

**REPUBLIC OF FIJI ISLANDS**

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**INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS**

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**BIOSECURITY PROMULGATION 2008**  
(PROMULGATION No. 28 OF 2008)

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**BIOSECURITY PROMULGATION 2008**  
 (PROMULGATION No. 28 of 2008)

**IN EXERCISE** of the powers conferred upon the Interim Government by virtue of the Interim Government Promulgation 2006 to make laws for the peace, order and good government of the Fiji islands or any part thereof with respect to any matter whatsoever;

**AND UPON** the exercise of my own deliberate judgment as President of the Republic of the Fiji Islands as to what is best and good for the beloved people of the Fiji Islands;

**AND UPON** the exercise of the executive authority of the State in accordance with section 85 of the Constitution;

1, Josefa Iloilovatu Uluivuda, on the advice of the Cabinet, promulgate this Law -

TO PREVENT THE ENTRY OF ANIMAL AND PLANT PESTS AND DISEASES INTO THE FIJI ISLANDS; TO CONTROL THEIR ESTABLISHMENT AND SPREAD IN THE FIJI ISLANDS; TO REGULATE THE MOVEMENT OF ANIMAL AND PLANT PESTS AND DISEASES AND OF ANIMALS AND PLANTS AND THEIR PRODUCTS; TO FACILITATE INTERNATIONAL COOPERATION IN RESPECT OF ANIMAL AND PLANT DISEASES; AND FOR RELATED MATTERS

**PART 1 - PRELIMINARY**

*Short title*

1.-(1) This Promulgation may be cited as the Biosecurity Promulgation 2008.

*Interpretation*

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

"aircraft" means any conveyance that may be used in navigation by air;

"animal" means any mammal (other than a human), bird, insect, amphibian, reptile,

fish, mollusk, sedimentary species or other member of the animal kingdom, whether alive or dead, and includes the egg, embryo, ova or semen and any organic animal tissue from which another animal could be produced, and the hide, skin, hair, feathers, shell, horns, hoof, viscera or any other part or portion of the body of an animal;

"animal product" means any article or substance derived from an animal, whether or not in combination with any other article or substance, and includes -

(a) meat, fat, milk, whey, cream, butter, cheese, eggs and other foodstuffs derived from an animal;

(b) the dung, urine, faeces, saliva, bone or blood of an animal, or any article or substance derived from the dung, urine, faeces, saliva, bone or blood of an animal;

(c) the secretions of any animal; and

(d) any product or biological preparation derived from any animal tissue or animal secretion;

"article" means a single unit of any goods;

"authorised" means duly authorised by the Minister, the Board, or biosecurity officer for the purposes of this Promulgation;

"Authority" means the Biosecurity Authority of the Fiji Islands established by section 8;

"baggage" means any goods which accompany a passenger or crew member on a conveyance, including clothing and any article attached or otherwise connected to the body or clothing of any passenger or crew member;

"ballast water" means water (including sediment that is or has been contained in water) used as ballast in a vessel;

"biosecurity" means the control by legal and administrative means of pests and diseases affecting animals, plants and their products, in order to avoid adverse effects from such pests and diseases on the economy and health of the Fiji Islands;

"biosecurity access arrangements" means arrangements under section 35(1) for specifications in respect of new imports;

"biosecurity approved premises" means premises approved for the inspection, testing and treatment of regulated articles under section 88;

"biosecurity authority" of a receiving country means the authority or officer in that country which administers its biosecurity Laws;

"biosecurity certification requirement", in relation to an article, means a requirement by a receiving country for a sanitary or phytosanitary certificate or a certificate of

origin in respect of the article;

"biosecurity clearance", in respect of a regulated article or consignment, means biosecurity import clearance or biosecurity export clearance;

"biosecurity clearance agent" means a person in the Fiji Islands appointed by an importer or exporter under section 21 for the purposes of this Promulgation as the agent of the importer or exporter to supervise the biosecurity clearance of a conveyance, container, animal, plant, animal or plant product or any other goods;

"biosecurity control" of a regulated article means submission of the article for inspection under this Promulgation, and thereafter taking such biosecurity measures, or permitting such measures to be taken, as are directed pursuant to this Promulgation, until biosecurity clearance is granted in respect of the article;

"biosecurity controlled area" means an infested biosecurity controlled area declared under section 70 or a pest-free biosecurity controlled area declared under section 72;

"biosecurity declaration" in relation to an article or consignment means a written statement of the nature, quantity and origin of the article or consignment, and of other details relating to it required by or under this Promulgation;

"biosecurity emergency" means the incursion or suspected incursion of a regulated pest or disease into any area of the Fiji Islands, or the existence of some other biosecurity threat, which requires urgent action, whether by eradication, containment or other response, and for which the powers under this Promulgation are not otherwise adequate;

"biosecurity emergency area" means an area declared in response to a biosecurity emergency under section 77;

"biosecurity entry inspection" of an incoming article means inspection of it pursuant to section 31;

"biosecurity export clearance" of an article means permission under section 46 for the article or consignment to be exported;

"biosecurity export inspection" of an outgoing article means inspection of it pursuant to section 41;

"biosecurity goods holding area" means an area of land at or adjacent to a seaport or airport designated under section 19(3) for the biosecurity inspection of incoming or outgoing articles and consignments;

"biosecurity holding area" means a biosecurity port holding area, a biosecurity goods holding area or a biosecurity postal holding area;

"biosecurity import clearance" of an article means permission under section 33. for the article or consignment to be removed from a biosecurity holding area;

"biosecurity import clearance inspection" of an incoming article means inspection of it pursuant to section 32;

"biosecurity import permit" means a biosecurity import permit issued under section 37;

"biosecurity import requirements" in relation to an article or consignment mean -

- (a) the conditions of a biosecurity import permit, if one is required;
- (b) the requirements of any sanitary or phytosanitary certificate relating to the article or consignment;
- (c) any other biosecurity measures specified under section 34(1)(c);

"biosecurity inspection" of an incoming or outgoing conveyance, article or consignment means an inspection to ascertain whether the conveyance, article or consignment presents a biosecurity risk to the Fiji Islands or a receiving country and whether in other respects it conforms to the requirements of this Promulgation;

"biosecurity landing clearance" means clearance for a vessel or aircraft to land cargo or passengers under section 23;

"biosecurity measure" means the inspection, detention, quarantining, testing, treatment, re-consignment or destruction of a regulated article to eliminate or reduce the biosecurity threat presented by the article;

"biosecurity officer" means -

- (a) the CEO and the Deputy CEO;
- (b) any person appointed as a biosecurity officer under section 11;
- (c) in respect of any particular function, a biosecurity officer to whom the function has been assigned or delegated under section 11 or 13;

"biosecurity point of departure" means a seaport, airport designated under section 18(4) for the exportation of regulated articles;

"biosecurity point of entry" means a seaport, airport designated under section 18(1) for the importation of regulated articles;

"biosecurity port holding area" means an area designated under section 19(1) for the biosecurity inspection of incoming vessels or aircraft;

"biosecurity port quarantine" means quarantine of a vessel or aircraft in a biosecurity port quarantine area under section 24;

"biosecurity port quarantine area" means an area designated under section 24(1) for the quarantine of vessels and aircraft;

"biosecurity port quarantine clearance" means permission under section 27 for a vessel or aircraft to unload passengers and cargo after being in biosecurity port quarantine;

"biosecurity postal holding area" means an area of a mail exchange designated under section 19(5) for the biosecurity inspection of incoming or outgoing postal items;

"biosecurity quarantine" means confinement in isolation of a regulated article and any conveyance, container or packaging in which the article is carried, for inspection, testing and/or treatment; in order to prevent or limit the entry, introduction, establishment or spread of a regulated pest or disease;

"biosecurity quarantine station" means a facility under the control of the Authority and designated under section 48 for the performance of biosecurity quarantine, and includes a temporary biosecurity quarantine station;

"biosecurity register" means the register kept by the Authority under section 81;

"biosecurity risk" means the likelihood of the introduction, establishment or spread of a pest or disease which would adversely affect animals, plants, human beings, the environment or economic activities, and the likely extent of such harm;

"biosecurity risk assessment" in relation to a regulated article means evaluation of the biosecurity risk posed by the article;

"biosecurity specifications" means biosecurity import specifications made under section 34 or biosecurity export specifications made under section 44;

"biosecurity threat" means the threat of harm being caused or adverse effects resulting to animals, plants, human beings, the environment or economic activities as a result of the introduction, establishment or spread of a regulated pest or disease;

"Board" means the Board of the Authority constituted under section 8;

"captain", in relation to an aircraft, means the person for the time being in command or control of the aircraft;

"CEO" means the Chief Executive Officer of the Authority appointed under section 10(1);

"compliance agreement" means an agreement between the Authority and another person as provided for in section 87;

"consignment" means a quantity of goods which arrive in the same vessel or aircraft and which in accordance with this Promulgation can be covered by a single import permit or sanitary or phytosanitary certificate,

"container" means anything in which or by which goods are encased, covered, enclosed or packed, including any material in contact with the goods;

"contamination" means the presence in any item of a pest, not constituting an infestation;

"conveyance" means a ship, aircraft, vehicle or other means of transporting people, goods or animals from one location to another, while it is being used or prepared for such transport;

"country of origin" includes a re-exporting country;

"custodian", in respect of an item, means the occupier of a place or the person in possession and charge of an article, whether lawfully or not, but does not include a person who has possession or control of the item only for the purpose of taking biosecurity measures in respect of it;

"Deputy CEO" means the person appointed as Deputy Chief Executive Officer under section 10(l);

"disease" means any unhealthy condition in an animal or plant which is known or suspected to be caused by an organism, and includes a disease transmissible from animals to humans and a disease capable of harming the environment;

"document" means any mode of communicating information in a retrievable form, including electronically;

"environment" includes -

(a) the ecosystem and its constituent parts, including people and communities;

(b) all natural and physical resources;

(c) the qualities and characteristics of locations, places and areas.

"eradication" means the application of measures to eliminate a pest or disease from an area;

"establishment", in relation to a pest or disease, means the perpetuation in an area of the pest or disease for the foreseeable future after its entry into the area;

"export" means to take or send goods out of the Fiji Islands;

"exporter" means a person who exports or seeks to export goods, other than as the master of the vessel or captain of the aircraft in which the goods are carried; and includes a biosecurity clearance agent;

"fittings" means any stall, box, cage, enclosure, pen, net or other material used for penning, yarding, confining or containing any animal and includes any harness, saddlery, rope, bucket, trough, bedding, utensil or implement used in the handling or keeping of animals or animal products;

"fodder" means any water, meat, vegetables, grain or material used for the food or litter of animals, or the storage of animal products;

"functions of the Authority" means the functions set out in section 9;

"garbage" means waste material derived in whole or in part from plants, fruit, vegetables, meat or other plant or animal material, or other refuse of any kind that has been associated with any plants, fruits, vegetables, meat or other plant or animal material;

"genetic material" means any material of plant, animal, microbial or other origin containing functional units of heredity;

"goods" means any kind of moveable property or thing;

"host material" means any packing material, container, fittings, litter, manure, fodder or similar goods that might have had contact with animals or plants or their products;

"import" means to bring goods, or cause goods to be brought, into the Fiji Islands;

"importer" means a person who imports or seeks to import goods, other than as the master of a vessel or captain of the aircraft in which the goods are carried; and includes a biosecurity clearance agent;

"in transit", in relation to goods, means the goods are not imported into an area but pass through it to another area, whether by the same or another conveyance, during which time they remain enclosed, are not split up, are not combined with other goods, and do not have their packaging changed;

"infected", in relation an animal or plant, means that the animal or plant is diseased or may have been exposed to the risk of infection during the preceding 6 months;

"infested", in relation an item or area, means that there is present in the item or area a living pest or disease;

"inspection", in relation to an item, means an official examination of the item to determine if any pest or disease is present in the item and whether in other respects the item conforms to the requirements of this Promulgation;

"IPPC" means the International Plant Protection Convention of the Food and Agriculture Organization of the United Nations;

"introduction", in relation to a pest or disease, means the entry of the pest or disease into an area, resulting in its establishment in the area;

"item" means any kind of moveable or immovable property or thing, including premises;

"living organism" means any organism capable of transferring or replicating genetic material, including sterile organisms, viruses, viroids, plasmids, bacteriophages and

prions;

"local authority" means the District Office, Provincial Administration Office, and Municipal Office; "master", in relation to a vessel, means the person for the time being in charge or control of the vessel, not being the pilot;

"microbe" means any organism or biotic entity of microscopic proportions, whether unicellular, multicellular or sub-cellular in common form;

"Minister" means the Minister who has responsibility for the administration of this Promulgation; and "Ministry" means the Ministry of that Minister;

"notifiable pest or disease" means a pest or disease which is declared under section 75(1) to be notifiable;

"OIE" means the Organisation International Epizoötique;

"operator" means the operator or owner of the facilities which have been declared as the biosecurity point of entry and departure under this Promulgation.

"organism" means a biotic entity capable of reproduction or replication (other than a human);

"packing material" means any fabric, paper, cardboard, plastic, wood, straw, grass or leaves used in packing any goods, and any other type of material in which goods are covered, enclosed, contained or wrapped,

"pest" means any species, strain or biotype of a plant, animal, microbe or pathogenic agent, or any organism, which -

(a) causes disease; or

(b) is detrimental to or capable of harming or adversely affecting animals or animal products, plants or plant products, human beings or the environment;

"pest risk analysis" means the evaluation by a qualified person of biological or other scientific and economic evidence to determine whether a pest or disease should be regulated and the nature of any biosecurity measures to be taken against it;

"phytosanitary certificate" means a certificate relating to a plant or plant product which -

(a) is issued by the biosecurity authority of the country of origin or re-exporting country;

(b) certifies that the plant or plant product is substantially free from plant pests and diseases and in other respects meets the plant health import requirements of the receiving country; and

(c) is patterned after the model certificates of the IPPC;

"plant" includes seeds, germplasm, any other part of a plant and a dead or preserved plant;

"plant material" means any unmanufactured material of plant origin, including grain;

"plant product" means -

(a) plant material;

(b) timber; and

(c) any product manufactured wholly or partly from one or more plants;

"PPPO" means the Pacific Plant Protection Organisation;

"precautionary principle" means the principle that it is not unreasonable to refuse permission for an activity that has great potential negative impact, even if there is not sufficient scientific data to support a refusal, as incorporated in Article 5.7 of the SPS Agreement;

"premises" means any immovable property, other than land;

"prescribed" means prescribed by this Promulgation or by regulations made under it;

"prohibited import" means a regulated article the importation or ownership of which is prohibited under section 17;

"re-exporting country", in relation any goods, means a country which is not the country of origin of the goods, but where a container or consignment of goods is opened and re-packed for export;

"receiving country" means a country which is the intended destination of an article being or proposed to be exported;

"reconsign", in relation to a regulated article or consignment which has been refused biosecurity import clearance, means to send the article or consignment out of the Fiji Islands, either by the vessel or aircraft on which it was imported or by another vessel or aircraft;

"regulated article" means -

(a) any animal or animal product;

(b) any plant or plant product;

(c) any living organism, whether modified or not;

(d) soil, sand gravel and aggregate;

(e) any genetic material;

(f) human remains;

(g) any host material;

(h) a regulated pest or disease;

(i) any clothing, machinery or other article that contains or has adhering to it anything mentioned in paragraph (a), (b), (c) or (d);

(j) garbage;

(k) any other article, substance, goods or thing declared by the Minister by order under subsection (2) to be a regulated article for the purposes of this Promulgation;

"regulated consignment" means a consignment of regulated articles;

"regulated pest or disease" means a pest or disease -

(a) the importation of which into the Fiji Islands is prohibited or restricted under section 16; or

(b) which is under official control;

"regulations" means regulations, orders and any other subsidiary legislation made under this Promulgation;

"repealed laws" means the Promulgation and subsidiary legislation repealed by section 107(1);

"sanitary certificate" means an international health certificate relating to an animal or animal product which -

(a) is issued by the biosecurity or agricultural Authority of the country of origin or re-exporting country;

(b) certifies that the animal or animal product is substantially free from animal pests and diseases and in other respects meets the animal health import requirements of the receiving country; and

(c) complies with relevant requirements of the SPS Agreement or the exporting country, as the case may be;

"ship's stores" means any food or other regulated articles carried on a vessel or aircraft for consumption or use on the vessel or aircraft;

"specified", in relation to a requirement, document, procedure or any other matter, means specified by the Authority under section 105;

"spread", in relation to a pest or disease, means the expansion of the geographical distribution of the pest or disease within an area;

"SPS Agreement" means the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures;

"status", in relation to a pest or disease, means its presence, absence, prevalence, incidence, distribution and occurrence in an area;

"technical section head" means the technical section head of the Authority;

"test" means an examination which goes beyond a visual inspection, to determine if a pest or disease is, or is likely to be, present or to identify a pest or disease, and includes chemical tests of plant material and diagnostic tests in respect of an animal;

"timber" includes round wood, sawn wood, wood chips and dunnage, with or without bark;

"treatment" means an authorised procedure for the killing, removal, modification or rendering infertile or non-viable of a pest or disease by way of cleansing, fumigation, inoculation, disinfection, disinfestation, decontamination, or otherwise;

"uncleared", in relation to a regulated article, means that the article has not received biosecurity clearance;

"under official control", in relation to a pest or disease, means that its presence is known, its distribution is limited and its further spread is controlled by the exercise of powers under this Promulgation;

"vehicle" includes a bicycle (whether motorized or not), a cart and any other wheeled conveyance;

"vessel" includes a ship, hovercraft, boat, ferry, raft, yacht, canoe or pontoon that is used as a conveyance in or on water, whether or not it is self-propelled;

"written" and "in writing" mean any mode of communicating information in a retrievable form, including electronically (as to which see section 104(5)).

(2) The Minister, on the advice of the Authority, may by order declare any article, substance goods or thing to be a regulated article for the purposes of this Promulgation.

#### *Application of the Promulgation*

**3.**-(1) This Promulgation applies to every person in the Fiji Islands, irrespective of the person's nationality or citizenship.

(2) This Promulgation applies to all conveyances, containers and goods while they are in the Fiji Islands, including vessels and aircraft owned or operated by the government of a foreign State;

(3) This Promulgation applies to persons, conveyances, containers and goods outside the Fiji Islands to the extent needed for its effective enforcement.

*Promulgation binds the State*

4. This Promulgation binds the State, including every Government department and statutory authority and every person in the employment of the Government.

*Responsibility for the Promulgation*

5.-(1) The Minister is responsible to the Cabinet for the implementation of this Promulgation.

(2) The Board is responsible to the Minister for the performance of the functions of the Authority set out in section 9.

*Powers of the Minister*

6. The Minister may -

(a) in accordance with section 9 and Schedule 2, call for reports from the Authority on any matter pertaining to this Promulgation or the functions of the Authority;

(b) in accordance with section 12, give directions in writing to the Authority concerning administrative action needed to implement this Promulgation and to achieve the functions of the Authority;

(c) in accordance with section 13, delegate any of the Minister's functions, powers and duties under this Promulgation to the Authority or a named biosecurity officer, other than any legislative or appellate function or this power to delegate.

*Relationship with other written laws*

7.-(1) This Promulgation is in addition to and does not derogate from any other Law. In particular, but without limiting this rule -

(a) the notification requirements in section 22 relating to human health do not displace any other statutory requirement relating to such notification;

(b) the provisions of Part 4 relating to biosecurity port quarantine of vessels and aircraft do not displace any other provisions relating to quarantine of vessels and aircraft;

(c) the requirements relating to imports and exports in Parts 5 and 6 do not displace any other statutory requirements relating to imports and exports, trade in endangered species, biosafety, biodiversity or environmental Laws generally.

(2) To the extent of any inconsistency between this Promulgation and any other written law, every other written law must so far as possible be construed so as to fulfil the purpose of this Promulgation.

**PART 2 - THE BIOSECURITY AUTHORITY OF THE FIJI ISLANDS**

*Establishment of the Biosecurity Authority of the Fiji Islands*

8.-(1) This section establishes the Biosecurity Authority of the Fiji Islands as a body

corporate with perpetual succession and a common seal, with power to -

(a) sue and be sued in its corporate name;

(b) acquire, hold and dispose of property; and

(c) do or perform such other acts or things as bodies corporate may by law do and perform.

(2) The affairs of the Authority are conducted by the Board as the governing and executive body of the Authority. The Board has the capacity to perform the functions and powers of the Authority under this Promulgation or any other written law.

(3) The Board consists of -

(a) a Chairperson and 5 other members appointed by the Public Enterprise Minister, in consultation with the Minister and the Minister of Finance, and with the endorsement of the Prime Minister;

(b) the person for the time being holding the office of CEO, or his or her nominee *ex officio*, with no voting rights.

(4) An appointed member of the Board must have experience in either management, commerce, public administration, quarantine, health or legal matters.

(5) Before appointing a person as a member, the Public Enterprise Minister must have regard to any potential conflicts of interest the person may have.

(6) Appointments under this section must be published in the *Gazette* and do not take effect until they are so published.

(7) Members, including the CEO, must -

(a) seek to advance the interests of the Authority;

(b) comply with the obligations under the Public Enterprise Act, 1996;

(c) to the extent possible, and consistent with the functions of the Authority, implement any policy for the benefit and best interest of the Authority;

(d) not publicly disclose the deliberations of the Board unless authorised to make the disclosure, or unless it is in the public interest that the disclosure be made.

