

COMMERCE COMMISSION (BUDGET AMENDMENT) BILL 2017
(BILL NO. 34 OF 2017)

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BILL NO. 34 OF 2017

A BILL

FOR AN ACT TO AMEND THE COMMERCE COMMISSION ACT 2010

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Commerce Commission (Budget Amendment) Act 2017.

(2) This Act comes into force on 1 August 2017.

(3) In this Act, the Commerce Commission Act 2010 is referred to as the “Principal Act”.

Section 4 amended

2. Section 4 of the Principal Act is amended by—

- (a) in the definition of “authorisation”, deleting “under Part 11”;
- (b) in the definition of “financial year”, deleting “commencing on 1 January” and substituting “which coincides with the financial year of the Government”;

(c) inserting the following new definition—

““market” means a market in Fiji and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first mentioned goods or services;”;

(d) in the definition of “trade or commerce” after “activity”, inserting “within Fiji or between Fiji and places outside Fiji”; and

(e) deleting the definition of “trader” and substituting the following—

““trader” means any person who sells, has sold or proposes to sell any goods or who supplies or who carries on any service, whether for profit or not;”.

New sections 4A and 4B inserted

3. The Principal Act is amended after section 4 by inserting the following new sections—

“Exclusionary provisions

4A.—(1) A provision of a contract, arrangement or understanding, or of a proposed contract, arrangement or understanding, shall be taken to be an exclusionary provision for the purposes of this Act if—

(a) the contract or arrangement was made, or the understanding was arrived at, or the proposed contract or arrangement is to be made, or the proposed understanding is to be arrived at, between 2 or more persons that are competitive with each other; and

(b) the provision has the purpose of preventing, restricting or limiting—

(i) the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons; or

(ii) the supply of goods or services to, or the acquisition of goods or services from, particular persons or classes of persons in particular circumstances or on particular conditions,

by all or any of the parties to the contract, arrangement or understanding or of the proposed parties to the proposed contract, arrangement or understanding or, if a party or proposed party is a body corporate, by a body corporate that is related to the body corporate.

(2) A person shall be deemed to be competitive with another person for the purposes of subsection (1) if—

(a) the first mentioned person or a body corporate that is related to that person is, or is likely to be; or

- (b) but for the provision of any contract, arrangement or understanding or of any proposed contract, arrangement or understanding, would be, or would likely be,

in competition with the other person, or with a body corporate that is related to the other person, in relation to the supply or acquisition of all or any of the goods or services to which the relevant provision of the contract, arrangement or understanding or of the proposed contract, arrangement or understanding relates.

Lessening of competition to include preventing or hindering competition

4B. For the purposes of this Act, references to the lessening of competition shall be read as including references to preventing or hindering competition.”.

Section 5 amended

4. Section 5(2) of the Principal Act is amended by—

- (a) in paragraph (c) after “;”, deleting “or”;
- (b) in paragraph (d), deleting “.” and substituting “; or”; and
- (c) after paragraph (d), inserting the following new paragraph—
- “(e) the industry is engaged in the supply of any goods or services, where competition is lessened or likely to be limited as assessed and determined by the Commission.”.

New section 13 inserted

5. The Principal Act is amended after section 12 by inserting the following new section—

“Meetings of the Commission

13.—(1) Meetings of the Commission must be held at such times and places as the Chairperson appoints.

(2) Subject to subsection (3), the Chairperson must preside at each meeting of the Commission.

(3) In the event of the absence of the Chairperson from any meeting of the Commission, the Deputy Chairperson must preside at that meeting, and if both the Chairperson and the Deputy Chairperson are absent, the meeting must be presided over by a member who is nominated by the Chairperson, and failing any such nomination, the meeting must be presided over by a member appointed by the members present.

(4) At all meetings of the Commission, the quorum necessary for the transaction of business of the Commission is 3 members.

(5) All questions arising at any meeting of the Commission must be decided by a majority of votes of the members of the Commission present at the meeting.

(6) At a meeting of the Commission, the Chairperson and all members of the Commission present have the right to vote, and in the case of equality of votes, the Chairperson, or in the absence of the Chairperson the member presiding, has a casting vote.

(7) A resolution of the Commission in writing signed, or assented to by letter, facsimile, e-mail or such other electronic means as approved by the Commission, by a majority of the members of the Commission, is as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(8) Subject to this Act, the Commission may regulate its own proceedings.”.

New section 18A inserted

6. The Principal Act is amended after section 18 by inserting the following new section—

“Enforcement officers

18A.—(1) The Minister may, from time to time, by written notice appoint enforcement officers to exercise any powers and functions rendered to the Commission under this Act or any other written law.

