

COMMERCIAL USE OF MARINE AREAS BILL 2025
(BILL NO. 42 OF 2025)

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SCHEDULE — CONSEQUENTIAL AMENDMENTS

BILL NO. 42 OF 2025**A BILL**

FOR AN ACT TO PROVIDE FOR THE TRANSFER OF PROPRIETARY OWNERSHIP OF MARINE AREAS USED FOR COMMERCIAL PURPOSES TO THE CUSTOMARY OWNERS, THE ESTABLISHMENT OF AN EQUITABLE COMPENSATION SCHEME FOR THE ACCESS AND USE OF THESE AREAS AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji —

PART 1 — PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Commercial Use of Marine Areas Act 2025.

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

Interpretation

2.—(1) In this Act, unless the context otherwise requires —

“appointment committee” means the *exofficio* committee that appoints the Tribunal under section 15(2);

“commercial marine area” means a marine area that is used for commercial purposes even if it is within the boundaries of a marine protected area;

“commercial purposes” means the use of a marine area for a commercial tourism activity or for an emissions reductions project, programme or activity undertaken in accordance with Part 10 of the Climate Change Act 2021, but excludes “fishing” as defined in section 2 of the Marine Spaces Act 1977;

“commercial tourism activity” means a prescribed commercial activity in the tourism industry;

“Constitution” means the Constitution of the Republic of Fiji;

“customary owners” means the vanua, yavusa, tikina or other division or subdivision of the iTaukei having customary rights over a commercial marine area;

“customary rights” means those rights acknowledged and recognised according to iTaukei customs, usage and tradition, as listed in the Register;

“Director of Lands” means the person holding all State lands on behalf of the State under section 4(1) of the State Lands Act 1945;

“interest holder” means a person, other than the customary owners of a commercial marine area, with a legal interest in or rights over a commercial marine area;

“interested person” means a person who is not an interest holder but holds a commercial interest in a commercial marine area, including by way of—

- (a) a commercial activity which, in the absence of a lease or licence, utilises the commercial marine area; or
- (b) as otherwise prescribed by regulations;

“iTaukei land” has the same meaning under section 2 of the iTaukei Lands Act 1905;

“iTaukei owners” means the owners of a vested marine area;

“marine area” means any of the following areas vested in the State at the commencement of this Act ~~with the same sovereignty and ownership as its land territory~~—

- (a) foreshore;
- (b) internal waters;
- (c) archipelagic waters; and
- (d) the territorial sea of Fiji,

and includes ~~— the lower airspace above the area, the seabed and subsoil beneath the area and reclaimed land that would have been a part of the foreshore if the area had not been reclaimed;~~

- (i) ~~reclaimed land that would have been a part of the foreshore if the area had not been reclaimed; and~~
- (ii) ~~the seabed and subsoil beneath the area;~~

“TFC” means the iTaukei Fisheries Commission established under section 14 of the Fisheries Act 1941;

“TLTB” means the iTaukei Land Trust Board established under section 3 of the iTaukei Land Trust Act 1940;

“Minister” means the Minister responsible for tourism;

“person” includes any company or association or body of persons, corporate or unincorporated;

“Register” means the Register of iTaukei Customary Fishing Rights under section 19 of the Fisheries Act 1941;

“transfer application” means an application for the transfer process;

“transfer process” means the process for transferring the ownership of a commercial marine area under Part 2;

“Tribunal” means the Marine Area Appeals Tribunal established under section 15;

“vested marine area” means a commercial marine area vested wholly and absolutely in the iTaukei owners by a vesting order made under section 11 by the Vesting Authority;

“Vesting Authority” means the authority comprising the Minister responsible for fisheries, Minister responsible for iTaukei affairs and the Minister; and

“vesting order” means an order made under section 11(1).

(2) In this Act, the term “used for commercial purposes” includes, subject to section 11(5), the proposed use of a marine area for commercial purposes.

Objectives

3. The objectives of this Act are to—

- (a) enable the reversion of the proprietary ownership of commercial marine areas to the customary owners under a fair and equitable framework;
- (b) ensure that the process of reversion is undertaken in accordance with the rule of law and the principles of natural justice;
- (c) provide for the active participation in the reversion process of all parties that are or are likely to be impacted; and

- (d) empower existing iTaukei institutions to take an active role in the control and administration of marine areas in Fiji for the benefit of the iTaukei.

Act to bind the State

4. This Act binds the State.

PART 2 — TRANSFER OF OWNERSHIP OF COMMERCIAL MARINE AREA

Transfer of ownership

5.—(1) This section applies to all commercial marine areas for which the title was, prior to the commencement of this Act and by operation of law, vested in the State.

(2) At the commencement of this Act, the title or ownership of a commercial marine area held or vested before the commencement of this Act may be transferred to the identified customary owner of the area in accordance with this Part.

