

## FINANCIAL MANAGEMENT ACT 2004

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## ACT NO. 17 OF 2004

### An Act

#### TO REGULATE THE FINANCIAL MANAGEMENT SYSTEM OF THE STATE AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands –

#### PART 1 – PRELIMINARY

##### *Short title and commencement*

1. – (1) This Act may be cited as the Financial Management Act 2004.
- (2) This Act commences on –
  - (a) 1st January 2005, unless a notice is published under subsection (3); or
  - (b) 1st January in a later year specified in a notice under subsection (4).
- (3) The Minister may, by notice published in the *Gazette* before 1st January 2005, defer the commencement of this Act.
- (4) If a notice is published under subsection (3), the Minister may, by that notice or another notice published in the *Gazette*, appoint 1st January in a later year as the date of commencement of this Act.
- (5) Despite the above provisions of this section, this Part, section 84 and Schedule 3 commence on the date on which this Act is published in the *Gazette*.

##### *Interpretation*

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

“agency assets” means assets held or managed by a budget sector agency, but does not include –

- (a) state assets;
- (b) trust money; or
- (c) other money within the meaning of this Act;

“agency revenue”, in relation to a budget sector agency, means revenue received or receivable by the agency, and includes revenue that the agency is authorised to retain under this Act or any other written law and revenue from –

- (a) commercial, professional or other fees charged by the agency;
- (b) cost recovery charges imposed by the agency;
- (c) gifts or bequests to the agency;
- (d) the sale or use of agency assets; or
- (e) insurance recoveries relating to agency assets,

but does not include -

- (f) state revenue; and
- (g) money declared by the Finance Instructions not to be agency revenue for the purposes of this Act;

“Annual Appropriation Act” means an Appropriation Act that has been introduced in the House of Representatives as a Bill as part of the budget papers for an annual budget under section 13;

“appropriated money” means an amount appropriated by an Appropriation Act;

“Appropriation Act” means an Act that appropriates public money or varies the purpose for which public money is already appropriated;

“appropriation category”, in relation to an appropriation, means a division, subdivision or subdivisional item specified in the budget estimates or in an authorisation or direction under this Act in relation to the relevant head of appropriation;

“associated entity”, in relation to a department, means an entity that is within or part of the department or that is associated with the department, whether the entity is titled or referred to as a department, subdepartment or office or in some other way, and includes a disciplined Force within the meaning of the Constitution; and “entity associated with a department” has a corresponding meaning;

“Auditor-General” means the person appointed as or to act as Auditor-General under the Constitution;

“borrowing” means any borrowing of money (including by way of bonds or treasury bills) or other receipt of credit, whether secured or unsecured, and includes any hire purchase agreement or finance lease arrangement, but does not include the purchase of goods or services on credit for a period of 90 days or less;

“budget sector agency”, in relation to a financial year, means a state entity that administers an appropriation for that year under an Appropriation Act or this Act;

“chief executive officer” means -

- (a) in relation to a department – the person who is responsible under section 110 of the Constitution for the management of the department;
- (b) in relation to the following parliamentary bodies –
  - (i) the Office of the Auditor-General – the Auditor-General;
  - (ii) the Human Rights Commission and the Office of the Ombudsman – the Ombudsman;

- (iii) the Office of the Secretary-General to the Parliament – the Secretary-General to the Parliament; or
- (c) in relation to any other state entity – the person designated as or performing the functions of chief executive officer of the entity, however that designation is expressed;

“commercial statutory authority” has the meaning given by the Public Enterprise Act 1996;

“company” means a company formed and registered under the Companies Act (Cap. 247) or an existing company within the meaning of that Act;

“control” of an entity means the power of another entity to govern the financial and operational policies of the entity so as to benefit from its activities;

“department” means a department of the public service for the management of which a person is responsible under section 110 of the Constitution, whether the department is titled or referred to as a ministry, department or office or in some other way;

“entity” means any body (whether corporate or unincorporate);

“Finance Instructions” means the instructions issued by the Minister under section 30 and in force for the time being;

“financial year” means a year ending on and including 31st December or such other date as the Minister may from time to time determine, either generally or for any particular state entity;

“government commercial company” has the meaning given by the Public Enterprise Act 1996;

“government company” –

- (a) means a company over which the State or the Government has the capacity to exercise control; and
- (b) in respect of each such company, includes all entities under the control of the company;

“loan” means any loan of money or other provision of credit, whether secured or unsecured;

“loss” means -

- (a) loss of public money; or
- (b) loss incurred through the loss or destruction of, or damage to, state assets or agency assets;

“Ministry of Finance” means the department administered by the Minister and responsible to the Minister for the administration of this Act;

“off-budget state entity” means a state entity that is not a budget sector agency;

“other money” means money held by a budget sector agency, other than public money and trust money;

“outcomes” means the impacts that the Government has on the community;

“outputs” means the services or products that a budget sector agency provides to or for the community on behalf of the Government;

“parliamentary body” means –

- (a) the Office of the Auditor-General, including staff of or attached to the Office;
- (b) the Human Rights Commission, including staff of or attached to the Commission;
- (c) the Office of the Ombudsman, including staff of or attached to the Office;

- (d) if the Human Rights Commission and the Office of the Ombudsman are administered jointly – the joint entity consisting of that Commission and Office and the relevant staff; or
- (e) the Office of the Secretary-General to the Parliament, including staff of or attached to the Office;

“person” includes an entity and an individual;

“public money” means revenue or money raised or received for the purposes of government;

“quarter” means a period of 3 months ending with the month of March, June, September or December;

“raising a loan” includes -

- (a) borrowing;
- (b) entering into hire purchase agreements;
- (c) entering into finance lease arrangements;
- (d) accepting a debt on assignment from other persons;

“responsible authority” for a state entity means –

- (a) in the case of a department – the chief executive officer of the department; or
- (b) in the case of a state entity that is not a department –
  - (i) the board or other governing body of the entity; or
  - (ii) the chief executive officer of the entity if it does not have a board or other governing body;

“state assets” means -

- (a) assets held or managed by a budget sector agency for the State; and
- (b) assets held or managed by a budget sector agency that are declared by the Minister in the Finance Instructions to be state assets;

“state entity” means a department, parliamentary body, statutory authority or government company, and includes an associated entity that is taken to be a separate department under section 80;

“state revenue” means any or all of the following kinds of revenue –

- (a) taxes and regulatory fees in the nature of taxes;
- (b) fines and penalties;
- (c) grants-in-aid;
- (d) revenue from the sale or use of state assets;
- (e) insurance recoveries relating to state assets;
- (f) revenue received or receivable by a budget sector agency that is declared by the Finance Instructions to be state revenue for the purposes of this Act,

but does not include revenue that a state entity is authorised to retain under this Act or any other written law;

“statutory authority” means –

- (a) an authority, corporation, instrumentality or office –
  - (i) that is established by or under an Act;
  - (ii) that has control of funds; and
  - (iii) that either consists of at least one person appointed to it by or under an Act or has a board or other governing body that consists of at least one person appointed to it by or under an Act;
- (b) an authority, corporation, instrumentality or office that is stated to be a statutory authority by the Act by or under which it is established, either –
  - (i) specifically for the purposes of this Act; or
  - (ii) generally for the purposes of any Act; or
- (c) a commercial statutory authority,

but does not include an authority, corporation, instrumentality or office that is –

- (d) a parliamentary body;
- (e) a department;
- (f) a local authority within the meaning of the Local Government Act (Cap. 125);
- (g) a company; or
- (h) an entity declared, or of a class declared, by the regulations not to be a statutory authority for the purposes of this Act;

“treasury bills” means debt obligations of the Government that have a maturity period not exceeding one year and that are issued at a discount to their face value;

“table” includes cause to be tabled;

“trust money” means money held by a budget sector agency on trust, other than public money.

(2) If the Finance Instructions assign a meaning to the expression “assets”, “expense”, “liability” or “revenue” for the purposes of this Act or of particular provisions of this Act, the expression has in this Act or those provisions the assigned meaning, unless the context otherwise requires.

(3) For the purposes of paragraph (a) of the definition of “state revenue” in subsection (1), a regulatory fee that is intended to recover the cost of a service from a user of the service is not in the nature of a tax.

