

BILL NO. 46 OF 2022

A BILL

FOR AN ACT TO AMEND THE WATER AUTHORITY OF FIJI ACT 2007

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Water Authority of Fiji (Budget Amendment) Act 2022.

(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 Water Authority of Fiji Act 2007 is referred to as the “Principal Act”.

Section 2 amended

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

(a) inserting the following new definitions—

““fixed penalty” means a penalty specified in, and payable on receipt of, an infringement notice;”;

““infringement notice” means a notice prescribed by regulations and issued by an officer pursuant to section 36A;” and

““liquid trade waste” refers to waste water that is discharged from commercial and industrial business processes and is distinct from human sanitary waste water;” and

(b) deleting the definition of “premises” and substituting the following—

““premises” includes any land or area, whether vacant or developed, building, aircraft, vehicle or vessel;”.

Section 7 amended

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

(a) in paragraph (d) after “services”, inserting “and other services”; and

(b) in paragraph (g) after “services”, inserting “and other services”.

Section 36 amended

4. Section 36 of the Principal Act is amended by—

(a) in subsection (1), deleting “not exceeding \$1,000, 000 or to imprisonment for a term not exceeding 10 years” and substituting “in the case of a natural person, not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both and in the case of a company, a fine not exceeding \$1, 000, 000”; and

(b) in subsection (2), deleting “not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years” and substituting “in the case of a natural person, not exceeding \$20,000 or imprisonment for a term not exceeding 5 years or both and in the case of a company, a fine not exceeding \$1, 000, 000”.

Sections 36A, 36B and 36C inserted

5. The Principal Act is amended after section 36 by inserting the following new sections—

“Infringement notices

36A.—(1) Subject to this section, if an officer has reason to believe that a person has committed an offence under this Act or any subsidiary legislation made under or continued under this Part, the officer may issue an infringement notice to the person.

(2) The infringement notice must—

(a) name the person to whom the infringement notice is issued;

(b) specify the particulars of the offence;

(c) specify the fixed penalty that the person named on the infringement notice is required to pay; and

(d) specify any other information prescribed by regulations.

Regulations for the issuance of infringement notices

36B. The Minister may make regulations prescribing matters that are required to be prescribed or are necessary or convenient to be prescribed for the issuance of infringement notices, including—

- (a) the offences for which infringement notices may be issued;
- (b) the fixed penalties for prescribed offences;
- (c) the manner, form and timeframes for which infringement notices are to be issued;
- (d) the actions a person may undertake on receipt of an infringement notice; and
- (e) other penalties that a person to whom an infringement notice has been issued may be liable to, including a late payment fee.

Offences by corporate bodies

36C. Where any offence against this Act or against any subsidiary legislation made under or continued under this Part is committed by a company, firm or other association of individuals, every person who at the time of the offence was a director, manager, secretary or other similar officer of such company, firm or association, or who was at that time concerned in or purported to act, in the management of its affairs, shall be severally liable in prosecution and punishment, in like manner as if such person committed the offence, unless he or she proves that the offence was committed without his or her consent and connivance and that he or she took all reasonable steps to prevent its commission.”.

Section 42 amended

6. Section 42(3) of the Principal Act is amended by deleting “not exceeding \$2,000 or imprisonment for a term not exceeding 12 months” and substituting “in the case of a natural person, not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both and in the case of a company fines not exceeding \$100, 000”.

WATER AUTHORITY OF FIJI (BUDGET AMENDMENT) BILL 2022

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 Water Authority of Fiji Act 2007 (**‘Act’**) was promulgated in 2007 to establish the Water Authority of Fiji (**‘Authority’**), to make provision for the effective management and administration of the water and waste water systems in Fiji.
- 1.2 Under section 37 of the Act, the Authority may institute and conduct prosecutions in respect of offences alleged to have been committed against the Act, subject to the powers of the Director of Public Prosecutions. Section 36 of the Act deals with offences of wilful destruction of assets of the Authority, obstruction etc.
- 1.3 With the increased cases of wilful destruction, tampering, interference with the assets of the Authority and other related offences, the Authority seeks to immediately penalise the alleged offender by issuing infringement notices as opposed to instituting ordinary prosecutions only.
- 1.4 The inability of the Authority to expeditiously take action against the alleged offenders and to deter them from damaging its assets has resulted in the Authority incurring substantial costs in rectifying the damages to its assets, and huge losses to its revenue. As such, there is an urgent need to provide for a more efficient regulatory framework, which allows for the issuance of infringement notices for offences committed under the Act or any subsidiary legislation under the Act. This streamlines the enforcement measures.
- 1.5 Additionally, as instances of serious offending related to interfering with Authority assets may be committed by companies, the Bill seeks to provide for director or officer liability for such offences.
- 1.6 Furthermore, under section 42(3) of the Act the Minister responsible for infrastructure (**‘Minister’**) may make regulations to prescribe fines not exceeding \$2000 or imprisonment for a term not exceeding 12 months.

1.7 However, to ensure that the Authority’s assets are protected and that there are severe penalties against the alleged offenders, it is pertinent through this Bill to amend the Act to allow the Minister to make regulations prescribing fines in the case of a natural person, not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both and in the case of a company fines not exceeding \$100, 000.

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 to include definitions and replace the definition of “premises”.

2.3 Clause 3 of the Bill amends section 7 of the Act to clarify that the Authority’s functions are to establish, operate, maintain systems for the provision of water and sewerage services and other services which includes waste water and liquid trade waste disposal.

2.4 Clause 4 of the Bill amends section 36 of the Act to set out the penalty and sentencing thresholds for natural persons and companies.

2.5 Clause 5 of the Bill amends the Act after section 36 to provide for the issuance of infringement notices. Additionally, as instances of serious offending related to interfering with Authority assets may be committed by companies, clause 5 seeks to provide for director or officer liability for such offences.

2.6 Clause 6 of the Bill amends section 42 of the Act to allow the Minister to prescribe regulations setting out fines in the case of a natural person, not exceeding \$10,000 or imprisonment for a term not exceeding 2 years or both and in the case of a company fines not exceeding \$100, 000.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General