



STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN RIGHTS

Report on the Review of the Electoral (Amendment) Bill 2020 (Bill No. 50 of 2020)



Parliament of the Republic of Fiji

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CHAIRPERSON'S FOREWORD



Electoral systems are viewed as one of the most influential of all political institutions and of crucial importance to broader issues of governance. It is increasingly being recognized that an electoral system can be designed both to provide local geographic representation and to promote proportionality. It can also promote the development of a strong and viable national political party's framework and ensure the representation of women, youth and the marginalized, in the Parliament.

The way in which a particular electoral system is chosen, is extremely important in ensuring its overall legitimacy. A process in which, most or all groups are included, is likely to result in significantly broader acceptance of the end result than a decision perceived as being motivated by partisan self-motivation alone. Therefore, it is essential to build legislation that is accepted among all key actors that are involved in the political process.

The Fijian Government, is committed to this vital aspect of good governance, thus ensured that the regulatory framework that governs elections is kept up to date. Therefore through the Fijian Electoral Commission and the Fijian Elections Office, and at the conclusion of two (2) elections under the new electoral system, as embedded in the **2013 Constitution**, a review was carried out, on the election processes and there were certain changes suggested for amendments to the **Electoral Act 2014**. These changes are reflected in the proposed **Electoral (Amendment) Bill 2020**.

Thus, the Standing Committee on Justice, Law and Human Rights, under the Parliamentary process was handed the **Electoral (Amendment) Bill 2020**, to conduct a review and report back to the Parliament.

This Committee Report will provide details of the Committee's review process, which includes initial deliberation, public consultation and identification of key findings, and outcome of the review.

In the initial stages of the review the Committee conducted preliminary deliberations and noted that the Bill aims to bring about changes to the Electoral Act that are based on the analysis, by the Electoral Commission and the Supervisor of Elections and the Multinational Observer Group, on the 2018 General Elections.

The Committee also conducted public consultation on the Bill and received support on the introduction of the Bill, from the public that had participated in the public consultation. There were also concerns and suggestions for improvements from numerous participants that were present at the public consultation. Some of the main areas of discussion highlighted from the public consultation were:

- That the Bill shall vest the authority to the Supervisor of Elections to determine whether to include Party names and symbols in the National Candidate List.

- That the Bill will prescribe a timeframe for submitting voter lists to the Fijian Elections Office, to institutions at which polling will take place.
- That the Bill intends to provide a special polling venue in Suva for overseas registered voters, who are in Fiji during Polling Day.
- That the Bill aims to provide specific provisions in the law that requires provisional results to be published for a specified period of time, by the Supervisor of Election.
- That the Bill will provide the Supervisor of Elections sufficient time to compile and submit the General Election report to the Electoral Commission, post-General Elections.
- That the Bill will provide penal consequences for failing to adhere to directives by the Supervisor of Election regarding removal of materials that is in breach of the campaign rules.
- That the Bill will specify the period to which election related offences will be limited to.
- That the Bill proposes to prescribe penal provisions for publishing false information and fake news and vest the authority to remove or direct to be removed, any false information or fake news, to the Supervisor of Election.
- That the Bill will allow the Supervisor of Elections to destroy election records, six months after an election.
- That the proposed amendments in the Bill reflects some of key recommendations by the Multinational Observer Group, both from the 2014 and 2018 General Elections.

The Committee also considered the alignment of the Bill towards meeting the targets of the national development plan and sustainable development goal. The Bill ensures that Fijians are free to practice their right to vote in a free and fair election and ensures that the provisions of the Bill applies equally to all persons irrespective of gender, age, socio-economic status and geographical location.

At the end of the review, the Committee noted that there were a few issues and in addressing the issues, the Committee sort legal clarifications pertaining to these matters noted from the review. This ensured that the primary objectives of the Bill are preserved. The Committee deliberated extensively on the issues and the legal clarifications provided and made efforts in coming to a conclusion that would preserve the main intentions of the Bill while at the same time give consideration to the public's input.

The Committee therefore is satisfied with the clarifications provided and believes that as we start implementing the provisions proposed by this Bill, this would be an opportune moment to gauge the implications of the Bill on Fiji's electoral system in the next General Election, and gather the lessons learnt. The Committee is of the opinion that the Bill is adequate as it is, to meet the key objectives of the Bill, and does not recommend any substantial amendments. However, it was noted that there were very few minor grammatical issues in the Bill, which have been amended and these are reflected in the copy of the amended Bill, with the amendments in magenta coloured texts, appended to this Report.

This Report benefited immensely on the public consultation and the Committee would like to acknowledge all the members of the public and entities that provided their views on the Bill and for taking an interest in the proceedings of the Committee and Parliament.

Moreover, I sincerely thank the Honourable Members of the Justice, Law and Human Rights Committee for their dedication, deliberations and input; Hon. Rohit Sharma (Hon. Deputy Chairperson), Hon. Ratu Suliano Matanitobua, Hon. Dr. Salik Govind, and Hon. Mosese Bilitavu.



Hon. Alvick Avhikrit Maharaj
Chairperson

ACRONYMS

FEO	-	Fijian Elections Office
ICCPR	-	International Covenant on Civil and Political Rights
MOG	-	Multination Observer Group
SOE	-	Supervisor of Elections

Committee Composition



Hon. Alvick A. Maharaj (Chairperson)

- Assistant Minister of Employment, Productivity, Industry Relations, Youth and Sports
- Chairperson of Public Accounts Committee
- Government Whip
- Pharmacist



Hon. Rohit Sharma (Deputy Chairperson)

- Former Civil Servant – Education Sector
- Deputy Chairperson of the Standing Committee on Justice, Law and Human Rights
- Deputy Government Whip



Hon. Ratu Suliano Matanitobua (Member)

- Shadow Minister for Youth and Sports
- Former State Minister of Fijian Affairs
- Former Military Territorial Officer



Hon. Dr. Salik Govind (Member)

- Public Health Specialist – United Nations (World Health Organisation)
- Deputy Chairperson of the Standing Committee on Foreign Affairs and Defence Committee



Hon. Mosese Bulitavu (Member)

- Shadow Minister for Defense, National Security, Immigration and Correction Services
- Former Opposition Whip
- Business Consultant/Farmer
- Territorial Military Officer – Republic of Fiji Military Forces
- Law Graduate and Researcher

Committee Secretariat Team

Supporting the Committee in its work is a group of dedicated Parliament Officers who make-up the Committee Secretariat, and are appointed and delegated by the Secretary-General to Parliament pursuant to Standing Order 15 (3)(i). The Secretariat team is made of the following Parliament officers:

- Mr. Ira Komaisavai – Senior Committee Clerk
- Mr. Jackson Cakacaka – Deputy Committee Clerk
- Ms. Darolin Vinisha – Committee Assistant

PART 1 - INTRODUCTION

1.1 Background

Following the 2018 General Election, the Electoral Commission and the Supervisor of Elections reviewed the work conducted by their respective offices during the 2018 Election period and published a Joint Report on the same. Through this report, the two offices made recommendations for changes to the laws on Election and certain procedural aspects of the election process. The recommendations put forth is also a result of the review of the Multi-national Observer Group Report on the 2018 General Election.

The Government of day has considered these recommendations and have introduced the certain proposed election-related legislation, which aims to bring about the proposed changes to the election laws and one of which is *Electoral (Amendment) Bill 2020*.

As is required under the *Constitution*, the Government introduced the Bill into Parliament for its consideration, before it becomes law¹. The Parliament then referred the Bill to the Standing Committee on Justice, Law and Human Rights (“**Committee**”), for review on 11 December 2020. The Bill was referred to the Committee pursuant to Standing Order 51 of the Standing Orders of the Parliament of Fiji, whereby the Committee was tasked with scrutinising the Bill and to report back on the Bill in the March 2021 Parliament Sitting.

Despite the specified timeframe for reviewing and reporting prescribed by Parliament to the Committee; there were a lot of interest shown by the public on the Bill, thus, the Committee requested for an extension of the timeframe for the review and for reporting by the Committee.

1.2 Committee’s Review Process

The Committee’s review process was through the resolution of the Committee and the following provides brief summary of the agreed upon procedure and program.

The first step in the Committee’s review process was the formulation of its program with regards to its review process. The Committee’s agreed upon review program was as follows:

i) Initial Deliberation

The Committee began with an initial reading of the Bill and conducting its own deliberation of the Clauses in the Bill. An in-depth deliberation of the Bill was conducted by the Committee, whereby pertinent issues were identified.

Following the initial analysis of the Bill, the Committee met twice with the Supervisor of Elections and once with the Electoral Commission to obtain in-depth view of the Bill, for better understanding by the Committee.

¹ Chapter 3, Part A, *Constitution of the Republic of Fiji (2013)*.

ii) Identification of mode of public consultation

The Committee then discussed, which mode of public consultation would be suitable for the review the Bill. The Committee resolved to rely on two main modes of public consultation, which is to call for written submission and conducting in-person public consultation.

iii) Awareness on the Committee's public consultation through advertisement

The Committee then conducted awareness on its proposed public consultations, through advertisements via newspaper advertisements and televised advertisements.

iv) Conducting of public consultation

The Committee was also committed to upholding public trust in Parliament, by ensuring that there is public participation and that all such participation is given due consideration. The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

The Committee called for written submissions from the public and other interested stakeholders by placing an advertisement through the Parliament website and Parliament social media pages on social media platforms; Facebook, Twitter and Instagram. The Committee received a written submission on the Bill from relevant stakeholders. A summary of these submissions is provided in a later part of this report, under the heading '*Committee's Deliberation and Analysis of the Bill*'.

The Committee then visited various communities around Fiji to conduct in-person public consultation. A list of the areas visited by the Committee is appended to the Appendices of this Report. All the face-to-face submissions conducted during the public consultation were recorded and open to the public and the media.

v) Review of evidence collected and seeking legal clarification on pertinent issues

The Committee reviewed all the evidence received from the public consultation and to maintain due diligence, the Committee also relies on legal clarification on technical issues identified from the Bill, which is obtained from the Office of the Solicitor-General. These clarifications also assist the Committee in deliberating on these pertinent issues and in deciding whether there would be recommendations for any changes to the Bill.

vi) Drafting of Committee Report

The final step of the review process is the compilation of all issues identified from the evidence received from the public consultation. This is then deliberated on with the necessary legal clarifications and the Committee forms its own independent view on all issues identified.

PART 2 - COMMITTEE'S DELIBERATION AND ANALYSIS OF THE BILL

2.1 Initial Analysis by the Committee

The Committee commenced its analysis of the Bill, reading through it, Clause by Clause. From this initial reading, it was noted that the Bill aims to make changes to the *Electoral Act 2014*. These proposed changes to the electoral law was the result of extensive analysis of the 2018 General Election by the Electoral Commission (hereinafter referred to as the Commission) and the Supervisor of Elections, who is most commonly referred to as "SoE". This analysis was assisted by a report by Multinational Observer Group (also commonly known as "MOG") on the 2018 General Election.

The Committee had extensive discussions on the provisions of the Bill and resolved that given the time provided to the Committee to review the Bill; that it be prudent to firstly hear the views of the public on this very important piece of proposed legislation. This public consultation would then allow the Committee to gauge the public's perspective on the Bill before deliberating further, whilst also bearing in mind the requirements as set down by Parliament in referring the Bill to the Committee.

Before commencing with the public consultation, the Committee also heard submissions from the Electoral Commission and the Supervisor of Elections. The Committee saw this as an important step for the Committee in understanding the election process and system and to gauge how the Bill contributes to the election system. From these submission, the Committee was briefed on the election process.