#### *Act binds Government*

3. This Act binds the Government.

#### *Extraterritorial operation*

4. This Act extends, as far as possible, to –

- (a) financial transactions;
- (b) balances; and
- (c) acts and omissions;

outside the Fiji Islands.



## PART 2 – FINANCIAL MANAGEMENT GENERALLY

### *Principles of responsible financial management*

5. The principles of responsible financial management are as follows –
- (a) to manage finances over the medium term on a responsible and transparent basis;
  - (b) to manage revenues and expenditure in such a way as to achieve prudent levels of debt;
  - (c) to ensure value for money in the use of money and resources;
  - (d) to manage contingent liabilities in a prudent manner;
  - (e) to report transparently in accordance with relevant accounting and statistical standards.

### *General responsibility of the Minister for financial management*

6. The Minister is responsible for managing the financial affairs of the Government as a whole in accordance with the requirements of the Constitution and this Act and with due regard to the principles of responsible financial management.

### *General responsibility of responsible authorities for financial management*

7. The responsible authority for a state entity is responsible for managing the financial affairs of the entity in accordance with the requirements of this Act and with due regard to the principles of responsible financial management.

### *Responsibility for powers, functions and duties of state entities under this Act*

8. – (1) A power, function or duty expressed to be imposed on a state entity by this Act is exercisable or to be performed by the responsible authority for the entity.

(2) This section does not prevent the delegation of a power, function or duty under this Act or another written law or under other arrangements lawfully available.

## PART 3 – THE CONSOLIDATED FUND AND OTHER FUNDS

### *Consolidated Fund*

9. – (1) The Consolidated Fund in existence before the commencement of this section is continued in existence by this Act.

(2) The Minister may create or close, or alter the designation of, special accounts of the Consolidated Fund.

### *Money payable into Consolidated Fund*

10. – (1) In accordance with section 176 of the Constitution, public money is to be paid into the Consolidated Fund, unless –

- (a) it is payable, by or under a written law, into another fund established for a specific purpose; or
- (b) it may, by or under a written law, be retained by the authority receiving it for the purposes of defraying the expenses of the authority.

(2) Trust money is not payable into the Consolidated Fund.

(3) Other money within the meaning of this Act may, subject to the Finance Instructions, be paid into the Consolidated Fund.

*Withdrawal of money from Consolidated Fund and certain other funds*

11. – (1) In accordance with section 177 of the Constitution, money must not be withdrawn from the Consolidated Fund or from a fund referred to in section 176 (2) of the Constitution except under an appropriation made by law.

(2) Money (including other money within the meaning of this Act) that is not public money and that is paid into the Consolidated Fund, or money that is paid into the Consolidated Fund in error, may be withdrawn from the Consolidated Fund without further appropriation than this Act.

(3) Refunds of unclaimed money may be withdrawn from the Consolidated Fund without further appropriation than this Act.

## PART 4 – RESOURCE ALLOCATION

### Division 1 – Budget process

#### *Strategic policy statement*

12. – (1) The Minister must table a strategic policy statement in the House of Representatives on or before 30th June in each financial year.

(2) The strategic policy statement must include –

- (a) a statement of the Government’s broad objectives for the next financial year and for at least the following 2 financial years;
- (b) a statement of the Government’s financial targets or limits for the next financial year and for the following 2 financial years, relating to –
  - (i) the budget result as a proportion of gross domestic product;
  - (ii) government debt as a proportion of gross domestic product;
  - (iii) government debt servicing as a proportion of gross domestic product; and
  - (iv) contingent liabilities as a proportion of gross domestic product;
- (c) a statement comparing the figures provided under paragraph (b) with –
  - (i) for each type of financial target or limit, the actual results for the 2 previous financial years; and
  - (ii) an estimate of the results for the current financial year; and
- (d) an explanation as to how those financial targets and limits compare with any international benchmarks that are relevant to the Fiji Islands economy.

#### *Annual budget*

13. – (1) On or before 30th November in each financial year, the Minister must table in the House of Representatives and the Senate budget papers for an annual budget for the next financial year.

(2) The budget papers for a financial year (the “budget year”) comprise -

- (a) a Bill for an Annual Appropriation Act that appropriates money in the Consolidated Fund for the budget year and specifies each head of appropriation;
- (b) budget estimates that –
  - (i) specify the appropriation categories for each head of appropriation in the Bill;
  - and

- (ii) include estimates of amounts appropriated by other Acts (other than this Act) for the budget year; and
- (c) one or more budget statements that include –
  - (i) the estimated budget result for the budget year (as budget surplus or budget deficit);
  - (ii) a summary of the outcomes the Government is seeking to achieve in the budget year;
  - (iii) a summary of any new policy actions to be undertaken and the outcomes they are directed at achieving;
  - (iv) economic forecasts for the budget year and for the next 2 financial years;
  - (v) financial forecasts (including any revision of the financial targets or limits specified in the most recently tabled strategic policy statement) for the budget year and for the next 2 financial years;
  - (vi) a statement as to whether the financial forecasts for the budget year adopt the financial targets and limits for the budget year as specified in the most recently tabled strategic policy statement or whether they adopt revised financial targets or limits;
  - (vii) information on significant one-off revenue and expenditure items included in the financial forecasts, including aid funding;
  - (viii) a statement of the major assumptions underlying the economic and financial forecasts;
  - (ix) estimates of revenue retained by a state entity and of the expenditure of that revenue without appropriation as authorised by or under another Act, as referred to in section 176 (2) of the Constitution.

(3) The budget estimates and budget statements are to be prepared as far as practicable in accordance with internationally accepted standards.

(4) The budget estimates may denote items in the estimates as requiring “requisition to incur expenditure” (as referred to in section 15).

## Division 2 – Control of expenditure of public money

### *Appropriated money*

14. – (1) Subject to the Constitution and this Act, expenditure of money appropriated by an Appropriation Act from the Consolidated Fund or any other fund may be incurred only in accordance with the authorisation effected by the Appropriation Act as indicated in the Act and any applicable appropriation categories specified in relation to the head of appropriation.

- (2) Each appropriation is to be administered by –
- (a) the budget sector agency specified in the Appropriation Act concerned or the budget estimates tabled with the Bill for that Act as being responsible for its administration; or
  - (b) the Ministry of Finance if no agency is so specified.

### *Requisition to incur expenditure*

15. – (1) The approval of the Minister is required before expenditure is incurred on items denoted in the relevant budget estimates as requiring “requisition to incur expenditure”.

- (2) Accordingly, the Minister may give authorisations for the purposes of subsection (1).

*Virement of appropriation for budget sector agencies other than parliamentary bodies*

16. The Minister may, in writing and without further appropriation than this Act, authorise the transfer of any unspent amount in an appropriation category within a head of appropriation administered by a budget sector agency (other than a parliamentary body) to another appropriation category within that head of appropriation.

*Virement of appropriation for parliamentary bodies*

17. The chief executive officer of a parliamentary body may, in writing and without further appropriation than this Act, authorise the transfer of any unspent amount in an appropriation category within a head of appropriation administered by the body to another appropriation category within that head of appropriation.

*Lapsing of appropriation*

18. An appropriation made by an Annual Appropriation Act lapses at the end of the financial year to which it relates, except to the extent provided by section 19.

*Carry-over of appropriation*

19. – (1) If an amount appropriated by an Annual Appropriation Act for a financial year -  
 (a) has not been used in that financial year; or  
 (b) is unlikely to be used in that financial year,

the Minister may authorise the carry-over to the following year of all or part of the unused appropriation that relates to known liabilities as at a particular date, and the amount authorised for carry-over may be used accordingly in that following year, subject to such conditions as the Minister specifies in the authorisation.

(2) If -

- (a) an authorisation under subsection (1) is made as at a date before the end of the financial year to which the unused appropriation relates; and
- (b) some or all of the appropriated amount is subsequently used in that financial year,

the amount authorised for carry-over is reduced accordingly.

(3) The amount authorised for carry-over under subsection (1), reduced if and as required under subsection (2), is appropriated for the year in which it is used, without further appropriation than this Act.

*Revenue retention*

20. – (1) The Minister may, with the approval of the Cabinet, authorise a budget sector agency to retain specified agency revenues.

