

**FEO Submission on the Electoral Amendment Bills 2021 to the Standing Committee
on Justice, Law and Human Rights**

01/03/21 – 9.30am

Introduction:

Fiji's current electoral framework can be described as follows: The first law introduced for elections since 2006 was the 2012 Electoral Registration of Voters Act followed by the 2013 Political Parties (Registration, Conduct, Funding and Disclosures) Act. In September 2013, the Constitution of the Republic of Fiji brought into effect the modified version of the Open List Proportional Representation system, single Constituency, single voter list and the concept of one person one vote one value was enshrined in the highest law of the land.

In 2014, the Electoral Act came in and more features of the electoral system were finalized such as 'One-day voting' followed by counting at the polling station, introduction of multiple stations at each polling venue, the rule that voters can only vote at the polling station they are assigned, overnight provisional results and the widely used *d'hondt* system for calculating seats in Parliament.

Since then, the FEO has conducted 2 general elections and both these elections were observed by the Multinational Observer Group ["**MOG**"] that was co-led by Australia, India and Indonesia. The MOG, following the observation of the election, declared that the elections were credible and represented the will of the Fijian people. The MOG also made some observations and recommendations in specific areas that Fiji would have to address.

Parliament amended the laws previously in 2017 in line for the 2018 General Election. It is indeed very positive that Parliament is once again considering further amendments following the experience in 2018 for the 2022 General Election. Internationally, it is always regarded as good practice for Parliament to review and approve laws for the General Election well in advance of the date.

Following the 2018 General Election, the FEO conducted an extensive review of the electoral processes in Fiji as well as the existing electoral laws in preparation for the next general election. In the review, FEO identified that in-order to deliver more effective election operations, the existing laws outlining the procedures needed to be streamlined.

In summary, there are 56 clauses proposed to be amended which includes 11 clauses in the Electoral (Registration of Voters) Act, 2012, 31 clauses in the Electoral Act, 2014 and 14 clauses in the Political Parties (Registration, Conduct, Funding and Disclosures) Act, 2013.

Electoral (Registration of Voters) (Amendment) Bill, 2020

The amendments, which will be covered shortly, are designed to also introduce natural justice in terms of a person's right to be registered as well as an opportunity for another person to object to the registration of someone on the National Register of Voters. While objections to voters on the roll was a tool used by political parties and candidates in the multi constituency system before, it still has relevance in the single constituency system where the primary challenge will be on the basis of eligibility rules.

We shall now cover the various amendments to the act that have been proposed.

1. Protection of National Register of Voters Database:

The FEO registers voters electronically. The electronic registration system was introduced after the Act came into force in 2012. The law is now being amended to protect the FEO's national register of voters' database- section 10A.

2. The Voter Card:

As is common knowledge, the FEO issues a voter card for every registration. Section 10(3) is being inserted in the law to now legally require that the SoE must issue every person who is registered as a voter with a Voter Card. The amendment in the law makes the Voter Card a property of the FEO. The new section 19(E) introduces the legal provisions for replacement of Voter Cards.

3. Selection of Polling Venue:

Furthermore, in terms of the registration of voters in Fiji, the Electoral Act states that every voter must be listed to vote closest to their residential address. As such the amendments in Section 4 is to now:

3.1 Firstly, register a voter based on a form approved by the EC.

3.2 Secondly, the law now requires a voter to select a polling venue closest to his/her residence or an alternative polling venue.

This removes the obligation on the FEO to individually allocate voters to polling venues and transfers the onus on the voters to select a polling venue of their choice. Although the FEO still retains the power to allocate a voter who does not choose or make that choice at the time of registration. These provisions also allow the FEO to make effective use of its polling maps to assist voters on making the choice on their venue.

4. *Details on the National Register of Voters:*

Furthermore, the National Register of Voters will now contain details of each voter and in addition to that, it will contain details of their polling venue and their alternative polling venue.

5. *Return of voter cards:*

As mentioned earlier, the law now requires the SoE to issue a voter card to every voter once they have registered. The voter cards will remain the property of the FEO and should anyone find another person's voter card they must return it to the FEO. This will cover voter cards that may be forgotten at a post office or at a bank. Now this obligates these institutions to actually return all those voter cards that are in their custody to the FEO.

