

BILL NO. 50 OF 2020

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 2021~~0~~.

(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) in the definition of “banker’s cheque” after “Fiji”, inserting “but does not include a personal cheque”;

(b) after the definition of “campaign”, inserting the following new definition—
““campaign period” means the period determined by the Electoral Commission under section 109A;”;

- (c) after the definition of “day”, inserting the following new definition—
 ““designated area” means an area designated by the Supervisor for the purpose of observing an electoral process;”;
- (d) in the definition of “election official”, deleting “section 42” and substituting “this Act”; and
- (e) in the definition of “polling” after “day”, inserting “or a date determined and approved by the Electoral Commission under section 47 following an adjournment of polling”.

Section 6 amended

3. Section 6(1)(a) of the Principal Act is amended after “registration” by inserting “and regulates the conduct, funding and disclosures”.

Section 14 amended

4. Section 14(g) of the Principal Act is amended by deleting “3” and substituting “6”.

Section 21 amended

5. Section 21(2) of the Principal Act is amended by—

- (a) in paragraph (c) after “;”, deleting “and”;
- (b) in paragraph (d), deleting “.” and substituting “;”; and
- (c) after paragraph (d), inserting the following new paragraph—
 “(e) time and date of the close of the Register of Voters.”.

Section 25 amended

6. Section 25(5) of the Principal Act is amended after “relates” by deleting “to”.

Section 30 amended

7. Section 30 of the Principal Act is amended by deleting subsection (1) and substituting the following—

“(1) A person who is a registered voter may object to the nomination of any candidate on the ground that the nomination of the candidate as an independent candidate or as a party candidate on a party list does not comply with the requirements of the Constitution or this Act.”.

Section 36 amended

8. Section 36(6) of the Principal Act is amended by deleting “must not contain any party name or party symbol” and substituting “may contain either the party name or the party symbol or any other information as approved by the Supervisor”.

Section 40 amended

9. Section 40 of the Principal Act is amended by—

- (a) in subsection (4), deleting “residing at their facilities and forward them to the Supervisor” and substituting “, in the approved form, residing at their facilities and forward the list to the Supervisor within 7 days of the dissolution of Parliament”;

(b) deleting subsection (8) and substituting the following—

“(8) The Supervisor may publish the provisional voter list for each polling station as approved by the Electoral Commission on or before 30 September of each year except in an election year.”; and

(c) in subsection (9), deleting “prescribed” and substituting “approved”.

Section 41 amended

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

(a) in subsection (5), deleting “address of all polling stations and polling venues, the location of a polling station or polling venue” and substituting “list of all polling venues, the polling venues”; and

(b) after subsection (6), inserting the following new subsections—

“(7) The Supervisor must identify the physical locations of all polling venues and submit the list of all polling venues to the Electoral Commission for approval on or before 30 June of each year except in an election year.

(8) The Electoral Commission must publish the approved list of polling venues within 30 days after the list of polling venues has been submitted to the Electoral Commission.

(9) The Supervisor may 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.”.

Section 45 amended

11. Section 45(1) of the Principal Act is amended by—

(a) after “a polling station”, inserting “or designated area”;

(b) after “officer”, inserting “or authorised officer”; and

(c) deleting “at the polling station”.

Section 50 amended

12. Section 50(2) of the Principal Act is amended by deleting “and police officers” and substituting “, police officers and Fijian Elections Office service providers”.

Section 51 amended

13. Section 51(3) of the Principal Act is amended by deleting “, date of birth or occupation” and substituting “or date of birth”.

Section 53 amended

14. Section 53 of the Principal Act is amended by—

(a) in subsection (1), deleting paragraphs (a) to (c) and substituting the following—

“(a) mark the name of the voter on the voter list;

- (b) have the voter sign next to his or her name on the voter list; and
- (c) immediately hand a ballot paper to the voter.”;
- (b) in subsection (8) after “followed”, inserting “and the assistance provided is within the polling venue boundary”; and
- (c) after subsection (8), inserting the following new subsection—
 - “(8A) The presiding officer must ensure that all the voters in the queue at a polling station have voted before the presiding officer leaves the polling station to assist a person who—
 - (a) 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; and
 - (b) resides within 300 metres of the polling venue, to cast his or her vote.”.