History of Elections in Fiji

1.	1972	7.	1994
2.	1977 (March)	8.	1999
3.	1977 (September)	9.	2001
4.	1982	10.	2006
5.	1987	11.	2014
6.	1992		

Historical Statistics

Year	Voter turnout	Total vote	Registration	Voting age population	Population	Invalid voters	Compulsory voting
2014	84.60%	500,078	591,101	602,405	903,207	0.75%	No
2006	64.00%	307,004	479,674	552,797	905,949	6.40%	Yes
2001	81.05%	379,954	468,,772	493,217	832,494	11.70%	Yes
1999	89.41%	398,877	437,195	522,310	832,494	9.00%	Yes
1994	74.80%	277,046	303,529	407,680	784,000		Yes
1992	78.77%	238,814	303,172	373,000	746,000		Yes

Source: <http://www.idea.int/data-tools/country-view/106/40>

Comparison of Elections: 2006 – 2014 -2018

	2006	2014	2018
Constituency	71	1	1
Voting	Compulsory	NOT Compulsory	NOT Compulsory
Voting Age	21	18	18
Polling Stations	1183	2028	2149
Registered Voters		591,101	637,527
Turnout	64%	84.6%	71.9%
Invalid votes	6.40%	0.75%	0.92%

Election Statistics – Fiji

Year	Voter Turn-out	Total vote	Registration	VAP Turn-out	Voting age population	Population	Invalid votes	Compulsory voting
2014	84.60%	500,078	591,101	66.70%	602,405	903,207	0.75%	No
2006	64.00%	307,004	479,674	55.54%	552,797	905,949	6.40%	Yes
2001	81.05%	379,954	468,772	77.04%	493,217	832,494	11.70%	Yes
1999	89.41%	390,877	437,195	74.84%	522,310	832,494	9%	Yes
1994	74.80%	227,046	303,529	55.69%	407,680	784,000		Yes
1992	78.77%	238,814	303,172	64.03%	373,000	746,000		Yes

Legal Framework Governing Elections in Fiji

For this part, the discussions was on the Election legal framework that covers a few key areas of the electoral system and process including, the Nominations Process, Preparations for Poll (After Nomination Process) and Requirement for Voting by Ballot.

The nomination process for candidates wishing to contest elections are covered in the following provisions of the *Electoral Act 2014*:

Section 23 – eligibility criteria;	Section 30 – objections to nominations;
Section 26 – party candidates’ eligibility;	Section 31 – appealing SoE’s decision for non-acceptance of nomination;

Section 27 – candidate nomination deposit;	Section 32 – death after successful nomination; and
Section 28 – withdrawing from being a candidate;	Section 33 – disqualification of candidate after nomination.
Section 29 – nominations to be displayed;	

Preparation for Poll is covered under Section 36 of the *Electoral Act 2014*. Postal Voting is provided under Sections 66-81 and Pre-Poll is provided under Sections 82 to 88.

The Commission and the SoE then highlighted key aspects of Fiji’s electoral system and process, including the 50 Day Writ to Writ Plan, a brief overview of the election process, key electoral events, voter registration, candidate nomination process, preparation of national candidate list, voting process (steps on how to vote) and seat allocation.

❖ 50 Day Writ to Writ Plan (as per the lead up to the 2018 General Election)

The 50 Day Plan highlights the Key Operational Events during the Election period, which include:

- Writ Day - 7:
 - Prime Minister may advise the President to dissolve Parliament;
 - Writ for General Election must be issued within 7 days;
 - If Election date is announced, then:-
 - Postal Vote Applications Open;
 - Provisions of Campaign under the Electoral Act are activated;
- Writ Day – considered as Day 0;
- Writ Day + 1:
 - Nominations open;
 - Nomination forms are available on FEO website;
 - FEO Suva HQ Opening Hours – 8 a.m. – 6 p.m.;
 - FEO Suva HQ to be open on Saturday and Sunday during nominations;
 - Final Voter List operation process commences;
- Writ Day + 14:
 - Nominations Close at 12 Noon;
 - List of approved Candidates to be published;
- Writ Day + 18:
 - Electoral Commission Issues Notice of Poll and Notice of Pre-Poll;
 - Final List of Polling Stations and statistics released:-
 - Political Parties will receive this information on email;
 - 3 p.m. National Candidate List draw (can be held sooner if all the decisions from the EC are received);
 - Ballot Paper productions begins at the factory:-
 - Briefing at the factory at 12 midnight for Party agents;
 - Postal vote pre-packing initiated:-
 - Party Agents briefing on pre-packing at 9 a.m.;
- Writ Day + 23:
 - Postal Vote Application closes at 6 p.m.;
- Writ Day + 30:
 - Ballot Paper Production concludes:-
 - Final briefing of Party Agents at Print Factory.

❖ Election Operations

The Election process covers the following key aspects:

- Polling Places
- Election Officials
- Election Materials
- Election Security

Polling Places as per 2018 General Election

Divisions	Total No. of Polling Venues	Total No. of Pre-Poll Venues	No. of Pre-Poll Teams
Central	316	96	10
Western	303	164	20
Northern	202	134	15
Eastern	33	187	44
TOTAL	854	581	89

Election Officials as per 2018 General Election

Divisions	Elections Office staffing required
Central	4459
Western	4023
Northern	1537
Eastern	224
Pre-poll	445
Voter Awareness Assistants	134
Counting	240
TOTAL	11,062
<i>It should be noted that these are estimates only</i>	

Election Materials as per 2018 General Election

Each Polling Station receives:

- 5 Cardboard Voting Screens;
- 1 Polling kit;
- 1 Ballot Box;
- Voter List;
- Ballot Paper (as per quantity required);
- Indelible Ink;
- Election Officials Manuals and Recording instruments.

Election Security as per the 2018 General Election

- Fiji Police Force provides security;
- Police Training on elections;
- Police provides guard at the printing facility;
- Police accompanies Pre-Poll teams on the ship;
- Police receive sensitive materials with the Presiding Officer at the Polling Station;
- Election Resources.

❖ Key Electoral Events

For this part, discussion was based on the Pre-Writ Period, inclusively on the Voter Registration.

Pre Writ Process

❖ Voter Registration

2006 Election	Post 2012
Voters were issued with a voter registration slip	Voters are issued with a Voter ID card
Voter registration was conducted within a period of 3 weeks	Voter registration is conducted continuously.
Eligibility was 21 years for Fiji citizens	Eligibility was 18 years for Fiji citizens Overseas Fijians can register
Not personal verification data captured	Use of biometrics and facial recognition.

Voter Registration – the process - 2018 General Election

There are five (5) steps in the voter registration process, which are as follows:

Step 1:	Step 2:	Step 3:	Step 4:	Step 5:
Verification of personal details and verification of ID	Filling of registration details and identification of 3 closest polling venues	Data entry on EVR laptop and confirmation of 3 closest polling venues	Capturing of biometrics and taking of photograph of sufficient quality	Printing of VoterCard and registering the form received by the FEO staff

Voter Registration- The National Register of Voters

- National Register of voters is printed annually.
- All registered Political Parties are handed copies free of Charge.
- Names of registered voters are printed alphabetically according to their divisions.
- Voters entitled to inspect the NRV display and apply for changes if necessary or confirm details or object to the registration of another voter.

Voter Registration- Annual National Voter Registration Drives

- Conducted annually and offers the following services:

- Secondary Schools voter registration drive
- Nationwide voter services drive
- National Register of Voters Display
- Nationwide Polling Venues assessment project
- Voter awareness

Voter Registration- The Voter List

- Voter List is printed from the National Register of Voters
- Voter selects 3 polling venues closest to their place of residence when they register and FEO tags them to the Polling places accordingly.
- The new Fiji National Polling Venues Directories will assist the voter and the FEO staff members to identify venues and tag voters accordingly
- Provisional Voters list available in e-copy for political parties.

Writ Period

❖ **Nomination Process**

The first step is ensuring potential candidates are eligible to stand for election. The eligibility criteria for being a candidate is provided under 23 of the *Electoral Act 2014* (“Act”), while Section 26 provides for Party Candidates eligibility. Section 27 of the Act, then prescribes that a nomination of a party candidate should then be accompanied with a deposit (\$1,000).

Under the nomination process, there is also provisions for withdrawing from being a candidate. For this, candidates follow the steps provided under Section 28 of the Act. After successful nomination, the law requires for the names and notice of nomination of those nominated to be candidates are displayed at the place of nomination (Section 29).

The process also includes objecting to a nomination and the rules governing this is provided under Section 30 of the Act. In addition to this, candidates can appeal, to the Electoral Commission, against the decision of the SoE for not accepting a nomination. If a candidate duly nominated dies after being successfully nominated, then provisions of Section 32 apply. There is also the process for the disqualification of a candidate after he or she has been duly nominated.

❖ **After Nomination Process**

Section 36, prescribes the Preparations for Poll of the Electoral Act and the process for preparing the National Candidate List. A general overview of this regulatory provision provides that all the candidates for the 2018 General Election will be assigned a unique three-digit number. The numbers will be assigned by random draw which will be conducted publicly in the presence of candidates, media, and observers.

- Approved names of independent candidates and names of party candidates saved in PDF format in alphabetical order with the last name (if any) of the candidate appearing before the first name.
- Balls for the draw:
 - Balls of equal size and weight

- Each marked with number commencing from approved number: for e.g. number 508 as used in the 2018 General Election

Step 1: The list of candidates to be read out. In alphabetical order as it was saved after approval process.

Step 2: Equal to the number of candidates, the marked balls will be placed into a barrel that is large enough to allow the balls to move about freely when the barrel is rotated.

Step 3: The barrel will be rotated to ensure thorough mixing of the balls for equal probability of selection.

Step 4: A person nominated by the SoE is blind folded prior to the barrel rotation and once the barrel rotation has taken place is asked to pick the balls of the barrel one by one.

Step 5: As each ball is taken out, the unique three-digit number on the ball will be called out.

- The ball will be shown to the audience before it is placed into the basket.

Step 6: The picked three-digit number will be allocated to the first candidate on the list.

- All the numbers will be placed or allocated as they are called out for each subsequent candidate on the list until all the candidates have been allocated with the unique 3 digit number.

Step 7: The numbers will be entered electronically into the EMS System.

- A copy will also be entered and maintained in an excel sheet.

Step 8: After the draw;

- A National Candidate List is prepared which contains the names of the candidates.

National Candidate List

- The names in the National Candidate List will be arranged in sequential order, commencing with the first candidate who was allocated the first 3 digit number.
- The allocated number together with the photograph of each candidate will be recorded next to the name of each candidate on the National Candidate List (as proposed in the amendment, the National Candidate List to include Party Name and Party Symbol).

❖ **Voting Process**

Voting by ballot

Section 37 provides that the votes in a poll must be taken by ballot and the ballot of each voter must consist of a paper prepared in accordance with the Act; the provision also specifies other key requirements of for voting by ballot.

Voting Hours

- **Start: 7:30am**
 - The polling venue will be open to the voters all throughout the day;
 - Polling venue will not close for breaks.

- **Close: 6:00pm**
 - After all voters who are in the queue in the polling station have voted.

Election Official & Responsibilities

- **Presiding Officer:** In charge of the polling station.
- **Assistant Presiding Officer:** Provides assistance when required to the Presiding Officer and the Election Officials.
- **Venue Queue Controller:** Directs voter to correct polling station.
- **Inside Queue Controller:** Stands at the entrance of the Polling Station and is responsible for checking the voter's finger for ink prior to giving out the Voter Instruction Booklet.
- **ID Officer:** Confirm the voter's id before drawing a line to join the two arrowheads in the check off column of the Voter List.
- **Ballot Paper Issuer:** Explains to the voter the method of marking the Ballot paper and gives one (1) Ballot Paper to the voter.
- **Inker:** Ensures the voter's index finger or the little finger of the left hand is marked with indelible ink.
- **Ballot Box Guard:** Responsible for guarding the Ballot Box inside the Polling Station.

Voting Steps

Step 1: Voters will be assisted by the **Venue Queue Controller** who will direct them to their correct polling station.

Step 2: In each polling station, the **Inside Queue Controller** will check that;

- voters have no ink on their fingers;
- voters do not carry any materials containing instruction on how to vote.
- here the Voter is issued with the Voter Instruction Booklet

Step 3: The ID officer checks the name and photograph on the person's Voter Card to confirm the identity of the voter.

