NFP

Submission on Electoral, Voter Registration & Political Parties Amendment Bills

March 05, 2021

The National Federation Party makes it abundantly clear at the outset – we do not support the three amendment bills relating to electoral process and political parties tabled in December 2020.

Our submission extensively outlines the flaws in the proposed amendments in the three bills DO NOT address the fundamental flaws in the electoral processes exposed during the 2014 and 2018 general elections.

The amendments do not bring about electoral integrity. It is easy to label any process free and fair. But we noticed lack of transparency and different interpretation of rules in the last two elections.

Last month, Parliament debated the Review Report of the standing committee on Justice, Law and Human Rights of the 2014 Elections Reports by the Electoral Commission and Multinational Observer Group.

Yet two months before that in December, Parliament was told that electoral processes and how political parties operated needed reform.

This is despite the fact that the Justice, Law and Human Rights Committee rightly recommended that after two elections it was time to establish a special parliamentary committee to extensively review electoral processes.

Yet, the government has ignored this salient recommendation. Why?

Simply, a review in a bipartisan manner doesn't suit the government's agenda, especially that of an administration that believes in micro-managing policies.

Major recommendations from the 2014 reports like

- empowering the Electoral Commission with independent legal advice instead of solely relying on the Solicitor-General, something that this Parliament must also have access to and not only depend on Solicitor-General
- provision of symbols on ballot papers and not only in candidates' booklets
- freeing up the media
- making observation of elections less restrictive
- removing draconian provisions in the political parties act

Simply, there has been very little or no heed paid to the recommendations of the 2014 Annual Report of the Electoral Commission and the Multinational Observer Group findings into the 2014 general elections.

It is better late than never. As the Committee stated, it is important that a special parliamentary committee is established to review the entire electoral processes.

And time is of the essence. We are less than 16 months away from when elections can be held at the earliest in 2022 – which is July next year. This has been confirmed by the Electoral Commission during its recent meeting with political parties.

Might we add, we have even less time if the issuance of Writs and nomination period is taken into account.

But instead, this government is forging ahead and blatantly ignoring what was recommended after 2014 and 2018 elections. It only made cosmetic and not real changes as recommended by the Commission and MOG before the nation went to the polls in 2018.

And the government seemingly has no intention of adopting major recommendations of the recommendations from the reports in 2014 and again in 2018.

While turning a blind eye to substantive changes, it has decided to make changes that it thinks are suitable, as seen in Bills of the Electoral (Amendment) and Political Parties (Amendment) Acts tabled in December 2020.

Absolute independence of an independent institution is totally necessary for transparency.

Surely, any government that believes in transparency, accountability, good governance and absolute independence of institutions, would have embraced these recommendations.

That is why the bills before the committee are premature, draconian and catalyst for further entrenchment of power into the hands of a few with duplication of roles such as that of the Supervisor and Registrar of Political Parties.

We therefore believe that given the experiences of the last two elections, the laws are tailor-made to ensure continuity of the rule of Fiji First by restricting functions of truly democratic parties of the Opposition.

The ruling party is not democratic. Its constitution is restrictive. It doesn't hold any meetings of its members. It confines party leadership in the hands of two people.

Its financiers are rewarded by board appointments. One only has to look at the donors lists of Fiji First and see the names who occupy key positions in statutory organisations.

Yet no action is taken against Fiji First. Why?

This is the kind of Animal Farm application of laws that we are being subjected to. Not to mention the latest attempt to entrench dictatorship and totalitarianism through the latest draft legislation of the Police Bill.

The draconian provisions of the Police Bill and Cybercrime Act are a perfect catalyst to apply the regressive provisions of the amendments proposed in these bills to politically persecute the opposition.

It is as simple as this.

We will now look at the individual bills.

Electoral (Registration of Voters) Amendment Bill

The new insertion to section 2 states that applications for registration has to be on a form approved by the Electoral Commission.

