”

- (6) inserting after section '46' a new section "46A" —
"46A. Training and Productivity Authority of Fiji"
- (7) inserting after section '47' a new section "47A" —
"47A. Repeals"

Interpretation

- 4. Section 3 subsection (1) of the Decree is amended by inserting—
 - (1) after the definition of 'appointed member' the definition of "apprentice" —
"“apprentice” means a person being trained under the apprenticeship scheme”;
 - (2) after the definition of 'Minister' the definition of "National Training and Productivity Centre" —
"“National Training and Productivity Centre” means the National Training and Productivity Centre established by section 35A of this Decree”;
 - (3) after the definition of 'land' the definition of "Levy" —
"“Levy” refers to the funds generated under the Levy Order under section 42A of this Decree”;
 - (4) after the definition of 'Levy' the definition of "Levy Order" —
"“Levy Order” refers to the order made by the Minister under section 42A of this Decree.”

Section 5 amended

- 5. Section 5 subsection (1) of the Decree is amended by—
 - (1) deleting the word 'and' after the word 'inquiry,' and inserting ", and trade competence" after the words 'academic excellence' ;
 - (2) inserting "and productivity" after the word 'knowledge' and before the words 'by teaching' ;
 - (3) inserting ", training" after the word 'teaching' and before the words 'and other means'.

Section 6 amended

- 6.—(1) Section 6 subsection (1) of the Decree is amended by—
 - inserting in subparagraph (c) "and awards at other levels" after the word 'awards' and before the word 'as'.
 - (2) inserting after subparagraph '(c)' a new subparagraph "(d)" —
"“(d) to provide, arrange for or regulate the appropriate training of persons or classes of persons, whether by way of apprenticeship or otherwise, to assist such persons or classes of persons in connection with employment;”
 - (3) inserting after subparagraph '(d)' a new subparagraph "(e)" —
"“(e) to assist and contribute towards the cost of training, and the promotion of training, of any person or class of persons;”
 - (4) renumbering subparagraph '(d)' as "(f)"
 - (5) renumbering subparagraph '(e)' as "(g)".

Section 11 amended

- 7. Section 11 of the Decree is amended by—
 - (1) inserting after subsection '(4)' a new subsection "(5)" —
 - "(5) (a) The Council may appoint such boards or committees from time to time and on such terms as it may consider fit to hold office for such terms as it deems fit to advise the Council on any matter or matters arising out of the proper discharge of its functions.
 - (b) Any such board or committee shall, in addition to any member of the Council appointed, consist of such persons who in the opinion of the Council can make a contribution to the

work of that board or committee, provided that such board or committee may invite such other persons as it considers desirable to attend its meetings and give advice, but such persons shall not be entitled to vote.

- (c) In the discharge of its functions, the Council shall give due consideration to the advice or recommendations of any such board or committee."

- (2) renumbering subsection '(5)' as "(6)".

Section 12 amended

8. Section 12 of the Decree is amended by—

- (1) renumbering section '12' as section "12 (1) —"

- (2) inserting after subsection '(1)' a new subsection "(2)"—

"(2) Members of the Council and of any board or committee appointed by it shall be paid by the Council such allowances and expenses as the Minister may from time to time determine."

Section 14 amended

9. Section 14 of the Decree is amended by—

- (1) inserting after subsection '(1)' a new subsection "(2)"—

"(2) There shall be 2 members appointed by the Minister from a list of nominees submitted by the national employer bodies;"

- (2) inserting after subsection '(2)' a new subsection "(3)"—

"(3) There shall be 2 members appointed by the Minister from a list of nominees submitted by the registered trade union confederations."

- (3) deleting the words 'section 14(1)' in subsection '(2)' and substituting "sections 14(1) to 14(3)";

- (4) renumbering subsection '(2)' as "(4)";

- (5) renumbering subsection '(3)' as "(5)".

Section 22 amended

10. Section 22 of the Decree is amended by—

- (1) inserting after subsection '(2)' a new subsection "(3)"—

"(3) All members of the Council, and of any board or committee appointed by the Council, shall fully declare to the Council any financial or other interest with which they may at any time directly or indirectly be connected and shall, unless the Council so decides, refrain from voting at meetings of the Council or of such board or committee on any matter related thereto provided that such interest, if so declared, shall not disqualify such member for the purpose of constituting a quorum."

- (2) inserting after subsection '(3)' a new subsection "(4)"—

"(4) Any member of the Council or of a board or committee thereof and any employee of the Council who discloses any material information acquired in the course of his obligations under this Decree (other than as lawfully required to do so) commits an offence."

