



Constitutional Matters

Monthly Legal News Bulletin

5 November 2010

Introduction

The purpose of this periodical newsletter is to improve access to justice and enhance the rule of law by keeping people informed of changes under new Decrees, judicial news and other significant legal developments in Fiji.

For further information on any of the issues covered in this newsletter, please contact CCF at ccf@kidanet.net.fj.

Public Emergency Regulations

Pursuant to the Public Safety Act, on Friday 18 October 2010, the *Extension of the Public Emergency Regulations 2009* was gazetted.

The *Public Emergency Regulations 2009* has been extended for a further period of 30 days with effect from 1200 hours on 21 October 2010.

New Decrees

The following Decrees have been promulgated or published since our last issue:-

- *Income Tax (Amendment) Decree 2010 (Decree No. 50 of 2010)*
- *Companies (Amendment) Decree 2010 (Decree No. 51 of 2010)*
- *Criminal Procedure (Amendment) (No. 2) Decree 2010 (Decree No. 52 of 2010)*
- *Microfinance Institutions (Examination and Assessment) Decree 2010 (Decree No. 53 of 2010)*
- *Mental Health Decree 2010 (Decree No. 54 of 2010)*
- *Tax Administration (Amendment) Decree 2010 (Decree No. 55 of 2010)*

The *Income Tax (Amendment) Decree 2010 (Decree No. 50 of 2010)* amends the *Income Tax Decree* by inserting a new subsection, which amends the Income Tax paid out per any allowances paid in accordance to the Criminal Procedure (Allowances to Witness and Assessors) Rule 2010, to the witnesses attending or inquiries before a Magistrate Court or High Court or on summons by any court exercising appellate jurisdiction and assessors attending trials at the High Court.

The *Companies (Amendment) Decree 2010 (Decree No. 51 of 2010)* amends the Companies Act of Fiji (Cap 247). The amendments are minor, where reference to "21" in sections 181(3), 187(1) and 188(1) are substituted with "18". This is in reference to the age limit, where now a company secretary and or Director can be anyone from 18 years and above rather than 21.

The *Criminal Procedure (Amendment) (No. 2) Decree 2010 (Decree No. 52 of 2010)* amends the Criminal Procedure Decree 2009 by inserting a new subsection after subsection (7) under section 204. The amendments state that the name and identifying details of any assessor shall not be published or broadcast in any manner or form, including on the internet on in any other place before, during or after trial without leave of a judge of the High Court. This requirement is also extended to the personal protection and security of any assessor, his or her spouse, children or family.

The *Microfinance Institutions (Examination and Assessment) Decree 2010 (Decree No. 53 of 2010)* provides that notwithstanding the powers contained in the Reserve bank of Fiji Act (Cap 210) and the Banking Act 1995, the Reserve Bank may conduct examinations, onsite or otherwise, on any microfinance institution. The Decree states that when carrying out such examinations the Reserve



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bank must assess specific matters, which includes, but not limited to, government structure, credit policy and accounting process, loan portfolio management and client files. Upon completion of such examination the Decree requires the Reserve bank to present a report of its findings to Cabinet.

The Decree concludes with a provisions that states that no court, tribunal, commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any way entertain any proceeding, claim, challenge or dispute by any person or body which seeks or purports to challenge or question the validity, legality or propriety of the Decree and any decision of the Minister or the Reserve Bank, made under the Decree.

The *Mental Health Decree 2010 (Decree No. 54 of 2010)* aims to promote and treat mental health and prevent mental disorders in Fiji, provide access to basic mental health care for all who need it, provide for the making of mental health assessments and diagnoses in accordance with internationally accepted principles, to name a few aims. The Decree gives regard to the principles approved by the World Health Organization (WHO) in relation to mental health.

Some of the objectives of the Decree are to provide for the care, treatment, management, rehabilitation, and protection of people with mental illness and other mental disorders, to regulate mental health care, to co-ordinate access to mental health care, and to facilitate the development of community health services.

The Decree also sets out the responsibilities in dealing with mental health issues, and also has a provision, which discusses anti-discrimination, wherein it states that the prohibited grounds for discrimination are the

grounds that a person has or has had a mental disorder or mental illness or has been an inpatient at a mental health facility.

The Decree also gives powers to the Minister of Health to licence private premises as private mental health facilities upon the advice of the Advisory Council. The Advisory Council must be appointed by the Minister pursuant to the Decree. The Council has the function of advising the Minister on the administration and operation of the Decree, developing a national policy on mental health, implementing and reviewing the national mental health suicide prevention policy, raising awareness, issuing guidelines, encouraging informed public opinion, destigmatize mental illness, promote high standard of facilities and promoting research into the problems of mental disorder, to name a few functions.

Other administrative and assessment matters are provided for in the Decree in respect of mental health patients, facilities and promotion against the stigma.

The Decree also established a Mental Health Review Board, which includes a President that shall be qualified to be a judge of the High Court, one member which must be a medical practitioner, 2 members which must have relevant experience and qualifications in psychiatric practice or nursing and 1 member that must be a person who can represent the interests of mental health service users and their families.

The *Tax Administration (Amendment) Decree 2010 (Decree No. 55 of 2010)* amends section 2 of the Tax Administration Decree 2009 by inserting the definition of Tax Identification Number after the definition of tax decision. This definition means a unique computer-generated number issued to a person by the Fiji Island Revenue and Customs Authority.



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Other definitions are also inserted including "financial institutions". There are other minor amendments where previously the Decree contained typo errors and missed words, which are now being corrected by this Decree.

The Decree also provides a list of financial institutions, which includes all the banks in Fiji, the Housing Authority, Home Finance Company Limited, Dominion Finance Limited, Merchant Finance and Credit Corporation Fiji.