This seems like a redundant clause because many have already registered and updated their cards based on FEO's alarmist public announcement in February 2020 on the invalidity of the green cards.

What is not explicitly stated and should be in this Bill, is that all voter ID cards used from 2014-2018 elections are now invalid and all citizens must get new ones, provided that new birth certificates and associated costs are not a barrier to citizens constitutional political rights.

Thankfully the insane proposal of Feb 2020, of FEO that married women can not use their husband's married name is missing from the Bill.

The amendment to section 4 where the registration of voters must now include a primary polling venue, in addition to an alternative polling venue, that may then be selected by FEO, is messy and illogical.

There is nothing in any of the reports post-2018 Elections by the Electoral Commission or the Elections Office that justifies the need for alternative polling venues.

What we political parties do know is that it was the actual voter registration list and data used in the 2018 elections that was problematic. There were, for example, people registered to vote in Nukuloa Gau, but actually lived in Nukuloa Ra.

Then just as political parties were being given the lists of registered voters for August 2018, we noticed that certain polling venues were listed under random provincial divisions as commonly used all over government systems. The reason for these ad hoc arrangements according to FEO in media reports that year, is that the Elections Office "have carefully distributed the entire country into 25 administration areas which will be looked after by 23 administrative staff."

And he further "stressed that they are not required to distribute the entire country along provincial, district or town boundary lines."

This year, FEO actually acknowledged during a meeting with political parties that there were "some" problems brought to his attention about wrong classification of voters to wrong polling venues, but we have never had closure on the full extent of those disenfranchised voters whose constitutional political rights were denied when they wanted to express their voting intent. The questions still remain!

Why did approximately 637,000 voters make the effort to register yet only approximately 458,000 actually cast a vote? This is a damning indictment on the Elections Office, and the millions of public money poured into it to conduct the elections!

Sections 16, 17 & 18 have new insertions. Yet these new additions were repealed in a previous version of the Bill -- and it only leaves more questions in our mind on the competence of both drafting and intent.

Political Parties (Registration, Conduct, Funding & Disclosures) Amendment Bill

Much of the trial by media that NFP faced with regards to our audits, conveniently hides one thing. That after all these years of having all political party audit records with them, the Fijian Elections Office decided to execute a retrospective investigation spanning a number of years.

One wonders why?

Mr Chair, in section 3 of the Bill, whereas the register of political parties held by the Registrar of Political Parties, only listed the names of political parties registered under this Act before, the amendment seeks to detail much more about registered political parties -- such as office holders and contact details, party bank account details, and names and contacts of party auditors and legal advisor.

Why is this extra level of detail necessary? The Registrar of Political Parties told parties at a recent meeting that parties have been observed as engaging "premium legal practitioners" and auditors, but the cost of these services to the party are not being declared according to their market value.

Parties were told that companies or hotels cannot give discounts to political parties, on services or products otherwise this will be considered as donations to the party, and if these types of donations were more than $10,000 in value -- these are breaches of the law.

In section 24, the new sub-sections 2A and 2B of the Bill are deeply, deeply concerning for NFP.

Candidates must now within 30 days of polling day, make more onerous declarations to Mr Saneem.

At a recent meeting with political parties, the Registrar that once candidate nominations are filed, apart from the usual assets and liabilities disclosures, candidates must also disclose all monetary donations made to the candidates personal campaign with receipted details of names and addresses, INCLUDING in-kind donations such as vehicles for campaigning etc.

Parties were informed that within this nomination period if a candidate was found in breach of this -- parties would be suspended and would not be able to campaign within that final stretch before elections. Needless to say, parties that were there were shocked at why political parties should be held liable, but the Registrar was adamant that candidates "were agents of the party".

Not only that, 30 days after the writ has been returned, all candidates whether elected to Parliament or not, must again file more disclosures.