(2) A written notice issued under subsection (1) may be made to a specified person, committee or unit or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) An appointment made under this section may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(4) A person, committee or unit purporting to exercise any power by virtue of an appointment under this section must, when required to do so, produce evidence of authority to exercise the power.

(5) The Minister shall by notice in the Gazette publish the name of a person or names of persons appointed under this section.”.

Section 41 amended

7. Section 41 of the Principal Act is amended by—

(a) after subsection (1), inserting the following new subsection—

“(1A) An authorisation for the price of controlled goods or services made under this Act or any subsidiary legislation shall be authorised by the Commission.”; and

(b) deleting subsection (3) and substituting the following—

“(3) A person who acts or aids and abets another person to contravene this section commits an offence.”.

Section 42 amended

8. Section 42 of the Principal Act is amended by deleting subsection (3) and substituting the following—

“(3) A person who acts or aids and abets another person to contravene this section commits an offence and is liable upon conviction to—

- (a) in the case of a natural person, a fine not exceeding \$50,000 or imprisonment for a term not exceeding 10 years or both; or
- (b) in the case of a body corporate, a fine not exceeding \$100,000.”.

Section 45 amended

9. Section 45 of the Principal Act is amended by deleting subsection (3) and substituting the following—

“(3) A person who increases rent in contravention of subsection (1) or (2) commits an offence.”.

Section 53 amended

10. Section 53 of the Principal Act is amended by deleting subsection (2) and substituting the following—

“(2) A person who acts or aids and abets another person to contravene this section commits an offence.”.

New section 55A inserted

11. The Principal Act is amended after section 55 by inserting the following new section—

“Receipts

55A. A trader shall supply at the time of sale to every purchaser a receipt containing the following particulars and shall retain a copy of such receipt—

- (a) the name, address and tax identification number of the trader;
- (b) the date;
- (c) the individual description of the goods or services;
- (d) the quantity of goods or services;
- (e) the price charged inclusive of any tax;
- (f) other relevant requirements in any other written law; and
- (g) such other particulars as the Commission may, with the approval of the Minister, by order require generally or with reference to certain goods or services, or classes of goods or services.”.

Section 56 amended

12. Section 56(3) of the Principal Act is amended by deleting “3 years” and substituting “7 years”.

Section 59 amended

13. The Principal Act is amended by deleting section 59 and substituting the following—

“Issue of fixed penalty notice

59.—(1) Where the Commission has reason to believe that a person has committed an offence against section 41, 45, 52, 53, 54, 55, 55A, 56, 70, 71, 75, 77, 78, 83, 84, 85, 86, 87, 87E, 87F, 87G, 88, 112, 113, 114, 117 or 118, it shall be lawful for the Commission to institute proceedings in respect of the alleged commission of an offence by issuing upon that person a fixed penalty notice which shall require that person to pay such fixed penalty as prescribed by regulations.

(2) The Commission may serve a fixed penalty notice—

- (a) personally upon the person; or
- (b) if personal service of a fixed penalty notice cannot be practicably, conveniently or expediently effected, by sending the fixed penalty notice by prepaid registered post addressed to the last known place of abode or business of that person.

(3) The fixed penalty notice shall be in a form prescribed by regulations.

(4) If the person fails to make payment pursuant to subsection (1), the Commission may institute legal proceedings, subject to subsection (6), and the person is liable upon conviction to—

- (a) in the case of a natural person, a fine not exceeding \$50,000 or imprisonment for a term not exceeding 10 years or both; or
- (b) in the case of a body corporate, a fine not exceeding \$250,000.

(5) The liability of a person in criminal proceedings shall not be a bar to another person seeking civil remedies against the first mentioned person.

(6) Proceedings instituted by a fixed penalty notice may be pursued in accordance with Division 4 of Part 7 of the Criminal Procedure Act 2009.”.

Section 88 amended

14. Section 88 of the Principal Act is amended after subsection (1) by inserting the following new subsection—

“(1A) Where payment or other consideration has been accepted, the onus shall lie on the person who accepts payment or other consideration for goods or services to prove that at the time of acceptance, the person intended to supply the goods or services in respect of which payment or other consideration was accepted.”.

Section 119 amended

15. Section 119 of the Principal Act is amended by—

- (a) in subsection (4)—
 - (i) deleting “A” and substituting “Subject to subsection (10), a”; and
 - (ii) deleting “, is guilty of an offence under this Act. If the offender is a natural person—\$1,000 and imprisonment for 12 months and if the offender is a body corporate—\$5,000”;
- (b) after subsection (4), deleting subsections (5) and (6) and substituting the following—

“(4A) Any person who contravenes subsection (4) commits an offence and is liable upon conviction to—

 - (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$50,000.

