

# BILL NO. 1 OF 2021

## A BILL

FOR AN ACT TO AMEND THE HIGH COURT ACT 1875

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the High Court (Amendment) Act 2021.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

*Part 6B inserted*

**2.** The High Court Act 1875 is amended after section 21K by inserting the following new Part—

“PART 6B—THE ANTI-CORRUPTION DIVISION OF THE HIGH COURT

*Interpretation*

21L. In this Part, unless the context otherwise requires—

“Commission” means the Fiji Independent Commission Against Corruption established under section 3 of the Fiji Independent Commission Against Corruption Act 2007;

“Commissioner” means the Commissioner of the Fiji Independent Commission Against Corruption appointed under section 5 of the Fiji Independent Commission Against Corruption Act 2007 and includes the Deputy Commissioner and the acting Commissioner respectively appointed under sections 6 and 7 of the Fiji Independent Commission Against Corruption Act 2007; and

“Division” means the Anti-Corruption Division of the High Court.

*Anti-Corruption Division of the High Court*

21M.—(1) This section establishes the Anti-Corruption Division of the High Court.

(2) The Division consists of such Judges as the Chief Justice determines.

*Judges of the Division*

21N.—(1) The Chief Justice may, in writing, designate a Judge or Judges to preside as a Judge in the Division.

(2) The designation of a Judge under this section does not preclude the Judge exercising other powers and jurisdiction of the High Court.

(3) The Chief Justice shall have the power to revoke the designation of any Judge from presiding in the Division.

(4) The appointment of a Judge under section 106(2) of the Constitution of the Republic of Fiji is not affected if the designation of the Judge to preside over the Division is revoked pursuant to subsection (3).

*Jurisdiction and powers of the Division*

21O.—(1) The Division has jurisdiction in—

- (a) proceedings instituted pursuant to section 12B of the Fiji Independent Commission Against Corruption Act 2007 in respect of the offences listed in section 2A of the Fiji Independent Commission Against Corruption Act 2007; and
- (b) any other matter in respect of which jurisdiction is conferred on it by a written law.

(2) Subject to this Act, Judges of the Division have all such powers as are by law or custom granted to the High Court including the hearing of appeals from the Anti-Corruption Division of the Magistrates Court.

*Exercise of jurisdiction*

21P.—(1) The original and appellate jurisdiction of the Division is exercisable by one or more Judges as the Chief Justice may direct or as prescribed by the rules of court.

(2) Sittings of Judges of the Division are to be held from time to time as required at such places in Fiji as the Chief Justice directs.

*Appeals from the Anti-Corruption Division of the Magistrates Court*

21Q.—(1) An appeal from the Anti-Corruption Division of the Magistrates Court lies as of right to the Division subject to Division 1 of Part 15 of the Criminal Procedure Act 2009.

(2) Appeals from Judges of the Division exercising original or appellate jurisdiction lie to the Court of Appeal subject to Part 4 of the Court of Appeal Act 1949.

*Transfer of pending proceedings*

21R. Upon commencement of the High Court (Amendment) Act 2021, all pending proceedings instituted by the Commissioner in the High Court shall be transferred to the Division.

*Practice and procedure*

21S.—(1) The practice and procedure of the Division are governed by the provisions of the Fiji Independent Commission Against Corruption Act 2007 and the Criminal Procedure Act 2009 (in so far as they are capable of such application and subject to any directions of the Chief Justice).

(2) If there is inconsistency between the provisions of the Fiji Independent Commission Against Corruption Act 2007 and the Criminal Procedure Act 2009, the provisions of the Fiji Independent Commission Against Corruption Act 2007 shall prevail to the extent of the inconsistency.

*Crimes Act 2009 and other written laws*

21T.—(1) The provisions of the Crimes Act 2009 shall be applicable in the Division to the extent that those provisions are not inconsistent with the provisions of the Fiji Independent Commission Against Corruption Act 2007.

(2) The provisions of any other written law pursuant to which the Commissioner institutes proceedings in exercise of the powers conferred on the Commissioner under section 12B of the Fiji Independent Commission Against Corruption Act 2007 shall be applicable in the Division to the extent that those provisions are not inconsistent with the provisions of the Fiji Independent Commission Against Corruption Act 2007.