6. *Publication of the National Register of Voters:*

The SoE is required now to publish the National Register of Voters in the form approved by the EC. If you look at the amendments to the Electoral Act, it has been amended so that the Provisional Voter Lists are published by September every year and these amendments will enhance the level of information that is available to stakeholders particularly political parties as they prepare for the general election.

Further transparency amendments have been implemented wherein the SoE is now required to publish the Notice of Deletion (Section13(1)) annually for all those persons who have been removed from the voter roll. The FEO has already been doing such in practice and now the legal framework has been revised to strengthen the current processes. The notice as you can see will contain the details of the person and this publication will be done online annually.

7. *Objections:*

Objections provisions have been introduced with appeals provisions which allows for review of SoE's decision by the EC and the EC's decision is final.

8. *Close of National Register of Voters:*

There has been an amendment to practically implement the close of the National Register of Voters. The registration is closed when the Writ is issued, the Writ will now specify the exact time when the National Register of Voters will close that day.

9. *Powers of the Supervisor:*

The Law further strengthens the powers of the SoE in the following manner:

- a. The SoE or his staff can take possession of any documents that has been produced and that the registration officer believes is false or invalid.
- b. The state and all state agencies have been directed by the law to provide assistance in a timely manner. This is particularly necessary when the Voter List is to be prepared after the issuance of the Writ.
- c. There is now a specific law that prohibits any staff of the FEO from disclosing information in relation to any person at the time of registration unless it is by a directive of a court of law. And if any staff of the FEO will commit such an offense they are liable upon conviction to a maximum term of imprisonment of 5 years.
- d. The security features of the voter card has also been introduced where the SoE must ensure that there are now security features incorporated in the voter card. The law now specifically allows the SoE to upgrade the security features in design and printing of the voter card and it further allows the SoE to enforce these upgrades on voters by requiring the voters to replace their voter cards following the security feature upgrades.

Electoral (Amendment) Bill, 2020

1. *Interpretation:*

Certain terms in the “Interpretation” section have been amended or added for clarification purposes. For instance:

- 1.1. Banker’s cheque is redefined not to include a personal cheque. This would avoid confusion during the nomination period and will ensure that a personal cheque is not accompanied with the nomination of candidate form for either a party candidate or independent candidate.
- 1.2. The meaning of campaign period is inserted to clearly specify the period in which the campaign for the general election is to take place.
- 1.3. The definition of ‘Designated area’ has been amended to allow the SoE to give access to Political Party agents and observers to areas of the electoral process that is not dealing with polling only.
- 1.4. Election Officials is amended to refer to those staff appointed under this Act by the SoE; and
- 1.5. the definition of ‘Polling’ is amended to cater for *force majeure* events.

2. *Powers of SoE:*

The duties and powers of the SoE is specified in section 6 of the Act. The amendment is to clarify his current role which is not only to administer registration but also regulate the conduct, funding and disclosures of political parties.

Further, amendment to section 116 allows SoE to remove or direct any political party, candidate or police officer to remove any material that is in breach of the campaign rule. This amendment gives effect to the protection of the voters from campaign during the blackout period.

3. *Submission of Electoral Reports:*

For transparency in election administration, the SoE is required to submit a report to the EC within 1 month (*section 109(1)*) and EC/SoE are required to submit a post-election joint report within 3 months (*section 14(g)*). The proposed amendment is for SoE to submit his report within 3 months and the EC/SoE are to submit theirs within 6 months.

This is to allow additional time for the SoE and the EC to compile a comprehensive report that reflects on the election. It is actually a recommendation by the EC and SoE in their 2018 General Election Joint Report. In 2014 and 2018 General Election, it was

found that there were some significant constraints on the EC and SoE to effectively deliver their respective reports when the timing coincided with the petition period.

Also, the proposed increment in time would allow EC and SoE to comprehensively review and reflect on the election as well as assess and analyse the recommendation of the Observers of the Election and if necessary incorporate those recommendations in their own reports.

4. *Requirement for the Writ:*

The amendment to section 21(e) requires that the time and date of the close of the National Register of Voters is specified in the Writ. It is necessary to state a specific time so that all stakeholders are aware. The exact cut-off time is also useful in the preparation of the Final Voter List.

5. *Objection to Nomination of Candidates:*

The amendment to section 30(1) is to avoid confusion on the grounds for objection. It specifies that the Objector must be a registered voter and the grounds of objection must be on non-compliance of the candidate eligibility requirements in section 56(2) of the Constitution of the Republic of Fiji and section 23 of this Act.

