

PARLIAMENTARY POWERS AND PRIVILEGES BILL 2016
(BILL NO. 28 OF 2016)

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BILL NO. 28 OF 2016**A BILL**

FOR AN ACT TO PROVIDE FOR THE POWERS AND PRIVILEGES OF
PARLIAMENT, MEMBERS OF PARLIAMENT AND OFFICERS OF PARLIAMENT

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 Parliamentary Powers and Privileges Act 2016.
(2) This Act comes into force on a date or dates appointed by the Attorney-General by notice in the Gazette.

Interpretation

- 2.** In this Act, unless the context otherwise requires—

“advantage” means—

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;

- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour, other than entertainment, including protection from any penalty or disability incurred or apprehended or from any action or proceeding of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right or any power or duty; or
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage within the meaning of any of the preceding paragraphs,

but does not include any donation permitted by the Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 and Electoral Decree 2014, particulars of which are included in an election return in accordance with the Decrees;

“bribe” means any advantage, whether direct or indirect;

“committee” means a committee of Parliament, including the Committee of the Whole Parliament, a standing committee, select committee, special committee, and subcommittee of a committee of Parliament;

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

“court” means—

- (a) the Supreme Court, Court of Appeal, High Court and Magistrates Court; and
- (b) any other court established in accordance with section 102 of the Constitution;

“document” means a record of information in any form, including any information that is written, photographed, recorded or stored in any manner, on any storage medium or by any other means, including by graphic, electronic or mechanical means;

“member”—

- (a) means an elected member of Parliament;
- (b) includes a person appointed as the Attorney-General under section 96(3) of the Constitution; and
- (c) includes a person appointed to act as the Attorney-General under section 96(6) of the Constitution, if that person is not an elected member;

“officer of Parliament” means—

- (a) the Speaker;
- (b) the Secretary-General;
- (c) an individual authorised in writing by the Speaker; or
- (d) a police officer who, with the authorisation of the Speaker, is on duty within the parliamentary precincts;

“official document” means a document, including an Act, Bill, report or journal extract, printed for the consideration of Parliament or a committee;

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

“parliamentary precincts” means the parliamentary premises under the control and administration of the Speaker;

“Secretary-General” means the Secretary-General to Parliament appointed in accordance with section 79 and Part D of Chapter 6 of the Constitution;

“Speaker” means the Speaker elected in accordance with section 77(1)(a) of the Constitution;

“Standing Orders” means the Standing Orders of Parliament for the time being in force;

“stranger” means a person other than a member or an officer of Parliament;

“tribunal” means any person or body, other than Parliament, a committee, or a court, with the power to summon witnesses and take evidence on oath or affirmation; and

“witness” means a person ordered or summoned to give evidence or produce a document before Parliament or a committee under section 7.

PART 2—PRIVILEGES AND IMMUNITIES

Immunity from legal proceedings

3. Notwithstanding any other provision of this Act or any other written law, a civil or criminal proceeding must not be instituted against a member—

- (a) for words spoken before or written in a document that is presented to Parliament or a committee; or
- (b) as a result of a matter or thing that the member has brought before Parliament or a committee by a Bill, petition, motion or otherwise.

Freedom from arrest

4.—(1) A member must not be arrested for a civil debt while attending, or going to or from, a sitting of Parliament or a committee.

- (2) A member must not be arrested for a criminal offence if—
- (a) the member is within the parliamentary precincts; and
 - (b) Parliament, or a committee on which the member sits, is sitting.
- (3) Subsection (2) does not apply if the Speaker has consented to the arrest.

Service of process

- 5.** A court process must not be served or executed within the parliamentary precincts—
- (a) while Parliament is sitting; or
 - (b) through any officer of Parliament.

Exclusion of suspended member

6. A member who has been suspended from the service of Parliament must not enter or remain within the parliamentary precincts during the duration of his or her suspension, and if any such member is found within the parliamentary precincts in contravention of this section, he or she may be forcibly removed by any officer of Parliament.

PART 3—EVIDENCE

Power to call for evidence

7.—(1) Parliament and its committees have the power to order or summon any person to appear before Parliament or a committee for the purpose of giving evidence or providing information.

(2) For the purpose of subsection (1), Parliament and its committees have, with all necessary modifications, the same powers as the High Court to—

- (a) enforce the attendance of witnesses and examine the witnesses on oath or affirmation; and
- (b) compel the production of documents as required for proceedings.

