

BILL NO. 5 OF 2017

A BILL

FOR AN ACT TO AMEND THE ELECTORAL ACT 2014

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Electoral (Amendment) Act 2017.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Electoral Act 2014 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by—
 - (a) inserting the following new definitions—
 - ““day” means a period of 24 hours;”; and
 - ““officer” means a person appointed to the staff of the Fijian Elections Office;”;
 - (b) in the definition of “campaign rules”, inserting “and any rules issued by the Electoral Commission in relation to campaigns” after “116”;

- (c) in the definition of “Fijian Elections Office”, deleting “to the Electoral Commission and the Supervisor”;
- (d) in the definition of “illegal practice”, deleting “or the Regulations” and substituting “, the Regulations or the Rules”;
- (e) in the definition of “polling day”, deleting “, and for the first general election for the members of Parliament under the Constitution and this Act, means the day determined by the President under section 170(1) of the Constitution”; and
- (f) deleting the definition of “postal ballot voting officer” or “postal ballot counting officer”.

*Section 5 amended***3.** Section 5 of the Principal Act is amended by—

- (a) inserting the following new subsection after subsection (4)—
 - “(4A) The Electoral Commission must, within 5 days of its meeting, publish a copy of the decisions taken by the Commission at the meeting.”;
 - and
- (b) inserting the following new subsections after subsection (6)—
 - “(7) Subject to subsection (8), the Supervisor shall act as the secretary of the Electoral Commission and must attend all the meetings of the Electoral Commission.
 - (8) Where the Electoral Commission is dealing with objections or appeals against the actions or decisions of the Supervisor, the Supervisor must not be present at such meetings.”

*New section 18A inserted***4.** The Principal Act is amended by inserting the following new section after section 18—*“Court to finalise decisions*

18A. A court must promptly make a decision with respect to a charged filed for an election related offence under this Act, the Electoral (Registration of Voters) Act 2012 and the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.”

*Section 23 amended***5.** Section 23 of the Principal Act is amended by inserting the following new subsection after subsection (6)—

“(7) For the purpose of verification, the Supervisor may make enquiries and, where necessary, require the person to provide the necessary authorisations and declarations to the relevant authorities to assist with the enquiries.”

Section 26 amended

- 6.** Section 26 of the Principal Act is amended in subsection (4) by—
- (a) deleting “leader” and substituting “president”; and
 - (b) deleting “secretary” and substituting “registered officer”.

Section 30 amended

- 7.** Section 30 of the Principal Act is amended in subsection (6) by—
- (a) deleting “and” and substituting “,”; and
 - (b) inserting “and the Supervisor as soon as possible but no later than 12.00 pm on the day following its decision” after “objected to”.

Section 31 amended

- 8.** Section 31 of the Principal Act is amended in subsection (5) by inserting “as soon as possible but no later than 12.00 pm on the day following its decision” after “its decision”.

Section 34 amended

- 9.** Section 34 of the Principal Act is amended in subsection (3) by deleting “registration”.

Section 35 amended

- 10.** Section 35 of the Principal Act is amended in subsection (1) by deleting “give a notice of poll in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television” and substituting “publish a notice of poll”.

Section 36 amended

- 11.** Section 36 of the Principal Act is amended by—
- (a) in subsection (2)—
 - (i) deleting “at the place of nomination,” and “at that place”; and
 - (ii) in paragraph (c), deleting “number 135” and substituting “a 3-digit number approved by the Electoral Commission”;
 - (b) in subsection (3), deleting “number 135” and substituting “the lowest number”;
 - (c) in subsection (5), deleting “in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television,” and “independent and party”; and
 - (d) inserting the following new subsection after subsection (6)—

“(7) For the purpose of subsection (2)(c), the numbers used in an election of members of Parliament must not be used at the next election of members of Parliament.”

Section 39 amended

- 12.** Section 39 of the Principal Act is amended in subsection (2) by deleting “adopted” and substituting “approved”.

Section 40 amended

13. Section 40 of the Principal Act is amended in subsection (9) by—

- (a) deleting “approved” and substituting “prescribed”;
- (b) deleting “written”; and
- (c) deleting “published under subsection (8)” and substituting “containing the names, genders, address details and voter numbers of the voters”.

Section 41 amended

14. Section 41 of the Principal Act is amended by—

- (a) in subsection (2), deleting “in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television,”; and
- (b) in subsection (6), deleting “adopted” and substituting “approved”.