(8) The terms of membership of appointed members of the Board are as set out in Part A of Schedule 1.

(9) The procedure of the Board and of any committee of the Authority is as set out in Part B of Schedule 1. Subject to that Schedule and this section, the Board and any committee may regulate its procedure in such manner as it thinks fit, consistent with the requirements of natural justice.

*Functions and powers of the Authority*

9.-(1) The general functions of the Authority are -

(a) to act as agent of the State and to provide services in administering and enforcing this Promulgation and any other law relating to Biosecurity matters;

(b) to exercise the powers and perform the duties carried out by the Quarantine and Inspection Division immediately prior to the commencement of this Promulgation;

(c) to advise the Government on matters relating to animal and plant quarantine and biosecurity and to liaise with appropriate Ministries and statutory bodies on such matters;

(d) to represent the State internationally in respect of matters relating to biosecurity; and

(e) to perform such other functions as the Minister may assign to the Authority.

(2) The biosecurity functions of the Authority are, to the extent of the available resources and consistently with this Promulgation -

(a) to protect the Fiji Islands against the entry of regulated pests and diseases affecting animals, plants, human beings and the environment;

(b) to carry out surveillance and monitoring of pests and diseases in the Fiji Islands and assess the status of regulated pests and diseases;

(c) to prevent the establishment and spread of regulated pests and diseases and the release of organisms that might adversely affect animals, plants, human beings and the environment in the Fiji Islands;

(d) to eradicate, contain or control the movement of regulated pests and diseases that are already present in the Fiji Islands;

(e) to prevent the introduction and spread of regulated pests and diseases not already present in the Fiji Islands;

(f) to facilitate the safe importation of animals and plants and their products, and related equipment and technology;

(g) to facilitate the export of animals and plants and their products in accordance with the biosecurity requirements of the receiving countries;

(h) to facilitate international cooperation to prevent the spread of pests and diseases affecting plants, animals, human beings and the environment.

(3) The Authority -

(a) has all the powers reasonably necessary or convenient for the purpose of carrying

out its functions under this Promulgation and regulating its own procedure;

(b) must adopt commercial management practices so far as is consistent with the Authority's biosecurity functions;

(c) must adopt international best practice in the management and development of staff.

(4) The Authority must -

(a) report to the Minister and the Public Enterprise Minister as required by Schedule 2;

(b) produce an organisation and staffing plan as required by the Public Enterprise Act, 1996;

(c) provide to the Minister and the Public Enterprise Minister such other returns, accounts, and other information as either Minister may from time to time reasonably require in writing.

(5) Before performing technical functions under this Promulgation, the Authority must as appropriate obtain advice from its technical section heads.

(6) The Authority must -

(a) in consultation with relevant government departments and statutory authorities, and the National Disaster Management Council, devise a Biosecurity Emergency Response Plan to deal with an incursion of a regulated pest or disease in the Fiji Islands and keep the plan under review;

(b) produce an operations manual for the guidance of biosecurity officers in electronic or hard format or both;

(c) to the extent possible, publicise the requirements of this Promulgation and increase public awareness of the importance of biosecurity.

*Chief Executive Officer and the Deputy Chief Executive officer*

**10.** - (1) The Board must appoint a Chief Executive Officer and Deputy Chief Executive Officer on terms and conditions the Board decides.

(2) The CEO-

(a) is responsible to the Board for the efficient running of the Authority and the administration of this Promulgation, within the resources available to the CEO and in accordance with any policy laid down by the Board;

(b) must perform any other functions relating to this Promulgation that the Board by directions in writing confers on the CEO from time to time;

(c) must report to the Board as required by the Board from time to time.

(3) The Deputy CEO performs the functions of the CEO whenever the CEO is not available to do so.

(4) Before performing technical functions under this Promulgation, the CEO or Deputy CEO must as appropriate obtain advice from technical section heads.

(5) Appointments under this section must be published in the *Gazette* and do not take effect until they are so published.

*Biosecurity officers and other employees*

**11.**-(1) The CEO may appoint on such terms and conditions as the CEO thinks fit such employees, agents or consultants of the Authority as are necessary or expedient for performing the functions of the Authority.

(2) At the date of commencement of this Promulgation, the provisions of Part A of Schedule 3 apply to persons employed immediately before that date in the Quarantine and Inspection Division whose services are required by the Authority for the performance of its functions under this Promulgation.

(3) The CEO may exercise disciplinary control over employees of the Authority in accordance with Part B of Schedule 3.

(4) The CEO with the approval of the Board may designate any public officer or employee of a statutory authority to be a biosecurity officer for the purposes of this Promulgation for a particular purpose or at a particular location.

(5) (a) The powers of a biosecurity officer are as prescribed by or under this Promulgation.

(b) A biosecurity officer must perform such duties, not inconsistent with this Promulgation, as are assigned to the officer by the CEO.

(c) The CEO may limit the functions to be performed by a biosecurity officer to those within the officer's technical sphere of competence;

(d) The functions assigned to an officer designated under subsection (4) must be consistent with the designation under that subsection.

(6) The CEO must provide every person designated as a biosecurity officer with a suitable form of identification as such officer.

(7) A person who -

(a) upon the termination of his or her appointment as a biosecurity officer fails to surrender up any identification issued under subsection (8) within a specified period;  
or

(b) copies, forges or alters a form of identification issued under subsection (7) without the written authority of the Authority,

commits an offence.

(8) A person who is to perform duties as a biosecurity officer under this Promulgation must be given adequate training in biosecurity control measures and in the provisions of this Promulgation before embarking on those duties.

#### *Directions*

**12.**-(1) The Board may give written directions to the CEO as to the performance of the functions of the CEO, but may not give directions to the CEO except after receiving appropriate technical advice.

(2) The CEO may give written directions to biosecurity officers as to the manner in which their functions are to be performed, consistent with this Promulgation and the regulations and any specifications.

#### *Delegation of functions*

**13.**-(1) The Minister may in writing delegate any of the Minister's functions under this Promulgation to the Board or a named biosecurity officer, other than any legislative or appellate function or this power to delegate.

(2) The Board may, by writing under the hand of the Chairperson, delegate to the CEO, a Board member or a committee any of the Authority's functions under this Promulgation, other than -

(a) the power to borrow money, raise loans, give loans or advances or subscribe to or underwrite the issue of stocks or debentures of any business enterprise;

(b) the power to make regulations under section 106;

(c) this power of delegation.

(3) A delegation under subsection (2) may be to a specified person or committee or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(4) The Chairperson may authorise in writing any other member of the Board to exercise any power or perform any function conferred on the Chairperson by or under this Promulgation.

(5) Subject to subsection (6), the CEO may in writing delegate -

(a) to the Deputy CEO, any of the functions of the CEO, including functions delegated by the Authority under subsection (2);

(b) to any suitably qualified biosecurity officer any of the biosecurity functions of the CEO except the power to make specifications.

(6) The CEO may not delegate any legislative, judicial or appellate function, the power of giving directions under section 12, or the power of delegation under this section, except to the Deputy CEO.

(7) A delegation under this section may be made subject to such restrictions and conditions as

the delegator thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(8) A person or committee purporting to perform any function by virtue of a delegation under this section must, when required to do so, produce evidence of the authority to perform the function.

*Financial provisions*

**14.**-(1) The assets of the Authority at the commencement of this Promulgation are the assets of the Quarantine and Inspection Division at that date, which are transferred to the Authority in accordance with Part A of Schedule 4.

(2) The Minister may request Cabinet to provide finance for implementation of this Promulgation in addition to an annual appropriation.

(3) If -

(a) there is an incursion of a regulated pest, disease or organism into the Fiji Islands that could threaten the livelihood and environment of the country or any part of it; and

(b) a response is immediately required, whether by way of the declaration of a biosecurity emergency area or otherwise,

the Cabinet may approve the payment from the Consolidated Fund of such sum as it may consider to be reasonably required to deal with the incursion.

(4) The funds of the Authority consist of -

(a) money appropriated by the Cabinet;

(b) money paid to the Authority for services rendered;

(c) money paid to the Authority by way of grants;

(d) money derived from the disposal, lease or hire of, or other dealing with, any property vested in or acquired by the Authority;

(e) money borrowed by the Authority in accordance with this Promulgation;

(f) income from investments by the Authority made under this Promulgation;

(g) fees or other charges imposed by the Authority under this Promulgation;

(h) other money which is payable to the Authority in respect of any matter incidental to its functions and powers.

(5) The assets and funds of the Authority are to be dealt with in accordance with Part B of Schedule 4.

*Fines, fees and charges*

**15.**-(1) Fines payable under this Promulgation are to be paid to the Authority and dealt within accordance with Part B of Schedule 4.

(2) The Authority may prescribe fees and charges payable for the services provided by the Authority under this Promulgation.

(3) Fees and charges payable under this Promulgation are to be paid to the Authority and dealt with in accordance with Part B of Schedule 4.

(4) If a fee or charge payable under this Promulgation is not paid -

(a) if the service for which the fee or charge is payable has not been provided, it may be withheld until the fee is paid;

(b) if the service has been provided, the fee or charge may be recovered as a debt owing to the Authority;

(c) if the fee or charge is in respect of an item in quarantine, the item may be sold once it has cleared quarantine, or otherwise be treated as abandoned goods.

### **PART 3 - BIOSECURITY BORDER CONTROL**

#### *Regulated pests and diseases*

**16.**-(1) The Minister may by order declare the pests or diseases -

(a) the importation of which is prohibited for all purposes;

(b) the importation of which is permitted subject to conditions specified by the Authority under section 34;

(c) which are under official control.

(2) A person who imports or attempts to import a pest or disease which is prohibited under subsection (1)(a) commits an offence.

(3) A person who imports or attempts to import a pest or disease which is regulated under subsection (1)(b) in breach of the conditions of import commits an offence.

(4) Before making an order under this section, the Minister must obtain -

(a) a pest or disease risk analysis;

(b) the advice of the Authority.

#### *Prohibited imports*

**17.**-(1) The Minister may by order prohibit the importation of -

(a) particular regulated articles from all countries; or

(b) particular regulated articles from one or more particular countries of origin,

(in this Promulgation referred to as "import prohibited articles") if the importation would present an unacceptable biosecurity risk to the Fiji Islands.

(2) An order under this section in respect of an article -

(a) may be made at any time before biosecurity import clearance is granted in respect of the article;

(b) continues in force until the prohibition is revoked or varied, but must be reviewed every 12 months.

(3) In making a decision under this section, the Minister -

(a) must have regard to the international obligations of the Fiji Islands in respect of biosecurity;

(b) may apply the precautionary principle.

(4) Before making an order under this section the Minister must obtain -

(a) a pest or disease risk analysis in relation to the article;

(b) the advice of the Authority.

(5) If a person imports or attempts to import a prohibited article -

(a) the person commits an offence;

(b) biosecurity import clearance under section 33 will be refused for the article.

(6) A person who without lawful excuse owns or is in possession of any prohibited article commits an offence.

#### *Biosecurity points of entry and departure*

**18.**-(1) The Minister may by order designate as biosecurity points of entry the seaports and airports at which regulated articles may enter the Fiji Islands.

(2) Subject to subsection (8), a master or captain who causes or permits an incoming vessel or aircraft to berth or land except at a seaport or airport that is a biosecurity point of entry commits an offence.

(3) A person who imports, or attempts to import, a regulated article or consignment except at a biosecurity point of entry commits an offence.

(4) The Minister may by order designate as biosecurity points of departure the seaports and airports at which regulated articles may be exported.

(5) A master or captain who causes or permits a vessel or aircraft to leave the Fiji Islands except from a seaport or airport that is a biosecurity point of departure commits an offence.

(6) A person who exports, or attempts to export, a regulated article or consignment except at a biosecurity point of departure commits an offence.

(7) A designation of a biosecurity point of entry and departure may be limited to particular types of vessels, aircraft or articles or to arrivals from or exports to particular countries.

(8) A vessel or aircraft may berth or land elsewhere than at a biosecurity point of entry -

(a) if constrained by adverse weather, mechanical failure or superior force; or

(b) if so directed or permitted by the Authority or a biosecurity officer.

(9) In the circumstances mentioned in subsection (8), the place where the vessel has berthed or the aircraft has landed is deemed to be a biosecurity point of entry for the purposes of this Promulgation, once the Authority has been notified of the berthing or landing.

(10) Before making an order under subsection (1) or (4) the Minister must obtain the advice of the Authority and consult, as the case may be, the officers or authorities responsible for the movement of vessels and aircraft in the Fiji Islands.

#### *Designation of biosecurity holding areas*

**19.** (1) The Minister in consultation with the Minister responsible for Sea Port Management may by order designate -

(a) any territorial waters or any part of a seaport as a biosecurity port holding area for vessels;

(b) any part of an airport as a biosecurity port holding area for aircraft.

(2) A biosecurity port holding area is one where incoming conveyances may be held for biosecurity inspection pending biosecurity landing clearance or other disposition under this Promulgation.

(3) The Minister may by order designate any area of land at or adjacent to a seaport or airport as a biosecurity goods holding area for incoming or outgoing containers and goods.

(4) A biosecurity goods holding area is one where incoming or outgoing containers or goods maybe held for biosecurity inspection pending biosecurity clearance or other disposition under this Promulgation.

(5) The Minister may designate any part of a mail exchange as a biosecurity postal holding area for incoming or outgoing postal items.

(6) A biosecurity postal holding area is one where incoming or outgoing postal items maybe held for biosecurity inspection pending biosecurity clearance or other disposition under this Promulgation.

(7) Before making an order under subsection (1), (3) or (5) the Minister must obtain the advice of the Authority and consult, as the case may be, the officers or authorities responsible

for the movement of vessel, aircraft and postal items in the Fiji Islands.

*Management of biosecurity holding areas*

**20.**-(1) Section 48(2) and (3) apply to biosecurity holding areas as they apply to biosecurity quarantine stations.

(2) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity holding area without the written permission of the Authority, or the permission of the person in charge of the area or of a biosecurity officer.

(3) A biosecurity officer may, in order to reduce a biosecurity threat, lock, seal or otherwise prevent entry to and exit from a biosecurity holding area or any building in it.

(4) A person who -

(a) enters a biosecurity holding area without permission given under subsection (2); or

(b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity holding area, or any regulated article or other item in the area, commits an offence.

(5) The Authority may issue written directions to the person in charge of a biosecurity holding area as to the management of the area.

(6) A person who removes or attempts to remove from a biosecurity holding area any regulated article without obtaining biosecurity clearance in respect of it, unless for the purpose of biosecurity measures being applied to the article in accordance with this Promulgation, commits an offence.

*Biosecurity clearance agents*

**21.**-(1) A person who proposes to import or export regulated articles through a seaport or airport and who will not be present when biosecurity inspection is to take place must -

(a) in writing appoint a person resident in the Fiji Islands as a biosecurity clearance agent for the purposes of this Promulgation; and

(b) notify the Authority in writing of the appointment before the agent performs any agency functions.

(2) A biosecurity clearance agent appointed under subsection (1) ceases to be an agent for the purposes of this Promulgation if the Authority notifies the importer or exporter in writing that, in the opinion of the Authority, the agent's conduct in the performance of functions under this Promulgation renders the agent unacceptable for purposes of this Promulgation.

(3) Notice under subsection (2) must be given in sufficient time to allow the importer or exporter to appoint another agent.

(4) A biosecurity clearance agent who performs or purports to perform any functions of an importer or exporter under this Promulgation is liable to the same extent as the importer or exporter for any act or omission which amounts to an offence or which creates any legal

obligation under this Promulgation.

(5) If a person referred to in subsection (1) fails to comply with that subsection, biosecurity clearance will not be granted for any regulated article or consignment which the person seeks to import or export.

#### **PART 4 - VESSELS AND AIRCRAFTS**

##### *Biosecurity arrival declaration*

**22.**-(1) The master or captain of every vessel or aircraft destined for the Fiji Islands must make to the Authority a biosecurity arrival declaration stating -

- (a) the destination seaport or airport in the Fiji Islands and the estimated time of arrival of the vessel or aircraft;
- (b) its immediately preceding port or place of call;
- (c) the proposed itinerary of the vessel or aircraft until it leaves the Fiji Islands;
- (d) the nature and country of origin of its cargo;
- (e) the number of passengers and crew;
- (f) the presence of any live animal or live plant on the vessel or aircraft;
- (g) the nature of any illness or malady affecting any live animal, plant, crew member, passenger or other individual on board the vessel or aircraft; and
- (h) any other matter relevant to facilitating biosecurity landing clearance of the vessel or aircraft that is specified by the Authority.

(2) The declaration required by subsection (1) -

- (a) must be made not less than 24 hours in the case of a vessel, or 60 minutes in the case of an aircraft, before the estimated time of arrival;
- (b) maybe made by electronic means, in accordance with directions of the Authority issued from time to time;
- (c) may be made through a biosecurity clearance agent;
- (d) maybe made in conjunction with or as part of a declaration made for customs or other border control purposes.

(3) A master or captain who fails to make a biosecurity arrival declaration, either directly or through a biosecurity clearance agent, commits an offence.

##### *Biosecurity landing clearance*

**23.**-(1) The master or captain of every incoming vessel or aircraft must-

(a) take the vessel or aircraft directly to a biosecurity port holding area as directed by a biosecurity officer;

(b) permit a biosecurity officer to board and search the vessel or aircraft in accordance with section 55(1);

(c) provide to the officer the log, cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is on or in and relates to the vessel or aircraft and that the officer reasonably requests for the purposes of this Promulgation;

(d) complete an incoming conveyance biosecurity certificate, in the form specified or approved by the Authority, certifying that all garbage, live animals, meat or animal products and plants or plant material on board the vessel or aircraft will be lawfully disposed of.

(2) A biosecurity officer may grant biosecurity landing clearance to the vessel or aircraft, after inspecting relevant documents and conducting any necessary search of an incoming vessel or aircraft, and if satisfied -

(a) that the vessel or aircraft does not have on board any regulated article that might pose a biosecurity threat to the Fiji Islands; and

(b) that the prescribed fee, if any, has been paid.

(3) Biosecurity landing clearance means that a vessel or aircraft may land crew members and any cargo or passengers on board, but the crew and any cargo or passengers remain subject to biosecurity control under this Promulgation.

(4) Biosecurity landing clearance must be refused if a biosecurity officer orders the vessel or aircraft into port quarantine pursuant to section 24(2).

(5) A master or captain who contravenes a provision of subsection (1) commits an offence.

(6) A master or captain who lands any crew, cargo or passengers from a vessel or aircraft without biosecurity landing clearance, except with the permission of a biosecurity officer, commits an offence.

(7) A crew member or passenger who lands from a vessel or aircraft before it has received biosecurity landing clearance, except with the permission of a biosecurity officer, commits an offence.

(8) Biosecurity landing clearance of a vessel or aircraft may be granted unconditionally, or conditioned on entry into a bond to the Authority, in the form specified or approved by the Authority, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Promulgation in respect of the vessel or aircraft or cargo.

*Biosecurity port quarantine of vessels and aircrafts*

24.-(1) The Minister may by order designate -

(a) any territorial waters or any part of a seaport as a biosecurity port quarantine area for vessels;

(b) any part of an airport as a biosecurity port quarantine area for aircraft.

(2) Before making an order under subsection (1) the Minister must obtain the advice of the Authority and consult, as the case may be, the officers or authorities responsible for the movement of vessels and aircraft in the Fiji Islands.

(3) If a biosecurity officer reasonably suspects that an incoming vessel or aircraft is -

(a) infected or infested with a regulated pest or disease; or

(b) carrying any regulated article which might pose a biosecurity threat to the Fiji Islands,

the officer may order the vessel or aircraft into biosecurity port quarantine.

(4) If a vessel or aircraft is ordered into biosecurity port quarantine under subsection (2), a biosecurity officer may -

(a) order the master or captain to remove the vessel or aircraft to quarantine in a biosecurity port quarantine area; or

(b) if necessary (because the master or captain refuses to obey the order, or because of the nature of the biosecurity threat) arrange for the vessel or aircraft to be removed to the biosecurity port quarantine area.

(5) The cost of removal of a vessel or aircraft to biosecurity port quarantine is to be borne by the owner or charterer, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

(6) The owner or charterer and master or captain must each be given written notice stating the reasons for an order under this section in respect of the vessel or aircraft and, if it was removed under subsection (3), the whereabouts of the vessel or aircraft.

(7) If the Authority reasonably believes that a vessel or aircraft poses a serious biosecurity threat to the Fiji Islands which cannot adequately be dealt with by appropriate biosecurity measures, the Authority may in writing direct the vessel or aircraft to leave the waters of the Fiji Islands.

(8) Before issuing a direction under this section, the Authority must consult, as the case may be, the officers or authorities responsible for the movement of vessels or aircraft in the Fiji Islands.

#### *Management of biosecurity port quarantine areas*

**25.-** (1) No person, other than the person in charge of the area or a biosecurity officer acting in the course of duty, may enter a biosecurity port quarantine area without the written permission of the Authority or of the person in charge of the area.

(2) A person who -

(a) enters a biosecurity port quarantine area without permission; or

(b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity port quarantine area, or any regulated article or other item in the area,

commits an offence.

