

# BILL NO. 22 OF 2023

## 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 (Amendment) Act 2023.
- (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 Drainage Act 1961 is referred to as the “Principal Act”.

*Section 2 amended*

2. Section 2 of the Principal Act is amended by inserting the following new definitions—
  - ““Board” means a drainage board appointed under section 4;”;
  - and
  - ““drainage area” means any portion of land declared as a drainage area under section 3;”.

*Sections 3, 4 and 5 inserted*

3. The Principal Act is amended after section 2 by inserting the following new sections—

*“Drainage area*

3.—(1) The Ministry must give notice in the Gazette if it intends to declare an area of land as a drainage area.

(2) Where the Ministry intends to declare an area of land as a drainage area under this section, the Ministry may—

- (a) enter, survey and take levels of any land in such area;
- (b) dig and bore in and under the ground;
- (c) do all other acts necessary to ascertain whether any and, if so, what drainage measures are desirable; and
- (d) clear, set out and mark the boundaries of any area proposed to be included in a drainage area and the intended line of any drainage works proposed to be carried out, provided that—
  - (i) no person can enter any land within the curtilage of a dwelling house without first informing the occupier of his or her intention to do so;
  - (ii) as soon as conveniently after entry, the Ministry must pay for any damage done; and
  - (iii) in case of dispute as to the amount to be paid, either the Ministry or the person claiming compensation may refer such dispute to the Commissioner of the Division in which the land is situated, whose decision is subject to an appeal to a court of competent jurisdiction.

(3) The notice under subsection (1) must specify—

- (a) the boundaries of the drainage area;
- (b) the general nature of drainage works which are proposed to be carried out in the drainage area; and
- (c) a date, not being less than 2 months after the publication of the notice in the Gazette, within which objection may be made.

(4) A copy of the notice must be posted at the offices of—

- (a) the nearest district officer of the Division in which the drainage area is proposed to be situated; and
- (b) the Ministry,

within 14 days of its publication in the Gazette.

(5) An owner in the area in respect of which a notice is published under subsection (1) may, within the time specified in the notice, object in writing against such declaration to the Minister, stating his or her grounds of objection.

(6) The Minister must—

- (a) hear all persons submitting objections to the declaration;
- (b) consider all objections submitted within the specified time limit; and
- (c) give his or her decision thereafter.

(7) The decision of the Minister under subsection (6) is final.

(8) Where—

- (a) no objection is received within the specified time for making an objection;  
or
- (b) an objection has been made and decided on by the Minister,

the Ministry may, by notice in the Gazette, and in accordance with any decision on objection, declare the whole or any part of the land described in the notice referred to in subsection (1) as a drainage area.

(9) The Ministry must, within 14 days of such declaration, lodge in the office of the Department of Lands, a certified true copy of the plan of any area declared a drainage area.

(10) After an area has been declared as a drainage area in accordance with this section, the Minister must assign that drainage area to a Board.

(11) The Ministry may—

- (a) vary the boundaries of any drainage area; or
- (b) declare the whole or any part of a drainage area to no longer be a drainage area,

provided that, if any variation involves the inclusion within the boundaries of a drainage area of land which was not previously included in that drainage area, the procedure prescribed in subsections (1) to (9) are followed.

(12) Any expense lawfully incurred by the Ministry under this section must be paid out of the Consolidated Fund.

#### *Boards*

4.—(1) The Minister may appoint a Board or Boards for the purposes of this Act which must consist of a chairperson and 7 other members as appointed by the Minister.

(2) A Board—

- (a) may appoint such officers as necessary to enable it to carry out its functions under this Act; and
- (b) is responsible for fixing and paying the remuneration of such officers.

*Quorum and proceedings*

5.—(1) At all meetings of a Board, 4 members form a quorum.

(2) The chairperson presides over all meetings of the Board and in his or her absence, a member appointed by the members present must preside over the meeting.

(3) Any issue raised or to be decided must be decided upon by a majority of the votes of the members present and voting.

(4) In the event of an equality of votes, the chairperson, or in his or her absence, the member presiding, has a casting vote.

(5) The Board has the power to regulate its own procedure at its meetings.”.

*Section 8 amended*

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

- (a) in the heading, deleting “the Ministry” and substituting “a Board”;
- (b) in the chapeau, deleting “The Ministry shall” and substituting “A Board must”; and
- (c) in paragraph (a), after “all land” inserting “in the drainage area of which the Board is responsible for”.

