

BILL NO. 23 OF 2024

A BILL

FOR AN ACT TO AMEND THE SUGAR INDUSTRY ACT 1984

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Sugar Industry (Amendment) Act 2024⁵.
- (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 Sugar Industry Act 1984 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—
- ““Board” means the Board of Directors of the Council;”;
- ““general election” means the election of the members of the Council;”;
- ““Minister” means the Minister responsible for sugar;”.

Section 32 amended

3. The Principal Act is amended by deleting section 32 and substituting the following—

“Composition of the Council

32.—(1) The Council consists of one representative from each sector.

(2) A representative on the Council under subsection (1) must be a registered grower elected by registered growers within his or her sector.

(3) The chairperson and vice-chairperson of the Board must act as the chairperson and vice-chairperson of the Council respectively.

(4) The elected members of the Council must be taken for the purposes of this Act to represent on the Council, the districts and the mill areas in which they are registered growers and the sectors which they have been elected to represent on the Council.”.

Sections 34, 34A and 35 inserted

4. The Principal Act is amended after section 33 by inserting the following new sections—

“Right to vote at election

34.—(1) Subject to subsection (4), a person entitled to vote in an election under this Part must be registered in that sector at the date of the election.

(2) The Registrar of the Tribunal must, on the request of the Chief Executive of the Council, provide a certified list of all registered growers in each sector.

(3) The Chief Executive of the Council must make available to any candidate in an election an extract from the list under subsection (2), showing the names of registered growers in his or her sector.

(4) A registered grower who, **is adjudged or declared is found** to be of unsound mind **by a court of law**, is not eligible to vote in an election conducted under this Part.

(5) A registered grower who is eligible to vote at an election may appoint another person who manages the registered grower’s farm under an instrument of proxy; **or power of attorney**, to vote at the election on behalf of the registered grower.

(6) ~~In this section—An instrument of proxy in this section must be in the form and contain such particulars as the Tribunal may determine.~~

(a) **an instrument of proxy must be in the form and contain such particulars as the Tribunal may determine; and**

(b) **a power of attorney must —**

(i) **be accompanied by a certificate issued by the Registrar of Titles certifying that the power of attorney has not been revoked or cancelled; and**

- (ii) specify the manner in which the appointed person must vote in an election and the appointed person must vote in accordance with the directions provided in the power of attorney.

(7) Any question as to the right of a registered grower to vote at an election under this Part and any other question arising in connection with the election must be determined by the Tribunal.

~~(8) In this section “instrument of proxy” includes a power of attorney.~~

Candidate eligibility

34A.—(1) A person is eligible to contest an election if the person—

- (a) is a registered grower;
- ~~(b)~~ is an eligible grower;
- ~~(bc)~~ has produced an annual cane amount ~~as prescribed by regulations~~;
- ~~(ed)~~ is not an elected representative of any cane producers’ association; and
- ~~(de)~~ is of sound mind.

(2) The Registrar of the Tribunal, in consultation with the Chief Executive of the Council is responsible for verifying the eligibility of candidates in accordance with subsection (1).

(3) Any person who fails to meet the eligibility criteria in subsection (1) is not eligible to contest an election.

~~(4) In this section—~~

- ~~(a) “eligible grower” means an active registered grower who is domiciled in Fiji for at least 2 years immediately before his or her nomination; and~~
- ~~(b) a person is considered to be of sound mind if he or she—~~
 - ~~(i) has the mental capacity to understand his or her decisions regarding participation in an election under this Part; and~~
 - ~~(ii) is not adjudged or declared to be of unsound mind.~~

General election

35.—(1) Subject to sections 36 and 37, each member of the Council must be elected at a general election and hold office until the next general election.

(2) A general election must be held every 34 years.”.

Section 36 amended

5. Section 36 of the Principal Act is amended by deleting subsection (1) and substituting the following—

“(1) A vacancy in the Council occurs—

- (a) on the death of a member of the Council;
- (b) if a member of the Council is disqualified from holding office under section 33;
- (c) at the expiration of a member’s term of office; or
- (d) if a member of the Council resigns in accordance with subsection (2).”.