This is clearly designed to hinder Opposition parties, because the types of disclosures that would show up the ruling parties accumulation of wealth, have never been mentioned or highlighted by the Registrar YET they have now been quietly removed from the Bill. These are disclosures like:

- any business interests in Fiji or abroad for the candidate or spouse;

- any business transaction entered into by the candidate or spouse in the 5 years preceding the date of nomination whether in Fiji or abroad;
- any gift received by either the candidate or the spouse whether in Fiji or abroad (apart from gifts from normal events such as relatives or customs)
- any assets acquired by either the candidate or spouse whether in Fiji or abroad, in the 5 years preceding nomination
- liabilities incurred or discharged by a candidate or spouse whether in Fiji or abroad in the 5 years preceding the date of nomination, and the amount of each liability.

Section 26 now places the burden of publishing our accounts both in the gazette and in the media, on political parties. This burden will be no problem to the ruling party that has millions of dollars of donations, but not so for the rest of us.

Section 30 is also a dangerous precedent where any appeals that political parties may wish to make against the Registrar's rulings, can no longer go to the High Court, but will be deliberated by the Electoral Commission. This is a gross miscarriage of natural justice because the Registrar as Supervisor is the Secretary to the Commission?

In all of our past dealings with the Electoral Commission, there has never been a punitive stand against the ruling Fiji First party, and frankly we have no confidence in their ability to mete out justice fairly where our appeals are concerned.

The High Court must remain as the judicial mechanism for redress, just as it is for every other constitutional independent institution. One man cannot have such an excessive concentration of power.

The new section 30A on dispute resolution between parties "on any campaign issue" as the Bill states, to be presided over by the Electoral Commission is farcical and again completely contrary to the norms of natural justice. It merely gives rise to frivolous and vexatious sub-campaigns that are not a lawful credible tribunal, that will serve to distract political parties from speaking to the electorate directly on policy and legislative changes they need, and draw parties into mindless debates and paper-wars.

There is no such need for this clause -- if there are issues, the High Court should be the only lawful mechanism for redress.

Section	Change	Comment
2a (Definitions)	Amend bankers cheque not to include personal cheque.	Unsubstantive. Cosmetic.
2b	Campaign period official definition to be set by the Electoral Commission, gazetted and published.	More restrictive and confusing and more regulations. If we post on FB – eg "we will provide free dialysis".... Would that be classified as a breach of campaign period, whereas we are registered to do politics as our core function. Adds to a more restrictive environment that is normal to political debate. Contrary to basic tenets of democracy where freedom of exchange of ideas and the right to information of our citizens so that they are fully informed.
2c	"Designated area" is now defined by the Supervisor.	Previously in 2018 the EC decided after we protested about the distance of polling agents away from view of count (1m). The EC then overruled the Supervisor after our protests following on from 2014 challenges that we faced.
2d	Amendment of "election official".	Now broadens election officials to include even contractors such as IT people, security personnel, consultants etc. It further diminishes the integrity of the elections process and accountability of officials.
2e	Amendment of "polling" to include days determined by EC following an adjournment of polling (under section 47)	Cosmetic but possibly made in light of 2018 polling adjournment due to force majeure (bad weather).
6	Amendment of "Duties and Powers of Supervisor" to include registration.	Now includes the function of the Registrar of Political Parties under this section whereas 5 political parties had recommended the separation of powers. The Registrar should not be involved in the electoral processes at all but solely confined to the duties of the Registrar. This is vitally important.

