

# **FIJI ISLANDS**

## **IMMIGRATION ACT 2003**

### **ARRANGEMENT OF SECTIONS**

#### **Part 1 - PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Extension of application of this Act

#### **Part 2 - DESIGNATION, APPOINTMENTS AND POWERS OF IMMIGRATION OFFICERS**

4. Designation and appointment of immigration officers
5. Powers of immigration officers

#### **Part 3 - ENTRY INTO AND DEPARTURE FROM THE FIJI ISLANDS**

6. Duties on entry into and departure from the Fiji Islands
7. Visas and control of entry into the Fiji Islands
8. Persons entitled to enter without permits
9. Issue, extension and variation of permits
10. Notification of refusal
11. Cancellation of permits
12. Certificates of identity

#### **Part 4 - PROHIBITED IMMIGRANTS**

13. Persons who are prohibited immigrants
14. Offences relating to prohibited immigrants
15. Power to remove prohibited immigrants
16. Expenses in respect of prohibited immigrants

#### **Part 5 - TRAFFICKING AND SMUGGLING OF PERSONS**

17. Interpretation
18. Application of this Part
19. Offence of trafficking in persons
20. Offence of trafficking in children
21. Exploitation of persons not legally entitled to work
22. Consent of trafficked persons
23. Offence of smuggling of migrants
24. Aggravated offence of smuggling of migrants
25. Offence to facilitate stay of unauthorised migrants

26. Offence related to fraudulent travel or identity documents
27. Aiding, abetting, etc
28. Incitement to commit an offence
29. Conspiring to commit an offence
30. Attempting to commit an offence
31. Immunity from prosecution
32. Predicate offences for money laundering, etc
33. Obligation of commercial and private carriers
34. Boarding, search and detention of aircraft or ship
35. Liability of companies
36. Information relating to persons entering or leaving the Fiji Islands
37. Power to prevent entry and order the removal of persons

### **Part 6 - DETERMINATION OF REFUGEES STATUS**

38. Interpretation
39. Claim for asylum
40. Power to determine claims
41. Principles for determining claims
42. Other requirements
43. Decision final
45. Principles on appeals
46. Confidentiality
47. Claimants leaving the Fiji Islands
48. Prohibition of expulsion or return
49. Offences

### **Part 7 - DEPORTATION**

50. Interpretation
51. Deportation of certain persons
52. Procedures
53. Detention in custody pending decision
54. Execution of orders
55. Persons serving sentence
56. Expenses
57. Offences
58. Evidence

### **Part 8 - APPEALS**

59. Appeal to Minister
60. Notice of decisions

### **Part 9 - MISCELLANEOUS**

- 61. Exemption of liability
- 62. Public interest privilege
- 63. Recovery of certain costs
- 64. Authorised airports
- 65. Other offences
- 66. Penalties
- 67. Infringement notices
- 68. Publication of information about prohibited immigrants
- 69. Regulations
- 70. Repeals and savings

Schedule 1 Counter terrorism conventions  
Schedule 2 Maximum penalties  
Schedule 3 Fixed penalties

-----  
**ACT NO. 17 OF 2003**

I assent

[L.S.]

J.I. ULUIVUDA  
President

[6 November 2003]

**AN ACT**

**TO MAKE PROVISIONS RELATING TO IMMIGRATION, TO REGULATE AND CONTROL TRAFFICKING AND SMUGGLING OF PERSONS, TO REGULATE DETERMINATION OF REFUGEES STATUS AND FOR RELATED MATTERS**

**ENACTED** by the Parliament of the Fiji Islands

**Part 1 - PRELIMINARY**

*Short title and commencement*

1. (1) This Act may be cited as the Immigration Act 2003.
- (2) This Act commences on a date appointed by the Minister by notice in the *Gazette*.

*Interpretation*

2. (1) In this Act, unless the context otherwise requires-

"approved form" means a form approved under section 68(3);

"authorised airport" means an airport declared by or under section 63 to be an authorised airport;

"child" means any legitimate or illegitimate child, stepchild or adopted child who is under 21 years and has never been married;

"citizen" means a citizen of the Fiji Islands;

"declared port" means a port declared under the Maritime and Ports Authority of the Fiji Islands Act;

"depart" means-

(a) in the case of a person departing by sea - to depart from the Fiji Islands on a ship to a place outside the Fiji Islands;

(b) in the case of a person departing by air at an authorised airport - to depart from an authorised airport to a place outside the Fiji Islands;

(c) in the case of a person departing by air from any other place other than from an authorised airport - to depart from the Fiji Islands to a place outside the Fiji Islands;

"deportation" means deportation from the Fiji Islands;

"deportation order" means an order made under section 50;

"deportee" means a person in respect of whom a deportation order is in force;

"enter" means-

(a) in the case of a person arriving by sea - to disembark from a ship which arrives from a place outside the Fiji Islands;

(b) in the case of a person arriving by air at an authorised airport - to leave the precincts of the airport for the purpose of entering the Fiji Islands from a place outside the Fiji Islands;

(c) in the case of a person arriving by air at any place other than an authorised airport to land in the Fiji Islands from a place outside the Fiji Islands,

but does not include-

(i) an entry made only for the purpose of complying with this Act;

- (ii) an entry expressly or impliedly sanctioned by an immigration officer for the purpose of any inquiry under this Act; or
- (iii) an entry caused solely by stress of weather or the condition of a ship or aircraft;

"exempted person" means a person exempted under section 8;

"family" means legally married spouses (including a surviving spouse) and any child under 21 years who has never been married, living together as a unit;

"immigration officer" means a person designated or appointed under section 4;

"owners agent" means the agent in the Fiji Islands of the owner of a ship or aircraft;

"passenger" means any person travelling or seeking to travel on board a ship or aircraft who is not an officer or crewmember of the ship or aircraft;

"passport" has the same meaning given to it under the Passports Act;

"Permanent Secretary" means the Permanent Secretary responsible for Immigration;

"permit" means a permit issued under this Act;

"port" includes an airport;

"premises" means any building or part of a building and includes residential premises;

"prohibited immigrant" means a person who is a prohibited immigrant by virtue of section 13;

"ship" includes a yacht;

"visa" means an entry or note on a passport, certificate or other official document signifying that the holder may travel to or through the Fiji Islands;

"visitor" means a holder of a valid permit issued under section 9(2)(a).

(2) A reference in this Act to a person being unlawfully in the Fiji Islands is to be construed as a person who is not an exempted person or holder of a valid permit under this Act.

#### *Extension of application of this Act*

3. Without prejudice to section 5 of the Penal Code, the application of this Act extends to any act done or offence committed within the Fiji exclusive economic zone as prescribed under the

Marine Spaces Act.

## **Part 2 - DESIGNATIONS, APPOINTMENTS AND POWERS OF IMMIGRATION OFFICERS**

### *Designation and appointment of immigration officers*

4.- (1) The Permanent Secretary may, after consulting the Minister-

(a) designate a public officer or a class of public officers; or

(b) subject to conditions to be specified in the instrument of appointment, appoint any other person in the Fiji Islands or in another country,

as an immigration officer for the purpose of this Act.

(2) The Permanent Secretary may, except the powers under subsection (1), delegate in writing all or any of powers, functions or duties conferred on the Permanent Secretary under this Act either generally or in respect of any area in the Fiji Islands, or for such periods or purposes as the Permanent Secretary may in writing specify, to any immigration officer, and may revoke or vary such delegation.

(3) Notwithstanding subsection (2), the Permanent Secretary may exercise and perform any powers, functions and duties so delegated.

(4) The Minister may give the Permanent Secretary written policy directions, not inconsistent with this Act, as to the exercise of any power, discretion or function or the performance of any duty under this Act, and the Permanent Secretary must comply with the directions and the Permanent Secretary must in writing notify all immigration officers about the directions.

(5) Once notified of any directions given under subsection (4), an immigration officer must comply with the directions.

(6) Directions given by the Minister under this section must not relate to an individual.

### *Powers of immigration officers*

5. (1) For the purpose of exercising powers, performing functions or carrying out duties under this Act, an immigration officer may-

(a) without a search warrant, enter and search any ship, aircraft, vehicle, premises or place;

(b) question any person-

(i) who desires to enter or to leave the Fiji Islands;

- (ii) whom the officer has reasonable grounds for believing to be a prohibited immigrant;
- (iii) who is applying for extension or variation of a permit or for exemption; or
- (iv) whom the officer reasonably believes can give material information regarding any person mentioned in sub-paragraphs (i), (ii) or (iii);

(c) require any such person to produce any documents in his possession, which are necessary to enable the officer to carry out his duties under this Act;

(d) require any person who desires to enter or leave the Fiji Islands to make and sign any form of declaration;

(e) require any person who desires to enter the Fiji Islands to submit to an examination by a registered medical practitioner, and to undergo any test or investigation, which the practitioner requires.