(2) If a budget sector agency is authorised to retain agency revenues, those revenues are appropriated to that entity from the Consolidated Fund or other fund into which they were paid, without further appropriation than this Act.

*Reallocation of appropriations on assignment of government business*

21. – (1) If ministerial responsibility is assigned by a ministerial assignment in a way that is not reflected in the most recent Annual Appropriation Act or in the budget estimates tabled with the Bill for that Act, the Minister may authorise amounts appropriated by that Act to be reallocated -

- (a) to new heads of appropriation and appropriation categories to be administered by the same or different budget sector agencies; or
  - (b) between existing heads of appropriation and appropriation categories to be administered by the same or different budget sector agencies,
- or both, in order to reflect the new assignment of ministerial responsibility.

(2) Details of the reallocation under this section are to be published in the Gazette as soon as possible after the authorisation is given.

(3) The amounts reallocated under this section are taken to be appropriated by the most recent Annual Appropriation Act to the heads of appropriation and appropriation categories as indicated in the authorisation, without further appropriation than this Act.

(4) The power of the Minister to give authorisations under this section cannot be delegated under this Act.

(5) In this section –

“ministerial assignment” means an assignment by the President of responsibility to a Minister under section 103 of the Constitution.

#### *Redeployment of appropriation*

22. – (1) The Minister may authorise the redeployment of amounts appropriated by the most recent Annual Appropriation Act for administration by the Ministry of Finance to the heads of appropriation and appropriation categories to be administered by one or more other budget sector agencies.

(2) The Minister may authorise the redeployment of amounts appropriated by the most recent Annual Appropriation Act for administration by a budget sector agency (other than the Ministry of Finance) to the heads of appropriation and appropriation categories to be administered by one or more other budget sector agencies.

(3) The amounts redeployed under subsection (1) are taken to be appropriated by the most recent Annual Appropriation Act to the heads of appropriation and appropriation categories as indicated in the authorisation, without further appropriation than this Act.

(4) A statement of amounts redeployed under subsection (2) must be included in the first Bill for an Annual Appropriation Act after the authorisation is given, unless it is included in an earlier Appropriation Act.

(5) The amounts redeployed under subsection (2) are taken to be appropriated by the most recent Annual Appropriation Act to the heads of appropriation and appropriation categories as indicated in the authorisation, without further appropriation than this Act, pending enactment of the legislation referred to in subsection (4).

(6) The power of the Minister to give authorisations under this section cannot be delegated under this Act.

*Authorisation pending enactment of Annual Appropriation Act*

23. – (1) This section applies, in accordance with section 178 of the Constitution, if the Annual Appropriation Act for a financial year has not come into operation by the beginning of the year.

(2) The Minister may authorise government expenditure for the ordinary services of the Government in advance of appropriation, and that expenditure may be incurred and paid accordingly.

(3) The total amounts involved in authorisations for the financial year under this section for the ordinary services of the Government must not exceed one-third of the appropriations made for the ordinary services of the Government in respect of the preceding financial year.

(4) The Minister is to allocate the amounts involved in authorisations under this section to particular heads of appropriation and appropriation categories.

(5) The amounts of expenditure referred to in this section are taken to be appropriated, without further appropriation than this Act, pending the coming into operation of the Annual Appropriation Act for the financial year.

(6) On the coming into operation of the Annual Appropriation Act for the financial year, the amounts involved in authorisations under this section for the year and already withdrawn are taken to have been appropriated to the heads of appropriation and appropriation categories referred to in subsection (3) and to have been withdrawn in accordance with that Act.

*Expenditure for emergencies*

24. – (1) If a state of emergency is declared under a written law, the Minister may authorise such government expenditure to meet the emergency as is approved by the Cabinet, where -

(a) the money involved has not already been appropriated; or

(b) the money has already been appropriated for another purpose,

and that expenditure may be incurred and paid accordingly.

(2) A statement of expenditure incurred and paid under this section must be included in the first Bill for an Annual Appropriation Act after the expenditure is incurred and paid, unless it is included in an earlier Appropriation Act.

(3) The amounts of expenditure referred to in this section are taken to be appropriated by the most recent Annual Appropriation Act, without further appropriation than this Act, pending enactment of the legislation referred to in subsection (2).

Division 3 – Other matters

*Trust money*

25. – (1) Trust money is to be accounted for separately from public money and other money within the meaning of this Act.

(2) Trust money is to be kept in a separate bank account pending its withdrawal (including withdrawal for use or investment).

(3) Subject to section 55 (2) and to the objects of the relevant trust, trust money is to be accounted for, banked, invested, reported on and otherwise controlled in accordance with the Finance Instructions.

*Accrual accounting*

26. – (1) The Finance Instructions may make provision for the adoption of accrual accounting principles, policies and procedures for whole of government reporting or budget sector agency reporting or both.

(2) Provisions for the adoption of accrual accounting principles, policies and procedures may apply differently for different aspects of accounting and for different budget sector agencies or classes of budget sector agencies and may provide for the principles, policies and procedures to be adopted in a staged manner.

*Alteration of arrangements*

27. The President, on the advice of the Cabinet, may, if satisfied that compliance with a provision of Division 1 within a time or period specified in that Division is or will be difficult or impossible because of an election or for any other reason, give such directions regarding the time or period for compliance with the provision as appear to the President to be appropriate, and the provision has effect accordingly.

## PART 5 – BUDGET SECTOR AGENCIES

### Division 1 – Responsibilities of chief executive officers and other responsible authorities

*Responsibilities*

28. – (1) The responsible authority for a budget sector agency is responsible for the following –
- (a) the effective, efficient and economical management of the agency;
  - (b) ensuring the proper administration by the agency of an appropriation administered by it;
  - (c) ensuring that money and property of or under the control of the agency are properly accounted for;
  - (d) the setting of fees or charges for agency revenue, subject to the Finance Instructions and any other relevant written law;
  - (e) the collection of agency revenue and state revenue so far as the revenue relates to the functions of the agency or the agency is otherwise responsible for its collection;
  - (f) the authorisation of expenditure in relation to the agency;
  - (g) the maintenance of an effective system of internal control for money and property;
  - (h) the preparation and provision of annual corporate plans for the agency;
  - (i) the preparation of annual reports and financial statements for the agency;
  - (j) the issue of a finance manual for the agency;
  - (k) compliance by the agency with applicable requirements of this Act, the regulations and the Finance Instructions;
  - (l) any other responsibilities assigned by or under other provisions of this Act or other written laws.

(2) This section does not authorise the responsible authority for a budget sector agency to vary the amount of fees or charges or of any other agency revenue that is set by a written law.

*Power to incur expenditure*

29. Subject to this Act and the Finance Instructions, the responsible authority for a budget sector agency –
- (a) may incur expenditure of money appropriated for administration by the agency; and
  - (b) accordingly, and without limiting the authority's powers, may enter into contracts involving the expenditure of appropriated money.

Division 2 – Finance Instructions

*Finance Instructions*

30. The Minister may, from time to time, issue and amend Finance Instructions.

*Application of and compliance with Finance Instructions*

31. The Finance Instructions apply to and are to be complied with by budget sector agencies, and may apply differently to different agencies or classes of agencies.

*Contents of Finance Instructions*

32. – (1) The Finance Instructions may provide for any matters contemplated by other provisions of this Act to be prescribed or dealt with by the Finance Instructions.
- (2) The Finance Instructions may also provide for any or all of the following –
- (a) principles, policies and procedures for the management of –
    - (i) revenue, including user charges;
    - (ii) expenditure, including purchasing, and expenses;
    - (iii) assets, including cash management;
    - (iv) liabilities and contingent liabilities;
    - (v) information systems;
  - (b) without limiting paragraph (a), the establishment, functions and procedures of tender boards, whether for budget sector agencies generally or for particular budget sector agencies;
  - (c) matters relating to corporate planning;
  - (d) matters relating to annual reports and financial statements;
  - (e) the preparation and provision of financial and performance information;
  - (f) the application of accounting standards and policies.

Division 3 – Annual corporate plans

*Annual corporate plans*

33. Each budget sector agency must prepare and make available, for each financial year, an annual corporate plan, in the manner and times required by the Finance Instructions, and containing the particulars required by or under the Finance Instructions, the Public Service Act 1999 and any other Act.