- Finds the voter's name on the Voter List;
- Confirms the persons ID and draws a line joining the two (2) arrowheads in the check off column.

Step 4: The ID Officer after confirming voters identification will than ask the voter to sign next to his/her name on the Voter List and direct the voter to the Ballot Paper Issuer.

Step 5: The Ballot Paper Issuer

- will instruct the voter on how to use the Voter Instruction Booklet and how to mark the Ballot Paper.
- will clearly inform the voter to mark the Ballot Paper and not the Voter Instruction Booklet.
- Will issue the Ballot Paper to the Voter.

Step 6:

- Using the Voter Instruction Booklet, the **voter** identifies the number for whom he/she wishes to vote;

- Using the pen attached on the voter screen, mark the Ballot Paper (Circle, tick or cross);
- Fold the ballot paper into four;
- Proceed to the Inker.

Step 7: Inker will;

- Request voter to fold Ballot Paper into four if yet to and hold it in his/her right hand;
- Clean the voter's left hand index finger with a tissue and dip that finger in the ink bottle;
- Direct the voter to the Ballot Box Guard.

Step 8: Ballot Box Guard will;

- Direct the voter to place the folded Ballot Paper in the Ballot Box;
- Ensure that voter does not drop his/her VoterCard or Voter Instruction Booklet in the Ballot Box;
- Kindly instruct the voter to leave the polling station after putting the Ballot Paper inside the Ballot Box.

Step 9: Once the Ballot Paper is placed inside the Ballot Box, the **voter** must leave the Polling Station and Polling Venue.

Additional ways of voting apart from Polling Day voting:

❖ **Postal Voting**

Postal Voting is provided under Sections 66-81, Division 5 of the *Electoral Act 2014* and encompasses the following.

- A registered voter may apply to be registered in the Register of Postal Voters in order to vote by post in an election.
- Application for postal vote can be made from the announcement of the date of election
- Application for postal vote must be received by the Supervisor of Elections 21 days prior to polling day
- Verification of postal ballot papers starts 7 days before polling day
- Receive of postal package 6pm on polling day

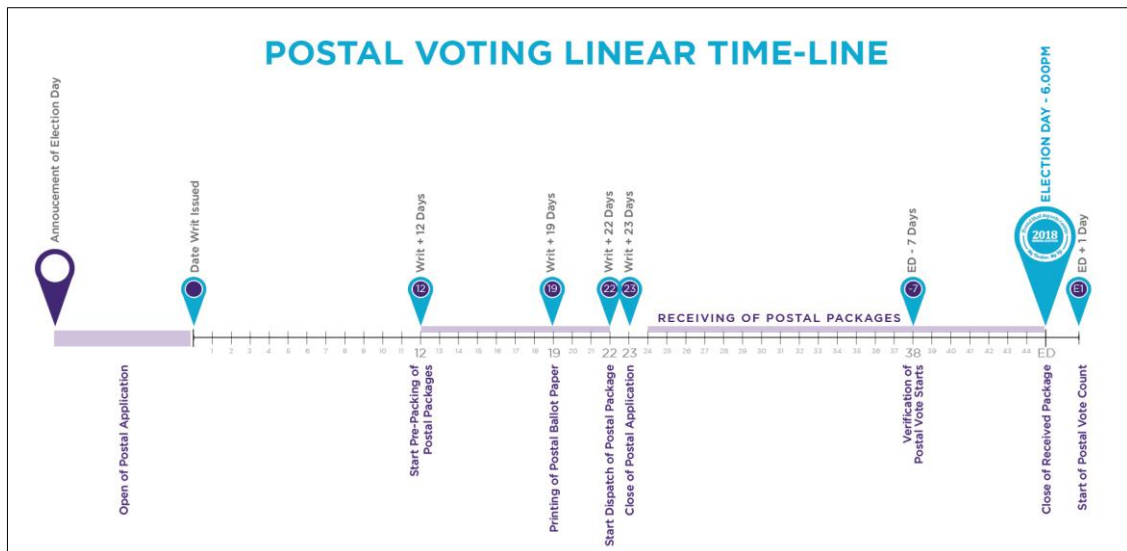
Eligibility for Postal Voting

- a) The applicant is living outside of Fiji or will be outside of Fiji on the polling day;
- b) Because of serious illness or infirmity, the applicant is unable to travel from his or her place of living to his or her assigned polling station;
- c) The applicant is under pre-trial detention or sentence of imprisonment;
- d) Because of the applicant's religious beliefs or membership of a religious order, he or she –
 - i.) is precluded from attending a polling station; or
 - ii.) for the greater part of the hours of polling is precluded from attending a polling station; or
- e) Because the applicant will be away from his or her usual place of residence and in a place not convenient to his or her assigned polling station due to work commitments on the polling day

Decision on Registration as a Postal Voter

As provided under Section 70(1) of the Electoral Act, the Supervisor must decide whether to accept or reject an application for inclusion in the Register of Postal Voters under section 67 within 48 hours, and if the application is delivered by person, the decision to register the applicant as a postal voter may be made on the spot

As provided under Section 70(5), a decision under subsection (4) may be appealed to the Electoral Commission within 1 day of the receipt of the rejection which must issue its decision on appeal within 1 day.



Postal Vote Packages

Will be delivered by:

- Overseas Courier Company
- Local Courier Company
- Or by the Fijian Elections Office

Return of Ballot Papers

Overseas

- A pre-paid return labelled courier bag will be included in your package

Local

- If couriered, a pre-paid return labelled courier bag will be included in your package
- If received by registered post, a pre-paid return labelled envelope will be included in your package
- Or can be dropped at any designated drop off point as deemed by the Supervisor of Election

❖ **Pre Poll Voting**

Division 6 of the Electoral Act 2014 – s82 to s88

- Electoral Commission authorizes voters to vote in advance of Polling Day

Grounds for a voter to vote in advance

- Resides in a locality that is remote, or number of voters is not sufficient for the establishment of a polling station

- Is a resident of a nursing home or health care facility
- Is a member of the Disciplined forces
- Is under pre-trial or sentence of imprisonment
- Is in any other place approved by the Electoral Commission

Pre-Poll Venues 2018			
Divisions	Total No Polling Venues	Total No. Pre Poll Venues	No. of Pre Poll Teams
Central	411	95	10
Western	467	170	20
Northern	336	136	15
Eastern	219	187	43
TOTAL	1433	588	88

Publication of Pre Poll Venues

- July 30th 2016
- March 18th 2017
- September 16th 2017

2018 General Election - Pre Poll Voting Timelines

- pre poll voting week is week before polling week
- seven (7) days pre poll voting period
- five (5) days polling, two (2) days travelling
- pre poll voting period from Writ Day + 35 to Writ Day + 42

❖ The Counting Process

The following provides details of the counting of the process, which were extracted from the Fijian Elections Office Polling Agent Handbook used for the 2018 General Election.

Firstly, when the last voter in the queue at 6:00 p.m. has voted, the Polling Day Workers will immediately setup the counting station. Polling Agents who are present inside the Polling Station at the close of poll can remain inside to witness the counting station setup.

Counting Station Set-Up: On Election Day all Ballot Papers for each Polling Station will be counted immediately after close of poll. However, the Postal Ballot Papers and the Pre-Poll Ballot Papers will be counted at the National Count Centre at the date and time prescribed by the SoE. Polling Agents will be notified to observe the counting process at the National Count Centre. The standard setup for counting either at the Polling Station or at the National Count Centre is as illustrated below:



Counting Process:

Step 1: Reconciliation of all Ballot Papers received by the Polling Station. Number of voters' signature on Voter List + Unused Ballot Papers + Spoiled Ballot Papers + Tendered Ballot Papers must equal the total number of Ballot Papers received by the Polling Station. If there is discrepancy in the reconciliation of the Ballot Papers received, a recount of the above is conducted.

Step 2: The five (5) numbered seals on the Ballot Box is checked and verified. If the five (5) seals have been reconciled, the Ballot Box is opened. If there is any discrepancy in the five (5) seals, the Ballot Box is not opened.

Step 3: Reconciliation of the number of Ballot Papers in the Ballot Box with the total number of signatures on the Voter List.

Step 4: Ballot Papers will be unfolded and then sorted into column number ranges as marked on the Ballot Paper before counting Ballot Papers for each candidate. Counting of all the Ballot Papers in each column range including the invalid Ballot Papers. Totalling each column to reconcile the total number of signatures on the Voter List.

Step 5: Sorting of Ballot Papers by candidate number, proceeding column by column. Counting the Ballot Papers for each candidate number that have received votes. The results are entered in the Protocol of Results worksheet in the PO Record Book.

Step 6: Once the Presiding Officer is satisfied that all the numbers on the Protocol of Results worksheet in the PO Record Book is correct, the results are transferred in the Protocol of Results.

❖ **Declaration of Results**

The following provides details of the declaration of results, as extracted from the Fijian Elections Office Polling Agents Handbook for the 2018 General Elections.

Declaration of Results:

After the result of the Polling Station is recorded in the Protocol of Results the Presiding Officer will sign off on it and this is witnessed by any three (3) Election Observers or Polling Agents.

Once the Protocol of Results is witnessed, the Presiding Officer will call the Call Centre to transmit the result recorded in the Protocol of Results.

From the Call Centre the result is submitted to the Results Centre where results from all Polling Stations and the Count Centre are received and released as provisional results until counting concludes for the General Election and the last result is submitted to the Results Centre.

Subsequently the Presiding Officer will place the original copy of the Protocol of Results inside the Tamper Evident Envelope and this will be transported to the Count Centre after the Polling Day Workers pack-up from the Polling Station.

The second copy (pink colour) is detached and placed in a publicly accessible area outside the Polling Station. The third copy (green colour) is placed inside the Ballot Box for safe keeping.

Transferring of Sensitive Materials:

When packing is completed the Ballot Box and the Tamper Evident Envelope containing the original Protocol of Results, Presiding Officer's Record Book, Voter List and Tendered Ballot Papers is collected by the Fijian Elections Office Officials. These sensitive materials are then transported to the Count Centre by Fijian Elections Officials and the Fiji Police Force. Any Polling Agent can accompany the transport of the sensitive materials to the Count Centre. However, this will be at the cost of the Polling Agent.

Final National Results Tally:

Once all results from the Polling Stations and the Count Centre are received, the Results Centre will prepare the Final National Results Tally and this is signed off by the SoE. The SoE will then provide the Final National Results Tally to the Electoral Commission who will allocate seats to the candidates who have been elected as Members of Parliament. The Final National Results Tally will also be publicly displayed and made available to Polling Agents upon request.

❖ Allocation of Seats in Parliament

The Electoral Commission (EC) allocates the 51 seats of the new Parliament (that is, it determines which candidates from which political parties have been elected).

Step 1:

EC receives the Final National Results Tally from the Supervisor of Elections. The Tally will contain:

- The total number of votes received by each candidate.
- The total number of votes received by each political party.

The party list of each political party, which will have been arranged in descending order (that is, the party candidate receiving most votes for a party will be at the top of its list, and the one receiving least votes at the bottom). A table showing an example of the aforementioned is provided below.

**Table 1:
Final National Results Tally – Section 103 (4)**

	Party A	Votes		Party B	Votes		Party C	Votes
149	Name	20,119	218	Name	5,400	211	Name	10,200
393	”	18,234	300	”	5,264		”	10,060
201	”	15,413	379	”	4,151		”	4,113
314	”	10,279	182	”	4,607		”	3,717
255	”	7,048	394	”	2,014		”	3,221
195	”	6,824	142	”	1,207		”	1,233
141	”	6,041	276	”	918		”	1,052
382	”	4,422	148	”	420		”	1,084
316	”	2,433	End of list				”	900
135	”	2,100		Total	23,441		”	882
List continues		....					List continues	....
	
