

# BILL NO. 7 OF 2023

## A BILL

### FOR AN ACT TO AMEND THE CUSTOMS ACT 1986

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

- 1.—(1) This Act may be cited as the Customs (Budget Amendment) Act 2023.
- (2) This Act comes into force on 1 August 2023.
- (3) In this Act, the Customs Act 1986 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—
    - ““alternative dispute resolution” means a set of mechanisms that may be used to resolve or settle a dispute without litigation, and includes arbitration or mediation;”;
    - ““cargo reporter” in relation to a ship or aircraft and in relation to a particular voyage or flight means—
      - (a) the operator of the ship or the aircraft;

- (b) a shipping agent in respect of the ship; or
- (c) a freight forwarder in respect of the ship or aircraft,  
for the voyage or flight;”;

““person” means both natural and legal persons, unless the context otherwise requires;”;

““post office” refers to a post office as defined in section 78 of the Posts and Telecommunications Act 1989;”;

- (b) in the definition of “duty”, after “any duty”, inserting “or any other amount payable or”.

*Section 6 amended*

**3.** Section 6 of the Principal Act is amended as follows—

- (a) in the heading, after “airports;”, inserting “post offices;”;
- (b) in subsection (1)—
  - (i) in the chapeau, after “sufferance airport;”, inserting “post office;”;
  - (ii) in paragraph (a), after “sufferance airport”, inserting “post office”;
  - (iii) in paragraph (a), after “;”, deleting “and”;
  - (iv) in paragraph (b), deleting “.” and substituting “;”;
  - (v) after paragraph (b), inserting the following new paragraphs—
    - “(c) permanent or temporary identification cards to all the customs officers who are engaged in administering and enforcing customs laws at such premises; and
    - (d) the required infrastructure, including carparking facility to all the customs officers who are engaged in administering and enforcing customs laws.”;
- (c) in subsection (2), after “sufferance airport;”, wherever it appears inserting “post office;” .

*Section 11B inserted*

**4.** The Principal Act is amended after section 11A, by inserting the following new section—

*“Advanced cargo information*

11B.—(1) This section applies to a ship or aircraft in respect of a voyage or flight to Fiji from a place outside Fiji.

(2) If the ship or aircraft is due to arrive at its first port or airport in Fiji since it last departed from a port or airport outside Fiji, each cargo reporter must, in accordance with this section, provide particulars of all goods—

- (a) that the cargo reporter has arranged to be carried on the ship or aircraft on the voyage or flight;

- (b) that are intended to be unloaded from the ship or aircraft at a port or airport in Fiji whether the first port or airport or any subsequent port or airport on the same voyage or flight; and
- (c) that are not—
  - (i) accompanied personal or household effects of a passenger or member of the crew; or
  - (ii) ship’s stores or aircraft’s stores.

(3) If the ship or aircraft is due to arrive at its first port or airport in Fiji since it last called at a port, or departed from an airport, outside Fiji, each cargo reporter must, in accordance with this section, provide particulars of all goods that the cargo reporter has arranged to be carried on the ship or aircraft and that are intended to be kept on board the ship or aircraft for shipment on to a place outside Fiji, other than—

- (a) goods that are accompanied personal or household effects of a passenger or member of the crew; or
- (b) ship’s stores or aircraft’s stores.

(4) A cargo report must be provided to the Comptroller in the approved form—

- (a) 48 hours prior to arrival for vessels; or
- (b) 9 hours prior to arrival for aircrafts.”.

*Section 52 amended*

**5.** Section 52 of the Principal Act is amended by deleting subsection (2) and substituting the following—

“(2) For the purposes of subsection (1), the Comptroller may allow any goods deposited in a bonded warehouse to be re-warehoused by the owner for a period not exceeding 6 months except for goods which fall within chapters 84 and 87 of Schedule 2 to the Customs Tariff Act 1986.”.

*Section 92 amended*

**6.** Section 92 of the Principal Act is amended by deleting subsection (20).

*Section 111 amended*

**7.** Section 111 of the Principal Act is amended after subsection (1), by inserting the following new subsection—

“(1A) For the purposes of administering any customs law or laws that are read together with this Act, the Comptroller or a proper officer authorised by the Comptroller—

- (a) has the right, at all times, with or without notice, to full and free access to any premises, place, property, accounts, documents, records or electronic data storage facility;

- (b) may make an extract or copy of any accounts, documents, records or information stored on or in an electronic data storage facility to which access is obtained under paragraph (a);
- (c) may seize any accounts, documents or records that, in the opinion of the Comptroller or proper officer, afford evidence that may be material in determining the duty liability of a person;
- (d) may retain any accounts, documents or records seized under paragraph (c) for as long as they may be required for determining a person's duty liability or for any proceeding under a customs law;
- (e) may, if a hard or electronic copy of information stored on a data storage device is not provided, seize and retain the device for as long as is necessary to copy the information required; and
- (f) may, so far as is reasonably necessary for the purposes in the preceding paragraphs, break open any door, window or container and force and remove any other impediment or obstruction, provided that entry shall not be made at night except in the company of a police officer.”.

*Section 143C amended***8.** Section 143C of the Principal Act is amended by—

- (a) deleting the heading and substituting “Arrival alerts and departure prohibition order”;
- (b) in subsection (1), in the proviso—
  - (i) deleting “a”, and substituting “an arrival alerts or”; and
  - (ii) after “country”, inserting “or place the person on arrival alert if the person is already outside Fiji”; and
- (c) in subsection 2, after “regulating”, inserting “arrival alerts or”.