Transfer process

6.—(1) The customary owner may initiate the transfer process by applying to TFC in the prescribed form.

(2) TFC must—

- (a) assess the transfer application to determine its merits;
- (b) verify and delineate the precise marine area by reference to the Register, or by way of surveying in accordance with the regulations;
- (c) determine whether the marine area for which the transfer application is made is a commercial marine area under this Act;
- (d) determine which groups of customary owners are entitled to the transfer by reference to the Register;
- (e) assess the potential economic and environmental impact of a vesting order, with particular regard to the interest holder; and
- (f) ~~determine~~ assist in the development or negotiation of a compensation scheme applicable for access to or use of the commercial marine area, in accordance with ~~regulations made under~~ this Act ~~for that purpose and the regulations~~.

(3) TFC may from time to time consult any expert in carrying out the functions prescribed under subsection (2).

(34) For the avoidance of doubt, the assessment of the environmental impact by TFC under subsection (2)(e) does not mandate the undertaking of an environmental impact assessment, however, where an environmental impact assessment is required under Part 4 of the Environment Management Act 2005, that requirement must be complied with.

Notification of interest holder

7.—(1) The transfer process must be undertaken through a collaborative process involving all interest holders.

(2) To ensure the effective participation of interest holders in the transfer process, TFC must—

- (a) if TFC is aware of the existence of an interest holder, notify the interest holder in writing of the transfer application within 7 days of receiving the transfer application; and
- (b) publish a notice of the application and the commercial marine area to which it relates in a newspaper in circulation throughout Fiji.

Existing interests

8.—(1) Subject to this section, all legal interests in and rights in existence before the commencement of a vesting order over a commercial marine area continue in existence according to their tenor.

(2) Subject to section 12, TFC may, as soon as practicable ~~and after the commencement of a vesting order~~ within the prescribed period, ~~initiate the renegotiation of~~ the terms and conditions of all interests in and rights in existence on the date of the transfer application over a commercial marine area vested in the State.

(3) TFC must consult the interest holder and customary owners in a manner that is fair, transparent, inclusive and informative.

(4) Notwithstanding subsection (2) and for the avoidance of doubt, the existing terms and conditions continue according to their tenor and are not affected ~~by this Act~~ until new terms and conditions, if any, are determined under this Part or Part 3.

(5) Renegotiation must seek to balance the legitimate commercial interests of the interest holder with the interests of the customary owners and their right to self-determination and equitable benefit sharing for the access to and use of their resources.

(6) If the relevant parties agree to the outcome of the renegotiation, TFC must—

- (a) record the agreed terms and conditions in writing executed by both parties; and
- (b) include the agreement in its recommendation to the Vesting Authority under section 10.

(7) If the renegotiation outcome is not agreed to between the relevant parties, TFC must notify the Vesting Authority in the recommendation under section 10.

Compensation scheme

9.—(1) TFC ~~must~~ may, in accordance with this section and within the period prescribed by regulations, develop or negotiate a compensation scheme between customary owners and an interest holder.

(2) The compensation scheme may be—

- (a) designed to reflect the customary rights of the customary owners and the quantitative commodification of those rights;

- (b) based on a general set of property rights held by customary owners, taking into account the social, environmental and cultural aspects associated with special indigenous value;
- (c) based on benefits accruing to a developer or investor, including consideration of the synergistic value of properties, intergenerational equity and income arrangements that may require adjustment for inflation;
- (d) made either by a one-off lump sum payment or a premium payment with recurring obligations structured in accordance with paragraphs (a) to (c);
and
- (e) in accordance with regulations made by the Minister.

(3) The compensation scheme must—

- (a) not require unreasonable or burdensome payment by the interest holder; and
- (b) as far as reasonably practicable, seek to ensure that payments are borne by the consumers or users of the commercial activity in the commercial marine area.

(4) Notwithstanding subsection (1) and for the avoidance of doubt, any existing compensation arrangement between the iTaukei owners and an interest holder continue according to their tenor and are not affected by this Act until a new compensation arrangement, if any, is determined under this Part or Part 3.

(45) TFC must consult the interest holder and customary owners in a manner that is fair, transparent, inclusive and informative.

(56) If the compensation scheme is agreed to between the relevant parties, TFC must—

- (a) set down the agreed terms and conditions in writing executed by both parties; and
- (b) include the agreement in their recommendation to the Vesting Authority under section 10.

(67) If the compensation scheme is not agreed to between the relevant parties, TFC must notify the Vesting Authority in their recommendation under section 10.

TFC recommendation

10.—(1) If TFC approves a transfer process application, TFC must make a recommendation to the Vesting Authority.

(2) The recommendation must contain—

- (a) the agreed renegotiated terms and conditions or a notification of the lack of agreement between parties in accordance with section 8;
- (b) the agreed compensation scheme or a notification of the lack of agreement between parties in accordance with section 9; and

- (c) a request that the Vesting Authority make a vesting order under section 11.