Section 46 amended

15. Section 46 of the Principal Act is amended in subsection (4) by deleting “close prior to 6.00 pm if all voters registered at that polling station have voted” and substituting “operate during the times approved by the Electoral Commission”.

Section 47 amended

16. Section 47 of the Principal Act is amended by—

- (a) in subsection (4)—
 - (i) deleting “and publish in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television,”; and
 - (ii) deleting “under this section” and substituting “and approved by the Electoral Commission”;
- (b) in subsection (6), deleting “and publish in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television, and any vote cast by that time shall be cancelled and polling at the affected polling stations must take place on a date determined under this section” and substituting “and any vote cast by that time shall be cancelled and polling at the affected polling station must take place on a date determined and approved by the Electoral Commission”; and
- (c) in subsection (10), deleting “, and publish a notice to that effect in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television”.

Section 52 amended

17. Section 52 of the Principal Act is amended by—

- (a) deleting subsection (3) and substituting the following—
 - “(3) Subject to section 60(1A), a polling agent or an approved observer may only bring into a polling station materials prescribed under section

60(1A) that he or she shall use to carry out his or her duties as an agent or observer.”; and

- (b) deleting “person” wherever it appears and substituting “voter”.

Section 60 amended

18. Section 60 of the Principal Act is amended by—

- (a) inserting the following new subsection after subsection (1)—

“(1A) The Supervisor shall prescribe materials allowed to be taken into a polling station by a polling agent or an approved observer to carry out his or her duties, within 7 days of the issuance of the writ.”; and

- (b) inserting the following new subsection after subsection (3)—

“(3A) A candidate at an election must not be appointed as a polling agent.”

Section 65 amended

19. Section 65 of the Principal Act is amended by—

- (a) renumbering the existing section as subsection (1);

- (b) in subsection (1)—

(i) inserting “or in the case of pre-poll at the time approved by the Electoral Commission” after “6.00 pm”; and

(ii) deleting “and the counting of the ballot papers shall begin immediately after the close of the polls”; and

- (c) inserting the following new subsection after subsection (1)—

“(2) On polling day, the counting of the ballot papers shall begin as soon as practicable after the close of the polls.”

Section 66 amended

20. Section 66 of the Principal Act is amended by—

- (a) in subsection (1), deleting “in writing postal ballot voting officers” and substituting “an officer”; and

- (b) deleting subsections (2) and (3).

Section 67 amended

21. Section 67 of the Principal Act is amended by—

- (a) in subsection (3), deleting “mail out an application for postal voting, upon request by any registered voter, and the approved form must be available at all electoral sub-offices” and substituting “make available an application for postal voting in both printed and electronic form that any registered voter can access or to whom the application can be sent”; and

- (b) in subsection (5)(d), deleting “postal address” and substituting “address”.

Section 68 amended

22. Section 68 of the Principal Act is amended by inserting “and not later than 5.00 pm on the twenty first day” after “polling day”.

Section 69 amended

23. Section 69 of the Principal Act is amended in subsection (2) by inserting “and is to be updated at 4.00 pm every day” after “election”.

Section 70 amended

24. Section 70 of the Principal Act is amended by—

- (a) in subsection (2), deleting “immediately”; and
- (b) in subsection (3), deleting paragraph (c) and substituting the following—
“(c) address to which the postal ballot paper should be sent;”

Section 72 amended

25. Section 72 of the Principal Act is amended by—

- (a) deleting subsection (1) and substituting the following—
“(1) The Supervisor must, upon entering a person in the Register of Postal Voters, despatch, once available, a postal ballot paper and any other voting material by the best means available to the address indicated on the application.”;
- (b) deleting subsection (2); and
- (c) in subsection (4), deleting “Subject to Division 6, no postal ballot papers are to” and substituting “Postal ballot papers must not”.

Section 74 amended

26. Section 74 of the Principal Act is amended by deleting “mailed out or couriered” and substituting “despatched”.

Section 76 amended

27. Section 76 of the Principal Act is amended in subsection (1) by inserting “or any of its sub-offices, excluding a polling station,” after “Fijian Elections Office”.

Section 79 amended

28. Section 79 of the Principal Act is amended by—

- (a) in subsection (2), deleting “and counted”; and
- (b) in subsections (4), (5)(a) and (7), deleting “postal ballot counting”.

Section 80 amended

29. Section 80 of the Principal Act is amended by deleting “postal ballot counting”.

Section 81 amended

30. Section 81 of the Principal Act is amended by—

- (a) in subsection (1), deleting “postal ballot counting officers” and substituting “the officers”; and

(b) in subsection (3), deleting “postal ballot counting”.

