

BILL NO. 18 OF 2021

A BILL

FOR AN ACT TO AMEND THE BIOSECURITY ACT 2008

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—**(1) This Act may be cited as the Biosecurity (Budget Amendment) Act 2021.
- (2) This Act comes into force on 1 August 2021.
- (3) In this Act, the Biosecurity Act 2008 is referred to as the “Principal Act”.

Section 2 amended

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

- (a) in the definition of “biosecurity clearance agent”, deleting “conveyance,”;
- (b) in the definition of “captain” after “the aircraft”, inserting “, and may include the owner or operator of the aircraft”;
- (c) in the definition of “master” after “pilot”, inserting “, and may include the owner or operator of the vessel”;

- (d) in the definition of “vessel” after “;”, deleting “and”; and
- (e) after the definition of “vessel”, inserting the following new definition—

““vessel or aircraft clearance agent” means a person in Fiji appointed by a master of a vessel or captain of an aircraft under section 21A for the purposes of this Act as the agent of the master of the vessel or captain of the aircraft to supervise the biosecurity landing clearance of the vessel or aircraft and to carry out any obligation of the master of the vessel or captain of the aircraft under this Act; and”.

Section 8 amended

- 3. Section 8(3)(a) of the Principal Act is amended by deleting “5” and substituting “6”.

Section 15 amended

- 4. Section 15 of the Principal Act is amended after subsection (4) by inserting the following new subsection—

“(5) The Minister may, subject to such conditions as the Minister considers necessary and in consultation with the Authority, exempt a person from payment of a prescribed fee or charge payable for any service provided by the Authority.”.

Section 21A inserted

- 5. The Principal Act is amended after section 21 by inserting the following new section—

“Vessel or aircraft clearance agents

21A.—(1) The master of a vessel or captain of an aircraft destined for Fiji—

- (a) may in writing appoint a person resident in Fiji as a vessel or aircraft clearance agent for the purposes of this Act; and
- (b) must notify the Authority in writing of the appointment before the vessel or aircraft clearance agent performs any agency functions.

(2) The vessel or aircraft clearance agent appointed under subsection (1) ceases to be a vessel or aircraft clearance agent for the purposes of this Act if the Authority notifies the master of the vessel or captain of the aircraft in writing that, in the opinion of the Authority, the vessel or aircraft clearance agent’s conduct in the performance of the functions under this Act renders the agent unacceptable for the purposes of this Act.

(3) Notice under subsection (2) must be given in sufficient time to allow the master of the vessel or captain of the aircraft to appoint another vessel or aircraft clearance agent in Fiji.

(4) Any vessel or aircraft clearance agent who performs or purports to perform any functions of the master of the vessel or captain of the aircraft under this Act is liable to the same extent as the master of the vessel or captain of the aircraft for any act or omission that amounts to an offence or that creates any legal obligation under this Act.

(5) If the master of the vessel or captain of the aircraft fails to comply with this section, the biosecurity landing clearance may not be granted for the vessel or the aircraft.”.

Section 106 amended

6. Section 106 of the Principal Act is amended by—

- (a) in subsection (3), deleting paragraph (b) and substituting the following—
“(b) carry out consultations with relevant stakeholders as appropriate.”;
and
- (b) in subsection (6), deleting paragraph (b) and substituting the following—
“(b) carry out consultations with relevant stakeholders as appropriate.”.

Schedule 1 amended

7. Schedule 1 to the Principal Act is amended in Part B by—

- (a) deleting paragraph 2 and substituting the following—
“2 Anything done by or in relation to a person purporting to act under an appointment to the Board is not invalid merely because—
 - (a) the occasion for the appointment had not arisen;
 - (b) there was a defect or irregularity in relation to the appointment;
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.”;
- (b) deleting paragraph 4 and substituting the following—
“4 A meeting of the Board must be chaired by—
 - (a) the Chairperson;
 - (b) in the Chairperson’s absence, the Deputy Chairperson; or
 - (c) in the absence of the Chairperson and the Deputy Chairperson, a member appointed by the members present.”; and
- (c) deleting paragraph 5 and substituting the following—
“5 The quorum at a meeting of the Board is a majority of the appointed members.”.

Office of the Attorney-General
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Suva

July 2021

BIOSECURITY (BUDGET 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 Biosecurity (Budget Amendment) Bill 2021 (**‘Bill’**) seeks to amend the Biosecurity Act 2008 (**‘Act’**) to include an exemption provision for fees and charges payable to the Biosecurity Authority of Fiji (**‘Authority’**), provide for the appointment of agents to clear vessels or aircraft under the Act and enable efficient and effective service delivery by the Authority pursuant to the Act.

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 2021.
- 2.2 Clause 2 of the Bill amends section 2 of the Act by amending the definitions of “biosecurity clearance agent”, “captain” and “master”. Clause 2 of the Bill also amends section 2 of the Act to include the definition of “vessel or aircraft clearance agent” to mean the agent for the biosecurity landing clearance of a vessel or aircraft and to carry out any obligation of the master of the vessel or captain of the aircraft under the Act.
- 2.3 Clause 3 of the Bill amends section 8 of the Act by increasing the number of members in the Board of the Authority (**‘Board’**) from 6 to 7 members.
- 2.4 Clause 4 of the Bill amends section 15 of the Act by providing that the Minister responsible for the Act (**‘Minister’**) may, subject to such conditions as the Minister considers necessary and in consultation with the Authority, exempt a person from payment of a prescribed fee or charge payable for any service provided by the Authority.

- 2.5 Clause 5 of the Bill amends the Act by including a new section 21A to provide that a master of a vessel or captain of an aircraft may appoint a vessel or aircraft clearance agent to perform agency functions in the biosecurity landing clearance of the vessel or aircraft destined for Fiji and any obligation of the master of the vessel or captain of the aircraft required under the Act. This new insertion will ensure accountability by the vessel or aircraft clearance agent to perform functions as per the Act. The vessel or aircraft clearance agent will also be liable for any breach of the Act.
- 2.6 Clause 6 of the Bill amends section 106 of the Act in subsections (3)(b) and 6(b) to provide that the Minister and the Authority must consult the necessary stakeholders when making regulations under the Act.
- 2.7 Clause 7 of the Bill amends Schedule 1 to the Act to align the procedures of the Board to the Public Enterprises Act 2019.
- 3.0 MINISTERIAL RESPONSIBILITY**
- 3.1 The Act comes under the responsibility of the Minister responsible for public enterprises.

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