

BILL NO. 49 OF 2022

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 2022.

(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 deleting the definition of “person” and substituting the following—

““person” means a natural or legal person and includes a company, association or body of persons, whether corporate or unincorporated, government department, non-governmental organisation, statutory authority or any other entity;”.

Section 6 amended

3. Section 6 of the Principal Act is amended after subsection (1) by inserting the following new subsections—

“(1A) Subject to the provisions of this Act, the Supervisor has all powers necessary to carry out his or her functions under this Act.

(1B) Notwithstanding the generality of subsection (1A), if the Supervisor has reason to believe that a person has information or documents relevant to or required by the Supervisor for the performance of his or her functions under this Act, the Supervisor must, by notice in writing, direct the person to furnish such information or documents to the Supervisor.

(1C) Any person who, having been lawfully required under this section to disclose any information or document to the Supervisor under subsection (1B) must, notwithstanding the provisions of any other written law on confidentiality, privilege or secrecy, comply with such direction and any such person who fails to comply with the directions of the Supervisor or provides information that is false, commits an offence and is liable on conviction—

(a) in the case of a natural person, to a fine not exceeding \$50,000 or a term of imprisonment not exceeding 5 years or both; and

(b) in the case of a company, association or body of persons, whether corporate or unincorporated, government department, non-governmental organisation, statutory authority or any other entity, to a fine not exceeding \$500,000 and for the director, chief executive officer, minister, manager or officer in charge for the time being, to a fine not exceeding \$50,000 or a term of imprisonment not exceeding 5 years or both.”.

Section 36 amended

4. Section 36 of the Principal Act is amended by deleting subsection (7).

Section 100 amended

5. Section 100 of the Principal Act is amended by deleting subsection (2) and substituting the following—

“(2) The Electoral Commission must approve the method of packing the unused, used and spoiled ballot papers after the count of the ballot papers.”.

Section 110A inserted

6. The Principal Act is amended after section 110 by inserting the following new section—

“Guidelines on opinion polls, surveys and research

110A.—(1) Pursuant to section 3(1)(h), the Electoral Commission must adopt and publish guidelines on opinion polls, surveys or research related to elections as it deems fit for the orderly conduct of free and fair elections.

(2) Any person who publishes an opinion poll, survey or research on elections must comply with the guidelines adopted by the Electoral Commission under subsection (1).

(3) If the Supervisor has reason to believe that there is inconsistency between the adopted guidelines under subsection (1) and any publication under subsection (2), the Supervisor must, by notice in writing, direct the person to furnish information or documents on the methodology used to generate the statistics for the opinion poll, survey or research, to the Supervisor.

(4) The Supervisor must also direct the person to remove or correct any information published under subsection (2) and the person must immediately remove or correct the information.

(5) Any person aggrieved by a decision of the Supervisor under this section may appeal the decision of the Supervisor to the Electoral Commission within 14 days from the date of the decision of the Supervisor.

(6) The Electoral Commission must make a decision on the appeal in accordance with the rules adopted by the Electoral Commission.

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

(8) Any person who fails to comply with a directive under subsection (3) or (4) 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.”.

ELECTORAL (AMENDMENT) BILL 2022

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 for *inter alia* the conduct of the general election.
- 1.2 In preparation for the 2022 general election, the Fijian Elections Office (**‘FEO’**) has recommended changes to the Act to reflect practical ways of implementing existing provisions of the Act. These amendments are also supported by the Electoral Commission for the conduct of free and fair elections in accordance with the laws of Fiji.
- 1.3 Given that the 2022 general election will take place once Parliament is dissolved, it is necessary that such amendments are made expeditiously to avoid any potential procedural conflicts under the Act vis-à-vis the practical considerations on the ground.
- 1.4 Therefore, the Electoral (Amendment) Bill 2022 (**‘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 term “person” to mean a natural or legal person and includes a company, association or body of person, whether corporate or unincorporated, government department, non-governmental organisation, statutory authority or any other entity. There are various provisions of the Act that refer to ‘person’ however, it is necessary to clarify that ‘person’ does not only mean a natural person but also a legal person so as to extend the application of the provisions to incorporated, unincorporated as well as other entities. This definition will also be useful in determining any contravention of the Act.

- 2.3 Clause 3 of the Bill amends section 6 of the Act to provide for the powers of the Supervisor of Elections ('SoE') necessary to carry out his or her functions under the Act, including the power to direct a person, by notice in writing, to furnish any relevant information or document. Without this specific power, the SoE is unable to make enquiries to obtain information necessary for the SoE to arrive at decisions as required by the Act. Such powers are also extremely important to allow the SoE to conduct enquiries into allegations of breaches of campaign provisions. Various sections of the Act such as sections 116(4)(c), 118, 141, 144 and 144A require the SoE to make certain enquiries in order to be satisfied as to whether or not a contravention under the Act has occurred. Therefore for this exercise, it is necessary that the SoE has the power to obtain relevant information or documentation.
- 2.4 Clause 4 of the Bill amends section 36 of the Act to allow the numbers used in an election of members of Parliament to be used in any future election of members of Parliament. As at 28 August 2022, there are 9 registered political parties in Fiji and the FEO is currently processing the application of another political party. If the registration is approved, the total number of political parties contesting the 2022 general election will be 10.
- 2.5 According to the Act, each political party may nominate up to 55 candidates (being the total number of seats as determined by the Electoral Commission for the 2022 general election) and therefore the maximum total number of candidates that can be nominated through political parties is 550. The Electoral Commission has already approved, through a publicly conducted draw, that the first number in the ballot paper will be 173. In applying the provisions of the Act, the FEO assigns the numbers in series from 173 until all the candidates have been assigned numbers. There is a likelihood that the series will repeat the numbers from the 2018 general election. If such repetition occurs and section 36(7) of the Act is not removed, the validity of the entire election is at stake. One must also consider that 4 years have passed since the last election and individuals will have likely forgotten the numbers from the last election.
- 2.6 Clause 5 of the Bill amends section 100 of the Act to allow the Electoral Commission to approve the method of packing unused, used and spoiled ballot papers after the count of the ballot papers. As mentioned in paragraph 2.5 above, in the event that there are 550 candidates, the ballot paper size will be 420 mm x 528 mm. This will mean that not all the ballot material may fit into a ballot box after the count of the ballot papers. Logistically, the weight of a ballot box will exceed 12.5 kg making it difficult to carry by hand. It is therefore necessary that the Electoral Commission be empowered to consider the practicality of the operations in order to approve the best means for a transparent, safe and variable mechanism to transport ballot material from polling stations.

- 2.7 Clause 6 of the Bill inserts section 110A to the Act to empower the Electoral Commission to adopt and publish guidelines on opinion polls, surveys and research related to elections, as it deems fit for the conduct of free and fair elections. Therefore, to protect the integrity of the electoral process and the results of the general election, it is necessary that all public opinion polls in Fiji adhere to international standards and guidelines which, under this amendment, the Electoral Commission may adopt as part of its powers and functions under the Act. The Electoral Commission is thus empowered to adopt the latest guidelines and standards to apply to Fiji and the SoE is further tasked to vet compliance by any public opinion poll published in Fiji.
- 2.8 Additionally, clause 6 of the Bill provides that the SoE is required to verify compliance and to take necessary action to ensure that the guidelines are fully complied with. Any appeal against the decision of the SoE under section 110A of the Act can be made to the Electoral Commission.

3.0 MINISTERIAL RESPONSIBILITY

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

A. SAYED-KHAIYUM
Attorney-General