6. *National Candidates List:*

The amendment to section 36(6) is to allow the National Candidates List to contain either the party name or party symbol or any other information as approved by the SoE. This is in line with the recommendation of the MOG from 2014 and 2018 who had suggested to remove restrictions on party identification in official election material.

7. *Publication of Provisional Voter Lists:*

The amendment to section 40 is to allow the SoE to publish the Provisional Voter List for each polling station on or before 30 September of each year except in an election year. This process would allow for stakeholders including political parties to carry out verification exercises and report inaccuracies in the voter list to the FEO for rectification.

Further, the heads of institution at which polling is to take place, for instance, Fiji Military Forces or Fiji Corrections Services will now be required to submit to FEO their list of voters within 7 days of the dissolution of parliament.

Practically, this provision also distributes deadlines for electoral events during the cycle and not only towards the end.

8. *Publication of Polling Venue Lists:*

The amendment to section 41 is to allow the SoE to identify the physical locations of all polling venues and submit this to the EC for approval before 30 June of each year except in election year. The Provisional List of Polling Venues would then be published by EC within 30 days after its approval. Then the final listing would later be published in election year. This is in support of the recommendation by the EC/SoE in their joint report.

This would ensure that a consultation process is available on a yearly basis for comments and suggestions from political parties and other interested stakeholders in respect of individual polling venues. Practically, the FEO will use the approved list of venues and conduct voter registration for these venues.

Following this process, the EC would then finalise and publish the Final List of Polling Venues to be used in the general election on election year.

Further, the amendment also allows for the SoE to establish a polling venue in Suva for voters who are registered overseas but are not postal voters to cast their vote in this polling venue. This would give an opportunity for these voters to be part of the election process as well. In the past two (2) general elections some voters missed out on this opportunity because there was no power for the SoE to establish a special polling venue to cater for them.

9. *Accessibility for Polling Agents:*

The amendment to section 45 and section 60 is to specify access for polling agents. This amendment would incorporate the practices in 2018. It would allow polling agents not only to observe at the polling station but at other designated areas where electoral processes are taking place. These areas will include polling agents coming to the Postal Vote Verification center, the ballot paper printing facility, etc.

In practice, the FEO has already been allowing Party agents to these processes in the interests of transparency.

10. Accessibility for FEO Service Providers:

On Election Day, the FEO has service providers such as third party vehicle suppliers and drivers, logistics operators and suppliers of tents etc. The FEO was unable to facilitate their vote on the day at the polling station they were located at and they also could not be released to travel to the polling station they were listed in. This amendment would ensure that they exercise their right to vote at a polling station they are working at or at a polling station convenient to their location of assignment. This includes those package drivers who previously were required to vote at their assigned polling station.

11. Voting Process:

The amendment to section 53 (1) simplifies the voting process. The new process will require the polling official to mark the voter's name from the voter list, have the voter sign next to their name and then receive the ballot paper from the same official. The voter then proceeds to the Cardboard voting screen. This amendment will streamline the queue inside the polling place and also reduce the polling staff required.

12. Removal of Ballot Paper from the Polling Station:

The inclusion of section 53(8A) is to avoid ambiguity by clarifying that on Election Day, the presiding officer can only leave the polling station to assist a voter who resides within 300 meters of 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 other reason approved by the SoE. It further clarifies that the presiding officer can only do this once all the voters in the queue at the polling station have voted. Also, there is a new inclusion on Section 83, particularly section 13A which allows the presiding officer during Pre-Poll voting to remove the ballot paper as well with an election official accompanying him or her when providing assisted voting outside of the polling station.

In practice, this provision will allow the Presiding Officer to take the ballot paper to a voter who is inside the Polling Venue Boundary but may not be able to disembark the vehicle that transported the voter.

13. Rights of Persons with Disability:

The amendment to section 57 is to make it consistent to section 47(c) of the Rights of Persons with Disabilities Act, 2018. The amendment will also align the Electoral Act with the Convention on the Rights of Disabled Persons.

In practice, the amendment will allow a disabled voter to bring in a person of their choice to assist him or her in the voting process. In the 2018 General Election, we allowed them to bring a person of their choice but this was through EC Decision. This amendment would recognize their rights in the Act and it is also one of the MOG recommendations after the 2014 General Election.