*Section 9 amended*

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

- (a) in the heading, deleting “the Permanent Secretary” and substituting “a Board”;
- (b) deleting the chapeau and inserting “A Board has the power to do all things necessary to carry out the functions conferred on it under this Act and, in particular, the following powers—”;
- (c) deleting proviso (A) and substituting “before entering any land within the curtilage of a dwelling house, the Board must first inform the occupier of its intention to do so; and”;
- (d) in proviso (B), deleting “;” and substituting “.”; and
- (e) deleting paragraph (g).

*Section 10 amended*

**6.** Section 10 of the Principal Act is amended after “The Permanent Secretary” by inserting “, a Board,”.

*Section 11 inserted*

**7.** The Principal Act is amended after section 10 by inserting the following new section—

*“Drainage fund*

11.—(1) There must be a drainage fund for each Board established under this Act.

(2) There must be paid into the drainage fund all grants of money made to a Board for the purpose of discharging its functions under this Act.

(3) The accounts of a Board must be audited by an independent auditor appointed by the Board and approved by the Ministry.

(4) The appointment of an auditor is for a term of one year.

(5) The remuneration of an auditor is fixed and paid by the Board.”.

*Section 20 amended*

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

(a) in subsection (1)—

(i) in the chapeau, deleting “The Permanent Secretary” and substituting “A Board”; and

(ii) in paragraph (a), deleting “the Permanent Secretary” and substituting “the Board”; and

(b) in subsection (5), deleting “the Permanent Secretary” wherever it appears and substituting “the Board”.

*Section 21 amended*

**9.** Section 21 of the Principal Act is amended by deleting “the Permanent Secretary” and substituting “a Board”.

*Sections 24, 25, 26, 27 and 30 deleted*

**10.** The Principal Act is amended by deleting sections 24, 25, 26, 27 and 30.

September 2023

## **DRAINAGE (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 The Drainage Act 1961 (**‘Act’**), which was enacted in 1961, provides for *inter alia* the execution of drainage works.
- 1.2 The Act is administered by the Ministry of Waterways (**‘Ministry’**) which was established in 2017 to address the growing threat that flooding poses to communities in Fiji. In 2018, the Act was amended to allow the Ministry to assume the responsibility for drainage systems and the functions of drainage boards (**‘boards’**) under the Act.
- 1.3 Regrettably, adequate consultation and planning had not been undertaken prior to the removal of the boards. Consequently, there has been a noticeable decline in the overall production of sugarcane as well as non-sugar commodities produced from the drainage scheme areas attributed to the transfer of the responsibilities for drainage systems to the Ministry.
- 1.4 It is anticipated therefore that the re-establishment of the boards will improve the service and maintenance of the drainage scheme areas whilst contributing towards the increase in the production of sugar and non-sugar commodities produced in these areas.
- 1.5 The Drainage (Amendment) Bill 2023 (**‘Bill’**) accordingly, seeks to amend the Act to revert the responsibility for drainage systems to the boards.

#### **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 by inserting the definitions of “Board” and “drainage area”.

- 2.3 Clause 3 of the Bill amends the Act by inserting new sections 3, 4 and 5 to—
- (a) provide for the declaration of drainage areas, and related matters;
  - (b) provide for boards and enable such boards to appoint officers to carry out functions under the Act and to remunerate such officers; and
  - (c) provide for the quorum and proceedings of the meetings of the drainage boards.
- 2.4 Clause 4 of the Bill amends section 8 of the Act to replace references made to the “Ministry” with the “Board”.
- 2.5 Clause 5 of the Bill amends section 9 of the Act to replace references made to the “Permanent Secretary” with the “Board”.
- 2.6 Clause 6 of the Bill amends the Act to include boards in the limitation of liability provision which is currently only extended to officers of the Ministry and the Permanent Secretary.
- 2.7 Clause 7 of the Bill amends the Act by inserting section 11 to establish a drainage fund where all grants of money made to a board will be paid.
- 2.8 Clauses 8 and 9 of the Bill amend sections 20 and 21 of the Act, respectively, to replace references made to the “Permanent Secretary” with the “Board”.
- 2.9 Clause 10 of the Bill deletes sections 24, 25, 26, 27 and 30 of the Act which provided for the transition of drainage responsibilities from boards to the Ministry in 2018, and are now obsolete.

### **3.0 MINISTERIAL RESPONSIBILITY**

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

S. D. TURAGA  
Attorney-General