

Drainage

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Drainage Act 1961

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Drainage Act 1961

TABLE OF AMENDMENTS

Drainage Act 1961 (No 20 of 1961) commenced on 12 August 1961, as amended by:

Amending Legislation	Date of Commencement
Drainage (Amendment) Ordinance 1962 (No 43 of 1962)	18 October 1962
Law Revision (Miscellaneous Amendments) (No 2) Ordinance 1966 (No 37 of 1966)	13 January 1967
Constitution (Statutory Amendments) Order 1970 (LN 112 of 1970)	8 October 1970
Constitution (Statutory Amendments) (No 2) Order 1970 (LN 118 of 1970)	13 November 1970
Drainage (Amendment) Act 1973 (No 39 of 1973)	28 December 1973
Law Revision (Miscellaneous Amendments) Act 1975 (No 14 of 1975)	30 May 1975
Drainage (Amendment) Act 1976 (No 13 of 1976)	9 July 1976
Drainage Act (Amendment) Promulgation 2007 (No 4 of 2008)	1 January 2008
Native Lands (Amendment) Decree 2011 (No 7 of 2011)	1 March 2011
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
Drainage (Budget Amendment) Act 2018 (No 22 of 2018)	1 August 2018

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AN ACT TO AUTHORISE THE EXECUTION OF DRAINAGE WORKS AND FOR RELATED MATTERS

[Long title subst Act 22 of 2018 s 2, opn 1 Aug 2018]

PART 1 — PRELIMINARY

[Pt 1 heading insrt Act 22 of 2018 s 3, opn 1 Aug 2018]

[DRA 1] Short title

1 This Act may be cited as the Drainage Act 1961.

[DRA 2] Interpretation

2 In this Act, unless the context otherwise requires—

Board

[def rep Act 22 of 2018 s 4, opn 1 Aug 2018]

Controlling Authority

[def rep Act 22 of 2018 s 4, opn 1 Aug 2018]

drainage area

[def rep Act 22 of 2018 s 4, opn 1 Aug 2018]

drainage works means any works for the purpose of draining land or of preventing or mitigating flooding or erosion to which land is subject, and includes—

- (a) the construction, cleansing, scouring, deepening, widening, straightening or diverting of any watercourse or outfall of water;
- (b) the construction, installation, alteration or repair of any pump, pump machinery or pump house;
- (c) the removal of any obstruction, natural or artificial, in any watercourse;
- (d) the construction, repair, raising, lowering, widening, strengthening, altering or removal of any embankment, dam, barrier, sluice, weir, wall, bridge, culvert or groyne or of any structure or erection for the purpose of defence against water; and
- (e) the construction, maintenance, improvement, alteration and removal of fencing round drainage works;

[def am Act 13 of 1976 s 2, opn 9 July 1976; Act 22 of 2018 s 4, opn 1 Aug 2018]

land includes land covered by water;

lease includes a sublease and **lessee** includes a sublessee;

Minister means the Minister responsible for waterways;

[def insrt Act 22 of 2018 s 4, opn 1 Aug 2018]

Ministry means the ministry responsible for waterways;

[def insrt Act 22 of 2018 s 4, opn 1 Aug 2018]

owner means the registered proprietor and, in the case of land registered in the Register of iTaukei Lands, means the iTaukei owners and, in the case of State land, means the Director of Lands and includes any person who has a right to, or licence or concession over or permission to occupy, any land, provided that, in the case of land held under a registered lease or over which any person has any right, licence,

concession or permission as hereinbefore specified, “owner” shall include the registered lessee during the term of such registered lease or the person having such right, licence, concession or permission;

[def subst Act 39 of 1973 s 2, opn 28 Dec 1973; am Decree 7 of 2011 s 4, opn 1 Mar 2011; Act 31 of 2016 s 58, opn 1 Dec 2016]

Permanent Secretary means the permanent secretary responsible for waterways;
[def insrt Act 22 of 2018 s 4, opn 1 Aug 2018]

public drain means any watercourse serving land of more than one owner; and
[def subst Act 39 of 1973 s 2, opn 28 Dec 1973; am Act 22 of 2018 s 4, opn 1 Aug 2018]

rateable area
[def rep Promulgation 4 of 2008 s 2, opn 1 Jan 2008]

rateable land
[def rep Promulgation 4 of 2008 s 2, opn 1 Jan 2008]

watercourse includes any estuary, river, stream, ditch, drain (whether open or closed), cut, culvert, dyke or sluice.

[DRA 3] Drainage areas

3 [s 3 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[DRA 4] Drainage Boards

4 [s 4 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[DRA 5] Quorum and proceedings

5 [s 5 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[DRA 6] Appointments

6 [s 6 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[DRA 7] Members and servants of a Board not liable personally

7 [s 7 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

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PART 2 — FUNCTIONS AND POWERS

[Pt 2 heading insrt Act 22 of 2018 s 3, opn 1 Aug 2018]

[DRA 8] Functions of the Ministry

8 The Ministry shall—

- (a) be responsible for the maintenance and improvement of the drainage of all land; and
- (b) carry out such works and issue such notices concerning drainage works for the maintenance and improvement of drainage.