		Consolidation of the functions of SOE and ROPP gives him draconian powers over political parties. There should be a clear demarcation of the role of SOE and ROPP. Also allows and entrenches that a SOE will play a dual role which undermines transparency and accountability. However the EC may now have an inroad into ROPP through this inclusion?
14(g)	Amendment to increase the 3-month timeline to 6-months for which EC and SOE must table a joint report to Parliament.	Effectively he has corrected his own legal breach because this was not submitted to Parliament within the required 3 months. NFP had demanded the late report.
21	Amendment to include that the writ will detail a specification time and date of the close of the "Register of Voters".	Editorial amendment to clean up drafting mistakes in 21(2)(c) and (d) and a new subsection (e) to require the Writ to include the date for close of the Register of Voters
25	Amdt to clean up drafting mistake – "to" is erroneously included in the sentence	Drafting mistake – clean up
30(1)	Amdt to clean up drafting mistake – simplifying the provision, no substantive amdt	
36(6)	Amdt to give the SOE discretion to include party name or symbol on National Candidate List	Current provision says the NCL must not contain party name or symbol – why is EC not included in the decision.
40 (4)	Amdt requires heads of prisons, military units, hospitals etc. to notify SOE within 7 days of dissolution of parliament with the list of inmates/voters	Recommend this be changed to 7 days after issuance of the Writ, rather than within 7 days of dissolution of Parlt, because voters can register up to issuance of the Writ. COVID
40(8)	Repeals 40(8) and inserts a new (8) to give SOE discretion in publishing a "provisional voter list"	Current provision requires SOE to publish Voter List for each Polling Station and make the lists available to voters at suitable locations. New

		provision states SOE "may" publish the "provisional voter list" on or before 30 Sept in each year except in an election year. The voter lists are important for Parties – the SOE must be compelled to publish the provisional lists, our recommendation is that the current provision must be retained.
41	Amendment no longer requires SOE to publish the address and location of polling venues, but simply to publish a "list of polling venues"	Current provision must remain, as the address and location of PVs must be published.
41(6)	New sub-sections 7, 8, 9 inserted for "polling venues and polling stations"	Sub-section 9 is to establish a special polling venue in Suva for overseas postal voters who may be caught out. Since this privilege has been extended to these overseas pre-postal voters, no similar privilege as per voters constitutional "right to vote" is made for pre-poll and polling day voters who may be caught out in similar circumstances e.g. Methodist Conference. Sub-section 9 does not specify whether this special polling venue is for pre-poll or polling day only. The special procedures for this must ensure that safety requirements of postal voters are rigid enough to ensure that they are not overseas postal voters despite being an overseas registered voter?. Furthermore the special procedures must be as stringent as pre-poll and polling day – there are no records for parties to cross-check whether they have voted or not (eg indelible ink mark on finger), and in effect vote twice OR if voter impersonation has occurred.

		Furthermore this privilege cannot be offered for a polling DAY venue in Suva alone?
45(1)	Includes "designated area"	Designated areas are still wishy washy and at discretion of SOE alone. In 2018 there were debates on the distance of agents from vote count tables for which they could properly observe – and the EC gave a ruling of 1m distance (via ruling). Will this amendment mean that polling agents can watch via screen? "Authorised officers" – presumably authorised by the Presiding Officer? Ambit is too wide to allow unknowns to political parties.
50(2)	Includes "service providers" being allowed to vote at the polling stations where they are working.	No definition of "service providers" included? It was told to us during 2018 election preparation that all election workers would vote by postal ballot. It is recommended that all elections officials, service providers etc. vote by postal ballot ONLY leaving the buffer of 50 extra ballots for spoiled ballots etc. Police and military had either postal votes or pre-polled in 2018. There may be too many ballots per polling station.
51(3)	Deletes "occupation" from	Nothing substantive
53	Deletes (a) to (c) of the Principal Act	Simplification of wording – not substantive
53(8) (b)(c)	New provision replaces old one for voter assistance to be provided within the polling station boundary	Provision for presiding officers to leave the polling station to assist voters needing it. The amendment allows a presiding officer to leave the polling station after everyone in the queue has voted. It is not clear who will be deputies for the presiding