Vesting Authority to make vesting order

11.—(1) Upon receipt of the recommendation made under section 10, the Vesting Authority must—

- (a) make an order vesting the proprietary ownership of the commercial marine area to the customary owners; and
- (b) publish the vesting order in the Gazette.

(2) Subject to subsection (5), a vesting order made under subsection (1) comes into force on the date of publication in the Gazette or as provided in the vesting order.

(3) If the recommendation contains—

- (a) agreements under sections 8 and 9, such agreements are binding according to their tenor; or
- (b) notifications of the lack of agreement between parties, section 14 applies.

(4) Notwithstanding the State Lands Act 1945 or any other written law, on the commencement of the vesting order, the commercial marine area specified in the vesting order wholly and absolutely vests in the customary owners.

(5) If a vesting order is made in relation to a commercial marine area where the commercial purpose is only a proposed commercial purpose, the vesting order does not commence until—

- (a) the commercial activity that is the subject of the transfer application has been approved and licensed in accordance with the applicable laws and regulations; and
- (b) the commercial activity has begun operations.

(6) For the avoidance of doubt—

- (a) a vesting order does not affect the sovereign rights of the State established under the Constitution and public international law; and
- (b) the vesting of a commercial marine area includes the associated rights under common law, including such rights in relation to the lower airspace of the area.

Exemptions

12.—(1) The Vesting Authority may, in the vesting order, exempt an interest holder, and the interest holder's interest or rights in relation to a commercial marine area, from renegotiation under sections 8 and 9 if the Vesting Authority is satisfied that—

- (a) the existing terms and conditions of a lease or licence are fair and equitable;
- (b) the existing compensation arrangement between the customary owners and interest holders is fair and equitable; or

- (c) renegotiating an existing lease, licence or compensation arrangement carries a real risk of causing significant harm to the economic potential of the commercial marine area.

(2) The Vesting Authority may limit the exemption to a specified period and after the period expires, may extend the period if the circumstances under subsection (1) continue to apply.

(3) After the period or extended period expires, the renegotiation process must be undertaken in accordance with this Part and the vesting order made under section 11 in relation to the commercial marine area must be amended by the Vesting Authority to reflect the outcomes of the renegotiation.

Effect of vesting order

13.—(1) A vesting order guarantees the right of the iTaukei owners to access the commercial marine area as well as the continued enjoyment of their customary rights, including the rights listed on the Register, regardless of any existing or future lease or licence over the area.

(2) Subsection (1) is subject to the terms of a compensation agreement or arbitral award preserved by, or made under or in accordance with this Act.

(3) For the avoidance of doubt, a vesting order does not grant the iTaukei owners or any other person the power to—

- (a) contravene a person's right to freedom of movement as guaranteed under section 21 of the Constitution; ~~or~~
- (b) restrict or remove the right of public ~~to enjoyment free and undisturbed access for non-commercial or recreational purposes; under the Rivers and Streams Act 1880 or the right of innocent passage as provided under the United Nations Convention on the Law of the Sea.~~
- (c) restrict, vary or remove any rights provided under the Chicago Convention; ~~or~~
- (d) restrict or remove the right of innocent passage as provided under the United Nations Convention on the Law of the Sea.

Process when no agreement between parties

14.—(1) If the recommendation under section 10 contains notifications of the lack of agreement between parties, the Vesting Authority may, with the consent of both parties, refer the unresolved dispute to arbitration on terms agreed by the parties.

(2) An arbitral award made under subsection (1) is binding on the parties and final.

(3) If the parties are unable to consent or agree to the terms of arbitration within the period prescribed by regulations, the Vesting Authority may forego arbitration and determine—

- (a) the ~~disputed~~ terms and conditions ~~of all interest in and rights over the commercial marine area~~; and

- (b) the applicable compensation scheme.
- (4) A determination made under subsection (3) is binding on the parties involved.
- (5) A party aggrieved by the decision of the Vesting Authority under subsection (3) may appeal to the Tribunal within 30 days of being notified of the decision.

PART 3—MARINE AREA APPEALS TRIBUNAL

Marine Area Appeals Tribunal

15.—(1) This section establishes the Marine Area Appeals Tribunal to hear appeals from decisions of the Vesting Authority under section 14(5).

(2) The Tribunal consists of a chairperson and 2 other members appointed by the Chief Justice in consultation with the Attorney-General.

(3) The chairperson of the Tribunal must be a person—

- (a) qualified to be appointed as a Judge in accordance with section 105(2) of the Constitution; or
- (b) otherwise suitable, by virtue of his or her academic or other qualifications and experience, to be chairperson of the Tribunal.