Section 37 amended

6. The Principal Act is amended by deleting section 37 and substituting the following—

“Filling of vacancies in the Council

37.—(1) Where there is a vacancy in the Council, ~~an election must be held to fill the vacancy in the sector of which the former member was a representative in accordance with section 39 and the person elected must hold office as a representative of the sector until the date of the next general election;~~ and subject to subsection (2)—

- (a) the vacant position must be awarded to the person from the same sector, who—
 - (i) is the next highest-ranked candidate in that sector from the most recent general election;
 - (ii) is the next highest-ranked out of those candidates of that sector who did not get elected to the Council; and
 - (iii) is still available to serve at the time of the vacancy (as may be determined by a written law governing elections); or
- (b) where the next highest-ranked candidate declines to assume the position, a new election must be conducted within 60 days to fill the position.

(2) An election must not be held under this section for any vacancy occurring within 6 months before the next general election.”.

Sections 38 and 39 inserted

7. The Principal Act is amended after section 37 by inserting the following new sections—

“Supervision of election

38.—(1) The Industrial Commissioner ~~or any independent body appointed by the Minister~~ has the general responsibility for, and must supervise the conduct of, a general election or an election.

(2) The Industrial Commissioner ~~or any independent body appointed by the Minister~~ must make such arrangements as he or she thinks is necessary for a general election or an election, including the following—

- (a) making and receipt of nominations of candidates;
- (b) manner of voting;
- (c) preparation and distribution of ballot papers;
- (d) establishment of polling stations;
- (e) counting of votes; and
- (f) appointment of persons to receive and count votes.

(3) Not less than 28 days before the date fixed to hold a general election or election, the Industrial Commissioner ~~or independent body appointed by the Minister~~, must publish a notice in the Gazette of the following—

- (a) the date to hold an election; and
- (b) the particulars of the arrangements under subsection (2).

(4) ~~The Tribunal may declare the election of any person at the general election to be invalid, and may direct that a fresh election be held in that sector, subject to any condition and in accordance with any arrangement as the Chief Executive of the Council in consultation with the Registrar of the Tribunal thinks fit. Where the Tribunal makes a declaration that the election of a person is invalid—~~

- (a) ~~the Tribunal must award the position to the person from the same sector, who—~~
 - (i) ~~is the next highest-ranked candidate in that sector from the most recent general election;~~
 - (ii) ~~is the highest-ranked out of those candidates of that sector who did not get elected to the Council; and~~
 - (iii) ~~is still available to serve at the time of the vacancy (as may be determined by a written law governing elections); or~~
- (b) ~~where the next highest-ranked candidate declines to assume the position, a new election must be conducted within 60 days to fill the position.~~

Determination of question of membership

39.—(1) The Tribunal may, of its own discretion or on written request being made to it by the Chief Executive of the Council or any registered grower entitled to vote at an election under this Act, hear and determine any question whether—

- (a) a person has been validly elected at any election as a member of the Council; or

- (b) any member of the Council has vacated his or her office under section 36.

(2) At the hearing of any proceedings under subsection (1) and where the Tribunal is satisfied that a person claiming to have been validly elected at any election has been guilty of an offence under any written law, the Tribunal may make an order disqualifying that person for appointment to the Council for a period not exceeding 34 years.”.

Section 43 inserted

8. The Principal Act is amended after section 42 by inserting the following new section—

“District and sector committees

43.—(1) The Council must appoint a committee of the Council for each district and for each sector for the purpose of assisting the Council within that district or sector in the exercise of its functions under this Act.

(2) The mutual relationship of the Council and the district and sector committees appointed under subsection (1) must be determined by the Council.

(3) The Council may appoint any other committee to provide advice on the exercise of any of its functions under this Act.”.

Sections 46 and 47 inserted

9. The Principal Act is amended after section 45 by inserting the following new sections—

“Board of Directors of the Council

46.—(1) There must be a Board of Directors of the Council which consists of representatives from each district.

(2) A representative on the Board under subsection (1) must be elected by members of the Council whose sectors are part of his or her district.

