

BILL NO. 29 OF 2023

A BILL

FOR AN ACT TO AMEND THE LOCAL GOVERNMENT ACT 1972

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Local Government (Amendment) (No. 2) Act 2023.
- (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 Local Government Act 1972 is referred to as the “Principal Act”.

Section 2 amended

2. Section 2 of the Principal Act is amended by inserting the following new definitions—
 - ““by-election” means an election held when the seat of a councillor becomes vacant under section 15 or 15A;”;
 - ““election” means an election which is held to elect a councillor or councillors of municipalities;”;
 - ““Fijian Elections Office” has the meaning given in section 2 of the Electoral Act 2014;”;

““Local Government Register of Voters” means a register of persons entitled to vote at the election and includes an electronic register;”;

““Minister” means the Minister responsible for local government;”;

““National Register of Voters” has the meaning given in section 2 of the Electoral (Registration of Voters) Act 2012;”;

““political party” means an association of persons or an organisation, which is duly registered under the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013;”;

““polling day” means the day prescribed in the writ for polling to take place in an election;”;

““public office” means —

- (a) any office in, or as a member of, a statutory authority, a commission, or a board established by or continued in existence by the Constitution of the Republic of Fiji or any written law;
- (b) an office in respect of which the Constitution of the Republic of Fiji makes provision;
- (c) an office established by written law;
- (d) an office of a judicial officer or an office of any court or tribunal established by the Constitution of the Republic of Fiji or any written law;
- (e) any office in a State service, including public service and the disciplined force;
- (f) any office in a trade union registered under the Employment Relations Act 2007 or any other written law (whether elected or appointed to that office, and including any position or arrangement under which a person receives remuneration, salary, allowances or fees from a trade union);
- (g) any office in any federation, congress, council or affiliation of trade unions (whether elected or appointed to that office, and including any position or arrangement under which a person receives remuneration, salary, allowances or fees from any federation, congress, council or affiliation of trade unions); and
- (h) any office in any federation, congress, council or affiliation of employers (whether elected or appointed to that office, and including any position or arrangement under which a person receives remuneration, salary, allowances or fees from any federation, congress, council or affiliation of employers);”;

““public officer” means the holder of a public office;”;

““resident” means a person who habitually resides at a property located within the geographical boundary of a municipal ward;”;

““Supervisor” means the Supervisor of Elections appointed under section 76 of the Constitution of the Republic of Fiji;”;

““ward” means an area demarcated within a municipality”.

Section 9 amended

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

(a) in subsection (2) after “shall”, inserting “, in consultation with the Minister;”;

(b) deleting subsection (3) and substituting the following—

“(3) Each councillor holds office for a period of 3 years, on such terms and conditions as the Minister may deem fit.”.

Section 9A deleted

4. The Principal Act is amended by deleting section 9A.

Section 10 amended

5. The Principal Act is amended by deleting section 10 and inserting the following new sections—

“Candidates for election to a Council

10.—(1) A candidate for the election must be either nominated by a registered political party or nominated as an independent candidate in accordance with the regulations made for the election.

(2) A person may be a candidate for the election if the person—

(a) is a citizen of Fiji, and does not hold citizenship of any other country;

(b) is registered on the Local Government Register of Voters;

(c) is nominated from a ward in the municipality in which he or she is registered;

(d) is nominated from one ward only;

(e) has been a resident for at least one year immediately before being nominated, of the municipality in which he or she is registered;

(f) is not an undischarged bankrupt;

(g) is not a member of the Electoral Commission, and has not been a member of that Commission at any time during the 4 years immediately before being nominated;

(h) is not a member of Parliament;

- (i) does not hold or is not acting in any public office;
- (j) does not hold any paid office, other than mayor, under or within the control of the Council or any committee thereof;
- (k) is not subject to a sentence of imprisonment when nominated;
- (l) has not, at any time during the 8 years immediately before being nominated, been convicted of any offence under any law for which the maximum penalty is a term of imprisonment of 12 months or more; and
- (m) has not been found guilty of any offence under a law relating to elections, registration of political parties or registration of voters.

