

**STANDING COMMITTEE ON JUSTICE, LAW AND
HUMAN RIGHTS**

Review of the Electoral Commission Annual Report 2018



PARLIAMENT OF THE REPUBLIC OF FIJI
Parliamentary Paper No. 281 of 2020

31 August 2022

Published and Printed by the Department of Legislature, Parliament House, SUVA

CONTENTS

CHAIRPERSON’S FOREWORD 3

COMMITTEE MEMBERSHIP 5

COMMITTEE SECRETARIAT 6

1.0 INTRODUCTION 7

1.1 Review Process/Program7

1.2 Electoral Commission of the Republic of Fiji 8

2.0 DELIBERATION AND FINDINGS BY THE COMMITTEE 8

2.1 Initial deliberation by the Committee 8

**2.2 Evidence via submission received and discussion with the Electoral
 Commission 9**

2.3 Sustainable development goals impact analysis 13

2.4 Findings 14

3.0 RECOMMENDATION 16

4.0 CONCLUSION 16

CHAIRPERSON'S FOREWORD



The Standing Committee on Justice, Law and Human Rights was referred the *Electoral Commission Annual Report 2018* and was mandated by Parliament to review the Annual Report and table its findings back to Parliament.

The Electoral Commission is the constitutionally mandated independent electoral management body in Fiji that oversees the running and conducting of free and fair elections, which is also in accordance with written laws governing elections.

This Report will cover the Committee's review of the Annual Report, including the review process followed, the findings and recommendation in regard to the issues noted from the contents of the Annual Report.

For the review, the Committee conducted extensive deliberation on the Annual Report, whereby issues were identified and correspondences regarding these issues were made with the Electoral Commission and its representatives.

Some of the main areas of discussion addressed in this Report are as follows:

- the Commission's key activities during the year 2018;
- the main challenges encountered by the Commission in the 2018 General Election;
- the objectives of having Pre-Poll as part of the electoral system in Fiji;
- how the Commission identified Pre-Poll venues for the 2018 General Election;
- the Commission's system for selecting the 3-digit number to be used for candidate numbers for the 2018 General Election;
- the Commission's election awareness and outreach programmes for the year 2018; and
- the voter turnout during the 2018 General Election when compared with other neighbouring Pacific Island countries that have a similar electoral system to that of Fiji;

The Committee was also mindful of the requirements of the Standing Orders of Parliament in regard to gender related issues, when reviewing the Annual Report and noted that there was insufficient gender-related information provided. However, after discussions with the Commission, it is encouraging to note the numerous activities and initiatives that the Commission is undertaking, which promotes gender equality and empowerment of women.

At the conclusion of the review, the Committee commends the Commission for the tremendous achievements in 2018. As part of its review process, the Committee believes it be prudent to provide the following recommendation for consideration of the Electoral Commission, and this as follows:

- That the Electoral Commission through the Fijian Elections Office continue with its advocacy programmes on the Elections, which is in line with the Office's Strategic Plan 2020-2023 whereby one such goal is to strengthen electoral participation through effective outreach and engagement programs.

At this juncture, I would like to acknowledge the Honourable Members of the Justice, Law and Human Rights Committee, Hon Rohit Sharma (Deputy Chairperson), Hon. Mosese Bulitavu, Hon. Salik Govind, Hon. Mikaele Leawere and former Member Ratu Suliano Matanitobua, for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend and the secretariat for their support. Also acknowledging the representatives of Fiji's electoral management bodies who kindly answered the Committee's request and made themselves available to answer pertinent questions, which assisted the Committee in its work.



Hon. Alvick Avhikrit Maharaj
Chairperson

COMMITTEE MEMBERSHIP



Hon. Alvick A. Maharaj
(Chairperson)

- Assistant Minister of Employment, Productivity, Industry Relations, Youth and Sports
- Chairperson of Public Accounts Committee
- Government Whip
- Pharmacist



Hon. Rohit Ritesh Sharma
(Deputy Chairperson)

- Former Civil Servant – Education Sector
- Deputy Chairperson of the Standing Committee on Justice, Law and Human Rights
- Deputy Government Whip



Hon. Ratu Suliano Matanitobua
(former Member)