Section 32 amended

11. Section 32 subsection (5)(c) of the Decree is amended by deleting the 'semi-colon' after the word 'Institutes' and substituting—

"and heads of the sections delivering the training, apprenticeship, trade testing and productivity programmes formally appointed at the National Training and Productivity Centre."

Section 34 amended

12. Section 34 subsection (3) of the Decree is amended by—

- (1) inserting the words "Faculty, School, Centre or Institute," after 'College';

- (2) deleting the words 'decide its' after 'and' and substituting "determine the";
- (3) inserting the words "of the respective Boards" after 'functions'.

New Section 35A

13. The Decree is amended by inserting a new section "35A" after section '35' —

"Establishment of a National Training and Productivity Centre

35A—(1) There shall be a National Training and Productivity Centre at the University.

- (2) The functions of the National Training and Productivity Centre shall be to—
 - (a) ensure that the in-service training needs of industries in Fiji is met at all times;
 - (b) manage a quality apprenticeship system in Fiji;
 - (c) promote productivity and business excellence programmes in industry and act as the National Productivity Organisation for Fiji on behalf of the Government;
 - (d) be responsible for training grants within the budgetary provisions and financial policies of the University;
 - (e) carry out such trade tests as are necessary for fulfilling the objective of training for national development, and
 - (f) carry out such other responsibilities relating to industry training needs as are delegated to the National Centre by the Senate or the Vice-Chancellor.
- (3) The Council shall establish a Board of the National Centre that shall consider and advise the Council on industry training needs.
- (4) The Board shall comprise—
 - (a) three members representing the employers, of which two are appointed by the Minister under section 14(2) and one appointed by the Council;
 - (b) three members representing the employees of which two are appointed by the Minister under section 14(3) of this Decree; and
 - (c) three members representing the Government appointed by the Minister."

Section 36 amended

14. Section 36 of the Decree is amended by —

- (1). deleting in subsection (1) (b) the word 'levies' after 'and' and substituting it with "charges";
- (2). inserting a new subparagraph "(c)" after '(b)' —

"(c) monies earned by the University through the implementation of the Levy Order";
- (3). renumbering subparagraph '(c)' as "(d)";
- (4). renumbering subparagraph '(d)' as "(e)";
- (5). renumbering subparagraph '(e)' as "(f)".

Section 37 amended

15. Section 37 of the Decree is amended by inserting a new subsection "(3)" after subsection '(2)' —

"(3) The funds collected under the Levy Order shall be used primarily for in-service training of employees of levy-payers, managing apprenticeship schemes, trade testing, productivity promotion, and education and training in the national interest."

New Section 40A

16. The Decree is amended by inserting a new section "40A" after section '40' —

"Regulations

40A— The Minister on the advice of the Council may make regulations for the purpose of carrying out the provisions of this Decree."

New Part VII

17. The Decree is amended by inserting a new "Part VII" after section '42' of the Decree—
"Part VII: Levy Order and Apprentices"

New Section 42A

18. The Decree is amended by inserting a new section "42A" after section '42'—

"Levy Order"

42A—(1) The Minister may, from time to time, after consultation with the Council make, in such form and containing such details (including provisions for the payment of interest) as he may determine, a Levy Order imposing a Levy on any employer or class of employers, and the amount payable under any such Levy Order shall be paid to the Council at the time and in the manner specified in such Levy Order, and a Levy Order may make different provisions in relation to different classes of employers.

- (2) The Minister may from time to time, after consultation with the Council, revoke or amend a Levy Order.
- (3) The Council shall ensure that the University always has in place an effective system for collecting the amount payable under a Levy Order.
- (4) The amount payable under a Levy Order shall be deemed to be a simple contract debt due from the employer and shall be recoverable accordingly by the Council in any court.
- (5) Proceedings under subsection (4) may be instituted by—
- (a) the Vice-Chancellor or
 - (b) by any servant or agent of the Council authorised by the Vice-Chancellor in writing for that purpose:

and the Vice-Chancellor or any such servant or agent may conduct proceedings whether or not he was the person instituting them.

- (6) Any employer who fails to pay to the Council any amount payable as a Levy Order at the time and in the manner specified is guilty of an offence."

New Section 42B

19. The Decree is amended by inserting a new section "42B" after section '42A'—

"Consequences upon failure to comply with the Levy Order"

42B—(1) The Council may require an employer or class of employers to furnish such returns, provide such information and keep such records as shall be approved by it to produce them for inspection by or on behalf of the Council to enable it carry out its functions under this Decree.

- (2) Any employer who refuses or fails to comply without reasonable cause with any requirement of the Council made under subsection (1) shall be guilty of an offence.
- (3) Any employer who—
- (a) knowingly or recklessly furnishes, in pursuance of any requirement made under subsection (1), any return, information or record which is false in a material particular; or
 - (b) wilfully makes a false entry in any record required to be produced and kept under the provisions of this Decree or, with intent to deceive, makes use of any such entry which he knows to be false;

is guilty of an offence.

