

BILL NO. 35 OF 2020

A BILL

FOR AN ACT TO AMEND THE IMMIGRATION ACT 2003

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Immigration (Amendment) Act 2020.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Immigration Act 2003 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2(1) of the Principal Act is amended in the definitions of “child” and “family” by deleting “21” and substituting “18”.

Section 8 amended

3. Section 8(1)(b) of the Principal Act is amended by deleting “21” and substituting “18”.

*Section 9 amended***4.** Section 9 of the Principal Act is amended by—

(a) in subsection (2)—

- (i) in paragraph (b) after “;”, inserting “or”;
- (ii) in paragraph (c), deleting “;” and substituting “,”; and
- (iii) deleting paragraphs (d) and (e);

(b) deleting subsection (3); and

(c) after subsection (11), inserting the following new subsection—

“(12) A permanent residence permit issued on the basis of an investment in Fiji, as provided for under regulations—

- (a) must not be revoked unless there is a clear breach of the conditions of the permit; and
- (b) is only subject to the conditions of the permit which were applicable at the time the permit was granted.”.

*Section 11 amended***5.** Section 11(8) of the Principal Act is amended by deleting “as a visitor”.*Section 58 amended*

6. Section 58 of the Principal Act is amended after “21” wherever it appears by inserting “working”.

Section 66 amended

7. Section 66(3) of the Principal Act is amended after “to” by inserting “*inter alia*”.

Section 68 amended

8. Section 68(4) of the Principal Act is amended by deleting “\$2000 and imprisonment for 2 years” and substituting “\$20,000 and imprisonment for 5 years”.

Schedule 3 amended

9. Schedule 3 to the Principal Act is amended by—

- (a) in the first and second rows, deleting “\$200” and substituting “\$2,000”; and
- (b) in the fifth row after “6”, inserting “(10) and ”.

August 2020

IMMIGRATION (AMENDMENT) BILL 2020

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 Immigration (Amendment) Bill 2020 (**‘Bill’**) seeks to amend the Immigration Act 2003 (**‘Act’**) to—

- (i) clarify ambiguities and correct redundancies in the Act;
- (ii) align the age range of a child in the Act to under 18 years in accordance with the Constitution of the Republic of Fiji (**‘Constitution’**);
- (iii) remove the requirement that permits must only be issued for 3 years at first instance, so as to allow for permits with longer terms which provide greater assurance to permit holders;
- (iv) assure persons who may be granted a permanent residence permit on the basis of an investment in Fiji that their permits may only be revoked if there is a clear breach of the conditions of the permit applicable at the time the permit was granted; and
- (v) increase the penalties for certain offences under the Act.

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 a date or dates appointed by the Minister by notice in the Gazette.

2.2 Clause 2 of the Bill amends section 2 of the Act to align the definitions of “child” and “family” to the age criteria for a child under the Constitution.

2.3 Clause 3 of the Bill amends section 8 of the Act to align the age range of a child as proposed under clause 2.

2.4 Clause 4 of the Bill amends section 9 of the Act to clarify the permit types, which are prescribed by regulations made under the Act, and to remove the limit on the period for which a permit may be issued at first instance.

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- 2.5 Clause 4 of the Bill also amends section 9 to provide an assurance to persons to whom a permanent residence permit may be issued on the basis of an investment, that their permit may only be revoked if there is a clear breach of the conditions which were applicable at the time the permit was granted.
- 2.6 Clause 5 of the Bill amends section 11(8) of the Act to clarify that if a person holding a visitor permit overstays in Fiji for more than 7 days, he or she will not be permitted to re-enter Fiji for 12 months under any type of permit, unless the Minister approves a shorter time period.
- 2.7 Clause 6 of the Bill amends section 58 of the Act to clarify that appeals to the Minister from decisions of the Permanent Secretary under the Act must be made within 21 working days from receipt of the Permanent Secretary's decision rather than 21 ordinary days of the week. Clause 7 of the Bill also makes this clarification for the time period for the Minister to make a decision on a matter on appeal.
- 2.8 Clause 7 of the Bill amends section 66(3) of the Act to clarify that the Minister may amend Schedule 3 to the Act by way of regulations.
- 2.9 Clause 8 of the Bill amends section 68 of the Act to increase the maximum penalties which may be prescribed by regulations — from \$2,000 and 2 years to \$20,000 and 5 years, so as to allow for penalties which more adequately reflect the severity of an offence.
- 2.10 Clause 9 of the Bill amends Schedule 3 to the Act to increase the penalty for refusing or failing to answer a question when interrogated, providing false or misleading answers to questions, or providing false or misleading documents when requested or does not provide documents in a reasonable time. Furthermore, clause 9 also seeks to increase the penalty for the offence of entering Fiji without lawful authority. The penalty for each offence is currently \$200 and is to be increased to \$2,000 as the current penalty does not adequately reflect the severity of the offence.
- 2.11 Clause 9 of the Bill also amends Schedule 3 to correct the cross-referencing in the Act.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General