*Extent of jurisdiction*

21U. The extent of the jurisdiction of the Division shall be that prescribed in section 8 of the Crimes Act 2009.”.

*Consequential amendment*

3. The Magistrates Court Act 1944 is amended after section 61G by inserting the following new Part—

“PART 8B—ANTI-CORRUPTION DIVISION OF THE MAGISTRATES COURT

*Interpretation*

61H. In this Part, unless the context otherwise requires—

“Commission” means the Fiji Independent Commission Against Corruption established under section 3 of the Fiji Independent Commission Against Corruption Act 2007;

“Commissioner” means the Commissioner of the Fiji Independent Commission Against Corruption appointed under section 5 of the Fiji Independent Commission Against Corruption Act 2007 and includes the Deputy Commissioner and the acting Commissioner respectively appointed under sections 6 and 7 Fiji Independent Commission Against Corruption Act 2007; and

“Division” means the Anti-Corruption Division of the Magistrates Court.

*Anti-Corruption Division of the Magistrates Court*

61I.—(1) This section establishes the Anti-Corruption Division of the Magistrates Court which is subordinate to the Anti-Corruption Division of the High Court.

(2) The Division consists of such Resident Magistrates as the Chief Justice determines in consultation with the Chief Magistrate.

(3) An appointment as a Magistrate of the Division does not prevent a Magistrate sitting as or executing any other power of a Resident Magistrate.

(4) The Chief Justice in consultation with the Chief Magistrate shall have the power to revoke the designation of any Magistrate from presiding in the Division.

(5) The appointment of a Magistrate under section 107(1) of the Constitution of the Republic of Fiji is not affected if the designation of the Magistrate to preside over the Division is revoked pursuant to subsection (4).

*Jurisdiction and powers of the Division*

61J.—(1) The Division has jurisdiction in—

(a) proceedings instituted pursuant to section 12B of the Fiji Independent Commission Against Corruption Act 2007 in respect of the offences listed in section 2A of the Fiji Independent Commission Against Corruption Act 2007; and

(b) any other matter in respect of which jurisdiction is conferred on it by a written law.

(2) All Magistrates of the Division shall exercise all such powers as are granted by law to Resident Magistrates and to Magistrates Courts.

(3) Sittings of Magistrates of the Division are to be held from time to time as required at such places in Fiji as the Chief Magistrate, in consultation with the Chief Justice, directs.

*Exercise of jurisdiction*

61K.—(1) The original jurisdiction of the Division is exercisable by one or more Magistrates as the Chief Justice may direct or as prescribed by the rules of the court.

(2) Sittings of Magistrates of the Division are to be held from time to time as required at such places in Fiji as the Chief Justice directs.

*Appeals from the Division*

61L. An appeal from the Division lies as of right to the Anti-Corruption Division of the High Court subject to Division 1 of Part 15 of the Criminal Procedure Act 2009.

*Transfer of pending proceedings*

61M.—(1) Upon commencement of the High Court (Amendment) Act 2021, all pending proceedings instituted by the Commissioner in the Magistrates Court shall be transferred to the Division.

(2) For the avoidance of doubt, the transfer of pending proceedings instituted by the Commissioner in the Magistrates Court shall be subject to section 139 of the Criminal Procedure Act 2009.

*Practice and procedure*

61N.—(1) The practice and procedure of the Division are governed by the provisions of the Fiji Independent Commission Against Corruption Act 2007, the Criminal Procedure Act 2009 and the Magistrates Courts Rules 1945 (in so far as they are capable of such application and subject to any directions of the Chief Justice or the Chief Magistrate, as the case may be).

(2) If there is inconsistency between the provisions of the Fiji Independent Commission Against Corruption Act 2007 and the Criminal Procedure Act 2009 or the Magistrates Courts Rules 1945, the provisions of the Fiji Independent Commission Against Corruption Act 2007 shall prevail to the extent of the inconsistency.

*Crimes Act 2009 and other written laws*

61O.—(1) The provisions of the Crimes Act 2009 shall be applicable in the Division to the extent that those provisions are not inconsistent with the provisions of the Fiji Independent Commission Against Corruption Act 2007.