- (4) Where an offence has been committed under the provisions of subsection (3) by an employer (other than the Government) being a body corporate, every officer, including any director, manager, secretary or other servant and any other person purporting to act in such capacity of the employer, who knowingly and wilfully authorised or permitted the contravention mentioned in this section shall, in addition to the employer, be guilty of an offence and on conviction liable to the same fine.

- (5) Where an offence has been committed under the provisions of subsection (3) by an employer being the Government, every public officer who furnishes the returns, provides the information or keeps the records required by subsection (1), or any person or persons purporting to do so, who knowingly and wilfully authorised or permitted the contravention mentioned in this section is guilty of an offence."

New Section 42C

20. The Decree is amended by inserting a new section "42C" after section '42B' —

"Apprenticeship and Training

42C—The Minister may after consultation with the Council make orders, known as Training Orders regulating the employment, training and minimum remuneration of apprentices in any particular trade or occupation and prescribing forms, fees, matters and things which are required, permitted or contemplated by this Part to be prescribed which appear to the Minister to be necessary or convenient for the purpose of more effectively carrying out the objects and operation of this Part."

New Section 42D

21. The Decree is amended by inserting a new section "42D" after section '42C' —

"Apprentices

42D—(1) Any apprentice in any particular trade or occupation shall, notwithstanding any agreement to the contrary, be deemed to be employed under an agreement made between the Vice-Chancellor or his nominee on behalf of the Council and—

- (a) the apprentice or (if he is under 18 years of age) a parent, guardian or a person in loco parentis to him; and
- (b) the employer whereby the employer agrees to employ the apprentice, and the apprentice agrees to serve the employer, for the period of training specified in the rules.

(2) Notwithstanding the provisions of subsection (1), the Council may where appropriate—

- (a) release any employer or apprentice from their respective obligations to each other; or
- (b) transfer the benefits and obligations of the employer under any apprenticeship agreement to another employer who is willing to undertake them."

New Section 42E

22. The Decree is amended by inserting a new section "42E" after section '42D' —

"Arrangements where apprentice not engaged

42E—The Council may make such arrangements as it thinks proper for safeguarding the continued training of any apprentice if such person is not, for any reason other than his own wilful default, engaged in employment in his particular trade or occupation."

New Section 42F

23. The Decree is amended by inserting a new section "42F" after section '42E' —

"Exemptions

42F—The Council may, if it deems it necessary in any particular case, in regard to the employment of an apprentice, exempt any person from any of the provisions of any rule, order or regulation made by the Council thereunder."

New Section 42G

24. The Decree is amended by inserting a new section "42G" after section '42F' —

"Training orders for other persons

42G—The Minister may, after consultation with the Council from time to time make orders known as Training Orders, in relation to or regulating the employment and training of persons other than apprentices, and may make rules prescribing forms, fees, matters and things which appear to the Minister to be necessary or convenient for the purpose of more effectively carrying out the objects and operation of this Part."

New Section 42H

25. The Decree is amended by inserting a new section "42H" after section '42G' —

"Obstruction"

42H— Any person who does any act or thing for the purpose either of preventing or obstructing the Council, or any employer from carrying out any arrangement made by the Council under the provisions of this Decree is guilty of an offence."

New Section 42I

26. The Decree is amended by inserting a new section "42I" after section '42H' —

"Authorised officers"

42I— (1) The University may appoint such persons as it thinks necessary, to be authorised officers for all or any of the purposes of this Part."

"Powers of authorised officers"

- (2) An authorised officer may —

- (a) at any reasonable time enter any premises in which he has reasonable cause to believe a particular trade or occupation is carried out, or where any apprentice is or has within the previous six months been or is believed to have been employed and examine the methods used on such premises in the training of apprentices and give advice in such training;
- (b) with respect to matters under section 21, examine any person whom he finds on premises entered under the provisions of subparagraph (a) and any apprentice, and require any such person or apprentice to appear before him at a reasonable time and place and to answer such questions as he may put touching such matters:

Provided that no person shall be required by virtue of this subsection to answer any questions or to give any evidence tending to incriminate himself;

- (c) at any reasonable time enter any premises and examine the methods used in the training of any person whom he finds employed in a trade or occupation the subject of a training order made under the provisions of section 25 and give advice in such training;
 - (d) require the production or delivery up of any of the records required to be kept by an employer by or under the provisions of this Decree or of any orders or regulations made thereunder, and to examine and make extracts from, and copies of, any such records.
- (3) An authorised officer may, by notice in writing served on any employer, or in respect of whom a Levy order has been made or carrying on a designated trade or occupation or having a person in training or employing an apprentice, require him to keep and to furnish to him within a time or times and in a manner to be specified, such report or particulars as shall be specified with respect to the persons or any apprentice employed by him.
- (4) An authorised officer shall be supplied by the Council with a certificate of his appointment and when exercising or seeking to exercise any of the powers lawfully conferred on him shall produce the certificate on demand.
- (5) Any person who —
- (a) refuses or fails to comply without reasonable cause with any requirement made by an authorised officer under the provisions of this Decree; or
 - (b) obstructs or hinders an authorised officer in the exercise of his powers under the provisions of this Decree,

is guilty of an offence."

