

ELECTORAL (AMENDMENT) BILL 2026 BILL NO. 29 OF 2026

To the **Parliamentary
Standing Committee
on Justice, Law and
Human Rights**

3 September 2026

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Executive Summary

The Centre for Democracy & Dialogue (CDD) welcomes the review of Fiji's electoral framework. The Electoral Act 2014 regulates the principal elements of parliamentary elections, including nominations, campaigning, polling, counting, results and electoral offences. Proposed amendments should therefore be assessed against a high standard of legal certainty, political neutrality, proportionality, accessibility, transparency, electoral integrity, and protection of the freedom and secrecy of the vote, taking into account relevant international standards and comparative practice.

The Electoral (Amendment) Bill 2026 contains several reforms that CDD supports. These include the repeal of the Supervisor of Elections' power to compel information notwithstanding other laws on confidentiality, privilege or secrecy; and an attempt to rationalise the highly punitive offence regime in the present Act. Several of these changes respond directly or indirectly to concerns raised by the Multinational Observer Group (MOG) following Fiji's 2014, 2018 and 2022 general elections.

CDD nevertheless considers that there are several important proposed provisions that require substantial revision before enactment. The principal concerns relate to the proposed permission for political parties and candidates to provide free transport and refreshments to voters on polling day; the reduction of the protected area around polling venues from 300 metres to 100 metres; the removal of the 48-hour election silence period; the replacement of continuous provisional results with an undefined requirement for periodic publication; and amendments to ballot-accounting provisions that would conflate rejected and discarded ballot papers.

The Bill also raises drafting concerns. A number of clauses seek to alter complex provisions through short textual substitutions without considering how the amended section will read as a whole. This produces circular definitions, awkward or incomplete sentences, inconsistent terminology and, in some cases, consequences that appear unintended. Given that electoral legislation governs a highly sensitive and contested area of public life, affects constitutional rights and can give rise to criminal liability, precision in drafting is not merely a technical requirement. It is a

fundamental safeguard for legal certainty, consistent enforcement and public confidence.

Priority recommendations

- Retain clause 3 and review the remaining general information-gathering power in section 6(1A) so that the repealed privacy-override powers cannot be recreated indirectly.
- Delete clause 26. The Electoral Act already requires, except in exceptional circumstances, voters to be assigned to polling stations within reasonable walking distance of their place of residence. Where disability, age, distance or another genuine access barrier nevertheless requires transport assistance, that assistance should be provided through a politically neutral mechanism administered or contracted by the FEO. There is no compelling electoral-access rationale for permitting political parties or candidates to provide food and drinks to voters on polling day. Doing so would create a material benefit at the point of voting and increase the scope for actual or perceived undue influence.
- Retain the 300-metre protected zone around polling venues. The law should also expressly prohibit photography, filming or optical surveillance of a ballot paper, voting screen or voter marking a ballot, recognising the increasing image-capture and zoom capability of modern mobile devices.
- Retain a clearly defined 48-hour campaign silence period.
- Clarify the recount provisions. It is reasonable to clarify that the Supervisor can either direct or conduct a recount where appropriate, particularly because the Supervisor cannot be physically present at every polling station. However, the proposed wording is poorly conceived and legally incoherent, and states the obvious by providing that a recount may “overturn” an earlier result when any valid recount would necessarily replace incorrect figure.
- Retain continuous publication of provisional results. Replacing “continuously” with the undefined term “periodically” would create unnecessary uncertainty about the frequency of public reporting. Verification pauses can be accommodated without abandoning timely, near-real-time publication.
- Replace the proposed two-tier offence model with a three-tier framework that distinguishes minor administrative

infringements, illegal electoral practices and serious corrupt electoral practices.

- Use the present reform process to address other recurring recommendations made over successive election cycles by civil-society organisations and the Multinational Observer Group (MOG), including recommendations that remain outside Bill No. 29.

CDD therefore recommends that the Committee support the Bill only after substantial amendment. The reform process should preserve the Bill's genuine liberalising measures while ensuring that changes do not weaken ballot secrecy, political equality, security around polling venues or confidence in election administration.