(3) The total number of candidates which a political party may nominate for a ward in a municipal council must not be more than the total number of seats in the ward, and the total number of candidates which a political party may nominate for a by-election must not be more than the total number of vacant seats in the council for which the by-election is being held.

(4) Every candidate, and every political party nominating a candidate must comply with any written law governing the election.

Disqualification of candidate after nomination

10A.—(1) If a candidate who is duly nominated in an election ceases to be eligible under this Act to be nominated as a candidate for such election at any time before polling day, the Electoral Commission must disqualify that candidate.

(2) Notwithstanding section 10A(1), the Supervisor must—

- (a) remove the name and number of that candidate from the list of candidates for the ward he or she was nominated from;
- (b) in the event that ballot papers have been printed, the Supervisor must, where practicable, ensure that a notice or notices are placed at every polling station for the ward informing voters of the candidate's disqualification; and
- (c) immediately ensure that appropriate public notice is published informing voters of the candidate's disqualification.

(3) No new nomination may be made after the close of the nomination period, to replace any candidate who is nominated for the election but is disqualified before the polling day.

(4) Any vote cast for a candidate who is disqualified before the polling day is deemed to be invalid and must not be counted in any way for the purposes of determining the results of the election.

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

Section 11 amended

6. The Principal Act is amended by deleting section 11 and substituting the following—

“Voter qualification

11.—(1) Any person who—

(a) is registered on the National Register of Voters; and

(b) has been a resident of a ward for not less than 3 months,

has the right to be registered on the Local Government Register of Voters for that ward and for the municipality within which that ward is, in the manner and form prescribed by the regulations governing the election.

(2) A person who is disqualified from registering on the National Register of Voters does not have the right to be registered on the Local Government Register of Voters.

(3) A person who is registered as a voter and who, after his or her registration as a voter is removed from the National Register of Voters must also be removed from the Local Government Register of Voters.”.

Section 12 amended

7. Section 12 of the Principal Act is amended by—

(a) in subsection (1), deleting “an elector” and substituting “a voter”; and

(b) in subsection (2), deleting “elector” and substituting “voter”.

Section 13 amended

8. Section 13 of the Principal Act is amended by—

(a) in subsection (1), deleting “Electoral Commission” and inserting “Minister responsible for election”;

(b) deleting subsection (2); and

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

“(5) A Council must provide resources and appropriate personnel required by the Supervisor to assist the Fijian Elections Office to conduct elections and must comply with all directions and instructions issued by the Supervisor.”.

Section 14 amended

9. The Principal Act is amended by deleting section 14 and inserting the following—

“Costs of election

14. Parliament must ensure that the Fijian Elections Office is allocated sufficient financial resources from the State budget for the conduct of local government elections.”.

Section 15A inserted

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

“Vacancy of seat of councillor

15A.—(1) Notwithstanding section 15, the seat of a councillor becomes vacant if the councillor—

- (a) dies, or resigns by giving to the mayor a signed notice of resignation;
- (b) becomes the holder of a public office or a member of Parliament;
- (c) ceases to have the right to be a registered voter under the Electoral (Registration of Voters) Act 2012;
- (d) ceases to have the right to be nominated as a candidate for the election;
- (e) ceases to be a resident of the municipality in which he or she was a resident at the time of election as a councillor, for a continuous period of one year;
- (f) resigns from the political party for which he or she was a candidate at the time he or she was elected to a Council; or
- (g) is expelled from the political party for which he or she was a candidate at the time he or she was elected to a Council and the expulsion was in accordance with the rules of the political party relating to party discipline.

(2) For the purposes of subsections (1)(f) and (g), the seat of the councillor becomes vacant only upon receipt by the mayor of a written notification signed by the leader and the secretary of the political party notifying the mayor that the councillor has resigned or has been expelled from the political party.

(3) Where a councillor ceases to be qualified to be a councillor due to any reason stated in section 15 or 15A, the Council must declare his or her office to be vacant and signify the vacancy by a notice signed by the Chief Executive Officer and publicly display the notice at the office of the Council.

(4) Subject to subsection (5), if the seat held by a councillor becomes vacant during the term of Council, then a by-election must be held to fill the vacancy.