Section 82 amended

31. Section 82 of the Principal Act is amended by—

- (a) in subsection (3), deleting “give notice of pre-poll voting in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television” and substituting “publish a notice of pre-poll”; and
- (b) in subsection (8), deleting “written”.

Section 86 amended

32. Section 86 of the Principal Act is amended by—

- (a) in subsection (1), inserting “ballot boxes containing” after “incoming”; and
- (b) in subsection (2), deleting “verification and”.

Section 87 deleted

33. The Principal Act is amended by deleting section 87.

Section 88 amended

34. Section 88 of the Principal Act is amended by—

- (a) in subsection (1), deleting “in writing pre-poll ballot”;
- (b) in subsection (2), deleting “pre-poll ballot” after “by”;
- (c) in subsection (4), deleting “pre-poll ballot”; and
- (d) in subsection (6), deleting “pre-poll ballot” after “the”.

Section 89 amended

35. Section 89 of the Principal Act is amended by inserting the following new subsection after subsection (5)—

“(6) The Supervisor may conduct a recount of any ballot box.”

Section 92 amended

36. Section 92 of the Principal Act is amended by—

- (a) in subsection (1)—
 - (i) deleting “opening the ballot boxes” and substituting “opening a ballot box”; and
 - (ii) deleting “seals of the ballot boxes” and substituting “seal of the ballot box”; and
- (b) inserting the following new subsection after subsection (7)—

“(8) The Supervisor may, having received the report of the presiding officer, conduct a recount of any ballot box.”

Section 93 amended

37. Section 93 of the Principal Act is amended by deleting “mix together all the ballot papers from the different ballot boxes and must”.

Section 95 amended

38. Section 95 of the Principal Act is amended by inserting the following new subsection after subsection (4)—

“(5) Where the Supervisor conducts a recount, the Supervisor may overturn any decision taken by the presiding officer.”

Section 97 amended

39. Section 97 of the Principal Act is amended by—

(a) in subsection (2), deleting “third”; and

(b) deleting subsection (3).

Section 109 amended

40. Section 109 of the Principal Act is amended in subsection (2) by deleting “in the Gazette”.

Section 155 amended

41. Section 155 of the Principal Act is amended in subsection (1) by inserting the following new paragraph after paragraph (c)—

“(ca) campaign activity by political parties and candidates;”

References to “polling booth” and “polling booths” amended

42. The Principal Act is amended by deleting “polling booth” and “polling booths” wherever they appear and substituting “voting screen” and “voting screens” respectively.

ELECTORAL (AMENDMENT) BILL 2017

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 Following the 2014 General Elections, the Fijian Elections Office (**'FEO'**) conducted a review of the electoral process in Fiji and existing electoral laws in preparation for the next general elections and other elections conducted by FEO.
- 1.2 In the review, FEO identified operational procedures that need to be streamlined and provisions in the Electoral Act 2014 (**'Act'**) that need to be simplified.
- 1.3 FEO also considered the recommendations made by the Multinational Observer Group that was co-led by Australia, India and Indonesia.
- 1.4 These recommendations include the following —
 - (i) that Fiji review and finalise its existing electoral laws well in advance of the next general elections;
 - (ii) that the division of the responsibilities between the Electoral Commission (**'EC'**) and FEO should be clarified; and
 - (iii) that the rules regarding the use of paper in polling stations should be clarified, and observers and party polling agents should be able to carry paper into polling stations.
- 1.5 These recommendations and other amendments to existing procedures as suggested by FEO do not make substantive changes to the Act, but are intended to ensure the efficiency and effectiveness of the electoral processes and procedures.
- 1.6 It is imperative that the Act be amended as soon as possible to allow FEO time to plan ahead and make necessary arrangements in preparation for the next general elections in 2018. Furthermore, this will also ensure that the laws in relation to the next general elections are available immediately to provide a

