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(DECREE NO. 51 OF 2009)

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NATIONAL FIRE SERVICE (AMENDMENT) DECREE 2009
(DECREE NO. 51 OF 2009)

GOVERNMENT OF FIJI

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

Amend the National Fire Service Act, 1994 providing for enlargement of powers and functions of National Fire Authority; the Establishment of National and Divisional Coordination Committees and Structural Fire Safety Department and strengthening and clarifying the duties and function of it's officers, enhancing the authority's revenue raising powers and related matters.

PART I—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the National Fire Service (Amendment) Decree 2009.
- (2) This Decree may come into force on the day appointed by the Minister and published in the Fiji Republic Gazette.

Interpretation

- 2.—(1) Section (2) of the National Fire Authority Act of 1994 (“the Act”) is amended—
 - (i) by inserting before the definition of “Authority”—

“ “alarm” refers to an automatic fire detection and alerting system installed in properties and connected through a wire or wireless system to the nearest fire station;”

“auxiliary firefighter” means an officer who is partly remunerated for his or her services in relation to the brigade but whose sole or principal calling or means of livelihood does not consist of these services;”
 - (ii) by inserting immediately after the definition of “Chief Fire Officer”—
 - (a) ““emergency services” includes industrial and road accidents and land oil spills”.
 - (b) “ “fire” includes—
 - (i) a hazardous materials incident not involving fire where the main threat or danger is from the effects of fumes, contacts with liquids or solids that could be hazardous to persons or the environment; and
 - (ii) a hazardous materials incident up to the stage where the fire has been effectively extinguished;”
 - (iii) by inserting after the definition of “policy of insurance”—

“ “property” means any real or personal property including motor vehicles situated in Fiji, with the exceptions of the following—

 - (a) Property the subject of cover under a contract of marine insurance;
 - (b) Any ship or anything in a ship, except while the ship is berthed at a wharf or is on land;

- (c) Any standing bush or forest;
- (d) Any road, street, or path;
- (e) Any railway tract or pole;
- (f) Any bridge or viaduct whether completed or in course of construction, or any items used in construction of any bridge or viaduct;
- (g) Any tunnel or cutting;
- (h) Any retaining wall, dam, breakwater, mole, fence or wall;
- (i) Any drain or channel;
- (j) Any reservoir, swimming bath, water tank (other than a water tank installed as part of the water supply system of any dwelling or farm building), water tower or septic tank;
- (k) Any water reticulation pipe other than such a pipe as constitutes a structural part of any building;
- (l) Any electric supply, telegraph, or telephone pole, line or cable;
- (m) Any mine or quarry;
- (n) Any aircraft or anything in an aircraft except while insured under a contract which is substantially a contract of fire insurance;
- (o) Any goods in transit, except while insured under a contract which is substantially a contract of fire insurance;
- (p) Any livestock;
- (q) Any growing crops;
- (r) Any cut crops insured in the open field;
- (s) Any offshore installation for petroleum mining operations;
- (t) Any pipeline, electricity cable or telecommunications cable located on the sea floor."

(v) by inserting after the definition of "vessel"—

" "volunteer firefighter" means a firefighter who is a member of a brigade—who does not receive any form of remuneration for his services in relation to the brigade".

Application

3.—(1) Section 3 of the Act is amended by deleting subsection (1) and (2), and substituting—

"3—(1) This Decree shall apply to all municipal council, fire districts and all other areas throughout Fiji as the Minister may from time to time vary or extend under subsection (2).

(2) The Minister may by notice in the Fiji Republic Gazette vary and extend areas to which the Decree applies, if the Minister is satisfied that—

- (i) expansions outside the Municipal Councils require the service provided by the Authority;
- (ii) the Authority has the required capacity to meet those needs if fire services are required;
- (iii) that the community is willing and able to assist the Authority establish and coordinate good fire service and emergency service relations."

New Section 3A Inserted – National and Divisional Coordination Committees

4.—(1) The Act is amended by inserting a New Section 3A—

"National and Divisional Coordination Committees

3A(1) This Section establishes a National Coordination Committee to be—

- (a) chaired by the Permanent Secretary of the Ministry responsible for the Authority with the functions of assisting and coordinating water supply, fire safety and mitigation and emergency services for disaster management; to also provide for planning and managing of fire safety and investigation as well as emergency services for disaster management and prevention;

(b) the National Fire Authority will be the Secretariat of these committees.