(3) The power to enforce the attendance of witnesses or compel the production of documents must only be exercised by—

- (a) the Speaker; or
- (b) the chairperson of the committee before which the witness is to appear or the document is to be produced.

Privileges of witnesses

8.—(1) A witness has the same rights and privileges as the witness would have if appearing before a court.

(2) An answer by a witness to a question asked by Parliament or a committee is not admissible in civil or criminal proceedings against the witness.

(3) Subsection (2) does not apply in the case of criminal proceedings against the witness for—

- (a) an offence under this Act;
- (b) perjury;
- (c) subornation of perjury; or
- (d) defeating or obstructing the course of justice.

Evidence of certain proceedings only given with leave

9.—(1) This section applies to—

- (a) a member;
- (b) an officer of Parliament; and
- (c) a person employed to take minutes of evidence given before Parliament or a committee.

(2) A person to whom this section applies may only give evidence about the following matters before a court or tribunal with the leave of the Speaker—

- (a) the contents of minutes of evidence given before Parliament or a committee;
- (b) the contents of a document produced before Parliament or a committee; or
- (c) any other information concerning a proceeding before Parliament or a committee.

(3) The Speaker must not give leave unless the Speaker is satisfied that the evidence or information—

- (a) was received as advice, evidence or otherwise when Parliament or a committee was closed to the public, and so is confidential to Parliament or the committee; or
- (b) was heard as secret evidence by Parliament or a committee, and so generally must not be disclosed.

Proceedings deemed to be judicial proceedings for certain purposes

10.—(1) The proceedings of Parliament or a committee are deemed to be judicial proceedings where a person gives evidence or produces a document before Parliament or a committee.

(2) Subsection (1) only applies for the purpose of prosecuting the person for—

- (a) perjury;
- (b) subornation of perjury; or
- (c) defeating or obstructing the course of justice.

PART 4—OFFENCES AND PENALTIES

*Division 1—Strangers**Strangers' offences*

11. A stranger who breaches an order made by the Speaker to regulate the admittance of strangers to the parliamentary precincts under section 72(2) of the Constitution commits an offence and is liable upon conviction to a fine not exceeding \$100 or to imprisonment for a term not exceeding 3 months, or to both.

*Division 2—Witnesses and giving of evidence**Offences against witnesses*

12. A person who—

- (a) attempts to deter or prevent a witness from appearing or giving evidence before Parliament or a committee;
- (b) tampers with a witness in relation to evidence the witness is to give before Parliament or a committee; or
- (c) threatens or in any way punishes, or attempts to punish, a witness for—
 - (i) giving evidence before Parliament or a committee; or
 - (ii) disclosing certain information when giving the evidence,

commits an offence and is liable upon conviction to a fine not exceeding \$600 or to imprisonment for a term not exceeding 2 years, or to both.

Offences by witnesses

13. A witness who—

- (a) knowingly fails to comply with an order or summons to appear or produce a document before Parliament or a committee, unless the witness is excused by the Speaker or the chairperson, as the case may be;
- (b) refuses to be examined before, or to answer a lawful and relevant question put by, Parliament or a committee, unless the witness is excused by the Speaker or the chairperson, as the case may be;
- (c) knowingly destroys a document that Parliament or a committee has ordered the witness to produce;
- (d) presents a falsified document to Parliament or a committee with intent to deceive Parliament or the committee; or
- (e) having not taken an oath or made an affirmation, knowingly gives false evidence before Parliament or a committee,

commits an offence and is liable upon conviction to a fine not exceeding \$600 or to imprisonment for a term not exceeding 2 years, or to both.

Giving of false answer affecting subject of business

14.—(1) A witness, including a witness who has not taken an oath or made an affirmation, commits an offence if—

- (a) the witness knowingly gives a false answer before Parliament or a committee to a question that affects the subject of the business concerned; and
- (b) the Speaker or the chairperson has previously informed the witness that such an answer would be an offence under this Act.

(2) A witness who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding \$800 or to imprisonment for a term not exceeding 3 years, or to both.

Division 3—Taking and falsifying documents

Taking documents in possession of Secretary-General

15. A person who takes a document in the possession of the Secretary-General without the authorisation of the Secretary-General, knowing that the authorisation of the Secretary-General is required, commits an offence and is liable upon conviction to a fine not exceeding \$400 or to imprisonment for a term not exceeding one year, or to both.