Division 4 – Write-off and other matters

*Write-off, refunds and ex gratia payments*

34. – (1) Subject to this or any other Act, the Minister may –
- (a) write off losses in respect of public money, state assets and agency assets;
  - (b) approve refunds of public money; and
  - (c) approve ex gratia payments of public money.



(2) The power to write off losses includes the power to abandon or discontinue the recovery of amounts of revenue, debts and overpayments.

*Duties of budget sector agencies regarding losses*

35. The Finance Instructions may require each budget sector agency –
- (a) to undertake appropriate recovery action for losses;
  - (b) to maintain a register of losses containing the details required to be recorded by the Finance Instructions; and
  - (c) to include details about losses and recovery action in the audited financial statements to be included in the agency's annual report.

*Delegation of authority to write off losses*

36. – (1) The Minister may delegate under this Act the Minister's power to write off losses to the responsible authority for a budget sector agency only if satisfied that –
- (a) the agency has issued a finance manual that satisfies the requirements of the Finance Instructions;
  - (b) the agency is maintaining a register of losses in a manner that satisfies the requirements of the Finance Instructions; and
  - (c) other conditions specified in the Finance Instructions or determined by the Minister have been satisfied.

(2) Without limiting section 74, the responsible authority for the agency may, if and as authorised to do so by the Finance Instructions or instrument of delegation, sub-delegate the power to officers of the agency.

(3) Without limiting section 75, the conditions of a delegation may limit the amount of losses that a delegate or sub-delegate may write off, and may specify different limits for different classes of losses and for different classes of delegates and sub-delegates.

(4) Subsection (1) does not affect the delegation to the chief executive officer of the Ministry of Finance of the power to write off losses.

(5) Nothing in this section requires the power to write off losses to be delegated or prevents its revocation.

## PART 6 – OFF-BUDGET STATE ENTITIES

### Division 1 – Responsibilities of boards and other responsible authorities

*Responsibilities*

37. – The responsible authority for an off-budget state entity is responsible for the following –
- (a) the effective, efficient and economical management of the entity;
  - (b) the maintenance of an effective system of internal control for money and property;
  - (c) the preparation of annual reports for the entity;
  - (d) compliance by the entity with applicable requirements of this Act, the regulations and any other written law;
  - (e) any other responsibilities assigned by or under other provisions of this Act or other written laws.

Division 2 - Regulations

*Regulations applying to off-budget state entities*

38. The regulations may contain provisions applying to off-budget state entities.

*Compliance with regulations*

39. The regulations applying to off-budget state entities are to be complied with by those entities, and may apply differently to different entities or classes of entities.

*Contents of regulations*

40. The regulations applying to off-budget stage entities may provide for -  
(a) any matters contemplated by other provisions of this Act to be prescribed or dealt with by the regulations as applying to off-budget state entities; and  
(b) any matters for which Finance Instructions may be made for budget sector agencies.

*This Division not to apply to certain state entities*

41. This Division does not apply to government commercial companies or commercial statutory authorities.

PART 7 – ACCOUNTABILITY

Division 1 – Whole of government

*Interpretation*

42. In this Division –

“reportable authorisations” means –

- (a) authorisations under section 19 for carry-over to or from a head of appropriation;
- (b) authorisations under section 21 for reallocation of amounts to or from a head of appropriation;
- (c) authorisations under section 22 for redeployment of amounts to or from a head of appropriation;
- (d) authorisations under section 23 for government expenditure in advance of appropriation; and
- (e) authorisations under section 24 for government expenditure in relation to an emergency.

*Quarterly appropriation statements*

43. – (1) The Minister must table in the House of Representatives a quarterly appropriation statement for each of the first, third and fourth quarters of a financial year.

(2) The quarterly appropriation statement for a quarter must be tabled -

- (a) within 2 months after the end of the quarter; or
- (b) if the House is not sitting in the last 7 days of the second month after the quarter and the report has not been tabled, within 3 sitting days of the House after the end of that second month.

- (3) The quarterly appropriation statement for a quarter of a financial year must include –
- (a) for each head of appropriation, a statement specifying the matters set out in subsection (4); and
  - (b) for the whole of government, a statement specifying the matters set out in subsection (5).
- (4) The statement for each head of appropriation must specify the following –
- (a) the actual expenditure for the quarter;
  - (b) the cumulative actual expenditure for the financial year to the end of the quarter (except in the case of the first quarter);
  - (c) the projected expenditure for the financial year;
  - (d) the amount appropriated for the financial year, including details of reportable authorisations relating to that head of appropriation;
  - (e) the budget sector agency administering the appropriation.
- (5) The statement for the whole of government must specify the following –
- (a) the total actual expenditure for the quarter;
  - (b) the total cumulative actual expenditure for the financial year to the end of the quarter (except in the case of the first quarter);
  - (c) the projected total expenditure for the financial year;
  - (d) the total amount appropriated for the financial year.

*Mid-year fiscal statement*

44. – (1) The Minister must table in the House of Representatives a mid-year fiscal statement for the first 6 months of each financial year.
- (2) The mid-year fiscal statement for the period of 6 months must be tabled -
- (a) within 2 months after the end of the period; or
  - (b) if the House is not sitting in the last 7 days of the second month after the period and the report has not been tabled, within 3 sitting days of the House after the end of that second month.
- (3) The mid-year fiscal statement for the period of 6 months must include a statement specifying–
- (a) for each head of appropriation, a statement specifying the matters set out in subsection (4); and
  - (b) for the whole of government, a statement specifying the matters set out in subsection (5).
- (4) The statement for each head of appropriation must specify -
- (a) the expenditure for the period of 6 months;
  - (b) the projected expenditure for the financial year;
  - (c) the amount appropriated for the financial year, including details of reportable authorisations relating to that head of appropriation;
  - (d) the budget sector agency administering the appropriation.
- (5) The statement for the whole of government must specify the following –
- (a) the total revenue and total expenditure, and the surplus or deficit, for the period of 6 months, compared with the revenue and expenditure, and the surplus or deficit, for the corresponding period of the previous financial year;

- (b) the projected total revenue and total expenditure, and the projected surplus or deficit, for the financial year, compared with the actual revenue and expenditure, and surplus or deficit, for the previous financial year.

*Annual reports*

45. – (1) The Minister must table in the House of Representatives a whole of government annual report for each financial year.
- (2) The annual report for a financial year must be table d within 9 months after the end of that year or within a longer period approved for that year by resolution of the House of Representatives.
- (3) The annual report for a financial year must include –
- (a) the whole of government financial statements referred to in section 46;
  - (b) the annual appropriation statement referred to in section 47; and
  - (c) the annual budget statement referred to in section 48.
- (4) The chief executive officer of the Ministry of Finance is responsible for the preparation of whole of government annual reports and the statements required to be included in them.

*Whole of government financial statements*

46. – (1) The whole of government financial statements required to be included in the whole of government annual report for a financial year must include –
- (a) for financial years where the Minister is satisfied that relevant reliable accrual information is available –
    - (i) a statement of financial position;
    - (ii) a statement of financial performance;
    - (iii) a statement of changes in net assets;
    - (iv) a cash flow statement; and
    - (v) notes on significant accounting policies,
 prepared in accordance with international accounting standards relevant to whole of government reporting on an accrual basis; or
  - (b) for financial years where the Minister is satisfied that relevant reliable accrual information is not available –
    - (i) one or more statements of receipts and payments;
    - (ii) a statement of assets and liabilities, including details of cash balances, investments, sinking funds and borrowings; and
    - (iii) a statement of contingent liabilities.
- (2) The whole of government financial statements must –
- (a) be signed by the chief executive officer of the Ministry of Finance; and
  - (b) be as audited by the Auditor-General and be accompanied by the Auditor-General's audit opinion.

*Annual appropriation statement*

47. – (1) The annual appropriation statement required to be included in the whole of government annual report for a financial year must –
- (a) show the actual revenue and expenditure, and surplus or deficit, for the financial year;
  - (b) show the corresponding revenue estimates and appropriations for the financial year;
- and

(c) show details of reportable authorisations relating to the financial year.

(2) The annual appropriation statement must -

- (a) be signed by the chief executive officer of the Ministry of Finance; and
- (b) be as audited by the Auditor-General and be accompanied by his or her audit opinion.

