

# DRAFT

## 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 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—

““political party” means an association of persons or an organisation, the object or activity, or one of the objects or activities of which, is the promotion of the election to local government of a candidate or candidates endorsed by it;”;

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

““Register of Voters” means a register of persons entitled to vote at local government election and includes an electronic register;”;

““resident” means a person who occupies or lives on a property within a municipal ward boundary;”;

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

#### *Section 5 amended*

3. Section 5 of the Principal Act is amended after subsection (3) by inserting the following new subsection—

“(3A).—(1) For the first election held after the Local Government (Amendment) (No.2) Act 2023 comes into force, the Electoral Commission must not redefine any wards as set out in subsection (3).

(2) Notwithstanding section 3(A), within [insert number] months of Local Government (Amendment) (No.2) Act 2023 coming into force, all town councils must provide the Supervisor with clearly demarcated ward boundaries that capture all eligible voters residing within that ward.”.

#### *Section 9 amended*

4. 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 4 years, on such terms and conditions as the Minister may deem fit.”.

*Section 9A amended*

5. Section 9A(1) of the Principal Act is amended by deleting “for such period as the Minister may consider necessary to perform the functions of a Council until the election date is determined by the Electoral Commission” and substituting “and the appointment may be until a date as determined by the Minister after consultation with the Electoral Commission”.

*Section 10 amended*

6. The Principal Act is amended by deleting section 10 and substituting the following—

*“Qualifications and disqualifications for candidates*

10.—(1) A candidate for election to a municipal council must be either nominated by a registered political party or nominated as an independent candidate in accordance with the regulations created for local government elections.

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

- (a) is a citizen of Fiji, and does not hold citizenship of any other country;
- (b) is registered on the Register of Voters for the ward within a municipality which they intend to be nominated from;
- (c) must be a resident of the ward within the municipality they are nominated from for at least 1 year;
- (d) is not an undischarged bankrupt;
- (e) 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;
- (f) is not subject to a sentence of imprisonment when nominated;
- (g) 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
- (h) has not been found guilty of any offence under a law relating to elections, registration of political parties or registration of voters.

(3) A person is disqualified from being elected or being a councillor if that person—

- (a) is disqualified from membership of a council under any written law relating to offences connected with elections;
- (b) holds or is acting in any public office as provided for in section 57 of the Constitution of the Republic of Fiji and includes members of Parliament;
- (c) has at any time during the immediately preceding 4 years held or acted in the office of a member of the Electoral Commission or in the office of the Supervisor;

- (d) holds any paid office, other than mayor, under or within the control of the council or any committee thereof; or
- (e) ceases, for a continuous period of 12 months, to reside in the municipality in which he or she was ordinarily resident at the time of his or her election as a councillor.

(4) For the purposes of subsection (2)(g)—

- (a) 2 or more terms of imprisonment that are required to be served consecutively must be regarded as a single term of imprisonment for the aggregate period of those terms;
- (b) a sentence of imprisonment imposed as an alternative to or in default of a payment of a fine must be disregarded.

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

(6) Every candidate, and every political party nominating a candidate must comply with any written law governing local government elections.

*Section 10A inserted*

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

*“Disqualification of candidate after nomination*

10A.—(1) If an independent candidate or a party candidate who is duly nominated in a local government election ceases to be eligible under this Act to be nominated as a candidate for local government election at any time before polling day, the Electoral Commission must disqualify that candidate and the Supervisor must remove the name and number of that candidate from the National Candidates List and 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 stations.

(2) The Supervisor must immediately ensure that appropriate public notice is published informing voters of the candidate’s disqualification.

(3) No new nomination may be made to replace any candidate who is nominated for local government election and who is disqualified before the polling day.

(4) For the avoidance of doubt, 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 deterring the results of the election.

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

*Section 11 amended*

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

*“Qualification of voters*

11.—(1) Every citizen who is or will be the age of 18 years on or before the date of the issue of the writ for the next municipal council election, is registered in the National Register of Voters and has resided within the ward of the municipal boundary for no less than 3 months, has the right to be registered as a voter for the municipal council election, in the manner and form prescribed by a written law governing elections or registration of voters.

(2) A person who—

- (a) is serving a sentence of imprisonment of 12 months or longer imposed by a court in Fiji or by a court of another country;
- (b) is under a written law in force in Fiji, adjudged or declared to be of unsound mind; or
- (c) is serving a period of disqualification from registration as a voter under a law relating to electoral offences,

does not have the right to be registered as a voter.

(3) A person who is registered as a voter and who, after his or her registration as a voter—

- (a) is serving a sentence of imprisonment of 12 months or longer imposed by a court in Fiji or by a court of another country;
- (b) is under a written law in force in Fiji, adjudged or declared to be of unsound mind; or
- (c) is serving a period of disqualification from registration as a voter under a law relating to electoral offences,

ceases to be a registered voter.”.