(3) The Authority may issue written instructions to the person in charge of a biosecurity port quarantine area as to the management of the area.

(4) A biosecurity officer may affix a notice at any biosecurity port quarantine area, and on any vessel or aircraft held in the area, stating the conditions and duration of quarantine and other information relating to the area or the item as specified by the Authority.

(5) A person who removes a notice affixed under subsection (4) without lawful authority commits an offence.

*Conduct of vessels and aircrafts in biosecurity port quarantine*

**26.**-(1) The Authority may give written directions to the master of a vessel or captain of an aircraft in biosecurity port quarantine -

(a) as to the movement of the vessel or aircraft while it is in quarantine;

(b) as to the movement of passengers, crew and cargo while the vessel or aircraft is in quarantine;

(c) as to any treatment or other biosecurity measure that must be applied to the vessel or aircraft.

(2) The cost of keeping a vessel or aircraft in biosecurity port quarantine and of any treatment or other measures that must be applied to it, is to be borne by the owner or charterer.

(3) No compensation is payable for any loss or destruction or consequential loss caused by a vessel or aircraft being detained in quarantine, unless negligence or malice is proved.

(4) A master or captain who fails to take all reasonable steps to ensure that the vessel or aircraft and its cargo, crew and passengers conform to directions given under subsection (1) commits an offence.

*Biosecurity port quarantine clearance of vessels and aircrafts*

**27.** -(1) If satisfied -

(a) that a vessel or aircraft in biosecurity port quarantine is substantially free from regulated pests and diseases;

(b) that any potential biosecurity risk from ships' stores and other regulated articles on

the vessel or aircraft is suitably contained; and

(c) that the prescribed fee, if any, has been paid,

a biosecurity officer may grant biosecurity port quarantine clearance for the vessel or aircraft to unload passengers and cargo.

(2) Biosecurity port quarantine clearance of a vessel or aircraft may be granted unconditionally, or conditioned on entry into a bond to the Authority, in the form specified or approved by the Authority, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Promulgation in respect of the vessel or aircraft or cargo.

(3) Biosecurity port quarantine clearance of a vessel or aircraft has the same effect as biosecurity landing clearance granted under section 23.

#### *Outgoing vessels and aircrafts*

**28.**-(1) If a biosecurity officer has reason to believe that there is on board an outgoing vessel or aircraft any regulated article that requires biosecurity export clearance and that has not been cleared, the officer may -

(a) board and search the vessel or aircraft in accordance with section 55(1);

(b) request the master or captain to produce for inspection the cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is on or in and relates to the vessel or aircraft and that the officer reasonably requires for the purposes of this Promulgation;

(c) direct the master or captain not to move the vessel or aircraft unless permitted by the officer, and then only as directed by the officer;

(d) direct the vessel or aircraft to be subjected to any treatment or other biosecurity measure that is prescribed or specified;

(e) give to the master or captain any other lawful direction that is reasonably required to protect the destination country from a biosecurity threat posed by the vessel or aircraft.

(2) A master or captain who -

(a) refuses to permit a search pursuant to subsection (1)(a); or

(b) fails to comply with a request or direction given under subsection (1)(b) to (e), commits an offence.

#### *Environmental obligations of masters and captains*

**29.**-(1) The master of every incoming vessel must, while the vessel is in the Fiji Islands -

(a) take all necessary steps to prevent any animal on board the vessel from making contact with any animal on shore unless permitted by a biosecurity officer, and then

only as directed by the officer;

(b) seal all hatches and holds and enclosed cargo areas during the hours of darkness, except as needed for the working of the vessel or its cargo.

(2) The master of every incoming vessel must take all reasonable steps to ensure that -

(a) no garbage containing any animal, plant, animal product or plant product;

(b) no bilge water or ballast water, and

(c) no sewage or foul wastewater,

is discharged from the vessel into the sea while the vessel is in the Fiji Islands.

(3) The master of every incoming vessel and captain of every incoming aircraft must, while the vessel or aircraft is in the Fiji Islands, take all reasonable steps to ensure that -

(a) all garbage generated on the vessel or aircraft is placed in a suitable leak-proof container, with a lid, and the container is securely fastened at all times and kept within the vessel or aircraft;

(b) garbage is not disposed of in the sea, and is only removed from the vessel or aircraft under and in accordance with the directions of a biosecurity officer.

(4) The master of every incoming vessel and captain of every incoming aircraft must take all reasonable steps to ensure that no ships' stores are removed from the vessel or aircraft while it is in the Fiji Islands, except under and in accordance with the directions of a biosecurity officer.

(5) A biosecurity officer may lock or seal the stores of any incoming vessel or aircraft while it is in the Fiji Islands.

(6) The cost of disposal of garbage under this section is to be borne by the owner or charterer of the vessel or aircraft.

(7) A master who contravenes subsection (1)(b), fails to take all reasonable steps as required by subsection (1)(a), (2), (3) or (4) or fails to obey a direction of a biosecurity officer given under any of those subsections commits an offence.

(8) A captain who fails to take all reasonable steps as required by subsection (3) or (4) or fails to obey a direction of a biosecurity officer given under either of those subsections commits an offence.

(9) An incoming vessel must comply with any de-ratting requirements prescribed by regulations.

#### *Passengers and crew members*

**30.**-(1) Subject to subsections (2) and (3), every passenger or crew member who arrives in the Fiji Islands on board a vessel or aircraft must make to a biosecurity officer a passenger arrival

biosecurity declaration.

(2) The passenger arrival biosecurity declaration must be in the form specified or approved by the Authority and contain all required particulars relating to the person and any baggage that accompanies the person.

(3) A passenger or crew member does not need to declare -

(a) articles of clothing worn on the body;

(b) articles visibly attached or connected to the body or clothing; or

(c) suitcases and other visible containers of personal baggage,

unless a biosecurity officer so requests because of the biosecurity risk posed by the item, and in the absence of any such request, the article or container is deemed to have biosecurity entry clearance.

(4) A single declaration under subsection (1) maybe made by a person in respect of the person and the person's spouse and any member of the family aged 16 years or less travelling on the same vessel or aircraft.

(5) When a declaration is tendered under this section, a biosecurity officer may -

(a) question the passenger or crew member;

(b) inspect the baggage to which it relates.

(c) if necessary, question a spouse or family member included on the declaration.

(6) After taking the steps in subsection (5), a biosecurity officer may either grant biosecurity entry clearance of the persons and baggage to which the declaration relates, or -

(a) detain the passenger or crew member for further questioning and search;

(b) detain the baggage and other articles in the possession of the passenger or crew member for further inspection and application of other biosecurity measures as the officer considers appropriate.

(7) An arriving passenger or crew member who fails -

(a) to make a declaration as required by subsection (1);

(b) to submit baggage for inspection when so directed under subsection (5) commits an offence.

(8) Every passenger or crew member departing from the Fiji Islands must -

(a) submit for inspection on request by a biosecurity officer any regulated article on the person or in the person's baggage;

(b) permit the officer to search the person's baggage.

(9) A departing passenger or crew member who fails to comply with subsection (8) commits an offence.

(10) Section 65 applies to the questioning, detention and searching of persons and baggage under this section.

## **PART 5 - BIOSECURITY IMPORT PROCEDURES**

### *Biosecurity entry inspection of incoming articles*

**31.**-(1) Every incoming article or consignment of articles is liable to biosecurity entry inspection by a biosecurity officer at the biosecurity point of entry to ascertain whether it is or includes a regulated article.

(2) If an importer of goods fails to make the goods available for biosecurity entry inspection at the biosecurity point of entry at the request of a biosecurity officer -

(a) the importer commits an offence; and

(b) the goods may be reconsigned or destroyed as if they were a regulated article for which biosecurity entry clearance had been refused.

(3) If, after inspecting an incoming article or consignment, a biosecurity officer is satisfied -

(a) that it is or includes a regulated article - the provisions of this Part apply to it;

(b) that it is not or does not include a regulated article- the article or consignment maybe released from the biosecurity point of entry upon payment of the prescribed fee, if any.

(4) If an incoming article or consignment is not inspected under this section, a biosecurity officer is deemed to be satisfied that it is not or does not include a regulated article, and subsection (3)(b) applies to it.

(5) Section 57 applies to an inspection under this section.

(6) Subject to section 101 (Appeals), the actual or deemed opinion of a biosecurity officer under this section as to whether an article or consignment is or includes a regulated article is conclusive for the purposes of this Promulgation.

(7) This section does not apply in respect of baggage accompanying passengers or crew members, but section 30 applies to such baggage.

### *Biosecurity import clearance of regulated articles*

**32.**-(1) Every incoming article or consignment of regulated articles -

(a) is liable to biosecurity import clearance inspection by a biosecurity officer;

(b) for that purpose must be taken to or retained in a biosecurity holding area for inspection.

(2) An application for biosecurity import clearance of a regulated article or consignment must-

(a) be made to a biosecurity officer in the manner specified or approved by the Authority;

(b) be accompanied by the prescribed fee, if any;

(c) state the country of origin of the article or consignment;

(d) state the nature and quantity of the article or consignment;

(e) attach any sanitary or phytosanitary certificate issued by the country of origin in relation to the article or consignment;

(f) attach any biosecurity import permit relating to the document;

(g) attach documentation relating to any other biosecurity measures specified under section 34(1) in relation to the article or consignment.

(3) The importer of a regulated article or consignment must on the request of a biosecurity officer -

(a) if the article or consignment is in a container - open the container or enable the officer to do so;

(b) allow the officer to inspect the article or consignment in accordance with section 57;

(c) allow the officer to take samples and conduct tests in accordance with Part 8 to enable the officer to determine whether biosecurity import clearance should be granted;

(d) if the article or consignment requires biosecurity measures to be applied to it - submit the article or consignment to such measures.

(4) The cost of taking an article to a biosecurity holding area, and of keeping it there, is to be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of the taking or keeping, unless negligence or malice is proved.

(5) If the importer of a regulated article or consignment fails to comply with any of the requirements of subsection (3) -

(a) the person commits an offence; and

(b) a biosecurity officer may refuse to grant import clearance for the article or

consignment, and may order the article or consignment to be reconsigned or destroyed.

(6) This section does not apply to passengers or crew members, but section 30 applies to such persons.

*Grant and refusal of biosecurity import clearance*

**33.**-(1) Before granting biosecurity import clearance of an article or consignment, a biosecurity officer must be satisfied that the article meets the biosecurity import requirements in relation to it, that is to say -

(a) if a biosecurity import permit is required - it has been obtained in respect of the article or consignment and the conditions of the permit have been complied with;

(b) if a sanitary or phytosanitary certificate is required for an article - the relevant certificate has been issued by the country of origin, and any requirement in it complied with;

(c) if any other biosecurity measures are specified under section 34(1)(c) - they have been applied to or in respect of the article or consignment.

(2) If satisfied in respect of an article or consignment -

(a) of the matters mentioned in subsection (1); and

(b) that all prescribed fees and charges relating to the article or consignment have been paid,

a biosecurity officer must grant biosecurity import clearance for the article or consignment.

(3) If the biosecurity risk presented by an incoming regulated article or consignment so requires, a biosecurity officer may refuse to grant biosecurity import clearance for the article or consignment, or may require additional biosecurity measures to be applied to it, even if the article or consignment meets the biosecurity import specifications in relation to it.

(4) Biosecurity import clearance may be made conditional on the article performing biosecurity quarantine if -

(a) quarantine is a biosecurity import requirement for the article; or

(b) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.

(5) Biosecurity import clearance must be refused for an incoming article which is a prohibited import.

(6) A biosecurity officer may cause any incoming article or consignment in respect of which biosecurity import clearance is refused to be reconsigned or destroyed, but the importer must be given reasonable time to make arrangements for reconsignment of the article or consignment before it is destroyed.

(7) No compensation is payable in respect of a refusal in good faith to grant biosecurity import clearance under this section.

*Biosecurity import specifications*

34.-(1) The Authority may specify in respect of incoming regulated articles -

(a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country of origin is required for an article and if so the matters that must be certified;

(b) whether a biosecurity import permit must be obtained for the article and if so the conditions to be attached to the permit;

(c) what biosecurity measures, if any, must be applied to the article on arrival in the Fiji Islands before biosecurity import clearance can be granted.

(2) Specifications under subsection (1) -

(a) may be different for different types and quantities of regulated article;

(b) may be by reference to the country or area of origin of the article;

(c) must only be those reasonably necessary to reduce or eliminate the biosecurity risk to the Fiji Islands presented by the article.

(3) In determining specifications under subsection (1), the Authority -

(a) must make a biosecurity risk assessment;

(b) must have regard to the requirements of the SPS Agreement and other international standards relating to biosecurity matters;

(c) must have regard to the resources available for biosecurity control;

(d) may apply the precautionary principle.

(4) The biosecurity risk assessment needed for making a specification under this section -

(a) may be performed by any qualified person (other than the importer) at the request of the Authority;

(b) is performed at the importer's expense.

(5) Specifications made under subsection (1) in respect of an article may be changed at any time before biosecurity import clearance is obtained in respect of the article if the biosecurity risk presented by the article or consignment changes.

(6) Notice of a change in an import specification in respect of an article should be given to intending importers as soon as practicable but no liability arises from a failure to do so.

(7) Before making or changing a specification under this section, the Authority must obtain the advice of its technical section heads.

(8) Specifications made under this section must be -

(a) published in the biosecurity register and at the office of the Authority; and

(b) made available to the public for inspection or purchase.

*Biosecurity access arrangements*

**35.**-(1) A person proposing to import a regulated article of a type that is not the subject of a biosecurity import specification must apply in writing to the Authority for a specification under section 34 in respect of the article.

(2) An application under subsection (1) in respect of an article must -

(a) be made in sufficient time before the intended importation; and

(b) give adequate information about the biosecurity procedures of the country of origin, the nature of the article and the proposed importation,

to enable the Authority to make a biosecurity risk assessment in relation to the article.

(3) Upon receipt of an application under subsection (1), and on payment of the prescribed fee, if any, the Authority must as soon as practicable, unless the article is or becomes a prohibited import under section 17, make a specification in respect of it in accordance with section 34.

(4) Section 34(2), (3) and (4) apply to the making of a specification under this section.

*Application for a biosecurity import permit*

**36.**-(1) If a biosecurity import permit is required under section 34(1) in respect of a regulated article or consignment, an application for a permit must -

(a) be made before the article or consignment leaves the country of origin or, in the case of re-exported goods, the re-exporting country.

(b) be made to the Authority in the manner specified or approved by the Authority;  
and

(c) be accompanied by the prescribed fee, if any.

(2) An application for a biosecurity import permit must -

(a) include evidence of the country of origin of the regulated article or consignment;

(b) state the nature and amount of the article or consignment;

(c) state the expected date of arrival in the Fiji Islands; and

(d) give any other information the Authority reasonably requires to enable the

Authority to make a biosecurity risk assessment.

(3) A decision on an application for a biosecurity import permit must be communicated to the applicant as soon as reasonably practicable after the application is received duly completed.

(4) If the decision is to refuse the permit, the applicant must be notified in writing, with brief reasons.

*Issue of a biosecurity import permit*

**37.**-(1) If satisfied of the matters set out in section 36(1) and (2), and on payment of the prescribed fee, if any, the Authority, or a biosecurity officer, must as soon as practicable issue a biosecurity import permit.

(2) The form of a biosecurity import permit is as specified or approved by the Authority.

(3) A biosecurity import permit may -

(a) be general or specific;

(b) relate to a single article or to a consignment of articles;

(c) be different for different types of regulated article and relate to different countries of origin.

(4) A general permit may relate to all imports of a type specified in the permit, or from an area specified in the permit, and may relate to continuing imports over a period specified in the permit. A specific permit will relate to a single article or consignment and may specify an expiry date.

*Revocation of a biosecurity import permit*

**38.**-(1) The Authority may at anytime, on written notice to the holder of a biosecurity import permit, revoke the permit, or vary the conditions of the permit, if a change in the biosecurity risk to the Fiji Islands presented by the article or consignment to which the permit relates so requires.

(2) Biosecurity import clearance must be refused for an article or consignment in respect of which a biosecurity import permit is revoked, but section 34(5) applies to a revocation as it does to the change of a biosecurity specification.

(3) When a biosecurity import permit is revoked, the holder of the permit must surrender it to a biosecurity officer as soon as practicable.

(4) A person who contravenes subsection (3) commits an offence.

(5) No compensation is payable in respect of the revocation in good faith of a permit under this section.

*Exemption from biosecurity import requirements*

**39.**-(1) The Authority may in writing exempt any regulated article, class of regulated articles or consignment of regulated articles -

(a) from any or all of the biosecurity import specifications that would otherwise apply to the article or class of articles;

(b) from a requirement for a biosecurity import permit that would otherwise apply to the article or consignment.

(2) An exemption under subsection (1) applies only to a single importation.

(3) An exemption under subsection (1) may specify the conditions on which the article, class of articles or consignment is exempt. If the conditions are not met the exemption ceases to apply.

(4) The Authority may only grant an exemption under subsection(1) upon receipt of advice from its technical section heads, and if satisfied that the biosecurity risk to the Fiji Islands is not increased as a result.

(5) A request for exemption under this section must be -

(a) made in writing to the Authority;

(b) accompanied by the prescribed fee, if any, and the specified documents;

(c) made insufficient time to allow the Authority to give due consideration to the request.

(6) Articles exempted from biosecurity import specifications or the requirement for an import permit under this section is not exempt from the requirement for biosecurity import clearance.

#### *Articles and passengers in transit*

**40.**-(1) Regulated articles in transit are liable to biosecurity import control, and require biosecurity import clearance at a biosecurity holding area.

(2) The Authority or a biosecurity officer may in writing waive any requirement for a sanitary or phytosanitary certificate or biosecurity import permit that would otherwise apply to articles in transit.

(3) If a waiver is granted under subsection (2), the Authority or officer may attach conditions to the waiver.

(4) A person who -

(a) deals with articles to which this section applies other than by way of transit; or

(b) contravenes a condition specified under subsection (3) in relation to them,

commits an offence.

(5) A request for a waiver, under this section must be -

(a) made in writing to the Authority;

(b) accompanied by the prescribed fee, if any, and the specified documents;

(c) made in sufficient time to allow the Authority or a biosecurity officer to give due consideration to the request.

(6) In the case of regulated articles which accompany a crew member or passenger in transit -

(a) subsection (5) is deemed to have been complied with if the passenger or crew member complies with other requirements for regulated articles in transit;

(b) the requirement in subsection (2) for a waiver to be in writing does not apply.

(7) A biosecurity officer may at any time inspect an article in transit if the officer reasonably suspects the article might pose a biosecurity threat to the Fiji Islands or a receiving country.

(8) A person in charge of an article in transit who refuses to comply with a request for inspection under subsection (7) commits an offence.

## **PART 6 - BIOSECURITY EXPORT PROCEDURES**

### *Biosecurity export inspection of outgoing articles*

**41.**-(1) Every outgoing regulated article or consignment of regulated articles is liable to biosecurity export inspection at the biosecurity point of departure to enable a biosecurity officer -

(a) to ascertain whether it is or includes an article that requires biosecurity export clearance pursuant to section 42;

(b) if so, to decide whether to grant export clearance under section 46.

(2) An exporter of goods who fails to make the goods available for biosecurity export inspection at the biosecurity point of departure at the request of a biosecurity officer commits an offence.

(3) A biosecurity officer may only request to inspect an outgoing article or consignment if the officer has reasonable cause to suspect that it is or includes a regulated article that requires biosecurity export clearance pursuant to section 42.

(4) If, after inspecting an outgoing article or consignment under this section, a biosecurity officer is satisfied -

(a) that it is or includes an article that requires biosecurity export clearance, the provisions of this Part apply to it;

(b) that it is not or does not include such an article the article or consignment may be released from the biosecurity point of departure upon payment of the prescribed fee, if any..

(5) Section 57 applies to an inspection under this section.

(6) This section does not apply in respect of baggage accompanying passengers or crew members.

*Requirement for biosecurity export clearance*

**42.**-(1) An article intended for export to a receiving country that requires -

(a) a sanitary or phytosanitary certificate for importation into that country; or

(b) any biosecurity measures to be applied to it under section 44(2) before being exported to that country,

must have biosecurity export clearance for export to that country.

(2) A person who exports or attempts to export an article or consignment that requires biosecurity export clearance without such clearance commits an offence.

*Issue of sanitary and phytosanitary certificates*

**43.**-(1) A person who wishes to obtain a sanitary or phytosanitary certificate or a certificate of origin in respect of an article in order to comply with the biosecurity certification requirements of the receiving country must -

(a) apply to the Authority in writing;

(b) pay the prescribed fee, if any;

(c) submit the article for inspection or other biosecurity measures as required by the receiving country.

(2) Upon receipt of an application under subsection (1), the Authority must -

(a) ascertain the biosecurity certification requirements of the receiving country, through the applicant or directly from the country;

(b) perform appropriate inspection and apply appropriate biosecurity measures to the article as required by the receiving country;

(c) if satisfied that the biosecurity certification requirements of the receiving country have been met, issue the appropriate certificate upon payment of the prescribed fee.

(3) A biosecurity certification requirement entered in the biosecurity register -

(a) if certified by or on behalf of the Authority, is conclusive evidence of the requirement for purposes of this Promulgation; but

(b) does not create any liability on the Government or the Authority if relied on by an exporter to the exporter's detriment.

