

BILL NO. 20 OF 2018

A BILL

FOR AN ACT TO AMEND THE DRAINAGE ACT 1961

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Drainage (Budget Amendment) Act 2018.
- (2) This Act comes into force on 1 August 2018.
- (3) In this Act, the Drainage Act 1961 is referred to as the “Principal Act”.

Long title amended

2. The Principal Act is amended by deleting the long title and substituting the following—

“AN ACT TO AUTHORISE THE EXECUTION OF DRAINAGE WORKS AND FOR RELATED MATTERS”.

Part headings inserted

3. The Principal Act is amended by—
 - (a) before section 1, inserting the heading “PART 1—PRELIMINARY”;
 - (b) before section 8, inserting the heading “PART 2—FUNCTIONS AND POWERS”; and

(c) before section 20, inserting the heading “PART 3—MISCELLANEOUS”.

Section 2 amended

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

- (a) deleting the definitions of “Board”, “Controlling Authority” and “drainage area”;
- (b) in the definition of “drainage works”—
 - (i) in paragraph (e), deleting “.” and substituting “;”; and
 - (ii) deleting “Any such drainage works may affect and be in respect of the whole of the land within a drainage area or may, for specific schemes (in this Act referred to as “drainage schemes”), be in respect of such part or parts of a drainage area as the Board for that area shall decide;”;
- (c) in the definition of “public drain”, deleting “, provided that, in section 22, “public drain” shall be interpreted in the same manner as in the Local Government Act 1972”; and
- (d) inserting the following new definitions—
 - ““Minister” means the Minister responsible for waterways;”;
 - ““Ministry” means the ministry responsible for waterways;”; and
 - ““Permanent Secretary” means the permanent secretary responsible for waterways;”.

Sections 3, 4, 5, 6, 7, 17, 18 and 19 deleted

5. The Principal Act is amended by deleting sections 3, 4, 5, 6, 7, 17, 18 and 19.

Section 8 amended

6. Section 8 of the Principal Act is amended by—

- (a) in the heading, deleting “a Board” and substituting “the Ministry”;
- (b) in subsection (1)—
 - (i) deleting “A Board” and substituting “The Ministry”;
 - (ii) in paragraph (a), deleting “within the drainage area for which it is appointed”; and
 - (iii) deleting paragraph (b) and substituting the following—
 - “(b) carry out such works and issue such notices concerning drainage works for the maintenance and improvement of drainage.”;
- (c) deleting subsections (2) and (3); and
- (d) renumbering subsection (1) as section 8.

Section 9 amended

7. Section 9 of the Principal Act is amended by—

- (a) in the heading, deleting “Board” and substituting “the Permanent Secretary”;
- (b) deleting “Every Board shall, within its own drainage area, have power to do all things necessary to carry out its functions” and substituting “The Permanent Secretary shall have the power to do all things necessary to carry out the functions conferred upon him or her”;
- (c) in paragraph (f)—
 - (i) deleting “at any time, by means of any member, officer, servant or agent, any lands within its area” and substituting “any land at any time”;
 - (ii) in subparagraph (iv), deleting “ordered by the Board” and substituting “notified by the Permanent Secretary”;
 - (iii) in subparagraph (v), deleting “in a drainage area”;
 - (iv) in subparagraph (ix), deleting “in a drainage area” and substituting “where drainage works are undertaken”; and
 - (v) deleting the proviso and substituting the following—
 - “provided that—
 - (A) before entering any land within the curtilage of a dwelling house, the Permanent Secretary shall first inform the occupier of the Permanent Secretary’s intention to do so; and
 - (B) if any damage is caused when entering such land, compensation shall be paid as soon as practicable for such damage;”;
- (d) deleting paragraphs (g), (i) and (j) and inserting the following—
 - “(g) to delegate any function or power under this Act to any officer of the Ministry.”.

Section 10 amended

8. The Principal Act is amended by deleting section 10 and substituting the following—

“Limitation of liability

10. The Permanent Secretary or any officer of the Ministry shall not be liable to any action, liability, claim or demand in respect of any act or matter *bona fide* done or omitted to be done in the exercise of the functions and powers conferred under this Act.”.