(4) Members of the Tribunal must be suitable, by virtue of their academic or other qualifications and experience, to be a member of the Tribunal.

(5) The appointment committee may—

- (a) determine the terms and conditions for appointment and reappointment of the members of the Tribunal;
- (b) determine the remuneration and allowances to be paid to the chairperson and members of the Tribunal; and
- (c) terminate the appointment of the Tribunal for incapacity to perform the functions of the office or for misconduct.

Role and power of Tribunal

16.—(1) The Tribunal, in accordance with rules of procedure made by the Tribunal and approved by the Chief Justice, must hear and determine any appeal under this Act brought before it in accordance with those rules.

(2) The Tribunal may, upon appeal, confirm, review or vary the decision appealed against and may order the payment of such costs as it thinks fit.

(3) A decision of the Tribunal is final and cannot be challenged in a court of law.

PART 4—CONTROL AND ADMINISTRATION OF VESTED MARINE AREAS

Control and administration of vested marine area

17. The control of a vested marine area is vested in TLTB and is to be administered by TLTB for the benefit of iTaukei owners or for the benefit of the iTaukei.

Vested marine area alienable only to the State

18.—(1) A vested marine area must not be alienated by iTaukei owners, whether by sale, grant, transfer or exchange, except to the State, and must not be charged or encumbered by iTaukei owners without the consent of TLTB.

(2) Any instrument that purports to transfer, charge or encumber a vested marine area, or any estate or interest in it, without the prior consent of TLTB is null and void.

Provisions as to transfer of vested marine area

19.—(1) When any vested marine area has been transferred to or acquired by the State a certificate must be executed in the prescribed form.

(2) The certificate must contain a diagram or description of the vested marine area defined in a prescribed scale and must be executed by TLTB under seal on behalf of the iTaukei owners and by the Director of Lands.

(3) A record of the transfer must be made in the Register.

Vested marine area not to be alienated except in accordance with Act

20. Subject to the State Acquisition of Lands Act 1940, no vested marine area may be sold, leased or otherwise disposed of and no licence in respect of a vested marine area may be granted except in accordance with this Act.

Alienation of vested marine area by lease or licence

21.—(1) Subject to section 22, TLTB may grant a lease or licence over any portion of a vested marine area for such purposes, and on such terms and conditions, including renewals, as may be prescribed.

(2) Any lease or licence of a vested marine area under this Act must be made out from and in the name of TLTB and such lease or licence must be executed under the seal of TLTB.

(3) A vesting order is deemed to be a part and condition of a lease or licence over a vested marine area whether the lease or licence was issued prior to or after the commencement of this Act.

Conditions to be observed prior to vested marine area being dealt with by way of lease or licence

22. TLTB must not grant a lease or licence over a vested marine area unless TLTB is satisfied that—

- (a) the marine area proposed to be leased or licensed is not being beneficially used by the iTaukei owners; and
- (b) the portion is not likely, during the term of the proposed lease or licence, to be required by the iTaukei owners for their use, maintenance or support.

Form of lease, registration and fees

23.—(1) A lease of a vested marine area must be in the prescribed form, subject to the prescribed conditions and covenants, and be recorded in a register to be kept by the Registrar of Titles titled “Register of iTaukei Marine Leases”.

(2) TLTB may charge and collect the prescribed fees for the preparation of a lease and for any related matter.

(3) A lease granted under this Act, once registered, is subject to the Land Transfer Act 1971, so far as the same are not inconsistent with this Act, and must be dealt with as if it were a lease made under that Act.

(4) The Registrar of Titles may charge and collect in respect of any lease registered under this Act, or in respect of any dealing with such lease, the fees prescribed under the Land Transfer Act 1971 in the same manner as if such lease was a lease under that Act.

Form of licence, registration and fees

24.—(1) A licence of a vested marine area must be in the prescribed form, and be recorded in a register to be kept by TLTB titled “Register of Licences in respect of vested marine areas”.

(2) TLTB may charge and collect the prescribed fees for the preparation and registration of any licence and for any related matter.

Consent of TLTB required for any dealings with lease

25.—(1) Except as may be otherwise provided by regulations, no lessee under this Act may alienate or deal with the vested marine area comprised in his or her lease or any part of it, whether by sale, transfer or sublease or in any other manner whatsoever without the prior consent of TLTB as lessor or head lessor.

(2) The granting or withholding of consent is at the absolute discretion of TLTB, and any sale, transfer, sublease or other unlawful alienation or dealing effected without such consent is null and void.

(3) For the purposes of this section “lease” includes a sublease and “lessee” includes a sublessee.

Rent or fee in arrears in respect of licence

26. If any rent, fee or other charge payable under any licence granted under this Act is in arrears for the space of one calendar month, or in case default is made in the fulfilment of any other covenant or condition whether expressed or implied in such licence on the part of the licensee, and continues for the space of 2 calendar months, TLTB may determine such licence without prejudice to any claim against the licensee which must have already accrued under such licence.