*Biosecurity export specifications*

**44.**-(1) The Authority may specify in respect of outgoing animals or plants, or their products, any biosecurity measures, in addition to biosecurity certification requirements of the receiving country, that must be applied to the animal, plant or product before export.

(2) Specifications under subsection (1) may only be made if required by an international agreement to which the Fiji Islands and the receiving country are party in respect of the movement of animals, plants or animal or plant products, and must conform to any such agreement.

(3) Specifications under subsection (1) in respect of an animal or animal product may be changed at any time before biosecurity export clearance is granted, if there is a change in the relevant international obligations relating to the animal or animal product, and section 34(6) applies to any such change.

(4) Before making or changing a specification under this section, the Authority must obtain the advice of its technical section heads.

(5) Specifications made under this section must be -

(a) published in the biosecurity register and at the office of the Authority; and

(b) made available to the public for inspection or purchase.

*Application for biosecurity export clearance*

**45.**-(1) An application for biosecurity export clearance of an article or consignment must be made to a biosecurity officer in the manner specified or approved by the Authority and be accompanied by the prescribed fee, if any.

(2) An application for biosecurity export clearance for a regulated article or consignment must -

(a) be made before the regulated article or consignment arrives at a biosecurity point of departure; and

(b) allow sufficient time for processing of the application.

(3) An application for biosecurity export clearance for an article or consignment must -

(a) specify the receiving country;

(b) specify the nature and quantity of the article or consignment;

(c) attach any sanitary or phytosanitary certificate issued under section 43(2) in relation to the article or consignment;

(d) attach documentation relating to any other biosecurity measures required under section 44 (1) in relation to animals or plants or animal or plant products.

(4) If the article or consignment requires biosecurity measures to be applied to it, the person seeking to export it must submit the article or consignment to such measures, failing which

biosecurity export clearance will not be granted.

(5) If a person seeking to export an article or consignment fails to comply with any of the requirements of this section, a biosecurity officer may refuse to grant biosecurity export clearance for the article or consignment.

(6) This section does not apply to passengers or crew members, but section 28 applies to such persons.

#### *Grant of biosecurity export clearance*

**46.**-(1) Before granting biosecurity export clearance in respect of an article or consignment, a biosecurity officer must be satisfied -

(a) that the biosecurity certification requirements of the receiving country have been complied with;

(b) that any biosecurity measures specified under section 44(1) in respect of an animal or animal product have been applied;

(c) that the prescribed fee, if any, has been paid.

(2) If an outgoing article that requires biosecurity export clearance is found to be infected, infested or contaminated by a regulated pest or disease, biosecurity clearance will be refused in respect of it.

(3) A decision on an application for biosecurity export clearance must be communicated to the applicant as soon as reasonably practicable after the application is received duly completed. .

(4) If the decision is to refuse clearance, the applicant must be notified in writing, with brief reasons.

(5) If a biosecurity officer considers it necessary to inspect any outgoing article or consignment for the purposes of this section, section 57 applies.

### **PART 7 - BIOSECURITY QUARANTINE**

#### *Biosecurity quarantine of regulated articles*

**47.**-(1) A biosecurity officer may, by notice in writing to the importer, order into biosecurity quarantine any incoming regulated article if -

(a) the article is a prohibited import and must therefore be reconsigned or destroyed;

(b) quarantine is a biosecurity import requirement for the article; or

(c) during biosecurity entry inspection or biosecurity import clearance inspection the article is found to be, or is suspected to be, infested, infected or contaminated.

(2) If an article is ordered into biosecurity quarantine under this section, a biosecurity officer may -

(a) in writing direct the importer to remove the article to a specified biosecurity quarantine station;

(b) if necessary (because the importer, exporter, owner or custodian refuses to obey the direction, or because of the nature of the biosecurity threat) arrange for the article to be removed to a biosecurity quarantine station.

(3) An importer who refuses to remove an article to biosecurity quarantine as directed under this section commits an offence.

(4) The cost of removal of an article to biosecurity quarantine is to be borne by the importer of the article, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal, unless negligence or malice is proved.

(5) If an article is quarantined under this section, the importer must be given written notice stating the reasons for the quarantine and, if it was removed under subsection (2)(b), the location of the article.

#### *Biosecurity quarantine stations*

**43.**-(1) The Minister, on the advice of the Authority, and after consulting other relevant Ministries, may by order designate any public or private land as a biosecurity quarantine station for animals, animal products, plants, plant products, conveyances, containers or other goods for the purposes of this Promulgation.

(2) Before designating any private land as a biosecurity quarantine station, the Minister, through the Authority, must consult the owner, and must pay compensation as agreed or as determined by a court for use of the land as a quarantine station.

(3) The Authority must ensure that every biosecurity quarantine station is provided with such buildings and facilities as are reasonably needed -

(a) to hold regulated articles in biosecurity quarantine;

(b) to prevent unauthorized persons from entering the station or removing items from the station;

(c) to enable the Authority to perform tests, provide treatment and apply other biosecurity measures as required by or under this Promulgation.

#### *Conditions of biosecurity quarantine*

**49.**-(1) The Authority may issue specifications as to -

(a) the examination, treatment, disposal or destruction of articles while in a biosecurity quarantine station or in transit to or from a quarantine station;

(b) the period for which different types of regulated articles must remain in a biosecurity quarantine station.

(2) The fees or charges payable for keeping items in biosecurity quarantine are as prescribed

by the Authority.

(3) The cost of keeping an article in biosecurity quarantine is to be borne by the importer of the article.

(4) No compensation is payable for any loss or destruction or consequential loss caused by an item being detained in biosecurity quarantine, unless negligence or malice is proved.

*Management of biosecurity quarantine stations*

**50.**-(1) No person, other than the person in charge of the station or a biosecurity officer acting in the course of duty, may enter a biosecurity quarantine station without the written permission of the Authority or of the person in charge of the station.

(2) A biosecurity officer may, in order to reduce a biosecurity threat, lock, seal or otherwise prevent entry to and exit from a biosecurity quarantine station or any building in it, regardless of the ownership of the station.

(3) A person who -

(a) enters a biosecurity quarantine station without permission pursuant to subsection (1); or

(b) damages, interferes with or in any way reduces the effectiveness of measures taken to secure a biosecurity quarantine station, or any regulated article or other item in the station,

commits an offence.

(4) The Authority may issue written instructions to the person in charge of a biosecurity quarantine station as to the management of the station.

*Release from biosecurity quarantine*

**51.**-(1) A conveyance, container or article must not be released from biosecurity quarantine except upon the authority of a biosecurity quarantine release certificate issued by a biosecurity officer.

(2) Before an article can be released from biosecurity quarantine -

(a) any treatment required as a condition of importation of the article must have been applied; and

(b) all quarantine fees must have been paid.

(3) Once subsection (2) has been complied with, the conveyance, container or article must be released from biosecurity quarantine as soon as practicable and a biosecurity release certificate issued.

(4) A person who releases an article from a biosecurity quarantine station contrary to subsection (1) commits an offence.

*Biosecurity quarantine notices*

52.-(1) A biosecurity officer may affix a notice on any biosecurity quarantine station, and on any conveyance, container or article held in biosecurity quarantine, stating the conditions and duration of quarantine and other information relating to the station or the item as specified by the Authority.

(2) A person who removes a notice affixed under subsection (1) without lawful authority commits an offence.

*No plant or animal to be at large*

53.-(1) No person may liberate or cause to be liberated from a biosecurity quarantine station, biosecurity port quarantine area, or biosecurity holding area or let go at large in the Fiji Islands any animal, plant or organism which is subject to biosecurity control under this Promulgation.

(2) A person who contravenes subsection (1) is not entitled to any compensation for loss of or damage to the animal, plant or organism occasioned by its being recaptured and confined or if necessary destroyed in accordance with Parts 8 and 9.

(3) A person who contravenes subsection (1) commits an offence and, in addition to the prescribed maximum penalty, is liable to pay the Authority the cost of recapturing and confining or if necessary destroying the animal, plant or organism.

**PART 8 - POWERS OF BIOSECURITY OFFICERS**

*General rules as to exercise of powers*

54.-(1) The powers conferred by this Promulgation on biosecurity officers maybe exercised only for the purpose of ascertaining whether there is a biosecurity risk presented by a conveyance, container or item and eliminating or reducing the risk to an acceptable extent.

(2) A reference in this Promulgation to a biosecurity officer, when exercising powers, means a duly authorised biosecurity officer acting in the performance of his or her duties.

(3) A biosecurity officer may use only such force as is reasonably necessary when exercising a power under this Promulgation. If necessary, the officer should obtain the assistance of a police officer to effect an arrest or enter premises.

(4) Before exercising a power to enter and search premises, to search a conveyance or container or to inspect or test any article, a biosecurity officer must, if practical, request the assistance of the person in control of the premises, conveyance, container or article.

(5) Except as otherwise provided in this Promulgation, a biosecurity officer may exercise a power under this Promulgation without a warrant or other order of a magistrate, provided the action is taken in good faith for the purposes of this Promulgation.

(6) A biosecurity officer exercising powers under this Part must produce for inspection his or her identification as an officer, upon request by the person in charge of the conveyance, premises or area, or the importer, exporter, owner or custodian of the item, in respect of which the power is being exercised.

(7) Before exercising a power in a situation that involves shipping, civil aviation, human health, the environment or any other activity governed by another Law, a biosecurity officer must if practicable consult the officer or authority responsible under that Law for that activity.

(8) The powers conferred on biosecurity officers by or under this Promulgation must be exercised subject to -

(a) any regulations made by the Minister under this Promulgation in respect of those powers;

(b) any biosecurity specifications made in respect of regulated articles;

(c) any written directions of the Authority given under section 77;

(d) the provisions of -

(i) the Vienna Convention on Diplomatic Relations relating to the premises of a diplomatic mission, diplomatic bags and the personal baggage of diplomatic agents;

(ii) the Vienna Convention on Consular Relations relating to consular premises, archives and documents.

#### *Entry, search and seizure*

**55.-(1)** A biosecurity officer may -

(a) search an incoming vessel or aircraft at a biosecurity port holding area to ascertain whether the vessel or aircraft has on board any regulated article that might pose a biosecurity threat to the Fiji Islands;

(b) search an outgoing vessel or aircraft if the officer has reason to believe there are on board any uncleared articles that require export clearance;

(c) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a dwelling house, but not a dwelling house, in order to ascertain the presence of uncleared regulated articles that have not received biosecurity import clearance;

(d) at any time with the consent of the owner, enter and search a dwelling house for purposes of this Promulgation;

(e) at any time, on a warrant issued under subsection (2), enter and search a dwelling house for uncleared regulated articles that the officer reasonably suspects to be in it.

(2) If a magistrate is satisfied on affidavit evidence by a biosecurity officer that -

(a) there may be in a dwelling house uncleared regulated articles; and

(b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the magistrate may issue a warrant authorising the officer to enter and search the dwelling house for uncleared regulated articles.

(3) A biosecurity officer may at any time enter and search any store, warehouse, silo, pen or similar premises, or any conveyance, in which regulated articles intended for importation to or exportation from the Fiji Islands are kept.

(4) A person who keeps regulated articles in or on any premises, or in a conveyance, prior to importation or exportation of them must make the premises or conveyance available for inspection by a biosecurity officer upon request at any reasonable time.

(5) Subsections (1), (3) and (4) apply to premises and conveyances outside the Fiji Islands in respect of articles intended for importation to the Fiji Islands.

(6) A person who contravenes subsection (4) commits an offence.

(7) During a search of premises or a conveyance under this section a biosecurity officer may seize anything which -

(a) is an uncleared regulated article; or

(b) may be used as evidence of the commission of an offence under this Promulgation.

(8) A biosecurity officer who seizes anything from a person under subsection (7) must -

(a) inform the person of the reason for the seizure;

(b) give the person a receipt for the thing seized; and

(c) remove the thing to a place of safekeeping and deal with it in accordance with this Promulgation.

(9) A biosecurity officer may, at the expense of the importer, submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

#### *Inspection of documents*

**56.**-(1) A biosecurity officer may -

(a) call for and inspect documents on or in incoming or outgoing vessels and aircraft as provided in sections 23 and 28 respectively;

(b) open and inspect at a biosecurity point of entry any incoming document, including mail, in order to ascertain whether the document contains or relates to a regulated article;

(c) open and inspect at a biosecurity point of departure any outgoing document, including mail, if the officer reasonably suspects that the document contains or relates to -

(i) an uncleared regulated article that requires biosecurity export clearance; or

(ii) a regulated article that could pose a serious biosecurity threat to the country of destination of the document.

(2) The powers relating to mail in subsection (1)(b) and (c) must only be exercised in respect of personal letters if the officer reasonably suspects that a letter contains or relates to a biosecurity threat.

#### *Inspection of articles*

57.-(1) A biosecurity officer may at a biosecurity holding area inspect any incoming regulated article, and any conveyance, container or baggage in which the article is carried, in order to assess the biosecurity risk presented by the article, conveyance, container or baggage.

(2) A biosecurity officer may at a biosecurity point of departure inspect any article, which requires biosecurity export clearance, in order to facilitate such clearance.

(3) The powers of inspection in subsection (1) and (2) are in addition to the powers of inspection in sections 31 and 41 and any other powers of inspection in or under this Promulgation.

(4) For the purpose of exercising the powers of inspections under this Promulgation, a biosecurity officer may request an importer or exporter to unpack and/or break up a consignment, or to open a container, at the person's risk and expense.

(5) If an importer or exporter refuses to comply with a request under subsection (4) -

(a) the person commits an offence;

(b) the biosecurity officer may break up the consignment or open the container or cause it to be broken or opened;

(c) the cost of action under paragraph (b) is a debt owing to the Authority by the importer or exporter, as the case may be;

(d) no liability lies on the Government, the Authority or any biosecurity officer and no compensation is payable, for the action of breaking up or opening, unless negligence or malice is proved.

(6) When conducting an inspection under this Promulgation, a biosecurity officer may seek access to, and take photographic, electronic or other copies of any evidence, information, records and things related to the regulated article or consignment that the officer reasonably requires in order to ensure compliance with this Promulgation or to investigate a possible offence under it.

(7) Inspection of articles in transit is governed by section 40(7).

*Detention of articles*

**58.**-(1) If an incoming regulated article requires biosecurity measures to be taken in respect of it before biosecurity import clearance can be granted, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, for biosecurity measures to be taken.

(2) If an outgoing regulated article that requires biosecurity export clearance has not been cleared, a biosecurity officer may detain the article, and any conveyance, container or baggage in which the article is carried, until clearance or other disposition of the article under this Promulgation.

(3) An article detained under this section must be detained in a place specified by the officer, being a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises.

(4) If an article is to be detained under this section, a biosecurity officer may -

(a) direct the importer or exporter of the article to remove it to the specified place;

(b) if necessary (because the importer or exporter refuses to obey the direction, or because of the nature of the biosecurity threat,) arrange for the article to be removed to the specified place.

(5) If an article is detained under this section, a biosecurity officer must give to the importer or exporter a notice in writing stating the reasons for the detention and, if it was removed under subsection (4)(b), the specified place.

(6) The cost of removal of an article to and its detention in a specified place is to be borne by the importer or exporter, and no compensation is payable for any loss or destruction or consequential loss caused as a result of any such removal or detention, unless negligence or malice is proved.

(7) The charges for detention of all article under this section are as prescribed by the Authority.

*Taking of samples*

**59.**-(1) A biosecurity officer may, with the consent of the importer, owner or custodian, take samples from -

(a) any part of an incoming vessel or aircraft that has on board regulated articles;

(b) any warehouse containing regulated articles intended for importation ;

(c) any consignment of incoming regulated articles, wherever located;

(d) any incoming container, baggage or thing that the officer reasonably suspects to be or include a regulated article.

- (2) If an importer refuses consent under subsection (1), the biosecurity officer may require the person to provide appropriate samples.
- (3) An importer who refuses either to allow samples to be taken or to provide samples, when required to do so under this section, commits an offence.
- (4) A biosecurity officer may, with the consent of the person in charge of the article, take samples of any outgoing regulated article if the taking of a sample is necessary for the issue of a sanitary or phytosanitary certificate.
- (5) If the person in charge of a regulated article refuses consent under subsection (4), the biosecurity officer may require the person to provide a sample, failing which the sanitary or phytosanitary certificate will not be issued.
- (6) A biosecurity officer may request the importer or exporter of a consignment to unpack it or break it up to facilitate sampling, at the risk and expense of the importer or exporter.
- (7) When exercising powers under subsection (1) or (2), a biosecurity officer must give the importer or exporter a written notice, identifying the quantity of the sample and the place where the sample is to be analysed.
- (8) In other respects, the procedure for taking and analysing samples, recording the results and disposing of the samples is as prescribed or specified.
- (9) If, in the course of sampling, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or exporter of the goods.
- (10) The importer or exporter of a regulated article from which samples are taken under subsection (1) must be notified in writing of the findings in respect of the samples as soon as reasonably practicable.
- (11) The charges for taking and analysis of samples under this section are as prescribed by the Authority.

#### *Testing of articles*

- 60.**-(1) A biosecurity officer may test, or cause tests to be conducted on, any incoming regulated article, in order to ascertain whether the article meets the biosecurity import requirements in respect of it.
- (2) Following a test of an incoming article, and on payment of the prescribed fee, if any, the article must be either released to the importer, and biosecurity import clearance granted in respect of it, or it must be treated in accordance with section 53 or reconsigned or destroyed.
- (3) A biosecurity officer may test, or cause tests to be conducted on, any outgoing regulated article that requires biosecurity export clearance if such tests are a condition for importation into the receiving country.
- (4) Following tests on an outgoing article, biosecurity export clearance must either be granted or refused in respect of the article.

(5) Section 58(3) to (6) apply to articles detained for testing under this section.

(6) The importer or exporter of a regulated article which is tested under subsection (1) or (3) must be notified in writing of the results of the test before the article is released or otherwise disposed of.

(7) If a test conducted under subsection (1) or (3) without negligence or malice destroys or damages an animal or other article being tested, no compensation is payable to the importer of the animal or other article.

(8) The charges for testing of an article under this section are prescribed by the Authority.

#### *Treatment of articles*

**61.**-(1) If an incoming regulated article requires treatment in order to meet the biosecurity import requirements in respect of it, the article must be treated before biosecurity import clearance is granted in respect of it.

(2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease, the article may be treated to reduce the biosecurity risk to an acceptable level, whether or not treatment is a specified requirement or a condition of an import permit.

(3) Section 58(3) to (6) apply to articles detained for treatment under this section.

(4) Once treatment has been administered to the satisfaction of the biosecurity officer, and on payment of any applicable charges, the article must, subject to subsection (4), be released to the importer and biosecurity import clearance granted in respect of it.

(5) The cost of treatment is to be borne by the importer of the item, but the importer may instead opt to have the article reconsigned or destroyed.

(6) If an importer fails to have an article which requires treatment under this section treated within a reasonable time, the biosecurity officer may require the article to be destroyed.

(7) If -

(a) appropriate treatment is not available in the Fiji Islands;

(b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or

(c) the importer chooses not to have the article treated, the article must be reconsigned or, if the importer chooses, or if section 62(3) applies, destroyed.

(8) Notice of action to be taken under subsection (6) or (7) must be given to the importer in writing before the action is taken, except for articles in passenger baggage which are detained for destruction in the presence of the owner or custodian.

(9) If an outgoing regulated article requires treatment as a condition of importation into the receiving country, the article must be treated at the expense of the exporter before biosecurity export clearance is granted in respect of it.

(10) If, in the course of treatment, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or exporter of the goods.

(11) Treatment of an article -

(a) should be the minimum required to remove or adequately reduce the biosecurity risk posed by the article;

(b) may be administered by an appropriately qualified biosecurity officer, or by any other suitably qualified person at the request of the officer or the importer.

(12) The charges for treatment of an article under this section are as prescribed by the Authority.

#### *Reconsignment of articles*

**62.**-(1) If an incoming regulated article which requires an import permit or a sanitary or phytosanitary certificate does not have the permit or certificate attached to it, a biosecurity officer may, after informing the importer, detain the article for reconsignment or destruction.

(2) An incoming article that is a prohibited import must be reconsigned or destroyed.

(3) Reconsignment is at the option and cost of the importer, but -

(a) reconsignment must be effected within a time specified by the officer which must be reasonable in the circumstances;

(b) if the biosecurity officer considers that the biosecurity risk of reconsignment is unacceptable, the option is not available.

(4) The power to order reconsignment of an article under this section applies also to any container, crate, baggage, package or mail which carries it.

(5) If reconsignment is not effected within the time specified under subsection (3)(a), or is not acceptable, the article or consignment must be destroyed.

(6) No compensation is payable to the importer for the cost of reconsignment under this section.

#### *Destruction of articles*

**63.**-(1) If this Promulgation requires or authorizes an article to be destroyed, the destruction of the article must be in accordance with this section.

(2) If an incoming article is found to be infected, infested or contaminated by a regulated pest or disease, and -

(a) appropriate treatment is not available in the Fiji Islands;

(b) in the opinion of the Authority, there would still be a biosecurity risk after treatment; or

(c) the importer chooses not to have the article treated,

the article must be reconsigned or, if the importer chooses, or if section 62(3) applies, destroyed.