*Section 159 amended*

**9.** Section 159 of the Principal Act is amended by deleting “, provided that it shall be lawful for the Minister to direct that, *in lieu* of being sold, such goods shall be reserved for the civil service”.

*Section 173B amended*

**10.** Section 173B of the Principal Act is amended in the chapeau, after “objection decision”, inserting “or upon unsuccessful resolution under section 173C”.

*Section 173C inserted*

**11.** The Principal Act is amended after section 173B, inserting the following new section—

*“Rectification of mistakes*

173C. If the Comptroller is satisfied that an order or assessment made or document issued by the Comptroller under a customs law contains a mistake which is apparent from the record and that the mistake does not involve a dispute as to the interpretation of the law or facts of the case, the Comptroller may, for the purposes of rectifying the mistake, amend the order, assessment or document any time before the expiry of 6 years from the date of making or issuing the order, assessment or document.”.

*Part 22B inserted*

**12.** The Principal Act is amended by, after Part 22A, inserting the following new Part—

**“PART 22B—ALTERNATIVE DISPUTE RESOLUTION**

*Alternative dispute resolution*

173D. A person dissatisfied with an objection decision may request for the matter to be resolved through alternative dispute resolution.”.

*Sections 180A and 180B inserted*

**13.** The Principal Act is amended after section 180 by inserting the following new sections—

*“Court of Review or High Court may remit the matter to the Comptroller*

180A.—(1) At any stage in a proceeding for review of an objection decision, the Court of Review or High Court may remit the decision to the Comptroller for reconsideration and the Comptroller may—

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set aside the decision and make a new decision.

(2) If the Comptroller affirms, varies, or sets aside a decision under subsection (1), the decision as affirmed, varied or set aside is a decision the applicant may either proceed with or withdraw the application.

*General provisions relating to objections and appeals*

180B.—(1) In any proceeding under Parts 22A and 23 of this Act the burden is on the person to prove that the assessment is excessive or to prove that the decision should not have been made or should have been made differently.

(2) In an application for review by the Court of Review or appeal to the High Court in relation to an objection decision, the person objecting is limited to the grounds stated in the objection to which the objection decision relates unless the Court of Review or High Court grants the person leave to add new grounds.

(3) The duty under an assessment is payable notwithstanding that an objection, application for review by the Court of Review, or notice of appeal to the High Court has been lodged by the person in respect of the assessment.

(4) All proceedings of the Court of Review or High Court under this Act must be held in camera if requested by either party to the proceeding.”.

June 2023

## **CUSTOMS (BUDGET AMENDMENT) BILL 2023**

### **EXPLANATORY NOTE**

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

#### **1.0 BACKGROUND**

1.1 This Customs (Budget Amendment) Bill 2023 (**‘Bill’**) seeks to amend the Customs Act 1986 (**‘Act’**) to address budgetary policy changes in the 2023-2024 Budget.

#### **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 2023.

2.2 Clause 2 of the Bill amends section 2 of the Act by inserting new definitions of “alternative dispute resolution”, “cargo reporter”, “person” and “post office”.

2.3 Clause 3 of the Bill amends section 6 of the Act to include “post offices” where custom officers are to be accommodated for the purposes administering and enforcing customs laws.

2.4 Clause 4 of the Bill amends the Act by inserting a new section 11B to provide for the requirement of cargo reporters to produce the advance cargo information on cargoes prior to the ship or aircraft arriving in Fiji.

2.5 Clause 5 of the Bill amends section 52(2) of the Act to provide for the warehousing period for items such as machinery and mechanical appliances and motor vehicles for only one year and no further extension allowed, while other goods be warehoused for 1 year with further extension of 6 months.

2.6 Clause 6 of the Bill amends section 92 of the Act to remove the provision for deferral of payment of import value added tax for gold card taxpayers.

2.7 Clause 7 of the Bill amends section 111 of the Act to provide that the Comptroller may, for the purposes of administering any custom law, collect accounts, documents, records or information stored in an electronic data.

- 2.8 Clause 8 of the Bill amends section 143C of the Act to insert the issuance of arrival alerts orders in addition to departure prohibition orders for a person who owes duty or outstanding fines and penalties under customs laws.
- 2.9 Clause 9 of the Bill amends section 159 of the Act by deleting provisions where the Minister directs goods forfeited under the provisions of the Act and instead of being sold, reserved for civil service.
- 2.10 Clause 10 of the Bill amends section 173B of the Act in relation to appeals where a person dissatisfied with an objection decision or upon unsuccessful resolution under section 173C of the Act in relation to rectification of mistakes may, within 20 working days, service a notice to the Court of Review or to a court of competent jurisdiction.
- 2.11 Clause 11 of the Bill amends the Act by inserting a new section 173C to provide for the rectification of mistakes where it is apparent from the record that the mistake does not involve a dispute, the Comptroller may for the purpose of rectifying the mistake, amend the mistake accordingly.
- 2.12 Clause 12 of the Bill amends the Act by inserting a new Part 22B in relation to alternative dispute resolution.
- 2.13 Clause 13 of the Bill amends the Act by inserting new sections 180A and 180B to provide that a Court of Review may remit decisions to the Comptroller for reconsideration and respectively provide for in relation to objections and appeals.

### **3.0 MINISTERIAL RESPONSIBILITY**

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

S. TURAGA  
Attorney-General