	Total	117, 064					Total	53,890

	Party D	Votes		Party E	Votes		Party F	Votes
392	Name	4,398	389	Name	41,154	210	Name	10,504
150	”	3,911	302	”	25,556	144	”	10,368
200	”	3,252	380	”	13,308	391	”	4,313
256	”	2,826	180	”	10,002	278	”	3,997
313	”	2,016	385	”	8,743	138	”	3,521
191	”	1,818	147	”	4,913	383	”	1,535

136	”	1,127	279	”	999	146	”	1,352
384	”	904	151	”	975	301	”	1,304
361	”	887	152		972	249	”	999
145	”	803	377		890	370	”	982
List continues		.... ....		List continues			List continues	........
				Total	221,457			
	Total	298,112					Total	67,099
Independent No. 1			Independent No. 2					
		Votes			Votes			
153	Name	27,504	317	Name	10,462			

Step 2:

- EC takes the totals in Table 1 for each party and independent candidate and puts them at the head of separate columns under the name of each such party or independent candidate.

TABLE 2 – Candidate allocation form

Party A	Party B	Party C	Party D	Party E	Party F	Ind 1	Ind 2
117,064	23,441	53,890	29,112	221,457	67,099	27,504	10,462

Step 3:

- EC adds all the totals together.
- The resultant figure is the total number of valid votes cast in the election.
- EC determines what constitutes 5% of the total.
- Any party or any independent candidate receiving less than 5% (called the threshold) will be declared eliminated.
- TABLE 2 – Candidate allocation form
- Total number of votes: 550,029 (e.g.)
- Threshold: 27,501.45 (e.g.)
- Party B and Independent No. 2 are eliminated as not reaching the threshold.

Step 4:

- EC now begins to determine the number of seats to be allocated to the remaining parties.

- The number of seats allotted to each party will be in proportion to the number of votes gained by that party as against the other remaining parties and independent candidates.
- This is worked out using the Largest Divisor Method, also known as the D'Hondt Rule.
- The total number of votes gained by each party is divided by 1, then by 2, then by 3 and so on.
- The results of the division (called “quotients”) are put in columns under the name of each party.
- For an independent candidate, the number of votes is divided only by 1.

Divisor	Party A	Party C	Party D	Party E	Party F	Ind 1
1	117,064	53,890	29,112	221,457	67,099	27,504
2	58,532	26,945	14,556	110,729	33,550	
3	39,021	17,963	9,704	73,819	22,366	
4	29,266	13,473	7,278	55,364	16,775	
5	23,413	10,778		44,291	13,420	
6	19,511	8,982		36,910	11,183	
7	16,723			31,637	9,586	
8	14,633			27,682	8,387	
9	13,007			24,606		
10	11,706			22,146		
11	10,642			20,132		
12	9,755			18,455		
13	9,005			17,035		
14	8,362			15,818		
15				14,764		
16				13,841		
17				13,027		
18				12,303		

19				11,656		
20				11,073		
21				10,546		
22				10,066		
23				9,629		
24				9,227		
25				8,858		

Step 5:

- EC then determines, which the 50 highest quotients are.
- EC marks these quotients by putting a circle around each of them.

Divisor	Party A	Party C	Party D	Party E	Party F	Ind 1
1	117,064	53,890	29,112	221,457	67,099	27,504
2	58,532	26,945	14,556	110,729	33,550	
3	39,021	17,963	9,704	73,819	22,366	
4	29,266	13,473	7,278	55,364	16,775	
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13	9,005			17,035		
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15				14,764		
16				13,841		

17				13,027		
18				12,303		
19				11,656		
20				11,073		
21				10,546		
22				10,066		
23				9,629		
24				9,227		
25				8,858		

Step 6:

- EC then determines how many circled quotients there are in the column of each party and independent candidate, and writes that number down for each column.
- The number of circled quotients in each column is the number of seats the EC must allot to that party or independent candidate. It is their proportional share of the 51 seats of Parliament.

Divisor	Party A	Party C	Party D	Party E	Party F	Ind 1
1	117,064	53,890	29,112	221,457	67,099	27,504
2	58,532	26,945	14,556	110,729	33,550	
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9	13,007			24,606		
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11	10,642			20,132		
12	9,755			18,455		

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14	8,362			15,818		
15				14,764		
16				13,841		
17				13,027		
18				12,303		
19				11,656		
20				11,073		
21				10,546		
22				10,066		
23				9,629		
24				9,227		
25				8,858		
Seats	12	5	3	23	6	1

Votes gained & percentage of remaining parties' votes

Party A	Party C	Party D	Party E	Party F	(Ind 1)
117,064	53,809	29,112	221,457	67,099	(27,504)
23.96%	11.01%	5.96%	45.33%	13.73%	
Seats won & percentage of 49 seats (d'Hondt)					
12	5	3	23	6	(1)
24.49%	10.2%	6.12%	46.94%	12.24%	

Step 7:

- EC must now determine which candidates of each party are to occupy the seats just allotted to that party.
- This is done by looking back at the party lists, sorted in the descending order of votes gained by each candidate of the party (as provided by the Supervisor of Elections).
- The topmost candidates on each list occupy the number of seats the parties have been respectively allotted (for example, candidates 211, 140, 390, 277 & 137 of Party C are to be allotted that party's 5 seats).

**Table 1:
Final National Results Tally – Section 103 (4)**

	Party A	Votes		Party B	Votes		Party C	Votes
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201	”	15,413	379	”	4,151		”	4,113
314	”	10,279	182	”	4,607		”	3,717
255	”	7,048	394	”	2,014		”	3,221
195	”	6,824	142	”	1,207		”	1,233
141	”	6,041	276	”	918		”	1,052
382	”	4,422	148	”	420		”	1,084
316	”	2,433	End of list				”	900
135	”	2,100		Total	23,441		”	882
List continues						List continues
	
	Total	117,064					Total	53,890

	Party D	Votes		Party E	Votes		Party F	Votes
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256	”	2,826	180	”	10,002	278	”	3,997
313	”	2,016	385	”	8,743	138	”	3,521
191	”	1,818	147	”	4,913	383	”	1,535

136	”	1,127	279	”	999	146	”	1,352
384	”	904	151	”	975	301	”	1,304
361	”	887	152		972	249	”	999
145	”	803	377		890	370	”	982
List continues		....		List continues			List continues	....
	
				Total	221,457			
	Total	298,112					Total	67,099
Independent No. 1			Independent No. 2					
		Votes			Votes			
153	Name	27,504	317	Name	10,462			

2.2 Deliberation on background to Proposed Amendments to the Act

Furthermore, the Committee had discussions with the Electoral Commission and the Supervisor of Election regarding their views on the proposed amendments to the Bill. The Committee was advised that the proposed amendments are a result of the consideration given to the recommendations put forth by the Electoral Commission and the Supervisor of Elections provided in the *Joint Report*.

1. Voter Lists

As noted from the recommendations in the *Joint Report*, it was recommended that the legal framework is amended to allow the Electoral Commission to fix appropriate timelines for the FEO to finalize and publish Provisional Voter Lists. It may be procedurally prudent that the first provisional voter list is available at-least 18 months before the first date the Writ for the General Election can be issued. Consideration should be given to Political Parties and other stakeholders to carry out verification exercises and report to the FEO inaccuracies in voter lists for rectification. The Electoral Commission may set out appropriate procedures for dealing with voter list verification. The FEO may need to re-look at its training of the Election Officials to minimize issues in locating names of voters in the Voter List.

2. Polling Venues

It is noted that the Fiji National Polling Venues Directory 2017 was the first ever comprehensive compilation of Polling Venue information from around the country. Venues that had been identified and selected by a committee comprised of various stakeholders. As per the *Electoral Act 2014* the Electoral Commission was able to approve these venues officially for use once the Writ was issued in 2018. The FEO had

continuously published the venues and the details, however, this did not carry legal authority and was merely advisory in nature.

It was recommended that the legal framework is amended to allow the FEO to propose a full list of venues for the following General Election for approval from the Electoral Commission at least two (2) years prior to the first date the Writ can be issued. The procedural framework would also be required to ensure that at-least a three (3) months consultation process is available for comments and suggestions from Political Parties and other interested stakeholders in respect of these polling venues. Following from this process, the Electoral Commission would finalize the Polling Venues and approve the same for publication. It would be prudent to consider allowing the Electoral Commission to approve additional or changes to existing venues as per the recommendation of the FEO and the process ought to accommodate an expedited process keeping in mind the tight operational timeline closer to the election.

3. Pre-Poll Polling Venues

Pre-Poll venues for the 2018 General Election had been identified in the Fiji National Polling Venues Directory 2017. The final approval for the Pre-Poll venues was done by the Electoral Commission in 2018 close to the announcement of the Writ. It was recommended that the legal framework is amended to allow the FEO to propose a full list of venues to be classified under Pre-Poll at least two (2) years prior to the first day the Writ can be issued. The procedure to be adopted as proposed above for finalizing polling venues.

4. Overseas Voters

The FEO recorded over 7,000 voters registered overseas. It was recommended that consideration is given to the setting up of a special polling station in Suva for voters who may be registered overseas, and did not apply for a postal ballot, to attend to cast their vote. Consideration should be given to allowing the ballot boxes from this Polling Station to be counted at the National Count Centre in addition to the relaxation of the maximum of 500 voters per polling station rule specifically for this venue.

5. Overseas Voter Postal Vote Applications

The FEO recorded over 7,000 registrations from Fijians who lived overseas, however, only 1,187 voters applied for a postal vote. At the close of the application period, the FEO found that a large number could not successfully complete and forward their applications as they did not wish to engage the services of a Notary Public as further costs were associated with the exercise. It was recommended that the legal framework is amended to facilitate the application process by overseas voters without the need to complete a statutory declaration. It will be possible for the FEO to verify voter information directly from its records to avoid fraudulent activity. Procedurally, the FEO would then be able to facilitate the overseas Postal Ballot Application online.

6. Election Timetable

The 2018 General Election recorded the first election in Fiji's history wherein the timetable for various activities and milestones were widely published. It was therefore recommended that the Electoral Commission publishes the timelines for key milestones leading up to a General Election at least two (2) years prior to the first date the Writ for the next General Election may be issued. This will boost the electoral understanding and

preparation for all stakeholders. It is also useful to conduct a workshop to train Political Party Administrative officials by the FEO.

7. Voter Instruction Booklets

The Voter Instruction Booklet is the only material that a voter is permitted to take into the Polling Station to the voting screen when they come to vote. In 2018, it was noted that some areas in Fiji complained of not having any party come to them to campaign. Accessibility and financial issues may have also prevented candidates to successfully disseminate their numbers to some areas.

Since Fiji has a modified proportional representation system where voter votes for a candidate and that vote is then added to the overall party vote to determine the threshold, it is prudent to consider sorting the candidates listed in the Voter Instruction Booklets by their Political Party. It was also recommended to list candidates for parties by alphabetical order of surname. It is anticipated that the above recommendation will reduce the number of errors in the number for each candidate while at the same time allow parties to properly educate voters on their candidate numbers.

8. Definition of Campaign Period

It was recommended that the legal framework clarifies the definition of ‘campaign period’ so as to allow proper enforcement of the Electoral Act 2014. It is recommended that consideration be given to declare the official campaign period to commence at-least one (1) month prior to the first date the writ can be issued and to conclude on Election Day.

9. Use of Government Resources

It was recommended that the legal framework is reviewed and clarity is made on use of Government resources during the campaign.

10. Enforcement of Blackout Period

It was necessary that any activity that is in breach of the Blackout Period is restrained without delay. The current legal framework allows for subsequent prosecution of offenders, however, it does not immediately stop the breach of the law. It was recommended that the legal framework is amended to empower the Supervisor of Elections to be able to issue an immediate cease and desist directive to any individual, Political Party or entity or to remove any material that is in breach of the blackout period. Any person who may have received such notice may appeal for a reconsideration by the Electoral Commission.

11. Provisional Results

It was noted that despite numerous trainings and awareness, some political parties demonstrated lack of understanding of Provisional Results. Publishing provisional results is a common practice in numerous countries and it is recommended that Fiji amends its legal framework to allow the FEO to publish the Provisional Results in terms of totals for candidates and totals for parties until 7am the day after the election.

12. Electoral Petition Rules

It is recommended that rules governing the handling of Election Petitions to the Court of Disputed Returns is promulgated expeditiously.