(3) The power of destruction of articles in subsection (2) is in addition to any other power of destruction in or under this Promulgation.

(4) Destruction of an article under this Promulgation may include any container, crate, baggage, package or mail which carries it.

(5) Packaging of an article may be considered as not part of a consignment and maybe destroyed, if considered to pose a biosecurity risk, whether or not the article is destroyed.

(6) If the article to be destroyed appears to be of or above the value of \$2,000, the biosecurity officer must obtain the written approval of the officer's immediate supervisor before arranging for its destruction.

(7) The manner of destruction of articles under this section is as specified or approved by the Authority and the importer or owner of the article, if known, must be invited to witness the destruction.

(8) The Authority must give notice of an intention to destroy any article to the importer or owner in writing before the action is taken, if the importer or owner is known.

(9) No compensation is payable to the importer for destruction of an article under this section.

(10) The charges for destruction of an article under this section are as prescribed by the Authority.

#### *Post mortem examination of an animal*

**64.**-(1) If a biosecurity officer examining an animal pursuant to this Promulgation suspects that the animal is diseased and considers a post mortem examination to be necessary to establish a diagnosis, the officer may, on the written authority of the Authority, and without the consent of the owner -

(a) take or cause to be taken the life of the animal;

(b) cause a post mortem examination to be conducted to decide whether the animal is diseased; and

(c) obtain specimens from the animal for laboratory examination and diagnosis.

(2) If an examination is conducted pursuant to subsection (1), the results of the examination and of any laboratory reports resulting from the examination must be provided in writing to the Authority and to the owner of the animal, if the owner can be identified and located.

#### *Powers in relation to people*

**65.**-(1) If a biosecurity officer is of the opinion that any person -

(a) seeking to enter or leave the Fiji Islands;

(b) employed at a biosecurity point of entry or departure, in a designated area or quarantine station, or at approved premises; or

(c) engaged in importing or exporting regulated articles;

is in possession or control of an article that poses a biosecurity threat to the Fiji Islands, the officer may detain and question the person.

(2) If a biosecurity officer suspects that there may be upon a person seeking to enter the Fiji Islands an article that would, if imported, constitute an offence under this Promulgation, the officer may cause the person and the person's baggage to be searched.

(3) If a biosecurity officer suspects that there may be upon a person seeking to leave the Fiji Islands an article that would, if exported, constitute an offence under this Promulgation, the officer may cause the person and the person's baggage to be searched.

(4) A search of a person under this section must be carried out by 2 officers of the same sex as the person searched.

(5) A person may be detained under this section only for as long as is required to question and search the person and the person's baggage and to arrange for biosecurity measures to be taken in respect of it.

(6) A person who refuses -

(a) to answer to the best of his or her knowledge and ability questions reasonably put by a biosecurity officer; or

(b) to submit to a search reasonably required under this section,

commits an offence.

(7) In this section, "person" means an individual.

## **PART 9 - BIOSECURITY INTERNAL CONTROL**

### *Pest and disease surveys*

**66.**-(1) The Minister, on the advice of the Authority, may order a survey of any area of the Fiji Islands to be conducted to ascertain the status of pests and diseases in the area and the biosecurity risk of moving animals, plants, humans or organisms into, out of, or through the area.

(2) An order under this section -

(a) must be published as required by section 104(1);

(b) does not take effect until published in the Gazette.

(3) For the purposes of a survey under this section, a biosecurity officer may, in the area of the survey -

(a) inspect premises and equipment;

(b) take photographs and films and make drawings;

(c) inspect animals and plants and their products;

(d) question persons;

(e) collect specimens and perform tests relating to animals, plants, animal and plant products, land, water and the environment.

(4) For the purposes of a survey under this section, the Authority may direct the owners of animals or plants in the area of the survey, or persons who have custody or control of them, to make them available for inspection at places designated by the Authority.

(5) A person who refuses, in the course of a survey under this section -

(a) to permit an officer to enter property, collect specimens or perform tests as reasonably required;

(b) to answer to the best of his or her knowledge and ability oral or written questions reasonably put to the person by a biosecurity officer; or

(c) to make animals or plants in the ownership, custody or control of the person available as required under subsection (4),

commits an offence.

(6) The Authority may provide for the publication and transmission of survey results to other interested governments and organisations in compliance with international agreements.

#### *Entry, search and seizure*

**67.**-(1) If a biosecurity officer reasonably suspects the presence of a regulated pest or disease that is not under official control, the officer may -

(a) at any time stop, board and search any conveyance;

(b) at any time enter and search any premises, building or area, including a biosecurity holding area, biosecurity quarantine station or biosecurity approved premises and land adjacent to a dwelling house, but not a dwelling house;

(c) at any time with the consent of the owner, enter and search a dwelling house for animals, plants and their products;

(d) at any time, on a warrant issued under subsection (2), enter and search a dwelling-house for any regulated article that the officer reasonably suspects to be in it and to

pose a biosecurity threat to the Fiji Islands.

(2) If a magistrate is satisfied on affidavit evidence by a biosecurity officer that -

(a) there may be in a dwelling house a regulated article that poses a biosecurity threat to the Fiji Islands; and

(b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the magistrate may issue a warrant authorising the officer to enter and search the dwelling house for the article.

(3) During a search of premises or a conveyance under this section a biosecurity officer may seize anything which -

(a) is a regulated article which the officer reasonably suspects poses a biosecurity threat to the Fiji Islands; or

(b) may be used as evidence of the commission of an offence under this Promulgation.

(4) A biosecurity officer who seizes anything from a person under subsection (3) must -

(a) inform the person of the reason for the seizure;

(b) give the person a receipt for the thing seized; and

(c) at the expense of the owner, remove the thing to a place of safekeeping and deal with it in accordance with this Promulgation.

(5) A biosecurity officer may submit to appropriate biosecurity measures any regulated article seized pursuant to this section.

*Detention and testing of animals and plants and their products*

**68.**-(1) If an animal or plant or animal or plant product in the Fiji Islands is suspected of being infected or infested by a regulated pest or disease, a biosecurity officer may direct the animal, plant or product to be detained and confined in a place specified by the Authority for tests to be conducted.

(2) Following detention under subsection (1), a biosecurity officer may test, or cause to be tested, any animal or plant or animal or plant product. Such tests may include -

(a) the taking of samples in accordance with section 59 (replacing references to the importer of an article by references to the owner or custodian of it);

(b) conducting a post mortem examination in accordance with section 64.

(3) If after testing as in subsection (2) the animal, plant or product is considered to pose a biosecurity threat to the Fiji Islands, the officer may further detain it in the specified place for

biosecurity measures to be taken in respect of it, but an animal, plant or product may be detained only for so long as is required for biosecurity measures to be taken in respect of it.

(4) If an animal or plant or animal or plant product is to be detained under this section, a biosecurity officer may -

(a) direct the owner or custodian to remove it to the place specified under subsection (1);

(b) if necessary (because the owner or custodian refuses to obey the direction, or because of the nature of the biosecurity threat) arrange for the animal, plant or product to be removed to the specified place.

(5) if an animal or plant or animal or plant product is detained under this section, the owner or custodian must be given a written notice stating the reasons for the detention and, if it was removed under subsection (4)(b), the specified place.

(6) The cost of removal of an article to and its detention in a specified place under this section is to be borne by the Authority, and the owner is entitled to compensation for damage to or destruction of an article (but not consequential loss) caused as a result of any such removal or detention.

(7) Section 20 (Management of biosecurity holding areas) applies to places specified under this section as it applies to biosecurity holding areas, except that section 48(2) and (3) do not apply.

*Treatment or destruction of animals and plants and their products*

**69.**-(1) If treatment is available to eliminate or reduce to an acceptable level the biosecurity threat posed by an animal or plant or animal or plant product that has been detained under section 68, a biosecurity officer may -

(a) with the consent of the owner or custodian of the animal, plant or product, administer such treatment, or cause it to be administered;

(b) after treatment, release the animal, plant or product to the owner or custodian.

(2) If -

(a) in the opinion of a biosecurity officer, appropriate treatment is not available in the Fiji Islands;

(b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or

(c) the owner or custodian does not consent to the treatment being administered,

a biosecurity officer may order the animal or plant or product to be destroyed.

(3) Notice of action to be taken under subsection (2) must be given to the owner or custodian in writing before the action is taken.

(4) Subject to subsection (5), section 63 applies to the destruction of animals and plants and their products under this section, replacing references to the importer of an article by references to the owner or custodian of it.

(5) The cost of treatment or destruction under this section is to be borne by the Authority, and the owner is entitled to compensation (but not consequential loss) for destruction of an article under this section.

*Infested biosecurity controlled areas*

**70.**-(1) If -

(a) an animal or plant on land or premises in any area of the Fiji Islands is found to be infested by a pest or disease; and

(b) the powers in sections 67 to 69 are inadequate to control the outbreak,

the Minister, on the advice of the Authority, may by order declare the land or premises to be an infested biosecurity controlled area in respect of that pest or disease.

(2) An order under this section -

(a) may include an area of adjacent land if necessary to effectively contain the infestation;

(b) must be made as soon as practicable after the finding of the infestation;

(c) must be published as required by section 104(1);

(d) comes into effect on making, if so declared.

(3) In an infested biosecurity controlled area, a biosecurity officer may enter upon any land at any time in order to ascertain the status of a regulated pest or disease.

(4) In an infested biosecurity controlled area, pending the making of an order under section 71, no animal or animal product, or plant or plant product, fodder, fitting or other thing as specified in the declaration, may be moved out of, into or within the area except with the permission of a biosecurity officer and in accordance with any conditions reasonably imposed by the officer.

(5) A person who contravenes subsection (4) commits an offence.

*Regulation of infested biosecurity controlled areas*

**71.**-(1) In an infested biosecurity controlled area, the Authority may by order direct -

(a) the treatment or disposal of diseased animals and plants;

(b) the destocking, cleaning, disinfecting or other treatment of land, premises and conveyances;

(c) the inspection and treatment of regulated articles in or entering or leaving the area;

(d) any other biosecurity measures the Authority considers necessary to control the infestation.

(2) In respect of an infested biosecurity controlled area, the Authority may by order control -

(a) the movement of animals or plants or their products or other regulated articles into, out of or within the area;

(b) the movement of humans and conveyances into, out of or within the area;

(c) any other activity the Authority considers needs to be controlled to prevent the movement of host material into and out of the area.

(3) An order under subsection (1) or (2) may create offences for breaches of it and prescribe maximum penalties not exceeding a fine of \$20,000 for an individual and \$100,000 for a corporate body.

(4) An order under this section -

(a) must be published as required by section 104(1);

(b) does not take effect until published in the *Gazette*.

(5) Section 70(4) ceases to have effect upon the coming into force of an order under this section.

(6) The cost of treatment or destruction under this section is to be borne by the Authority, and the owner is entitled to compensation (but not consequential loss) for destruction of an article under this section.

#### *Pest-free biosecurity controlled areas*

**72.**-(1) The Minister, on the advice of the Authority, may by order declare any area of the Fiji Islands to be a pest-free biosecurity controlled area in respect of a specified pest or disease.

(2) A pest-free biosecurity controlled area is one where the specified pest or disease does not occur, so far as is known, and where incursions of that pest or disease should be prevented.

(3) An order under this section -

(a) must be published as required by section 104(1);

(b) does not take effect until published in the *Gazette*.

(4) Following a further survey conducted under section 66, and on the advice of the Authority, the Minister may amend or revoke an order made under subsection (1).

(5) Before advising the Minister under this section, the Authority must obtain appropriate scientific advice.

*Regulation of pest free biosecurity controlled areas*

**73.**-(1) In respect of a pest-free biosecurity controlled area the Authority may by order -

(a) control the movement of regulated articles, humans and conveyances into, out of, and within the area;

(b) direct the inspection and treatment of regulated articles in or entering or leaving the area;

(c) establish surveillance procedures for the specified pest or disease in the area.

(2) An order under subsection (1) -

(a) must only be made for the purposes of preventing incursions of the specified pest or disease into the biosecurity controlled area;

(b) may create offences for breaches of the order and prescribe maximum penalties not exceeding a fine of \$20,000 for an individual and \$100,000 for a corporate body.

(3) An order under this section -

(a) must be published as required by section 104(1);

(b) does not take effect until published in the *Gazette*.

(4) The Authority may by administrative means institute other measures to keep the biosecurity controlled area free of the specified pest or disease.

*Destruction of wild and astray animals*

**74.**-(1) If the Authority has reason to suspect that a wild, feral or stray animal is carrying a regulated pest or disease, the Authority may, in order to prevent the pest or disease from being established or spreading in the Fiji Islands, after consultation with its technical section heads, cause the animal to be destroyed.

(2) The carcass of an animal destroyed under subsection (1) must be disposed of in a manner that will not create the risk of the spread of any regulated pest or disease.

*Notifiable pests and diseases*

**75.**-(1) The Authority may by order declare -

(a) the pests and diseases that are notifiable for purposes of this section;

(b) the manner of notifying such pests and diseases to the Authority.

(2) An order under this section -

(a) must be published as required by section 104(1);

(b) does not take effect until published in the *Gazette*.

(3) A person who knows of or suspects the occurrence of a notifiable pest or disease in the Fiji Islands must as soon as reasonably practicable notify the Authority in the manner declared under subsection (1), unless the person reasonably believes that the Authority has already been notified of the occurrence.

(4) A person who fails to comply with subsection (3) commits an offence.

(5) The master of a vessel or captain of an aircraft in the Fiji Islands who knows of or suspects the occurrence of a notifiable pest or disease on board the vessel or aircraft must -

(a) as soon as reasonably practicable notify the Authority in the manner declared under subsection (1); and

(b) take such action in relation to the vessel or aircraft as is directed by the Authority or a biosecurity officer.

(6) A master or captain who fails to comply with subsection (5)(a) or (b) commits an offence.

(7) The Authority must record in the biosecurity register all occurrences of notifiable diseases that are notified under this section or that otherwise come to the notice of the Authority.

*Beneficial organisms and bio-control agents*

**76.**-(1) The Minister may in writing authorise the release of beneficial organisms or biocontrol agents that are necessary or appropriate for the control or eradication of a particular pest or disease in the Fiji Islands.

(2) Before authorising a release under subsection (1) the Minister must obtain the advice of the Authority as to the biosecurity risk posed by the release and consult as appropriate the officers or authorities responsible for agriculture, fisheries, environment and natural resources.

(3) An authorisation under subsection (1) must identify -

(a) the organism or agent;

(b) the pest or disease which it is intended to control;

(c) the area where it may be released;

(d) the period during which it may be released;

(e) the person or persons who may release it; and

(f) any conditions subject to which the approval is granted.

(4) No liability attaches to the Minister, the Authority or any public officer in respect of the release of organisms or biocontrol agents in accordance with this section, except on proof of negligence or malice.

(5) The Authority must record in the biosecurity register -

(a) the names of any beneficial organisms or biological agents released under this section; and

(b) the place of and extent of release of such organisms and agents.

(6) In this section, "beneficial organism" and "biocontrol agent" mean a natural enemy, antagonist or competitor of a pest or disease, and any other self-replicating biotic entity used for pest and disease control.

(7) Before advising the Minister under subsection (2), the Authority must obtain appropriate scientific advice.

## **PART 10 - BIOSECURITY EMERGENCIES**

### *Declaration of a biosecurity emergency area*

**77.**-(1) On receiving evidence that a biosecurity emergency has arisen in the whole or any part of the Fiji Islands, the Minister may declare a biosecurity emergency in respect of the whole of or that part of the Fiji Islands.

(2) Before making a declaration under subsection (1), the Minister must obtain the advice of the Authority and consult the National Disaster Management Council.

(3) A biosecurity emergency area may include an area where an animal or plant is found to be infested or infected, and adjacent areas to the extent reasonably necessary.

(4) Notice of a declaration under this section must be -

(a) published as required by section 104(1);

(b) displayed on noticeboards or similar throughout the biosecurity emergency area.

(5) A declaration under subsection (1) -

(a) does not take effect until it has been published in the *Gazette*;

(b) must be revoked as soon as the biosecurity threat is removed or reduced to an acceptable degree.

(6) A declaration under subsection (1) expires on the date which is 6 months after it comes into force unless it is revoked or extended on or before that date by the Minister and subsection (2) applies to such a resolution.

(7) An extension of a biosecurity emergency declaration may not be for more than 6 months from the date of the resolution, but may be renewed in the same manner before the end of that period.

### *Response to a biosecurity emergency*

**78.**-(1) When a biosecurity emergency area is declared under section 77, the Authority must

undertake a detailed survey, using the powers in section 66, to ascertain the precise extent and severity of the incursion or other threat and the most appropriate measures to take in response.

(2) In deciding on an appropriate response to a biosecurity emergency, the Authority should -

(a) be guided by any Biosecurity Emergency Response Plan that has been devised by the Authority in consultation with other departments of government and statutory authorities;

(b) as appropriate, consult and liaise with the National Disaster Management Council.

(3) If the cost of a response to an emergency exceeds or is likely to exceed the current budget of the Authority, the Minister should request the Cabinet for additional funds, as provided by section 14(3).

*Action in a biosecurity emergency area*

**79.**(1) In respect of a biosecurity emergency area -

(a) *the CEO may request the Commissioner of Police and any department of government or statutory Authority to use their powers and resources to assist in the control or eradication of any pest or disease in the area;*

(b) *the CEO may in writing requisition for the use of the Authority any conveyance or equipment which the Authority reasonably considers is necessary or useful for preventing, eradicating or limiting the spread of a pest or disease;*

(c) *a biosecurity officer may enter upon any land at any time in order to ascertain the status of a pest or disease;*

(d) *the CEO may appoint temporary additional personnel, whether or not having the powers of biosecurity officers, to effectively respond to the biosecurity emergency.*

(2) In a biosecurity emergency area, the Authority may do or cause to be done any of the following -

(a) mark the boundaries of the emergency area;

(b) set up roadblocks at all exits from the area;

(c) set up facilities for the cleansing and disinfection of all persons and conveyances entering or leaving the area and any other thing likely to spread any pest or disease;

(d) disinfect all conveyances, crates, packing, animals, plants and other things which are likely to carry pests or diseases and which are being sent out of the area;

(e) inspect and disinfect all persons and their possessions leaving the area so as to prevent any host material that may be infected from leaving the area;

(f) for the purposes of paragraphs (d) and (e), detain persons, animals, plants, animal

and plant products, goods and vehicles for as long as is necessary to minimise or eliminate the biosecurity risk presented by them;

(g) perform surveillance activities to ascertain the extent and status of the emergency.

(3) A person who -

(a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of the Authority, a biosecurity officer or any police officer or other person performing duties under this section;

(b) knowingly enters or leaves a biosecurity emergency area except with and in accordance with the permission of the Authority or a biosecurity officer; or

(c) knowingly moves any article out of or into a biosecurity emergency area, or from one place within the area to another place within that area, except with and in accordance with the written permission of the Authority or a biosecurity officer,

commits an offence.

(4) Articles moved in contravention of subsection (3)(c) may be seized by a biosecurity officer and -

(a) held pending criminal proceedings for the contravention; or

(b) if necessary to remove a biosecurity threat, destroyed as the Authority directs, without a court order.

(5) In respect of action taken under this section -

(a) the cost of treatment or destruction of any article is to be borne by the Authority;

(b) compensation (but not for consequential loss) is payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

#### *Biosecurity Emergency Regulations*

**80.**-(1) The Minister, on the advice of the Authority, may at any time make regulations ("Biosecurity Emergency Regulations") which -

(a) supplement the powers given to the CEO and Authority and biosecurity officers by section 79; and

(b) take effect upon the declaration of a biosecurity emergency area under section 78.

(2) Biosecurity Emergency Regulations may, in respect of a biosecurity emergency area -

(a) create one or more exclusion zones within the area and control the movement of conveyances, humans, animals and plants and host material into, out of and within such a zone;

- (b) prohibit specified activities in the area;
- (c) provide for the destruction or treatment of specified goods and the treatment of land in the area;
- (d) regulate the use of the area for a specified period after the lifting of emergency restrictions;
- (e) generally, specify the conditions which apply to the area to control the biosecurity emergency.

(3) Biosecurity Emergency Regulations may -

- (a) confer on the CEO and Authority and on biosecurity officers powers additional to those conferred by this Promulgation and reasonably needed to deal with the emergency;
- (b) prescribe the disposal, destruction, treatment or other measures to be adopted in respect of any item which is infected, infested or contaminated;
- (c) require the cleansing or disinfecting of soil, conveyances, machinery, tools, equipment, clothing, footwear or other things which may have come into contact with those items;
- (d) prescribe measures to be taken to prevent pests and diseases from spreading, including but not limited to cleansing of homes and utensils, removal of stagnant water and disposal of garbage;
- (e) prohibit or restrict the use of any seaport or airport, or of any facilities at any seaport or airport, to the extent specified.

(4) Biosecurity Emergency Regulations may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of \$40,000 for an individual or \$200,000 for a corporate body.

(5) Biosecurity Emergency Regulations come into force on the day on which a biosecurity emergency declaration takes effect under section 77 and lapse upon the expiry of the declaration under that section. They come into force again if a further declaration is made under section 77.

