

BILL NO. 51 OF 2020

A BILL

FOR AN ACT TO AMEND THE ELECTORAL (REGISTRATION OF VOTERS)
ACT 2012

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Electoral (Registration of Voters) (Amendment) Act 2020.

(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 (Registration of Voters) Act 2012 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by—

(a) deleting the definition of “election” and substituting the following—

““election” has the meaning given in section 2 of the Electoral Act 2014;”;

- (b) after the definition of “election”, inserting the following new definition—
““Fijian Elections Office” has the meaning given in section 2 of the Electoral Act 2014;”;
- (c) deleting the definition of “polling day” and substituting the following—
““polling day” has the meaning given in section 2 of the Electoral Act 2014;”;
- (d) after the definition of “polling day”, inserting the following new definition—
““publish” means to produce and make available to the public, including electronically;”;
- (e) after the definition of “voter”, inserting the following new definition—
““voter card” means an identification card assigned to a person on the registration of the person as a voter, containing the full name, photograph, date of birth, residential address, voter number, polling venue and any other information as required by the Supervisor;”.

*Section 4 amended***3.** Section 4 of the Principal Act is amended by—

- (a) after subsection (2), inserting the following new subsection—
“(2A) The application for registration must be made in the form approved by the Electoral Commission.”; and
- (b) after subsection (5), inserting the following new subsections—
“(6) At the time of registration, the applicant must select a polling venue closest to their residence and an alternative polling venue.

(7) If the applicant is unable to select a polling venue closest to their residence and an alternative polling venue, the Supervisor may assign a polling venue closest to the applicant’s residence and an alternative polling venue.”.

*Section 9 amended***4.** Section 9 of the Principal Act is amended by—

- (a) after “full name,”, inserting “closest and alternative polling venues,”; and
- (b) deleting “form of identification, thumbprints,”.

*Section 10 amended***5.** Section 10 of the Principal Act is amended after subsection (2) by inserting the following new subsections—

- “(3) The Supervisor must issue every person entered in the National Register of Voters with a voter card.
- (4) All voter cards are the property of the Fijian Elections Office.

(5) If a person finds another person’s voter card, the first-mentioned person must, as soon as practicable, return the voter card to the Fijian Elections Office.”.

Section 11A inserted

6. The Principal Act is amended after section 11 by inserting the following new section—

“Publication of the National Register of Voters

11A.—(1) The Supervisor must publish the National Register of Voters in the form and manner approved by the Electoral Commission.

(2) Any political party may, on the payment of such fee as approved by the Supervisor, obtain a copy of the National Register of Voters.”.

Section 13 inserted

7. The Principal Act is amended after section 12 by inserting the following new section—

“Notice of deletions from the National Register of Voters

13.—(1) The Supervisor must, for the purpose of notifying persons whose names have been removed from the National Register of Voters, publish a notice listing the names of all such persons annually.

(2) A notice published under subsection (1) must also list the voter number of each person whose name has been removed from the National Register of Voters.”.

Sections 16, 17 and 18 inserted

8. The Principal Act is amended after section 15 by inserting the following new sections—

“Objections

16.—(1) A person whose name appears on the National Register of Voters may make an objection to the inclusion of the name of any other person on the National Register of Voters.

(2) An objection made under subsection (1) must—

- (a) identify the full name as it appears on the National Register of Voters, including the residential address, occupation, if any, gender and voter number of—
 - (i) the objector; and
 - (ii) the registered voter concerned;
- (b) set out the grounds of the objection;
- (c) set out the facts giving rise to the objection;
- (d) contain a statutory declaration by the objector stating that the objector has made a conscientious effort to determine that the facts are true to the best of his or her knowledge and belief; and
- (e) be delivered in the form and manner approved by the Supervisor.

(3) The Supervisor must not accept any objection made after the issue of the writ.

(4) On receiving an objection under this section, the Supervisor must make such enquiries as he or she may deem necessary.

(5) If—

(a) an objection does not comply with subsection (2); or

(b) the Supervisor deems that the objection is frivolous,

the Supervisor must, subject to subsection (6), dismiss the objection and notify the objector and the voter in writing of his or her decision, including the reason for the decision.

(6) The Supervisor must not dismiss an objection solely on the ground that the objection does not comply with subsection (2)(a) if the Supervisor is satisfied with the identity of the objector and the voter.