Distribution of rents and purchase money

27.—(1) Subject to this section, rents and premiums received in respect of leases or licences in respect of a vested marine area is subject to a deduction as determined by TLTB from time to time, not exceeding 2520% of such rent or premium, which is payable to TLTB as and for the expenses of collection and administration, the balance of which must be distributed in the manner prescribed.

(2) Subject to this section, the purchase money received in respect of a sale or other disposition of a vested marine area, must, after deduction of any expenses incurred by TLTB in respect of such sale or other disposition, be either distributed in the manner prescribed or invested and the proceeds distributed as TLTB may decide.

(3) Before any balance is distributed pursuant to subsections (1) and (2), TLTB must discharge out of the moneys received—

- (a) any statutory obligation in relation to the vested marine area, which by reason of any order of a court the iTaukei owners have been adjudged liable to discharge and have failed to discharge;
- (b) any payment which the iTaukei owners, in consequence of such an order have become liable to make in respect of the vested marine area, whether by way of payment for works carried out by any statutory body or other competent authority, or otherwise;
- (c) any amount due and unpaid in respect of any land rates payable by or under the iTaukei Affairs Act 1944 on the land or on any other iTaukei land belonging to the same iTaukei owners; and
- (d) with the consent of the iTaukei owners, which operates as an assignment of rents that is irrevocable until the total amount is paid, any amount due and unpaid in connection with any scheme approved by the Minister responsible for iTaukei affairs for the benefit of the iTaukei owners.

(4) In the event of the proceeds of any sale or other disposition of a vested marine area being insufficient to discharge in full all the obligations referred to in subsection (3), TLTB may in so far as funds permit discharge that obligation which was incurred first and must then discharge the remaining obligations in sequence according to the date they were incurred.

Enforcement powers of TLTB

28. The powers and procedures of TLTB under Part 5 of the iTaukei Land Trust Act 1940 apply *mutatis mutandis* to the enforcement and administration of this Act by TLTB.

PART 5—MISCELLANEOUS

Rotuma not within scope of Act

29.—(1) This Act does not apply to Rotuma.

(2) Cabinet may, after consultation with the Council of Rotuma, table a Bill before Parliament to expand the scope of this Act to the island of Rotuma.

(3) The Bill must seek to establish specific Rotuman institutional arrangements in order to apply this Act to Rotuma.

False declaration

30. A person who makes a false declaration in relation to a matter or thing required to be done by this Act or by any regulation made under this Act or who produces any false declaration or certificate, knowing that it is false in any material particular commits an offence, the penalty for which is as prescribed by regulations.

Breach and penalty

31. Every omission or neglect to comply with and every act done, or attempted to be done, contrary to this Act or of any regulation or order made under this Act, or in breach of the conditions and restrictions subject to or upon which any lease, licence or permit has been issued, is deemed to be an offence against this Act, the penalty for which is as prescribed by regulations.

Act to prevail

32. This Act has effect notwithstanding any provision of any other written law, and where there is any inconsistency between this Act and any other written law, this Act prevails.

Regulations

33.—(1) The Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations to—

- (a) prescribe any commercial tourism activity;
- (b) prescribe an interested person;
- (bc) prescribe the forms and fees required under this Act;
- (cd) prescribe the timelines for processes established under this Act;
- (e) prescribe compensation payments for interested persons;
- (df) establish equitable compensation schemes, including their methodology, formula, payment schedules or distribution procedures;
- (eg) prescribe rules for the fair and timely arbitration of disputes under this Act;
- (fh) prescribe the thresholds for obtaining consent by customary owners and iTaukei owners under this Act;
- (gi) regulate matters pertaining to the tenure of a vested marine area;
- (hj) prescribe the form, terms and conditions of leases and licences under this Act;
- (ik) define boundaries and maintain boundary marks;
- (jl) provide for the forfeiture of unclaimed monies; and
- (km) prescribe fines not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or both for an offence under this Act or the regulations.

(3) The Minister must make regulations to establish a framework for the determination of all marine areas for economic growth based on an accepted qualifying criteria for the determination and the processes to be utilised.

(4) The framework under subsection (3) must not be construed as affecting any rights of ownership of iTaukei land administered by TLTB as protected by section 28(2) of the Constitution.

Repeal and savings

34. The Regulation of Surfing Areas Act 2010 is repealed except for sections 6 to 9 of the repealed Act which continue in operation subject to this Act.

Consequential amendments

35. The laws listed in the Schedule are amended as set out in that schedule.

SCHEDULE
(Section 35)

1. The State Lands Act 1945 is amended in section 2 in the definition of “State land”, after “purpose” by inserting “but does not mean a commercial marine area vested by a vesting order made under section 11 of the Commercial Use of Marine Areas Act 2025”.