(2)(a) The National Coordination Committee shall comprise of 10 members who are appointed by the Minister whose numbers shall include the—

- (i) Permanent Secretary for Local Government;
- (ii) The Director of Fiji Water Authority;
- (iii) Director of Department of Town and Country Planning;
- (iv) Commissioner of Police or a representative;
- (v) Director of National Disaster Management Department;
- (vi) a Representative of Town Councils;
- (vii) a representative of Ministry of Labour;
- (viii) Chief Executive of Consumer Council of Fiji;
- (ix) a representative of the Insurance Council of Fiji;
- (x) a representative of the Chief Executive of the National Fire Authority.

(b) Members of the Committee may be represented by a representative appointed by them in writing; however, such persons must be of sufficient seniority to be able to contribute positively at Committee meetings.

(3)(a) There shall be Divisional Coordination Committees—

- (i) Central and Eastern Division;
- (ii) Western Division;
- (iii) Northern Division;

(b) The Divisional Coordination Committees shall have functions similar to the National Coordination Committee but at the Divisional level.

(c) Divisional Committees shall be chaired by the Divisional Commissioner and members of the Committees shall be drawn from agencies and entities who are members of the National Coordination Committee.

(4) The Minister shall prescribe by Regulation the procedure for the Committee Meetings.

(5) The Minister may terminate a member's appointment if that member—

- (i) is declared a bankrupt;
- (ii) vacates his or her existing office;
- (iii) is convicted of a serious offence;
- (iv) is absent from 3 consecutive meetings without reasonable excuse.

(6) A member of the Committee referred to in subsection (2) and (3) (c) may vacate membership if he or she resigns as a committee member."

Section 6 amended

5. Section 6(1) of the Act is amended by deleting "month" and substituting "quarter".

Section 11 amended

6. Section 11 of the Act is amended—

- (i) by deleting paragraph (a) and substituting—

"(a) to establish fire districts in accordance with Section 3 and to ensure that the provision of fire services is efficient having regard to life and property which the Authority is under an obligation to protect;"

- (ii) by deleting paragraph (i) and substituting—
 - “(i) to coordinate, establish and to take all practical steps to provide emergency services and rescues for road and industrial accidents, hazardous material incidents, floods and natural disasters;”
- (iii) by deleting paragraph (k) and substituting—
 - “(k) to inspect and certify in relation to the safety and the implementation of fire safety requirements—
 - (a) for residential, commercial as well as industrial properties;
 - (b) for liquor licenses and business license for municipal councils;
 - (c) for building approvals;
 - (d) any requirement under any written law or Act.”
- (iv) by deleting paragraph (p) and substituting—
 - “(p) perform duties that the Minister prescribes in regulations.”
- (v) by inserting the following new paragraphs after paragraph (p)—
 - “(q) to recommend appropriate fire safety equipment for use by any type of residential, commercial or industrial property;
 - (r) to regulate the storage of dangerous good or liquids in any premises as required by this Act or any written law;
 - (s) to register and issue licenses, as prescribed by regulations, for fire agents or fire protection equipment and provide installation or maintenance services for these products;
 - (t) to regulate appropriate standard for fire protection equipment and services and emergency protection equipment, and
 - (u) to consult and direct the Water Authority on suitable water supply and on the appropriate locations for the installation of fire hydrants in new industrial, commercial or residential premises or subdivisions in Fiji”.

New Section 11A Inserted

7. The Act is amended by inserting a new Section 11A—

“Structural Fire Safety Department

11A(1) This Section establishes a Structural Fire Safety Department of the Authority.

- (2) The Structural Fire Safety Department shall have the powers to—
 - (i) inspect and certify premises, whether residential, commercial, industrial or otherwise to determine compliance with the National Building Code (made under the Public Health Act), Health and Safety At Work Act 1996 and any other written law or regulation or which empowers the Authority to enforce;
 - (ii) obtain information and data necessary to provide the certifications or reports;
 - (iii) enforce this Act if individuals or corporations fail to comply with certifications or reports;
 - (iv) notify enforcement agencies established under law administered by the Authority of compliance or non-compliance of any other laws that require the Authority to inspect buildings or premises;
 - (v) issue a public notice for the closure of a premises, if the owner of the premises fails to comply with the provisions of this Act.

