

REPUBLIC OF FIJI

DECREE NO. 24 OF 1992

TRADE STANDARDS AND QUALITY CONTROL DECREE 1992

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TRADE STANDARDS AND QUALITY CONTROL DECREE 1991

A Decree to make provision prescribing standards regulating the safety and quality of goods, the provision of information in respect of goods and services and provide for standards and quality control authorities and for related purposes.

In exercise of powers vested in me as the President and Commander-in-Chief of the Republic of Fiji and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decrees:-

PART I - PRELIMINARY

1. Short Title.

This Decree may be cited as the Trade Standards and Quality Control Decree 1992.

2. Objective of the Decree.

The principal objective of this Decree is to provide for standards specifications to be prescribed for goods and services and control quality of products.

3. Application of Decree.

(1) This Decree applies to every person who does an act or makes an omission in Fiji that constitutes a contravention of this Decree.

(2) Where acts or omissions occur that would constitute a contravention of this Decree, if they occurred in Fiji and any of the acts or omissions occur in Fiji, the person who does the act or makes the omission shall be taken to have committed that contravention of this Decree.

(3) Subsections (1) and (2) -

(a) shall not be construed as limiting, any application that this Decree has apart from this section;

(b) shall be construed subject to any provisions of this Decree expressly to the contrary.

4. Interpretation.

(1) In this Decree, unless the contrary intention appears -

"the Council" means the Trade Standards Advisory Council established under part II of this Decree.

"dangerous goods" means goods declared under Part IV to be dangerous goods.

"dangerous services" means services declared under Part IV to be dangerous services.

"defect notice" means a notice issued under section 36

"goods" means any tangible property.

"information standards" means a information specification made under section 43.

"label" means affix or annex information to, mark information on, or incorporate information with, anything.

"Inspector" means-

(a) the Director;

(b) an Assistant Director;

(c) an Inspector appointed for the purpose of this Decree;

(d) the Chief Inspector and an Inspector within the meaning of section 5 of the National & Trade Measurement Decree No. 14 of 1989 and;

(e) includes any other officers and staffs appointed for the purpose of this Decree.

"manufacture" includes assemble, process or recondition.

"package" in relation to any goods means-

(a) wholly or partly enclose the goods in any form of covering or container for supply to any person; or

(b) authorize, direct, cause, suffer or permit the act referred to in paragraph (a) of this definition.

"premises" means -

(a) any land, building or place; or

(b) a part of premises.

"provide" in relation to information in respect of goods or services includes authorize, direct, cause, suffer or permit information to be provided in respect of goods or services.

"quality standard" means a regulation made under Part V of this Decree.

"safety standard" means a safety standards that are directed at preventing or minimizing risk or injury or impairment of health.

"services" includes the conferring of any prescribed right or privilege,

"standards" means -

- (a) a safety standard;
- (b) a quality standard;
- (c) an information standard;
- (d) specification standard; or
- (e) a packaging standard

"Specification" means a description of any commodity, process, practice, or service, by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age, or other characteristics or by reference to any mark or label on any commodity; and includes a model form of bylaws, a glossary of terms, definitions, or symbols, and a code of practice.

"supply"

(a) in relation to any goods means-

- (i) sell;
- (ii) agree to sell;
- (iii) supply by way of barter or exchange;
- (iv) let on hire;
- (v) bail;
- (vi) supply or deliver;
- (vii) offer to do, or keep or have in possession for the purpose of doing, any of the acts referred to in subparagraphs (i) to (vi) of this paragraph; or
- (viii) authorize, direct, cause, suffer or permit any of the acts referred to in subparagraphs (i) to (vi) of this paragraph;

or

(b) in relation to any services means -

- (i) supply or agree or offer to supply; or
- (ii) authorize, direct, cause, suffer or permit any of the acts referred to in subparagraph (i) of this paragraph:

and "supplier" has a corresponding meaning. For the avoidance of doubt, a manufacturer is deemed to be a supplier for the purpose of this Decree.

"vehicle" includes any kind of aircraft or vessel.

(2) For the purposes of this Decree, goods that are attached to, or wrapped or wound around, anything shall be deemed to be packaged and the thing to which they are attached, or around which they are wrapped or wound, shall be deemed to be the covering or container in which they are packaged.

(3) For the purposes of this Decree, a person provides information in relation to goods-

(a) if he labels the goods;

(b) if he labels any covering or container in which the goods are packaged;

(c) if he places the information in any covering or container in which the goods are packaged;

(d) if he packages the goods in any covering or container that is labelled; or

(e) if he provides the information in any other manner whether that manner is or is not similar to any manner of providing information referred to in paragraph (a), (b), (c) or (d) of this subsection.

(4) For the purposes of this Decree, information shall be deemed to be in respect of goods if it would be taken by any reasonable person as referring directly or indirectly to the goods, or a class of goods that includes the goods whether or not the goods are in existence at the time the information is provided.

(5) For the purposes of this Decree, a person shall be deemed to provide information in respect of goods if he supplies goods in respect of which information is provided (whether by himself or any other person) in the manner referred to in paragraph (e), (b), (c) or (d) of subsection (3) of this section.

(6) For the purposes of this Decree, a person provides information in respect of services if he provides the information in such a manner that it would be taken by any reasonable person as referring directly or indirectly to the services or a class of services that includes the services, whether or not-

(a) the service are being supplied, or

(b) any physical thing that is or is to be supplied, or that is or is to be provided for use, in the course of supply of the services, is in existence, at the time the information is provided.