Falsifying or improperly altering documents presented to Parliament or committee

16. A person who intentionally falsifies or improperly alters a document that has been presented to Parliament or a committee commits an offence and is liable upon conviction to a fine not exceeding \$400 or to imprisonment for a term not exceeding one year, or to both.

Division 4—Publishing and printing

Publishing confidential documents or other evidence

17.—(1) A person commits an offence if the person publishes, or causes to be published, a document or other evidence that has been presented to Parliament or a committee if—

- (a) the document or other evidence was presented to Parliament or a committee when the sitting was closed to the public, and so is confidential to Parliament or the committee;
- (b) Parliament or a committee has expressly prohibited the publication; and
- (c) the person knows, or ought to have known, the facts described in the preceding paragraphs.

(2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding \$400 or to imprisonment for a term not exceeding one year, or to both.

Printing and giving in evidence of falsified copies of official documents

18.—(1) A person who knowingly prints, or causes any other person to print, a document that—

- (a) purports to be an official document; and

(b) is not an official document,

commits an offence if the person gives in evidence to a court or tribunal such document and the person knows it is not an official document.

(2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding \$400 or to imprisonment for a term not exceeding one year, or to both.

Division 5—Bribing, assaulting, threatening etc, member or officer of Parliament

Bribing member or officer of Parliament

19.—(1) A member who accepts or agrees to accept a bribe, whether for the benefit of the member or any other person—

- (a) for speaking, voting, or acting in his or her role as a member;
- (b) for not speaking, voting, or acting in his or her role as a member; or
- (c) because of how the member spoke, voted, or acted in his or her role as a member,

commits an offence.

(2) A member or officer of Parliament who accepts or agrees to accept a bribe, whether for the benefit of the member, officer or any other person, where the member or the officer acts or refrains from acting, in the exercise of his or her official duties, commits an offence.

(3) A person who—

- (a) offers, promises or gives a bribe to a member or an officer of Parliament for, or in respect of, the promotion of or opposition to—
 - (i) a Bill;
 - (ii) a matter submitted to Parliament; or
 - (iii) a matter intended to be submitted to Parliament; or
- (b) offers, promises or gives a bribe, whether directly or indirectly, to a member or an officer of Parliament in order to otherwise influence his or her conduct as a member or an officer,

commits an offence.

(4) A member or person who commits an offence under this section is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years, or to both.

Fraud or threats against members

20. A person who attempts, directly or indirectly, by fraud or threat, whether express or implied, to—

- (a) influence a member in his or her vote, opinion or action in relation to a question in Parliament or a committee;

(b) influence a member to take a particular position on a proposition or matter before, or expected to be brought before, Parliament or a committee; or

(c) cause a member to be absent from Parliament or a committee,

commits an offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years, or to both.

Assaulting, obstructing etc, members

21. A person who—

(a) assaults or intentionally obstructs a member who is within, or going to or from, the parliamentary precincts;

(b) tries to compel a member by force to take a particular position on a proposition or matter before, or expected to be brought before, Parliament or a committee; or

(c) assaults or threatens a member because of his or her conduct as a member,

commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 5 years, or to both.

Assaulting, obstructing etc, officers of Parliament

22.—(1) A person who—

(a) assaults, resists or intentionally obstructs an officer of Parliament while the officer is carrying out his or her duties or going to or from Parliament; and

(b) knows or has reasonable grounds to believe that the officer is an officer of Parliament,

commits an offence.

(2) A person who assaults or threatens an officer of Parliament as a result of his or her conduct as an officer, commits an offence.

(3) A person who commits an offence under this section is liable upon conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 5 years, or to both.

Division 6—Disturbances

Creating, joining or inciting disturbances

23.—(1) A person commits an offence if—

(a) the person intentionally creates or joins a disturbance, or incites any other person to create or join a disturbance; and

(b) the disturbance interrupts, or is likely to interrupt, the proceedings of Parliament or a committee while Parliament or the committee is sitting.

(2) A person who commits an offence under subsection (1) is liable upon conviction to a fine not exceeding \$600 or to imprisonment for a term not exceeding 2 years, or to both.