(2) If-

(a) an immigration officer or a police officer has reasonable cause to suspect that a person has committed an offence against this Act or the regulations or is a prohibited immigrant; and

(b) it appears to the officer to be necessary to arrest the person immediately in order to secure the ends of justice or so that the purpose of this Act is not defeated,

the officer may arrest the person without a warrant and sections 23 to 26 of the Criminal Procedure Code apply, and an immigration officer is deemed to be a police officer for the purposes of those sections.

(3) If a person arrested under subsection (2) is an officer, crew member or passenger on a ship or aircraft whom the immigration officer or police officer has reasonable cause to suspect of being a prohibited immigrant, the officer may hand over the person to the master of the ship or commander of the aircraft to be kept in custody until the departure of ship or aircraft.

(4) A person who-

(a) refuses to answer any question or inquiry in the course of interrogation under subsection (1)(b);

(b) gives to any such question or inquiry an answer which the person knows or ought to know is false or misleading; or

(c) when required under subsection (1)(c) to produce a document which is in the person's

power to produce - refuses or fails to produce it within a reasonable time, or produces a document which the person knows or has reasonable cause to believe to be false or misleading,

commits an offence.

(5) Any answer to a question or inquiry under subsection (1)(b) or any document produced under subsection (1)(c) is admissible in evidence in relation to any matter arising under or connected with this Act in any civil or criminal proceedings.

(6) Subsection (5) does not render an answer or document admissible in evidence in proceedings in which the answer or document would be inadmissible.

### **Part 3 - ENTRY INTO AND DEPARTURE FROM THE FIJI ISLANDS**

#### *Duties on entry into and departure from the Fiji Islands*

6. (1) A person who, without lawful authority or without reasonable excuse, enters or departs from the Fiji Islands except at a declared port or an authorised airport commits an offence.

(2) The owner, agent, master or commander of a ship or aircraft must, at least one hour before departing another country for the Fiji Islands and in any manner of communication, send a list required under subsection 3(a) to an immigration officer at the port or airport in which the ship or aircraft will arrive in the Fiji Islands.

(3) The master of a ship or commander of an aircraft arriving in the Fiji Islands or about to depart from the Fiji Islands must-

(a) deliver to the immigration officer a complete list in duplicate of all officers, crew members, passengers (including passengers in transit) and other persons on the ship or aircraft;

(b) inform the immigration officer if the master or the commander knows or has reasonable grounds for believing any person on the ship or aircraft to be a prohibited immigrant, a stowaway or a person who is in the course of deportation or compulsory repatriation;

(c) use all reasonable means to prevent any person on the ship or aircraft entering or departing the Fiji Islands in contravention of this Act;

(d) prevent, with such reasonable force as is necessary, the re-entry of a person on the ship or aircraft

(i) who has been handed over to the custody of the master or commander under section 5(3); or

- (ii) in respect of whom to the knowledge of the master or commander a removal order under section 15 or a deportation order under Part 7 is in force.

(4) The master of a ship or commander of an aircraft about to depart from the Fiji Islands who-

- (a) contravenes paragraph (a), (b), (c) or (d) of subsection (3); or

- (b) provides a list as required by subsection (3)(a) which the master or commander knows or ought to know is false or misleading,

commits an offence.

(5) The master of a ship, which arrives in or is about to depart from the Fiji Islands must-

- (a) provide suitable facilities and assistance on board the ship for the proper performance by the immigration officer of his duties; and

- (b) in the case of a privately owned ship arriving in the Fiji Islands, provide bonds or tickets as the immigration officer requires for all persons on board the ship who will be disembarking.

(6) A master of a ship who contravenes paragraph (a) or (b) of subsection (5) commits an offence.

(7) The master, the owner or the owners agent of a ship which is due to arrive in the Fiji Islands from a place outside the Fiji Islands, or which is about to depart from the Fiji Islands, must give to an immigration officer at least 24 hours notice in writing of the expected arrival or departure time.

(8) If a ship is due to arrive in the Fiji Islands or is about to depart from the Fiji Islands on a Saturday, Sunday or public holiday, the period of notice required under subsection (7) is at least 48 hours.

(9) If notice is not given under subsection (7), the master, the owner or the owners agent each commits an offence.

(10) The master of a ship or commander of an aircraft departing from the Fiji Islands must not cause the ship or aircraft to depart unless an immigration officer has issued a certificate of clearance.

(11) The master of a ship or commander of an aircraft departing from the Fiji Islands must not-

- (a) cause the ship or aircraft to call at any other port or place in the Fiji Islands; or

- (b) permit any person whose name does not appear on the list delivered under subsection

(3)(a) to board the ship or aircraft,

after a certificate of clearance has been issued by an immigration officer.

(12) A master of a ship or commander of an aircraft who contravenes subsection (10), (11)(a) or (b) commits an offence.

(13) The Minister may, by order in the *Gazette*, exempt any ship or class of ship or any aircraft or class of aircraft from all or any of the provisions of this section.

#### *Visas and control of entry into the Fiji Islands*

7. (1) A person who is not a citizen must not enter the Fiji Islands unless the person-

(a) is the holder of a current visa or permit; or

(b) is exempted under subsection (2) or section 8.

(2) The Minister may, by order in the *Gazette*, specify classes of nationals or citizens of countries other than nationals or citizens of the Fiji Islands who are exempted from obtaining a visa before entering the Fiji Islands.

(3) A visa may, in accordance with the regulations, be obtained from an immigration officer, a diplomatic or consular representative of the Fiji Islands in another country or any other person authorised by the Minister to issue visas on behalf of the Government.

(4) A person who-

(a) is not exempted from obtaining a visa before entering the Fiji Islands; and

(b) enters or attempts to enter the Fiji Islands without a visa,

must, if so required by an immigration officer, deposit his passport or other travel document with the officer who may retain it until the person leaves the Fiji Islands.

(5) A person seeking to enter or to depart from the Fiji Islands must comply with any formalities and complete any documentation prescribed by the regulations.

(6) A person who enters or is about to depart from the Fiji Islands by sea or air must-

(a) appear before an immigration officer at a time and place the officer directs; and

(b) provide the officer with information in a manner the officer requires or as prescribed in the regulations.

(7) A person referred to in subsection (6) who fails to appear before an immigration officer or to

provide the information required under that subsection commits an offence.

*Persons entitled to enter without permits*

8. (1) The following categories of persons are entitled to enter, reside and work in the Fiji Islands without having obtained a permit under this Act-

(a) a citizen;

(b) a child of a citizen, being a child who is under the age of 21 years, or such lesser age as the Minister, by order, specifies, and who is not, and has never been, married;

(c) a member of the military forces of another country entering the Fiji Islands for an authorised military exercise, training or secondment;

(d) a person to whom immunities and privileges have been extended in the Fiji Islands under any written law relating to diplomatic or consular immunities and privileges;

(e) a person who is on the official staff of a person to whom the immunities and privileges mentioned in paragraph (d) have been extended; or

(f) a person employed in the service of the Government of the Fiji Islands or the Government of any country or territory entering the Fiji Islands in the course of his duty; or

(g) a person who is registered in the *Vola ni Kawabula* maintained by the Native Lands Commission under the Native Lands Act.

(2) A member of the family of a person mentioned in paragraph (c), (d), (e) or (f) of subsection (1) is entitled to enter and reside in the Fiji Islands without a permit during the time the person is resident in the Fiji Islands.

(3) The Minister may, by order in the *Gazette*, exempt any other person or class of persons from the requirement to obtain a permit, subject to any conditions the Minister prescribes in the order.

(4) If a person ceases to hold the employment, appointment or status which entitled the person under this section to enter the Fiji Islands without a permit-

(a) the person is treated as a person seeking to enter the Fiji Islands with effect from the date on which the person ceased to hold the employment, appointment or status; and

(b) if upon the expiry of 30 days from that date the person has not been granted a permit under this Act, the person's presence and the presence of his family in the Fiji Islands becomes unlawful, unless the Permanent Secretary, for good reasons, extends the period of 30 days up to 3 months.

(5) Subsection (7) does not apply to a person who at the time of ceasing to hold the employment, appointment or status, which entitled the person to enter the Fiji Islands without a permit, is or has become a citizen.

*Issue, extension or variation of permits*

9. (1) The Permanent Secretary may, on application made in the approved form, and on payment of the prescribed fee, issue a permit to any person who is not an exempted person, including persons entitled to enter and reside in the Fiji Islands under section 16 of the Constitution.

(2) A permit in the approved form may be issued entitling the applicant to enter the Fiji Islands-

- (a) as a visitor;
- (b) to reside;
- (c) to reside and work;
- (d) to reside for the purpose of study; or
- (f) to reside for the purpose of research,

on conditions prescribed in relation to a particular permit, which may include conditions imposed on an employer in respect of a work permit.