- Shadow Minister for Youth and Sports
- Former State Minister of Fijian Affairs
- Territorial Military Officer – Republic of Fiji Military Forces



Hon. Dr. Salik Govind
(Member)

- Public Health Specialist – United Nations (World Health Organisation)
- Deputy Chairperson of the Standing Committee on Foreign Affairs and Defence Committee



Hon. Mosese Bulitavu
(Member)

- Shadow Minister for Defense, National Security, Immigration and Correction Services
- Former Opposition Whip
- Business Consultant/Farmer
- Territorial Military Officer – Republic of Fiji Military Forces
- Law Graduate and Researcher

COMMITTEE SECRETARIAT

Staff

- Mr. Ira Komaisavai – Senior Committee Clerk
- Mr. Jackson Cakacaka – Deputy Committee Clerk
- Ms. Darolin Vinisha – Committee Assistant

Committee contact details

Address: Standing Committee on Justice, Law and Human Rights
Parliament of the Republic of Fiji
Government Buildings
SUVA, FIJI

Phone: +679 3225 600/ +679 8925 213

Web: <https://www.parliament.gov.fj/committees/standing-committee-on-justice-law-human-rights/>

1.0 INTRODUCTION

The Standing Committee on Justice, Law and Human Rights was referred the *Electoral Commission Annual Report 2018* on 17 February 2020 to review and report back to Parliament on its findings.

1.1 Review Process/Program

The Committee began its review of the Annual Report in 17 March 2020. The review process adopted by the Committee was agreed upon through consensus by the Members and a summary of this is as follows.

i) Initial Analysis of the Annual Report

The Committee began with an initial reading of the Annual Report and had discussions on matters that were noted by individual Members. From these discussions, a variety of issues were identified, which the Committee resolved needed clarification and further discussions.

ii) Conducting of consultation meetings with the Electoral Commission

The Committee was committed to upholding the public's trust in Parliament and to also meet its obligation under the Standing Orders of Parliament, by ensuring that there is public participation. The Committee ensured that its meetings were open to the public and the media, except during such deliberations and discussions to develop and finalise the Committee's observations and this Report.

The Committee endeavoured to hold public consultation via verbal submissions, but this was first done through virtual mode, given the existing restrictions placed around the country due to Covid-19. As the year progressed, the restrictions were slowly eased-off and as such the Committee was able to conduct in-person consultation meetings with the Electoral Commission. The submissions conducted were open to the public and the media and also recorded for subsequent reference.

iii) Review of evidence collected and seeking clarification on pertinent issues

The Committee reviewed all the evidence collected from interviewing the Electoral Commission. To maintain due diligence, the Committee also had further discussions and clarification done, via electronically generated correspondences and virtual meeting tools, with the Commission regarding any pertinent issue identified from the review.

iv) Drafting of Committee Report

The final step of the review process was the compilation of all issues identified from the evidence received. This was then deliberated on and the Committee forms its own independent view on all issues identified. The Committee then compiles a Report on the review of the Bill, which was also reviewed before being finalised for tabling before Parliament.

1.2 Electoral Commission of the Republic of Fiji

The Electoral Commission (“**Commission**”) was constituted by Section 75 of the *Constitution of the Republic of Fiji (2013)* (hereinafter also referred to as “the *Constitution*”) and mandated to carry out the responsibilities as stated in Section 75(2), (3) and (4).

The Commission is mandated to formulate policy and to oversee the conduct of elections in accordance with the Electoral Act and any other related law, including responsibility and authority with respect to the following matters—

“

- (a) *registration of voters;*
- (b) *registration of political parties;*
- (c) *determination of the number of members of Parliament in accordance with section 54(2) of the Constitution;*
- (d) *receipt and return of the writ for an election;*
- (e) *declaration of the election results and allocation of seats in Parliament;*
- (f) *adjudication of electoral disputes, including disputes relating to or arising from the right to be nominated as a candidate, but excluding petitions and disputes subsequent to the declaration of election results;*
- (g) *monitoring and enforcing compliance with the Electoral Act and any law governing political parties, on its own initiative or in response to a formal complaint; and*
- (h) *adopting Rules and instructions consistent with the Electoral Act and the Constitution that are necessary for the transparent and orderly conduct of free and fair elections.¹”*

The *Electoral Commission Annual Report 2018* provides a snapshot of the Commission’s work in 2018, specifically in relation to the lead up to the 2018 General Elections. The Annual Report covers the work of the Commission in collaboration with the Supervisor of Elections in relation to preparing for, execution and results of the 2018 General Elections.