PART 5—MISCELLANEOUS

*Division 1—Defamation**Defamation*

24.—(1) Any person whose words or actions defame, demean or undermine the sanctity of Parliament, the Speaker or a committee commits an offence and is liable upon conviction—

- (a) in the case of a natural person, to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 5 years, or to both; or
- (b) in the case of a body corporate, to a fine not exceeding \$100,000 or to imprisonment for each director and manager for a term not exceeding 5 years, or to both.

(2) Subsection (1) does not apply to words spoken or acts done by a member within the parliamentary precincts.

(3) Nothing in this section prevents Parliament from taking action against any member for any words spoken or acts done within or beyond parliamentary precincts.

*Division 2—Publication of official documents**Protection of persons responsible for publication of official documents*

25.—(1) This section applies to a defendant in a civil or criminal proceeding concerning the defendant's publication, including by an agent, of an official document.

(2) The defendant may provide the court with an affidavit by the Speaker stating that the defendant published the document concerned under the authority of the Speaker, if the defendant gives the court 24 hours' notice of his or her intention to do so.

(3) If the defendant provides the document described in subsection (2)—

- (a) the court must immediately stay the proceeding; and
- (b) every process issued in connection with the proceeding is deemed to be finally determined.

Publication of purported official documents without malice

26. In a civil proceeding instituted for publishing a document that purports to be an official document, the court must enter judgment for the defendant if the court is satisfied that the defendant published the document in good faith and without malice.

*Division 3—Powers of officers of Parliament**Powers of officers of Parliament*

27. An officer of Parliament has all the powers and privileges of a police officer for—

- (a) the purpose of carrying out his or her functions or duties under this Act; and
- (b) enforcing the criminal law within the parliamentary precincts.

Powers of arrest

28. An officer of Parliament may arrest without warrant—

- (a) a person who commits, in the presence of the officer, an offence described in sections 11 to 23; or
- (b) a person within the parliamentary precincts whom the officer reasonably suspects of having committed, or is about to commit, an offence described in sections 11 to 23.

Division 4—Other provisions

Speaker may prohibit publication of words out of order

29.—(1) The Speaker may, at his or her discretion, order that the following words spoken by a member must not be published—

- (a) words that the Speaker ruled to be out of order;
- (b) words that gave rise to words that the Speaker ruled to be out of order; or
- (c) words that arose from words that the Speaker ruled to be out of order.

(2) A person commits an offence if the person—

- (a) publishes words that are the subject of an order made under subsection (1); and
- (b) knows, or ought to have known, that the order had been made.

(3) A person who commits an offence under subsection (2) is liable upon conviction—

- (a) in the case of a natural person, to a fine not exceeding \$600 or to imprisonment for a term not exceeding 2 years, or to both; or
- (b) in the case of a body corporate, to a fine not exceeding \$50,000 or to imprisonment for each director and manager for a term not exceeding 2 years, or to both.

Witness attendance expenses

30. If a witness is to travel 10 kilometres or more from his or her place of residence to the hearing location, the Secretary-General must pay for the expenses of the witness at the rates and amounts approved by Parliament.

Regulations

31. The Attorney-General, in consultation with the Speaker, 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 and generally for achieving the purposes of this Act.

Repeal

32. The Parliamentary Powers and Privileges Act (Cap. 5) and any subsidiary law made thereunder are repealed.

PARLIAMENTARY POWERS AND PRIVILEGES BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Parliamentary Powers and Privileges Act (Cap. 5) ('Act') was enacted in 1965 and subsequently amended in 1970 and 1975.
- 1.2 As its name suggests, the Act provides for the powers and privileges of members and officers of Parliament.
- 1.3 Given that the Act has never been amended since 1975 and that the provisions of the Act make reference to a bicameral legislature, a review of the Act was conducted in 2014.
- 1.4 The Parliamentary Powers and Privileges Bill 2016 ('Bill') seeks to repeal the Act.

2.0 FEATURES OF THE BILL

- 2.1 Clause 1 of the Bill provides for the short title and commencement provisions. If passed by Parliament, the new Act will come into force on a date or dates appointed by the Attorney-General by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides for the definitions of terms used throughout the Bill.
- 2.3 Clause 3 of the Bill provides for immunity from legal proceedings to a member for words spoken before or written in a document presented to Parliament or a committee, or as a result of a matter or thing that the member brought before Parliament or a committee by a Bill, petition, motion or otherwise.
- 2.4 Clause 4 of the Bill states that a member must not be arrested for a civil debt while attending, or going to or from, a sitting of Parliament or a committee, or for a criminal offence if the member is within the parliamentary precincts and Parliament or a committee on which the member sits is sitting. This clause does not apply if the Speaker has consented to the arrest.