13. Final Report on the General Election

It was found in 2018 that there is significant constraint on the part of the Supervisor of Elections to effectively deliver its report within 30 days of the General Election in the event petitions are moved in the Court of Disputed Returns. In the same like, there is significant constraints placed on the Electoral Commission and the Supervisor of Elections to publish a report on the Election in three (3) months.

It is recommended that consideration be given to extend the timeframes to allow for the Petition timelines. It is also necessary to consider that the joint report on the General Election be made to be due at least six (6) months following the election to allow for comprehensive review and reflection on the election. It will also allow the Electoral Commission and the FEO to properly assess and analyse the recommendations and findings of the Observers of the Election and if necessary incorporate the same in their own report. Such timeframes will also facilitate appropriate time for necessary consultations with Agencies such as the Solicitor-General's Office, the Office of the Auditor General and FICAC to name a few.

2.3 Bill Summary

The Committee believed that it be important to also capture in this Report, the necessary changes the proposed law is intending to bring about to the changes to the election regulatory framework. This would conveniently provide the reader of this Report with the aforementioned information about the Bill. The Bill summary is provided below².

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.

Clause 2 of the Bill amends section 2 of the Act by redefining the terms “banker’s cheque”, “election official” and “polling”. The definition of “banker’s cheque” is amended to not include a personal cheque. The definition of “election official” is amended to refer to those appointed under the Act, and not just Section 42 of the Act. The definition of “polling” is amended to cater for force majeure events. Clause 2 of the Bill also inserts new definitions for the phrases “campaign period” and “designated area”. The definition of “campaign period” specifies the period in which campaigning can take place. The definition of “designated area” clarifies that a designated area is an area designated by the Supervisor of Elections (‘SOE’) for the purpose of observing electoral processes.

Clause 3 of the Bill amends section 6 of the Act to clarify that SOE administers the registration, conduct, funding and disclosures of political parties.

Clause 4 of the Bill amends section 14 of the Act to allow additional time for SOE and the Electoral Commission to compile a comprehensive report.

Clause 5 of the Bill amends section 21 of the Act to specify the close of party registration and to also reflect current content of the writ.

² Explanatory Note to the Bill; *Electoral (Amendment) Bill 2020* (Bill No. 50 of 2020), pages 7-12.

Clause 6 of the Bill amends section 25 of the Act to correct a typographical error.

Clause 7 of the Bill amends section 30 of the Act to avoid confusion by deleting subsection (1)(a) and (b) and merging it into a new subsection (1).

Clause 8 of the Bill amends section 36 of the Act to allow the National Candidates List to contain the party name, the party symbol or any other information as approved by SOE.

Clause 9 of the Bill amends section 40 of the Act to ensure that institutions comply with the voter list requirement of FEO. Clause 9 of the Bill also amends section 40 of the Act to ensure that political parties and stakeholders carry out verification exercises and report inaccuracies in the voter list to FEO for rectification. Clause 9 of the Bill also amends section 40 of the Act by deleting the word “prescribed” and substituting it with the word “approved” for consistency.

Clause 10 of the Bill amends section 41 of the Act to allow SOE to submit the physical locations of all polling stations and polling venues to the Electoral Commission for approval. Clause 10 of the Bill also amends section 41 of the Act to allow the Electoral Commission to publish the approved polling venues within 30 days. Clause 10 of the Bill also amends section 41 of the Act to allow overseas registered voters who are in Fiji during the time of election to cast their votes in Suva.

Clause 11 of the Bill amends section 45 of the Act to specify access areas for polling agents and allow FEO to control the number of polling agents at any given location.

Clause 12 of the Bill amends section 50 of the Act to allow FEO service providers who are appointed to work on polling day to vote at the polling station they are working at or at a polling station convenient to their location of assignment.

Clause 13 of the Bill amends section 51 of the Act by omitting the word “occupation” to make it consistent with the voter list.

Clause 14 of the Bill amends section 53 of the Act to simplify the administration of the voting process by making the voter sign the voter list first and then receiving the ballot paper. Clause 14 of the Bill also inserts a new subsection (8A) in the Act to avoid ambiguity by clarifying that the presiding officer can only leave the polling station to assist a voter who resides within the polling venue boundary¹¹ and is unable to cast his or her vote at his or her assigned polling station due to illness, physical disability or for any reason approved by the Supervisor, only after all the voters in the queue at the polling station have voted.

Clause 15 of the Bill amends section 57 of the Act to make it consistent with section 47(c) of the Rights of Persons with Disabilities Act 2018.

Clause 16 of the Bill amends section 60 of the Act to allow polling agents to observe more electoral processes other than the processes at the polling station.

Clause 17 of the Bill amends section 70 of the Act to enhance the administration of postal applications.

Clause 18 of the Bill amends section 73 of the Act to clarify references made to the “secret envelope” in section 75 of the Act.

Clause 19 of the Bill amends section 77 of the Act to clarify FEO’s processes prior to despatch of postal ballots.

Clause 20 of the Bill amends section 79 of the Act to correct a grammatical error and make it more administratively practical for FEO to continue verifications when postal count starts.

Clause 21 of the Bill amends section 81 of the Act so that the counting of postal ballot papers can commence after close of polling on polling day.

Clause 22 of the Bill amends section 83 of the Act to specify that the presiding officer is accompanied by at least one other election official and that the procedures under clause 57 of the Bill are followed.

Clause 23 of the Bill amends section 92 of the Act to reflect that there is only one ballot box per polling station.

Clause 24 of the Bill amends section 100 of the Act to allow accessibility of the voter list for analysis purposes after the conduct of the general elections.

Clause 25 of the Bill inserts a new section 102A in the Act to allow SOE to continuously publish provisional results totals for candidates and political parties upon receiving the first protocol of results from the presiding officers until 7 am on the day after polling day.

Clause 26 of the Bill amends section 104 of the Act to make it consistent with section 53(3) of the Constitution of the Republic of Fiji.

Clause 27 of the Bill amends section 109 of the Act to provide additional time for SOE to submit a report to the Electoral Commission of the results of the election.

Clause 28 of the Bill inserts a new section 109A for the determination of the campaign period before a general election.

Clause 29 of the Bill amends section 113 of the Act to clarify that subsection (2) does not apply to a public officer who provides information or security services in the performance of their official duties. Clause 29 of the Bill also ensures that Government vehicles are not used to conduct campaign activities unless the vehicles are used for the purposes of providing security.

Clause 30 of the Bill amends section 114 of the Act to specify the timeframe within which the offence is applicable.

Clause 31 of the Bill amends section 116 of the Act to allow SOE to remove or direct any political party, candidate or police officer to remove any material that is in breach of the campaign rules.

Clause 32 of the Bill amends section 140 of the Act to specify the timeframe within which the offence is applicable.

Clause 33 of the Bill amends section 141 of the Act to specify the timeframe within which the offence is applicable.

Clause 34 of the Bill amends section 144 of the Act to specify the timeframe within which the offence is applicable.

Clause 35 of the Bill inserts a new section 144A to introduce provisions in the Act to allow SOE to deal with content published by political parties or persons that may contain false information or designed to diminish public confidence in the performance of any duty or function of SOE and the Electoral Commission. These provisions also create the framework for the correction or removal of such information. The provisions further empower FEO to require any service provider to remove such information. The Electoral Commission and SOE highlighted that false information posed high risk to their activities in the last two elections, and as such the penalties under this section are high. Although this does not stop a court from awarding penalties best suited to the circumstances of the offending.

Clause 36 of the Bill amends section 153 of the Act to allow SOE to destroy physical records in relation to an election 6 months after the election unless a court orders otherwise.

2.4 Evidence received via public consultation

As part of the review, the Committee conducted public consultation on the Bill, in various key locations around Fiji and also called for written submissions from interested persons or entities. This consultation ensured that the public participated in the legislative process, which is fundamental to democracy. All the submissions received were considered and deliberated on extensively. Various individuals and entities including registered political parties participated in the public consultation. The main points and issues noted from the submissions are summarised below.

At the outset, members of the public that provided their views, commended and supported the introduction of the Bill given that it aims to introduce provisions that will assist in making the voting process simpler.

Apart from this commendations from the members of the public, there were also submissions, which highlighted a few pertinent issues, which the Committee placed reasonable emphasis on.

To begin with, submissions noted that there were issues with Clause 8 which amends Section 36 of the Act. The Inclusion of a provision that allows the Party symbols or Party names to be included in the National Candidates List was welcomed and commended.

This was also one of the recommendations of MOG in 2014 and in 2018 and also recommended by the Young Electoral Commission of 2014.

It was argued that the power to allow whether party symbols and party names in the national candidate list, must not be vested in the Supervisor of Elections as proposed in the Bill. It should be stipulated in the Act, providing for the Party symbol and name to appear on the List. The use of the word “may” for the proposed amendment in Section 36 (6) of the Act is a concern. It was argued that the use of the word “may” suggests that it is optional and not mandatory to include party names or party symbols or any other information approved by the Supervisor of Elections.

If taking the premise that international best practices are being followed then it would be perceived that international instruments that provide for internationally accepted practices are also adhered to. It was noted that certain key Articles of international instruments that provide guidance on elections is somewhat being ignored; in this instance, General Comment 25 regarding Article 25 of the ICCPR, which clearly states that positive measures must be taken to address specified issues like; “illiteracy, language barriers, poverty, or impediments to freedom of movement” that are a hindrance to a person exercising their right to vote. Paragraph 12 of the said General Comment goes on to say;

“Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice.”

It was noted that the General Comments of International Conventions and treaties alike to which Fiji has committed to, must be considered in policy making as they are guidelines for State parties on treaty provisions, issues and methods of work or approaches to implementing provisions. Therefore, it is imperative to utilise such guidelines that provides support to Fiji’s commitments to human rights and in this context, a reform to electoral processes.

Concern was raised on the tight timeframe provided for submitting voter lists as per the amendment provided in Clause 9, which specifies that seven days, from the dissolution of Parliament, is given to heads of institutions around Fiji (prisons, hospitals, health centres, detention centres, etc.) to send lists of their residents, who are eligible to vote, to the Supervisor of Elections. This timeframe may not be sufficient. Realistic timelines need to be incorporated to ensure that processes are effectively and efficiently followed to allow a free, fair and credible election. Thus it was recommended that the proposed 7 days for a list of residents to be forwarded to the Supervisor of Elections as per section 40 (4), be reviewed to include a longer period.

Clause 10, which amends Section 9, intends to set up a special polling venue in Suva for overseas registered voters to cast their votes if they happen to be in Fiji at the time. Certain submitters believe that Fijian voters that are overseas residents must cast their votes by postal ballot for which they should be allowed to apply while in Fiji. Other submitters believe that this new amendment is commended, however polling venues for overseas should be set up in other key areas around Fiji, such as the Western Division.

Certain submitters are against the publishing of Provisional Results because these are not official results and cause confusion amongst the public when the release and publishing of it stops as per the requirements of the law. Additionally, it was also suggested that what provisional results are, is to be clearly explained to the public and how it differs from the Official Results.

Comments from submitters also noted that Clause 27, which amends Section 109, provides the SoE three months to submit a report to the Commission on the election results instead of the existing one month. Elections are important processes. Certain submitters noted that it shouldn't take the Supervisor three months to submit his report on election results which is all the Act requires. The results are announced within 2-4 days of the close of polling so why should one month not be sufficient?

There was concern raised on the proposed amendments to Section 116 of the Electoral Act as provided in Clause 31. It is understood that the likely intention of the provision is for the purpose of protecting voters and election officials, however, it should be noted that the proposed amendment be reviewed to ensure respect for freedom from unreasonable search and seizure as per Section 12 (1) of the *Constitution of the Republic of Fiji*.

Additionally, the Clause will provide penal provisions for breaching the provisions, which also includes a police officer. It was noted that the police officers will also be held accountable for not following the directives of the SoE, as provided under the provision.