5. Related Act or Decree

For the purpose of this Decree, related Act or Decree means an Act or Decree or a provision of an Act or Decree:-

- (a) of which Director stated in that Act or Decree to have the Administration; or
- (b) that is prescribed by Regulation to be a related Act or Decree.

6. Decree Binds The State.

This Decree binds the State.

7. Saving of Other Remedies.

- (1) The provisions of this Decree shall be in addition to and shall not derogate from the provisions of any other Decree or Act.
- (2) The provisions of this Decree shall not limit or affect any civil remedy at law or in equity.

PART II - ADMINISTRATION

Division I - TRADE STANDARDS ADVISORY COUNCIL

8. Establishment of Trade Standards and Quality Control Advisory Council.

- (1) There shall be established an advisory council entitled the "Trade Standards Advisory Council".
- (2) The Council shall consist of six members appointed by the Minister of whom -
 - (a) one person shall be appointed to be Chairman of the Council;
 - (b) one shall be a person who in the opinion of the Minister represent the interest of Food Processing Industry in Fiji;
 - (c) one shall be a person who in the opinion of the Minister represent the interests of importers of goods in Fiji;
 - (d) one shall be a person who in the opinion of the Minister, represent the interests of Manufacturers in Fiji;
 - (e) one shall be a person who in the opinion of the Minister represent the interest of professional Engineers in Fiji;
 - (f) one shall be the person who in the opinion of the Minister represent the interest of consumers in Fiji.

9. Terms and Conditions of Office

- (1) Subject to this Decree, a member of the Council shall hold office for a term of three years upon such conditions as the Minister determines, and upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Minister may appoint a member to be a deputy chairman of the Council and the Deputy Chairman may act in the absence of the Chairman and shall be deemed to be a Chairman of the Council and shall have all the powers, authorities, duties and obligations of the Chairman.

(3) The Minister may remove a member of the council from office for -

- (a) mental or physical incapacity;
- (b) neglect of duty;
- (c) dishonourable conduct; or
- (d) any other cause considered sufficient by the Minister.

(4) The office of a member of the Council shall become vacant if -

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by written notice addressed to the Minister;
- (d) he fails to attend three consecutive meetings of the Council without leave of the Chairman of the Council; or
- (e) he is removed from office by the Minister pursuant to subsection (3) of this section.

(5) Upon the office of a member of the Council becoming vacant., a person shall be appointed, in accordance with this Decree, to the vacant office, but where the office of a member becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

10. Allowances and Expenses.

A member of the Council shall be entitled to receive such allowances and expenses as may be determined by the Minister.

11. Quorum etc of Council.

(1) Three members of the Council shall constitute a quorum of the Council and no business shall be transacted at a meeting of the Council unless a quorum is present.

(2) The Chairman of the Council shall preside at a meeting of the Council at which he is present and in the absence of both the Chairman and his Deputy from a meeting, the members of the Council present shall decide who is to preside at that meeting.

(3) A decision carried by the votes of a majority of the members of the Council present at a meeting shall be a decision of the Council.

(4) Each member of the Council shall be entitled to one vote on a matter arising for determination by the Council and the person presiding at the meeting of the Council shall, in the event of all equality of votes, have a second or casting vote.

(5) Subject to this Decree, the business of the Council shall be conducted in a manner determined by the Council.

12. Validity of Acts of the Council.

An act or proceeding of the Council shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of a member, an act or proceeding shall be as valid and effectual as if the member had been duly nominated or appointed.

13. Functions of the Council.

(1) The function of the Council is to consider and recommend to the Minister for promulgation Fiji Standards in respect of the quality of commodities, processes, practices and services imported into, produced or provided in or exported from Fiji, bearing in mind the promotion of industrial efficiency development, the promotion of welfare health safety and protection of the consumers in respect of the standards that are adopted for Fiji.

(2) The council is to consider matters related to standards and quality control which may be referred to it by the Minister.

DIVISION II

Establishment of Standards and Quality Control Office

14. Appointment of Director and Staff.

(1) The Public Service Commission shall appoint a Director of Standards and Quality Control, Chief Inspector and such number of inspectors and staff as is necessary to administer the provisions of this Decree.

(2) Without prejudice to the power of appointment conferred by sub-section (1) the Chief Inspector and every Inspector appointed under the National and Trade Measurement Decree and Regulations 1989 shall be deemed also to be the chief Inspector and Inspectors for the purpose of this Decree.

15. Trade Standards & Quality Control office

(1) There shall be established a Standards and Quality Control Office comprised of the Director, Chief Inspector and the other Inspectors and officers appointed to assist him.

(2) The office shall discharge its functions subject to the directions and control of the Minister.

16. Functions of the Office of Trade Standards and Quality Control

The functions of the office shall be: -

- (a)* Prepare, frame, modify, or amend standard specifications for quality of commodities, processes, practices and services imported into, produced or provided in, or exported from Fiji;
- (b)* Promote research in relation to standards;
- (c)* Provide for the examination and testing of commodities, processes, and practices, and for those purposes may either establish such laboratories and other facilities or arrange with such laboratories as may be necessary;
- (d)* Approve the use of standards mark for products and commodities or services complying with Fiji Standards;
- (e)* Undertake educational work and promotion in connection with standardization and quality control;
- (f)* Collect and disseminate information relating to standards and related matters, including the publication of reports, pamphlets, booklets, journals, and any other publications;
- (g)* Maintain a library and publish and print documents including standards;
- (h)* Provide technical advice and assistance in standards and quality control matters; and
- (i)* to undertake such other functions as the Minister may direct it to administer or discharge.

