

ACT NO. 7 OF 2023



I assent.

W. KATONIVERE
President

[14 July 2023]

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.”.

Passed by the Parliament of the Republic of Fiji this 14th day of July 2023.