(3) A permit issued under subsection (2)(a) entitles the holder to work for a period up to 14 days only if-

- (a) the person is in the Fiji Islands for the purpose of business or investment that will benefit the country, study, research or consultancy work; and
- (b) subject to any conditions imposed by the Permanent Secretary.

(4) The Minister may prescribe different classes of permits for different purposes and may attach different conditions to each class.

(5) The period for which a person may enter, reside and work under subsection (2)(c) is up to 3 years in the first instance, but may be extended if the prescribed conditions are met.

(6) A person who is-

- (a) unlawfully in the Fiji Islands;
- (b) in lawful custody; or
- (c) a patient in a mental hospital,

is not entitled to be issued with a permit.

(7) The Permanent Secretary may, on application made in the approved form, and on payment of the prescribed fee, extend or vary a permit.

*Notification of refusal*

10. (1) If the Permanent Secretary refuses-

- (a) to issue a permit; or
- (b) to extend or vary a permit,

the Permanent Secretary must notify the applicant in accordance with this section.

(2) Notice of a decision to refuse to issue a permit must-

- (a) where the permit was refused because a condition for the issue of the permit was not satisfied - specify the condition;
- (b) where the permit was refused because a provision of this Act or the regulations prevented the issue of the permit - specify the provision;
- (c) give written reasons why the condition was not satisfied or the provision prevented the issue of the permit; and
- (d) state-
  - (i) the right to appeal under section 58;
  - (ii) the time within which the appeal must be made; and
  - (iii) the place where the appeal is to be lodged.

(3) Notice of a decision to refuse to issue, extend or vary a permit must-

- (a) give written reasons why the issue, extension or variation was refused; and
- (b) state-
  - (i) the right to appeal under section 58;
  - (ii) the time within which the appeal must be made; and
  - (iii) the place where the appeal is to be lodged.

(4) Failure to give notice of a decision to refuse to issue, extend or vary a permit does not affect the validity of the decision.

(5) A statement of reasons under subsection (2)(c) or subsection (3)(a) must not include any information or matter to which a certificate under section 61 applies.

(6) A reference in this section to a refusal to issue a permit does not include a reference to a refusal to issue a visitors permit under section 9(2)(a).

### *Cancellation of permits*

11. (1) Subject to this section, the Permanent Secretary may cancel a permit if the Permanent Secretary is satisfied that-

- (a) the holder is not the person to whom the permit ought to have been issued;
- (b) there has been a breach of the conditions subject to which it was issued; or
- (c) the permit was obtained through fraud or by means of a false statement or misrepresentation.

(2) Where the Permanent Secretary intends to cancel a permit because there appear to be grounds for cancelling a permit, the Permanent Secretary must notify the holder and-

- (a) give particulars of those grounds and of the information by virtue of which the grounds appear to exist; and
- (b) invite the holder to provide a statement in writing, within a specified time, showing that-
  - (i) those grounds do not exist; or
  - (ii) there is a reason why the permit should not be cancelled.

(3) The Permanent Secretary must not cancel a permit before whichever of the following happens first-

- (a) if the holder responds within the time specified under subsection (2)(b) - the Permanent Secretary considers the response;
- (b) the time specified under subsection (2)(b) expires without a response from the holder; or
- (c) the holder informs the Permanent Secretary that the holder does not wish to respond.

(4) The Permanent Secretary must notify the holder of a permit of the cancellation of the permit, and the notice must include a statement relating to the right of appeal under section 58.

(5) Failure to comply with the requirements of subsection (4) does not affect the validity of the decision to cancel the permit.

(6) A notice under subsection (2)(a) must not include any information or matter to which a certificate under section 61 applies.

(7) A reference in subsection (2), (3) or (4) to the holder of a permit includes, in the case of a permit entitling the holder to reside and work in the Fiji Islands, a reference to the employer of the holder of the permit.

(8) If a permit issued under section 9(2)(a) is cancelled because the holder overstays the period of the permit by more than 7 days or other different periods as may be prescribed for different period overstayed, the holder of the permit must not be allowed to re-enter the Fiji Islands as a visitor within 12 months or such other different period as may be prescribed for different period overstayed, from the date of departing the Fiji Islands.

(9) The Minister may, on application and accompanied by the prescribed fee, remove the period set out in subsection (8).

#### *Certificates of identity*

12. (1) The Permanent Secretary must, in accordance with the regulations, issue a certificate of identity to a person who-

(a) is not a citizen;

(b) is about to leave the Fiji Islands; and

(c) is unable to obtain a passport from a consular representative of the country of which the person claims to be a national.

(2) The Permanent Secretary may issue a certificate of identity to a Fiji Islands citizen in another country who has lost his passport, or whose passport has expired, and who has an immediate need to return to the Fiji Islands.

(3) A certificate of identity issued under subsection (1) or (2) must specify the period for which it remains in force, not being longer than 1 year from the day on which it is issued.

### **Part 4 - PROHIBITED IMMIGRANTS**

#### *Persons who are prohibited immigrants*

13. (1) A person who-

(a) is not a person entitled to enter the Fiji Islands without a permit under section 9; or

(b) is a member of a prohibited class by virtue of subsection (2),

is, subject to subsections (3) and (4), a prohibited immigrant and the person's entry into or presence in the Fiji Islands is unlawful.

(2) The following persons, if they are not citizens, are members of the prohibited class-

(a) a person who, not being an exempted person, is not the holder of a valid permit;

(b) a person in respect of whom a deportation order under Part 7 or a removal order under section 15 is in force;

(c) enters the Fiji Islands by virtue of Part 5;

(d) a person who-

(i) refuses to submit to an examination by a registered medical practitioner after being required to do so under section 5(1)(e) or to undergo any test or examination which the practitioner requires; or

(ii) is certified by a registered medical practitioner to be suffering from a contagious or infectious disease, or from a mental disease or disorder, that makes the person's presence in the Fiji Islands dangerous to the community;

(e) a person who has been convicted by a court in another country of an offence which if committed in the Fiji Islands would be an offence that carries a minimum penalty of imprisonment of 2 years or more (including life imprisonment) or a minimum fine of \$5,000 or more, and has not received a free pardon;

(f) a person who has arrived in the Fiji Islands as a stowaway;

(g) a person who prior to or after entry into the Fiji Islands, as a result of information received from any country through official or diplomatic channels, or from any other source the Minister considers reliable, is deemed by the Minister to be a person who is or has been conducting himself in a manner prejudicial to the peace, defence, public safety, public order, public morality, public health, security or good government of the Fiji Islands;

(h) a person who is in the course of deportation or compulsory removal from any other country;

(i) a person who is a member of any class of persons declared by the Minister, by order in

the *Gazette*, to be a prohibited class for the purposes of this section;

(j) a member of the family, and any dependant of, a prohibited immigrant, unless the Minister in his discretion declares in writing that the member or dependant is not a member of the prohibited class;

(k) a person who, at the time of entry into the Fiji Islands, is unable to show that he has the means of supporting himself and his family and any dependant or that the person has a permit to work in the Fiji Islands or who is likely to become a pauper or charge on the public;

(l) a person who is a member of a terrorist group as defined under Part 5;

(m) an asylum seeker whose claim has been refused or a refugee whose status has been cancelled under Part 6.

(2) Notwithstanding subsection (1), a person whose permit has been cancelled or whose request for the extension or variation of a permit has been refused does not become a prohibited immigrant until-

(a) the Minister makes a decision on an appeal made under section 58; or

(b) the end of the 21st day after the day on which notice of the cancellation or refusal was given to the person,

whichever is the later.

(3) A person who enters the Fiji Islands in order-

(a) to be tried by a court of competent jurisdiction;

(b) to serve a sentence of imprisonment; or

(c) to be detained in lawful custody for any other reason,

is not a prohibited immigrant and may enter and remain in the Fiji Islands without a permit for so long, but only for so long, as is necessary for the purpose.

#### *Offences relating to prohibited immigrants*

14. (1) If a prohibited immigrant enters the Fiji Islands on a ship or aircraft, whether or not with the knowledge of the owner, the owners agent or the master or commander, as the case may be, the owner, the owners agent or the master or commander each commits an offence.

(2) Subsection (1) does not apply in any case where the prohibited immigrant is, at the time of entry, in possession of a valid permit issued under this Act or the regulations authorising him or

her to enter the Fiji Islands.

(3) If a person is convicted of an offence under subsection (1) in respect of a ship or aircraft, the ship or aircraft may, by order of the court, be detained until provision has been made by the owner, owners agent, master or commander, as the case may be, to the satisfaction of the Permanent Secretary, for the conveyance out of the Fiji Islands of the prohibited immigrant.

*Power to remove prohibited immigrants*

15. (1) The Permanent Secretary may make a written order directing a prohibited immigrant to leave the Fiji Islands and remain out of the Fiji Islands either indefinitely or for a period specified in the order.