(5) If the seat held by a councillor becomes vacant more than 2 years and 6 months after the first meeting of Council following the most recent election, the seat vacated must remain vacant until the next election.

(6) If a councillor whose seat becomes vacant under subsection (1) seeks to question or challenge the validity of his or her seat in the Council becoming vacant, the councillor must, within 7 days of the councillor’s seat becoming vacant, make an application to the Electoral Commission for a declaration on whether the seat of the councillor has become vacant.”.

Section 16A deleted

11. The Principal Act is amended by deleting section 16A.

Section 21 amended

12. Section 21 of the Principal Act is amended by—

- (a) in subsection (2), deleting “general election” and substituting “election”;
- (b) in subsection (3), deleting “the drawing of lots” and substituting “referring to the number of votes received by each candidate in the last election held”; and
- (c) in subsection (4), deleting “person appointed to be returning officer for the purpose of supervising elections to the Council, shall” and substituting “Chief Executive Officer must”.

Section 23 amended

13. Section 23 of the Principal Act is amended by—

- (a) in subsection (1), deleting “general election” and substituting “election”; and
- (b) in subsection (3), deleting “the drawing of lots” and substituting “referring to the number of votes received by each candidate in the last election held”.

Section 25 amended

14. Section 25(1) of the Principal Act is amended by deleting “town clerk” and substituting “Chief Executive Officer”.

Transitional

15. Any person who is a special administrator of a municipality at the commencement of the Local Government (Amendment) (No. 2) Act 2023 continues in office on the terms and conditions on which he or she was appointed as a special administrator until the writ for an election is issued by the Electoral Commission.

Consequential amendment

16. The Local Government (Elections) Regulations 1972 is revoked.

November 2023

LOCAL GOVERNMENT (AMENDMENT) (NO. 2) BILL 2023

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 Local Government (Amendment) (No. 2) Bill 2023 (**‘Bill’**) seeks to amend the Local Government Act 1972 (**‘Act’**) to ensure that the local government election procedures and processes are consistent with the policies and legislation relevant to elections.
- 1.2 Accordingly the Bill seeks to bring into effect the policy decision of the Fiji Government to undertake local government elections.

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 provides for the definitions of the terms used throughout the Bill.
- 2.3 Clause 3 of the Bill amends section 9 of the Act to include that the Electoral Commission consults the Minister to determine the number of councillors in each ward.
- 2.4 Clause 4 of the Bill deletes section 9A of the Act to remove the provision for special administrators.
- 2.5 Clause 5 of the Bill deletes section 10 of the Act and substitutes a new section which provides the manner in which a candidate can stand for election to the Council, and the qualifications required. It also inserts a new section 10A which provides for the provisions relating to the disqualification of a candidate after he or she has been nominated for election.

- 2.6 Clause 6 of the Bill amends section 11 of the Act to provide for the qualification of voters.
- 2.7 Clause 7 of the Bill amends section 12 of the Act to delete the term “elector” and substitute it with the term “voter”.
- 2.8 Clause 8 of the Bill amends section 13 of the Act to allow for the Minister responsible for elections to make regulations in relation to the conduct of elections.
- 2.9 Clause 9 of the Bill amends section 14 of the Act to provide that Parliament will allocate financial resources to the Fijian Elections Office for the conduct of local government elections.
- 2.10 Clause 10 of the Bill inserts section 15A to provide for the vacancy of a seat of a councillor.
- 2.11 Clause 11 of the Bill deletes section 16A of the Act.
- 2.12 Clause 12 of the Bill amends section 21 of the Act to amend the method used to determine the outcome when there is a draw in votes.
- 2.13 Clause 13 of the Bill amends section 23 of the Act to amend the method used when there is a draw in votes.
- 2.14 Clause 14 of the Bill amends section 25(1) of the Act to replace “town clerk” with “Chief Executive Officer”.
- 2.15 Clause 15 of the Bill provides the transitional provisions.
- 2.16 Clause 16 of the Bill revokes the Local Government (Elections) Regulations 1972.

3.0 MINISTERIAL RESPONSIBILITY

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

S. D. TURAGA
Attorney-General