transparent electoral process for all stakeholders, including political parties, candidates who wish to contest in the general elections and the voting public.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister responsible for elections.
- 2.2 Section 2 of the Act primarily provides for the definitions of certain terms and phrases used throughout the Act.
- 2.3 Clause 2 of the Bill amends section 2 of the Act by inserting new definitions for “day” and “officer”. The new definitions provide clarity and help prevent unnecessary delay in the implementation of the electoral process. For instance, during the 2014 General Elections, given that there was no specific definition for the term “day” in the Act, there were different interpretations of the term. This resulted in a matter on candidate nominations being referred to the courts for an interpretation.
- 2.4 Clause 2 of the Bill also amends the definitions of “campaign rules”, “Fijian Elections Office”, “illegal practice”, “polling day”, “postal ballot voting officer” and “postal ballot counting officer”.
- 2.5 Clause 3 of the Bill amends section 5 of the Act by inserting new subsections (4A), (7) and (8).
- 2.6 Subsection (4A) ensures that the EC publishes its decisions within 5 days of its meetings. Subsections (7) and (8) state that the Supervisor of Elections (‘SOE’) shall act as secretary to the EC, but where the EC deals with objections or appeals against the actions or decisions of the SOE, the SOE shall not be present at those meetings.
- 2.7 Clause 4 of the Bill amends the Act by inserting a new section 18A. This ensures that a court promptly makes a decision on a charge filed under the Act, the Electoral (Registration of Voters) Act 2012 and the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.
- 2.8 Clause 5 of the Bill amends section 23 of the Act by inserting a new subsection (7). This enables the SOE to verify a person’s information, by making enquiries and, where necessary, requiring the person to provide the necessary authorisations and declarations to the relevant authorities to assist with the enquiries.
- 2.9 Clause 6 of the Bill amends section 26(4) of the Act by deleting “leader” and “secretary” and substituting “president” and “registered officer” respectively. This is to align the terms with the terms used in the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013.

- 2.10 Clause 7 of the Bill amends section 30(6) of the Act to ensure that the EC also notifies the SOE of its decision on an objection no later than 12.00 pm on the day following the decision.
- 2.11 Clause 8 of the Bill amends section 31(5) of the Act. This ensures that the EC also notifies the SOE of its decision on an application for a review of the decision of the SOE no later than 12.00 pm on the day following the decision.
- 2.12 Clause 9 of the Bill amends section 34(3) of the Act by deleting “registration”.
- 2.13 Clause 10 of the Bill amends section 35(1) of the Act by deleting the requirement for the EC to give a notice of poll in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television. Instead, the EC will only be required to publish a notice of poll. Under section 2 of the Act, “publish” means to produce, including electronically, and make available to the public. This is to assist the EC in the operational process of elections.
- 2.14 Clause 11 of the Bill amends section 36 of the Act by amending subsections (2), (3) and (5), and by also inserting a new subsection (7).
- 2.15 The amendments to subsections (2) and (3) enable the SOE to conduct the draw of the candidate numbers at a place that the SOE determines, and not specifically at the place of nomination. The place of nomination may not always be available, large enough or suitable for the drawing of the candidate numbers.
- 2.16 The amendment to subsection (5) deletes the requirement for the SOE to publish the National Candidates List in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television. Instead, the SOE will only be required to publish the National Candidates List according to the definition in section 2 of the Act.
- 2.17 The amendments to subsections (2) and (7) ensure that candidate numbers are 3-digit numbers approved by the EC and that the candidate numbers used in an election of members of Parliament must not be used at the next election of members of Parliament.
- 2.18 Clause 12 of the Bill amends section 39(2) of the Act by deleting “adopted” and substituting “approved”.
- 2.19 Clause 13 of the Bill amends section 40(9) of the Act to ensure that the fees for obtaining a copy of the voter lists are prescribed by the SOE, and also that copies of the voter lists that may be obtained are not confined to written copies.
- 2.20 Clause 14 of the Bill amends section 41(2) and (6) of the Act.
- 2.21 The amendment to subsection (2) deletes the requirement for the SOE to publish the addresses of all polling stations and polling venues in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television.

Instead, the SOE will only be required to publish the addresses according to the definition in section 2 of the Act.