PART III - CONTROL AND INSPECTION

17. Powers of Inspectors.

(1) For the purpose of the discharge of any functions under this Decree, or for purposes connected with the exercise, performance or discharge of any power, or duty under this Decree, an Inspector may at all reasonable times:-

- (a)* (i) enter and inspect any premises at any reasonable time; or
(ii) stop and inspect any vehicle;
- (b)* during the course of the inspection of any premises or vehicle -
 - (i) require any person found in the premises or vehicle to answer any question;
 - (ii) inspect any goods, articles or substances found in the premises or vehicles;

(iii) open any container, package or other item found in the premises or vehicle;

(iv) seize and remove anything that is reasonably believed to constitute evidence of an offence against this Decree;

(v) inspect, examine, analyze and test any goods;

(vi) take photographs, films or video recordings;

(vii) take measurements and make notes;

(viii) require any person to produce any plans, specifications, books, papers or other documents or records;

(ix) search for any plans, specifications, books papers or other documents or records;

(x) examine, copy and take extracts from any plans, specifications, books, papers or other documents or records;

(xi) give such directions as are reasonably necessary for, or incidental to, the effective exercise of powers under this section; and

(xii) undertake such other functions as the Minister may direct it to administer or discharge;

(2) In the exercise of his powers under this section, an Inspector may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

(3) A person shall not hinder or obstruct an Inspector, or any person accompanying an Inspector in the exercise of his powers under this section.

(4) Subject to subsection (5), a person to whom a question is put under this section shall not refuse or fail to answer the question to the best of his knowledge, information or belief.

(5) A person is not required to answer a question or to produce a plan, specification, book, paper or other document or record under this section if the answer or the production of the plan, specification, book paper or other document or record would result in or tend towards his or her self-incrimination.

(6) A person given any direction under this section shall not refuse or fail to comply with the direction.

18. Seizure of Goods.

(1) If an Inspector believes that an offence against this Decree involving goods has been committed, the Inspector may:

(a) seize and retain the goods, samples from the goods, any package containing the goods and any records concerning the goods or package;

(b) seize and retain any number of packages required to follow the procedures and make any determinations prescribed by this Decree as a condition precedent to the bringing of proceedings for any offence concerned; and

(c) examine, test, analyze anything seized whether at the time and place of seizure or alter and elsewhere.

(2) In the exercise of his powers under this section, an Inspector may he accompanied by such other persons as lie considers necessary or desirable in the circumstances.

(3) A person shall not hinder or obstruct an inspector, in the exercise of his powers under this section.

(4) Any person who contravenes this section is guilty of an offence.

19. Power to Obtain Information.

(1) An Inspector may by notice in writing given to any person require that person to furnish within the period specified in the notice any information that is necessary for the purpose of determining whether or not -

(a) any provision of this Decree is being or has been complied with; or

(b) any goods should be declared to be dangerous goods, or any services should be declared to be dangerous services; or

(c) any standards should be prescribed under this Decree.

(2) A person given a notice under this section

(a) shall not fail without excuse, to furnish information in accordance with the requirements of the notice; and

(b) shall not furnish information that is false or misleading in any material particular.

(3) Any person who contravenes this section is guilty of an offence.

20. Examination, Analysis Test etc.

Where any goods are examined, analyzed or tested under this section, an Inspector shall-

(a) if the goods were seized and removed under this Decree; or

(b) if the goods were purchased arid removed under this Decree and the examination, analysis or test leads to the institution of proceedings for an offence against this decree,

cause the owner or apparent owner of the goods to be informed of the result of the examination, analysis or test and if proceedings for an offence against this Decree are instituted against any person as a result of the examination, analysis or test, allow that person to have the copy of the result of the examination, analysis or test as the case may be.

21. Inspection of Seized Goods etc.

(1) Where any plan, specification, book, paper or other document or record is seized and removed under this Decree, the person from whom it was seized, and any other person authorized by him or her, is entitled to inspect it at any reasonable time with the approval of an inspector.

(2) Where any goods are seized and removed under this Decree and -

(a) proceedings are not instituted for an offence against this Decree in relation to the goods within six months of their seizure; or

(b) proceedings are instituted within that period but the defendant is not subsequently convicted,

the person from whom it was seized is, on application to the Chief Inspector, entitled to its return.

(c) if an application for return of the goods is not made within 3 months after the entitlement to its return arises the Chief Inspector may dispose of it as he thinks fit.

(3) Where any goods are seized and removed and the person from whom the goods were seized is convicted of an offence against this Decree in relation to the goods, the court convicting the person may, in addition, order that the goods be forfeited to the state.

22. Information Not to be Given.

A person who is engaged or has been engaged in any office or position connected with the administration of this Decree shall not, otherwise than in the performance of the duties or functions appertaining to that office or position, divulge or communicate any information obtained by virtue of that office or position.