		officer when voters arrive at the station in his/her absence. Presiding officer is not accompanied by parties'/ independent candidates' agents to witness the process
57(a) deleting illiterate		Nothing substantive
57(2-5)	An incapacitated voter choosing a person of his/her choice other than a presiding officer and processes adopted	Again, lack of transparency. The person selected by a incapacitated voter, presiding officer and another election official are privy to a voter's choice – not poling agents of parties and independent candidates. This is totally not transparent. The whole provision in the principal Act should have been amended to reflect absolute transparency.
60	A new section is added (5) to say polling agents may also be present at other areas designated by the Supervisor	This is pseudo-transparency. Section 58(f) gives powers to the Supervisor to designate areas. Section 57 should have been amended for the sake of transparency. Ironically, a new subsection (5) is added after 4 that threatens polling agents with a fine of up to $50,000 or 10 years imprisonment, or both for violating the designated areas conditions set out by the Supervisor. This is nonsensical.
70(1)	Decision timeframe on postal ballot application. Deleting instant decision in respect of postal ballot applications handed over in person.	Not substantive but together with other changes, it may be open to abuse if regular updates about postal ballot applications are provided to parties.
73(2)	Postal voting declaration form and a secret envelope	Not substantive

77	Inserting “conducted by the supervisor”	Not substantive – but list of postal ballots dispatched must be made available
79	The following is being deleted : “Following the verification and reconciliation of the postal ballot transmissions, the counting of the postal ballot papers can begin but not before the close of polling on the polling day”.	Does it mean that postal ballots can be counted any time? What about the presence of count agents from parties/independent candidates? What about the provision to provide full disclosures in terms of a full list of postal ballots dispatched and received?
81	Count of postal ballots to begin after close of polling on polling day	Made to look transparent but is it? Will these ballots be counted at the National Count Centre?
83	Accompanying the presiding officer for assisted voting	Why agents of parties/independent candidates accompany the presiding officer apart from another election official
92 (4)	Presiding officer or an election official responsible for opening the ballot box at a polling station	Not substantive
100 (2)	Deleting “together with the voter list” from principal act	This is Standard Operating Procedure. List is in 3 so not substantive
100 (4)	Deleting (4) from principal act and replacing it with amendment.	Inconsistent with 100(1) that requires each item to be packed into separate envelopes and not one envelope as the amendment seeks. 100(2) clearly requires the election material to be sealed inside the ballot box.
100(4A)	Subsection 4 is deleted and replaced by amendment that requires all election official material to be in one tamper seal envelope and not separate envelopes	This breeds suspicion. Why should the protocol of results be in the same envelope as other material like record book, voter list etc.? It reduces transparency and credibility of the process.
102(A)	Inserting a new section stating the Supervisor will	Principal Act compels the Supervisor to publish and display results

	publish results from the presiding officers until 7am on the day after polling day	continuously. Unfortunately this wasn't done both in 2014 and 2018. Again the setting of a deadline of 7am on the day after polling means no results will be published until the count is over at the National Count Centre. This means results from the count at polling stations will cease until the Supervisor announces the results at his/her discretion. Yet again, non-transparent and done to suit the Supervisor's failure to strictly comply with the principal Act in the last two elections. Why change the law to camouflage non-compliance?
104(3)	Amendment concerns determination of threshold and seats by including total number of invalid votes	Editorial change. However, it is worth noting this determination of threshold based on proportionality is overridden by the d'hondt system. It is worth noting her that when the results were calculated after the final results of 2018, NFP's share of seats under proportional representation as stipulated in the 2013 Constitution was 3.95 while Fiji First's was 26.2. But proportionality was cast aside because of the d'hondt system and 3.95 became 3 and 26.2 became 27.
109(1)	Amendment deletes "1", substituting it with "3"	The principal Act requires the Supervisor to furnish his/her Report to the Electoral Commission within one month of the elections. The Amendment gives SOE more time – 3 months . Why? Is it the SOE's failure to comply with deadlines? Further 109(2 requires the EC to publish the Report. Why has the EC failed to do so in both elections? Yet again, an amendment against the grains of transparency, accountability and to comply with the non-compliance of the Supervisor to adhere to timelines.
109(A)	Inserting a new section empowering the Electoral	Amendment empowers EC to determine a campaign period three