(2) An order under subsection (1) takes effect either on the date of service or, if the person is serving a sentence of imprisonment, on the completion of the sentence of imprisonment, as the Permanent Secretary specifies in the order.

(3) An order made under this section must be carried into effect in such manner as the Permanent Secretary directs in writing, including removal of the person by use of reasonable force if necessary.

(4) A person against whom an order under this section is made may, before leaving the Fiji Islands and while being conveyed to the place of departure, be kept in prison, in police custody or in any other place of custody authorised by the Permanent Secretary, and while so kept is deemed to be in lawful custody.

(5) The Permanent Secretary may vary or revoke an order or directions given under this section.

(6) A person against whom a removal order has been made may be removed to the place from where the person came or to the country of which the person is a citizen, or to any other country or place to which the person consents to be removed, if the Government of the country or place agrees to receive the person.

(7) The master of a ship or commander of an aircraft which is proceeding to a country or place to which a person is directed to be removed to must, if so required by an immigration officer, receive the person on board the ship or aircraft and afford the person a passage to the country or place and proper accommodation and maintenance during the passage.

(8) If the master of a ship or commander of an aircraft fails to comply with subsection (6), the master, commander, the owner of the ship or aircraft and the owners agent each commits an offence.

(9) If a person in respect of whom a removal order is made under this section has been sentenced to a term of imprisonment by a court in the Fiji Islands, the person must serve the sentence before the order is carried into effect.

(10) A person in respect of whom a removal order has been made under section 15 who re-enters the Fiji Islands while the removal order is in force commits an offence.

*Expenses in respect of prohibited immigrants*

16. (1) Subject to subsection (2), the owner, the owners agent and the master or commander of a ship or aircraft from which a prohibited immigrant disembarks are jointly and severally liable for the cost of passage, accommodation, maintenance and medical treatment and any other reasonable cost incurred in connection with the removal of a prohibited immigrant from the Fiji Islands.

(2) The Minister may direct that all or part of the expenses mentioned in subsection (1) be paid by the State, and must so direct if at the time of entry the prohibited immigrant was in possession of a permit or visa issued under this Act purporting to authorise him to enter the Fiji Islands.

**Part 5 - TRAFFICKING AND SMUGGLING OF PERSONS**

*Interpretation*

17. (1) In this Part, unless the context otherwise requires-

"arms and ammunition" have the meanings given to them in the Arms and Ammunition Act;

"border of the Fiji Islands" means the outer limits of the exclusive economic zone prescribed under the Marine Spaces Act;

"child" means a person under the age of 18 years;

"commercial carrier" includes a company, or the owner, operator or master of any means of transport, that engages in the transport of goods or persons for commercial gain;

"company" means an entity that is not an individual, but that has a legal personality;

"enter", without prejudice to the definition of enter in section 2, includes a person who arrives into the Fiji Islands in a ship but is transferred to another ship within the territorial waters or exclusive economic zone before disembarking;

"exploitation" includes forced labour or services, slavery or practices similar to slavery, servitude, removal of organs, sexual servitude, exploitation of another persons prostitution or any other form of exploitation whether sexual or otherwise;

"fraudulent travel or identity document" means a travel or identity document that-

(a) has been made, or altered in any way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on

behalf of a country;

(b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(c) is being used by a person other than the lawful holder;

"illegal entry" means crossing the borders of the Fiji Islands or any other country without complying with the requirements for lawful entry of that country;

"material benefit" includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

"receiving country" means a country into which a trafficked person is brought as part of an act of trafficking in persons;

"smuggling of migrants" means the arranging or assisting of an unauthorised migrants illegal entry into any country;

"trafficked person" means a person who is subject to trafficking in persons;

"trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation;

"unauthorised migrant", for a country, means a person who is not a citizen of the country or is not in possession of all the documents required by the law of the country for that persons lawful entry;

"unlawful employee", for an employer, means a person whom the employer knows is not entitled under any written law to undertake employment in the employers service;

"unlawful means" means any of the following means-

(a) threat;

(b) use of force or other forms of coercion;

(c) abduction;

(d) fraud;

(e) deception;

(f) abuse of power or of a position of vulnerability;

(g) giving or receiving payments or benefits to achieve the consent of a person

having control over another person;

"terrorist act" means an act or omission in or outside the Fiji Islands that-

(a) constitutes an offence within the scope of a counter terrorism convention mentioned in Schedule 1; or

(b) is mentioned in subsection (2);

"terrorist group" means-

(a) an entity that has as one of its activities or purposes committing, or facilitating a terrorist act;

(b) a specified entity; or

(c) an organisation that is prescribed by regulation.

(2) For paragraph (b) of the definition of terrorist act, the act or omission-

(a) must-

(i) involve serious bodily injury to a person;

(ii) involve serious damage to property;

(iii) endanger a persons life;

(iv) create a serious risk to the health or safety of the public or a section of the public;

(v) involve the use of arms or ammunition; or

(vi) involve releasing into the environment or distributing or exposing the public to any-

(A) dangerous, hazardous, radioactive or harmful substance;

(B) toxic chemical; or

(C) microbial or other biological agent or toxin; or

(vii) be designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial institution, transportation or other essential infrastructure;

(viii) be designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or

(ix) involve prejudice to national security or public safety;

(b) must be intended, or by its nature and context, reasonably be regarded as being intended-

(i) to intimidate the public or a section of the public; or

(ii) to compel a government or an international organization to do, or refrain from doing, any act;

(c) must be made for the purpose of advancing a political, ideological, or religious cause.

(3) An act is not a terrorist act if-

(a) it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subparagraph (i), (ii), (iii) or (iv) of subsection (2); or

(b) it occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

#### *Application of this Part*

18. This Part applies to conduct constituting an offence under this Part that took place in or outside the Fiji Islands in the following circumstances-

(a) if the Fiji Islands is the receiving country or the exploitation occurs in the Fiji Islands; or

(b) if-

(i) the receiving country is another state, other than the Fiji Islands; and

(ii) the offence of trafficking in persons or smuggling of migrants originates in the Fiji Islands or transits the Fiji Islands; or

(c) if the person who engages in the offence of trafficking in persons or smuggling of migrants is a citizen or permanent resident of the Fiji Islands.

#### *Offence of trafficking in persons*

19. A person who engages in trafficking in a person knowing that the persons entry into the Fiji Islands or any other state was arranged by unlawful means commits an offence.

*Offence of trafficking in children*

20. A person who engages in trafficking in a person who is a child regardless of whether the child's entry into the Fiji Islands or any other state was arranged by unlawful means commits an offence.

*Exploitation of persons not legally entitled to work*

21. (1) An employer who, while allowing an unlawful employee to undertake employment in the employers service, takes an action with the intention of preventing or hindering the employee from-

- (a) leaving the Fiji Islands;
- (b) ascertaining or seeking that persons entitlement under the law of the Fiji Islands; or
- (c) disclosing to any person the circumstances of that persons employment by the employer,

commits an offence.

(2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection-

(a) taking or retaining possession or control of a persons passport, any other travel or identity document, or travel tickets;

(b) preventing or hindering a person from

- (i) having access to a telephone or any other means of telecommunication available;
- (ii) using a telephone or any other means of telecommunication available;
- (iii) using a telephone or any other means of telecommunication privately;
- (iv) leaving premises; or
- (v) leaving premises unaccompanied; or

(c) preventing or hindering a labour officer or inspector from entering or having access to any place or premises to which the person is entitled to have access under any written law.

(3) For this section, an employer must be treated as knowing that an employee is not entitled

under any written law to undertake any particular employment if, at any time within the preceding 12 months, the employer has been informed of that fact in writing by an immigration officer.

*Consent of trafficked persons*

22. For sections 19, 20 and 21, it is not a defence-

- (a) that the trafficked person or unlawful employee consented; or
- (b) that the person charged believed consent was given.

*Offence of smuggling of migrants*

23. A person who engages in the smuggling of an unauthorised migrant either knowing or being reckless as to the fact that the persons entry into the Fiji Islands is illegal, in order to obtain a material benefit commits an offence.

*Aggravated offence of smuggling of migrants*

24. (1) A person who knowingly engages in the smuggling of migrants in one or more of the following circumstances-

- (a) the unauthorised migrant is, or is intended to be, subject to exploitation;
- (b) the unauthorised migrant is subjected to torture or to any other cruel, inhuman or degrading treatment;
- (c) the life or safety of the unauthorised migrant is, or is likely to be, endangered,

commits an offence of aggravated smuggling of migrants.

(2) Subsection (1) applies whether or not the unauthorised migrant arrives in the receiving country.

*Offence to facilitate stay of unauthorised migrants*

25. (1) A person who knowingly facilitates the continued presence of an unauthorised migrant in a receiving country-

- (a) by any unlawful means; and
- (b) in order to obtain a material benefit,

commits an offence.