23. Cost of Testing.

(1) Where-

(a) goods are declared to be dangerous goods; or

(b) services are declared to be dangerous services; or

(c) goods that, require analysis to determine its composition or purity for the purposes of this Decree; or

(d) goods that do not comply with an applicable standard; or

(e) services are found not to Comply with an applicable standard; or

(f) Where a person provides (in contravention of this Decree) inaccurate information in relation to goods or services,

the Chief Inspector shall recover as a debt from a manufacturer or supplier of the goods or from a supplier of the services the cost of any examination, analysis or test as the case may be.

(2) The Chief Inspector may, before proceeding to recover costs from a person under this section, supply to the person a statement setting out details of the examination, analysis or test that was carried out and the costs that were incurred.

(3) In any proceedings for the recovery or the cost of carrying out an examination, analysis or test to which this section applies, a certificate signed by the Chief Inspector -

(a) certifying that the Chief Inspector supplied a statement in accordance with subsection (2) on a date specified in the certificate; or

(b) certifying the amount of the costs, shall be accepted, in the absence of proof to the contrary as proof of the matter so certified.

24. False Representation as an Inspector.

A person shall not falsely represent, by words or conduct, that he is a Director or a Chief Inspector or an Inspector or otherwise engaged in the administration of this Decree.

PART IV - STANDARDS

Division 1 - Specification of Standards

25. Declaration of Standards.

(1) The Minister may after consideration of recommendation from the Council or as he thinks fit declare any specification, including any international or other overseas specification, to of Fiji standard specification for the purpose this Decree, and may in a like manner amend or revoke any such declaration.

(2) Where the Minister has declared any specification to be a Fiji standard specification or an adopted standard specification or has amended or revoked a Fiji standard specification or an adopted standard specification, notification thereof shall be published in the Gazette.

26. Designated Standards.

(1) The Minister may, after consideration of the recommendation of the Council or as he thinks fit that it is in the public interest so to do, by order published in the Gazette, declare a mandatory standard specification to be applied without exception throughout Fiji.

(2) No person shall manufacture, import, or sell any commodity, or provide any service, or use any process or practice not in accordance with a mandatory standard specification.

(3) Any person who contravenes this section is guilty of an offence.

27. Sole Authority for Standards.

(1) No person or association of persons, other than the Minister responsible for this Decree shall declare a specification to be a "Fiji standard specification", or an adopted Fiji Standard Specification nor shall any person or association of persons purport to declare, promote or promulgate a specification, other than a Fiji Standard Specification, if it is intended to or is likely to deceive or cause confusion that it is a Fiji Standard Specification.

(2) The Trade Standards and Quality Control Office shall be the sole authority for representing Fiji in standards matters overseas and in international standards organizations.

(3) Any person or association of persons who contravenes this section shall be guilty of an offence under this Decree.

28. Protection for Standards.

(1) Except with the consent of the Minister, no person or association of persons, whether a body corporate or not, shall carry out activities or trade under a name which contains the word "Standard" or the words "Fiji Standard" or any abbreviation of those words.

(2) Where any Act or Decree provides for the registration of any association of persons, the registering authority shall refuse registration, if the use of the name by which the association desires to be registered is prohibited by subsection (1) of this section.

(3) Any person who, or association of persons which, does any act, in contravention of the provisions of this section is guilty of an offence.

29. Duty to Comply with Standards.

(1) A person shall not, in the course of a trade or commerce:-

(a) manufacture or supply goods that do not comply with an applicable standard; or

(b) supply goods in contravention of an applicable standard.

(2) A person shall not, in the course of a trade or commerce supply a service contrary to an applicable standard.

(3) Any person who contravenes this section is guilty of an offence under this Decree.

30. Safety Standards.

(1) Safety standards may be promulgated by the Minister by notification in the Gazette in the form of Fiji Safety Standards.

(2) Safety standards may -

(a) provide the design, construction, composition, materials, contents, finish, performance or other characteristics of any kind of goods;

(b) specify the nature and quality of services of any kind or the manner in which they are to be performed;

(c) prohibit the supply of particular kinds of goods or services to persons of less than a specified age;

(d) specify precautions to be taken in relation to the supply of particular kinds of goods or services either generally or when they are supplied to particular classes of persons);

(e) prohibit the supply of particular kinds of goods unless instructions are supplied, or adequate instruction is given, in their installation, alteration or use; and

(f) make any other provision that is desirable to prevent or minimize risk of injury or impairment of health.

(3) Any person who sells or manufacture or supplies any goods which do not comply with safety standards is guilty of an offence.

31. Manufacture or Supply of Dangerous Goods and Services.

(1) A person shall not, in the course of a trade or commerce, manufacture or supply dangerous goods.

(2) A person shall not, in the course of a trade or commerce, supply dangerous services.

(3) Any person who contravenes this section is guilty of an offence.

32. Declaration of Dangerous Goods and Services.

(1) The Minister may, after consideration of report of the Council or as he thinks fit by notice in the Gazette -

(a) declare any goods, or goods of a specified class, to be dangerous goods;

(b) declare any services, or services of a specified class, to be dangerous services; or

(c) vary or revoke a declaration under this section.

(2) A declaration cannot be made under this Decree unless the Minister is satisfied -

(a) that the declaration is necessary in order to avert risk of injury or impairment of health; and

(b) that it is not appropriate in the circumstances to deal with the matter by the prescription of safety standards.