*Section 57 amended***15.** Section 57 of the Principal Act is amended by—

- (a) deleting “illiterate or” wherever it appears;
- (b) in subsection (1)—
 - (i) after “station”, deleting “is”; and
 - (ii) after “officer”, inserting “or a person of their own choice”;
- (c) deleting subsection (2) and substituting the following—
 - “(2) When assisting a person with disability to cast his or her vote—
 - (a) the presiding officer must ensure that one other election official is present with the presiding officer;
 - (b) if it is a person chosen by the person with disability, the presiding officer or election official must be present; and
 - (c) the person chosen by the person with disability must be a registered voter.”;
- (d) in subsection (3) after “officer”, inserting “or person chosen by the person with disability”;
- (e) after subsection (4), inserting the following new subsection—
 - “(4A) An illiterate voter may only request the presiding officer to assist him or her to cast a vote and the presiding officer must ensure that one other election official is present.”; and
- (f) in subsection (5) after “assisted voter”, inserting “and any person providing the assistance”.

Section 60 amended

16. Section 60 of the Principal Act is amended after subsection (4) by inserting the following new subsection—

“(5) Polling agents may also be present at other areas designated by the Supervisor.”.

Section 70 amended

17. Section 70(1) of the Principal Act is amended by deleting “, and if the application is delivered in person, the decision to register the applicant as a postal voter may be made on the spot”.

Section 73 amended

18. Section 73(2) of the Principal Act is amended by deleting “and a postal voting declaration form” and substituting “, a postal voting declaration form and a secret envelope”.

Section 77 amended

19. Section 77 of the Principal Act is amended after “voting” by inserting “conducted by the Supervisor”.

Section 79 amended

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

(a) in subsection (4)(d), deleting “the” and substituting “a”; and

(b) deleting subsection (8).

Section 81 amended

21. Section 81 of the Principal Act is amended after subsection (4) by inserting the following new subsection—

“(5) The counting of postal ballot papers must commence after close of polling on polling day.”.

Section 83 amended

22. Section 83 of the Principal Act is amended after subsection (13) by inserting the following new subsection—

“(13A) If a presiding officer removes a ballot paper from the polling station, the presiding officer must ensure that he or she is accompanied by at least another election official and the procedure for assisted voting in accordance with section 57 is followed.”.

Section 92 amended

23. Section 92 of the Principal Act is amended by deleting subsection (4) and substituting the following—

“(4) The presiding officer or an election official is responsible for opening the ballot box at a polling station.”.

Section 100 amended

24. Section 100 of the Principal Act is amended by—

- (a) in subsection (2), deleting “, together with the voter list”;
- (b) in subsection (3) after “record book,”, inserting “marked voter list”; and
- (c) deleting subsection (4) and inserting the following new subsections—

“(4) The original of the final protocol of results, the record book of the polling station, any unopened tendered ballot papers and the marked voter list must be enclosed in a tamper evident envelope.

(4A) The tamper evident envelope must be expeditiously and securely delivered by the presiding officer to the collection point as designated by the Supervisor.”.

Section 102A inserted

25. The Principal Act is amended after section 102 by inserting the following new section—

“Publication of provisional results

102A. The Supervisor must continuously publish provisional results for candidates and political parties on receipt of the first protocol of results from the presiding officers until 7 am on the day after polling day.”.

Section 104 amended

26. Section 104(3) of the Principal Act is amended after “independent candidates” by inserting “and the total number of invalid votes”.

Section 109 amended

27. Section 109(1) of the Principal Act is amended by deleting “one” and substituting “3”.

Section 109A inserted

28. The Principal Act is amended in Part 4 before section 110 by inserting the following new section—

“Campaign period

109A.—(1) Subject to subsection (2), the Electoral Commission must determine the campaign period for a general election and publish a notice to that effect in the Gazette.

(2) The campaign period must not be—

- (a) earlier than 30 days prior to the completion of 3 years and 6 months of the sitting of Parliament after the last general election; and
- (b) later than 48 hours prior to the general election.”.