(2) The provisions of any other written law pursuant to which the Commissioner institutes proceedings in exercise of the powers conferred on the Commissioner under section 12B of Fiji Independent Commission Against Corruption Act 2007 shall be applicable in the Division to the extent that those provisions are not inconsistent with the provisions of the Fiji Independent Commission Against Corruption Act 2007.

*Extent of jurisdiction*

61P. The extent of the jurisdiction of the Division shall be that prescribed in section 8 of the Crimes Act 2009.”.

February 2021

## **HIGH COURT (AMENDMENT) BILL 2021**

### **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 Fiji Independent Commission Against Corruption ('**FICAC**') was established under the Fiji Independent Commission Against Corruption Act 2007 and is tasked with effectively combating corruption in order to promote transparency and accountability for good governance in Fiji.
- 1.2 In relation to prosecuting cases related to corruption that are reported to and investigated by FICAC, FICAC institutes proceedings in the Magistrates Court and High Court of Fiji. These cases are then added to the list of numerous cases currently being presided over in both the Magistrates Court and High Court.
- 1.3 Noting the above, the High Court (Amendment) Bill 2021 ('**Bill**') is intended to create a specialised court within Fiji's judicial system which will allow anti-corruption cases to be dealt with effectively and expeditiously.
- 1.4 If passed, the Bill will establish a specialised Anti-Corruption Division of the High Court and an Anti-Corruption Division of the Magistrates Court which will be presided over by Judges and Magistrates who will deal specifically with cases relating to anti-corruption law.
- 1.5 Specialised courts are not new to Fiji's judicial system, examples of which include—
- (a) the Family Division of the High Court and the Family Division of the Magistrates Court established under sections 15 to 23 of the Family Law Act 2003;
  - (b) the Court of Review established under sections 174 to 180 of the Customs Act 1986;
  - (c) the Tax Court established under sections 90 to 95 of the Tax Administration Act 2009; and

(d) the Employment Relations Court established under sections 219 to 225 of the Employment Relations Act 2007.

1.6 Worldwide there has also been an emergence of specific specialised anti-corruption courts. To date, there are over 17 jurisdictions worldwide that have established specialised anti-corruption courts in-countries.

1.7 Amongst others, the main objectives of establishing anti-corruption courts within the High Court and Magistrates Court Division of Fiji are to achieve the following—

(a) the consistent application of anti-corruption jurisprudence in relation to corruption cases;

(b) the specialisation of local Judges and Magistrates in anti-corruption law; and

(c) adherence to international norms and standards in relation to anti-corruption.

1.8 The consistent application of anti-corruption jurisprudence in Fiji has become a cause for concern especially when the law is applied differently to anti-corruption cases across the judicial system, where many cases receive a more lenient sentence while some cases receive a higher sentence and some are acquitted while others are found guilty for the same offences.

1.9 Creating specialised anti-corruption courts will ensure that as the designated Judges and Magistrates become specialised in anti-corruption cases, the application of the jurisprudence on anti-corruption cases will be applied consistently across the board in Fiji.

1.10 The specialisation of local Judges and Magistrates is also an important objective of the Bill given that once Judges and Magistrates are designated to either the Anti-Corruption Division of the High Court or Magistrates Court, they will become specialised, trained and experts in the area of anti-corruption law.

1.11 This will ensure a more timely, effective and expeditious mechanism dealing with complex anti-corruption cases, applying international jurisprudence while at the same time upholding the integrity of the courts and ensuring the prosecuted benefit from a consistent and efficient system. This will create certainty for all parties and further reinforce the rule of law.

## **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 the High Court Act 1875 by inserting a new Part 6B to establish the Anti-Corruption Division of the High Court.
- 2.3 Clause 3 of the Bill consequentially amends the Magistrates Court Act 1944 by inserting a new Part 8B to establish the Anti-Corruption Division of the Magistrates Court.
- 3.0 MINISTERIAL RESPONSIBILITY**
- 3.1 The Act comes under the responsibility of the Minister responsible for justice.

A. SAYED-KHAIYUM  
Attorney-General