[s 8 am Act 22 of 2018 s 6, opn 1 Aug 2018]

[DRA 9] Powers of the Permanent Secretary

9 The Permanent Secretary shall have the power to do all things necessary to carry out the functions conferred upon him or her under this Act and, in particular, shall have power—

- (a) to maintain drainage works;
 - (b) to improve any drainage works;
 - (c) to construct new drainage works;
 - (d) [Repealed]
 - (e) to control livestock so as to prevent damage to drainage works;
 - (f) to enter any land at any time for the following purposes—
 - (i) to do all acts necessary to ascertain whether any drainage measures are necessary or desirable;
 - (ii) to construct, maintain and improve drainage works;
 - (iii) to inspect drainage works;
 - (iv) to ascertain whether maintenance or other measures notified by the Permanent Secretary have been or are being carried out;
 - (v) to survey and take levels of any land;
 - (vi) to dig and bore in and under the ground;
 - (vii) to clear, set out and mark the boundaries of any land in connection with drainage works;
 - (viii) to prevent or detect the commission of an act constituting an offence under section 21;
 - (ix) to secure the proper control of livestock where drainage works are undertaken,
- provided that—
- (A) before entering any land within the curtilage of a dwelling house, the Permanent Secretary shall first inform the occupier of the Permanent Secretary's intention to do so; and
 - (B) if any damage is caused when entering such land, compensation shall be paid as soon as practicable for such damage;
- (g) to delegate any function or power under this Act to any officer of the Ministry.
 - (h) [Repealed]
 - (i) [Repealed]
 - (j) [Repealed]

[s 9 am LN 112 of 1970 O 81, opn 8 Oct 1970; Act 39 of 1973 s 3, opn 28 Dec 1973 s 3; Act 13 of 1976 s 7, opn 9 July 1976; Promulgation 4 of 2008 s 3, opn 1 Jan 2008; Act 22 of 2018 s 7, opn 1 Aug 2018]

[DRA 10] Limitation of liability

10 The Permanent Secretary or any officer of the Ministry shall not be liable to any action, liability, claim or demand in respect of any act or matter *bona fide* done or omitted to be done in the exercise of the functions and powers conferred under this Act.

[s 10 subst Act 22 of 2018 s 8, opn 1 Aug 2018]

[DRA 11] Drainage rate

11 [s 11 rep Promulgation 4 of 2008 s 4, opn 1 Jan 2008]

[DRA 12] Rate book

12 [s 12 rep Promulgation 4 of 2008 s 5, opn 1 Jan 2008]

[DRA 12A] Charge and deduction

12A [s 12A rep Promulgation 4 of 2008 s 6, opn 1 Jan 2008]

[DRA 13] By whom rates payable

13 [s 13 rep Promulgation 4 of 2008 s 7, opn 1 Jan 2008]

[DRA 13A] Dates on which rates payable

13A [s 13A rep Promulgation 4 of 2008 s 8, opn 1 Jan 2008]

[DRA 14] Recovery of rates

14 [s 14 rep Promulgation 4 of 2008 s 9, opn 1 Jan 2008]

[DRA 15] Land may be sold for arrears of rates

15 [s 15 rep Promulgation 4 of 2008 s 10, opn 1 Jan 2008]

[DRA 16] Notice of change of ownership

16 [s 16 rep Promulgation 4 of 2008 s 11, opn 1 Jan 2008]

[DRA 17] Acquisition of land

17 [s 17 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[DRA 18] Power to acquire compulsorily

18 [s 18 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[DRA 19] Power to sell

19 [s 19 rep Act 22 of 2018 s 5, opn 1 Aug 2018]

[The next page is 640,601]

PART 3 — MISCELLANEOUS

[Pt 3 heading insrt Act 22 of 2018 s 3, opn 1 Aug 2018]

[DRA 20] Private drainage

20 (1) The Permanent Secretary may issue a notice requiring the owner of any land to, at his or her own expense—

- (a) lay, build, dig, construct, improve, maintain or alter any drain within his or her land (other than a public drain or part thereof) which the Permanent Secretary deems necessary in the interests of good drainage; and
- (b) take such steps in regard to any tree or other vegetation on any land of his or hers adjacent to a public drain as may be necessary to ensure that no fruit, leaves, branches, tree trunk or other vegetation shall—
 - (i) impede the free flow of water in any public drain; or
 - (ii) interfere with or damage in any way drainage works appurtenant to such public drain.

[subs (1) am Promulgation 4 of 2008 s 12, opn 1 Jan 2008; Act 22 of 2018 s 9, opn 1 Aug 2018]

(2) Every such notice shall be deemed to have been served if a copy is—

- (a) sent by registered post to the owner; or
- (b) affixed to the property of the owner concerned.