2.0 DELIBERATION AND FINDINGS BY THE COMMITTEE

2.1 Initial deliberation by the Committee

The Committee commenced the review through a first reading of the Annual Report and from which there were numerous matters noted that the Committee deliberated on and some of which were issues that needed to be discussed further and/or clarified. Some of the preliminary findings by the Committee, at this stage of the review, are summarised below.

It was worth noting that for the reported period that the Electoral Commission received a lot of support from development partners. There were also visits to Korea, Indonesia and New Zealand Electoral Commissions to observe their respective electoral operations, which the Commission noted were instructive and beneficial.

¹ Section 3, *Electoral Act 2014*.

The Committee noted that there were numerous undertakings by the Commission, leading up to the 2018 General Election, which included the development of a roadmap to the 2018 General Election, meeting with key stakeholders, attending knowledge exchange programmes and forums on the electoral process.

Additionally, the Committee noted that the Commission also undertook numerous activities for 2018 General Election, including monitoring of Pre-Poll and Polling venues, reviewing the Result Management Information System (RMIS), the Electoral Management System (EMS), overseeing the secure storage of the Election materials including Ballot Papers, and monitoring the electoral process from 1 October through to the Return of Writ on 18 November 2018.

Furthermore, the Committee noted from the Annual Report that certain aspects of the activities carried out by the Commission needed further discussion, which included,

- pertinent issues relating to objections (nominations and candidates) received by the Commission;
- pertinent issues relating to pre-poll; and
- complaints received by the Commission.

At the conclusion of the first reading, certain key issues were identified and then formulated into questions and submitted to the Commission for clarification.

2.2 Evidence via submission received and discussion with the Electoral Commission

The next stage of the review saw the Committee have extensive discussions, via correspondences, with the Commission on issues identified from the reading of the Annual Report. The following is a summary of the response provided by the Electoral Commission to the Committee's queries on the key issues identified.

To begin with, there was a query regarding the objectives of having Pre-Poll and the criteria for selecting Pre-Poll venues. The Commission advised the Committee that Pre-Poll allows voters to physically vote in advance of the polling day, due to specific grounds as provided under Section 82 (2) of the *Electoral Act 2014*. These grounds include:

- the remoteness of the locality of where the voter resides;
- the number of voters residing in a locality is insufficient for establishment of a polling station; or
- a voter being:
 - a resident of a nursing home or health care facility;
 - member of the disciplined forces;
 - under pre-trial detention or sentence of imprisonment; or
 - in any other place approved by the Electoral Commission.

The Electoral Commission sanctions the criteria and guidelines for identifying Pre-Poll venues with close collaboration with the Fijian Elections Office ('**FEO**'). The criteria for selecting Pre-Poll Venues is governed by the FEO Operations Guidelines, which provides for the definition of remoteness as follows:

- Located in maritime zones;
- More than 3 hours of travel from an area office; and
- Not accessible by road.

Pre-Poll venues are identified after conducting a nationwide polling venue assessment whereby a team from the FEO goes to physically assess all polling venues that were used for the 2014 General election and confirm its availability and suitability for the 2018 General Election using set criteria. Alternative polling venues were also assessed during this period. After this assessment, a Polling Venue Selection Committee was selected to review and approve the recommended polling venues for the 2018 General election.

This Committee consisted of staff from the Fijian Elections Office Operations Directorate, Director of Operations (Fiji Police Force) and Director Geospatial from the Ministry of Lands. The role of this Committee was to recommend to the Supervisor of Elections the list of polling venues to be used for the 2018 General Election. This Committee was also tasked to recommend polling venues for pre poll voting and in order to do this, criteria on the determination of Pre-Poll venues was used.

Additionally there were queries regarding the implications of including essential services staff as part of Pre-Poll. The Electoral Commission advised the Committee that it recognises the important services provided by essential services personnel and further considers the implications of having to remove them from their place of work to join a line to vote either on Election Day or in Pre-Poll.