(2) For subsection (1), "unlawful means" means any of the following means-

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud, including producing, providing or procuring fraudulent travel or identity documents for the unauthorised migrant;
- (e) deception.

*Offence related to fraudulent travel or identity documents*

26. A person who makes, obtains, gives or sells or possesses a fraudulent travel or identity document for the purposes of facilitating-

- (a) trafficking in persons; or
- (b) smuggling of migrants,

commits an offence.

*Aiding, abetting, etc*

27. (1) A person who intentionally aids, abets, counsels or procures the commission of an offence under this Part by another person is taken to have committed the offence and is punishable as if the offence had been committed by that person.

(2) A person does not commit an offence of aiding, abetting, counselling or procuring the commission of an offence if, before the offence was committed, the person

- (a) terminated that persons involvement; and
- (b) took all reasonable steps to prevent the commission of the offence.

*Incitement to commit an offence*

28. (1) A person who intentionally urges or incites the commission of an offence under this Part commits an offence.

(2) A person commits an offence under subsection (1) even if committing the offence incited is impossible.

*Conspiring to commit an offence*

29.-(1) A person who conspires with another person to commit an offence under this Part commits the offence of conspiracy to commit that offence and is punishable as if the offence to which the conspiracy relates had been committed.

(2) A person does not commit the offence of conspiracy if, before the taking of action under the agreement, the person-

(a) withdrew from the agreement; and

(b) took all reasonable steps to prevent the commission of the offence.

(3) A person does not commit the offence of conspiracy if-

(a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or

(b) that person is a person for whose benefit or protection the offence exists.

*Attempting to commit an offence*

30. A person who attempts to commit an offence under this Part commits the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed, provided that the persons conduct is more than merely preparatory to the commission of the offence.

**Immunity from prosecution**

31. A trafficked person, unlawful employee or an unauthorised migrant, as the case may be, is not liable to criminal prosecution for-

(a) the offence of smuggling migrants, by reason only of the fact that the person is the victim of, or object of, an act of smuggling migrants;

(b) the act of trafficking in persons or being a party to an offence of trafficking in persons;

(c) the persons illegal entry into the Fiji Islands, if the Fiji Islands is the receiving country;

(d) the persons period of unlawful residence in the Fiji Islands, if the Fiji Islands is the receiving country; or

(e) the persons procurement or possession of any fraudulent travel or identity documents which that person obtained, or with which that person was supplied, for the purpose of entering the receiving country.

*Predicate offences for money laundering, etc*

32. The offences set out in this Part are-

- (a) predicate offences for the purposes of Proceeds of Crime Act;
- (b) extraditable offences for the purposes of Extradition Act;
- (c) offences in respect of which mutual assistance in criminal matters may be granted under Mutual Assistance in Criminal Matters Act.

*Obligation of commercial and private carriers*

33. (1) A commercial or private carrier that transports a person into a receiving country and, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country, commits an offence.

(2) Without prejudice to section 16, commercial or private carrier does not commit an offence under subsection (1) if-

- (a) the commercial or private carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country;
- (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
- (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial or private carrier.

(3) A commercial or private carrier convicted of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

*Boarding, search and detention of aircraft or ship*

34. (1) A immigration officer may stop and board an aircraft or ship within the Fiji Islands in any of the circumstances mentioned in subsection (2) if the immigration officer has reasonable grounds to suspect the aircraft or ship is being used to commit an offence against this Part.

(2) The circumstances are that the aircraft or ship-

- (a) is in the Fiji Islands;

(b) is in the exclusive economic of the Fiji Islands; or

(c) is registered in the Fiji Islands and is outside the territorial sea or airspace of another country.

(3) The immigration officer may, when necessary for the exercise of his functions, do one or more of the following-

(a) direct the aircraft or ship to be taken to a suitable place in the Fiji Islands for the purpose of search;

(b) search and detain the aircraft or ship, anyone on it and anything on it;

(c) question any person on board the aircraft or ship;

(d) require the production of any document relating to the aircraft or ship or any travel or identity document of a person on the aircraft or ship;

(e) take a copy of any document produced;

(f) seize and detain anything found on the aircraft or ship that appears to him to be evidence of an offence against this Act;

(g) remain on the aircraft or ship for as long as it is necessary for the purpose of boarding and searching the aircraft or ship.

(4) If an aircraft or ship fails to stop at the request of a immigration officer, the immigration officer may pursue it into international waters and take any action that is reasonably necessary to stop the aircraft or ship.

(5) The immigration officer may require the master, a member of the crew or any person on board to take any action as may be directed by that officer.

(6) The master or commander of the aircraft or ship must give any immigration officer who remains on board the aircraft or ship proper and sufficient food and suitable accommodation without charge.

(7) A master, commander or any person who contravenes this section commits an offence.

#### *Liability of companies*

35. (1) This Part applies to a company in the same way as it applies to an individual and a company may be found guilty of an offence under this Part, in addition to the liability of any person for the same offence.

(2) For the purposes of offences under this Part, the conduct or state of mind of an employee,

agent or officer of a company is taken to be attributed to the company if that person is acting-

- (a) within the scope of that persons employment; or
- (b) within the scope of that persons actual or apparent authority; or
- (c) with the consent or agreement (express or implied) of a director, employee or agent of the company, and giving that consent is within the actual or apparent authority of the director, employee or agent.

(3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the persons reasons for that intention, opinion, belief or purpose.

#### *Information relating to persons entering or leaving the Fiji Islands*

36. (1) The Permanent Secretary may, subject to regulations made under this Act, provide to the competent authority in a another country any information in his possession relating to persons entering or leaving the Fiji Islands and that is required by the laws of that country.

(2) Any information under subsection (1), subject to regulations made under this Act, is taken not to be a contravention of any provision of law prohibiting the disclosure of the information.

(3) No information provided to the Permanent Secretary under subsection (1) may be used or disclosed by or on behalf of the Permanent Secretary except for the purpose of protecting national security or public safety.

#### *Power to prevent entry and order the removal of persons*

37. (1) An immigration officer must not grant an endorsement or other authority permitting a person to enter the Fiji Islands if the immigration officer has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.

(2) If the Permanent Secretary has reasonable grounds to suspect that a person in the Fiji Islands has been, is or will be, involved in the commission of a terrorist act, Permanent Secretary must exercise the powers under section 15 to remove the person from the Fiji Islands.

### **Part 6 - DETERMINATION OF REFUGEES STATUS**

#### *Interpretation and application of Convention*

38. In this Part, unless the context otherwise requires-

"asylum seeker" means a person who has made a claim under section 39;

"claim" means a claim for asylum made under section 39, and claimant has a

corresponding meaning;

"country of nationality", in the case of a person who has more than one nationality, means each of the countries of his nationality of which he is a national, and such person is deemed not to be lacking the protection of the country of his nationality if, without any valid reason based on well founded fear, the person has not availed himself of the protection of one of the countries of which he is a national;

"refugee" means a person who-

(a) owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear is unwilling to avail himself of the protection of that country; or

(b) not having a nationality and being outside the country of his habitual residence is unable or owing to such fear, is unwilling to return to such country;

"Refugee Convention" means the United Nations Convention Relating to the Status of Refugees, done at Geneva on 28<sup>th</sup> day of July 1951; and includes the Protocol Relating to the Status of Refugees done at New York on the 31<sup>st</sup> day of January 1967 or any other protocol Relating to the Status of Refugees signed and ratified by the Fiji Islands;

"subsequent claim" means a claim received under section 40(2);

"terrorist" means a member of a terrorist group;

"terrorist group" has the meaning given to it in Part 5;

"writing" means in the English language and where applicable a translation into the language the asylum seeker understands.

### *Claim for asylum*

39. (1) A claim is made as soon as a person signifies his intention to seek to be protected or recognised as a refugee in the Fiji Islands to an immigration officer.

(2) Where a claim is made under subsection (1), the claimant must, in the approved form and accompanied by the prescribed fee, confirm the claim, which must include the following-

(a) the grounds for the claim; and

(b) a statement explaining whether any other member of the claimants family who is in the Fiji Islands and is also seeking to be recognised as refugees in the Fiji Islands;

(c) the grounds, if different, for the claim by the member of the family of the claimant;

and

(d) a current address in the Fiji Islands and any telephone number or other prescribed means of contact in the Fiji Islands, and must notify the Immigration Department of any change in the address, telephone number or other prescribed means of contact provided.

(3) The asylum seeker must-

(a) establish the claim; and

(b) ensure that all information, evidence, and submissions that the asylum seeker wishes to have considered in support of the claim are provided to the Immigration Department before the Permanent Secretary determines the claim.

(4) For the purpose of determining a claim, the Permanent Secretary may-

(a) seek information from any source, except that the officer is not obliged to seek any information, evidence or submissions apart from those provided by the claimant; and

(b) determine the claim on the basis of the information, evidence, and submissions provided by the claimant.