(6) In respect of action taken under Biosecurity Emergency Regulations -

- (a) the cost of treatment or destruction of any article is to be borne by the Authority;
- (b) compensation (but not for consequential loss) is payable to the owner of any land, premises, conveyance or article that is used, lost, destroyed or damaged.

## **PART 11 - ADMINISTRATION OF THE PROMULGATION**

### *Biosecurity register and records*

**81.**-(1) The Authority must maintain a biosecurity register and other records needed for the administration of this Promulgation and the performance of the functions of the Authority.

(2) Without limiting the matters to be recorded in the biosecurity register, details of the following must be included -

- (a) regulated pests and diseases;
- (b) prohibited imports;
- (c) biosecurity points of entry and departure;
- (d) biosecurity holding areas;
- (e) biosecurity clearance agents;
- (f) biosecurity port quarantine areas;
- (g) biosecurity quarantine stations;
- (h) biosecurity approved premises;
- (i) biosecurity import permits issued, refused and revoked under Part 5;
- (j) exemptions granted under section 39;
- (k) transit waivers issued under section 40, other than in-transit passenger waivers;
- (l) biosecurity controlled areas declared under section 70 or 72;
- (m) occurrences of notifiable pests and diseases notified under section 75;
- (n) beneficial organisms and biocontrol agents released under section 76;
- (o) agreements and memoranda of understanding with other government departments, statutory authorities and overseas agencies under section 83(3);
- (p) compliance agreements entered into by the Authority under section 87;
- (q) bilateral agreements entered into with potential receiving countries under section 89;
- (r) any other matter required by or under this Promulgation or considered by the Authority to be necessary or appropriate for inclusion in the biosecurity register.

(3) The Authority must include in the biosecurity register details of -

- (a) specifications for regulated articles made under sections 34 and 44, including the biosecurity measures appropriate to each type of regulated article;

(b) any other form or matter prescribed or specified by the Authority under this Promulgation.

(4) In respect of the biosecurity requirements of receiving countries, the biosecurity register must include details of -

(a) the requirements of those countries for which biosecurity export clearance has been granted in the past 12 months;

(b) source material for ascertaining the biosecurity requirements of all potential receiving countries.

(5) The Authority must maintain records relating to its functions, including, but not limited to-

(a) financial and resource management records, with budgets and records of expenditure and revenue, in accordance with Part B of Schedule 4;

(b) personnel records including the identities, duty statements and terms and conditions of employment of all biosecurity officers and other employees;

(c) operational statistics relating to the biosecurity functions of the Authority.

#### *Status of biosecurity register and records*

**82.**-(1) The biosecurity register kept pursuant to section 81(1) must be made available for inspection and copying by members of the public during office hours at the office of the Authority on payment of the prescribed fee.

(2) Subject to any other Act, the biosecurity register and other records kept under section 81 must only be used for the purposes of this Promulgation.

(3) A copy of an entry in the biosecurity register which is certified by the Authority to be an accurate copy may be produced in court as prima facie evidence of the entry.

(4) The biosecurity register and other records kept under section 81 may be in electronic format, provided the information is readily retrievable and is protected against unintended loss.

(5) The Minister, on the advice of the Authority, may by order determine the period for which entries in the biosecurity register and other records under section 81 must be kept, consistent with any other Act relating to public records.

#### *Consultation and outsourcing*

**83.**-(1) Before making subsidiary legislation, issuing directions or exercising other powers under this Promulgation, the Minister, CEO and Board should each obtain appropriate technical advice and consult relevant interested parties, but failure to do so does not invalidate the exercise of the relevant powers.

(2) Before exercising a power under this Promulgation that will or might affect matters within the responsibility of another government department or statutory authority (including but not limited to human health, natural resources, environment, tourism, postal services, shipping,

aviation, transport and trade) the Minister, CEO and Board should each consult the relevant department, authority or officer, but failure to do so does not invalidate the exercise of the power.

(3) The Authority may, for the effective implementation of this Promulgation, enter into memoranda of understanding or other agreements with other government departments and statutory authorities and with official agencies and private organizations in the Fiji Islands or elsewhere.

(4) The Authority may -

(a) hire the services of a laboratory for testing of samples;

(b) hire consultants to perform biosecurity risk assessments and to carry out surveys authorised under this Promulgation;

(c) hire any treatment or other service deemed necessary for the effective implementation of this Promulgation.

(5) Outsourcing of services under subsection (4) does not confer on any person the powers of a biosecurity officer.

*Duty to coordinate*

**84.**-(1) Biosecurity officers and other persons administering this Promulgation should so far as possible coordinate their functions with those of officers of other government departments and statutory authorities, in respect of border control, the movement of vessels and aircraft, human health, biosecurity internal control and compliance with the laws of the Fiji Islands generally.

(2) Without limiting subsection (1), -

(a) biosecurity officers should notify officers of the customs and immigration services of any breach of the customs or immigration Laws that comes to their notice;

(b) officers of the customs and immigration services and of the postal service should -

(i) notify a biosecurity officer of the importation or proposed exportation of any uncleared regulated article that comes to their notice;

(ii) hand over to a biosecurity officer any such article which comes into their possession for inspection and treatment in accordance with this Promulgation;

(c) police officers, customs officers, immigration officers, postal service officers, environmental officers, agriculture officers, livestock officers, forestry officers and fisheries officers should co-operate with biosecurity officers in the performance of their functions under this Promulgation and render such assistance as they can lawfully do when called upon by the Authority or a biosecurity officer.

(3) The Authority should seek so far as possible to coordinate the biosecurity functions of the Authority with those of other government departments and statutory authorities dealing with

the police, customs, immigration, marine, harbours, civil aviation, health, environment, fisheries, natural resources and similar services.

*Facilities at biosecurity points of entry or departure*

**85.**-(1) The operator of every biosecurity point of entry or departure in the Fiji Islands must, to the extent possible, provide on the premises, for the purposes of this Promulgation and to the satisfaction of the Authority -

- (a) an area suitable for use as offices by biosecurity officers stationed at the point;
- (b) adequate space for the display of notices regarding the biosecurity requirements of this Promulgation;
- (c) areas for interview and, if necessary, physical examination of incoming passengers and crew, if required;
- (d) biosecurity holding areas as designated under section 19;
- (e) facilities and suitable containers for garbage collection and incineration or other disposal;
- (f) facilities for the incineration or other disposal of regulated articles without creating an unacceptable biosecurity risk;
- (g) fencing of premises in which garbage holding and disposal equipment is situated;
- (h) any other facilities the Authority reasonably requests in writing as being needed for the performance of biosecurity functions at the point of entry or departure.

(2) The operator of a biosecurity entry or departure point, whether or not a public officer, must keep the premises and facilities mentioned in subsection (1)(e), (f) and (g) free from weeds and vermin to the satisfaction of the Authority. An operator who fails to do so commits an offence.

(3) No charge is payable by the Authority for the facilities to be provided under this section. If an operator fails to provide facilities as required by this section they may be provided by the Authority and the cost of such provision is a debt owing by the operator to the Authority.

*Safe carriage and safe working environment*

**86.**-(1) If it is necessary for the purposes of this Promulgation for a biosecurity officer to be transported to a conveyance, premises or place, the owner of the conveyance, premises or place must ensure that the mode of transport provides safe carriage having regard to the conditions of travel.

(2) if it is necessary for an officer to undertake inspection duties on a conveyance or premises, including a conveyance or premises owned by the Government or Authority, the person in charge of the conveyance or premises must provide a safe working environment for the officer.

(3) The Minister's power to make regulations under section 106 includes the power to make

regulations, consistent with the health and safety Laws of the Fiji Islands, to enforce the obligations stated in subsection (1) and (2).

*Compliance agreements*

**87.**-(1) The Authority may enter into a written agreement with an importer, exporter, producer or any other person in connection with -

- (a) the application of particular biosecurity measures in respect of any item;
- (b) the way in which any requirement under this Promulgation can be satisfied by the person; and
- (c) the supervision, monitoring and testing of the person's compliance with those measures or that requirement.

(2) A compliance agreement may provide that, in circumstances stated in the agreement, the Authority may, by written notice, cancel or vary the agreement or suspend its operation for a period. The circumstances may include, but are not limited to, the person's failure to comply with specified measures or meet specified requirements.

(3) A biosecurity officer may release an article to which a compliance agreement applies, and if it is a regulated article grant biosecurity clearance in respect of it, on the basis of a written certificate, given by a person authorised under the agreement to give such a certificate, that all the measures to which the agreement refers have been complied with in respect of the article.

*Biosecurity approved premises*

**88.**-(1) The Authority, on written application by the owner or occupier of any premises and on payment of the prescribed fee, may in writing -

- (a) approve the premises as premises where the inspection, testing and treatment of regulated articles can take place; and
- (b) approve specified action being taken under this Promulgation in relation to all regulated articles, or specified articles, while they are in the approved premises.

(2) In deciding whether to give approval under subsection (1), the Authority, after inspection of the premises by a biosecurity officer, must take into account -

- (a) whether the specified action can be taken in the premises without an unacceptable biosecurity risk and without contravening this Promulgation or the conditions of any permit;
- (b) whether the premises and facilities in them are adequate to enable such action to be taken efficiently and safely;
- (c) whether the location of the premises is appropriate having regard to the nature of the articles, the specified action and the level of biosecurity risk;
- (d) whether the premises are located in a place where biosecurity officers can

conveniently check that this Promulgation and the regulations are being complied with in the premises; and

(e) any other matter the Authority considers relevant.

(3) An approval under this section may be expressed to be subject to conditions stated in the approval and is of no effect if the conditions are not met.

(4) An approval under this section has effect for a period not exceeding 12 months but maybe renewed by following the procedure for a new approval.

(5) An approval under this section maybe cancelled if the Authority is satisfied -

(a) that the premises or facilities or action taken do not comply with this Promulgation or the regulations; or

(b) that the premises are otherwise no longer suitable for approval.

(6) The provisions of this Promulgation relating to biosecurity quarantine stations (other than section 48) apply to premises approved under this section.

#### *International cooperation*

**89.**-(1) The Minister, in consultation with the Ministers for foreign affairs and trade, may, with the approval of the Cabinet, enter into bilateral or multilateral agreements with countries and international organisations for effective international control in biosecurity matters.

(2) The Authority may pursuant to such agreements -

(a) exchange information with other countries and international organisations;

(b) contribute to the development of international sanitary and phytosanitary standards.

(3) Agreements under subsection (1) may include agreements on procedures for implementing this Promulgation, but not so as to vary the effect of any of its provisions except as provided by this Promulgation.

(4) The Minister must use his or her best endeavours to implement in the Fiji Islands international standards and requirements relating to biosecurity, and to that end should -

(a) designate one or more officers in the Authority as the enquiry point and notification authority for purposes of the IPPC, the OIE and the PPPO;

(b) seek to ensure that notification and reporting requirements of the IPPC, the OIE, the PPPO and any other international agreement relating to biosecurity imposed on the Fiji Islands are met in a timely manner.

#### *Notifications*

**90.**-(1) The Minister, on the advice of the Authority, may at anytime issue a notice -

- (a) stating that a specified pest or disease is known to exist in the Fiji Islands;
- (b) stating that, to the best of the Minister's knowledge, a specified pest or disease does not exist in the Fiji Island;
- (c) specifying the classification, name or identity by which any animal, animal product, plant, plant product, pest or disease is known in the Fiji Islands.

(2) A notice issued under subsection (1) is, for the purposes of this Promulgation, conclusive until revoked or amended under that subsection and is admissible in any court or other proceedings as evidence of the matters stated in it.

## **PART 12 - OFFENCES AND PENALTIES**

### *Dereliction of duty by officers*

**91.** A biosecurity officer who -

- (a) fails without reasonable excuse to perform any of his or her duties under this Promulgation or the regulations;
- (b) disposes of a regulated article or other item under the control of the officer other than in accordance with this Promulgation;
- (c) discloses information of a confidential or commercial nature which has come into the officer's possession while performing functions under this Promulgation, except for purposes of this Promulgation;
- (d) in the course of performing his or her duties molests or intimidates unlawfully assaults any person;
- (e) in connection with his or her duties solicits or accepts a bribe; or
- (f) knowingly or recklessly makes a false or misleading statement, or issues a false or misleading certificate or other document, while purporting to perform his or her duties,

commits an offence.

### *Obstruction, false information etc.*

**92.** A person who -

- (a) wilfully fails to comply with a lawful request made or direction given by a biosecurity officer under this Promulgation;
- (b) knowingly obstructs a biosecurity officer in the performance of his or her functions under this Promulgation;
- (c) assaults, or threatens to assault a biosecurity officer performing functions under this Promulgation;

(d) bribes a biosecurity officer in relation to the performance of functions under this Promulgation;

(e) makes a false or incomplete statement, whether orally or in writing, in relation to any matter under this Promulgation, intending to mislead a biosecurity officer in the performance of functions under this Promulgation,

(f) for purposes of this Promulgation knowingly or recklessly -

(i) makes a false or misleading biosecurity declaration; or

(ii) issues any false or misleading certificate;

(g) knowingly or recklessly gives false or misleading information to a biosecurity officer while the officer is performing functions under this Promulgation,

commits an offence.

#### *Fraudulent use of official documents*

**93.**-(1) A person to whom a permit or other document is issued under this Promulgation who-

(a) forges or unlawfully alters the document;

(b) allows any other person to use or attempt to use the document for any purpose of this Promulgation,

commits an offence.

(2) A person who, for the purposes of this Promulgation, produces a document which is false or misleading, knowing it to be so and intending another person to rely on it, commits an offence.

(3) A person who uses or affixes an official stamp or seal required under this Promulgation, without lawful authority and with intent to defraud or deceive, commits an offence.

#### *Maximum Penalties*

**94.**-(1) An individual who commits an offence under a section of this Promulgation listed in column 2 of Schedule 5 is liable on summary conviction to the maximum penalties respectively listed in columns 4 and 5 of Schedule 5.

(2) The penalties listed in Schedule 5 are maxima and a court may impose on an individual any penalty for an offence up to the amount of fine or period of imprisonment (or both) listed in respect of the offence.

(3) A body corporate that commits an offence is liable to a maximum fine of 5 times the maximum fine for the same offence if committed by an individual, as prescribed in Schedule 5.

#### *Forfeiture*

**95.**-(1) A court convicting a person of an offence under this Promulgation or the regulations may, in addition to any other penalty imposed, order that any article used in committing the

offence, or, if the article has been sold, the proceeds of the sale, be confiscated.

(2) If an article or proceeds are confiscated under subsection (1) -

(a) the article or proceeds are forfeited to the Authority;

(b) a forfeited article may be sold and the proceeds of sale paid into the funds of the Authority; or

(c) if the article poses a biosecurity threat it must be destroyed as directed by the Authority.

(3) For the purposes of subsection (1), "article used in committing the offence" includes equipment, a conveyance and any other movable thing owned by the offender which was used directly in the commission of the offence, but does not include land or buildings and fixtures on land.

(4) In deciding whether to order confiscation of any article or proceeds under this section, a court must have regard to the principle of proportionality.

*Fixed penalty system*

**96.** - (1) The Authority, if of the opinion that a person has committed an offence under this Promulgation, may as an alternative to prosecuting the person -

(a) order the person to pay a fixed penalty as described in subsection (2); and

(b) order any goods liable to confiscation in connection with the offence to be forfeited to the State or, if they pose a biosecurity threat, to be destroyed.

(2) The fixed penalty referred to in subsection (1) is as set out in column 6 of Schedule 5. If no figure is shown in that column, the fixed penalty option is not available.

(3) The fixed penalty for a body corporate is 5 times that for an individual.

(4) Before imposing a fixed penalty order on a person for an offence, the Authority must notify the person in writing, giving particulars of the offence, the maximum penalty that a court could impose, the fixed penalty that is proposed, and any item that will be confiscated.

(5) If a person on whom a notice is served under subsection (4) -

(a) within the time specified in the notice, and in writing, admits the offence, requests the Authority to deal with it under this section and consents to the confiscation of the item (if appropriate) - the Authority may impose a fixed penalty order on the person;

(b) does not respond as in paragraph (a) within the time specified in the notice - the Authority may prosecute the offence.

(6) A fixed penalty order must -

(a) be in writing and specify the offence which the person has committed, the fixed

penalty that is imposed, the place where it is to be paid and the date by which it is to be paid;

(b) specify any item that is to be forfeited or destroyed.

(7) A person against whom an order is made under this section is not liable to any further criminal proceedings in respect of the offence and if in custody must be discharged.

(8) If a fixed penalty payable under this section, or any part of it, is not paid by the date specified in the order, the sum payable becomes a debt owing to the Authority and the Authority may -

(a) request the Director of Immigration to place a stop order on the person leaving the country until the sum is paid; and either –

(b) send a copy of the order to a court of competent jurisdiction which may enforce payment of the sum outstanding as if it were a fine imposed by the court including imposing costs and confiscation as appropriate; or

(c) prosecute the offence.

(9) The Minister's power to make regulations under section 106 includes the power to make regulations to supplement the provisions of this section in relation to fixed penalty notices, including the imposing of stop orders to prevent a person leaving the country until the sum is paid.

#### *Offences by corporate bodies*

**97.**-(1) A corporate body cannot be imprisoned for an offence under this Promulgation or the regulations, but the maximum fine for such an offence by a corporate body is as stated in section 94(3).

(2) If a corporate body commits an offence against this Promulgation, every person who is a board member or director or otherwise concerned in the management of the body also commits the offence as an individual, unless the person proves -

(a) that the offence was committed without his or her consent or connivance; and

(b) that he or she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the corporate body and to all the circumstances.

### **PART 13 - MISCELLANEOUS PROVISIONS**

#### *Civil and criminal proceedings*

**98.**-(1) Notwithstanding any limit on its jurisdiction in any other Law, a magistrate's court is competent to impose any penalty or to make any order provided for in or under this Promulgation.

(2) The Authority may institute and conduct proceedings for an offence under this Promulgation, subject to the right of the Director of Prosecutions to institute, take over or

terminate criminal proceedings at any time.

(3) The Authority may institute and conduct proceedings for the recovery of a debt owing to the Authority under this Promulgation.

#### *Abandoned goods*

**99.**-(1) An article may be treated as abandoned and disposed of under this section if -

(a) any fee or charge payable by a person under this Promulgation or the regulations in respect of the article is not paid within 3 months of the notice of the fee or charge being served on the person;

(b) the article is in a biosecurity holding area and is not removed from the area within 14 days after biosecurity entry clearance has been granted in respect of it; or

(c) the article is in biosecurity quarantine and is not removed from a biosecurity quarantine station or biosecurity approved premises within 14 days after the end of the quarantine period in respect of it.

(2) An article that has been abandoned may be destroyed, sold or otherwise disposed of in the prescribed manner, or, in the absence of regulations, in any manner the Authority thinks fit that does not present a biosecurity risk.

(3) The cost of disposal of an abandoned article is a debt due to the Authority by the person who was the owner of it, and proceeds of any sale or disposal of an abandoned article revert to the Authority.

#### *Compensation*

**100.**-(1) Except as otherwise provided in or under this Promulgation, no compensation is payable for loss of or damage to any item as a result of any search, inspection, examination, sampling, testing, detention, treatment, quarantine or other biosecurity measure taken under this Promulgation or the regulations, unless negligence or malice on the part of the person taking the measure is proved.

(2) Compensation is not payable under this Promulgation, or may be reduced proportionately, if the biosecurity measures that caused the loss or damage were occasioned by a wilful or negligent act or omission of the person claiming compensation.

(3) If this Promulgation provides for payment of compensation in any circumstances, the compensation must be -

(a) claimed in accordance with a specified procedure;

(b) if not agreed, determined by the Authority in accordance with specified rates, not exceeding the market value of the item plus consequential loss reflecting contemporary costs;

(c) paid out of the funds of the Authority.

(4) An appeal against a determination under subsection (3) lies to the High Court.

### *Appeals from decisions*

**101.** -(1) A person who is aggrieved by a decision of a biosecurity officer under this Promulgation may within 24 hours from the time he or she receives the decision appeal to the biosecurity officer's immediate supervisor.

(2) A person who is aggrieved by the decision of a supervisor under subsection (1), may within 24 hours from the time he or she receives the decision appeal in writing to the Manager.

(3) A person who is aggrieved by a decision of the Manager, may, within 24 hours from the time he receive the decision, appeal in writing to the CEO, whose decision is final.

(4) The lodging of an appeal in respect of an article does not prevent biosecurity measures being taken in respect of the article to reduce or eliminate the biosecurity risk posed by the article, and section 102 applies to the taking of such measures.

(5) The person deciding an appeal must give the appellant and the respondent the opportunity to be heard, in writing or in person, and to produce evidence and call witnesses, and must give reasons for the decision on the appeal.

(6) If an appeal involves a technical issue, the person hearing the appeal must obtain the advice of the relevant technical section head.

(7) An appeal in respect of compensation is to be dealt with as provided in section 100(4).

### *Limitation of liability*

**102.**-(1) Neither the Authority, the Minister, the Board, the CEO, or any biosecurity officer or other public officer is personally liable for action taken under this Promulgation in good faith and without negligence.

(2) A breach of a duty imposed on the Authority, the Minister, the Board, the CEO, a biosecurity officer or any other public officer by or under this Promulgation does not give rise to any civil liability except as provided by or under this Promulgation.