The Commission conducted information sessions and consultation with human resource teams of 25 various essential services organisations on the electoral processes and specifically with regards to options for voting for the staff of these organisations. The Commission understands and appreciates the necessity of not disrupting essential services and recognising that these individuals may be away from their assigned polling stations on Poll Day, the Fijian Elections Office through the consultations with the various essential services organisations agreed for their staff who are registered voters to apply for postal voting. In 2018, essential services were not disrupted due to elections. Therefore, the Commission favours the argument that essential services staff are not disrupted from their work/ service and as such the Commission does not support the concept of attendance voting for them.

The Committee also queried about certain objections and complaints that were referenced in the Annual Report, given that there were no detailed explanations to these objections and complaints provided. The Commission advised the Committee of the procedures the Commission followed when dealing with the complaints and objections received. Furthermore, the procedures followed by the Commission is governed by relevant provisions in the *Electoral Act 2014*.

The Committee queried about the main challenges faced by the Electoral Commission during the election year in 2018 and how these were addressed. The Commission advised the Committee that one of the main challenge faced was the spread of false information about the election on social media and various other platforms. This saw considerable effort and resources diverted to counter false information with accurate and credible information.

The Commission also had to deal with various political leaders who also produced articles that attempted to undermine the credibility of the Election. Futile attempts had been made to discredit the results, however, quick action by the Supervisor of Elections ensured that the misinformation was quickly identified and clarified.

The second biggest issue was the bad weather on Election Day that affected the turnout in the election and it was noted that that is a risk that comes with when an election date is selected in the cyclone season.

Moreover, the Committee was curious to know whether the Electoral Commission has enough time for preparation once the Writ of Election is issued. The Commission provided the Committee of a summary of the key activities undertaken during the election period. The Commission also advised and assured the Committee that it believes that they have enough time for preparation once the Writ of Election was issued.

The Committee queried the about the differing roles between the Secretary to the Electoral Commission and the Executive Secretary to the Electoral Commission. The Commission advised the Committee that the Secretary to the Electoral Commission is an appointment by law as stipulated in Section 5(7) of the Electoral Act, 2014. In instances where the Electoral Commission is dealing with objections or appeals against the decisions of the Supervisor of Elections, the law stipulates that the Supervisor of Elections must not be present at such meetings.

The Executive Secretary is a staff of the Supervisor of Elections and provides administrative and clerical support to the Supervisor of Elections in duties assigned for him at the Electoral Commission. The position organises and maintains the Electoral Commission meeting schedules and assists the Electoral Commission in a variety of administrative and logistics tasks.

The Committee queried how the Commission determines which number to begin with when deciding the numbers for the ball roll. The Commission advised that in the 2014 General Election the 3-digit number was part of the schedule of the Electoral Act, 2014. However, in 2018, the Commission believed that applying any of the set of 3-digit number from the 2014 General Election in the 2018 General Election would confuse the voters. To prevent this confusion, for the 2018 General Election the Electoral Commission decided to use a ball draw system similar to the National Candidates Ball draw to select the first 3 digits in the Ballot paper.

This process took away any illusion of bias in the selection of the first 3 digit number. The draw would be done live on TV and internet and be carried out by a blindfolded person in the presence of Police officer. The Electoral Commission agreed that the series in the Ballot paper would not be repeated and as such the numbers would start either in the 400 series or 500 series.

The public draw was held on 15 May 2017 whereby the balls were drawn 2 consecutive times. In the first draw, only 2 balls were placed in the barrel containing number 4 and number 5 to determine the series. In the second draw, 9 balls were placed in the barrel containing numbers 0 to 9 and it was drawn twice to determine the next two digits.

After the draw, the first 3 digit number for Ballot Paper in 2018 was ‘508’. The conduct of a public draw had promoted the principles of transparency which is essential to the electoral process as it promoted a clear and open process as well as promote public confidence and trust in the electoral system.

Furthermore, the Committee queried the effectiveness of the “Know your Election” program in terms of the number of votes cast against the total number of registered voters. The Commission advised that the “Know Your Election Program” is an initiative undertaken by the Fijian Elections Office to educate and disseminate election related information to the people of Fiji. This voter awareness drive served as a platform for the Fijian Elections Office to capture its key target audiences [voters] and to ensure the successful delivery of critical information relating to the conduct of elections in Fiji.