33. Compensation.

(1) A person to whom dangerous goods, or goods that do not comply with an applicable safety standard, are supplied is entitled to recover from the supplier -

(a) compensation for any damage suffered by the person in consequence of a dangerous characteristic of the goods, or the failure to comply with an applicable safety standard;

(b) where the goods are returned to the supplier or where they cannot be returned because they have been consumed or destroyed any amount paid by the person for the goods;

(c) where the goods are returned any reasonable expenses incurred by the person in or in connection with the return of the goods.

(2) A person to whom dangerous services, or services that do not comply with an applicable safety standard, are supplied is entitled to recover from the supplier: -

(a) compensation for any damage suffered by the person in consequence of a dangerous characteristic of the services, or the failure to comply with an applicable safety standard; and

(b) any amount paid by the person for the services.

(3) The rights conferred by this section cannot be excluded or limited by contract.

(4) If in proceedings for compensation under this Decree it is established that the person claiming compensation contributed to his or her damage or loss, that fact must be reflected in any award of compensation to that person.

34. Temporary Bans.

The Minister may by notice in the Gazette, impose a temporary ban (for a period not exceeding three months specified in the notice) on the manufacture or supply of those goods, or the supply of those services, which may appear to be dangerous while the Minister directs investigation to determine whether they should be declared to be dangerous.

(2) The Minister may, on the recommendation of the Director, or as he thinks fit by further notice in the Gazette –

(a) extend the period of the ban (but, not so that the total period of the ban exceeds 12 months); or

(b) vary or revoke the ban.

(3) While the ban is in force, a person shall not, in the course of a trade or commerce, manufacture or supply goods, or supply services, that are subject to the ban.

(4) Any person who contravenes this section is guilty of an offence.

(5) The Director may take reasonable steps to bring the publication of a notice under subsection (1) or (2) to the attention of manufacturers or suppliers who are likely to be affected by the notice.

35. Warnings.

(1) The Director may take any action to warn the public against risks, or potential risks, associated with -

- (a) goods or services that do not comply with an applicable safety standard;
- (b) goods or services that have been supplied in contravention, of an applicable safety standards;
- (c) dangerous goods or services; or
- (d) goods or services that are subject to a temporary ban.

(2) For the purposes of subsection (1), the Director may publish the trade name or description of goods or services and identify manufacturers or suppliers by name.

Division II - Defect Notices

36. Issue of Defect Notices.

(1) Where -

- (a) goods are supplied in the course of trade or commerce after the commencement of this Decree;
- (b) the goods -
 - (i) are dangerous goods;
 - (ii) do not comply with an applicable safety standard; or
 - (iii) are such as may cause injury; and
- (c) it appears to the Director that insufficient action has been taken to avert danger to those to whom the goods have been supplied (or to other persons who may come into possession of the goods), the Director may issue a defect, notice to the supplier.

(2) a defect notice is a notice that identifies a defect in, or dangerous characteristic of, the goods to which it applies and directs the supplier to do one or more of the following -

- (a) to take action to recall the goods in accordance with directions contained in the notice and on the return of the goods-
 - (i) to repair the goods;

(ii) to replace the goods; or

(iii) to refund to the person who returns the goods any amount paid by the person for the goods;

(b) to disclose to the public, in the manner and within the period specified in the notice-

(i) the nature of the defect in, or dangerous characteristic of, the goods;

(ii) the circumstances in which the use of the goods is dangerous; and

(iii) where appropriate procedures for disposing of the goods;

(c) to inform the public, in the manner and within the period specified in the notice, that the supplier undertakes to do whichever of the following:

(i) to repair the goods;

(ii) to replace the goods;

(iii) to refund to a person who returns the goods any amount paid by the person for the goods.

(3) A defect notice may be issued to a supplier-

(a) personally;

(b) by post; or

(c) if the notice is addressed to suppliers by publication in the Gazette and in a newspaper circulating, generally in Fiji.

(4) The Director shall take reasonable steps to bring the publication of a notice under subsection (3)(c) to the attention of suppliers who are known by the Director to be affected by the notice.

(5) Where goods are to be repaired in pursuance of a defect notice, the supplier must, on delivery of the goods for repair, cause the goods to be repaired so that -

(a) any defect in, or dangerous characteristics of, the goods identified in the notice is remedied; and

(b) if there is a safety standard in respect of the goods - the goods comply with that standard.

(6) Where goods are to be replaced in pursuance of a defect notice, the supplier must replace the goods with similar goods that -

(a) do not have the defect or dangerous characteristic identified in the notice; and

(b) if there is a safety standard applicable to the goods - comply with that standard.

(7) The cost of the repair or replacement of goods - under subsection (5) or (6) (including any necessary transportation costs) shall be borne by the supplier.

(8) Where a refund of the amount paid for goods is to be made in pursuance of a defect notice, the supplier shall, subject to subsection (9), make such a refund in full.

(9) If the goods were acquired from the supplier more than 12 months before the date of the application for the refund, the amount of the refund may be reduced by an appropriate amount to allow for the use of the goods.

(10) The cost of the return of the goods under subsection (8) (including any necessary transportation costs) shall be borne by the supplier.

(11) If a supplier -

(a) fails to comply with a defect notice;

(b) supplies goods to which a defect notice relates while the notice remains in force;
or

(c) fails to comply with a requirement of this section, the supplier is guilty of an offence.