14. Postal Voting Process:

To enhance the administration of postal applications, section 70 (1) is amended. This is to allow the FEO to thoroughly process a postal vote application instead of providing an 'on the spot' decision for hand delivered postal applications.

Once the application is approved the voter would normally receive a postal package which includes the instruction on postal voting, declaration form, secret envelope, transmission envelope, return envelope and postal ballot paper. These have been the contents for the 2014 and 2018 General Election postal packages. The amendment to section 73(2) is to reflect the current contents.

Furthermore, amendments to section 77, 79(8) and 81(5) clarifies that postal voting is conducted by the SoE and the counting of postal ballot would commence after the close of polling on polling day instead of after the verification and reconciliation of postal ballots.

15. One Ballot Box Per Polling Station:

The amendment to section 92(4) is to clarify that there is only one ballot box per polling station and it is the responsibility of the presiding officer or an election official to open this ballot box during the counting process.

Under the current electoral system, each polling station only has 1 ballot box.

16. Accessibility of the Voter Lists:

The amendment to section 100 of this Act is to allow accessibility of the voter lists for analysis purposes after the conduct of the general election. With the current legal framework FEO had to wait for a year for the past two (2) general elections before it could do any analysis on the voter turnout as after counting the voter lists were placed back inside their respective ballot boxes and sealed awaiting destruction after a year.

The FEO has published the 2018 General Election Voter Turnout data and analysis and the same was tabled in Parliament as part of the 2020 Electoral Commission Annual Report.

17. Publication of Provisional Results:

The new section 102A allows the SoE to publish provisional results which is a common practice in numerous countries. This is a recommendation in the EC/SoE joint report which emphasized that the amendment to the legal framework would allow the FEO to publish provisional results in terms of totals for candidates and total for parties from the moment the protocol of results is received from presiding officers on election night until 07:00am the day after the election.

Whilst the announcement of provisional results should be considered an important feature of the election, particularly in terms of certainty of results and an indication of the progress in count, there were some objections in 2018 and hence the need to legislate it.

18. Allocation of Seats:

The amendment to section 104 is to ensure that the allocation of seats provision is consistent to that described in section 53(3) of the Constitution of the Republic of Fiji. The 5% threshold should be calculated against the total number of votes cast which should include invalid votes.

19. Campaign Period:

The section 109A explains the campaign period before a general election. The period is 30 days prior to the completion of 3 years and 6 months of the sitting of Parliament and ends 48 hours prior to the general election.

This is another recommendation of the MOG as well as the EC/SoE in their joint report. The clarification of the start and finish of the campaign period would allow stakeholders to understand their rights and obligations during this period.

The subsequent sections in the law that deal with campaign offences have also been amended to now be applicable upon commencement of the campaign period.

20. Use of State Resources:

This is a recommendation of the EC/SoE in their joint report. The amendment to section 113 is to ensure that the legal framework is clear on the use of state resources during the campaign period.

21. Publication of False Statements:

The inclusion of section 144A is to allow the SoE to deal with content published by political parties or persons that may contain false information or be designed to diminish public confidence in the performance of any duty or function of the SoE and EC.

These provisions also create the framework for the correction or removal of such information. The provision further empowers FEO to require any service provider to remove such information.

The creation and publication of false information, particularly on election processes harms the public confidence in elections. The current manner of dealing with such cases provides a swift mechanism for removing of content so that the integrity of the election is protected. Such provisions also deter politicians and other actors from making poorly researched statements without any facts or evidence.

22. Destruction of Election Materials:

The amendment to section 153 is to allow the SoE to destroy the records in relation to an election six (6) months after the election unless the Court orders otherwise. This is to reduce storage cost for the FEO.

Political Parties (Registration, Conduct, Funding and Disclosures) (Amendment) Bill, 2020

1. Register of Political Parties:

The amendment to section 3 is to enhance the administrative records of the political parties in the Register. It ensures that the Register captures the political party name, terms of office and contact details of the office holders, bank account details of the party, name of contact details of the auditor and legal advisor as well as any other particulars as required under this Act. Further, it ensures that the Register is updated on an annual basis.

2. No Registration during Elections:

The amendment to section 7 is to clarify that no proposed political party will be registered from the time the Writ is issued to the time the Writ is returned. This also, aligns to the amendment made by the Electoral (Amendment) Bill, 2020 to section 21 of the Electoral Act, 2014.