### *Evidence*

**103.** - (1) In any proceedings under this Promulgation -

(a) a document purporting to have been issued by the Minister, CEO, Board or by a biosecurity officer or other public officer for the purposes of this Promulgation is presumed, until the contrary is proved, to have been duly executed or signed by that person;

(b) a copy of or extract from a document issued by the Minister, Board, CEO or by a biosecurity officer or other public officer, and certified by the Authority or person to be true and correct is, unless the contrary is proved -

(i) presumed to be a true and correct copy or extract;

(ii) on its production in court prima facie proof of any matter contained in it.

(2) In any proceedings under this Promulgation -

(a) a certificate, in a form approved by the Authority, of the results of any test conducted on an article by the person who conducted the test may be tendered in evidence and is prima facie evidence of the facts stated in it;

(b) a certificate of analysis of a sample of any article or thing may be tendered in evidence and is prima facie evidence of the facts stated in it if the procedure prescribed in relation to the sample has been substantially followed.

(3) Section 81 governs the evidential status of the biosecurity register and records kept under this Promulgation.

*Publication of orders and notices*

**104.**-(1) Regulations and legislative orders made under this Promulgation must be published -

(a) in the *Gazette*;

(b) at the office of the Authority and on the Authority website, if any;

(c) on any radio or television station that broadcasts in the affected area;

(d) in any newspaper that circulates in the affected area;

(e) at any government or local authority offices that are in or adjacent to the affected area.

and made available to the public for inspection or purchase.

(2) Regulations and legislative orders made under this Promulgation do not take effect until published in the *Gazette*, unless otherwise provided.

(3) Unless otherwise provided, and subject to subsection (4), notice required by this Promulgation to be given may be given electronically -

(a) by a person to the Authority;

(b) by the Authority to a person, if the person has given the Authority an electronic address for receipt of such notices.

(4) If service of a notice or other document on a person is to be proved in a court, it must be effected -

(a) by personal service on the person; or

(b) by registered post to the address of the person given to the Authority, in which case service is presumed to have been effected 2 days after posting.

(5) The CEO may give instructions and directions to biosecurity officers by electronic means.

(6) A printed copy of an electronic record of a notice, instruction or direction given or received by electronic means is prima facie evidence of the notice if the record purports to have been made at the time of sending or receipt.

#### *Specification*

**105.**-(1) The Authority may in writing specify -

(a) documents and forms for use in connection with this Promulgation, including the format of documents transmitted by electronic means;

(b) the procedures for applying for and issuing permits and other documents;

(c) all other matters that can or must be specified, as provided for in this Promulgation.

(2) If a matter is prescribed by regulations or an order, the regulations or order take precedence over a specification on the same matter.

(3) Specifications must be entered in a biosecurity register maintained under section 81 and do not take effect until so entered.

(4) Section 82 governs the evidential status of a specification contained in a biosecurity register.

(5) Unless otherwise provided, section 104(1) does not apply to specifications made under this Promulgation and entered in a biosecurity register, but they must be -

(a) published in the biosecurity register and at the offices of the Authority;

(b) published in any operations manual provided to biosecurity officers pursuant to section 9(6)(b); and

(c) made available to the public for inspection or purchase.

#### *Regulations*

**106.**-(1) The Minister may make regulations not inconsistent with this Promulgation for the effective implementation of this Promulgation, other than regulations that can be made by the Authority under subsection (5).

(2) Without limiting subsection (1) or affecting any other regulation-making power in this Promulgation, regulations made by the Minister may -

(a) prescribe the method of taking and analyzing samples, recording the results and disposing of the samples;

(b) prescribe the manner of disposal of abandoned goods under section 99;

(c) prescribe the procedure for claiming compensation, and the rates payable, pursuant to section 100;

*(d)* regulate the procedure on appeals under section 101;

*(e)* provide for the de-ratting of vessels, and the form of de-ratting certificate;

*(f)* regulate the disposal of garbage and waste and second-hand clothing and bedding so as to minimise any biosecurity risk;

*(g)* prescribe additional measures, consistent with this Promulgation, to implement in the Fiji Islands the standards and requirements relating to biosecurity of the IPPC, the OIE and the PPPO;

*(h)* prescribe any other matter which this Promulgation requires to be prescribed by the Minister.

(3) Before making regulations under this section, the Minister must -

*(a)* obtain the advice of the Authority; and

*(b)* consult any local authority whose area of jurisdiction will be affected, and other government departments and statutory authorities as appropriate.

(4) The Authority may make regulations relating to the performance of the functions of the Authority.

(5) Without limiting subsection (4) or affecting any other regulation-making power in this Promulgation, regulations made by the Authority may -

*(a)* prescribe fees and charges for services provided by the Authority;

*(b)* provide for the electronic filing of declarations and applications required by this Promulgation and the electronic keeping of registers;

*(c)* prescribe the language of documents required by this Promulgation;

*(d)* prescribe the manner and language of markings on containers of incoming and outgoing regulated articles;

*(e)* prescribe the methods of handling and sealing and disposal of containers of regulated articles;

*(f)* provide for the placing and use of amnesty bins or other containers for regulated articles at points of entry;

*(g)* subject to the approval of the civil aviation and maritime authorities, require a video film about biosecurity to be shown on all aircraft and vessels arriving in the Fiji Islands and carrying passengers;

*(h)* require treatment to be applied in respect of a vessel or aircraft before it arrives in the Fiji Islands;

(i) prescribe additional measures, consistent with this Promulgation, to implement in the Fiji Islands the standards and requirements relating to biosecurity of the IPPC, the OIE and the PPPO;

(j) prescribe any other matter that is necessary for performing the functions of the Authority and that is not prescribed by the Minister.

(6) Before making regulations under this section, the Authority must -

(a) obtain the written approval of the Minister; and

(b) consult any local authority whose area of jurisdiction will be affected, and other government departments and statutory authorities as appropriate.

(7) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of \$20,000 for an individual or \$100,000 for a corporate body.

*Repeals and savings*

**107.**-(1) Subject to this section, the following Acts and item of subsidiary legislation are repealed -

(a) the Animals Importation Act (Cap. 159);

(b) the Animals (Contagious Diseases) Act (Cap. 160);

(c) the Plant Quarantine Act (Cap. 156).

(2) Subsidiary legislation made under the repealed Acts continue in force as if made under this Promulgation until amended, replaced or repealed under this Promulgation, unless and to the extent that -

(a) the matter is provided for in this Promulgation;

(b) the subsidiary legislation is inconsistent with the provisions of this Promulgation or any other Act.

(3) Provisions of regulations made under the repealed Acts dealing with the treatment of animals, plants and their products on arrival in the Fiji Islands -

(a) are deemed to have been made by the Authority as specifications under section 34;

(b) may be varied by the Authority under that section;

(c) if included in a biosecurity register are governed by section 82 as to their evidential status.

(4) Delegations, directions, notices, agreements and other administrative actions or decisions of the Minister, the Permanent Secretary, the Director of Agriculture and livestock,

agricultural and quarantine officers issued or made under the repealed Acts which could be issued or made by equivalent officers under this Promulgation continue to have effect as if issued or made under this Promulgation until varied or revoked under this Promulgation.

*Transitional provisions*

**108.**-(1) Permits equivalent to import permits issued under any provision of the repealed Laws remain in force until they expire in accordance with their terms, or until revoked under this Promulgation.

(2) Any bond, agreement, instrument or arrangement to which the Government is a party subsisting immediately before the commencement of this Promulgation and relating to the biosecurity functions of the Authority continues to have effect after that date and is enforceable by or against the Authority as if it had been entered into by the Authority under the provisions of this Promulgation.

(3) Subject to subsection (4), any action, arbitration, proceeding or cause of action that relates to a biosecurity function of the Authority and that immediately before the commencement of this Promulgation is pending or existing by, against, or in favour of the Government, or to which the Government is a party, may be continued and enforced by and against the Authority under the provisions of this Promulgation.

(4) A prosecution for an offence committed against a repealed law must be brought and continued under that law.

*Consequential amendments*

**109.**-(1) A reference in another Act to any of the repealed laws is, to the extent possible, to be read as a reference to this Promulgation.

(2) A reference in another Act to a quarantine officer, plant protection officer or animal health officer is, to the extent possible, to be read as a reference to the CEO or a biosecurity officer exercising equivalent functions under this Promulgation.

*Amendment of Schedules*

**110.**-(1) The Minister, after consultation with the Authority and the Public Enterprise Minister, may by order amend Schedules 1, 2, 3 and 4.

(2) The Minister may amend column 3, 4 or 5 of Schedule 5 by order, which must be laid before the Cabinet and does not come into effect until it has been passed by affirmative resolution of the Cabinet.

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**SCHEDULE 1**

*[Section 8]*

**MEMBERSHIP AND PROCEDURES OF THE BOARD**

In this Schedule -

"committee" means a committee established under paragraph 13 of Part B;

"member" means a member of the Board other than the CEO;

"Minister" means the Public Enterprise Minister;

### **PART A - TERMS OF MEMBERSHIP**

1. A member holds office for a term not exceeding 3 years and is eligible for reappointment for 3 years at a time.
2. A member may resign from office by giving 30 days' notice in writing to the Minister.
3. The Minister may remove a member from the Board if the person -
  - (a) is absent, without leave of the Board, from 3 consecutive meetings of the Board;
  - (b) is declared bankrupt;
  - (c) has, in the Fiji Islands or elsewhere, been convicted of an offence involving dishonesty or carrying a maximum sentence of at least 2 years' imprisonment;
  - (d) has, in the Fiji Islands or elsewhere, been disqualified or suspended from practising his or her profession by any competent authority by reason of misconduct;
  - (e) for any reason, is unable to perform his or her functions under this Promulgation.
4. Members of the Board and any committee, and persons invited to attend a meeting of the Board under paragraph 9 of Part B, are entitled to remuneration applicable to boards of commercial statutory authorities appointed under the Public Enterprises Act 1996.
5. A member of the Board or a committee who is, directly or indirectly, interested in a matter under discussion by the Board or committee must disclose to the Board or committee the fact and nature of the interest. This rule applies also to the CEO.
6. A disclosure under paragraph 5 must be recorded in the minutes of the Board or committee.
7. After a disclosure under paragraph 5 the member in question -
  - (a) may not take part in nor be present during any discussion, deliberation or decision of the Board or committee; but
  - (b) may be counted for the purpose of forming a quorum of the Boardor committee.

### **PART B - PROCEDURE OF THE BOARD AND COMMITTEES**

1. The Board may act notwithstanding a vacancy in its membership.
2. The validity of any proceedings or act of the Authority or of a committee is not affected by

any defect in the appointment of any member.

#### *Meetings*

3. The Board must meet at least once every 2 months, as determined by the Chairperson, or on a notice signed by at least 3 members.
4. The Chairperson presides at all meetings of the Board, and if he or she is absent, the members present may elect one of them to preside at that meeting [unless a person has been authorised to act as Chairperson under paragraph 3].
5. The quorum at a meeting of the Board is 4 voting members.
6. Notice of a meeting of the Board must be given to each member and delivered by hand or sent by post, telex, facsimile or other written message to an address supplied to the Board for the purpose.
7. Decisions at meetings of the Board are by a simple majority of the members present and voting except that, in the case of an equality of votes, the Chairperson or member presiding has a casting vote as well as an original vote
8. A resolution signed or assented to by letter, facsimile transmission or e-mail message or other means of technology by each member has the same effect as a resolution passed at a meeting of the Board.
9. The Board may invite a person to attend a meeting of the Board to advise it on any matter under discussion, but the person so attending does not have a right to vote at the meeting.

#### *Seal*

10. The Authority must have a seal of such design as the Board may decide. The seal must be kept by the Chairperson and its affixing is to be authenticated by -
  - (a) any 2 or more persons generally or specifically authorised by Board for the purpose; or
  - (b) one such member and the Chairman.
11. All deeds, documents and other instruments purporting to be sealed with the Authority seal and authenticated in accordance with paragraph 10 are, unless the contrary is proved, presumed to have been validly executed.
12. The Authority seal is to be officially and judicially noticed for all purposes.

#### *Committees*

13. The Board may establish committees of the Board to advise the Board on such matters as the Board considers necessary.
14. In establishing a committee under paragraph 13, the Board may -
  - (a) appoint such persons, including members of the Board, as it considers necessary; and

(b) specify the functions and procedures of the Committee.

**15.** Persons who are disqualified by this Promulgation from being members of the Authority are also disqualified from being members of a committee.

**16.** A committee may regulate its own procedure but is subject to this Schedule and to any directions given by the Authority.

**17.** A committee meets at such times and places as the chairperson may determine.

**18.** A committee may invite any person to attend any meeting for the purpose of advising it on any matter and a person so invited is not entitled to vote.

#### *Minutes*

**19.** The Board and every committee must keep minutes of all its meetings in a proper form.

**20.** Minutes duly signed by the Chairperson or person presiding are, in any legal proceedings, admissible as evidence of the facts stated in them; and a meeting of the Board or a committee in respect of which minutes have been so signed is deemed to have been duly convened and held and the members present at it to have been duly appointed to act.

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## **SCHEDULE 2**

*[Section 9]*

### **REPORTING BY THE AUTHORITY**

In this Schedule -

"financial year" means the financial year as defined in Part B of Schedule 3;

"Ministers" means the Minister and the Public Enterprise Minister;

"SCI" means a statement of corporate intent.

#### **PART A - HALF YEARLY AND ANNUAL REPORTS**

**1.** The Authority must give to each of the Ministers a report on its activities for the first half of each financial year, by the end of August or a later date if agreed between the Authority and the Ministers.

**2.** The half yearly report must include the information required by the Authority's SCI to be given in the report.

**3.** Within 4 months after the end of each financial year the Authority must in accordance with its statement of corporate intent prepare a report of its activities during that financial year (the "Annual Report").

**4.** The Authority must send a copy of the Annual Report to the Ministers who must cause it to

be laid before the Cabinet as soon as practicable.

5. The Annual Report must contain, among other things -

(a) the audited accounts;

(b) a statement of financial performance, including a statement of the financial position of the Authority;

(c) a statement of cash flows;

(d) any other information needed to give a true and fair view of the Authority's financial affairs; and

(e) a copy of the auditor's report.

6. The Annual Report must include the information required by the Authority's statement of corporate intent to be given in it.

## **PART B - CORPORATE PLAN**

1. The Authority must in each year publish a corporate plan setting out plans for the future operations of the Authority and must act in accordance with it.

2. The Ministers may issue guidelines as to the format and content of the corporate plan and the Authority must comply with the guidelines except as otherwise agreed in writing by the Ministers.

3. A corporate plan must, except as otherwise agreed in writing by the Ministers, contain -

(a) a forecast of profit and loss accounts, balance sheets and cash flows for the current and following 2 financial years; and

(b) a statement of the assumptions on which the forecasts are based.

4. The corporate plan must be consistent with the Authority's statement of corporate intent.

### *Draft corporate plan*

5. The Authority must, not later than 3 months before the commencement of each financial year, prepare a draft corporate plan.

6. The draft corporate plan must, as soon as possible, be sent to the Ministers, who must within 1 month comment in writing or inform the Authority that the Ministers have no comments.

7. If the Ministers have no comments on the draft corporate plan, the plan is to be treated as approved.

8. If the Ministers comment on the draft corporate plan, the Authority must give effect to the comments in a finalised corporate plan which must within one month be sent to the Ministers

for approval.

## **PART C - STATEMENT OF CORPORATE INTENT**

**1.** The Authority must in each year publish a SCI containing a summary of the corporate plan and setting out the financial and non-financial performance targets of the Authority for that year.

**2.** In addition to the matters mentioned in paragraph 1, the SCI must include -

(a) an outline of the objectives of the Authority;

(b) an outline of the nature and scope of the activities proposed to be undertaken by the Authority;

(c) an outline of the Authority's main undertakings;

(d) an outline of the borrowings made and proposed to be made by the Authority, and the corresponding sources of funds;

(e) an outline of the Authority's policies and procedures relating to the acquisition and disposal of major assets;

(f) a description of the Authority's accounting policies;

(g) a description of the financial information to be given to the Ministers in the half yearly report and Annual Report;

(h) a description of measures by which the performance of the Authority can be judged in relation to its objectives, in addition to the performance targets required by paragraph 1;

(i) other matters agreed between the Ministers and the Authority or directed by the Ministers to be included in the statement of corporate intent.

**3.** The Ministers may, in writing, exempt the Authority from including in its statement of corporate intent any matter, or any aspect of a matter, mentioned in paragraph 2.

### *Draft SCI*

**4.** The Authority must, not later than 3 months before the end of each financial year, prepare a draft SCI for the following year.

**5.** The draft SCI must, as soon as possible, be sent to the Minister who must, within one month, comment in writing on the draft statement of corporate intent or inform the Authority that they have no comments.

**6.** If the Ministers have no comments on the draft statement of corporate intent, the statement is to be treated as approved.

**7.** If the Ministers comment on the draft statement of corporate intent, the Authority must

give effect to the comments in a finalised SCI which must within one month be sent to the Ministers for approval.

#### **PART D - GENERAL**

1. The corporate plan and SCI come into effect when approved by the Ministers in writing.
2. A corporate plan or SCI may, with the written approval of the Ministers, be modified during the relevant financial year.
3. The Ministers may in writing direct the Authority to modify its corporate plan or statement of corporate intent during the relevant financial year.

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### **SCHEDULE 3**

*[Section 11]*

#### **EMPLOYEES OF THE AUTHORITY**

##### **PART A - TRANSFER**

1. At the date of commencement of this Promulgation, persons employed immediately before that date in the Quarantine and Inspection Division whose services are required by the Authority for the performance of its functions under this Promulgation are transferred to the service of the Authority on terms not less favourable than those enjoyed by them immediately prior to their transfer.
2. Until such time as terms and conditions of service, including rules as to the conduct and discipline of its employees, are drawn up by the Authority, the terms and conditions of service of State employees, including rules as to their conduct, continue to apply to every person transferred under subsection (2).
3. A person who is transferred to the service of the Authority is not entitled to claim any benefit on the ground that he or she has been retired from the service of the State on account of abolition or reorganisation of office in consequence of the establishment of the Authority.
4. For the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of a transferred employee, the contract of employment of that employee is deemed to have been unbroken and the period of service with the State is for all purposes deemed to have been a period of service with the Authority.

##### **PART B - DISCIPLINE AND SURCHARGE**

1. The Authority may make regulations with respect to the conduct and discipline of its officers and employees.
2. Regulations made under this Schedule may, amongst other things, provide for -
  - (a) interdiction with reduction in salary or in other remuneration; and

(b) suspension without salary or other remuneration, of an officer or employee of the Authority while disciplinary proceedings against the officer or employee are pending.

3. Regulations made under this Schedule must provide for an opportunity to be given to the officer or employee concerned to make representations before the Authority makes a decision.

#### *Surcharge*

4. If -

(a) the Authority is satisfied that an officer or employee is responsible -

(i) for the improper payment of moneys or for the payment of moneys which is not duly vouched; or

(ii) for a deficiency in, or the destruction of, moneys, securities, stores or other property of the Authority; and

(b) a satisfactory explanation is not given within a period specified by the Authority, the Authority may surcharge against the officer or employee a sum not exceeding the amount of the payment, deficiency or loss, or the value of the property destroyed, as the case may be.

5. If -

(a) the Authority is satisfied that an officer or employee -

(i) as an accounting officer, fails or has failed to keep proper accounts or records; or

(ii) has failed to make any payment, or is responsible for any delay in the payment, of moneys from the Authority to any person to whom such payment is due under a contract, agreement or arrangement entered into between that person and the Authority; and

(b) a satisfactory explanation is not given within a period specified by the Authority, the Authority may surcharge against the person a sum the Authority thinks fit.

6. Before a surcharge is imposed under paragraph 4 or 5, the officer or employee concerned must be given an opportunity to make representations.

7. The Authority may at any time withdraw a surcharge in respect of which a satisfactory explanation is given or if it otherwise appears that no surcharge should have been made.

8. The amount of any surcharge imposed under paragraph 4 or 5 and not withdrawn under paragraph 7 is a debt due to the Authority from the person on whom it is imposed and may be-

(a) sued for and recovered in any court at the suit of the Authority; or

(b) recovered by deduction from the salary or pension surcharged by equal monthly instalments not exceeding one quarter of the person's monthly salary or pension.

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## **SCHEDULE 4**

*[Section 14]*

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### **ASSETS AND FINANCES OF THE AUTHORITY**

In this Schedule, "Minister" means the Public Enterprise Minister.

#### **PART A - TRANSFER OF ASSETS**

1. On the date of commencement of this Promulgation, all movable property vested in the State immediately before that date and used or managed by the Quarantine and Inspection Division of the Ministry of Agriculture and all assets, interests, rights, privileges, liabilities and obligations of the State relating to that Division are transferred to and vest in the Authority without any conveyance, assignment, or transfer.
2. Every right and liability vested under paragraph 1 in the Authority may, on and after the commencement of this Promulgation, be sued on, recovered or enforced by or against the Authority in its own name and the Authority or the State does not need to give notice to any person whose right or liability is affected by the vesting.
3. On and after the commencement of this Promulgation, any agreement relating to any property, rights and liabilities transferred to and vested in the Authority under paragraph 1 to which the State was a party immediately before the commencement of this Promulgation, whether in writing or not, and whether or not of such a nature that rights and liabilities could be assigned by the State, has effect as if the Authority had been a party to the agreement.
4. If a question arises as to whether any particular property, asset, interest, right, privilege, liability, or obligation has been transferred to or vested in the Authority under paragraph 1, a certificate signed by the Minister is conclusive evidence that the property, asset, interest, right, privilege, liability or obligation was or as not so transferred or vested.