New Section 42J

27. The Decree is amended by inserting a new section "42J" after section '42I' —

"Penalties"

42J— Any person who commits an offence under this Part is liable on conviction to a fine not exceeding 50 penalty points or to imprisonment for a period not exceeding one year or both."

Part VII amended

28. Part VII of the Decree is amended by renumbering 'Part VII' as "Part VIII".

New Section 46A

29. The Decree is amended by inserting a new section "46A" after section '46' —

"Training and Productivity Authority of Fiji

- 46A— (1) At the commencement of this Decree any reference in any written law to Fiji National Training Council or Training and Productivity Authority of Fiji or Authority in its context is for all purposes deemed to be replaced and read as a reference to the Fiji National University.
- (2) All real and personal property which immediately before the commencement of this Decree was vested in or belonged to the Training and Productivity Authority of Fiji, without conveyance, transfer or assignment and, subject to this Decree, becomes the property of the University.
- (3) The Registrar of Titles or any person responsible for the keeping of any register under any written law must, on the written request of the University and on payment of the appropriate fee, make entries in the register and on any outstanding documents of title and generally do all things necessary to give effect to this Decree.
- (4) At the commencement of this Decree, all contracts, guarantees, undertakings and securities entered into by or on behalf of the Training and Productivity Authority of Fiji immediately before the commencement date, is taken to have been entered into or given by or to the University and may be enforced against or by the University.
- (5) This Decree deems the decisions made by the Councils of the Training and Productivity Authority of Fiji prior to the commencement of this Decree, as being made under the provisions of the Fiji National University Decree 2009 to the extent that the decisions are not inconsistent with the provisions of the Fiji National University Decree 2009 and do not undermine the decision making powers conferred on the Council, the Senate or other Offices of the University established under the Fiji National University Decree 2009.
- (6) On the commencement date, all tenured or permanent employees of the Training and Productivity Authority of Fiji shall be deemed to be employed by the University on the same terms and conditions on which each such person was employed prior to the commencement of this Decree.
- (7) At the commencement of this Decree, all contracted employees of the Training and Productivity Authority of Fiji shall be deemed to be employed by the University for the balance of their contractual terms on the same terms and conditions on which the person was employed by the former entity, and thereafter, to be employed under the terms and conditions of employment of the University.
- (8) All rights, including leave entitlements, accrued or accruing to the person as a staff member of the Training and Productivity Authority of Fiji up to the commencement date, shall be retained by the staff member after the commencement of this Decree.
- (9) Section 46A subsections (6) to (8) are valid to the extent that there is no change in terms and conditions of any category of staff member, including leave entitlements, which is outside the respective institution's budgetary and financial provisions, or that are designed to take advantage of the merger of the Training and Productivity Authority of Fiji with the University.
- (10) The Minister may before or after the commencement of this Decree give policy directives to the Council as he deems necessary in relation to the terms and conditions of employment of the staff of the Training and Productivity Authority of Fiji at the commencement of this Decree.
- (11) All subsidiary laws of the Training and Productivity Authority of Fiji Act are hereby deemed, in context, to become the subsidiary laws of the Fiji National University (Amendment) Decree 2010 *mutatis mutandis*."

Section 47 amended

30. Section 47 of the Decree is amended by—

- (i) deleting in subsection (1) the year '2010' after the word 'December' and substituting it with the year "2011";

- (ii) deleting the word 'and' after the year '1997' in subparagraph (iii) and substituting with a semi-colon
“;”
- (iii) inserting new subparagraph “(iv)” as follows—
 - “(iv) the members of the Council of the Training and Productivity Authority of Fiji appointed under section 4 of the Training and Productivity Authority Act; and;”
- (iv) renumbering subparagraph ‘(iv)’ as “(v)”;

New Section 47A

31. The Decree is amended by inserting a new section “47A” after section ‘47’—

“Repeals

47A—The Training and Productivity Authority Act 2002 is repealed on the commencement of this Decree.”

Given under my hand this 25th day of November 2010.

EPELI NAILATIKAU
President of the Republic of Fiji