- (3) The Officer designated as head of the Structural Fire Safety Department may direct in writing any person who has contravened any of the provisions of subsection (2) by such non-compliance to take within the time specified, such steps as may be so specified to prevent any further contravention and to remedy the matter in respect of which the non-compliance has occurred,

Provided that—

- (i) a direction issued under this subsection shall not affect any proceeding under this Act which has been or may be taken for the non-compliance which gave rise to the direction.
- (ii) any person to whom a direction under this subsection is issued, who does not comply with the directions, commits an offence and shall upon conviction be liable to: for a company or legal entity, the sum of not exceeding \$20,000. For a natural person, the sum of not exceeding \$5,000.”

Section 12 amended

8. Section 12 (1) of the Act is amended by —

- (i) deleting paragraph (g);
 - (ii) adding the new subsection(4) after subsection (3)—
- “(4) The Authority is empowered to charge a fee for providing fire services for an area outside of a fire district, or on a vessel or motor vehicle and to recover any other expenses actually incurred. In charging fees the Authority may —
- (a) reduce the charges from that which ought to be paid;
 - (b) vary the charges;
 - (c) waive charging a fee;
 - (d) agree to payment by installments.
- (5) In exercising the powers in (4) above, the Authority shall do so only on any one of the following grounds—
- (a) that the owner of the property already pays a form of fire levy to the Authority;
 - (b) that the owner of the property lacks the means to pay having regard to all sources of income available to the owner after a means test carried out by the Authority on the prescribed form, provided the owner shall supply all documents and proofs as may be required by the Authority in the prescribed form aforesaid supported by a statutory declaration;
 - (c) the owner of the property is a non-profit or charitable organization registered under the Charitable Trusts Act and would, in the opinion of the Authority, face hardship;
- (6) It shall be an offence punishable with \$500.00 for any person not being entitled thereto to willfully seek a reduction, variation or waiver or any expense or fee otherwise chargeable by the Authority or to provide any false information or declaration in support of an application for reduction, variation or waiver”.

Section 13 amended

9. Section 13 of the Act is amended in subsection (1) by inserting after the word by deleting “the Minister” and substituting “the Authority after the recommendation for appointment by the Authority is approved by the Minister”.

Section 19 amended

10. Section 19 of the Act is amended—

- (a) in sub paragraph (e) by deleting “\$100” and substituting “\$500” and deleting “and” at the end;

- (b) by removing the full stop at the end of sub paragraph (f) and substituting a semi-colon;
- (c) by inserting the new paragraphs—

- “(g) shall upon any alarm of fire proceed with all possible speed to the place where the fire has occurred and endeavor by all practical means to extinguish the fire and prevent the spreading thereof, and to save lives and property in danger;
- (h) shall control and direct all brigades for which he is responsible, and all persons who are there to place their services at his disposal;
- (i) may enter and, if necessary, break into any buildings on fire, or any building or premises, or any building or premises adjacent thereto;
- (j) may remove from any such building or premises, without responsibility for any consequent loss or damage, any inflammable, explosive, or dangerous material found therein;
- (k) may for the purpose of extinguishing or preventing the spreading of any fire, cause any building which is on fire, or which is adjacent to or in the vicinity of any buildings on fire, to be pulled down wholly or partially, or otherwise destroyed or damaged;
- (l) may cause water to be shut off from or turned in to any main pipe in order to obtain a greater pressure and supply of water for the purpose of extinguishing any fire;
- (m) may cause any motor way, highway, road, street, private road, right of way, or thoroughfare in the vicinity of any fire to be closed for traffic during the continuance of any fire and to remove any motor vehicle impeding the brigade’s activities;
- (n) may shut off or disconnect, or order any person having the control thereof to shut off or disconnect, the supply of gas or electricity to any building which is on fire or which is in the vicinity of any buildings which is on fire;
- (o) may remove, by force if necessary, any person who by his presence, or otherwise howsoever, interferes with the operations of any brigade or who is, in his opinion, endangered by any fire;
- (p) may, at the time of a fire or within twenty four hours thereafter, pull down or shore up any building which, in his opinion, has been so damaged by fire to be or likely to become dangerous to life or property, and the expense of any such operation shall be borne by the owner of the building, and shall be paid by him to the Authority; and
- (q) generally may do all other things which are reasonably necessary for the protection of life and property and the extinction of any fire or for preventing the spreading thereof”.