*Section 20 amended***9.** Section 20 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) deleting “A Board may issue orders requiring the owner of any land within the drainage area” and substituting “The Permanent Secretary may issue a notice requiring the owner of any land to”;
 - (ii) in paragraph (a)—
 - (A) before “lay”, deleting “to”;
 - (B) deleting “Board” and substituting “Permanent Secretary”; and
 - (C) deleting “within the area for which it is responsible”; and
 - (iii) in paragraph (b) before “take”, deleting “to”;
- (b) in subsection (3)—
 - (i) deleting “an order” and substituting “a notice”; and
 - (ii) deleting “Controlling Authority” wherever it appears and substituting “Minister”;
- (c) in subsection (4), deleting “order” wherever it appears and substituting “notice”; and
- (d) deleting subsection (5) and substituting the following—

“(5) If the owner fails to comply with any requirement of a notice served under subsection (2) within such time as the Permanent Secretary may require, being not less than 30 days from the date of service of the notice, the Permanent Secretary may undertake the work and the cost shall be a debt to the State and may be recovered in a court of competent jurisdiction.”.

*Section 21 amended***10.** Section 21 of the Principal Act is amended by—

- (a) deleting “Board or a duly authorised officer or servant of the Board” and substituting “Permanent Secretary”;
- (b) in paragraphs (a), (c), (d), (e) and (f), deleting “within the jurisdiction of the Board”;
- (c) in paragraph (b), deleting “works or measures within the jurisdiction of the Board” and substituting “work or measure”; and
- (d) deleting “shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine not exceeding \$200 or to imprisonment for a

period not exceeding 6 months or to both such fine and imprisonment” and substituting the following—

“shall be guilty of an offence and shall be liable upon conviction to—

- (i) in the case of a natural person, a fine not exceeding \$25,000 or imprisonment for a term not exceeding 10 years or both; or
- (ii) in the case of a body corporate, a fine not exceeding \$100,000 and for a director, manager or officer in charge for the time being, a fine not exceeding \$25,000 or imprisonment for a term not exceeding 10 years or both.”.

Section 22 amended

- 11.** The Principal Act is amended by deleting section 22 and substituting the following—

“Relationship of this Act with other written laws

22. In so far as drainage works or public drains are concerned, nothing in this Act shall affect the functions and powers of—

- (a) a local authority established under the Public Health Act 1935;
- (b) a council established under the Local Government Act 1972; and
- (c) the Fiji Roads Authority established under the Fiji Roads Authority Act 2012.”.

Section 23 amended

- 12.** The Principal Act is amended by deleting section 23 and substituting the following—

“Regulations

23. The Minister may make regulations to prescribe matters that are required to be permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.”.

Part 4 inserted

- 13.** The Principal Act is amended after section 23 by inserting the following new Part—

“PART 4—TRANSITIONAL

Meaning of “drainage board”

24. For the purposes of this Part, “drainage board” means a drainage board existing under this Act immediately before 1 August 2018.

Revocation of appointment of members of a drainage board

25. All appointments of members to a drainage board existing immediately before 1 August 2018 are revoked.

Transfer of assets, interests, rights, privileges, liabilities and obligations

26.—(1) All assets, interests, rights, privileges, liabilities and obligations of a drainage board are transferred to and vest in the State without conveyance, assignment or transfer.

(2) Any right or liability vested in the State under subsection (1) may, on or after 1 August 2018, be enforced by or against the State in its own name and it is not necessary for the State to give notice to any person whose right or liability is affected by the vesting.

Transfer of officers and servants

27.—(1) All officers and servants appointed under this Act to a drainage board immediately before 1 August 2018 are transferred to the Ministry.

(2) Until such time as the terms and conditions of the officers and servants transferred under subsection (1) are determined by the Ministry, the terms and conditions of such officers and servants continue to apply to every officer or servant transferred under subsection (1).

Existing deed, bond, agreement, instrument or arrangement

28. All deeds, bonds, agreements, instruments and arrangements to which a drainage board is a party immediately before 1 August 2018 continue in force and are enforceable by or against the Ministry as if the Ministry had been a party to the deed, bond, agreement, instrument or arrangement.

Continuation of proceedings

29. Any action, arbitration, proceeding or cause of action existing under this Act immediately before 1 August 2018, is pending against or in favour of a drainage board, or to which the drainage board is a party, may be prosecuted and, without amendment to any writ, pleading or other document, continued and enforced against or in favour of the Ministry.

Transfer of monies in the drainage fund

30. All monies in the drainage fund existing under this Act immediately before 1 August 2018 are to be transferred to the Consolidated Fund.”.

Consequential amendments

14.—(1) All subsidiary legislation made under the Principal Act are revoked.

(2) The Fijian Competition and Consumer Commission Act 2010 is amended in section 4(1) in the definition of “rent” in paragraph (b) by deleting “, Water Authority of Fiji Act 2007 or Drainage Act 1961” and substituting “or Water Authority of Fiji Act 2007”.