37. Opportunity to Make Representation.

(1) Where the Director proposes to publish a defect notice in relation to goods, the Director shall before publishing a notice in the Gazette and in a newspaper circulating generally in Fiji shall afford the affected supplier opportunity to be heard by the Council and shall:

(a) make available to the supplier a draft of the proposed defect notice;

(b) the reason for the proposed publication of the defect notice; and

(c) an invitation to the supplier to request the Council, within a period specified in the notice (which shall be a period of at least 14 days from the proposed date of publication), to hold a hearing in relation to the proposed publication of the defect notice.

(2) The Director shall take reasonable steps to deliver the notice tender subsection (1) to the supplier who may be affected by the defect notice.

(3) If the supplier does not respond hearing to invitation to make representation the Council shall notify the Minister accordingly.

(4) If a request for a hearing is made within the relevant time, the Council shall appoint a time and place for the holding of the hearing, and give notice of the time and place so appointed to the Minister and to the supplier.

(5) At the hearing -

(a) the Council may be represented by a member or members nominated by the Chairman;

(b) each supplier who requested a hearing is entitled to be present or to be represented;

(c) any other person whose presence at the hearing is considered by the council to be appropriate is entitled to be present or to be represented;

(d) The Director or Chief Inspector are entitled to be present or to be represented;

(e) the procedure to be followed will be determined by the Council.

(6) The Council shall allow the parties to the hearing -

(a) reasonable access to information on the basis of which the publication of a defect notice is proposed; and

(b) an opportunity to make representations on the question of whether the defect notice should be published.

(7) As soon as is practicable after the conclusion of a hearing the Council shall recommend to the Minister that -

(a) the Director publish a defect notice in terms of the draft notice; or

(b) the Director publish the defect notice with specified modifications; or

(c) the Director refrain from publishing the defect notice.

(8) If it decides not to publish a defect notice, the Director shall give notice of that decision to the Supplier.

38. Notification of Voluntary Recall.

(1) Where a supplier voluntarily takes action to recall goods because the goods will or may cause injury, the supplier shall, within twenty-four hours after taking that action, give notice in writing to the Director-

(a) stating that the goods are subject to recall;

(b) setting out the nature of the defect in, or dangerous characteristic of, the goods;
and

(c) setting out the action that the supplier intends to take on the recall.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

PART V - QUALITY STANDARDS

39. Goods and Services to Which This Part Applies and Notification of Proposed Quality Standards.

(1) The Minister shall by notice in the Gazette publish the class of the goods and services which shall comply with quality Standards and after the publication:

(a) any person may make representation to the Minister and such representation shall be made within 28 days from the date of publication;

(b) the Minister may consider the representation made to him in determining what shall be the quality.

40. Compliance with Quality Standards.

(1) A person shall not, in the course of trade or commerce manufacture or supply goods to which this Part applies that do not comply with an applicable quality standard.

(2) A person shall not, in the course of a trade or commerce, supply a service to which this part applies that does not comply with an applicable quality standard.

(3) Any person who contravenes this section is guilty of an offence.

41. Quality Standards.

(1) Quality standards may include:

(a) that goods to which this Decree applies are reasonably fit for the purpose for which such goods are ordinarily used;

(b) that services to which this Decree applies are reasonably fit for the purpose for which such services are ordinarily supplied.

(2) Quality standards may -

(a) specify the design, construction, composition, materials, contents, finish, performance or other characteristics of goods;

(b) specify the nature or quality of services or the manner in which they are to be supplied;

(c) make any other provision relating to the quality of goods or services.

42. Warnings.

(1) The Director or the Chief Inspector shall take any action to warn the public -

(a) that goods that do not comply with an applicable quality standard have been supplied to the public; or

(b) that services that do not comply with an applicable quality standard have been supplied to the public.

(2) For the purposes of subsection (1), the Director or the Chief Inspector may publish the trade name or description of goods or services and identify manufacturers or suppliers by name.

43. Information Standards.

(1) The Minister shall promulgate by Regulations standards to ensure that misleading information is not provided and that adequate information is provided in respect of goods or services.

(2) Without limiting the generality of subsection (1) of this section, these standards may -

(a) specify the content of information in respect of goods or services or the manner or form in which information is to be provided in respect of goods services;

(b) provide that information of a specified kind is not to be provided in respect, of goods or services or that information, in respect of goods or services is not to be provided in a specified manner or form;

(c) require the provision of specified information in respect of goods or services and specify the manner of or form in which it is to be provided;

(d) assign a meaning to information of a specified kind in respect of goods or services;

(e) prohibit the alteration or variation of, or any interference with, any information provided in compliance with any standard.

44. Breach of Information Standards.

(1) No person shall in the course of a trade or commerce provide, or fail to provide, any information in respect of any goods or services in breach of any applicable information standard.

(2) Any person who contravenes this section is guilty of an offence.

PART VI - QUALITY CONTROL

45. Register of Conformity Certificate.

(1) The Director shall maintain register of conformity for commodity, process, practice or services by a manufacturer or supplier that conforms to Fiji Standards specification.

(2) On application by a person for issue of conformity certificate, the Chief Inspector shall ensure that the commodity, process, practice or service produced or supplied by the manufacturer or supplier comply in every respect of this Decree.

(3) On receipt of conformity certificate, the manufacturer or supplier or as the case may be, may make application to the Director for issue of standards mark.

46. Standards Mark.

(1) The Director with approval of the Minister may from time to time prescribe standards mark to be used in relation to commodities, processes, practices or services to distinguish commodities, processes, practices, or services which conform to a Fiji standards specification or other specification, from others which do not conform to that specification.