#### *Annual budget statement*

48. – (1) The annual budget statement required to be included in the whole of government annual report for a financial year must –

- (a) show the revenue, expenditure, and surplus or deficit, for each of the 2 previous financial years;
- (b) show the estimated revenue, expenditure, and surplus or deficit, for the financial year;
- (c) show the projected revenue, expenditure, and surplus or deficit, for the next 2 financial years;
- (d) provide a disaggregation of revenue, estimated revenue and projected revenue by economic type;
- (e) provide a disaggregation of expenditure, estimated expenditure and projected expenditure by economic type; and
- (f) include a statement comparing, for each type of financial target or limit specified in the most recently tabled strategic policy statement under section 12 –
  - (i) that target or limit;
  - (ii) any revisions specified in the budget statement or statements under section 13 of that target or limit; and
  - (iii) the actual results.

(2) The annual budget statement is to be prepared as far as practicable in accordance with internationally accepted standards.

#### Division 2 – Budget sector agencies

##### *Annual reports*

49. – (1) Each budget sector agency must prepare and make publicly available, for each financial year, an annual report in the manner and times required by the Finance Instructions.

(2) The annual report must –

- (a) be provided to the responsible Minister within the time set by the Finance Instructions or within a further time approved by the responsible Minister and allowed by the Finance Instructions; and
- (b) be tabled in the House of Representatives by the responsible Minister.

(3) The annual report must be tabled –

- (a) within one week of its being received by the responsible Minister; or
- (b) if the House of Representatives is not sitting in the last 3 days of that week and the report has not been tabled, within 3 sitting days of the House after the end of that week.

(4) The annual report of a budget sector agency for a financial year must –

- (a) demonstrate the agency's performance during the year in terms of its outputs and of its contributions to outcomes;
- (b) include the agency's annual financial statements referred to in section 50; and
- (c) include other information required by the Finance Instructions.

(5) The annual report required by this section for a budget sector agency may be included in the annual report (if any) required by or under another Act for the agency, but the composite report must comply with the requirements of this section.

(6) In this section –

“the responsible Minister” for a budget sector agency means the Minister responsible for the agency or a Minister determined by the Finance Instructions.

*Annual financial statements*

50. – (1) The annual financial statements required to be included in the annual report for a budget sector agency must be prepared in the manner and times required by the Finance Instructions, and contain the particulars required by or under the Finance Instructions.

(2) The annual financial statement for a budget sector agency must –

- (a) be signed by the chief executive officer of the agency or by a person specified for that purpose in the Finance Instructions; and
- (b) be as audited by the Auditor-General and be accompanied by his or her audit opinion.

Division 3 – Off-budget state entities

*Annual reports*

51. – (1) Each off-budget state entity must, subject to the regulations, prepare, submit and publish an annual report under this section for each financial year.

(2) An off-budget state entity’s annual report for a financial year under this section must –

- (a) be prepared, submitted and published in the manner and times required by the regulations;
- (b) be tabled in the House of Representatives in the manner and time required by the regulations;
- (c) include the entity’s annual financial statements referred to in section 52; and
- (d) include other information required by the regulations.

(3) The annual report required by this section for an off-budget state entity may be included in any annual report required under other legislation applying to the entity, but the composite report (including its preparation, submission, publication and tabling) must comply with the requirements of this Division.

(4) The regulations may provide that specified requirements of this section or of regulations made for the purposes of this section do not apply to a particular state entity or class of state entities.

*Annual financial statements*

52. – (1) The annual financial statements required to be included in the annual report for an off-budget state entity must –

- (a) be the financial statements prepared under other legislation applying to the entity; or
- (b) if paragraph (a) does not apply, be prepared in the manner and times required by the regulations and contain the particulars required by or under the regulations.

- (2) The annual financial statement for an off-budget state entity must –
- (a) be signed by the chairperson and the chief executive officer of the entity or by persons specified for that purpose in the regulations; and
  - (b) be as audited under the applicable requirements of the Audit Act (Cap. 70).
- (3) In this section –
- “chairperson” of an off-budget state entity means the person (however designated) who presides at meetings of the board or other governing body of the entity.

*This Division not to apply to certain state entities*

53. This Division does not apply to government commercial companies or commercial statutory authorities.

## PART 8 – BANKING AND OTHER ARRANGEMENTS

### *Banking arrangements*

54. – (1) Except as provided by or under a written law, all the following money –
- (a) public money;
  - (b) trust money;
  - (c) other money within the meaning of this Act,
- is to be kept at a bank approved by the Minister pending its withdrawal (including withdrawal for use or investment).
- (2) The Minister may do any or all of the following -
- (a) open bank accounts for a budget sector agency;
  - (b) operate bank accounts for a budget sector agency;
  - (c) make and amend arrangements with the bank concerned for the efficient management of a budget sector agency’s bank accounts.

### *Investments*

55. – (1) The Minister may invest public money, and other money within the meaning of this Act, as follows –
- (a) on deposit with a bank;
  - (b) in securities issued by a statutory authority;
  - (c) by way of advances authorised by an Act or by resolution of the House of Representatives;
  - (d) in any way in which trustees are authorised to invest money under the Trustee Act;
  - (e) in any way in which the particular money may be invested under the authority of another Act.
- (2) Subject to any other Act and any relevant trust instrument, trust money may be invested as follows –
- (a) in any way in which trustees are authorised to invest money under the Trustee Act;
  - (b) in any way in which the particular money is authorised to be invested under another Act or any relevant trust instrument.

*Overdrafts*

56. The responsible authority for a budget sector agency must not arrange an overdraft for any of the agency's bank accounts without the authorisation of the Minister.

*Collective arrangements*

57. – (1) The Minister may enter into arrangements to collectively manage and invest the balances of some or all state entities.

(2) The power under subsection (1) may only be exercised in relation to an off-budget state entity at the request or with the concurrence of the entity.

*Alteration or termination of arrangements*

58. Arrangements entered into under this Part may be altered or terminated.

PART 9 - GOVERNMENTAL ARRANGEMENTS

*Borrowing*

59. – (1) The Minister may, on behalf of the State, borrow money -

- (a) by raising loans of such amounts as may be necessary for the purpose of funding the budget deficit from time to time and any standing or other appropriations;
- (b) by raising loans of such amounts and for such purposes as the House of Representatives may authorise by resolution; and
- (c) by means of overdrafts or advances, but so that the total amount outstanding by way of overdrafts and advances under this paragraph does not at any one time exceed \$20 million or such greater amount as the House of Representatives may determine by resolution,

on such terms and conditions as the Minister thinks fit and whether within or outside the Fiji Islands.

(2) Money may not be borrowed, on behalf of the State, by any means other than those referred to in subsection (1) except in accordance with Schedule 3 or another written law.

(3) The regulations may make provision for or with respect to any form of borrowing on behalf of the State.

*Hedging transactions and arrangements*

60. – (1) The Minister may, on behalf of the State, enter into a hedging transaction or hedging arrangement, for the purpose of avoiding or reducing the effect of currency or interest rate fluctuations, on such terms and conditions as the Minister thinks fit and whether within or outside the Fiji Islands.

(2) A transaction or arrangement of a kind referred to in subsection (1) must not be entered into unless a debt management policy is prescribed by the regulations and the transaction or arrangement complies with that policy.



*Lending*

61. – (1) The Minister may, on behalf of the State, make loans of public money from the Consolidated Fund on such terms and conditions as the Minister thinks fit and whether within or outside the Fiji Islands.

(2) A loan of public money under this section can only be made in accordance with an appropriation of the money concerned.

(3) A loan of public money under this section or under any other Act must be evidenced by an instrument signed by the Minister.

(3) The regulations may make provision for or with respect to loans under this section or (subject to the other Act) any other Act.

*Guarantees*

62. – (1) Subject to any other Act, the Government may guarantee the financial liability of an entity in respect of a loan or otherwise, but only if the giving of the guarantee is authorised by the House of Representatives.

(2) A guarantee given under subsection (1) is to be evidenced in writing by the Minister.