1. Introduction

The Electoral Act 2014 is the principal statute governing the conduct of elections in Fiji. It establishes the institutional roles and powers of the Electoral Commission, the Supervisor of Elections and the FEO; prescribes nomination and candidate eligibility rules; regulates campaigning and media activity; governs ordinary, postal and pre-poll voting; sets procedures for counting, tabulation and declaration of results; and establishes the principal electoral offences and dispute-resolution mechanisms.

The breadth of the Act means that even apparently narrow amendments can have consequences across the electoral cycle. CDD has therefore assessed each proposed amendment together with the provision of the principal Act that it would alter, and against relevant international standards, comparative practice and contemporary electoral-administration principles.

1.1 Principles informing CDD's assessment

- Legal certainty: electoral stakeholders should be able to understand their rights, duties and potential liabilities from the legislation itself.
- Political neutrality: election administration and regulation should minimise both actual and perceived partisan advantage.
- Proportionality: restrictions and penalties should be no more severe than is necessary to protect electoral integrity.
- Equality of competition: the legal framework should neither disadvantage nor confer an unjustified advantage on any electoral contestant or stakeholder.
- Voter autonomy and ballot secrecy: voters should be able to approach, enter and leave a polling venue free from surveillance, inducement, pressure or unnecessary partisan contact. The secrecy of the ballot should remain paramount.
- Transparency and verifiability: key administrative decisions, counting processes and results procedures should be capable of independent scrutiny and verification.
- Accessibility: barriers to participation should be removed where this can be done without compromising security or the secrecy of the vote or creating scope for undue influence.

1.2 The relevance of the MOG recommendations

The MOG reports are a particularly important reference point because they draw on direct observation of Fiji's elections and consultations with election officials, political parties, civil society and other stakeholders. Recommendations repeated over more than one election cycle warrant particular attention because they point to concerns that have persisted in practice.

Bill No. 29 directly implements some MOG recommendations and partially responds to others. It is important, however, to distinguish direct implementation from a policy change that merely concerns the same subject. For example, the MOG repeatedly recommended review and clarification of the media blackout regime. It did not recommend abolition of the 48-hour silence period. Similarly, clause 27 gives some treatment to the framework for civil-society activity, but does not fully implement the MOG's longstanding call for a more enabling environment for non-partisan civil-society participation.

2. Overview of CDD's position

CDD position	Principal clauses	Committee action sought
Support	3, 17, 28	Retain these reforms. They provide clear improvements to the existing framework.
Support with amendment or safeguards	1, 4, 5, 7, 9, 13, 14, 16, 21, 46, 47	Retain the principal policy objective, but revise the drafting, clarify procedures or introduce the safeguards identified in this submission.
Retain and strengthen	25	Preserve the serious treatment of misuse of State resources and strengthen monitoring, enforcement and public reporting.

CDD position	Principal clauses	Committee action sought
Oppose or delete in present form	12, 18, 19, 20, 26, 29, 42, 43	Delete the proposed change, retain the existing safeguard, or substantially redraft the clause because it would weaken electoral protections, create legal uncertainty or introduce unnecessary integrity risks.

3. Detailed analysis of the Bill

3.1 Clause 1: Commencement

PROPOSED CHANGE

Clause 1 provides that the amending Act will come into force on a date or dates appointed by the Minister by Gazette notice.

CDD ASSESSMENT

CDD has no objection in principle to commencement by ministerial notice, but considers that the commencement of core electoral rules should not remain open-ended or depend indefinitely on the discretion of a political office-holder who may also be an electoral contestant.

Analysis

The FEO may require a limited period to update forms, procedures, training material and public information. However, parties, candidates, observers, media organisations and voters also require certainty about the legal framework that will govern an election.

This consideration is particularly important where reforms affect campaigning, offences, polling or results procedures. Late commencement can reduce the time available for training, public education and compliance and may create uncertainty about which version of the law applies.

CDD recommendation. Provide a fixed commencement date or require commencement within a defined period after assent. Material changes to election rules should take effect sufficiently in advance of the election timetable.