The Fijian Elections Office conducted three (3) “Know Your Election” campaigns during 2017 and 2018, in both urban and remote areas. With 50 FEO teams, the program reached 3,870 villages and communities, 168 schools, as well as companies and the disciplinary forces. These sessions included information sessions on how to vote, when to vote, where to vote, and what happens inside a polling station. The Fijian Elections Office trained voter awareness officials to conduct this outreach where thousands of people attended voter awareness information sessions. A separate Know Your Election campaign in August 2018 targeted areas where pre-polling was to take place, reaching some 68,000 people in these remote communities.

According to the 2018 Fijian General Election Final Report of the Multinational Observer Group (Refer to page 25), the Fijian Elections Office was commended for its extensive voter information and awareness efforts in advance of the election period. They noted that the campaigns were highly visible and generally well-targeted to include typically marginalised voters, including women, people with disabilities, young people and those living in remote communities. They found that the vast majority of Fijians appeared to understand the voting process and that the rate of invalid votes was low.

There was one such issue noted by the Committee, which required comparative analysis on a jurisdictional basis, and that was the issue of voter turnout during the national general election. The Committee noted that in the 2018 General Elections, the voter turnout was 71.9%, which the Committee endeavoured to determine whether this value, when compared to other jurisdictions with similar electoral systems, is below what is considered to be a sound percentage of voter turnout. The Electoral Commission assisted the Committee on this matter, by providing a comparison of Fiji’s voter turnout with New Zealand and Kiribati. These two Pacific Island countries are similar to Fiji’s electoral system, whereby voting is not compulsory². It was noted that compared to these two countries, Fiji’s voter turnout is reasonable, whereby in New Zealand, it was 79.75% and 75.67% for Kiribati³.

² Inter-Parliamentary Union Database; NZ: http://archive.ipu.org/english/parline/reports/2233_b.htm; Kiribati: http://archive.ipu.org/parline-e/reports/2169_B.htm (Accessed: August 2022).

³ International Institute for Democracy and Electoral Assistance (Voter Turnout Database): <https://www.idea.int/data-tools/data/voter-turnout> (Accessed: September 2020).

It was also commendable that the Fijian Elections Office Strategic Plan 2020-2023 includes a goal of strengthening electoral participation through effective outreach and engagement programs.

Written copy of the submission is uploaded along with this Report and can be accessed from the Parliament website: www.parliament.gov.fj.

2.3 Sustainable development goals impact analysis

As part of its review the Committee is also mindful of the requirements of the Standing Orders of Parliament whereby all matters before the Committee are to be reviewed through a gender lens, that is, to see how the work of the Commission contributes to promoting principles of gender equality and empowerment. This is supplemented by the Committee's appreciation of the Parliament's role in contributing to Fiji's obligations towards the 2030 Global Agenda, which encompasses the goal of promoting the empowerment of women and girls.

The first noticeable aspect from this scrutiny of the Annual Report was that it had insufficient information regarding gender and women and girls empowerment. The Committee thus sought clarification from the Commission on its work towards this.

From the clarification provided, it was encouraging to note that the Commission's work is based on gender-neutral and non-discriminatory principles and legal framework. Legal framework guiding the work of the Commission includes the *Constitution of the Republic of Fiji*, the *Electoral Act 2014* and the *Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013*. These pieces of regulatory authorities promote gender equality, as seen in the provisions of these laws, which provides that all political parties, during registration, make an undertaking to be bound by the Political Parties Act and the Code of Conduct in the schedule which states that Political Parties will among other things uphold democratic values, encourage inclusive participation and promote equality and non-discrimination⁴.

The Commission also believes that the regulatory framework that exists provides enough room that enables non-discriminatory policies, which ensures full and effective participation and equal opportunities for women within Political Parties. It was also advised that it is for Political Parties to manage their own candidate selection and are free to create policies on inclusion.

Furthermore, the Commission advised that there are certain initiatives that are being planned, which it believes will contribute to and promote equal opportunities for women participation in politics and these include:

- the Electoral Commission advised, at the time of providing the response, that it will have induction programs for new political parties that will include awareness on women inclusiveness in political participation;
- the Electoral Commission advised, at the time of providing the response, that it will conduct workshops on inclusivity with political parties;

⁴ Schedule 1, Sections 3 and 4, *Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013*.