(2) Standards mark shall be of such design as the Minister may from time to time approve, provided however that any standards mark, shall be registerable trade mark under the Trade Mark Act.

(3) For the purposes of this Decree the Director may from time to time make application to the registrar of trade marks for the registration of any standards mark as a registered trade-mark under the Trade Mark Act.

(4) Except with the consent of the Minister in writing, no trade mark which contains the word "Standards" or "Fiji Standards" or abbreviations thereof shall be registered under the Trade-Mark Act.

47. Licences.

(1) The Director may grant to any person a license to use a standards mark prescribed in section 46 of the Decree. Any license under this section shall be granted for a period not exceeding one year provided however that if the terms and conditions of any such license are complied with any license not suspended or revoked shall be renewed for a period of one year on payment of any prescribed fee.

(2) The Director shall only grant a license to use a standards mark in connection with a commodity, process, practice, or service if the Director is satisfied that the person to whom the license is granted has a quality control system sufficient to ensure that the commodity process or practice is in conformity and will continue to be in conformity with the relevant Fiji standards specification or other standards specification.

(3) Every license granted under subsection (1) of this section shall be subject to such terms and conditions as the Director shall determine either generally for all such licences or as shall be determined for the particular license. Such terms and conditions may include terms and conditions prescribing the quality control system to apply and prescribing inspection of compliance with such terms and conditions or with the specification.

(4) The Minister may prescribe fees for the granting of any license under this section and no license shall be granted or renewed unless the applicant or holder pays the prescribed fee.

(5) The Director shall maintain a register of licences under this section, which register shall at all reasonable times be open for inspection by the public at the office of the Director.

(6) Any license may be suspended or may be revoked by the Director at any time for breach of any terms of conditions of the license or for non payment of the license fee.

(7) Notice of the granting, suspension or revocation of any license shall be notified in the Gazette.

48. Use of Standards Mark.

(1) No person shall use the standards mark to or in connection with any commodity, process, practice, or service unless:

(a) that person has been granted a license under section 47 of this Decree;

(b) any term or condition of that license has been complied with, including but not limited to any term of condition relating to any quality control system; and

(c) that commodity, process, practice, or service complies with the standards specification to which the standards mark refers.

(2) Any person who contravenes this section is guilty of an offence.

(3) An Inspector shall enter at anytime on production of suitable identification, any premises or place in order to ascertain if that standards mark is properly used in accordance with license and shall take all reasonable steps to carry out such an inspection.

PART VII - LABORATORY CERTIFICATION & ACCREDITATION

49. Establishment of Laboratory Certification and Accreditation System

(1) The Director with the approval of the Minister shall establish a system of testing laboratory accreditation or certification to certify that testing laboratories which apply for such certification have the necessary skill or equipment to carry out tests of compliance by commodities, processes, practices or services to standards specification specified in the certificate.

(2) The Director with approval of the Minister may from time to time make rules for accreditation and, certification and publish it in the Gazette.

(3) The granting of certificates pursuant to subsection (1) of this section shall also be published in the Gazette.

(4) The Director with the approval of the Minister may appoint competent; persons or organization either in Fiji or from another country to carry out examination of testing laboratories to ascertain its capability.

(5) The Director on application from a person may cause such examination as considered necessary to ascertain its capability and may either approve the application or may refuse it;

(6) The person whose application is refused may appeal to the Minister, and each such appeal with grounds shall be delivered to the Minister within 14 days of the notification of the refusal by the Director;

(7) The Minister after receipt of the application referred at subsection (6), shall direct that necessary investigation be carried out on receipt of the report of the investigation may direct the Director to issue the standards mark or dismiss the appeal.

PART VIII - MISCELLANEOUS

Offences, Court Enforcement, Defences and Remedies

50. Penalties

(1) Subject to subsections (2) and (3) any person guilty of an offence under this Decree for which no other penalty is provided is liable on conviction to a fine not exceeding \$5,000.00 for a first offence and \$10,000.00 for a second or subsequent offence.

(2) Every person who commits an offence against this Decree is liable in addition to the fine in subsection (1); and

(3) Where a person is convicted of any offence against this Decree and the court by which he is convicted is of the opinion that the offence was committed to defraud, that person shall be liable, in addition to or instead of any other penalty, to imprisonment for a term not exceeding three years.

(4) The maximum penalty for an offence under a provision of this Decree committed by a body corporate is a fine that is five times the fine provided for in the provision or, as the case may be, a fine that is five times the fine provided for in subsection (1).

(5) If a person is convicted of an offence under this Decree and the court considers that the commission of the offence caused another person to suffer pecuniary loss, the court may order the convicted person to pay to the other person a specified amount of compensation for the loss.

(6) The court may make such an order whether or not it imposes a penalty for the offence.

(7) The amount ordered to be paid may be recovered in a court of competent jurisdiction as a debt due by the convicted person to the other person.

(8) Unless otherwise expressly provided, any goods or services in connection with which any offence against this Decree is committed may, on conviction of any person guilty of the offence, be forfeited to the state by order of the court, and such forfeiture may, in the case of goods or articles extend to the whole of any similar articles found on the defendant's premises or in his possession at the time the offence was committed.