3. Bank Account of Parties:

The amendment to section 10 is to ensure that newly registered political parties open their bank accounts and provide the bank account details to the Registrar within 90 days of registration. For those existing political parties that do not have a bank account, they are to open a bank account and provide its details to the Registrar within 60 days of commencement of this Bill.

4. Restriction on Public Officers:

The amendment to section 14(1) (c) is to clarify that the public official must not engage in political activity in an election that may compromise or be seen to compromise the political neutrality of the person's office in an election.

5. Sources of Funds/Declaration of Assets, Liabilities and Expenditure of Political Parties:

The current role of the Registrar is to administer and regulate political parties. The MOG had recommended that parties report on their campaign expenditure following an election. In order to properly assess these, there needs to be certain amendments made to the current legal framework.

For instance, the amendment to section 16 of this Act would ensure newly registered political parties submit to the Registrar within 30 days of being registered their

details of assets and liabilities incurred and income and expenditure including all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made to the political party.

Then there is the amendment to section 21 which demarcates the source of funds for a political party and an independent candidate. The source of funds for political parties would now include income derived from any building owned by a political party and the source of funds for the independent candidate must only be from voluntary contributions, donations, bequest and grants from a lawful source, not being from a foreign government, intergovernmental or non-governmental organization. The proceeds of any investment, project or undertaking in which a political party or independent candidate has an interest, no longer forms part of the sources of funds for the political party and independent candidate.

Political parties will now be required to submit to the Registrar their sources of funds within 90 days of the end of their financial year and political parties will be required to publish this information themselves in any national newspaper during this time period as well.

The amendment to section 24 would allow the Registrar to assess the election spending and monitor the donations and income and expenditure of nominated candidates. This is because nominated candidates will now be required to provide to the Registrar within 30 days of polling and within 30 days of the return of the Writ their sources of donation, assets, income and expenditures. In practice, this amendment allows a before election and after election comparison.

Furthermore, amendment to section 25 would require political parties to submit to the Registrar within 30 days after polling day, a written declaration giving details of all assets and liabilities as at polling day and income and expenditure, including all contributions, donations or pledges of contributions or donations, whether in cash or in kind, made or to be made from the date the writ is issued to polling day. This would allow the Registrar to assess the political party's election spending and compliance to the law as well.

Then the amendment to section 26 would ensure that political parties publish their audited accounts in any national daily newspaper within 3 months after the end of each financial year.

6. *Appeals to the EC:*

The amendment to section 30 would allow appeals against the decisions of the Registrar to be dealt with by the EC instead of the High Court. This would expedite the process. It also creates consistency in the determination of decisions of the SoE across all the electoral laws.

7. *Dispute Resolution:*

The new section 30A allows political parties to request the EC to mediate or arbitrate where there are disputes on any campaign issues between political parties.

Conclusion

Some of the amendments in the Bills are designed to make the law more consistent with other electoral laws. Since some laws were made before the finalization of the electoral system and the polling process, there were some disconnects which resulted in having to look across multiple laws to design the electoral processes. Some of the definitions also were inconsistent between the laws.

The Fijian Elections Office is an independent Election Management Body formally established in March 2014 under the Electoral Act, 2014. The mission of the FEO as Fiji's election management body is to implement internationally recognized election best practices in accordance with the law, effectively regulate political parties and efficiently register eligible Fijians to ensure that we deliver the highest quality of election services under the supervision of The Electoral Commission.

The FEO submission today is intended to compliment the submission by the Electoral Commission. The FEO wholly supports the Electoral Commission's recommendations for specific provisions to be introduced creating it an offence for anyone attempting to direct or prevent the SoE or the FEO from carrying out their independent functions. Such an act by Parliament will further strengthen the independence of the electoral institutions.

To the Chair and members of the committee, you will notice from the amendments, the amendments introduced what I would say is the settling down of the laws that are there making it more mature, more functional and with greater coverage of the processes in order to ensure there is legitimacy to the activities of the FEO. I would recommend the Committee to submit to Parliament to approve the amendments to the Electoral (Registration of Voters) Act, 2012, Electoral Act, 2014 and Political Parties (Registration, Conduct, Funding and Disclosures) Act, 2013.

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