(5) The Permanent Secretary must not seek any information under subsection (4) on the applicant from the authorities of the country of origin.

(6) The Permanent Secretary may waive any fee required under this Part.

#### *Power to determine claims*

40. (1) The Permanent Secretary may determine a claim by an asylum seeker to be recognised as a refugee in the Fiji Islands.

(2) When a subsequent claim is received, the Permanent Secretary may-

(a) determine whether, since the most recent claim by the person, circumstances in the claimants home country have changed to such an extent that the subsequent claim is based on significantly different grounds to the previous claim; and

(b) only if the officer is satisfied that circumstances have changed, determine any matter specified in subsection (1).

(3) For a subsequent claim, the claimant is not entitled to challenge any finding of credibility or fact made in relation to a previous claim, and the Permanent Secretary may rely on any such findings.

#### *Principles of determining claims*

41. (1) The Permanent Secretary must, when determining a claim, be guided by the provisions of the Refugee Convention.

(2) The Permanent Secretary may refuse a claim if-

(a) the claimant is at present receiving from an agency or organ of the United Nations protection or assistance;

(b) the claimant has been recognised by the competent authorities of a country in which the claimant has taken residence or held residence as having the rights and obligations which are attached to possession of the nationality of that country;

(c) there are serious reasons for considering that-

(i) the claimant has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(ii) the claimant has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(iii) claimant has been guilty of acts contrary to the purposes and principles of the United Nations;

(iv) the claimants continued presence in the Fiji Islands is a threat to national security or public safety;

(v) the claimant is a member of or adheres to any organisation or group of persons that has engaged in, or has claimed responsibility for, an act of terrorism in the Fiji Islands or outside the Fiji Islands and that persons continued presence in the Fiji Islands constitutes a threat to national security or public safety; or

(d) having regard to the interests of national security and public safety, Permanent Secretary has reasonable grounds to suspect that the claimant has committed a terrorist act or is, or is likely to be, involved in the commission of a terrorist act;

(e) the claimant is at present receiving protection and assistance from a third country or international agency in the Fiji Islands.

(3) The Permanent Secretary must, when determining whether a person ceases to be recognised as a refugee in the Fiji Islands, be guided by the provisions of the Refugee Convention.

(4) The Permanent Secretary may cancel the refugee status of a person if-

(a) the recognition given to a refugee was procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or

(b) the refugee has been subsequently excluded from protection of the Convention and this Act, in any case, where the matter dealt with in Articles 1D, 1E, and 1F of the Convention or under subsection (2), may not have been properly considered by the refugee determination officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information;

*Other requirements*

42. (1) In carrying out the functions under this Part, the Permanent Secretary may-

(a) require the asylum seeker to supply such information, and within such times, as the officer reasonably requires;

(b) require the asylum seeker to produce such documents in the asylum seekers possession or within the asylum seekers ability to obtain as the officer requires;

(c) require the asylum seeker to consent to the release by any other person of any relevant documents or information relating to the asylum seeker;

(d) if the officer has good cause to suspect that a person other than the asylum seeker has possession or control any document of the asylum seeker (including any passport or travel document), request the person to produce any such document;

(e) require the asylum seeker to provide or allow the taking of fingerprints or photographs of the asylum seeker as are reasonably necessary for the purpose of ascertaining or confirming the claimants identity or nationality only where there are no other means available to identify the asylum seeker; or

(f) require the asylum seeker to attend an interview.

(2) A person who is requested to produce a document under subsection (1)(d) is not entitled to refuse to comply with the request by reason only that the person has a lien over the document.

(3) Where an asylum seeker who is required to attend an interview fails to attend at the appointed time and place, the Permanent Secretary may determine the claim without conducting an interview, unless the Permanent Secretary is of the opinion that there may be good reasons for not attending the interview, in which case the Permanent Secretary may defer the interview.

*Decision final*

43. (1) An officer must, in writing and as soon as possible, notify the applicant of-

(a) the decision on the claim and the reasons for the decision; or

(b) any decision to cease or cancel refugee recognition and the reasons for the decision; and

(c) the right of appeal.

(2) Subject to section 58, where a decision is made on a claim and notified to the claimant, the Permanent Secretary or any other person may not re-open the claim for further consideration.

#### *Principles on appeals*

44. (1) Without prejudice to Part 8, the Minister must be guided by the matters set out in section 41 for the purpose of determining any appeal arising out of a decision under this Part.

(2) Section 42 applies to an appeal arising out a decision under this Part.

#### *Confidentiality*

45. (1) Subject to subsection (2) or (3), confidentiality as to the identity of the asylum seeker who is being considered under this Part, and as to the particulars of his case, must at all times, both during and subsequent to the determination of their claim or other matter, be maintained by Permanent Secretary or the Minister in the case of an appeal.

(2) Subsection (1) does not prevent disclosure of particulars-

(a) to a person necessarily involved in determining the relevant claim or matters; or

(b) to a public officer or other Government agency whose functions in relation to the asylum seeker require knowledge of those particulars; or

(c) to the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or

(d) in dealing with government officials of other countries, not being the country of feared persecution.

(3) Subsection (1) does not apply where an asylum seeker has waived the right of confidentiality given under that subsection.

#### *Claimants leaving the Fiji Islands*

46. If a claimant leaves the Fiji Islands, any pending claim of the claimant is to be treated as withdrawn.

#### *Prohibition of expulsion or return*

47. (1) A person determined as a refugee in the Fiji Islands under this Part, must not be expelled or returned in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) Subsection (1) does not apply where there are reasonable grounds for regarding the person is a danger to the security of the Fiji Islands and the person is, or who, having been convicted of a serious offence, constitutes a danger to the community of the Fiji Islands

### *Offences*

48. (1) A person who-

(a) makes a statement, or provides any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of a claim for refugee status in the Fiji Islands or any other state, where that claim is made in the territory of the Fiji Islands;

(b) without reasonable excuse, refuses or fails to produce or surrender any document or to supply any information when required to do so by Permanent Secretary under this Part; or

(c) without reasonable excuse, produces or surrenders any document or supplies any information to Permanent Secretary knowing that it is false or misleading in any material aspect,

commits an offence.

## **Part 7 - DEPORTATION**

### *Interpretation*

49. In this Part '*person charged*' means a person in respect of whom it is alleged that there are grounds for making a deportation order.

### *Deportation of certain persons*

50. Subject to this Part, the Minister may order the deportation of a person who is not a citizen, being-

(a) subject to paragraph (b), a person who-

(i) has, before or after the commencement of this Act, been convicted of an offence, in the Fiji Islands or another country, which carries a fine of not less than \$5,000 or imprisonment of not less than 2 years; and

(ii) had, when the offence was committed, been in the Fiji Islands for

- (A) period of less than 10 years; or
- (B) periods that, when added together, total less than 10 years; or

(b) a person who has, before or after the commencement of this Act, been convicted, in the Fiji Islands or another country, of an offence which carries a fine of not less than \$20,000 or imprisonment of 10 years or more (including life imprisonment or death sentence); or

(c) a person whose conduct, in the opinion of the Minister, after consulting the Government body responsible for national security, constitutes a threat to the security of the Fiji Islands.

### *Procedures*

51. (1) If the Minister proposes to order the deportation of a person, the Minister must cause to be served on the person a notice signed by or under the authority of the Minister-

(a) specifying the facts alleged against the person with sufficient particularity to give reasonable information as to the grounds upon which it is alleged the order can be made; and

(b) requiring the person to show cause before a magistrate, at a time specified in the notice, why the order should not be made.

(2) On application supported by information on oath or affirmation, the magistrate may issue a warrant for the arrest of the person charged and, if the notice mentioned in subsection (1) has not already been served upon the person, it must be so served not later than 24 hours after the person's arrest.

(3) A person whose evidence is required to be given before a magistrate in proceedings under this section may be issued with a summons at the request of a police officer or the person charged, and a person who fails to appear in answer to a summons may be dealt with in the way provided for in the Criminal Procedure Code.

(4) The magistrate hearing proceedings under this section may upon application regarding the desirability of proceedings being held *in camera*, direct that the public be excluded from any room, building or place in which the proceedings are being heard.

(5) A legal representative may appear with the person charged.

(6) The magistrate, after considering the evidence and making such investigations as he considers desirable, must make a report to the Minister setting out the findings of fact and the magistrate's conclusions on any question of law involved.

(7) On receipt of the report, the Minister may, having regard to the findings of fact and law set out in the report, make or refuse to make a deportation order within 28 days after receiving the report.

#### *Detention in custody pending decision*

52. (1) Pending the decision of the Minister in relation to a report under section 51(6), a magistrate may order that the person charged be detained, in the way the magistrate directs, for a period of not more than 28 days.