(5) A requisition made under subsection (1) shall be made in a prescribed form which specifically states that any and all information furnished by the person including information incriminating that person shall be admissible in evidence against that person in proceedings in any court of competent jurisdiction or tribunal.

(6) Subject to subsection (5), if in response to a requisition authorised by subsection (1) a person furnishes information that would tend to incriminate that person in relation to any offence, the information furnished shall be admissible in evidence against that person in proceedings in any court of competent jurisdiction or tribunal.”; and
- (c) deleting subsection (12) and substituting the following—

“(12) A person who contravenes this section commits an offence and is liable upon conviction to—

 - (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$50,000.”.

Section 120 amended

16. Section 120 of the Principal Act is amended by—

- (a) in subsection (2), deleting the following—

“Penalty—

 - (a) if the offender is a natural person—\$1,000 and imprisonment for 12 months;

- (b) if the offender is a body corporate—\$5,000.”; and
- (b) after subsection (2), inserting the following new subsection—
 - “(3) A person who contravenes subsection (2) commits an offence and is liable upon conviction to—
 - (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$50,000.”.

*Section 121 amended***17.** Section 121 of the Principal Act is amended by—

- (a) in subsection (3), deleting the following—
 - “Penalty—
 - (a) if the offender is a natural person—\$1,000;
 - (b) if the offender is a body corporate—\$5,000.”; and
- (b) after subsection (3), inserting the following new subsection—
 - “(4) A person who contravenes subsection (3) commits an offence and is liable upon conviction to—
 - (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$50,000.”.

*Section 121A amended***18.** Section 121A of the Principal Act is amended by—

- (a) in subsection (1), deleting the following—
 - “Penalty—
 - (a) if the offender is a natural person—\$1,000 and imprisonment for 12 months;
 - (b) if the offender is a body corporate—\$5,000.”;
- (b) after subsection (1), inserting the following new subsection—
 - “(1A) A person who contravenes subsection (1) commits an offence and is liable upon conviction to—
 - (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$50,000.”;

(c) in subsection (2), deleting the following—

“Penalty—

- (a) if the offender is a natural person—\$1,000 and imprisonment for 12 months;
- (b) if the offender is a body corporate—\$5,000.”; and

(d) after subsection (2), inserting the following new subsection—

“(2A) A person who contravenes subsection (2) commits an offence and is liable upon conviction to—

- (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
- (b) in the case of a body corporate, a fine not exceeding \$50,000.”.

Section 124 amended

19. Section 124(1)(c) of the Principal Act is amended by deleting “section 20(2)” and substituting “section 20(1) and (2)”.

New section 127 inserted

20. The Principal Act is amended after section 126 by inserting the following new section—

“Enforcement of undertakings

127.—(1) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Commission has a power or function under this Act.

(2) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a clearance or an authorisation.

(3) The person, with the prior written consent of the Commission, may withdraw or vary the undertaking at any time.

(4) A person who breaches any term or condition of an undertaking given under this section commits an offence.

(5) Notwithstanding subsection (4), if the Commission considers that the person who gave the undertaking has breached any of its terms or conditions, the Commission may apply to any court of competent jurisdiction for an order under subsection (6).

(6) If the court of competent jurisdiction is satisfied that the person has breached a term or condition of the undertaking, the court of competent jurisdiction may make any of the following orders—

- (a) an order directing the person to comply with that term or condition of the undertaking;
- (b) an order directing the person to pay the Commission an amount up to the amount of any financial benefit, as determined by the Commission, that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the court of competent jurisdiction considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach; or
- (d) any other order that the court of competent jurisdiction considers appropriate.”.

Section 129 amended

21. Section 129 of the Principal Act is amended by—

- (a) in subsection (1), deleting “\$10,000” and substituting “\$1 million”;
- (b) deleting subsection (1A) and substituting the following—

“(1A) Subject to subsections (2) and (3), a person who commits an offence under this Act for which no other penalty is provided is liable upon conviction to a fine not exceeding \$10,000 for a first offence and \$100,000 for a second or subsequent offence, or imprisonment for a term not exceeding 10 years or both.”; and

- (c) in subsection (2), deleting “3 years” and substituting “10 years”.

Section 130 amended

22. Section 130(1)(c) of the Principal Act is amended by deleting “shall be liable to a penalty not less than \$1,000” and substituting “is liable upon conviction to a fine not exceeding \$1,000”.

Section 150 amended

23. Section 150 of the Principal Act is amended by—

- (a) in subsection (8)—
 - (i) deleting “—” and substituting “.”; and
 - (ii) deleting the following—

“Penalty—

- (a) in the case of a natural person—\$2,000;
- (b) in the case of a body corporate—\$10,000.”;

(b) deleting subsection (9) and substituting the following—

“(9) A person who contravenes subsection (8) commits an offence and is liable upon conviction to—

(a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or

(b) in the case of a body corporate, a fine not exceeding \$50,000.