(3) The authorisation of a guarantee is not to be granted unless the following conditions have been complied with –

- (a) the guarantee is for a financial liability of an entity that is -
  - (i) a statutory authority; or
  - (ii) a government company in which the State holds at least one-half of the voting rights;
- (b) the Minister has recommended the giving of the guarantee;
- (c) the Minister has certified that the entity has been or will be required to execute a written guarantee agreement with the Government;
- (d) the Minister has certified that the guarantee agreement or a related agreement requires or will require the entity to provide such specified kinds of information and at such specified times as the Minister considers appropriate for protecting the interests of the State.

(4) For the purposes of subsection (3), the State holds voting rights in a government company if those rights are exercisable by a person on behalf of the Government.

- (5) Any sum payable by the Government in fulfilment of a guarantee given under this section –
- (a) is appropriated from the Consolidated Fund without further appropriation than this Act; and
  - (b) is taken to be a loan to the entity whose financial liability has been guaranteed.

*Reserve Bank of Fiji*

63. – (1) This Part has effect subject to the Reserve Bank of Fiji Act (Cap. 210).

(2) Without limiting any power of the Minister to delegate powers under this Act, the Minister may delegate his or her powers under this Part to the Reserve Bank of Fiji.

(3) The Minister may appoint the Reserve Bank of Fiji as agent for the Government for any of the purposes of this Part.

*Exclusive authority to enter into transactions or arrangements*

64. No person, other than –  
 (a) the Minister or his or her delegate; or  
 (b) a person authorised by the Minister under this Part,  
 may enter into a transaction or arrangement of a kind referred to in this Part, unless authorised to do so by or under another Act.

PART 10 – MISCELLANEOUS

Division 1 – Unclaimed money

*Unclaimed money*

65. Unless otherwise provided in any Act, at the end of each financial year any money that –  
 (a) is held by or on behalf of any state entity; and  
 (b) has remained unclaimed for a period of one year from the date it was payable to the person entitled to it,  
 must be paid into the Consolidated Fund.

*Payment of previously unclaimed money*

66. If unclaimed money is paid into the Consolidated Fund and a state entity afterwards pays the whole or a part of that amount to a person claiming it, the amount paid to the claimant is to be refunded to the entity from the Consolidated Fund, without further appropriation than this Act.

Division 2 – Surcharges

*Interpretation*

67. In this Division –  
 “surcharge appeal authority”, in relation to a surcharge, means –  
 (a) the chief executive officer of the Ministry of Finance, unless paragraph (b) applies; or  
 (b) the Minister, if the surcharge was imposed by a chief executive officer;  
 “surcharging authority”, in relation to a surcharge imposed or proposed to be imposed –  
 (a) on a person who was an officer of a budget sector agency at the relevant time, means an officer of the Ministry of Finance authorised to impose surcharges of the relevant kind by or under the Finance Instructions, unless paragraph (b) or (c) applies;  
 (b) on a person who is, or was at the relevant time, a chief executive officer (other than the chief executive officer of the Ministry of Finance), means the chief executive officer of the Ministry of Finance; or  
 (c) on a person who is, or was at the relevant time, the chief executive officer of the Ministry of Finance, means a chief executive officer designated for the purpose by the Minister.

*Imposition of surcharge*

68. – (1) If a budget sector agency –
- (a) incurs a loss of money or property through an act or omission of a person who was an officer of the agency at the time of the act or omission; and
  - (b) has taken reasonable steps to recover the money or property or the value of the property but is unsuccessful in recovering the whole or a part of it within a reasonable period,

a surcharging authority may require the person to show cause within a specified period (not exceeding 4 weeks or a longer period allowed by the Finance Instructions) why the person should not be surcharged under this Division with an amount to cover the unrecovered loss.

- (2) If –
- (a) the surcharging authority is not satisfied with the person’s explanation; or
  - (b) the person does not offer an explanation within the specified period or a longer period allowed by the surcharging authority,

the surcharging authority may impose a surcharge on the person to cover the whole or a part of the unrecovered loss.

(3) The surcharged person is to be notified of the surcharge by written notice stating the amount of the surcharge, the time for payment of the surcharge and any arrangements for payment of the surcharge by instalments.

(4) The Finance Instructions may contain provisions about surcharging, including provisions for calculating or limiting the amount that may be imposed by way of surcharge and for describing or limiting the circumstances in which surcharges may be imposed.

(5) A surcharge may not be imposed for losses incurred through normal wear and tear or for losses of a class specified in the Finance Instructions.

(6) In this section –

“unrecovered loss”, in relation to money or property that is the subject of a loss referred to in this section, means so much of the money or property, or the value of the property, as is not recovered.

*Appeal against surcharge*

69. – (1) A surcharged person may appeal to the surcharge appeal authority against the surcharge within one month after being notified of the surcharge or a longer period allowed by the authority.

(2) On an appeal, the surcharge appeal authority may, after any further investigation the authority considers appropriate, do any one or more of the following -

- (a) confirm the surcharge;
- (b) cancel the surcharge in whole or part;
- (c) vary the time for payment of the surcharge;
- (d) provide or vary any arrangements for payment of the surcharge by instalments.

*Withdrawal or variation of surcharge*

70. A surcharging authority may, at any time, and must if required to do so by the Minister, by written notice given to the surcharged person, withdraw a surcharge imposed under this Division, reduce the amount of the surcharge, extend the time for payment of the surcharge or provide or vary arrangements for payment of the surcharge by instalments.

*Recovery of surcharge*

71. The amount of any surcharge imposed under this Division is recoverable as a debt due to the State from the surcharged person.

Division 3 - Delegation

*Delegation by the Minister*

72. – (1) The Minister may, by the Finance Instructions or by a separate written instrument, delegate any powers, functions or duties conferred on the Minister by this Act to the responsible authority for a budget sector agency, and may revoke or vary any such delegation.

(2) A delegation by the Minister under this section to the chief executive officer of a budget sector agency applies only in relation to the agency but, where the agency is a department, may be expressed to apply to all or any specified entities associated with the department or class of specified entities associated with the department.

(3) A delegation by the Minister under this section to the chief executive officer of the Ministry of Finance is not limited by subsection (2), but may be limited in any way the Minister thinks fit.

*Delegation by responsible authorities*

73. The responsible authority for a budget sector agency may, by the agency's finance manual or by a separate written instrument, delegate any powers, functions or duties conferred on the authority by this Act to an officer of the agency, and may revoke or vary any such delegation.

*Sub-delegation*

74. – (1) If authorised to do so by the Finance Instructions or instrument of delegation, a delegate of the Minister under this Division may by written instrument sub-delegate a delegated power, function or duty to an officer of the agency concerned, and may revoke or vary any such sub-delegation.

(2) If authorised to do so by the relevant finance manual or instrument of delegation, a delegate of a responsible authority for a budget sector agency under this Division may by written instrument sub-delegate a delegated power, function or duty to an officer of the agency concerned, and may revoke or vary any such sub-delegation.

(3) Sections 31A to 31C of the Interpretation Act (Cap. 7) apply to sub-delegations under this section in the same way as they apply to delegations.

*Conditions of delegation or sub-delegation*

75. – (1) A power, function or duty delegated under this Act may be exercised or performed only in accordance with any conditions to which the delegation is subject.

(2) A power, function or duty sub-delegated under this Act may be exercised or performed only in accordance with any conditions to which the delegation or sub-delegation is subject.

*Operation of Interpretation Act*

76. – (1) Section 30 of the Interpretation Act (Cap. 7) does not authorise the delegation to a public officer by the Minister of a power, function or duty conferred on the Minister under this Act.

(2) To avoid any doubt, subsection (1) does not apply to any power, function or duty conferred under the Audit Act (Cap. 70).

*Operation of this Division*

77. This Division (other than this section and section 76) does not apply to a power, function or duty that a provision of this Act states cannot be delegated or sub-delegated under this Act, and has effect subject to any restriction imposed by another provision of this Act on the delegation or sub-delegation of any particular power, function or duty.

Division 4 – Other provisions

*Relationship of this Act to other written laws*

78. This Act is to be interpreted as not excluding or limiting the concurrent operation of any written law, but this Act prevails to the extent of any inconsistency with a written law as in force immediately before the date of commencement of this Act under section 1 (2).

*Appropriation of certain money*

79. Money that is taken to be appropriated under a provision of this Act, or that may be dealt with under a provision of this Act, without further appropriation than this Act, is appropriated by this Act.