(7) If an objection is not dismissed under subsection (5), the Supervisor must—

(a) send a notice by registered post or by personal service requiring the voter to respond to the objection; and

(b) state the time within which the voter must respond to the objection, either in person or in writing.

(8) If the voter does not respond to the objection within the time allowed, the Supervisor must proceed to deal with the objection and may either dismiss or uphold the objection.

(9) If an objection is upheld, the Supervisor must notify the objector and the voter in writing and the voter's name and other information must be removed from the National Register of Voters and, if the objection is upheld in the period between the date fixed for the closure of the National Register of Voters and the first polling day, the name and other information of the voter must be removed from the National Register of Voters and entered in the list of post-register deletions.

Settling objections

17. The Supervisor must either uphold or dismiss an objection within 7 days from the date the objection is delivered to him or her.

Review of decision of the Supervisor on objection

18.—(1) If the objector or the voter is dissatisfied with the decision of the Supervisor on an objection, the objector or the voter must, within 2 days from the date of receipt of the Supervisor's decision, apply in writing to the Electoral Commission for a review of the decision.

(2) An application for review under subsection (1) must state the reason for the application.

(3) On receipt of an application under subsection (1), the Electoral Commission must give written notice of the application to the Supervisor and to either the objector or the voter who is not the applicant.

(4) The Electoral Commission must, within 3 days of the receipt of an application, review the decision in question and make a decision in writing either—

(a) affirming the decision; or

(b) setting aside the decision and making a decision in substitution for it.

(5) The consideration and adjudication of an application by the Electoral Commission must respect the fundamental principle of due process, including the right to a fair hearing, at which relevant evidence in support and in response to the application may be submitted.

(6) The Electoral Commission must notify the objector, the voter and the Supervisor in writing of its decision, including the reason for the decision.

(7) The decision of the Electoral Commission under this section is final and is not subject to any further appeal to, or review by, any court, tribunal or any other adjudicating body.”.

Section 19 amended

9. Section 19 of the Principal Act is amended by deleting “on the writ day” and substituting “at the time specified in the writ”.

New sections inserted

10. The Principal Act is amended after section 19 by inserting the following new sections—

“False or invalid document in connection with registration

19A. A registration officer may take possession of any document produced to the registration officer in connection with the registration of a person if the registration officer reasonably suspects that the document is false or invalid.

Assistance of State and State agencies

19B. The State and all State agencies must provide, on a timely basis and to the extent of their capacity, any information, material and human resource assistance as requested by the Fijian Elections Office in the conduct of their duties and functions.

Non-disclosure of information

19C.—(1) At the time of registration, the registration officer or any person employed by the Fijian Elections Office must not disclose any information in relation to the registration of a person to any other person unless the disclosure is required by a court of law or under any other written law.

(2) Any registration officer or any person employed by the Fijian Elections Office who contravenes this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.

Security features of voter card

19D.—(1) The Supervisor must ensure that there are adequate security features incorporated into the design and printing of a voter card.

(2) The Supervisor may upgrade the security features incorporated into the design and printing of a voter card.

(3) The Supervisor may require a voter to have his or her voter card replaced following an upgrade of the security features incorporated into the design and printing of a voter card.

Replacement of voter card

19E.—(1) A voter who damaged, misplaced or had his or her voter card stolen may apply to the Supervisor for the replacement of his or her voter card.

(2) A voter who is required by the Supervisor to have his or her voter card replaced under section 19D(3) must apply to the Supervisor for the replacement of his or her voter card.

Breach of official duty

19F. Any registration officer or person employed by the Fijian Elections Office who contravenes a provision of this Act or direction given to him or her under this Act commits an offence and is liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 10 years or both.”.

Section 22 amended

11. Section 22 of the Principal Act is amended by deleting “office of Supervisor of Elections, except the power to revise the National Register of Voters” and substituting “Fijian Elections Office”.