Section 20 amended

11. Section 20 of the Act is amended by deleting subsection (1) and substituting—

“20(1) The Authority’s powers and functions to extinguish fires and provide emergency services for road and industrial accidents as well as for disasters shall be performed first and foremost and recognized by all officers and members of the police force, military force, any emergency service provider and other persons.”

Section 21 amended

12. Section 21 of the Act is amended by—

- (a) deleting the term and expression “disrict fire officer” and substituting the term and expression “divisional fire officer” wherever it appears in the Section;
- (b) deleting subsection (2) [a] to [k];
- (c) renumbering subsection (4) as subsection (3) and amend as follows—

“(3) During the absence from any fire of the Chief Fire Officer or the Divisional Fire Officer, and during the absence of both such officers any other officer for the time being in charge of any brigade engaged at the fire, shall have all the powers and duties conferred and imposed on the Divisional Fire Officer under this Decree.”

Section 22 amended

13. Section 22 of the Act is amended in subsection (1) by—

- (i) inserting after the word “buildings” in line three (before the opening bracket) the words “used for commercial or industrial purposes, workplaces and areas accessed by the public”;
- (ii) deleting the proviso to subsection (1).

New Section 23A Inserted

14. The Act is amended by inserting a new “Section 23A” after section 23—

“Auxiliary fire fighters

23A(1)The Authority may employ auxiliary fire fighters who shall have the same powers as a fire officer during the performance of their functions.

(2) The Authority may appoint volunteer fire brigade officers as auxiliary fire fighters with the same employment terms and conditions and benefits as a fire officer but on a casual basis, as and when necessary for the performance of the Authority’s functions.

Section 24 Amended

15. Section 24 of the Act is amended in subsection (4) by deleting “may” and substituting “shall”.

Sections 25 amended

16. Section 25 of the Act is amended—

- (a) by deleting the existing title to the Section and substituting—
“Damages in fire fighting and emergency services”
- (b) by deleting section 25 and substituting—

“25. Where damage to property is caused by the Chief Fire Officer or any Officer or member of a fire brigade of any fire district, or any other person, in the exercise in good faith of his powers, duties or obligations at or in connection with -

[a] any fire or suspected fire (including any fire or suspected fire occurring beyond the area in which the Divisional Fire Officer of that district has authority);

[b] any emergency services and rescues for road or industrial accidents,

the damage shall be deemed to be by fire or emergency service, as the case may be or both by fire and emergency service if applicable, within the meaning of any policy of insurance against fire or for road and industrial accidents covering the damaged property.

Section 26 amended

17. Section 26 is amended in subsections (1) and (3) by inserting immediately after the word “fire” or “fires” the words “emergency service, rescue from road or industrial accidents”.

Section 27 amended

18. Section 27 of the Act is amended in subsection (1) by deleting the existing subsection and inserting—

“(i) The Authority shall on or before the 30th of November of each year, submit to the Minister for his approval, in such form required by him or by a written law, an estimate of its probable expenditures for the year commencing 1st of January in the next year”.

Section 29 amended

19. Section 29 of the Act is amended—

- (i) in subsection (1) by—
 - (a) deleting “Commissioner of Insurance” and substituting “Reserve Bank of Fiji”;

- (b) inserting after the word “Fiji” in line five, “including a motor vehicle insured in terms of a contract of compulsory motor vehicle policy for the purposes of the Motor Vehicles (Third Party) Insurance Act Cap 177”;
- (ii) in subsection (2) by—
 - (a) inserting after “Insurance” the words “the Authority”;
 - (b) removing the full stop at the end and adding -
“subject to the following:
 - (i) the levy order is inconsistent with the provisions of the Act or with any other written laws;
 - (ii) the Authority advises the Minister for a variation of the levies;”
- (iv) in subsection (3) by inserting—
 - (a) after “Minister” the words “after consultation with the Authority” ;and
 - (b) inserting before “officer” the word “fire”;
- (v) inserting a new subsection (6) “VAT is excluded from all insurances charged for fire levies payable for insurance within Fiji.”