3.2 Clause 2: Definitions of electoral offences

PROPOSED CHANGE

Clause 2 introduces the terms “corrupt electoral practice” and “illegal electoral practice”, with the definitions referring in part to the penalties prescribed by proposed section 135A.

CDD ASSESSMENT

CDD supports the objective of rationalising the offence framework, but the proposed definitions are circular and should be redrafted.

Analysis

Under the Bill, an offence may fall within the definition of a corrupt electoral practice because the penalty is prescribed under section 135A(1), while section 135A(1) applies because the conduct is a corrupt electoral practice. A reader is therefore required to move between the definition and penalty provisions to determine the meaning of each.

The definition also imports the constitutional concept of “corrupt practices” in a manner that may blur the distinction between electoral misconduct and broader public-sector corruption. Criminal and quasi-criminal legislation should define liability with sufficient precision that a person can identify the prohibited conduct and the applicable consequence from the statute itself.

CDD’s earlier Electoral Act submission recommended a tiered system that separates low-level regulatory infractions from intermediate offences and serious corrupt practices. That approach is better suited to the wide range of conduct currently criminalised by the Act.

MOG context

The MOG repeatedly recommended review of the severity and complexity of electoral offences, including 2014 Recommendation 5, 2018 Recommendation 5 and 2022 Recommendation 4. The Bill responds to that concern, but a two-tier model remains incomplete.

CDD recommendation. Define each category directly and classify every offence expressly, preferably in a consolidated schedule. Introduce a third category for minor administrative infringements that can be dealt with through warnings, corrective directions and modest civil penalties.

3.3 Clause 3: Repeal of sections 6(1B) and 6(1C)

PROPOSED CHANGE

Clause 3 repeals sections 6(1B) and 6(1C), which permit the Supervisor of Elections to compel information notwithstanding other written laws on confidentiality, privilege or secrecy.

CDD ASSESSMENT

CDD strongly supports the repeal.

Analysis

The existing provisions confer unusually broad authority on a single administrative office-holder. They allow established confidentiality and privilege regimes to be displaced without prior judicial authorisation and therefore create significant concerns for privacy, professional confidentiality and freedom of political engagement.

CDD's earlier Electoral Act submission noted that Article 17 of the International Covenant on Civil and Political Rights protects individuals against arbitrary or unlawful interference with privacy. The same submission also observed that election management bodies in comparable democracies remain subject to ordinary privacy and confidentiality law.

Repeal of sections 6(1B) and 6(1C) is therefore both a rights-protective reform and an institutional safeguard.

MOG context

MOG 2022 Recommendation 6 specifically called for review of the appropriateness of the Supervisor's powers under sections 6(1A) to 6(1C), including their real or perceived effect on free political debate. Clause 3 is a direct and significant response.

CDD recommendation. Retain clause 3 and review section 6(1A) to ensure that it cannot be interpreted as recreating, through general language, the compulsory powers repealed by the Bill.

3.4 Clause 4: Conflict of interest

PROPOSED CHANGE

Clause 4 inserts the words “for the purpose of that decision” into section 13(3), which currently requires a person with a conflict of interest to step down from office.

CDD ASSESSMENT

The proposed wording does not use the clearest legal concept.

Analysis

The amended sentence would require a person to “step down from his or her office for the purpose of that decision”. That formulation is awkward because a person does not ordinarily vacate an office for a single decision.

The intended safeguard appears to be recusal. A clear conflict-of-interest provision should require disclosure of the conflict and non-participation in discussion, deliberation and decision-making on the affected matter. This is more precise and avoids uncertainty about whether there is a temporary vacancy in the office.

CDD recommendation. Replace the relevant wording with a clear recusal rule, for example: “The person must disclose the conflict and must not participate in the discussion, consideration or decision on that matter.”

3.5 Clauses 5 to 11: Eligibility, objections, accessibility and offence labels

PROPOSED CHANGE

These clauses address continuing candidate eligibility, declarations supporting objections, use of assistive devices in polling stations and reclassification of several offences.

CDD ASSESSMENT

CDD supports the principal policy objectives, particularly continued eligibility and improved accessibility, but recommends clearer procedures and more precise drafting.