*Departments and associated entities*

80. If an associated entity of a department (the “original department”) is specified in an Appropriation Act, or the budget estimates tabled with the Bill for that Act, as responsible for a particular head of appropriation –

- (a) the entity is taken for the purposes of this Act and the Audit Act to be a separate department in relation to that head of appropriation; and
- (b) the powers, functions and duties of a chief executive officer under this Act are exercisable in relation to the entity by –
  - (i) the chief executive officer of the original department, unless subparagraph (ii) or (iii) applies;
  - (ii) the person designated in the Finance Instructions as responsible for exercising those powers, functions and duties, unless subparagraph (iii) applies; or
  - (iii) the person designated in the Appropriation Act or budget estimates as responsible for exercising those powers, functions and duties.

*Regulations*

81. The Minister may make regulations to give effect to the provisions of this Act and in particular to provide for any matter required or permitted to be prescribed by regulations for the purposes of this Act.

## Division 5 – Repeals, amendments, and transitional and savings provisions

*Repeals*

82. - (1) The following Acts are repealed –
- (a) Finance Act (Cap. 69);
  - (b) Public Finance Management Act 1999.
- (2) All regulations and rules under the Finance Act are repealed, including the following to the extent that they are in force immediately before the commencement of this section –
- (a) Finance (Advances to Ministers, Members of the House of Representatives and Public Officers) Regulations;
  - (b) Finance (Control and Management) Regulations;
  - (c) Finance (Public Works) Regulations;
  - (d) Finance (Supplies and Services) (General) Regulations;
  - (e) Treasury Bills Rules.

*Amendments*

83. – (1) The Acts mentioned in Schedule 1 are amended as provided in that Schedule.
- (2) The instruments mentioned in Schedule 2 are amended as provided in that Schedule.

*Transitional and savings provisions*

84. Schedule 3 has effect.

## SCHEDULE 1 – AMENDMENT OF ACTS

## LAND TRANSPORT ACT 1998

*Section 27* (Surplus revenues and shortfalls) – Delete “the Minister, in consultation with the Minister responsible for Finance” from subsection (1) and substitute “the Minister responsible for Finance, in consultation with the Minister”.

*Section 29* (Estimates of expenditure) – Insert “, given with the concurrence of the Minister responsible for Finance,” after “approval” in subsection (1).

*Section 29* (Estimates of expenditure) – Insert “as provided under subsection (1)” after “and approved” in subsection (2).

## PUBLIC ENTERPRISE ACT 1996

*Section 3* (Definitions) – Delete the definition of “Minister of Finance” and substitute –  
 “Minister of Finance” means the Minister to whom responsibility for finance or public finance is for the time being assigned;

*Section 100* (Audit) – Delete the section and substitute –

*Audit*

100. – (1) Every Government Commercial Company and Commercial Statutory Authority is required to be audited at least once in every year.

- (2) The audit is to be conducted in accordance with –
- (a) the audit provisions of the Companies Act and (subject to paragraph (b)) other legal requirements; and
  - (b) the Audit Act, except where the audit is conducted by a person appointed by the Board under subsection (3) (b).
- (3) The audit is to be conducted –
- (a) by the Auditor-General or a person authorised or contracted under the Audit Act to carry it out, unless the Government Commercial Company or Commercial Statutory Authority is exempted from audit under that Act by the regulations under that Act; or
  - (b) by a person appointed by the Board, if the company or authority is so exempted from audit.
- (4) The person appointed by the Board under subsection (3) (b) is to be –
- (a) the person that the Minister of Finance directs the Board in writing to appoint; or
  - (b) if the Minister of Finance gives no such direction, the person chosen by the Board.
- (5) This section applies notwithstanding any other law or any contrary provision in a company’s memorandum or articles.
- (6) This section applies also to a subsidiary of a Government Commercial Company or Commercial Statutory Authority.

## PUBLIC SERVICE ACT 1999

*Section 2* (Commencement) – Delete subsection (3).

*Section 3* (Interpretation) – Delete the definition of “chief executive” and substitute –

“chief executive officer” means –

- (a) in relation to a department – the person who is responsible under section 110 of the Constitution for the management of the department; or
- (b) in relation to the following parliamentary bodies –
  - (i) the Office of Auditor-General – the Auditor-General;
  - (ii) the Human Rights Commission and the Office of the Ombudsman – the Ombudsman;
  - (iii) the Office of the Secretary-General to the Parliament – the Secretary-General to the Parliament;

*Section 3* (Interpretation) – Delete “Public Finance Management Act 1999” from the definitions of “department”, “government company”, “parliamentary body” and “statutory authority” and substitute “Financial Management Act 2004”.

*Section 3* (Interpretation) – Delete the definition of “Judicial and Legal Services Commission” and substitute –

“Judicial Service Commission” means the Commission of that name established by section 131 of the Constitution;

*Section 3* (Interpretation) – Delete the definitions of “Minister”, “Ministry”, “Ownership Minister” and “Purchase Minister”.

*Section 3* (Interpretation) – Insert –

“Minister for Finance” means the Minister to whom responsibility for finance or public finance is for the time being assigned;

*Section 3* (Interpretation) – Delete “and Legal Services” from the definitions of “public service” and “service Commission” and substitute “Service”.

*Section 4* (Public Service Values) – Delete “Public Finance Management Act 1999” from subsection (8) and substitute “Financial Management Act 2004”.

*Section 6* (Public Service Code of Conduct) – Delete “Ministry,” from subsections (5) and (11).

*Section 6* (Public Service Code of Conduct) – Insert “officer” after “chief executive” in subsection (11).

*Section 8* (Responsibilities of chief executives) – Delete “chief executives” from the heading and subsection (4) and substitute “chief executive officers”.

*Section 8* (Responsibilities of chief executives) – Delete “chief executive” from subsection (1) and substitute “chief executive officer”.

*Section 8* (Responsibilities of chief executives) – Delete “chief executive of a Ministry” from subsection (2) and substitute “chief executive officer of a department”.

*Section 8* (Responsibilities of chief executives) – Delete “Ministry, including any department or group of departments in the Ministry” from subsection (2) and substitute “department”.

*Section 8* (Responsibilities of chief executives) – Delete “Chief executives” from subsection (3) and substitute “Chief executive officers”.

*Section 9* (Establishment of Senior Executive Service) – Delete “chief executives” from subsection (2) and substitute “chief executive officers”.

*Section 9* (Establishment of Senior Executive Service) – Delete subsection (3) and substitute –

(3) Before designating an office under subsection (2) the Public Service Commission must consult the relevant Commission and the chief executive officer of the department or parliamentary body concerned.

*Section 10* (Purpose of Senior Executive Service) – Delete “Ministry,” and “Ministries and”.

*Section 11* (Public Service Commission’s statutory functions) – Delete “Ministries,” and “Ministries and” wherever occurring in subsection (1).

*Section 11* (Public Service Commission’s statutory functions) – Delete “the Ownership Minister for a statutory authority” from subsection (2) and substitute “the Minister who administers or is responsible for a statutory authority”.



*Section 11* (Public Service Commission's statutory functions) – Delete “the Ownership Minister” from subsection (2) (a) and substitute “that Minister”.

*Section 11* (Public Service Commission's statutory functions) – Delete “(2) In this section” and substitute “(3) In this section”.

*Section 12* (Directions of Minister) – Delete “Public Finance Management Act 1999” from subsection (4) and substitute “Financial Management Act 2004”.

*Section 13* (Inquiries by Public Service Commission) – Delete “Chief executives” from subsection (3) and substitute “Chief executive officers”.

*Section 14* (Annual reports by Public Service Commission) – Delete “Public Finance Management Act 1999” from subsection (3) and substitute “Financial Management Act 2004”.

*Section 15* (Regulations) – Delete subsection (2) (f) and substitute –  
(f) performance agreements to be entered into by chief executive officers which are consistent with the Financial Management Act 2004;

*Section 15* (Regulations) – Delete “chief executives” from subsection (2) (g) and substitute “chief executive officers”.

*Section 15* (Regulations) – Delete “Ministries and” from subsection (2) (h) and (i).

*Section 15* (Regulations) – Insert “Service” after “Public” in subsection (4).