(2) The person charged is taken to be in lawful custody while detained under subsection (1).

#### *Execution of orders*

53. (1) A copy of a deportation order must be served on the deportee as soon as practicable after it is made.

(2) A deportee may be detained in the way the Minister directs and may be placed on a ship or aircraft that is scheduled to leave the Fiji Islands.

(3) The deportee is taken to be in lawful custody while so detained and until the ship or aircraft leaves the Fiji Islands.

(4) When a deportee has been placed on any ship or aircraft, the master of the ship or the commander of the aircraft must, if so required by the Minister or by any person authorised by the Minister, take any step necessary for preventing the deportee from leaving the ship or aircraft before it leaves the Fiji Islands and may, for that purpose, detain the deportee in custody on board the ship or aircraft.

(5) The validity of a deportation order is not affected by any delay in the execution of the order.

#### *Persons serving sentence*

54. If a deportee has been sentenced to a term of imprisonment, the sentence is to be served before the deportation order is carried into effect, unless the Minister otherwise directs.

#### *Expenses*

55. (1) When a deportation order is made, the Minister may use any money or property of the deportee found on the deportee in payment of the whole or any part of the expenses of or incidental to his deportation.

(2) The Minister may direct that any expenses incurred under subsection (1) be paid by the State.

#### *Offences*

56. (1) A deportee who is at any time found within the Fiji Islands or who returns or attempts to return to the Fiji Islands in contravention of a deportation order commits an offence.

(2) A conviction under subsection (1) does not affect the validity of the original deportation order and the deportee may be deported under that order without the need for another deportation order.

(3) A person who, without lawful excuse, assists, harbours or conceals a deportee in contravention of a deportation order commits an offence.

### *Evidence*

57. In proceedings under this Part-

(a) the burden of proof that the person charged is a citizen rests upon the person;

(b) a document purporting to be a deportation order is, until the contrary is proved, presumed to be such an order;

(c) a deportation order is, until the contrary is proved, presumed to have been made on the date which it purports to have been made; and

(d) a notice signed by or under the authority of the Minister is, unless the contrary is proved, presumed to have been validly made.

## **Part 8 - APPEALS**

### *Appeal to Minister*

58. (1) In this section '*reviewable decision*' means a decision of the Permanent Secretary-

(a) refusing to issue, extend, or vary a permit under section 9;

(b) attaching conditions to a permit under section 9(2);

(c) cancelling a permit under section 11; or

(d) refusing a claim or cancelling a refugee status under Part 6.

(2) When a reviewable decision is made, a person affected by the decision who is dissatisfied with it may, within 21 days after the day on which it was made, or within any further period the Minister (either before or after the expiration of the 21 days) allows, appeal to the Minister for a review by the Minister of the decision.

(3) An appeal under subsection (2) must-

- (a) be in writing;
  - (b) set out the grounds of the appeal;
  - (c) be accompanied by the prescribed fee; and
  - (d) be lodged with the Director of Immigration.
- (4) Upon receipt of an appeal, the Minister must review the reviewable decision and must within 21 days make a decision-
- (a) affirming it;
  - (b) varying it; or
  - (c) setting it aside and making a new decision in substitution for it.
- (5) An appeal to the Minister must be accompanied by the prescribed fee unless the fee is waived under the regulations.
- (6) The Permanent Secretary must notify the appellant of the Ministers decision as soon as practicable after it is made.
- (7) Section 31 of the Interpretation Act may apply to an appeal under this section.

#### *Notice of decisions*

59. (1) When a reviewable decision within the meaning of section 58 has been made and notice of the making of the decision is given to the person or persons whose interests are affected by the decision, the notice must include a statement to the effect that a person affected by the decision may, if he is dissatisfied with it, appeal to the Minister for a review of the decision in accordance with section 58.

(2) A failure to comply with the requirements of subsection (1) when notifying a person of a decision does not affect the validity of the decision.

### **Part 9 - MISCELLANEOUS**

#### *Exemption of liability*

60. (1) No proceedings for damages may be instituted in any court of law against the Government or any other person for or on account of or in respect of any act, matter or thing done or omitted to be done in good faith, in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act or the regulations.

(2) This section applies to any person to whom any duty or power is delegated.

*Public interest privilege*

61. The Minister may, on the advice of the Attorney General, certify in writing that the disclosure of information about a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest.

*Recovery of certain costs*

62. (1) Regulations made under section 68 may prescribe charges for providing immigration clearance services at a port or an airport outside of normal office hours.

(2) The owner and the owners agent and the master or commander of a ship or aircraft in respect of which the services mentioned in subsection (1) are provided are jointly and severally liable to pay to the Permanent Secretary the prescribed charges and the Permanent Secretary may recover the amount as a debt in a court of competent jurisdiction.

(3) In this section normal office hours means-

(a) 8.00a.m. to 4.30 p.m. every Monday to Thursday and 8.00 a.m. to 4.00 p.m. every Friday (except for public holidays); or

(b) any other hours the Minister may, by order in the *Gazette*, specify.

*Authorised airports*

63. (1) The Nadi International Airport and the Nausori Airport are declared to be authorised airports for the purpose of this Act.

(2) The Minister may, by order in the *Gazette*, declare any other airport to be an authorised airport for the purpose of this Act.

*Other offences*

64. (1) A person who-

(a) for the purpose of obtaining for himself or for any other person, or of assisting any other person to obtain any visa, permit or other document, exemption or other advantage under this Act, with intent to deceive any immigration officer, makes any document, return, statement, application or other writing which the person knows or ought to know is false or misleading;

(b) except with the authority of the Permanent Secretary (the burden of proof lying on the accused person) alters, or wilfully defaces a visa, permit or other document issued under this Act, or any official or certified copy of a visa or permit;

(c) knowingly uses or has in his possession any unlawfully issued or otherwise irregular visa, permit or other document issued or purporting to have been issued under this Act;

(d) uses any visa, permit or other document issued to or in respect of any other person as if it had been issued to or in respect of himself;

(e) gives, sells, lends or parts with possession of any visa, permit or other document in order that, or intending or knowing or having reasonable cause to believe that, it may be used in committing an offence under paragraph (d);

(f) unlawfully uses or without lawful authority (the burden of proof lying on the accused person) has in his possession any forged or unlawfully altered visa, permit or other document issued or purporting to have been issued under this Act, or any forged or unlawfully altered birth certificate, marriage certificate or other document purporting to establish age, status or identity;

(g) resists, hinders or obstructs any immigration officer or other officer or person in the lawful execution of his duty, or in the lawful exercise of his powers, under this Act;

(h) knowingly misleads or attempts to mislead any immigration officer in relation to any matter material to the performance or exercise by any immigration officer of any duty, function, power or discretion under this Act;

(i) unlawfully enters or is present within the Fiji Islands in contravention of this Act;

(j) refuses or fails to comply with any notice issued to the person under this Act or the regulations, with which the person is required by this Act or the regulations to comply;

(k) refuses or fails to comply with any lawful term or condition subject to which any permit is or has been issued to the person under this Act or the regulations and with which the person is required by this Act or the regulations to comply;

(l) not being a person exempt under section 8(1) and not holding a permit to do so, engages in any business, profession or employment, whether for reward or not, or engages in any religious vocation, without the approval of the Permanent Secretary;

(m) employs or continues to employ any other person who is neither exempted under section 8(1) nor the holder of a permit to work;

(n) harbours or assists any other person whom he knows or has reasonable cause to believe to be a person whose presence in Fiji is unlawful,

commits an offence.

(2) For the purposes of any proceedings for an offence under subsection (1)(a), any declaration, return, statement, application or other writing to which subsection (1)(a) relates is deemed to

have been made, or the causing of it is deemed to have been done, at the time and place at which it was received by the officer or person to whom it was addressed.

(3) If a person is convicted of an offence under subsection (1)(a), the court may, in addition to any penalty imposed for the offence, by order cancel any visa, permit or other document issued in consequence of the false declaration, return, statement, mentioned in the subsection.

(4) If a person is convicted of an offence under subsection (1) (b) or (c), the Minister may, in addition to the penalty imposed by a court for the offence, direct the Permanent Secretary to cancel any visa, permit or other document issued to the person under this Act.

(5) In proceedings for an offence under this section, a person is deemed to know the contents of any declaration, return, statement, application or other writing which the person has signed or marked, whether or not the person has read the declaration, return, statement, application or other writing.

#### *Penalties*

65. (1) A person who commits an offence under this Act is liable on conviction to the fine or imprisonment or both specified for respective sections in the third column of Schedule 2.

(2) If a fine is imposed under this Act on the owner, master or commander of a ship or aircraft or on the owner's agent, the court may order-

(a) that the ship or aircraft be detained until-

- (i) the fine has been paid; or
- (ii) a guarantee for payment of fine has been provided, to the satisfaction of the Permanent Secretary; or

(b) that a writ of execution be issued against the ship or aircraft in satisfaction of the fine.