The proposed amendments to Sections 140 (1), 141 and 144 (1) are not supported by certain submitters considering that the conditions are limited to the campaign period. It was submitted that the sections not be amended for the restricted period as this would not capture any related offences that would take place outside the campaign period. For instance, if the words "During the campaign period" substitutes the term "Any" in Section 140 (1), this would then be understood as a person would only be charged and found guilty for the related offence at the relevant time (during the campaign period). The provision would not include a person who commits the same offence but outside of campaign period and thus submitters shared the sentiment, "*Would this then defeat the purpose of protecting against undue influence or bribery for election purposes?*"

Comments on Clause 35 noted that the Clause seeks to insert a new provision after Section 144, regarding the publication of false statements by political parties, which is likely to influence the outcome of an election or diminish public confidence in the performance of duty or function of the Supervisor and the Electoral Commission.

Submitters argued that while they do not subscribe to the propagating of false information, they believe this carries with it the potential for abuse by the Elections Office. The offence carries a heavy penalty with a fine of up to \$50,000 or a 5 year jail term or both, in contradiction of Recommendation 5 of the MOG Report which says that penalties for electoral offences should be proportionate and generally civil in nature rather than criminal. The amendment does not state whether the offenders will not be prosecuted if they take corrective action under s144A (2). This needs to be clarified. These submitters believe this to be a draconian provision. The appointed arbiter in this case is the Electoral Commission. The Commission may also be affected by the alleged

false information. It was recommended that there be appointment of a completely independent arbiter to deal with the matter. Preferably, the matter should be referred to the Courts, as it would deem to fall in the category of a criminal offence.

Furthermore it was argued that the Supervisor's Office and the Electoral Commission are now closely aligned with the SOE functioning as secretary to the Commission. There is little likelihood of the Commission acting independently of the SOE in such instances. It was also noted that this is an issue that has also been raised by MOG and that there is a lack of public trust in the electoral processes which primarily implies a lack of trust in the Fijian Elections Office and the Electoral Commission. This makes the case for an independent arbiter or referee even more crucial.

The existing Clause provides for a fine of \$10,000 and/or up to a five year jail term for a similar offence against a candidate. Submitters questioned, why such a steep fine when the Elections office is involved.

Submission noted that Clause 36, which amends Section 153, allows the FEO/SoE to destroy election records in 6 months after a general election instead of the one year currently prescribed in the Act. Submitters find this amendment not acceptable. It was submitted that records should be kept for at least a year before they are destroyed. It should be noted in cases of electoral fraud, time limit is longer than 3 months, whereby a challenge is being mounted. Records should therefore be kept for a longer period before they are destroyed.

A copy of the written submission and transcripts of the submission received can be obtained from the online Appendices of this Report, which can be accessed via the parliament website: www.parliament.gov.fj.

2.5 Discussions with the Electoral Commission and Supervisor of Elections

The Committee also had discussions with the Electoral Commission and the Supervisor of Elections, whereby the two electoral management offices gave detailed submissions on the Election process and the proposed amendments to the Election laws. A summary of the main points from the submission is provided below.

Summary of the submission by the Electoral Commission.

The Commission began by highlighting that it is regarded as best practice to make changes to electoral laws well in advance of an election. It also notes the efforts to reform some of the prescribed procedures in the laws to make them consistent practically with the international norms around such activities.

Following the 2018 General Election, the Electoral Commission and the Supervisor of Elections issued a Joint Report, whereby various recommendations were made on the legal and operational frameworks. It was advised that the rationale for the recommendations for changes was due to the fact that there were 2 general elections under the framework and it was a suitable time to determine which of the projects, policies and procedures are practical and contextually relevant in Fiji's electoral system.

The Commission highlighted the recommendations which were put forth in the 2018 Joint Report, provided in page 25 and provided the Committee with their view on the proposed amendments to the election law.

The Electoral Commission submitted that it is recommended that the law is amended to require the FEO to publish provisional voter lists at-least 18 months before the first date the writ can be issued. This is reflected in the Bill whereby Section 40 (8) of the Electoral Act is proposed to be amended to require that the provisional Voter List is published annually on or before 30 September every year. The amendment will allow Political parties to work with the FEO to verify and update the voter lists.

It was submitted that that the law is amended so that the FEO proposes the full list of polling venues for the next election at-least 2 years prior to the first date the writ can be issued. This is reflected in the proposed amendment to Section 41 (7), which would now require the SoE to identify the physical locations of all polling venues and submit the list of all such venues to the Electoral Commission for approval by 30 June every year. Section 41(8) requires the Electoral Commission to publish the approved list of venues within 30 days of receipt of the list by the SoE.

This amendment provides the SoE with an approved list of venues to register voters during the election cycle. Political parties will also have a conclusive idea on the number of venues on an annual basis.

Additionally, the Commission submitted that that a polling arrangement is made for voters, who had registered overseas and are in Fiji but did not apply for postal voting, to be able to vote. This is reflected in the proposed amendment to Section 41(9), which would now allow the Supervisor of elections to establish a polling venue in Suva for voters who are registered overseas but are not postal voters to attend to cast their vote and special procedures for the conduct of polling at such polling stations as approved by the Electoral Commission. The introduction of this provision allows the FEO to facilitate franchise for voters who may have travelled to Fiji after the Writ to be able to vote. It would also allow any voter that may have missed the deadline for postal voting to travel to Fiji and cast their vote.

The submission also highlighted that the National Candidate's list that is given to every voter when they come to vote, should contain political party information. Both the Commission, through the Joint Report and the Multinational Observer Group ("MOG") suggested that the National Candidates List be revised to include Party identification. The proposed amendment to Section 36(6) will now remove the restriction on political party identification and would allow the SoE to determine whether it contains the Political Party name or Symbol or any other information as the SoE approves.

This amendment will allow a voter to identify the candidate of their choosing, by the Party. Since nominations in Fiji are by Party Lists, and also considering that the electoral system is based on parties, having the symbols or names of parties on the National Candidates list is envisioned to make the process more consistent.

Moreover, the Commission submitted that proposed amendment to Section 109, which would now define campaign period, in the law, is useful for effective monitoring and implementation of the laws. The Commission believes that the amendment will clarify campaign laws and the enforcement of the rules relating to campaign. The setting of a proper timeframe also allows all stakeholders to prepare for the election. This was also a recommendation by the MOG.

The submission also noted that the proposed amendment to Section 113, which makes it unlawful to use Government Vehicles to conduct campaign, is a very important amendment. This amendment is necessary to prohibit the use of state resources in the use of Campaign. It was advised that in 2018, the media highlighted one candidate who went in his official vehicle to campaign in Cunningham. The change in the law is a means of levelling the playing field during elections.

The Commission submitted that the proposed amendment to Section 116 of the Act, which authorizes the SoE to remove or to direct any political party, candidate or police officer to remove any material that is in breach of the campaign rules; is an essential amendment to the election law. This amendment enables the SoE to enforce the Campaign blackout and to issue directives to remove campaign material that is in breach of the law.

The Commission submitted on the proposed amendment to Section 102 of the Act. The amendment will allow the SoE to publish the provisional results until 7am the day after polling. It was advised that the provisional results are a necessity in developing democracies as it signifies the progress in count and helps to build peace and calm in the stakeholders. These results are normally received through phone or electronically and are intended to be indicative only.

Furthermore, the Commission commented on the proposed amendment to Section 109. Based on the experiences from the two previous election years (2014 and 2018), the Commission, suggests that 3 months be provided to the SoE to submit the post-Election report. This amendment facilitates the compilation of the final report after the conclusion of the Petition Period which is 42 days (21 days to file and 21 days for their decision). The Commission advised that in 2018, it was difficult, for the SoE to compile the final Report while the Election Petitions were in session in court.

Summary of submission by the Fijian Elections Office

In the interpretation section, there has been amendments to certain definitions to, firstly, create more access and, secondly, to also make it consistent with the other pieces of legislation. So, a banker's cheque is redefined not to include a personal cheque. This would avoid confusion during the nomination period and will ensure that a personal cheque is not accompanied with nomination of candidate form either for a party or an independent candidate. The meaning of 'campaign period' is inserted to clarify the period in which campaign for the General Election is to take place. The definition of 'designated area' has been amended to allow the Supervisor of Elections (SOE) to give access to political party agents and the observers to areas of the electoral process that is not dealing with polling only. Election officials has been amended to refer to those staff appointed under this Act by the SOE.

The definition of polling has also been amended to cater for force majeure events. In terms of the powers of the SOE, the duties and the powers of the SOE is specified in Section 6 of the Act. The amendment is to clarify the SoE's role, which is not only to administer registration but also regulate the conduct, funding and disclosures of political parties.

Further the amendment to Section 116 allows the SOE to remove or direct any political party candidate or police officer to remove any material that is in breach of the campaign rules. This amendment gives effect to the protection of the voters from campaign during the Blackout Period. The amendment to Section 6 is an administrative amendment merely to make the laws consistent. The SOE is the Registrar of Political Parties under the Political Parties Act and the function of the Registrar is not only to administer the registration of the party, but to also regulate the conduct, funding and disclosures of the parties. So, that has now been also reflected in the Electoral Act. As for Section 116, previously the law prohibited anyone from campaigning in the 48-hour period before the Election, however, if there was a breach, it would be a matter referred to FICAC for them to prosecute. There were no powers to immediately have the person remove the breach.

Now, that was ineffective because it was difficult to monitor those activities and then enforce the laws. Now, the Supervisor of Elections can direct someone, "You are now in breach of the campaign rules, you have to remove this," and they have to follow that.

For transparency in election administration, the SOE is required to submit a report to the Electoral Commission within one month under section 109(1), and the Electoral Commission and the SOE are required to submit a joint report after the Election within three months under section 14(g) of the Electoral Act. The amendments that have been proposed in the Bill is for the SOE to submit his report within three months and the joint report is to be submitted within the six months. The justification for this is that it is to allow time for the SOE and the Electoral Commission to compile comprehensive reports that reflect on the election. It is actually a recommendation by the Electoral Commission and SOE as well in our joint report for 2018.

The experience in 2014 and 2018 General Elections was that there were some significant constraints on the Electoral Commission and the SOE to effectively deliver their respective reports when their timing coincided with the legal petition period. In fact, if you look at the last General Election, the SOE is required to produce a report in 30 days, but right up until the 30 days period, they were still engulfed heavily in the election petitions that were filed and subsequently withdrawn. That just frustrated the process of compiling the report because the Fijian Elections Office Management Team was still engaged in responding to the petitions, as well as compiling all the necessary legal instructions. Hence, the suggestion is to increase the timeframe to three for the Supervisor's report and six months for the joint report.

Additionally, by expanding that time, the Electoral Commission and the SOE will also have received the Multinational Observer Group (MOG) Report on the election, and that report can then be reviewed and compiled together with the joint report. So it just makes the timelines more practical.

Requirements for the Writs: The amendment to section 21(2)(e) requires that the time and date of the close of the National Register of Voters is specified in the Writ. It is necessary to state that a specific time is there for the closure of the registration so that all the stakeholders are aware. The exact cut-off time will also allow the FEO to prepare well for the final Voter List. Currently, it says that the registration of voters closes on the date the Writ is issued. There is no definition of an exact day. Is it close of business or is it at midnight? We ended up in court on this very issue. However, for practicality sake, it would be unwise to continue the voter registration on the very last day until midnight, and that is why it is necessary for the Writ to stipulate the time the registration of voters is to close.

On the objection of candidates, the amendment to section 30(1) is to avoid the confusion on the grounds for objection. It specifies that the objector must be a registered voter and the grounds of objection must be on non-compliance of the candidate eligibility requirements in Section 56(2) of the *Constitution of the Republic of Fiji* and Section 23 of the *Electoral Act*. In fact, in practicality, when objections to nominations are received, there are multiple pages of various arguments. Some complaints are received on the basis of the candidate not paying child support or the candidate having absconded on a debt, et cetera, which are not part of the requirements for the nomination of candidate to the election. So the law is now revised so that it clearly explains the basis for objections.