Section 113 amended

29. Section 113 of the Principal Act is amended by—

(a) after subsection (2), inserting the following new subsection—

“(2A) For the avoidance of doubt, subsection (2) does not apply to a public officer who provides—

(a) information, whether orally or in writing; or

(b) any security services,

in the performance of his or her duties as a public officer.”; and

(b) after subsection (4), inserting the following new subsection—

“(4A) It is unlawful to use a Government vehicle to conduct campaign activities unless the vehicle is used for the purposes of providing security.”.

Section 114 amended

30. Section 114(1) of the Principal Act is amended by—

(a) deleting “It” and substituting “During the campaign period, it”; and

(b) deleting “in an election”.

Section 116 amended

31. Section 116 of the Principal Act is amended after subsection (4) by inserting the following new subsections—

“(4A) The Supervisor may remove or direct any political party, candidate or police officer to remove any material that is in breach of the campaign rules.

(4B) Any political party, candidate or police officer who fails to comply with a directive under subsection (4A) commits an offence and is liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.”.

Section 140 amended

32. Section 140(1) of the Principal Act is amended by deleting “Any” and substituting “During the campaign period, any”.

Section 141 amended

33. Section 141 of the Principal Act is amended by deleting “Any” and substituting “During the campaign period, any”.

Section 144 amended

34. Section 144(1) of the Principal Act is amended by deleting “Any” and substituting “During the campaign period, any”.

Section 144A inserted

35. The Principal Act is amended after section 144 by inserting the following new section—

“Publication of false statements

144A.—(1) A person or a political party must not publish any information in or outside Fiji and is accessible in Fiji, knowing or having reason to believe the information is a false statement which is likely to influence the outcome of an election or diminish public confidence in the performance of any duty or function of the Supervisor and the Electoral Commission.

(2) The Supervisor may direct a person, including a service provider, or a political party to remove or correct any statement or information published under subsection (1) and the person must immediately remove or correct the statement or information.

(3) The person or political party may request the Electoral Commission to review the decision of the Supervisor under subsection (2), and the Electoral Commission must within 24 hours review the decision and inform the Supervisor and the person or political party of its decision in writing.

(4) Any person or political party that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years or both.”.

Section 153 amended

36. Section 153 of the Principal Act is amended by deleting “records in relation to an election one year” and substituting “physical records in relation to an election 6 months”.

December 2020

ELECTORAL (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 Act 2014 (**‘Act’**) provides *inter alia* for the conduct of 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 (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 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.
- 2.3 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.
- 2.4 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.

- 2.5 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.
- 2.6 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.
- 2.7 Clause 6 of the Bill amends section 25 of the Act to correct a typographical error.
- 2.8 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).
- 2.9 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.
- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 Clause 13 of the Bill amends section 51 of the Act by omitting the word “occupation” to make it consistent with the voter list.
- 2.15 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 boundary

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.

- 2.16 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.
- 2.17 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.
- 2.18 Clause 17 of the Bill amends section 70 of the Act to enhance the administration of postal applications.
- 2.19 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.
- 2.20 Clause 19 of the Bill amends section 77 of the Act to clarify FEO’s processes prior to despatch of postal ballots.
- 2.21 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.
- 2.22 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.
- 2.23 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.
- 2.24 Clause 23 of the Bill amends section 92 of the Act to reflect that there is only one ballot box per polling station.
- 2.25 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.
- 2.26 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.
- 2.27 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.
- 2.28 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.

- 2.29 Clause 28 of the Bill inserts a new section 109A for the determination of the campaign period before a general election.
- 2.30 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.
- 2.31 Clause 30 of the Bill amends section 114 of the Act to specify the timeframe within which the offence is applicable.
- 2.32 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.
- 2.33 Clause 32 of the Bill amends section 140 of the Act to specify the timeframe within which the offence is applicable.
- 2.34 Clause 33 of the Bill amends section 141 of the Act to specify the timeframe within which the offence is applicable.
- 2.35 Clause 34 of the Bill amends section 144 of the Act to specify the timeframe within which the offence is applicable.
- 2.36 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 diminished 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.
- 2.37 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.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General