2. The Rivers and Streams Act 1880 is amended by—

- (a) after section 1, inserting the following new section—

“Interpretation

- 1A. In this Act, unless the context otherwise requires—

“iTaukei owners” means the owners of a vested marine area;

“Minister” means the minister responsible for lands;

“Responsible Authority” means the—

- (a) Director of Lands for rivers and streams other than in a vested marine area; or

- (b) TLTB for rivers and streams in a vested marine area;

“rivers” means all waters in Fiji which the iTaukei have been accustomed to traverse in takias or canoes, whether the same be navigable for vessels built on the European model or not, and whether the tide flows and reflows in the river or at the particular part of it navigable by takias or canoes or not, and also those waters which are included by the term “rivers” by the laws of England in force on 11 March 1882;

“TLTB” means the iTaukei Land Trust Board established under section 3 of the iTaukei Land Trust Act 1940; and

“vested marine area” means a commercial marine area vested wholly and absolutely in the iTaukei owners by an order made by the Vesting Authority under section 11 of the Commercial Use of Marine Areas Act 2025.”;

- (b) in section 2 deleting “waters in Fiji which the iTaukei have been accustomed to traverse in takias or canoes, whether the same be navigable for vessels built on the European model or not, and whether the tide flows and reflows in the river or at the particular part thereof navigable by takias or canoes or not, which are hereinafter styled “rivers”, and also those waters which are included by the term “rivers” by the laws of England, shall, with the soil under the same, belong to the State and be” and substituting “rivers, with the soil under the rivers, belong to the State or to the iTaukei owners and are”;

- (c) in section 5, deleting “State, to be” and substituting “State or to the iTaukei owners and are”;
- (d) in section 7, deleting “Director of Lands (hereinafter in this Act referred to as “the Director”)) special rights to lead off, for purposes of irrigation, industry, agriculture or domestic use or other uses beneficial to their property, such portion of water as may be agreed on, the water remaining after the special purpose is served for which the water-right is granted being, in all cases, restored to the river, stream or water-course, provided that the Director shall not grant any special right for a term exceeding 25 years without the prior approval of the Minister” and substituting “Responsible Authority special rights to lead off, for purposes of irrigation, industry, agriculture or domestic use or other uses beneficial to their property, such portion of water as may be agreed on, the water remaining after the special purpose is served for which the water-right is granted being, in all cases, restored to the river, stream or water-course, provided that the Responsible Authority may not grant any special right for a term exceeding 25 years without the prior approval of the Minister or, for a vested marine area, the Minister responsible for iTaukei affairs”;
- (e) in section 8—
 - (i) deleting “an officer authorised in writing for this purpose by the Director” and substituting “the Responsible Authority”; and
 - (ii) deleting “, and the granting thereof shall be reported by the authorised office without delay to the Director”;
- (f) in section 10, deleting “Director” wherever it appears and substituting “Responsible Authority”;
- (g) in section 11—
 - (i) in the heading, deleting “Director” and substituting “Responsible Authority”;
 - (ii) in subsection (1), deleting “Director” and substituting “Responsible Authority”;
 - (iii) in subsection (2)—
 - (A) deleting “Director” and substituting “Responsible Authority”; and
 - (B) after “Minister”, inserting “or, for a vested marine area, the Minister responsible for iTaukei affairs”;

- (iv) in subsection (3), deleting “Director for onward transmission to the Minister within 30 days of the receipt of the notification of the Director’s” and substituting “Responsible Authority for onward transmission to the applicable minister within 30 days of the receipt of the notification of the Responsible Authority’s”;
- (v) in subsection (4), deleting “Minister” and inserting “applicable minister”; and
- (vi) in subsection (5), deleting “Director until the Minister” and substituting “Responsible Authority until the applicable minister”;
- (h) in section 12(1), deleting “Director” and substituting “Responsible Authority”;
- (i) in section 15—
 - (i) renumbering section 15 as section 15(1);
 - (ii) in section 15(1), deleting “The” and substituting “Except as provided under subsection (2), the”; and
 - (iii) after subsection (1), inserting the following new subsection—

“(2) The fees that may be charged under this Act in relation to a vested marine area are to be prescribed under the Commercial Use of Marine Areas Act 2025.”;
- (j) in section 16(2), deleting “Director” and substituting “Responsible Authority”; and
- (k) in section 17—
 - (i) deleting “The Director” and substituting “The Responsible Authority”; and
 - (ii) deleting “Director or his or her” and substituting “Responsible Authority or the Responsible Authority’s”.