December 2020

ELECTORAL (REGISTRATION OF VOTERS) (AMENDMENT) BILL 2020

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 Electoral (Registration of Voters) Act 2012 (**‘Act’**) provides *inter alia* for the registration of voters for the General Elections.
- 1.2 After having received and reviewed the Multinational Observer Group’s report on the 2018 General Elections, the Electoral Commission and the Fijian Elections Office (**‘FEO’**) have recommended a few changes to the Act.
- 1.3 The Electoral (Registration of Voters) (Amendment) Bill 2020 (**‘Bill’**) seeks to amend the Act to reflect the recommended changes.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends section 2 of the Act to insert the definitions of “election”, “Fijian Elections Office” and “polling day” to align them to the definitions of “election”, “Fijian Elections Office” and “polling day” in the Electoral Act 2014. Clause 2 of the Bill also amends section 2 of the Act to insert the definitions of “publish” and “voter card”. The term “publish” means to produce information and make it available to the public, including electronically. The term “voter card” means an identification card assigned to a registered voter which contains the full name, photograph, date of birth, residential address, voter number, polling venue and any other information as required by the Supervisor of Elections (**‘SOE’**).
- 2.3 Clause 3 of the Bill amends section 4 of the Act to give a voter the opportunity to select a polling venue closest to their residence and an alternative polling venue. Clause 3 of the Bill also amends section 4 to allow SOE to assign a

polling venue closest to the voter's residence and an alternative polling venue for the voter if the voter fails to select the polling venues as such. Clause 3 of the Bill also allows the Electoral Commission to approve the voter registration form to be used for the registration of voters.

- 2.4 Clause 4 of the Bill amends section 9 of the Act to capture the details that are currently in the National Register of Voters ('**Register**'), which include closest and alternative polling venues.
- 2.5 Clause 5 of the Bill amends section 10 of the Act to mandate the issuance of a voter card following the registration of a person as a voter. Clause 5 of the Bill also amends section 10 to include a provision which states that all voter cards are the property of FEO and any card found must be returned to FEO.
- 2.6 Clause 6 of the Bill inserts a new section 11A in the Act to allow SOE to publish the Register. Clause 6 of the Bill also allows political parties to obtain a copy of the Register upon the payment of an approved fee.
- 2.7 Clause 7 of the Bill inserts a new section 13 in the Act to ensure that SOE publishes a notice annually to notify those whose names have been deleted from the Register of the deletion.
- 2.8 Clause 8 of the Bill inserts a new section 16 in the Act to allow a person to make an objection in relation to the inclusion of a name of a person on the Register. Clause 8 of the Bill also outlines the procedure a person may follow to make the objection.
- 2.9 Clause 8 of the Bill also inserts a new section 17 in the Act to allow SOE to either uphold or dismiss an objection within 7 days from the date the objection is delivered to him or her.
- 2.10 Clause 8 of the Bill also inserts a new section 18 in the Act to allow a person to make an application to the Electoral Commission for a review of the decision made by SOE in relation to an objection. Clause 8 of the Bill outlines the procedure a person may follow when making an application to the Electoral Commission.
- 2.11 Clause 9 of the Bill amends section 19 of the Act to clarify that the Register will be closed at the time specified in the writ and from then onwards, no name is to be entered into the Register.
- 2.12 Clause 10 of the Bill inserts new sections 19A to 19F in the Act.
- 2.13 The new section 19A allows FEO to verify any document with the relevant agency if the registration officer suspects that the document produced during registration is false or invalid.

- 2.14 The new section 19B allows FEO to seek assistance from the State and State agencies in relation to the verification of information submitted by voters during registration.
- 2.15 The new section 19C states that the data obtained from voters is protected and not disclosed to any person by the registration officer or any person employed by FEO at the time of registration. It also includes a provision which states that if a person contravenes section 19C, he or she is liable on conviction to a term of imprisonment not exceeding 5 years.
- 2.16 The new section 19D mandates SOE to ensure that there are adequate security features on a voter card to prevent fraudulent activities. SOE is also allowed to upgrade the security features on a voter card and to also issue new voter cards to voters.
- 2.17 The new section 19E allows FEO to facilitate the replacement of a voter card when a person's voter card is damaged or misplaced.
- 2.18 The new section 19F ensures that FEO staff adhere to the provisions of the Act and also provides for a fine not exceeding \$50,000 or a term of imprisonment not exceeding 10 years or both if they are in breach of the Act.
- 2.19 Clause 11 of the Bill amends section 22 of the Act to allow SOE to delegate his or her powers to an officer of FEO.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General