- the Electoral Commission advised, at the time of providing the response, that it will work with civil society organisations in developing voter awareness on importance of women participation in elections.

The other key avenue relied upon by the Committee when determining a basis for the scrutiny, was the existing ambitious State national plans in place, that is, the National Development Plans. The Committee noted that free and fair elections are important enablers and fundamental for a democratic and accountable governance under the Constitution⁵. This was something that the Commission had endeavoured to achieve in 2018, when it successfully conducted the General Election, which continues the great strides achieved from the 2014 General Election, whereby the Fijian Parliament has one of the highest percentage of women Parliamentarians in the Pacific region⁶.

Another commendable fact identified from this scrutiny was the Commission's work in the electoral system relating to improved participation for all Fijians. It was encouraging note the tremendous support put towards improved access and participation in the electoral process, for persons with disabilities. This demonstrates the Commission's efforts in reducing inequality, and promoting political inclusion of everyone in Fiji, irrespective of one's socio-economic capabilities.

2.4 Findings

At the penultimate stage of the review, the Committee has reviewed all the evidence it has collected, both from its preliminary findings and the evidence received from the discussion with the Electoral Commission. The following is a summary of the key findings by the Committee.

- i) The Electoral Commission has given an opportunity to all Fijians, even those that reside in very remote locations, to be able to vote. This has been achieved through having Pre-Poll as part of the electoral system in Fiji.
- ii) The Electoral Commission achieved a great milestone, by successfully conducting another election after the D'hondt system was first introduced in the 2014 General Election.
- iii) The Electoral Commission is commended for being able to address the challenges encountered in the 2018 General Election, which includes the spread of false news about the election via social media and the bad weather conditions that hampered certain voters from being able to vote during election day.
- iv) The Electoral Commission is commended for its transparent system of selecting the 3-digit number to be used for candidate numbers, however, when two (2) similar 3-digit numbers appear in the Ballot Paper, it may cause confusion among the voters.
- v) The Electoral Commission is commended for its election awareness and outreach programmes for the year 2018, especially the 'Know Your Election' programme, which were conducted in both urban and rural areas inclusive of villages, communities, and schools.
- vi) The 2018 General Election had a reasonable voter turnout, when compared with other neighbouring countries that have a similar electoral system to that of Fiji.

⁵ Fiji 5-Year and 20-Year National Development Plan, page 15.

⁶ Ibid 5, page 55.

- vii) The Committee noted that there was insufficient gender-related information provided in the Annual Report, however, after seeking clarification, the Committee commends the work carried by the Commission in empowering women and girls and promoting gender equality.

3.0 RECOMMENDATION

After extensive deliberation, the Committee notes and commends the Electoral Commission in remarkable strides made in many areas of the electoral system, but for purpose of continued improvements, the Committee would also like to suggest one recommendation for the Electoral Commission's consideration, which is as follows:

- That the Electoral Commission through the Fijian Elections Office continue with its advocacy programmes on the Elections, which is in line with the Office's Strategic Plan 2020-2023 whereby one such goal is to strengthen electoral participation through effective outreach and engagement programs.

4.0 CONCLUSION

After reviewing the *Electoral Commission Annual Report 2018*, the Committee recommends that the House takes note of its contents.

The Standing Committee on Justice, Law and Human Rights has fulfilled its mandate approved by Parliament, which is to examine and review the *Electoral Commission Annual Report 2018* with due diligence.

The Committee's review highlighted numerous findings which were addressed by the Committee and these were reflected in this Report.

The Committee through this report commends the *Electoral Commission Annual Report 2018* and the contents of its Report to the Parliament.

MEMBER'S SIGNATURES

Hon. Alvick Maharaj
(Chairperson)



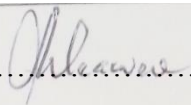
.....

Hon. Rohit Sharma
(Deputy Chairperson)



.....

Hon. Mikaele Leawere
(Member)




.....

Hon. Dr. Salik Govind
(Member)



.....

Hon. Mosese Bulitavu
(Member)



.....

Date: 19/ 08/ 2022