National Candidates List: The amendment to section 36(6) is to allow the National Candidates List to contain either the party name or party symbol, or any other information as approved by the Supervisor of Elections. This amendment is in line with the recommendation from the MOG from 2014 and 2018. Now, that the party identification is available in the official material that will be given to every voter as they enter the polling station, they will be able to associate the candidate of their choosing based on the party identification.

Publication of Provisional Voter List: The amendment to section 40 is to allow the SOE to publish the Voter List for each polling station on or before 30th September of each year, except in an election year. In the election year, the Provisional Voter List will be published multiple times. For 2022, the first Provincial Voter List will be coming out in September this year. Another will come out in February and another one will come out most likely in June. And if the Election is called, then a Provisional Voter List will come out in the first 14 days after the Writ is issued so that had, at least, five times. The issue with Provincial Voter List is that, political parties will want to check the Voter List.

The Fijian Elections Office, will be setting up, through consultation with political parties, the mechanism for them to liaise with us on the checking of the Voter List. More details will be made available as we move closer to the Elections in this regard. The basic provision here is that, the provision of the Voter List will now be available anywhere. Practically, this provision now distributes the deadline for electoral events throughout the four year electoral cycle. Previously, all the events were due only in the election year, which meant that in the election year political parties and other stakeholders will rush in to meet all these deadlines and to use all these information. But now that the information is available annually, they should be able to distribute those tasks more evenly. The same goes with polling venues which is my next submission.

Section 41 has been amended to allow the SOE to identify the physical locations of all polling venues and submit the list to the Electoral Commission for approval before 30th June every year, except in an election year. Once again, in the election year, the polling venues will be published very often so that there can be responses received as well as members of the public can know and say, “There is a polling venue near my house and that is why I want to go and update my details to register and vote.” Under this new framework, the polling venue list that will be given to the Electoral Commission will require it to be approved within 30 days. Once it is approved, the final listing will be published every year. This publication will allow for the following:

- (1) There would be a consultation process on a yearly basis for comments and suggestions from political parties and other stakeholders in respect of individual polling venues.
- (2) Practically, the FEO will use the approved list of venues and conduct voter registration for these venues.
- (3) We will be able to do thorough analysis of polling venues with political parties.
- (4) Generally, when we consult political parties, either they do not respond or they send us back a one-line letter and say, “There are too many venues, reduce them.”

That is not a practical suggestion. If the political party was instead able to identify the venue from the list of venues we have given to them and say, “This venue should not exist”, which can create room for some consultation. But a simple one line letter so that at the end of the election, they can say, “I told them to reduce the venue”, which is not good enough.

Following this process, the Electoral Commission would finalise and publish the final list of venues for the general election on each election year. In case an election is called earlier than the prescribed time, there is an existing list of venues that can be relied upon which would be as old as one year. Furthermore, the amendment will also allow the SOE to establish a polling venue in Suva for voters who are registered overseas but are not postal voters, to cast their vote in this polling venue. This would give an opportunity for those voters to be part of the election process as well, as long as they are in Suva on the date of Election. In the past two General Elections, some voters missed out on this opportunity because the SOE could not establish a special polling venue as there was no authority in the law.

Accessibility for Polling Agents: The amendment to Section 45 and Section 60 is to specify access for polling agents. This amendment would incorporate the practices that we already had in 2014 and 2018. It would allow polling agents not only to observe the polling station but at other designated area where the electoral processes are taking place. These areas will include polling agents who are allowed to enter the postal vote verification centre, the ballot paper printing facility, et cetera. In practice, the FEO has already been allowing party agents to these processes in the interest of transparency.

Accessibility for FEO Service Providers: On Election Day, the FEO has service providers, such as third-party vehicle suppliers and their drivers, logistics operators and suppliers of tents and other utilities. The FEO in 2014 and 2018 was unable to facilitate

their vote on the day at the polling station they were located at. They also could not be released to travel to the polling station they were listed in because of the service they provided. This amendment would now ensure that they exercise their right to vote at a polling station they are working at or at a polling station convenient to their location of assignment. This includes those drivers who previously were required to vote at their assigned polling venue.

Voting Process: The Amendment to section 53(1) simplifies the voting process. The new process will require polling officials to mark the voters name from the voter list, have the voter sign next to their name and then receive the ballot paper from the same official. If you recall voting in the last Election, when you entered the polling venue, after receiving the voter instruction booklet, you would go to one staff, check your name, sign your name, then you go to the next staff who would give you your ballot paper. Now, the process has been streamlined, the same staff who would cross your name off the list will get you to sign and immediately hand you a ballot paper. This voter is now going to spend lesser time in the polling station. The amendment will also streamline the queue handling inside the polling station and also reduce the polling staff that are required for the conduct of polling on Election Day.

Removal of Ballot Paper from the Polling Station: It was advised that this provision, is to simply give some clarity on how Election officials can take ballot papers outside the polling station to a person who maybe in the car, or maybe in the house within the boundary and not able to come to the polling station. The process is as follows. The Presiding Officer can only leave the polling station to assist the voter who resides within the 300 metres boundary of the polling venue and is unable to cast his or her vote at his or her assigned polling station due to illness, physical disability, or for any other reason that may be approved by the SOE. It further clarifies that the Presiding Officer can only do this once all the voters in the queue in the polling station have voted. This is just a very sensible approach. We do not want 20 people to be still in the queue and the Presiding Officer suddenly takes off with one ballot paper and the ballot box and says, “Wait, I have to come back.” We want to make sure that the processing of people in the queue is done first.

An arrangement similar to one stated above, is now in Section 83, particularly section 13A has been introduced which allows the Presiding Officer to do the same during pre-poll. So when everyone in the queue has voted, then the Presiding Officer is able to take the ballot paper and the ballot box from the polling station to the voter who is unable to come to the polling station. The person can then mark his/her vote and put the ballot paper in the box. I think this is very useful for people who are disabled or people who are bedridden but are within the boundary.

Section 57 has been amended to make it more consistent with Section 47C of the *Rights of Persons with Disabilities Act 2018*. The amendment also aligns the Electoral Act with the Convention on the Rights of Disabled Persons. In fact, these amendments will allow a disabled voter to bring in a person of their choice to assist him or her in the voting process. In the 2018 General Elections, the Electoral Commission and FEO allowed them to bring a voter of their choice but this was through an Electoral Commission decision. The amendment would now recognise their rights directly in the Electoral Act and it has also been one of the recommendations of the MOG from the 2014 General Elections. The

amendments not only take care of the recommendations from 2018, but also the ones from 2014, so the MOG document continues to be a living document.

Postal Voting: To enhance the administration of postal applications, section 70(1) is amended. This is to allow the FEO to thoroughly process a postal voter application instead of providing an on-the-spot decision for hand-delivered postal applications. Once the application is approved, the voter would normally receive a postal package which includes the instructions on postal voting, declaration form, secret envelope, transmission envelope, return envelope and postal ballot paper. These have been the contents for the 2014 and 2018 General Elections postal packages. The amendment in section 73(2) is to reflect what the contents of the postal package are.

Furthermore, the amendments to sections 77, 79(8) and 81(5) clarify that postal voting is conducted by the SOE and the counting of postal ballots would commence after the close of polling on polling day, instead of after verification and reconciliation of postal ballots. As I said at the beginning, a lot of the amendments just reflect what the current processes are and also streamline the laws so that it actually can comprehensively govern the processes.

Amendment to section 92(4): This is to clarify that there is only one ballot box per polling station and it is the responsibility of the Presiding Officer or an Election official to open this ballot box during the counting process. Under the current Electoral System, each polling station only has one ballot box.

Section 16 - Accessibility of the Voter List: The amendment to section 100 of the Act is to allow accessibility of the Voter List for analysis purposes after the conduct of the General Election. With the current legal framework, the FEO had to wait over a year for the past two General Elections before it could do any analysis on the voter turnouts, as after counting the votes, the Voter Lists were placed back inside the respective ballot boxes and sealed as per the law for one year. The FEO, for the 2018 General Elections, carried out the voter turnout survey and the data analysis from the Voter List. The Report has been tabled in Parliament as part of the Electoral Commission 2020 Annual Report. However, this was done after one year because the Voter List were sealed in the ballot boxes. Ideally, we would like to do this very soon after the general election so that specific data on certain claims can be revealed.

Publication of Provisional Results: The new section 102A allows the SOE to publish provisional results which is a common practice in numerous countries. This is a recommendation in the Electoral Commission's Joint Report which emphasised that the amendment to the legal framework would allow the FEO to publish provisional results in terms of totals for candidates and totals for parties from the moment the Protocol of Results is received from Presiding Officers on election night until 7.00 a.m. the next day after the election. Whilst the announcement of provisional results should be considered an important feature of the election, particularly in terms of giving certainty to the results and an indication to the general public that count is in progress, there were some objections to the provisional results in 2018, hence the FEO and the Electoral Commissions suggested that there is a need to actually legislate it. The provisional result for the next election will be available on the FEO App and members of the public can

download the App at any point in time until the next election, to obtain results in the palm of your hands.

Allocation of Seats: There is an amendment to section 104, to ensure that the allocation of seats provision in Fiji under the Electoral Act is consistent with the one described in Section 53(3) of the Constitution of the Republic of Fiji. The 5 percent threshold should be calculated against the total number of votes cast which includes the invalid votes. Amendment to the Campaign: Section 109A explains the campaign period before General Election. The period is 30 days prior to the completion of three years and six months of the sitting of Parliament, and ends 48 hours prior to the General Election. This is another recommendation of the MOG, as well as in the Joint Report of the Electoral Commission and the SOE. The clarification of the start and finish of campaign period would allow stakeholders to understand their rights and obligations during this period. The subsequent sections in the law that deal with campaign offences have also been amended to now be applicable upon the commencement of campaign period. Previously, the campaign offences were only applicable once the election date was known. So, that narrowed the timeframe for election-related offences to a very small period of time and now, it is going to be roughly seven months.

Use of State Resources: This is a recommendation in the Joint Report. The amendment to section 113 is to ensure that the legal framework is clear, that there cannot be a use of State resources for campaign.

Publication of False Statements: The inclusion of section 144A is to allow the Supervisor of Elections to deal with content published by political parties or persons that may contain false information or designed to diminish public confidence in the performance of any duty or functions of the SOE and the Electoral Commission. These provisions also create the framework for correction or removal of such statement or information. The provisions further empowers the FEO to require any service provider to remove such statement. These provisions also create the framework for correction or removal of such statements. The creation and publication of false statements or information, particularly on election processes harms public confidence in elections. The current manner of dealing with such cases provides swift mechanism for removal of contents so that the integrity of the election is protected. Such provisions will also deter politicians and other actors from making poorly researched statements without any facts or evidence.

The final amendment is on the change of the timeframe for destruction of election materials. The amendment to Section 153 is to allow the SOE to destroy the records in relation to an election six months after the election, unless a court would order otherwise. The amendment, firstly, reduces storage costs for the FEO and, secondly, the materials for an election do not need to be kept for more than six months. After the, it was around seven tonnes of paper that we had to store in 19 containers for a period of one year. The storage area required to put 19 containers itself consumed a huge rental sum as well as the rental for the containers, as well as the security for the materials. So, the legal side of things is that, the petition period is now 42 days and after that, the materials do not need to be kept for more than six months. If the Attorney-General has any application to make under the law in relation to the election fraud, that it would safe to assume that the information would be available within the first six months and the court would be able to

impound the materials that it needs for its own verifications. So, practically, keeping the materials for six months is sufficient for the purposes of the law.

2.6 Sustainable Development Goals/National Development Plan Impact Analysis

In reviewing the Bill, the Committee was mindful of the Bill's impact on Fiji's efforts in achieving the targets set out in the national development plan, which in turn contributes to Fiji's overall commitment and obligation towards the global agenda - the sustainable development goals.

As a starting point, the objectives of the Bill aims to make necessary changes to the election regulatory framework, which were envisioned to make the election process more transparent and convenient to voters. This objective relates to the development plans by the Government of Fiji in contributing to the strong and enabling environment that exists for further development of good governance, which is a key component of a democratic and accountable governance system³. In order to contribute to good governance, Fiji has invested a lot in revamping its electoral system, with the goal of ensuring free and fair elections.