- 2.5 Clause 5 of the Bill states that the court process must not be served or executed within the precincts of Parliament while Parliament is sitting or through the Speaker, the Secretary-General or any other officer of Parliament.
- 2.6 Clause 6 of the Bill excludes suspended members from the parliamentary precincts.
- 2.7 Clause 7 of the Bill provides to Parliament and its committees the power to order or summon any person to appear before it for the purpose of giving evidence or providing information, and Parliament and its committees have the same powers as the High Court. The power to enforce attendance or compel the production of documents must only be exercised by the Speaker or the chairperson of the committee before which the witness is to appear or the document is to be produced.
- 2.8 Clause 8 of the Bill provides for the rights and privileges of witnesses. A witness has the same rights and privileges as he or she would have if appearing before a court.
- 2.9 Clause 9 of the Bill provides for certain evidence to be given only with the leave of the Speaker.
- 2.10 Clause 10 of the Bill outlines that the proceedings of Parliament or a committee are deemed to be judicial proceedings where a person gives evidence or produces a document before Parliament or a committee for the purpose of prosecuting the person for perjury, subornation of perjury or defeating or obstructing the course of justice.
- 2.11 Clause 11 of the Bill deals with the offences of strangers.
- 2.12 Clause 12 of the Bill deals with the offences against witnesses.
- 2.13 Clause 13 of the Bill deals with the offences by witnesses.
- 2.14 Clause 14 of the Bill deals with the offence of giving a false answer which affects the subject of the business of Parliament or a committee.
- 2.15 Clause 15 of the Bill deals with the offence of taking documents in the possession of the Secretary-General.
- 2.16 Clause 16 of the Bill deals with the offence of falsifying or improperly altering documents presented to Parliament or a committee.
- 2.17 Clause 17 of the Bill deals with the offence of publishing confidential documents or other evidence.
- 2.18 Clause 18 of the Bill deals with the offence of printing and giving evidence of falsified copies of official documents.

- 2.19 Clause 19 of the Bill deals with the offence of bribing a member or an officer of Parliament.
- 2.20 Clause 20 of the Bill deals with the offence of fraud or threats against a member of Parliament.
- 2.21 Clause 21 of the Bill deals with the offence of assaulting or intentionally obstructing a member, or trying to compel a member to take a particular position on a proposition or matter before, or expected to be brought before, Parliament or a committee, or assaulting or threatening a member because of his or her conduct as a member.
- 2.22 Clause 22 of the Bill deals with the offence of assaulting, resisting or intentionally obstructing an officer of Parliament.
- 2.23 Clause 23 of the Bill deals with the offence of creating, joining or inciting disturbances.
- 2.24 Clause 24 of the Bill deals with the offence of defamation.
- 2.25 Clause 25 of the Bill provides for the protection of persons responsible for the publication of official documents.
- 2.26 Clause 26 of the Bill states that in a civil proceeding instituted for publishing a document that purports to be an official document, the court must enter judgment for the defendant if the court is satisfied that the defendant published the document in good faith and without malice.
- 2.27 Clause 27 of the Bill provides for the powers of officers of Parliament.
- 2.28 Clause 28 of the Bill authorises an officer of Parliament to arrest, without warrant, a person who commits in his or her presence an offence described in clauses 11 to 23 of the Bill or a person within the parliamentary precincts whom the officer reasonably suspects of having committed, or is about to commit, an offence described in clauses 11 to 23 of the Bill.
- 2.29 Clause 29 of the Bill states that the Speaker may prohibit the publication of words which are out of order.
- 2.30 Clause 30 of the Bill provides for the payment of a witness's expenses if the witness is to travel 10 kilometres or more.
- 2.31 Clause 31 of the Bill authorises the Attorney-General, in consultation with the Speaker, to make regulations prescribing matters that are required or permitted by the Bill to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Bill and generally for achieving the purposes of the Bill.

2.32 Clause 32 of the Bill provides for the repeal of the Act and any subsidiary law made thereunder.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Attorney-General.

A. SAYED-KHAIYUM
Attorney-General