(2) A person who commits an offence for which no penalty is prescribed in the Schedule 2 is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for 2 years.

#### *Infringement notices*

66. (1) A person who contravenes any of the sections stated in the first column of Schedule 3 may, as an alternative to prosecution, be served by the Permanent Secretary with an infringement notice requiring the person to pay a fixed penalty shown in the third column of Schedule 3 in relation to that section.

(2) A person who makes full payment, in the manner and within the time specified in the infringement notice, of the penalty specified in the notice in respect of a contravention is indemnified from being prosecuted for that contravention.

(3) The Minister may, by regulations, amend Schedule 3 to prescribe other offences for the purpose of this section.

*Publication of information about prohibited immigrants*

67. If the Permanent Secretary is satisfied that a prohibited immigrant is in the Fiji Islands, the Permanent Secretary may approve the publication of information (including name, address and photograph of the person) relating to a prohibited immigrant.

*Regulations*

68. (1) The Minister may make regulations to give effect to the provisions of this Act and in particular to provide for-

- (a) the procedures for applying for visas or permits and the particulars or documents to be supplied;
- (b) the amount of the security which the Permanent Secretary may require to be provided in respect of persons entering the Fiji Islands;
- (c) the classes of visas and permits;
- (d) terms and conditions upon which visas and permits may be issued;
- (e) formalities to be complied with and documentation to be completed by persons seeking to enter or depart from the Fiji Islands;
- (f) the fees and charges payable for the purposes of this Act or the regulations;
- (g) exempting a class of persons from the payment of fees;
- (h) the form of a deportation order for the purpose of Part 7;
- (i) the form of an infringement notice issued under section 66 and the requirements for compliance with such a notice;
- (j) other procedures and requirements regulating the control of refugees entering and remaining in the Fiji Islands in accordance the Refugee Convention;
- (k) the procedures for an appeals under Part 8;
- (l) the types or classes of information that may be provided and the foreign states to which the information may be provided under section 36;
- (m) the regulation and control of immigration agents;

- (n) any other matter required to be prescribed for purposes of this Act.
- (2) The Minister may by notice in the Gazette issue written guidelines in relation to the exercise of powers and the performance of duties under this Act and the regulations.
- (3) The Minister may, in writing, approve any other forms to be used for the purposes of this Act.
- (4) Any regulation made under this Act may prescribe penalties not exceeding a fine of \$2000 and imprisonment for 2 years for breach of a provision of such regulation.

*Repeals and savings*

69. (1) The following Acts are repealed-

- (a) Immigration Act (Cap. 88);
- (b) Deportation Act (Cap. 90);
- (c) Aliens Act (Cap. 91).

(2) Regulations, orders and directions made or issued under any of the repealed Acts continue in force until repealed or replaced under this Act.

(3) At the commencement of this Act-

- (a) any appeal pending under the repealed Immigration Act is to be determined as if the Act has not been repealed;
- (b) any valid visa or permit issued under the repealed Immigration Act continues in force as if issued under this Act until it expires or until it is cancelled under this Act;
- (c) any pending application for a permit or visa is to be determined under this Act except any new issuing fees prescribed;
- (d) a removal order in respect of a prohibited immigrant remains in force as if made under Part 4 of this Act;
- (e) a deportation order made under the repealed Deportation Act remains in force as if made under Part 7 of this Act;
- (f) a prosecution for an offence under any of the repealed Acts continues as if the relevant Act had not been repealed;
- (g) any exemption conferred under any of the repealed Acts continues unless and until

removed or amended under this Act.

**SCHEDULE 1**  
*(Section 17)*

**COUNTER TERRORISM CONVENTIONS**

1. Convention on Offences and certain Other Acts committed on Board Aircraft signed at Tokyo on 14 September 1963
2. Convention for the Suppression of Unlawful Seizure of Aircraft done at the Hague on 16 December 1970
3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973
5. International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979
6. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980
7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at the Rome on 10 March 1988
9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988
10. Convention on the Marketing of Plastic Explosives for the Purposes of Detection, signed at Montreal on 1 March 1991
11. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
12. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999

**SCHEDULE 2**  
(Section 65)

**MAXIMUM PENALTIES**

Section	Offence	Penalty
5(4)(a)	Refusing to answer questions	\$2,000 or 2 years imprisonment
5(4)(b)	Giving false or misleading answers	\$100,000 or 7 years imprisonment
5(4)(c)	Refusing or failing to produce documents	\$20,000 or 5 years imprisonment
6(1)	Entry or departure without lawful authority or without reasonable excuse	\$20,000 or 5 years imprisonment
6(3)	Master of a ship or commander of an aircraft- (a) failing to deliver a complete list of all persons on the ship or aircraft; (b) failing to inform the immigration officer about a prohibited immigrant; (c) failing to use all reasonable means to prevent any person unlawfully entering or departing the Fiji Islands; (d) failing to prevent the re-entry of a person who has been handed over to custody or is subject to a removal order.	\$20,000 or 5 years imprisonment
6(4)(b)	Master of a ship or commander of an aircraft providing a list which the master or commander knows or ought to know is false or misleading	\$20,000 or 5 years imprisonment
6(5)	Master of a ship (a) failing to provide suitable facilities and assistance for an immigration officer; (b) failing to provide bond or tickets for onward travel	\$20,000 or 5 years imprisonment \$20,000 or 5 years imprisonment
6(9)	Failing to give 24 or 48 hours notice in writing to an immigration officer	(a) in the case of a master - \$20,000 or 5 years imprisonment (b) in the case of an owner or owners agent - \$40,000
6(10)	Master or commander causing a ship or aircraft to depart without a certificate of clearance	\$20,000 or 5 years imprisonment
6(11)	Master or commander departing from the Fiji Islands- (a) causing the ship or aircraft to call at any other port or place after clearance; (b) permitting a person to board the ship or	\$20,000 or 5 years imprisonment \$20,000 or 5 years imprisonment

	aircraft after clearance	
7(6)	(a) Failing to appear before an immigration officer (b) Failing to provide information to an immigration officer	\$20,000 or 5 years imprisonment \$20,000 or 5 years imprisonment
14(1)	Prohibited immigrant on board the ship or an aircraft	(a) in the case of a master or commander-\$20,000 or 5 years imprisonment (b) in the case of a owner or owners agent -\$40,000
15(8)	Failing to comply with subsection (7)	(a) in the case of a master or commander-\$20,000 or 5 years imprisonment. (b) In the case of a owner or owners agent - \$40,000
14(10)	Re-enters contrary to removal order	\$20,000 or 5 years imprisonment
19	Trafficking in persons	\$750,000 or 20 years imprisonment
20	Trafficking in children	\$750,000 or 20 years imprisonment
21	Exploitation of persons not legally entitled to work	\$750,000 or 20 years imprisonment
23	Smuggling of migrants	\$750,000 or 20 years imprisonment
24	Aggravated offence on smuggling of migrants	\$100,000 or life imprisonment
25	Facilitating stay of an unauthorised migrant	\$5,000 or 2 years imprisonment
26	Making, etc of fraudulent travel identity documents for the purposes of facilitating trafficking in persons or smuggling of migrants	\$5,000 or 2 years imprisonment
27	Aiding and abetting	\$5,000 or 2 years imprisonment
28	Incitement to commit an offence	\$5,000 or 2 years imprisonment
33	Transporting by commercial or private carriers of persons without travel documents for lawful entry	\$100,000
34	Contravention of a provision of section 34	\$5,000 or 2 years imprisonment
48(1)(a)	Making, a statement etc that is false or misleading	\$5,000 or 2 years imprisonment
48(1)(b)	Refusing to produce, etc documents	\$5,000 or 2 years

48(1)(c)	Producing, etc documents to Permanent Secretary that is false or misleading	imprisonment \$5,000 or 2 years
56(1)	Deportee returning or attempting to return to the Fiji Islands	imprisonment \$20,000 or 5 years
56(3)	Assisting, harbouring or concealing a deportee	imprisonment \$100,000 or 7 years

**SCHEDULE 3**  
*(Section 66)*

**FIXED PENALTIES**

<b>Section</b>	<b>Offender</b>	<b>Fixed Penalty</b>
5(4)(a), (b) or (c)	Any person	\$200
6(1)	Any person	\$200
6(2)	Master or commander	\$1,000
6(8)	Master or commander Owner or owners agent	\$1,000 \$2,000
6(10)(a) or (b)	Master or commander	\$1,000
7(6)(a) or (b)	Any person	\$200
15(8) 30(2)	Master or commander Master or commander Owner or owners agent	\$1,000 \$1,000 \$2,000

Passed by the House of Representatives this 16<sup>th</sup> day of October 2003.  
Passed by the Senate this 30<sup>th</sup> day of October 2003.

-----