(10) In addition to subsection (9), a person who contravenes subsection (8) and commits an offence in relation to the contravention of an order is liable upon conviction to—

(a) in the case of a natural person, a fine not exceeding \$1,000; or

(b) in the case of a body corporate, a fine not exceeding \$5,000,

for each day after the service of the order during any part of which that contravention continues.”.

Section 158 amended

24. Section 158(1)(c)(i) of the Principal Act is amended by—

(a) deleting “\$5,000” and substituting “\$50,000”; and

(b) deleting “\$10,000” and substituting “\$100,000”.

New section 160A inserted

25. The Principal Act is amended after section 160 by inserting the following new section—

“Amendment of all references to the Commission

160A. All written laws and all State documents of any nature whatsoever (including the titles of any written law) are amended by deleting “Fiji Commerce Commission” and “Commerce Commission” wherever they appear and substituting “Fijian Competition and Consumer Commission”, unless the context otherwise requires.”.

July 2017

COMMERCE COMMISSION (BUDGET AMENDMENT) BILL 2017

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

1.1 The Commerce Commission (Budget Amendment) Bill 2017 (**'Bill'**) seeks to amend the Commerce Commission Act 2010 (**'Act'**).

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement of the Bill. If passed by Parliament, the amending legislation will come into force on 1 August 2017.

2.2 Clause 2 of the Bill amends section 4 of the Act by amending the definitions relevant for the interpretation of the Act.

2.3 Clause 3 of the Bill amends the Act by including new sections 4A and 4B, which include exclusionary provisions and a provision for the lessening of competition. This will allow the Fiji Commerce Commission (**'Commission'**) to investigate circumstances where 2 or more parties enter into contracts, agreements or understandings to limit competition.

2.4 Clause 4 of the Bill amends section 5 of the Act to include as a regulated industry an industry that is engaged in the supply of goods or services where competition is lessened or likely to be limited as declared by the Minister.

2.5 Clause 5 of the Bill amends the Act by including a new section 13 in relation to the procedures for meetings of the Commission, which allows written resolutions to be reached by a majority of the members of the Commission, by electronic or non-electronic means.

2.6 Clause 6 of the Bill amends the Act by inserting a new section 18A to allow the Commission to appoint suitable persons not employed within the Commission to act and exercise duties conferred on the Commission.

- 2.7 Clause 7 of the Bill amends section 41 of the Act by inserting a new subsection (1A) to empower the Commission to authorise the price of controlled goods and services.
- 2.8 Clauses 8, 9, 10, 15, 16, 17, 18, 21, 22, 23 and 24 of the Bill amend the penalty provisions in the Act to increase the penalties for offences committed under the Act to deter non-compliance with the provisions of the Act.
- 2.9 Clause 11 of the Bill amends the Act by inserting a new section 55A where it requires a trader to supply a receipt at the time of sale to every purchaser. The receipt must contain particulars specified in this provision.
- 2.10 Clause 12 of the Bill amends section 56 of the Act to require the trader to keep all records and accounts, including stock and costing records and not to destroy any document without the consent of the Commission for a period of 7 years.
- 2.11 Clause 13 of the Bill amends section 59 of the Act by including a provision for the issuance of a fixed penalty notice for breach of a specified provision.
- 2.12 Clause 14 of the Bill amends section 88 of the Act to reverse the onus of proof in relation to the intention of a supplier of goods or services who have failed to make a supply after accepting payment for the supply.
- 2.13 Clause 15 of the Bill amends section 119 of the Act to clarify that any information provided to the Commission in response to a requisition is admissible in a court of competent jurisdiction, including if the information provided incriminates the person providing the information. However, it remains a reasonable excuse to not provide information if the information may incriminate the person.
- 2.14 Clause 19 of the Bill amends section 124 of the Act in relation to the disclosure of confidential information to a person, body or consultant with which the Commission may enter into an arrangement with to perform its duty. The amendment includes reference to section 20(1) where the Commission may disclose confidential information with a government agency for the purpose of performing its functions.
- 2.15 Clause 20 of the Bill amends the Act by inserting a new section 127 relating to enforceable undertakings, where the Commission accepts undertakings and if the Commission considers that the person who gave the undertaking has breached any of its terms or conditions, the Commission may apply to a court of competent jurisdiction for an order specified in this provision.
- 2.16 Clause 25 of the Bill inserts a new section 160A to provide for the consequential amendments to change the name of the Commission from the “Fiji Commerce Commission” to the “Fijian Competition and Consumer Commission”.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for industry and trade.

A. SAYED-KHAIYUM
Attorney-General