	Commission to determine a campaign period	and a half years after the first sitting of parliament. That is when elections can be first called. Why the regressive restriction? Government is always in campaign mode. Why are other parties prohibited from campaigning? For example, Fiji First billboards were on display almost a year before the 2018 general elections. The NFP announced its election policies more than a year before the elections after its Listening Exercise. The NFP also announced the first batch of proposed candidates 9 months before elections. Any material published strictly complied with the campaign and electoral advertising rules. This amendment curtails the freedom to consult, hear and impart information and policies on behalf of the people. The restrictive period of campaign is anti-opposition and suits the government to indulge in fear, freebies and handouts during a timeframe that it chooses, knowing too well when elections will be held. At the cost of repetition, yet again a rule made to suppress the Opposition and provide Fiji First government more than reasonable time to plot its strategies of freebies and fear mongering.
113 (2A)	Amendment deals with public officers' prohibition to campaign but provides exception to public officers imparting information in writing or orally as well as security service	Despite the principal Act having a blanket prohibition on public officers' involvement in campaigns, there have been many instances of public officers and independent office holders involved in campaigns as well as permanent secretaries and heads of certain statutory organisations. The amendment regularizes campaign by public officers and personnel in positions of influence. We have seen senior military officers make political statements and social media posts. But ordinary civil servants are

		terminated from their employment if they even share or indicate support for a post by the Opposition!. Members of the security forces and public officers can be recruited to campaign under the pretext of providing information. Despite the fact that public officers are barred from even becoming members of a political party, This amendment is clearly aimed at using the State apparatus and machinery to campaign on behalf of the ruling party.
113(4A)	Amendment states "unlawful to use a government vehicle for campaign"	This amendment is aimed at showing transparency. But it falls way short of doing so. It is only government vehicles. Easely overcome. What about State resources? There is no provision of a caretaker administration in the Act. No government vehicles but full access and use of State resources. This is farcical.
114(1)	Amendment deals with prohibition on vote buying during campaign period and deleting election from principal Act	A campaign period as per the amendments to be determined by the EC . The restrictions apply during an election. But not pre-election. Again, no mention and no restrictions on the government to become caretaker and no mention of using State resources.
116(4A)(4B)	New Section on directive from SOE and imposition of penalty	So many breaches have occurred. SOE now has discretion to decide what constitutes breach of campaign rules. Yet in 2018, the SOE was notified of several breaches but failed to take any action decisively. There were false news sites created using logos of fijivillage.com and Fiji TV news spreading fear and propaganda against NFP and then SODELPA Leader – including malicious claims of collusion between leaders of both parties. There were malicious and frivolous lies spread about Diwali

		holiday being scrapped. None of these were condemned by the SOE and EC. This was also noted in the MOG Report. Worse, pictorial evidence, which we still have, was forwarded to the Supervisor on election day in 2018 clearly showing a Fiji First candidate and his wife campaigning by distributing candidate numbers inside a polling venue in blatant violation of campaign blackout rules. Having earlier warned parties that any candidate discovered within 300 metres of a polling venue would be disqualified and his or her votes nullified, the Supervisor did not take any action. In this case. That Fiji First candidate is now an Assistant Minister. So rules are being applied similar to Animal Farm where some are more equal than others.
144(A)	Publication of false information (new section)	Again, it relates to campaign and spread of propaganda. This should also be extended to candidates and parties spreading lies and making racist statements, something that the NFP was a victim of in both 2014 and 2018. This was made worse by the bias and unethical reporting by two media outlets where journalists and talk show hosts behaved like politicians, parroting the view of the ruling party. Not surprisingly, both MIDA and the EC failed to take any action.