

BILL NO. 6 OF 2019

A BILL

FOR AN ACT TO AMEND THE FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 2007

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Fiji Independent Commission Against Corruption (Amendment) Act 2019.

(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 Fiji Independent Commission Against Corruption Act 2007 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended in the definition of “Commissioner” by deleting “by the President and includes the Deputy Commissioner appointed under section 6” and substituting “under section 5(1) and includes the Deputy Commissioner and the acting Commissioner appointed under sections 6 and 7”.

Section 5 amended

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

- (a) in subsection (1) after “President”, inserting “on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General”; and
- (b) in subsection (3), deleting “the President may think fit” and substituting “determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General”.

Section 6 amended

4. The Principal Act is amended by deleting section 6 and substituting the following—

“Appointment of Deputy Commissioner

6.—(1) The Deputy Commissioner shall be appointed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.

(2) The Deputy Commissioner shall hold office on such terms and conditions as determined by the President acting on the advice of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General.”.

Section 7 amended

5. Section 7 of the Principal Act is amended by—

- (a) in subsection (1), deleting “, save where the President otherwise directs, act as Commissioner” and substituting “act as Commissioner, except as otherwise directed by the President on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General”; and
- (b) in subsection (2) after “may”, inserting “, on the recommendation of the Judicial Services Commission following consultation by the Judicial Services Commission with the Attorney-General,”.

Consequential amendment

6. The Prevention of Bribery Act 2007 is amended in section 2 by deleting the definition of “Commissioner” and substituting the following—

““Commissioner” has the meaning given in section 2 of the Fiji Independent Commission Against Corruption Act 2007;”.

May 2019

**FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) BILL 2019**

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 The Fiji Independent Commission Against Corruption (**'FICAC'**) was established on 4 April 2007 under the Fiji Independent Commission Against Corruption Act 2007 (**'Act'**) and continues in existence as an independent legal institution by virtue of section 115 of the Constitution of the Republic of Fiji (**'Constitution'**).
- 1.2 Section 115(2) of the Constitution provides that FICAC shall consist of a Commissioner, Deputy Commissioner and such other officers as may be appointed by law.
- 1.3 Section 115(12) further provides that the remuneration entitlement of the Commissioner and Deputy Commissioner is determined by the President acting on the advice of the Judicial Services Commission (**'JSC'**) following consultation by the JSC with the Attorney-General (**'AG'**).
- 1.4 The Act provides that the President alone appoints and determines the terms and conditions of the Commissioner, Deputy Commissioner and acting Commissioner.
- 1.5 However, the provisions for appointments and remuneration entitlements of other independent legal institutions under the Constitution such as the Director of Public Prosecutions and the Solicitor-General feature a determination made by the President on the recommendation or advice of the JSC, following consultation by the JSC with the AG.
- 1.6 The Fiji Independent Commission Against Corruption (Amendment) Bill 2019 (**'Bill'**) therefore seeks to align the appointment provisions under the Act to that of the independent legal institutions under the Constitution.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends the definition of “Commissioner” to refer to section 5(1) of the Act, under which the appointment of the Commissioner is provided and to include the acting Commissioner in the definition for the purpose of clarity.
- 2.3 Clause 3 of the Bill amends section 5(1) of the Act to provide that the appointment of the Commissioner is made by the President on the recommendation of the Judicial Services Commission following consultation by the JSC with the Attorney-General.
- 2.4 Clause 3 of the Bill also amends section 5(3) of the Act to provide that the terms and conditions of the appointment of the Commissioner be determined by the President acting on the advice of the JSC following consultation by the JSC with the AG.
- 2.5 Clause 4 of the Bill amends section 6 of the Act to align the appointment provision of the Deputy Commissioner to mirror the changes proposed in clause 3 of the Bill. In other words, the appointment of the Deputy Commissioner will be made in the same manner as that of the Commissioner.
- 2.6 Similarly, clause 5 of the Bill amends section 7 of the Act to align the appointment provision of the acting Commissioner to mirror the changes proposed in clauses 3 and 4 of the Bill. In other words, the appointment of the acting Commissioner will be made in the same manner as that of the Commissioner and Deputy Commissioner.
- 2.7 Clause 6 of the Bill consequentially amends section 2 of the Prevention of Bribery Act 2007 by changing the definition of “Commissioner” to reflect the changes proposed in clause 2 of the Bill.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General