The Committee was also mindful of the requirements of the Standing Orders of Parliament regarding gender, which is also a key goal in the sustainable development goals. The Committee ensured that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally. Despite the lack of gender-related information during the review, it is evident from the deliberations on the Clauses of the Bill that it was designed to impact all Fijians and the people living in Fiji, irrespective of gender.

Furthermore, it would be worth noting that the Bill also aims to align its provisions to laws that aim to address other sectors of the populace, such as people with disabilities. The amendment to Section 57 of the Act, ensures that Fiji's electoral laws are consistent with laws relating to persons with disabilities and the International Convention on the Rights of Persons with Disabilities.

³ Fijian Government 5-Year & 20-Year National Development Plan.

Part 3 - KEY ISSUES IDENTIFIED

At the penultimate stage of the review, after reviewing the evidence received from both the public and the electoral management bodies; the Committee identified a few key issues, which the Committee place reasonable emphasis on and which the Committee believed need legal clarification. The following are these key issues that were identified:

- That the provisions of the Bill aligns to the policies in place that contribute to Fiji's efforts in achieving its national development plan and that it aligns to the principles of gender equality, whilst also addressing issues regarding persons with disabilities.
- That the Bill shall vest the authority to the Supervisor of Elections to determine whether to include Party names and symbols in the National Candidate List.
- That the Bill will prescribe a timeframe for submitting voter lists to the Fijian Elections Office, to institutions at which polling will take place.
- That the Bill intends to provide a special polling venue in Suva for overseas registered voters, who are in Fiji during Polling Day.
- That the Bill aims to provide specific provisions in the law that requires provisional results to be published for a specified period of time, by the Supervisor of Election.
- That the Bill will provide the Supervisor of Elections sufficient time to compile and submit the General Election report to the Electoral Commission, post-General Elections.
- That the Bill will provide penal consequences for failing to adhere to directives by the Supervisor of Election regarding removal of materials that is in the breach the campaign rules.
- That the Bill will specify the period to which election related offences will be limited to.
- That the Bill proposes to prescribe penal provisions for publishing false information and fake news and vest the authority to remove or direct to be removed, any false information or fake news, to the Supervisor of Election.
- That the Bill will allow the Supervisor of Elections to destroy election records, six months after an election.
- That the proposed amendments in the Bill reflects some of key recommendations by the Multinational Observer Group from the 2014 and 2018 General Elections.

Part 4 - OUTCOME OF REVIEW

After extensive deliberation, the following outlines some of the main outcomes of the Committee's deliberation and review.

The pertinent issues identified during the review were discussed at length by the Members of the Committee and considered with legal assistance from the Office of the Solicitor-General so as to ensure that all these relevant issues were appropriately addressed and that the objectives of the Bill were preserved.

The Committee weighed all options concerning the few issues that had been identified and had extensive discussions on these and the following is the result of these discussions.

- With regards to the concern raised on Clause 8 of the Bill, which has been interpreted by submitters as vesting the authority to choose whether to include Party names or Party symbols;

It was clarified that this was also a recommendation by the 2018 Electoral Commission in the Joint Report. Additionally, the provision in the Bill should be interpreted to mean that the choice is based on a Political Party's preferences, whether it wants the Party name or Party symbol, which would then be facilitated by the SoE when compiling the National Candidate List. Independent Candidates will not have any party name or symbol. It should also be noted that the amendments are in-fact aligning Fijian laws to the international instruments to a far greater extent. The availability of symbols or party name should strengthen the confidence of the voters on their choice.

- In terms of the issue highlighted regarding the tight timeframe provided for submitting voter lists as per the amendment provided in Clause 9;

It was clarified that the Fijian Elections Office (FEO) effectively has 14 days to finalize the Voter List and publish the official provisional voter list and then has only 1 more week to prepare the List Final. The number of voters that the elections office has to deal with is quite substantial, 600,000+ to be exact, which means it has a relatively more constricted timeframe. It was advised that any extension will compromise the FEO's ability to deliver a finalized voter list as required by the law. The Committee was also advised that in practice, the FEO works with all such relevant agencies well in advance of the election to compile the lists and once the election is announced, it becomes a matter of finalizing the same for the election. The Committee is of the opinion that this clarification addresses the concerns raised and that Clause 9 needs no amendment.

- In relation to the concerns raised on Clause 10, which amends Section 9 of the Act, which intends provide for the setting up of a special polling venue in Suva for overseas registered voters, who are in Fiji during Polling Day, to cast their votes;

The Committee was advised that at this point in time, there is still uncertainty as to who will be able to come to Fiji, if the registration teams can travel overseas for registration. This proposed change in the law is a starting point in improving election process and assisting voters in voting. If there is extensive turnout at this location in the next general election, then it was advised that the FEO can open more polling stations in the following general elections. It should also be noted that overseas registered Fijians will be eligible to vote at this polling station provided they have not already applied for postal voting. The Committee is of the opinion that this clarification addresses the concerns raised and that Clause 10 needs no amendment.

- Additionally, regarding the concerns raised by certain submitters on the publishing of Provisional Results due to its unofficial status and that it was argued to have caused and may cause confusion amongst the public;

The Committee was advised that provisional results are essential for peace and calm. This is a generally practiced in every country that has a democratic election. Announcing results in bulk by candidates and parties allows voters to remain calm and maintain interest in the process. It was advised that provisional results provide the citizens with an indication that the counting is progressing. It reduces the chance of violence as a continuous flow of results takes place starting from zero. Official Results are entered in the Result Management System after 7am the day after the election. Final Results are directly transferred from the Protocols of Results received from Polling Stations from the night before. The Count done at the Polling Station is final and the results that are forwarded from the Polling Station are directly entered into the Result Management Information System at the National Results Centre using the double blind data entry system. The Committee is of the opinion that this clarification addresses the concerns raised and that Clause 25 needs no amendment.

- In regard to the concerns raised on Clause 27, which amends Section 109, which intended to provide the Supervisor of Elections (SoE) three months to submit a report to the Commission on the election results;

The Committee was advised that the report is published by the Electoral Commission as part of the joint report to Parliament and is highly technical and is used by observers and other stakeholders in their respective activities. Additionally, in practical terms, the existing period of 30 days provided to the SoE also runs concurrently with and falls within the 42 days' petitions period. It was advised that SoE's Report of the last election was 150+ pages long. The Committee is of the opinion that this clarification addresses the concerns raised and that Clause 27 needs no amendment.

- Regarding the concerns raised on Clause 31, which proposes amendments to Section 116 of the *Electoral Act*;

The Committee was advised that that the protections in the law are necessary for the voters. Any material that is a breach of the law no longer qualifies for any

legal protection. This means that any public official, such as a police officer who, upon being lawfully directed, cannot refuse to prevent the breach of the law and must act in all capacity to uphold the law. The basic premise for this submission is misconceived and based on incorrect interpretation of the Constitutional law. Penal clauses are necessary to ensure that there are consequences of breaking the law. Practically, the SoE or the delegated officer at the FEO will notify the Commissioner of Police or delegated Officer and thereafter the Police would execute the instruction. The entire process will be formal and properly documented. Under the principles of Public Law, this power given to the SoE cannot be exercised unless the SoE follows the procedures within the FEO.

- In regard to the concerns raised on Clauses 32, 33 and 34;

The Committee was advised that currently, the law as seen in [FICAC v Reddy \[2018\] FJHC 525; HAA50.2017 \(22 June 2018\)](#), only applies when the election date is announced. The proposed changes in the law expand the reach of the law to the full 6 months of the official campaign period. This is far greater than what the existing law captures. The campaign laws are dependent of certain legal considerations such as:

- there being an election in close proximity;
- the person is a political candidate or is formally a member of a party; and
- the action complained about it substantial to impact the outcome of the election.

It was also advised that if the rules are left to be open and applicable throughout the cycle, it will be unenforceable. The Committee is of the opinion that this clarification addresses the concerns raised and that Clauses 32, 33 and 34 need no amendment.

- In regard to the concerns raised on Clause 35, the Committee was advised that the 2018 General Election saw a proliferation of false information and fake news. The actions also resulted in the MOG finding that the trust in electoral institutions were diminished. It was advised that it is necessary for a speedy action to be taken on any information that is false and also fake. The appeal and adjudication process should also be expedient. The penalties are high for breaches because the law needs to emphasize these as deterrents. The courts will ultimately issue a penalty based on the circumstances of each case. The Committee was further advised that the Electoral Commission nor the Supervisor of Elections (SoE) can fine any person. In terms of any grievance against the SoE, the law addresses such circumstances, whilst also ensuring that the impartiality of the Electoral Commission is protected (Section 5(8) of the *Electoral Act 2014*. Therefore, the Committee is of the opinion that this clarification addresses the concerns raised and that Clause 35 needs no amendment.
- In regard to the concerns raised on Clause 36 regarding the power vested in the SoE to be able to destroy election records after 6 months of an election;

The Committee was advised that this will enable the Fijian Elections Office to reduce cost of storage of the election records. Additionally, the Committee was

advised that from the electoral bodies reading of the law, the materials are required only for 21 days if any challenge is made under section 66 of the Constitution of the Republic of Fiji, 2013. The law also requires the Court of Disputed Returns to finalize all the Election Petitions in 21 days after it is filed. Therefore, the maximum timelines for materials to be stored is 42 days after the return of the Writ for any post-election legal petition. Therefore Committee is of the opinion that this clarification addresses the concerns raised and that Clause 36 needs no amendment.

At the conclusion of the review, the Committee deliberated extensively on the clarifications provided and is of the opinion that the Bill is sufficient as it is, given that all issues raised are addressed adequately in the current wording of the Bill. However, the Committee has taken note that there were a very few minor grammatical issues in the Bill, and thus suggested that this be amended and a copy of the Bill be appended to this Report.

PART 5 - APPRECIATION

The Committee acknowledges all those that had provided great support to the Committee during the review of the Bill.

Firstly, appreciation goes to the UNDP Fiji Parliament Support Project, for its financial support, which enabled the Committee to conduct extensive awareness and visit various communities around Fiji and effectively conduct public consultation on the Bill. Moreover, the Committee acknowledges the support from Acting Secretary-General to Parliament and the Speaker of the Parliament of the Republic of Fiji, for the logistics and support provided to the Committee in conducting extensive public consultation.

The Committee looks forward to continued support for all future Committee work including public consultation.

Furthermore, the Committee would also like to acknowledge the Parliament IT Team for its support, which enabled more public participation on the Committee work, through live coverage of the public consultation. The Committee visited a total of 33 communities (inclusive of urban and rural communities) and had a coverage of an average of 10,000 people that was reached through its live coverage of each public consultation venue.

PART 6 - CONCLUSION

After adhering to due process and the requirements of the Standing Orders of Parliament, the Committee in its deliberation and review noted that there was great support for the Bill.

The review highlighted a few issues on the Bill, which were considered extensively by the Committee through consultations with the legal team from the Solicitor-General's Office so as to address all the issues raised and to ensure the objectives of the Bill are not affected. The Committee is of the opinion that the provisions of the Bill are adequate in ensuring the achievement of its objectives and that no substantial amendments be made. The Committee however, notes that there were very few grammatical issues, which were minor in nature, and thus made amendments accordingly and these amendments are captured in magenta coloured texts in the Bill provided with this Report.

The Committee through this report commends the *Electoral (Amendment) Bill 2020 (Bill No. 50 of 2020)*, with its amendment to the Parliament.

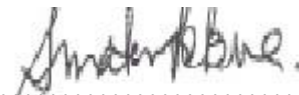
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(CHAIRPERSON)



.....
HON. ROHIT SHARMA
(DEPUTY CHAIRPERSON)



.....
HON. RATU SULIANO
MATANITOBUA
(MEMBER)



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HON. DR. SALIK GOVIND
(MEMBER)



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HON. MOSESE BULITAVU
(MEMBER)

DATE: 05 June 2021