December 2025

COMMERCIAL USE OF MARINE AREAS BILL 2025

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 Commercial Use of Marine Areas Bill 2025 (**‘Bill’**) seeks to repeal the Regulation of Surfing Areas Act 2010 (**‘Act’**) and replace it with a new framework. The Act was promulgated in 2010 as a decree and upon commencement vested all “surfing areas” in Fiji wholly and absolutely in the Director of Lands and cancelled all existing arrangements concerning surfing areas without compensation.
- 1.2 The new framework under the Bill seeks to enable the reversion of the proprietary ownership of marine areas used for commercial purposes to the customary owners of such areas under a fair and equitable framework, ensure that the process of reversion is undertaken in accordance with the rule of law and the principles of natural justice, provide for the active participation in the reversion process of all parties that are or are likely to be impacted and empower existing indigenous institutions to take an active role in the control and administration of marine areas in Fiji for the benefit of the iTaukei.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new 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 provides detailed definitions for key terms used throughout the Act, including “commercial marine area”, “commercial purposes”, “customary owners”, “interest holder”, “iTaukei owners”, “TFC”, “TLTB”, “marine area”, “transfer process” and “vested marine area.” It clarifies the categories of marine spaces covered (foreshore, internal waters, archipelagic waters, and territorial sea) and recognises that “commercial purposes” includes proposed commercial use.

- 2.3 Clause 3 of the Bill establishes the objectives of the Act, namely, to provide a fair mechanism for the reversion of proprietary ownership of commercial marine areas to customary owners, ensure that the process adheres to rule of law and natural justice, guarantee the participation of all affected parties and empower indigenous institutions in the control and administration of marine areas for the benefit of the iTaukei.
- 2.4 Clause 4 of the Bill declares that the Act binds the State, meaning the State is legally obligated to comply with its provisions.
- 2.5 Clause 5 of the Bill states that the transfer provisions apply to all commercial marine areas that were vested in the State or any entity by operation of law before the Act commenced, and provides that ownership of such areas may be transferred to the identified customary owners in accordance with Part 2 of the new legislation.
- 2.6 Clause 6 of the Bill outlines the transfer process initiated by customary owners through an application to TFC. It requires TFC to assess the merits of the application, verify boundaries based on the Register or surveys, confirm that the area is a commercial marine area, identify the entitled customary groups, assess economic and environmental impacts, and determine the applicable compensation scheme.
- 2.7 Clause 7 of the Bill requires TFC to actively involve interest holders in the transfer process by notifying known interest holders within seven days and publishing a public notice of the transfer application in a national newspaper.
- 2.8 Clause 8 of the Bill provides that existing legal interests and rights over a commercial marine area continue in force until renegotiated after a vesting order. It allows TFC to renegotiate terms and compensation with interest holders and customary owners and sets out principles of fairness and balance. It also requires TFC to record agreed outcomes or notify lack of agreement.
- 2.9 Clause 9 of the Bill sets out the framework for negotiating a compensation scheme between customary owners and interest holders. It allows schemes based on customary rights, property rights, benefit-based approaches, or lump-sum/recurring payments, and requires fairness and affordability. Agreed outcomes must be recorded, and lack of agreement must be notified.
- 2.10 Clause 10 of the Bill requires TFC, once it approves a transfer application, to make a formal recommendation to the Vesting Authority, which is a tri-ministerial committee comprising the ministers responsible for fisheries, iTaukei affairs and tourism. The recommendation must request the making of a vesting order and must include either agreed renegotiated terms and compensation arrangements or a statement of unresolved matters.

- 2.11 Clause 11 of the Bill obligates the Vesting Authority to make a vesting order transferring ownership once the recommendation is received. Agreements reached under clauses 8 and 9 become binding, while unresolved matters proceed under clause 14. Upon commencement of the vesting order, ownership vests absolutely in the customary owners as iTaukei owners. For proposed commercial uses, the vesting order will not commence until the project is approved and operational.
- 2.12 Clause 12 of the Bill allows the Vesting Authority to exempt an interest holder from renegotiation if existing lease or licence terms and compensation arrangements are fair and equitable, and renegotiation may materially harm the economic viability of the marine area. Exemptions may be time-limited, after which renegotiation must occur and the vesting order amended accordingly.
- 2.13 Clause 13 of the Bill guarantees that a vesting order secures customary owners' rights to access and enjoy their customary rights over the area, subject to any compensation agreement or arbitral award. It also clarifies that the vesting order cannot be used to infringe constitutional rights to freedom of movement, the rights of public enjoyment under the Rivers and Streams Act 1880 or the right of innocent passage under international law.
- 2.14 Clause 14 of the Bill sets out the process when the parties fail to reach agreement. The Vesting Authority may refer disputes to arbitration if both parties consent. If the terms of arbitration are not agreed within prescribed timelines, the Vesting Authority may determine the terms and compensation itself. Aggrieved parties may appeal to the Tribunal within 30 days.
- 2.15 Clause 15 of the Bill establishes the Marine Area Appeals Tribunal, appointed by the Chief Justice in consultation with the Attorney-General. It prescribes qualifications for members and outlines the appointment committee's powers concerning terms, remuneration and termination.
- 2.16 Clause 16 of the Bill sets out the Tribunal's powers and functions, including hearing appeals in accordance with approved procedural rules, confirming or varying decisions, awarding costs, and issuing final and conclusive decisions.
- 2.17 Clause 17 of the Bill provides that control of vested marine areas is vested in TLTB, which must administer the areas for the benefit of the iTaukei owners or for the broader benefit of the iTaukei people.
- 2.18 Clause 18 of the Bill states that vested marine areas cannot be sold, transferred, exchanged, or otherwise alienated by the iTaukei owners except to the State, and cannot be charged or encumbered without TLTB consent. Any dealings without consent are void.

