

# BILL NO. 2 OF 2021

## A BILL

FOR AN ACT TO AMEND THE CRIMINAL PROCEDURE ACT 2009

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

**1.**—(1) This Act may be cited as the Criminal Procedure (Amendment) Act 2021.

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

(3) In this Act, the Criminal Procedure Act 2009 is referred to as the “Principal Act”.

*Section 129 amended*

**2.** Section 129 of the Principal Act is amended by deleting “; and in any such case the Judge or Magistrate shall not be required to give any warning to the assessors relating to the absence of corroboration”.

*Section 203 amended*

**3.** Section 203 of the Principal Act is amended by—

(a) in the heading, deleting “to be with assessors”;

(b) in subsection (1), deleting “sitting with assessors as provided in this Part”;  
and

(c) deleting subsection (2).

*Sections 204 to 212 deleted*

- 4.** The Principal Act is amended by deleting sections 204 to 212.

*Section 214 amended*

- 5.** Section 214(7) of the Principal Act is amended by—

- (a) deleting paragraph (a); and
- (b) in paragraph (b), deleting “(provided that the assessors, if any, have been discharged)”.

*Section 216 amended*

- 6.** Section 216 of the Principal Act is amended by—

- (a) in subsection (1)(c), deleting “and the assessors”; and
- (b) in subsection (2), deleting “and assessors”.

*Section 222 amended*

- 7.** Section 222 of the Principal Act is amended by deleting “to choose assessors and”.

*Sections 224 to 226 deleted*

- 8.** The Principal Act is amended by deleting sections 224 to 226.

*Section 227 amended*

- 9.** Section 227 of the Principal Act is amended by deleting “When the assessors have been chosen and sworn, the” and substituting “The”.

*Section 237 amended*

- 10.** The Principal Act is amended by deleting section 237 and substituting the following—

*“Judge to give judgment*

237. When the case for the prosecution and defence is closed, the Judge shall give judgment.”.

*Section 243 amended*

- 11.** Section 243 of the Principal Act is amended by deleting paragraphs (b) to (d).

*Section 287 amended*

- 12.** Section 287 of the Principal Act is amended by—

- (a) deleting the heading and substituting “Expenses of complainants and witnesses”; and
- (b) deleting “assessor”.

*Section 288 amended*

- 13.** Section 288 of the Principal Act is amended by deleting “ may be conducted prior to the swearing in of the assessors but” and substituting “must only be conducted”.

*Section 296 amended*

- 14.** Section 296(1)(c)(ii) of the Principal Act is amended by deleting “, the assessors”.

*Section 301 amended*

- 15.** Section 301 of the Principal Act is amended after subsection (2) by inserting the following new subsection—

“(3) A court hearing any proceeding for which an assessor has been chosen and sworn prior to the commencement of the Criminal Procedure (Amendment) Act 2021 must apply the provisions of this Act as though the Criminal Procedure (Amendment) Act 2021 had not been enacted.”.

*Consequential amendments*

- 16.** The laws listed in the Schedule are amended as set out in the Schedule.

SCHEDULE  
(Section 16)

---

CONSEQUENTIAL AMENDMENTS

*Bail Act 2002*

1. The Bail Act 2002 is amended in section 19(2)(c)(ii) by deleting “or assessors”.

*Criminal Procedure Act (Allowances to Witnesses and Assessors) Rules 2016*

2. The Criminal Procedure Act (Allowances to Witnesses and Assessors) Rules 2016 is amended by—
- (a) in rule 1(1) by deleting “Act (Allowances to Witnesses and Assessors)” and substituting “(Allowances to Witnesses)”;
  - (b) in rule 2—
    - (i) deleting “and assessors attending trials at the High Court”; and
    - (ii) in paragraph (b), deleting “or assessor”; and
  - (c) in the Schedule, deleting paragraph 1(a).

*Income Tax (Exempt Income) Regulations 2016*

3. The Income Tax (Exempt Income) Regulations 2016 is amended by deleting paragraph (21) of Part 3 of the Schedule and substituting the following—

“(21) An allowance paid in accordance with the Criminal Procedure (Allowances to Witnesses) Rules 2016 to a witness attending at a trial or enquiry before a Magistrates Court or the High Court, or summoned to appear before any Court exercising appellate jurisdiction.”.

*Valuers Regulations 1989*

4. The Valuers Regulations 1989 is amended in regulation 9(2) by deleting “Criminal Procedure Code (Allowances to Witnesses and Assessors) Rules 2010” and substituting “Criminal Procedure (Allowances to Witnesses) Rules 2016”.