- 2.22 The amendment to subsection (6) deletes “adopted” and substitutes “approved”.
- 2.23 Clause 15 of the Bill amends section 46(4) of the Act by deleting the reference to 6.00 pm – the time at which special polling stations may close. With the amendment, special polling stations may operate during the times approved by the EC.
- 2.24 Clause 16 of the Bill amends section 47(4), (6) and (10) of the Act.
- 2.25 The amendment to subsection (4) deletes the requirement for the presiding officer to publish a public notice for the non-commencement or adjournment of polling at the polling station in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television.
- 2.26 Similar amendments are made to subsections (6) and (10) for public notices for the non-commencement or adjournment of polling in a particular geographic region due to *force majeure* and for allocation of a new polling day.
- 2.27 Clause 17 of the Bill amends section 52(2), (3) and (4) of the Act. The term “person” is specifically changed to “voter” and polling agents and approved observers are allowed to take into a polling station material which is allowed by the SOE.
- 2.28 Clause 18 of the Bill amends section 60 of the Act by inserting new subsections (1A) and (3A). The amendments enable the SOE to prescribe materials which are allowed to be taken into a polling station by a polling agent or observer. Additionally, a candidate for elections cannot be appointed as a polling agent.
- 2.29 Clause 19 of the Bill amends section 65 of the Act. The amendments cater for the closing of pre-polls, at times approved by the EC.
- 2.30 Clause 20 of the Bill amends section 66 of the Act. Subsection (1) is amended by deleting the reference to “postal ballot voting officers” and substituting it with “an officer”. In addition, subsections (2) and (3) are deleted.
- 2.31 Clause 21 of the Bill amends section 67(3) and (5)(d) of the Act. The amendments delete the requirement for the SOE to mail out an application for postal voting at the request of a voter. Instead, the SOE must make available an application for postal voting in both printed and electronic form for a voter to access or to whom an application can be sent.
- 2.32 Clause 22 of the Bill amends section 68 of the Act to ensure that applications for postal voting are received by the SOE no later than 21 days prior to the polling day and not later than 5.00 pm on the twenty first day.

- 2.33 Clause 23 of the Bill amends section 69(2) of the Act to ensure that the Register of Postal Voters is updated at 4.00 pm every day.
- 2.34 Clause 24 of the Bill amends section 70 of the Act for the purpose of clarity.
- 2.35 Clause 25 of the Bill amends section 72 of the Act. The amendments remove the requirement to mail out postal ballot papers. Instead, postal ballot papers and any other voting material will be despatched by the best means available. This is to assist the SOE in the operational process of elections.
- 2.36 Clause 26 of the Bill amends section 74 of the Act by deleting “mailed out or couriered” and substituting “despatched”.
- 2.37 Clause 27 of the Bill amends section 76(1) of the Act to enable the receipt of postal ballot papers at the sub-offices (excluding polling stations) of the FEO. Currently, section 76 of the Act states that postal ballot papers are to be received at the FEO.
- 2.38 Clause 28 of the Bill amends section 79 of the Act by deleting the reference to “postal ballot counting”.
- 2.39 Clause 29 of the Bill amends section 80 of the Act by deleting the reference to “postal ballot counting” so that “officer” remains in the provision.
- 2.40 Clause 30 of the Bill amends section 81 of the Act by deleting the reference to “postal ballot counting officers” and substituting it with “officers”.
- 2.41 Clause 31 of the Bill amends section 82 of the Act by deleting the requirement for the EC to give a notice of pre-poll voting in the Gazette and in all national daily newspapers and broadcast on radio and free-to-air television. Instead, the EC will only be required to publish a notice of pre-poll.
- 2.42 Clause 32 of the Bill amends section 86(1) and (2) of the Act to assist the SOE in the operational process of elections for pre-poll ballot papers.
- 2.43 Clause 33 of the Bill deletes section 87 of the Act. This amendment is linked to the amendments to section 86 of the Act.
- 2.44 Clause 34 of the Bill amends section 88(1), (2), (4) and (6) of the Act by deleting the references to “in writing pre-poll ballot” and “pre-poll ballot”.
- 2.45 Clause 35 of the Bill amends section 89 of the Act by inserting a new subsection (6). This enables the SOE to conduct a recount of any ballot box.
- 2.46 Clause 36 of the Bill amends section 92 of the Act. Essentially, the SOE may, having regard to the report of a presiding officer, conduct a recount of any ballot box.

- 2.47 Clause 37 of the Bill amends section 93 of the Act by deleting “mix together all the ballot papers from the different ballot boxes and must”.
- 2.48 Clause 38 of the Bill amends section 95 of the Act by inserting a new subsection (5). Where the SOE conducts a recount, the SOE may overturn any decision of a presiding officer.
- 2.49 Clause 39 of the Bill amends section 97 of the Act for the purpose of clarity and simplification.
- 2.50 Clause 40 of the Bill amends section 109 of the Act by deleting the requirement for the EC to publish its report in the Gazette. Instead, the EC will only be required to publish its report according to the definition in section 2 of the Act.
- 2.51 Clause 41 of the Bill amends section 155(1) of the Act by inserting a new paragraph (*ca*). This ensures that rules may be made in relation to campaign activities by political parties and candidates.
- 2.52 Clause 42 of the Bill amends the Act by deleting all references to “polling booth” and “polling booths” and substituting “voting screen” and “voting screens”.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General