*Section 12 amended*

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

- (a) in subsection (1), deleting “an elector” and substituting “a voter”;
- (b) deleting subsections (2) and (3) and inserting the following new subsections—

“(2) The election of Councillors from each ward in a municipality is by a multi-member open list system of proportional representation, under which each voter has one vote, with each vote being of equal value, in a single municipal electoral roll comprising the registered voters for that ward in a municipality.

(3) The allocation of seats for each ward must be assigned in accordance with regulations created for local government elections.”.

*Section 13 amended*

**10.** 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 substituting the following—

“(2) Regulations made under the provisions of subsection (1) must include—

- (a) preparation and revision of the electoral roll;
- (b) voter registration procedure;
- (c) different voting methods for the electoral system and its procedures;
- (d) counting procedure;
- (e) declaration of results;
- (f) allocation of seats;
- (g) campaigning rules for political parties;
- (h) ballot paper format;
- (i) nomination rules; and
- (j) observers;
- (k) dispute resolution;
- (l) any other relevant rules pertaining to the conduct of local government elections or the conduct of voters, candidates and political parties.”; and

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

“(5) A municipal council must provide resources and appropriate personnel, but not financial resources, required by the Supervisor to assist the Fijian Elections Office in the conduct of local government elections.

(6) A municipal council which is required by the Supervisor of Elections to provide assistance to the Fijian Elections Office must comply with all directions and instructions issued by the Supervisor of Elections in relation to the conduct of local government elections.”.

*Section 14 amended*

**11.** The Principal Act is amended by deleting section 14 and substituting the following—

“(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*

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

“

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 resignation;
- (b) becomes the holder of a public office as defined in section 57 of the Constitution or a member of Parliament;
- (c) ceases to have the right to be a registered voter under section 11 of this Act;
- (d) ceases to have the right to be nominated as a candidate for a municipal council election;
- (e) is an undischarged bankrupt;
- (f) resigns from the political party for which he or she was a candidate at the time he or she was elected to Council;
- (g) is expelled from the political party for which he or she was a candidate at the time he or she was elected to Council and the expulsion was in accordance with the rules of the political party relating to party discipline.

(2) For the purposes of subsection (1)(f) and (g), the seat of the Councillor becomes vacant only upon receipt by the Minister of a written notification signed by the leader and the secretary of the political party notifying the Mayor that the Councillor has resigned from the political party.

(3) 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, by way of a proceeding, make an application to the Electoral Commission for a declaration on whether the seat of the Councillor has become vacant.”.

*Section 16A amended*

**13.** Section 16A(1) of the Principal Act is amended by—

- (a) in subsection (1)—
  - (i) deleting “by reason of failure to attend meetings in pursuance of section 15” and substituting “due to any reason stated in section 15 and 15A”; and
  - (ii) deleting “town clerk” and substituting “Chief Executive Officer”; and
- (b) after subsection (2), inserting the following new subsections—

“(3) If the seat held by a Councillor who is a member of a political party becomes vacant from a ward, then the Electoral Commission must award that seat to the candidate of the same party who, in the most recent election, is the highest ranked out of those candidates of that party who did not get elected to Council and who is still available to serve at the time of the vacancy, as may be determined by a written law governing elections, however if no candidate in the most recent general election from that same political party is available, then a by-election must be held to fill the vacancy.

(4) Subject to subsection (3), if the seat held by a Councillor who is an independent member 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 for more than 3 years and 6 months after the first meeting of Council following the most recent municipal council election, then the seat vacated must remain vacant until the next municipal council election.”.

*Section 21 amended*

**14.** Section 21 of the Principal Act is amended by—

(a) in subsection (1)—

- (i) deleting “annually” and substituting “every 2 years”; and
- (ii) deleting “12” and substituting “24”;

(b) in subsection (2), deleting “12” and substituting “24”;

(c) in subsection (3), deleting “the drawing of lots” and substituting “referring to the number of votes received by each candidate in the municipal council election”; and

(d) in subsection (4), deleting “returning officer” and substituting “the Chief Executive Officer”.

*Section 23 amended*

**15.** Section 23 of the Principal Act is amended by—

(a) in subsection (1)—

- (i) deleting “annually” and substituting “every 2 years”; and
- (ii) after next, deleting “annual”; and

(b) in subsection (3), deleting “the drawing of lots” and substituting “referring to the number of votes received by each candidate in the municipal council election”.

*Section 25 amended*

**16.** Section 25(1) of the Principal Act is amended by deleting “town clerk” and substituting “CEO”.