#### **PART B - FINANCIAL MANAGEMENT**

1. The Authority must open at one or more banks such accounts as are necessary for the performance of its functions.
2. Money received by the Authority or by any officer or employee on behalf of the Authority must, as soon as practicable after it has been received, be paid into such bank account opened under paragraph 1 as the Authority from time to time determines.
3. The withdrawal or payment of money from an account opened under paragraph 1 must be authorised by prior resolution of the Authority or submitted to the Authority for confirmation in a meeting as soon as practicable after the withdrawal or payment.
4. The withdrawal or payment of money from an account opened under paragraph 1 must be

effected only by a person or persons authorised by the Authority.

5. For the purpose of enabling the Authority to carry out its function, the Minister may, from time to time, make grants-in-aid to the Authority of such sums as the Cabinet may determine.

6. The Authority may invest part of its funds in so far as the funds are not required to be expended by the Authority.

7. The Authority may borrow, upon such terms and conditions as the Minister approves, any sums required by the Authority to meet any of its obligations or to perform any of its functions.

8. Borrowings under paragraph 8 require the approval of the Minister, except for overdraft facilities required for working capital purposes.

9. The Authority must conserve its funds by performing its functions and exercising its powers under this Promulgation so as to ensure that the total revenues of the Authority are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital.

10. The funds of the Authority must be expended for the purposes of -

(a) paying any expenditure lawfully incurred by the Authority in the performance of its functions under this Promulgation;

(b) discharging any obligations and liabilities of the Authority and making any payments which the Authority is required or authorised to make;

(c) generally, paying any expenses for carrying into effect the provisions of this Promulgation.

11. Before giving notice under paragraph 12 the Minister must consult the Authority as to the appropriate amount and be satisfied that the payment will not materially disadvantage any creditor of the Authority or materially impede the Authority in performing its functions or meeting its obligations.

12. The Authority is exempt from stamp duty on all instruments executed by it or on its behalf.

13. The Authority's financial year must be determined by the Board with the approval of the Minister.

14. The accounts of the Authority must be audited each year in accordance with the Audit Act.

## **SCHEDULE 5**

*[Sections 94 and 96]*

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### **MAXIMUM PENALTIES AND FIXED PENALTIES**

<i>Item</i>	<i>Section</i>	<i>Offence</i>	<i>Fine \$</i>	<i>Prison</i>	<i>Fixed Penalty \$</i>
1.	11(7)(a)-	Officer fail surrender ID	10,000	-	-
2.	11(7)(b)-	Forge etc. officer's ID	40,000	12m	---
3.	16(2)-	Import prohibited pest/disease	50,000	15m	1000
4.	16(3)-	Import regulated pest/disease	50,000	15m	1000
5.	17(5)-	Import a prohibited article	50,000	15m	1000
6.	17(6)-	Own or possess a prohibited article	50,000	15m	1000
7.	18(2)-	Landing except at point of entry	50,000	15m	1000
8.	18(3)-	Import except at point of entry	20,000	6m	400
9.	18(5)-	Depart except at point of departure	50,000	15m	1000
10.	18(6)-	Export except at point of departure	20,000	6m	400
11.	20(4)-	Interference with holding area	10,000	3m	200
12.	20(6)-	Import without clearance	100,000	30m	2000
13.	22(3)-	Fail to make arrival declaration	50,000	15m	1000
14.	23(5)-	Fail to comply on arrival	50,000	15m	1000
15.	23(6)-	Master fail to obtain landing clearance	80,000	24m	1600
16.	24(7)-	Crew or passenger unlawful landing	20,000	6m	400
17.	25(2)-	Interference with port quarantine area	40,000	12m	800
18.	25(5)-	Removing a port quarantine notice	10,000	3m	200
19.	26(3)-	Fail to conform to port quarantine	50,000	15m	1000
20.	28(2)(a)-	Fail to allow search of vessel/aircraft	50,000	15m	1000
21.	28(2)(b)-	Fail comply with request etc.	50,000	15m	1000
22.	29(1)(a)	Fail to secure animal	40,000	24m	1600

23.	29(1)(b)-	Fail to secure hatches	40,000	24m	1600
24.	29(2)(a)-	Discharge garbage	60,000	18m	1200
25.	29(2)(b)-	Discharge ballast/bilge	100,000	30m	2000
26.	29(3)-	Fail to control garbage	40,000	12m	800
27.	29(4)-	Release of ships' stores	40,000	12m	800
28.	30(6)(a)-	Passenger fail to declare	10,000	3m	200
29.	30(6)(b)-	Fail to submit incoming baggage for inspection	10,000	3m	200
30.	30(8)-	Fail to submit outgoing articles for inspection etc.	10,000	3m	200
31.	31(2)-	Fail to make incoming goods available	10,000	3m	200
32.	32(5)-	Fail to allow import clearance inspection	10,000	3m	200
33.	38(4)-	Fail to surrender revoked permit	5,000	---	100
34.	40(4)-	Contravene transit waiver	20,000	6m	400
35.	40(8)-	Fail allow inspection in transit	20,000	6m	400
36.	41(2)-	Fail to make outgoing goods available	10,000	3m	200
37.	42(2)-	Export without clearance	50,000	15m	1000
38.	47(3)-	Refusal to move to quarantine	20,000	6m	400
39.	49(3)-	Interference with quarantine station	20,000	6m	400
40.	51(4)-	Unlawful release from quarantine	40,000	12m	800
41.	52(2)-	Removing a quarantine notice	5,000	1m	100
42.	53(3)-	Releasing animal etc.	20,000	6m	400
43.	55(6)-	Fail to make premises available	10,000	3m	200
44.	57(4)-	Fail to open container etc.	10,000	3m	200
45.	59(3)-	Refusal to provide samples	20,000	6m	400

46.	65(6)-	Person refusing to answer etc.	10,000	3m	200
47.	66(5)-	Fail to cooperate with survey	10,000	3m	200
48.	68(5)-	Movement in infested controlled area	40,000	12m	800
49.	75(4)-	Fail to notify occurrence	10,000	3m	200
50.	79(3)-	Breach of emergency directions	50,000	5m	1000
51.	91-	Dereliction of duty by officer	20,000	6m	---
52.	92-	Obstruction etc. of an officer	20,000	6m	400
53.	93(1)-	Forgery etc. of a document	40,000	12m	---
54.	93(2)-	Producing a false document	20,000	6m	---
55.	93(3)-	Using official stamp or seal	20,000	6m	---

Notes: 1. *The fines and periods of imprisonment are maxima for individuals.*

2. *If the offence is committed by a body corporate, the maxima fine is 5 times that for an individual and there is no imprisonment - see section 97.*

3. *'FP' means the fixed penalty for the offence under section 96. If no figure is shown, the fixed penalty option is not available. The FP for a body corporate is 5 times that shown.*

4. *The description of the offence in column 3 is for purposes of this Schedule only.*

GIVEN UNDER MY HAND this 17th day of December 2008.

**J. I. ULUIVUDA**  
**President of the Republic of the Fiji Islands**

### EXPLANATORY MEMORANDUM

*(This memorandum does not form part of the Promulgation but is intended only to indicate its general effect)*

#### **Background**

Biosecurity means the control of the movement of plants and animals and their products in order to prevent the establishment and spread of animal and plant pests and diseases that can harm human health and the agricultural economy of a country. It involves the control of

agricultural and food imports and exports, the establishment of a quarantine regime for animals and plants and the control of the movement of animals and plants within the country.

In many countries in the Pacific region, a review of the plant and animal quarantine laws is long overdue, given the international trend towards freedom of trade and the movement of goods and people. It is also desirable that the laws on biosecurity of the countries of the Pacific Forum be harmonised as far as possible. This Promulgation has therefore been drafted with the assistance of the Secretariat of the Pacific Community, as part of a project that aims to modernize and harmonise biosecurity legislation across the region and bring it into line with international obligations of participating countries.

This Promulgation is intended to replace the Animals Importation Act, the Animals (Contagious Diseases) Act and the Plant Quarantine Act 1982 and regulations made under them. It will bring together laws relating to both animals and plants, and provide the Fiji Islands with a legislative foundation for action to protect it from the introduction of animal and plant pests and diseases. The Promulgation will also enable the country to comply with its obligations to ensure that animal and plant pests or diseases are not exported from the Fiji Islands into neighbouring countries.

### **Main features**

The Promulgation establishes a regime to control the import and export of regulated pests and diseases (Parts 2, 3, 4 and 5). It also provides powers to control outbreaks of regulated pests and disease within the Fiji Islands (Parts 8 and 9). The key administrative feature is the establishment of the Biosecurity Authority of the Fiji Islands under Section 8. The Authority will have a Board and be headed by a CEO. It will be staffed by biosecurity officers (Part 10). The Authority members will be appointed by the Minister responsible for Agriculture. The CEO will be appointed by the Board, biosecurity officers and other staff will be appointed by the CEO. The Authority will have the functions set out in Section 9. The powers of biosecurity officers are set out in Part 8. Parts 11, 12 and 13 contain administration, miscellaneous and legal provisions, including enforcement procedures.

A key definition in Section 2 is that of 'regulated article' which includes animals, plants and their products and other articles that pose a biosecurity risk. Under Section 32, incoming regulated articles must not be removed from a biosecurity holding area without biosecurity import clearance, except for having biosecurity measures applied to them. Certain categories of outgoing regulated articles also require biosecurity export clearance - Section 42.

### **Contents of the Promulgation**

The scope of the Promulgation is stated in the Long Title.

The Promulgation is divided into 13 Parts, the first of which deals with preliminary matters, including definitions in Section 2.

Sections 3 and 4 make it clear that the Promulgation will apply to everyone in the Fiji Islands, including the Government.

Sections 5 and 6 define the role of the Minister and Board, and Section 7 makes it clear that other obligations relating to bringing in of items into the Fiji Islands are not displaced.

**Part 2** sets out the administrative framework for implementing the Promulgation.

Section 8 establishes the Authority as a body corporate, with details of membership and procedure in Schedule 1. Section 9 sets out the functions of the Authority, with reporting requirements in Schedule 2.

Sections 10 provides for the appointment of a CEO, and Section 11 provides for the employment of biosecurity officers and other staff, with details in Schedule 3. Section 11 also provides for the designation of biosecurity officers from other departments and can be given specific functions.

Section 12 empowers the Minister to give directions to the Board and the CEO to give directions to biosecurity officers.

Section 13 enables various powers to be delegated, including those of the Board, which can be delegated to the CEO.

Section 14 empowers the Minister to seek additional finance for implementing the Promulgation if necessary, and regulates the financial procedures of the Authority by means of Schedule 4.

Section 15 specifies the destination of fines, fees and charges.

**Part 3** sets out the principles of border biosecurity control. There will be prohibitions and restrictions on the importation of pests and diseases (Section 16).

Importation of any regulated article considered an unacceptable risk to the Fiji Islands will be prohibited (Section 17). The concept of regulated pests and diseases is central to the scheme of the Promulgation.

Points of entry and departure, such as ports, airports and post offices, will be designated and importation or exportation elsewhere will be an offence (Section 18).

Holding areas at ports, airports and post offices will be designated for biosecurity clearance inspection of incoming and outgoing regulated articles (Section 19).

Holding areas will be strictly managed to prevent animals and plants leaving the area until they have been cleared (Section 20).

Importers and exporters of regulated articles must appoint an agent if they will not be present at the time of importation or exportation (Section 21.)

**Part 4** of the Promulgation sets out the rules for incoming and outgoing vessels and aircraft. Every arriving vessel and aircraft must make an arrival declaration on or before arrival (Section 22.)

Vessels and aircraft must obtain landing clearance on arrival (Section 23.)

If ordered into quarantine an incoming vessel or aircraft must proceed to port quarantine

(Sections 25 to 27). It must then obtain quarantine clearance before landing passengers or cargo (Section 28.)

Section 29 requires masters and captains of outgoing vessels and aircraft to cooperate with a biosecurity officer who has reason to suspect that there might be on board uncleared regulated articles that require clearance.

Section 30 imposes on masters and captains of all vessels and aircraft that come into the country obligations with regard to securing the vessel to prevent biosecurity risks. There are also limitations on the discharge of garbage and ballast water from vessels within Fiji Islands waters.

Section 31 sets out the procedure for incoming passengers and crewmembers. They must make a passenger declaration and submit their baggage to inspection. Regulated articles in their baggage will require biosecurity import clearance like any other cargo.

**Part 5** establishes a regime for the control of incoming goods once they have been landed from a vessel or aircraft. All incoming goods will be liable to entry inspection at the point of entry to ascertain whether they are regulated (Section 32).

Incoming regulated articles will require biosecurity import clearance (Section 33). They will be liable to biosecurity inspection at a holding area and their import must be declared.

Section 34 sets out the matters on which a biosecurity officer must be satisfied before biosecurity import clearance can be granted. The requirements may include a sanitary or phytosanitary certificate issued by the country of origin, or treatment of a regulated article on arrival. Biosecurity import clearance will only be granted if all the requirements for import are satisfied, but may be granted conditionally in order to allow the article to be sent for treatment or to quarantine.

The requirements for importing regulated articles will be contained in specifications made by the Authority under Section 35. If there are no specifications relating to a proposed import, the intending importer must apply by way of an access arrangement under Section 36 before importing the article.

If the specifications for an article include the requirement for a biosecurity import permit, it must be obtained in accordance with Sections 37. Section 38 deals with revocation and refusal of a permit.

The Authority will have the power to exempt certain classes of regulated articles from the requirement for an import permit (Section 39).

Articles in transit are governed by Section 40, which enables the requirement for a permit to be waived, if there is no biosecurity threat to the Fiji Islands.

**Part 6** sets out the controls over articles intended for export.

Under Section 41 all outgoing regulated articles are liable to biosecurity export inspection to ascertain whether they require biosecurity export clearance.

Under Section 42, articles will require biosecurity export clearance if a sanitary or phytosanitary certificate is required by the receiving country, or if biosecurity measures need to be applied before the article is exported.

Section 43 sets out how a sanitary or phytosanitary (SPS) certificate can be obtained. It also requires the Director to keep a record of the SPS requirements of receiving countries.

The decision whether additional biosecurity measures need to be applied to an outgoing article will be made by the Authority and contained in specifications under Section 44. The requirement can only relate to animals or plants or their products, not to regulated articles generally, and must be in line with any international obligations of the Fiji Islands.

Once these matters are resolved, Sections 45 and 46 say how biosecurity export clearance can be applied for and obtained for regulated articles that require it.

**Part 7** sets out the rules relating to animals, plants or other articles in biosecurity quarantine for observation or treatment.

Section 47 states the general requirement and Section 48 provides for the establishment of biosecurity quarantine stations.

Movement in and management of quarantine stations is controlled (Sections 49 and 50) and items must not be taken out of quarantine until quarantine clearance is granted (Section 51.) Notices must not be removed (Section 52) and imported animals must not be allowed at large without authority (Section 53.)

**Part 8** defines the general powers of biosecurity officers under the Promulgation. Section 54 sets out certain general rules and Section 55 deals with entry and search of premises, and conveyances.

Section 56 regulates the inspection of documents, and Section 57 regulates the inspection of articles.

Under Section 58, biosecurity officers will have power to detain articles for testing and treatment. Testing and taking of samples are governed by Sections 59 and 60.

An article may need to be treated to remove the biosecurity risk, or reconsigned or destroyed because it poses an unacceptable risk; Sections 61, 62 and 63 give the necessary powers.

Section 64 permits the killing of an animal in order to conduct a post mortem examination.

Section 65 defines the powers of biosecurity officers in relation to people.

**Part 9** sets out the powers of the Authority and biosecurity officers to control pests and diseases within the Fiji Islands. Surveys can be conducted (Section 66), and biosecurity officers are given power to enter, search and inspect premises (Section 67.)

Under Section 68 an officer may order animals to be penned for testing and under Section 69 animals and plants may be treated and destroyed if necessary. Compensation will be payable when such action is necessary. Section 74 enables wild animals to be destroyed if they pose a

biosecurity threat.

The Part provides for areas to be declared biosecurity controlled areas, with restrictions imposed over the movement into and out of such areas.

Sections 70 and 71 deal with infested controlled areas, and Section 72 and 73 deal with pest-free controlled areas. Under Section 75, all persons in the Fiji Islands will have a duty to report an outbreak of certain pests and diseases.

Under Section 76, the Minister will have the power to authorise the release of biological control agents in order to control or eradicate pests and diseases.

**Part 10** provides powers to deal with biosecurity emergencies in the Fiji Islands which cannot be dealt with under Part 9.

If an emergency is declared under Section 77, the Authority is given extensive powers to deal with the emergency, if necessary with the assistance of the police and other Government personnel (Sections 78 and 79.).

Special regulations can be promulgated under Section 80 to give additional powers to the Authority and other persons. These regulations would only remain in force for as long as the emergency lasts.

**Part 11** sets out some ancillary administrative provisions needed to allow the Promulgation to function effectively.

Section 81 requires the Authority to keep extensive registers of all biosecurity decisions and activities. Under Section 82, entries in a register will be admissible as evidence in court.

Section 83 requires the Minister and Authority to consult other Government departments, and empowers the Authority to outsource aspects of biosecurity work if needed. Section 84 seeks to encourage coordination between different departments of the Government. and other statutory authorities on biosecurity matters.

Section 85 requires operators of points of entry and departure (i.e. seaports, airports and post offices) to provide facilities for biosecurity inspection or incoming and outgoing articles. Section 86 requires owners of ships and aircraft and warehouses to ensure that biosecurity officers have safe transport and adequate accommodation for performing their inspection functions.

The Part provides mechanisms to facilitate the biosecurity inspection process.

Under Section 87 the Authority can enter into compliance agreements with persons who regularly import or export regulated articles; and under Section 88, private premises can be approved as places for the inspection and treatment of regulated articles.

The Part also provides for cooperation with the international community in international activities in the field of biosecurity.

Under Section 89, the Minister can enter into bilateral or multilateral agreements on

biosecurity matters; under Section 90, the Minister may issue international advisory notices about the status of pests and diseases in the Fiji islands.

**Part 12** is concerned with enforcement of the Promulgation and specifies offences and penalties. Section 91 creates the offence of dereliction of duty by biosecurity officers.

Sections 92 and 93 create various ancillary offences that might be committed by importers and passengers relating to information, documents etc.

Section 94 prescribes the maximum penalties for all the offences in the Promulgation. These are listed in Schedule 5. Corporations will not be liable to imprisonment but will be liable to higher penalties (Section 97 and 94(3)). Section 95 provides for forfeiture of items connected with the commission of offences.

Section 96 establishes a system of fixed penalties, to simplify the processing of offences at the port and airport and limit the number of matters ending up in court.

Section 97 specifies higher maximum penalties for corporate bodies.

**Part 13** contains a number of miscellaneous provisions for implementing the Promulgation.

Section 98 extends the jurisdiction of the Magistrates Court to deal with offences under the Promulgation and enables the Authority to take cases to court.

Section 99 says how abandoned goods will be dealt with.

Section 100 says how compensation, if provided for, will be calculated.

Section 101 says how appeals from decisions made under the Promulgation are to be dealt with.

Section 102 says that public officers taking action under the Promulgation in good faith are not liable, and the Government and Authority are not liable for things done under the Promulgation except as provided.

Section 103 provides for the evidentiary status of certificates and other documents created or used under the Promulgation.

Section 104 states the rules about publication of regulations and orders made under the Promulgation; they should be given wide publicity in the areas affected by them, and must also be published in the Gazette.

Section 105 defines the status of specifications made by the Authority; they are not strictly legislative but must be entered in the biosecurity register and given due publicity.

Section 106 enables the Minister and Authority to make regulations to supplement the provisions of the Promulgation. The Authority regulations can include fees and charges for biosecurity services.

Section 107 provides for the repeal of the Animals Importation Act, the Animals (Contagious

Diseases) Act and the Plant Quarantine Act 1982 and makes savings in respect of certain provisions.

Section 108 makes transitional provisions for the smooth introduction of the Promulgation, and Section 109 makes consequential amendments to other laws as a result of the enactment of the Bill.

Section 110 provides that Schedules 1 to 4 can be amended by the Minister by Order. Schedule 5 can be amended by Order of the Minister but only with the approval of the Cabinet.

**Schedule 1** sets out the terms of membership of the Board of the Authority and procedures for the Board and committees.

**Schedule 2** says what reports the Authority must provide to the Ministers each year, including a corporate plan and a statement of corporate intent under the Public Enterprise Act.

**Schedule 3** provides for transfer of existing staff of the Quarantine and Inspection Division, and gives the Authority disciplinary powers over employees.

**Schedule 4** transfers the assets of the Quarantine and Inspection Division to the Authority and says how assets and moneys are to be accounted for.

**Schedule 5** lists all the sections which create offences and sets out the respective maximum fines and terms of imprisonment that can be imposed for them. It also sets out the fixed penalty for those offences that can be dealt with by way of fixed penalty under Section 96.

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