Section 32 amended

20. Section 32 is amended by deleting subsection (1) and substituting—

- “(1) The Authority shall require the Reserve Bank of Fiji to issue a return requiring prescribed particulars for a class or classes of insurance including classes of insurance providing all risk coverage or for all such insurance placed outside the Republic of Fiji as and when they are placed and renewed. For the avoidance of doubt this subsection applies to offshore placement of fire insurance and those classes of insurance that have fire component.”

New Section 32A; 32B; 32C; 32D and 32E

21. The Act is amended by inserting new Sections 32A, 32B, 32C, 32D and 32E—

*“Liability for levy on contracts of fire insurance with insurance companies
carrying on business outside of Fiji*

- 32(A) (1) For the purposes of this Act, where the owner of property negotiates a contract of fire insurance in respect of that property, either with an insurance company not carrying on business in Fiji, or with an office or branch outside Fiji of an insurance company carrying on business in Fiji, the contract shall be deemed to be made in Fiji and that owner of property, in respect of the amount insured (whether the premium was paid within or beyond Fiji) shall accordingly be liable for the payment of levy. The provisions of this section shall apply whether or not the negotiations for the contract of fire insurance were carried out by an overseas broker or agent acting on behalf of the owner of property.
- (2) The owner of property shall for the purposes of subsection (1) include, together with the payment of the levy, a return in the prescribed form and shall include in that return the sum insured in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the owner or the owner’s representative stating that to the best of that person’s knowledge or belief the payment is correct.
- (3) For the purposes of this section, where the owner of property transfers or credits money to any company, corporation, partnership or person outside Fiji for the purposes of providing coverage of any risk which includes risk of fire, that owner shall provide to the Authority a statutory declaration in the form prescribed that the levy payable in terms of this section has been paid.

Liability for levy where cover for risk provided by any company etc associated with the owner

- 32(B) (1) Where any owner of property makes a payment to any company, partnership, corporation or person (other than an insurance company) either within or beyond Fiji, including any company, corporation, partnership or person associated with the owner (including any parent company, associate company,

or subsidiary company of the owner) and the payment is to provide in respect of that property for arrangements for indemnity or a reserve or a fund to cover future loss or future damage resulting from circumstances which include loss or damage from fire, or for any other purpose similar or analogous to a contract of fire insurance, the owner in respect of that payment shall be liable for the payment of levy based on policy sum insured. The provisions of this subsection shall apply whether or not the said arrangements are in the form of a contract of fire insurance.

- (2) For the purposes of subsection (1) the owner of property shall include, together with the payment of levy, a return in the prescribed form and shall include in that return the policy sum insured in respect of which the payment is made, and the period for which the payment is made, and the return shall be signed by the owner or the owner's authorized representative stating that to the best of that person's knowledge or belief the payment is correct.
- (3) For the purposes of any payment under subsection (1) where any company, corporation, partnership or person, whether acting as the owner of property or otherwise, transfers money out of Fiji, that company, corporation, partnership or person shall provide the Authority with a statutory declaration in the form prescribed that the levy payable in terms of this section has been paid.

Insurance on unusual terms

32C Where a contract of fire insurance provides for the settlement of any claim for damage to or destruction of any property upon any basis more favourable to the insured person than its indemnity value or where there is no sum insured in the contract, the amount for which the property is insured shall be computed by reference to:

- (i) a declaration signed by the owner to the effect that the indemnity value declared for the purpose of the levy is a fair and reasonable indemnity value in relation to the replacement value of the property;
- (ii) a valuation certificate —
 - (a) given by a qualified architect, valuer, engineer or quantity surveyor having qualifications and experience suitable for the purposes of this Act; and
 - (b) establishing clearly the indemnity value of the property for the purposes of the levy.