*Section 15* (Regulations) – Delete subsection (5) and substitute –

(5) If regulations are made under this section relating to performance assessment of chief executive officers, they must provide that before completing any such assessment the relevant Commission must consult the Minister for Finance as regards the extent to which the department met its obligations under its annual corporate plan prepared pursuant to the Financial Management Act 2004.

*Section 15* (Delegation) – Delete “Public Finance Management Act 1999” from subsection (6) and substitute “Financial Management Act 2004”.

*Section 16* (Delegation) – Delete “Public Finance Management Act 1999” from subsection (12) and substitute “Financial Management Act 2004”.

*Section 18* (Additional powers of service Commissions) – Delete “Public Finance Management Act 1999” from subsection (3) (b) and substitute “Financial Management Act 2004”.

*Section 20* (Service Commission directions) – Delete “Chief executives” from subsection (4) and substitute “Chief executive officers”.

*Section 21* (Delegation of employment powers to chief executives) – Delete “chief executives” from the heading and substitute “chief executive officers”.

*Section 21* (Delegation of employment powers to chief executives) – Delete “chief executive” wherever occurring in subsections (1) to (3) and substitute “chief executive officer”.

*Section 21* (Delegation of employment powers to chief executives) – Delete “Ministry,” from subsections (1) and (2).

*Section 21* (Delegation of employment powers to chief executive officers) – Delete “Public Finance Management Act 1999” from subsection (3) and substitute “Financial Management Act 2004”.

*Section 31* (References to Permanent Secretaries and other officers) – Delete “Ministry” wherever occurring in paragraphs (a) and (b) and substitute “department”.

*Section 31* (References to Permanent Secretaries and other officers) – Delete “chief executive” from paragraphs (a) and (b) and substitute “chief executive officer”.

*Section 31* (References to Permanent Secretaries and other officers) – Insert after paragraph (d) – (e) a chief executive as defined in section 3 of this Act or within the meaning of this Act is to be construed as a reference to a chief executive officer.

## SCHEDULE 2 – AMENDMENT OF SUBSIDIARY LEGISLATION

### PUBLIC SERVICE (GENERAL) REGULATIONS 1999

*Regulations 3, 5, 6, 8, 10, 11, 15, 17, 21, 23, 24 (2), 26 (2) and (4), 28 (1) and (2), and 33* – Delete “Ministry or”, “ministry or” and “another Ministry” wherever occurring.

*Regulations 6, 21, 26, 27, and 28 (1)* – Delete “chief executive” and “Chief executives” wherever occurring and substitute “chief executive officer” and “Chief executive officers” respectively.

*Regulation 24* (Annual reports) – Delete subregulation (1) and substitute –

(1) This regulation applies to an annual report that the chief executive officer of a department is required to prepare under the Financial Management Act 2004.

*Regulation 24* (Annual reports) – Delete “Public Finance Management Act 1999” from subregulation (4) and substitute “Financial Management Act 2004”.

*Regulation 25* (Corporate plans) – Delete subregulation (1) and substitute –

(1) This regulation applies to an annual corporate plan that the chief executive officer of a department is required to prepare under the Financial Management Act 2004.

*Regulation 25* (Corporate plans) – Insert “annual” after “The”.

*Regulation 25* (Corporate plans) – Delete subregulation (3).

*Regulation 26* (Performance improvement programs) – Delete subregulation (1) and substitute –

(1) The chief executive officer of each department must establish a performance improvement program for his or her department.

*Regulation 28* (Procedures grievances) – Delete subregulations (3) and (4) and substitute –

- (3) In relation to a subdepartment of a department –
- (a) if the head of the subdepartment has put in place procedures under this regulation for the subdepartment, the chief executive officer of the department need not put in place procedures under this regulation that cover the subdepartment; and
  - (b) if the chief executive officer of the department has put in place procedures under this regulation that cover the subdepartment, the head of the subdepartment need not put in place procedures for the subdepartment.

(4) In this regulation –

“action” includes refusal or failure to act;

“entity” means any body (whether corporate or unincorporate);

“subdepartment”, in relation to a department, means an entity that is within or part of the department or that is associated with the department, whether the entity is titled or referred to as a department, subdepartment or office or in some other way.

#### PUBLIC SERVICE (APPEAL) REGULATIONS 1999

*Regulation 15* (Expenses of parties) – Insert after subregulation (2) –

- (3) In this regulation, “public funds” means funds appropriated from the Consolidated Fund by a relevant appropriation.

#### PUBLIC SERVICE APPEAL (EXCLUSION) ORDER 1999

*Item 10* – Delete “An entity listed in Part 2 of Schedule 2 to the Public Finance Management Act 1999 as an entity not owned by the State”.

### SCHEDULE 3 – TRANSITIONAL AND SAVINGS PROVISIONS

#### *Interpretation*

1. In this Schedule –

“date of commencement of this Act” means 1st January in the year in which this Act commences as provided under section 1 (2);

“first transitional year” means the year commencing on the date of commencement of this Act;

“second transitional year” means the year commencing on 1st January in the year following the first transitional year.

#### *Consolidated Fund*

2. – (1) The separate accounts of the Consolidated Fund created by the Finance Act (Cap. 69) and in existence immediately before the date of commencement of this Act are abolished with effect on and from that date.

(2) Transactions occurring before the date of commencement of this Act in or in respect of the Consolidated Fund are to be recorded after that date in any way considered appropriate by the Minister.

*Budget and strategic policy statements*

3. – (1) Estimates of expenditure, and any associated papers, for the first transitional year are to be prepared and dealt with as if this Act had not been enacted.

(2) Despite subclause (1), the Minister may direct that the estimates of expenditure, and any associated papers, for the first transitional year be prepared in accordance with such provisions (with any modifications that are necessary or that are specified or described by the Minister) of this Act as are referred to in the direction.

(3) A strategic policy statement or annual budget papers tabled after the date of commencement of this Act need not include information relating to any financial year preceding the first transitional year.

*Quarterly appropriation and mid-year fiscal statements*

4. This Act does not require the preparation and tabling of quarterly appropriation statements, and mid-year fiscal statements, for the first transitional year and the second transitional year.

*Annual reports for whole of government*

5. – (1) Whole of government annual reports and financial statements for the financial year preceding the first transitional year are to be prepared as if this Act and the Audit (Amendment) Act 2004 had not been enacted.

(2) Annual budget statements need not include information relating to the financial year preceding the first transitional year or any previous financial year.

*Annual reports for state entities*

6. – (1) Annual reports and financial statements for a state entity for the first transitional year and the preceding financial year are to be prepared as if this Act and the Audit (Amendment) Act 2004 had not been enacted.

(2) This Act does not require the preparation of financial statements for a budget sector agency for the first transitional year and the previous financial year, and accordingly any annual report for a budget sector agency for those years is not required to include financial statements.

*Borrowing*

7. – (1) Without limiting or otherwise affecting the power to borrow money under section 59 by way of treasury bills or by another means, the Minister may, on behalf of the State, borrow money by means of treasury bills issued during the first transitional year and the second transitional year (on such terms and conditions as the Minister thinks fit and whether within or outside the Fiji Islands), but so that –

- (a) the amount raised by each issue of treasury bills under the authority of this subclause does not exceed \$25 million; and
- (b) the total amount outstanding by way of treasury bills issued under the authority of this subclause does not at any one time exceed \$150 million or such greater amount as the House of Representatives may determine by resolution.

(2) Any loans raised under the Finance Act and outstanding immediately before the date of commencement of this Act are taken to have been raised under this Act.

(3) Any borrowing authorisations given by the House of Representatives before the date of commencement of this Act and operative immediately before that date are taken to have been given under this Act.

(4) Any treasury bills issued under the Finance Act and outstanding immediately before the date of commencement of this Act are taken to have been issued under this Act.

*General transitional arrangements*

8. – (1) The Minister, if satisfied that compliance with a provision of Part 5, 6 or 7 in or in relation to the first transitional year or the second transitional year may be impossible or unduly difficult, may give such directions with respect to that year as are in his or opinion appropriate for the purpose of facilitating the implementation of this Act.

(2) A direction under this clause may modify the operation of or waive compliance with a provision referred to in subclause (1), may be given unconditionally or with any conditions the Minister considers appropriate for the purpose referred to in that subclause, and must be complied with.