February 2021

## **CRIMINAL PROCEDURE (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 Criminal Procedure Act 2009 ('Act') was promulgated in 2009 to repeal the former Criminal Procedure Code 1944 and modernise provisions in relation to the powers and procedures to be applied in relation to the apprehension of offenders and the conduct of criminal trials and related matters.
- 1.2 However, some archaic provisions, such as the framework providing for the use of lay assessors in the High Court for criminal trials, were not addressed.
- 1.3 Lay assessors were introduced into the criminal justice system through the Criminal Procedure Ordinance of 1875. Under colonial rule the procedure for trials in the criminal justice system was heavily influenced by ethnic considerations. Europeans had their cases tried before an exclusively European jury; however, the iTaukei, Indo-Fijian and other ethnicities of non-European descent had their cases tried before lay assessors who, until 1950, were also exclusively European. In this manner, the jury system and assessor system existed in parallel.
- 1.4 The most significant difference between the jury system and the lay assessor system was that though the decisions of juries were final, the decisions of lay assessors could be overturned by the presiding Judge. This was for the ostensible reason that European assessors were likely to harbour prejudices against other ethnic groups and thus there existed a need for Judges to be able to overturn such prejudicial assessments.
- 1.5 In 1950, the iTaukei, Indo-Fijians and other ethnicities of non-European descent were included in the list of assessors and in 1961 the all-European jury system was abolished. However, the lay assessor system for the most part has not changed. Judges have retained the power to overturn the decisions of assessors and, with the development of the Fijian judiciary, justice system and jurisprudence, the archaic assessor system has become dissonant.

- 1.6 At present, the judiciary utilises only a small number of assessors in constant rotation. A limited amount of assessors, being used too frequently, can lead to corruption within the system.
- 1.7 This is further compounded by the fact that, as stated above, Judges ultimately have the authority to overturn decisions of lay assessors. If the ultimate decision-making authority rests with Judges, the lay assessor system is simply an added layer of administrative process. In order to facilitate greater and timely access to justice, it is imperative that a more streamlined process be developed. Cases are often delayed so as to find suitable assessors within available time slots for all interested parties. These delays are not justifiable when the final decision rests with the Judge and not the assessors.
- 1.8 Furthermore, given that lay assessors are sourced from members of the public without specific legal training, their views and decisions are essentially expressions of opinion. These views may be subject to economic, peer and political pressure and influence, and may not be tempered by the changes in society including the sensitisation of issues, e.g., gender issues. This is of particular note, given the small size of the Fijian population and the intrinsically interconnected relationships.
- 1.9 The societal values of lay assessors may often be in direct competition with the progressive values of modern law, which is most often seen in sexual assault and rape cases. In practice, Judges are not always willing to overturn the decisions of lay assessors, even when these decisions are clearly informed and heavily influenced by patriarchal ideals. This leads to inconsistencies in rulings, where the strength of the Judge's personality may end up being the determining factor for whether the values of the law are to be upheld or be made subject to the principles of the patriarchy still prevalent today. These inconsistencies illustrate the danger of a dual-decision system and it is therefore imperative that a more streamlined system be developed.
- 1.10 The Fijian judiciary and court system has matured significantly since the introduction of the assessor system more than a century ago. For the reasons described above, it is clear that the judiciary no longer requires the use of an out-dated and redundant system laden with a number of flaws.
- 1.11 As such, the Criminal Procedure (Amendment) Bill 2021 ('**Bill**') seeks to amend the Act to remove the use of lay assessors in the High Court.

## **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 a date or dates appointed by the Minister by notice in the Gazette.

- 2.2 Clause 2 of the Bill amends section 129 of the Act to remove the requirement that the Judge or Magistrate give warning to the assessors for any absence of corroboration, where a person is tried for an offence of a sexual nature.
- 2.3 Clause 3 of the Bill amends section 203 of the Act to remove the requirement of having assessors at trials before the High Court, including the minimum number of assessors required for any trial.
- 2.4 Clause 4 of the Bill deletes sections 204 to 212 of the Act. These sections make up Divisions 2 and 3 of Part 14 of the Act which provide for the lists of assessors and the attendance of assessors.
- 2.5 Clause 5 of the Bill amends section 214(7) of the Act to remove the court's power to order that the assessors be discharged from giving opinions on the count or counts, the trial of which is postponed, or on the information, as the case may be.
- 2.6 Clause 6 of the Bill amends section 216 of the Act to remove the references to assessors.
- 2.7 Clause 7 of the Bill amends section 222 of the Act to remove the requirement that the court proceed to choose assessors if the accused pleads not guilty, or if a plea of not guilty is otherwise entered in accordance with the provisions of the Act.
- 2.8 Clause 8 of the Bill deletes sections 224 to 226 of the Act. These sections make up Division 5 of Part 14 of the Act which deals with the selection of assessors and the attendance and absence of assessors.
- 2.9 Clause 9 of the Bill amends section 227 of the Act to remove the reference to assessors.
- 2.10 Clause 10 of the Bill amends section 237 of the Act to remove the requirement of assessors delivering their opinions.
- 2.11 Clause 11 of the Bill amends section 243 of the Act to remove the references to assessors.
- 2.12 Clause 12 of the Bill amends section 287 of the Act to remove the references to assessors.
- 2.13 Clause 13 of the Bill amends section 288 of the Act to remove the reference to assessors.
- 2.14 Clause 14 of the Bill amends section 296(1)(c)(ii) of the Act to remove the

reference to assessors.

- 2.15 Clause 15 of the Bill amends section 301 of the Act to provide that proceedings for which assessors have been chosen and sworn prior to the commencement of the amending legislation are to continue as though the amending legislation had not been enacted. This means that assessors serving in cases currently before a court will continue to do so until such cases have been decided.
- 2.16 Clause 16 of the Bill makes consequential amendments to other laws that make reference to assessors.

### **3.0 MINISTERIAL RESPONSIBILITY**

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

A. SAYED-KHAIYUM  
Attorney-General