51. Discretionary Exemptions

(1) The Minister may, upon the application of any person, notice in writing and publishing the notice in the Gazette, grant an exemption from compliance with any specified provision of the Decree in relation to any specified goods or class of goods, where the Minister is satisfied-

(a) that the goods are or were intended for export from Fiji and it is reasonable that the exemption be granted;

(b) that the goods were brought into Fiji and it is reasonable that the exemption be granted; or

(c) that having regard to the particular circumstances and the general purposes of this Decree it is reasonable that the exemption be granted.

(2) An exemption granted under this section may -

(a) apply (in addition to the applicant) to or any person specified in the notice;

(b) be permanent or for a period specified in the notice; and

(c) be unconditional or subject to conditions specified in the notice.

(3) The Minister may, for good cause, by giving notice in writing to the applicant for an exemption granted under this section and publishing the notice in the Gazette, vary or revoke the exemption or any condition of the exemption or impose a further such condition. Any person to whom an exemption under this section applies who breaches, or fails to comply with, any condition of the exemption shall be guilty of an offence.

52. Defences.

(1) In proceedings for an offence against this Decree it shall, subject to subsection (2) of this section, be a defence for the person charged to prove -

(a) that the commission of the offence was due to a mistake, to reliance on information provided to him by, or the act or default of, another person other than his employee, or to some cause beyond his control; and

(b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) In proceedings for an offence against this Decree, a person shall not, without the leave of the court, be entitled to rely upon the defence that the commission of an offence was due to the act or default of another person or to reliance on information provided to him by another person unless, within seven days before the hearing, he has served on the complainant a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

53. Contracts Not Avoided for Breach of Decree.

A contract for the supply of goods or services is not rendered void or unenforceable by reason only of any breach of or non-compliance with any provision of this Decree.

54. Evidence by Certificate.

(1) A certificate issued by the Director or Chief Inspector or an Inspector in relation to any matters of a prescribed kind shall, in any proceedings under this Decree, be accepted as proof of those matters in the absence of proof to the contrary.

(2) A document purporting to be a certificate referred to in subsection (1) of this section shall, in any proceedings under this Decree, be accepted as such in the absence of proof to the contrary.

55. Evidentiary Provisions.

(1) In proceedings for an offence against this Decree, where it appears to the court from an examination of any information provided in relation to any goods or services, that the information has been provided by, or on behalf of, any person whose name appears therein or whose identity may be inferred therefrom it shall, in the absence of proof to the contrary, be presumed that the information was provided by, or on behalf of, that person.

(2) In proceedings for an offence against this Decree, where it appears to the court from an examination of any packaged goods that the goods were packaged by, or on behalf of, any person whose name appears therein or whose identity may be inferred therefrom or were packaged at a time or place directly or indirectly indicated thereon, it shall, in the absence of proof to the contrary, be presumed that the goods were packaged by, or on behalf of, that person or at that time or place.

(3) In proceedings for an offence against this Decree, an allegation in the complaint that the defendant is a body corporate incorporated under the law shall, in the absence of proof to the contrary, be accepted as proof of the matter alleged.

(4) In proceedings for an offence against this Decree, an allegation in the complaint that a person is an Inspector, shall in the absence of proof to the contrary, be accepted as proof of the matter.

56. Offences by Bodies Corporate.

(1) Where a body corporate is guilty of an offence against this Decree, every director and other officer and the manager of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for that offence unless he proves that he did not know and could not reasonably be expected to have known of the commission of the offence or that he exercised all due diligence to prevent the commission of the offence.

57. Offences Due to Act or Default of Other Person.

Where a person has committed an offence against this Decree, or would have committed an offence against this Decree, but for the fact that he could establish a defence under section 52 of this Decree, and the offence, or what would have constituted the offence, was due to the act or default of another person-

(a) that other person-

(i) shall be guilty of an offence and liable to the same penalty as is prescribed for the first mentioned offence; and

(ii) may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first mentioned person;

and

(b) the first mentioned person shall be a competent and compellable witness in any proceedings taken against that other person in respect of the offence -

58. Compensation.

(1) A person who suffers loss through the failure of a manufacturer or supplier to comply with a provision of this Decree (or jointly from them both) for the loss may recover compensation in the same way as damages for a tort.

(2) If in proceedings for the compensation it is established that the person claiming compensation contributed to his or her loss, that fact may be reflected in any award of compensation to that person.

(3) A court by which a manufacturer or supplier is convicted of an offence may on application by a person claiming to have suffered loss in consequence of the offence, order the convicted person, to pay to that person an amount fixed by the court by way of compensation under this section.

59. Statutory Remedies to be Non-Exclusive.

The remedies for which this Decree provides are not mutually exclusive; hence, the fact that a person seeks or obtains one such remedy does not preclude that person from pursuing or obtaining another or others.

60. Regulations.

(1) The Minister may make such regulations prescribing anything which is required to be prescribed and generally for the better carrying into effect of the provision of this Decree.

(2) Prescribing a penalty for any offence against any regulation not exceeding -

(a) a fine of \$5,000 for a first offence or a fine of \$10,000 for a second or subsequent offence;

(b) where a court is of opinion that an offence under the regulations of which a person is convicted was committed to commit fraud, imprisonment for a term not exceeding three years in addition to or instead of any fine; and

(c) where an offence has been committed by a body corporate a fine which is five times the fine provided for under sub-paragraph (a) of this paragraph.

Made this 6th day of May 1992.

P.K. GANILAU
President of the Sovereign
Democratic Republic of Fiji and
Commander-in-Chief