(3) The iTaukei Land Trust Act 1940 is amended in section 14 by deleting subsections (3)(c) and (5).

- (4) The Natural Disaster Management Act 1998 is amended in section 39(3) by—
- (a) deleting paragraph (b); and
 - (b) in paragraph (e), deleting “Ministry responsible for infrastructure” and substituting “ministry responsible for waterways”.

June 2018

DRAINAGE (BUDGET AMENDMENT) BILL 2018

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 Drainage Act 1961 (**‘Act’**), which was enacted in 1961, provides for the declaration of drainage areas, authorises the execution of drainage works and provides for the establishment of drainage boards for the maintenance and improvement of certain drainage areas.
- 1.2 The Ministry of Waterways (**‘Ministry’**) was established in 2017 by the Fijian Government to address the growing threat that flooding poses to Fijian communities, a threat that is projected to worsen as a result of the effects of climate change. The responsibility for the maintenance of drainage systems and the management of waterways has since been assigned to and handled by the Ministry.
- 1.3 However, to date, the Ministry and the drainage boards share the same function of maintaining drainage systems.
- 1.4 Accordingly, the Drainage (Budget Amendment) Bill 2018 (**‘Bill’**) seeks to amend the Act so that the maintenance of drainage systems under the Act is solely managed by the Ministry. The Bill therefore amends the Act to facilitate the transfer of roles to the Ministry.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on 1 August 2018.
- 2.2 Clause 2 of the Bill substitutes the long title of the Act to reflect the changes proposed by the Bill.
- 2.3 Clause 3 of the Bill amends the Act to divide the Act into Parts for the purpose of clarity.

- 2.4 Clause 4 of the Bill amends section 2 of the Act by deleting the definitions of “Board”, “Controlling Authority” and “drainage area”, and amending the definitions of “drainage works” and “public drain”. Clause 4 of the Bill also inserts the definitions of “Minister”, “Ministry” and “Permanent Secretary” for the purpose of clarity.
- 2.5 Clause 5 of the Bill deletes sections 3, 4, 5, 6, 7, 17, 18 and 19 of the Act.
- 2.6 Clauses 6 and 7 of the Bill amend sections 8 and 9 of the Act to remove the references made to “Board” and “drainage area” given that the terms have been deleted by clause 2 of the Bill. The proposed amendments provide for the functions of the Ministry and the powers of the Permanent Secretary.
- 2.7 Clause 8 of the Bill replaces section 10 of the Act to provide a limitation of liability provision for the Permanent Secretary or any officer of the Ministry under the Act. This is currently captured under section 7 of the Act however, given that the Act is being divided into Parts by the Bill, it is only practical to have the limitation of liability provision appear after the provision dealing with the powers of the Permanent Secretary.
- 2.8 Clause 9 of the Bill amends section 20 of the Act to empower the Permanent Secretary to issue a notice requiring the owner of any land to—
- (a) lay, build, dig, construct, improve, maintain or alter any drain within his or her land; and
 - (b) take necessary steps to ensure that no fruit, leaves, branches, tree trunk or other vegetation interferes with the free flow of water in a public drain or damages any public drain.
- 2.9 Clause 10 of the Bill amends section 21 of the Act to remove the references made to “Board” given that the term has been deleted by clause 2 of the Bill. Clause 10 further amends the penalty provision to increase the maximum fine from “\$200” to “\$25,000” and the maximum term of imprisonment from “6 months” to “10 years”. It also introduces a penalty provision for bodies corporate.
- 2.10 Clause 11 of the Bill replaces section 22 of the Act with a provision which deals with the relationship of the Act with the following laws for the purpose of clarity—
- (a) Public Health Act 1935;
 - (b) Local Government Act 1972; and
 - (c) Fiji Roads Authority Act 2012.
- 2.11 Clause 12 of the Bill replaces section 23 of the Act to align the regulation making provision with that of other recent laws.

- 2.12 Clause 13 of the Bill amends the Act by inserting a new Part 4 dealing with transitional provisions based on the amendments proposed in the Bill.
- 2.13 Clause 14 of the Bill revokes all subsidiary legislation made under the Act and also makes consequential amendments to the following laws to bring them into uniformity with the amendments proposed in the Bill—
- (a) Fijian Competition and Consumer Commission Act 2010;
 - (b) iTaukei Land Trust Act 1940; and
 - (c) Natural Disaster Management Act 1998.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for waterways.

A. SAYED-KHAIYUM
Attorney-General