(3) The chairperson and vice-chairperson must be elected by the directors from amongst the members of the Board.

(4) The chairperson, vice-chairperson and directors must hold office until the date of the general election following the date on which they were elected to the Board or until the date on which they may otherwise vacate their offices under subsection (7), whichever is the earlier date.

(5) The Chief Executive of the Council must convene a district meeting of the Council immediately following a general election for the purpose of electing the directors of the Board.

(6) The Chief Executive of the Council must convene a meeting of the Board immediately after the election of directors for the purpose of electing the chairperson and the vice-chairperson, and the Chief Executive of the Council must preside over that meeting until the chairperson of the Board is elected.

(7) The chairperson, vice-chairperson or a director must vacate his or her office—

- (a) upon ceasing to be a member of the Council;
- (b) upon resigning from his or her office by notice in writing to the Chief Executive of the Council; or
- (c) upon the Council passing a resolution dismissing him or her from office as the chairperson, vice-chairperson or director of the Board, as the case may be.

(8) Where there is a vacancy in the office of any Board member, another person must be elected in his or her place in accordance with this section and, upon being elected, he or she must, subject to subsection (9), hold office until the date of the next general election.

(9) An election must not be held under subsection (8) in respect of any vacancy occurring within 6 months before the next general election.

Functions and proceedings of the Board

47. The functions and proceedings of the Board must be regulated by regulations.”.

Section 48 amended

10. Section 48 of the Principal Act is amended by deleting subsection (1) and substituting the following—

“(1) There must be a Chief Executive of the Council who is appointed by the Board to perform such functions assigned to him or her by the Council.”.

Section 129A inserted

1011. The Principal Act is amended after section 129 by inserting the following new section—

“Regulations

129A. The Minister may, in consultation with the Tribunal, make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for the purposes of this Act.”.

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December 2024

SUGAR INDUSTRY (AMENDMENT) BILL 2024

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 Sugar Industry Act 1984 (**‘Act’**) generally provides for the administration of the sugar industry. The Act also establishes the Sugar Cane Growers’ Council (**‘Council’**).
- 1.2 The function of the Council is to ensure the protection and development of the sugar cane industry. The Council was established with specific functions to represent the interests of all registered cane growers in Fiji.
- 1.3 Prior to 2015, the members of the Council were elected through an election process stipulated in the Act. However in 2015, through the Sugar Industry (Amendment) Act 2015, the Act was amended whereby the members of the Council were to be appointed by the Minister.
- 1.4 Therefore, the Sugar Industry (Amendment) Bill 2024 (**‘Bill’**) seeks to amend the Act to allow for the election of members to the Council. The Bill will also amend the composition of the Council and outline the electoral process for election to the Council.

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 provide for the definition of terms used in the Bill.
- 2.3 Clause 3 of the Bill amends section 32 of the Act by stating the composition of the Council.

- 2.4 Clause 4 of the Bill amends the Act by inserting sections 34, 34A and 35 which provides for the right to vote at elections, candidate eligibility and the general elections for members of the Council.
- 2.5 Clause 5 of the Bill amends section 36 of the Act to extend the circumstances under which a vacancy in the Council can occur.
- 2.6 Clause 6 of the Bill amends section 37 of the Act to provide for the manner in which a vacancy in the Council is to be filled.
- 2.7 Clause 7 of the Bill amends the Act by inserting sections 38 and 39 to provide for the supervision of an election and how questions of validity of membership to the Council may be determined.
- 2.8 Clause 8 of the Bill amends the Act by inserting section 43 to provide for district and sector committees.
- 2.9 Clause 9 of the Bill amends the Act by inserting sections 46 and 47 in relation to the Board of Directors of the Council and the manner in which its functions and proceedings are to be regulated.
- 2.10 Clause 10 of the Bill amends the Act by inserting section 129A to provide for the regulation making powers of the Minister, in consultation with the Tribunal.
- 3.0 MINISTERIAL RESPONSIBILITY**
- 3.1 The Act comes under the responsibility of the Minister responsible for sugar.

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Attorney-General