(3) In the case of a notice requiring the laying, building, digging, construction or improvement of a drain—

- (a) an aggrieved owner may, within 14 days, appeal to the Minister; and
- (b) the decision of the Minister shall be final.

[subs (3) am Act 22 of 2018 s 9, opn 1 Aug 2018]

(4) Any such notice shall be a good and valid notice notwithstanding any provisions in any document of title relating to such land and compliance therewith shall not constitute a breach of any agreement, covenant or condition in any such document of title.

[subs (4) am Act 22 of 2018 s 9, opn 1 Aug 2018]

(5) If the owner fails to comply with any requirement of a notice served under subsection (2) within such time as the Permanent Secretary may require, being not less than 30 days from the date of service of the notice, the Permanent Secretary may undertake the work and the cost shall be a debt to the State and may be recovered in a court of competent jurisdiction.

[subs (5) subst Act 22 of 2018 s 9, opn 1 Aug 2018]

[DRA 21] Interference with public drainage work

21 Any person who, without the prior authority of the Permanent Secretary—

- (a) interferes with any public drainage works or any part thereof;
 - (b) wilfully performs an act whereby the efficient operation of any drainage work or measure is impaired;
 - (c) maliciously damages any public drainage works or part thereof;
 - (d) obstructs or otherwise interferes with the free flow of any water in a public drain;
 - (e) leads any animal or suffers or permits any animal to stray upon the banks or side walls of any public drain;
 - (f) constructs any watercourse which connects directly to a public drain,
- shall be guilty of an offence and shall be liable upon conviction to—

- (i) in the case of a natural person, a fine not exceeding \$25,000 or imprisonment for a term not exceeding 10 years or both; or
- (ii) in the case of a body corporate, a fine not exceeding \$100,000 and for a director, manager or officer in charge for the time being, a fine not exceeding \$25,000 or imprisonment for a term not exceeding 10 years or both.

[s 21 am Act 22 of 2018 s 10, opn 1 Aug 2018]

[DRA 22] Relationship of this Act with other written laws

22 In so far as drainage works or public drains are concerned, nothing in this Act shall affect the functions and powers of—

- (a) a local authority established under the Public Health Act 1935;
- (b) a council established under the Local Government Act 1972; and
- (c) the Fiji Roads Authority established under the Fiji Roads Authority Act 2012.

[s 22 subst Act 22 of 2018 s 11, opn 1 Aug 2018]

[DRA 23] Regulations

23 The Minister may make regulations to prescribe matters that are required to be permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

[s 23 subst Act 22 of 2018 s 12, opn 1 Aug 2018]

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PART 4 — TRANSITIONAL

[Pt 4 insrt Act 22 of 2018 s 13, opn 1 Aug 2018]

[DRA 24] Meaning of “drainage board”

24 For the purposes of this Part, “drainage board” means a drainage board existing under this Act immediately before 1 August 2018.

[DRA 25] Revocation of appointment of members of a drainage board

25 All appointments of members to a drainage board existing immediately before 1 August 2018 are revoked.

[DRA 26] Transfer of assets, interests, rights, privileges, liabilities and obligations

26 (1) All assets, interests, rights, privileges, liabilities and obligations of a drainage board are transferred to and vest in the State without conveyance, assignment or transfer.

(2) Any right or liability vested in the State under subsection (1) may, on or after 1 August 2018, be enforced by or against the State in its own name and it is not necessary for the State to give notice to any person whose right or liability is affected by the vesting.

[DRA 27] Transfer of officers and servants

27 (1) All officers and servants appointed under this Act to a drainage board immediately before 1 August 2018 are transferred to the Ministry.

(2) Until such time as the terms and conditions of the officers and servants transferred under subsection (1) are determined by the Ministry, the terms and conditions of such officers and servants continue to apply to every officer or servant transferred under subsection (1).

[DRA 28] Existing deed, bond, agreement, instrument or arrangement

28 All deeds, bonds, agreements, instruments and arrangements to which a drainage board is a party immediately before 1 August 2018 continue in force and are enforceable by or against the Ministry as if the Ministry had been a party to the deed, bond, agreement, instrument or arrangement.

[DRA 29] Continuation of proceedings

29 Any action, arbitration, proceeding or cause of action existing under this Act immediately before 1 August 2018, is pending against or in favour of a drainage board, or to which the drainage board is a party, may be prosecuted and, without amendment to any writ, pleading or other document, continued and enforced against or in favour of the Ministry.

[DRA 30] Transfer of monies in the drainage fund

30 All monies in the drainage fund existing under this Act immediately before 1 August 2018 are to be transferred to the Consolidated Fund.

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[DRA Sch]

SCHEDULE
(Section 15)

FORM OF CERTIFICATE OF SALE

[Sch rep Act 31 of 2016 s 58, opn 1 Dec 2016]

641,001

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