- 2.19 Clause 19 of the Bill outlines the procedure for transferring vested marine areas to the State, requiring a prescribed certificate containing diagrams or descriptions, executed by TLTB and Director of Lands, and requiring the transfer to be recorded in the Register.
- 2.20 Clause 20 of the Bill prohibits the sale, lease, licence, or disposal of a vested marine area except in accordance with the new legislation and subject to the State Acquisition of Lands Act 1940.
- 2.21 Clause 21 of the Bill empowers the TLTB to grant leases or licences over portions of vested marine areas, subject to prescribed conditions. All such instruments must be made in the name of TLTB, executed under seal, and must incorporate the vesting order as a condition.
- 2.22 Clause 22 of the Bill imposes a pre-condition that the TLTB may only issue leases or licences if satisfied that the area is not being beneficially used by customary owners and is unlikely to be required by them during the term for their use, maintenance, or support.
- 2.23 Clause 23 of the Bill sets out the requirements for leases over vested marine areas, including prescribed forms, registration in the Register of iTaukei Leases, fee-charging powers, and application of the Land Transfer Act to registered leases.
- 2.24 Clause 24 of the Bill provides similar requirements for licences, requiring prescribed forms, registration in a dedicated register maintained by TLTB, and allowing TLTB to charge fees for preparation and registration.
- 2.25 Clause 25 of the Bill prohibits dealings with leased vested marine areas such as transfers or subleases without prior consent of the TLTB. Consent is discretionary, and any unauthorised dealing is void. Definitions of “lease” and “lessee” include subleases and sublessees.
- 2.26 Clause 26 of the Bill gives the TLTB the power to determine a licence if rent, fees, or other charges remain unpaid for one month, or if any other breach continues for two months, without affecting the TLTB’s right to recover accrued amounts.
- 2.27 Clause 27 of the Bill governs the distribution of rents, premiums, and purchase money from vested marine areas. It permits administrative deductions of up to 25%, requires the settlement of statutory and court-ordered obligations before distribution, and stipulates the order of priority.
- 2.28 Clause 28 of the Bill applies the enforcement powers and procedures of Part 5 of the iTaukei Land Trust Act 1940 to the administration of the new legislation by TLTB.

- 2.29 Clause 29 of the Bill excludes Rotuma from the scope of the new legislation but allows Cabinet, after consultation with the Council of Rotuma, to introduce legislation that would extend the new legislation to Rotuma with appropriate institutional arrangements.
- 2.30 Clause 30 of the Bill creates an offence for making or producing false declarations or certificates required under the new legislation or its regulations, with penalties to be set in regulations.
- 2.31 Clause 31 of the Bill establishes that any breach, omission, or attempt to contravene the Act, regulations, or conditions of any lease, licence, or permit constitutes an offence, with penalties prescribed by regulations.
- 2.32 Clause 32 of the Bill provides that the Bill supersedes any inconsistent provisions in other written laws, ensuring statutory primacy.
- 2.33 Clause 33 of the Bill grants regulation-making powers to the Minister, including prescribing forms, fees, timelines, compensation schemes, arbitration rules, consent thresholds, tenure matters, cadastral matters, and fines up to \$10,000 or two years' imprisonment. It also mandates regulations to establish an economic-growth framework for marine areas.
- 2.34 Clause 34 of the Bill repeals the Regulation of Surfing Areas Act 2010 ('**Surfing Act**'), except for sections 6 to 9 which remain in effect subject to the new legislation. Sections 6 to 8 of the Surfing Act provides for the right of access to surfing areas subject to conditions. These include conditions which the minister responsible for the Surfing Act may direct relating to the exclusivity, access and use of the area. Section 9 of the Surfing Act sets out the offence of infringing those conditions.
- 2.35 Clause 35 of the Bill makes consequential amendments to legislation listed in the Schedule (the State Lands Act 1945 and Rivers and Streams Act 1880) to align them with the new legislation.

3.0 MINISTERIAL RESPONSIBILITY

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

S. D. TURAGA
Acting Attorney-General