Audit of contracts for fire insurance

- 32D (1) Every insurance company and any agent or representative of any insurance company shall at all times keep in safe custody all records of contracts of fire insurance, including full particulars of each contract and the amount of the levy and the date of its payment to the Authority.
- (2) For the purpose of ascertaining whether the levy for which any insurance company or its representative is liable has been paid and whether the provisions of this Act have been complied with, the Authority or its authorized officer or agent may from time to time examine the records (including records of contracts of fire insurance) and the books and accounts of the company or its agent, and it shall be the duty of the said duly authorized officer or agent of the Authority to report the result thereof to the Authority and the company or its representative shall forthwith on demand submit its records, books and accounts accordingly to the said authorized officer or agent of the Authority.

Payment of expenses where property uninsured

- 32E (1) The owner of any property situated in Fiji which is damaged or destroyed by fire shall if that property is not insured be liable to pay to the Authority the reasonable costs and expenses incurred by the Authority in providing fire fighting services for him or her in relation to that property.
- (2) The amount payable under subsection (1) shall be determined by the Authority.
 - (3) Notice of the amount so determined shall be sent by post to the owner concerned, and the said sum shall be payable to the Authority by the owner within 28 days after receipt of the notice.
 - (4) The amount described herein shall be recoverable by suit in a court of competent jurisdiction".

Section 33 amended

22. Section 33 of the Act is amended by deleting “\$1000” and “\$100” in the 2nd and 3rd lines in subsection (2) and substituting “\$2000” and “\$200” respectively.

Section 38 amended - Report

23. Section 38 of the Act is amended in subsection (1) by deleting the following expression: “but not later than 31st March” and substituting “not later than 31st August”.

Section 42 amended

24. Section 42 is amended by—

- (i) deleting the heading and substituting: “False alarms”;
- (ii) renumbering theSection as subsection (1) of 42;
- (iii) adding new subsection (2) and (3)—

“(2) The Authority may charge for attendance and costs of attendance where the reason for attendance is the receipt of a false alarm of fire given by an automatic fire alarm system, and, where the alarm came from persons or equipment in any premises, the owner of the premises shall be liable to meet the charge.

(3) In any case where subsection 42 (1) applies and the false alarm of fire was not the fault of the owner of the premises, the owner may by authority of this subsection recover the costs incurred from the person who caused the false alarm to be made or whose equipment was responsible for the false alarm”.

Section 43 amended

25. Section 43 of the Act is amended by deleting “\$500” and substituting “\$10,000”.

Section 44 amended

26. Section 44 of the Act is amended by inserting after “brigade”, the words “volunteer fire brigade and auxiliary fire fighters”.

Section 46 amended

27. Section 46 of the Act is amended—

- (i) inserting immediately after the word “fire” in subsection (1) and subsection (2) the following, “road or industrial accidents or provision of emergency services”;
- (ii) deleting “\$500” and “6 months” in lines 3 and 4 in subsection (3) and substituting “\$1000” and “12 months” respectively.

New Sections 47A and 47B amended

28. The Act is amended by inserting new Sections 47A and 47B—

“Valour Medals

47(A) (1) The Authority may award a “Valour” medal to its officer, etc

(2) The “Valour” medal may be awarded after due inquiry and after receipt of statutory declarations by not less than two witnesses of the action of any officer of the Authority or officer or member of any brigade in saving(or attempting to save) human life at grave risk to his own.

(3) A Valour medal—

(a) shall be gold in colour and shall have depicted on the obverse a firefighter rescuing a child and on the reverse the seal of the Authority; and

(b) shall be worn on all ceremonial occasions suspended by a red and blue ribbon fastened to the right breast of the jacket.

Special Recognition Award

- 47(B) (1) The Authority may award a Special Recognition Award to a brigade in recognition of—
- (a) outstanding community service; or
 - (b) other significant activities performed by the brigade which have had a positive impact on an individual or a group or the community as a whole.
- (2) The Authority may—
- (a) make an award at its discretion; or
 - (b) by public notice seek nominations from members of the public.
- (3) A person may at any time nominate a brigade to the authority for consideration for an award under this section”.”

GIVEN UNDER my hand this 24th day of November 2009.

RATU EPELI NAILATIKAU
President of the Republic of Fiji