Analysis

Clause 5 closes a genuine gap by requiring a nominated candidate to continue meeting the statutory eligibility criteria. The Bill does not, however, identify who is responsible for monitoring continuing eligibility, what information may trigger a review, what notice must be given to the candidate or how the decision may be challenged. Because a finding of ineligibility may remove a person from electoral competition, procedural fairness should be explicit.

Clause 7 removes the requirement for a statutory declaration when lodging an objection. This can reduce an administrative and cost barrier. The legislation should nevertheless retain an effective mechanism for dealing with knowingly false or malicious objections.

Clause 9 requires tighter drafting. Section 53(9) presently prohibits any person from using a mobile phone, camera or other electronic device inside a polling station, subject only to the existing exception for the presiding officer or a person authorised by the Supervisor. The proposed exemption for “assistive learning or speaking devices” is not expressly confined to a voter who requires the device because of disability or communication need. A broadly framed exception could therefore unintentionally permit the use of electronic devices in circumstances that compromise ballot secrecy or the integrity of the polling environment.

It would be particularly risky to permit voters, polling agents or other persons to use mobile phones inside a polling station. Modern mobile phones are capable of high-resolution photography, video recording, audio recording and instantaneous transmission of information. Their use could create opportunities to photograph ballot papers, record voting activity, communicate information from inside the polling station or otherwise undermine the secrecy and controlled nature of the voting process. Any exemption should therefore be limited strictly to genuine assistive use by the voter concerned, subject to the supervision of the presiding officer and an express prohibition on photography, recording or transmission of a marked ballot or any other voting-related information. The offence

reclassifications in clauses 6, 8, 10 and 11 should ultimately be incorporated into the consolidated offence framework recommended in section 3.19 below.

CDD recommendation. Retain the eligibility and accessibility objectives, but specify decision-making and review procedures for continuing candidate eligibility, maintain proportionate consequences for knowingly false objections, and confine the electronic-device exception strictly to genuine assistive use by a voter who requires it. Allowing voters, polling agents or other persons to use mobile phones inside polling stations would create an extremely serious risk to ballot secrecy and the integrity of the polling environment, given the capacity of modern devices to photograph, record and transmit information instantaneously. The existing prohibition should therefore be preserved, subject only to narrowly defined assistive exceptions and an express ban on photographing, recording or transmitting a marked ballot or other voting-related information.

3.6 Clauses 12 and 29: 48-hour campaign silence period

PROPOSED CHANGE

Clauses 12 and 29 remove the existing 48-hour restrictions on campaigning and media activity immediately before polling day. Section 109A, which defines the campaign period, is not correspondingly amended.

CDD ASSESSMENT

CDD does not support abolition of the 48-hour silence period. The better approach is to retain it and modernise its scope.

Analysis

A limited campaign silence period gives voters a short interval in which to consider their choice without new rallies, paid advertising, bulk messaging or intensified direct mobilisation. This function remains relevant in a digital environment in which misleading content can be distributed rapidly and at scale immediately before voting.

Comparative evidence indicates that pre-election silence periods remain common. In a 2024 global comparison, IFES Senior Global Advisor Staffan Darnolf reported that approximately 79 of 119 countries or territories holding elections in 2023 and 2024 used a pre-election silence period.

The duration and scope vary, but 24- to 48-hour periods are common. Their principal purpose is to provide voters with a final interval for reflection and to reduce last-minute campaign pressure or inflammatory content.

The Bill also creates an internal inconsistency. Section 109A would continue to provide that the formal campaign period ends no later than 48 hours before polling, while sections 63 and 118 would no longer maintain the corresponding restrictions. Electoral legislation should not leave parties, media organisations, police or the FEO uncertain about whether campaign activity is lawful during this period.

CDD does not propose that all political discussion should cease. The silence period can be narrowly drafted to address active campaigning, such as new paid advertisements, boosted posts, bulk messages, rallies and direct requests for votes, while allowing genuine news reporting, official voter information, private discussion and pre-existing online content that is not newly promoted.

On another note, the Media Industry Development Authority has been abolished yet the Section 118(3) continues to designate it as the entity responsible for ensuring that media organisations comply with the provisions relating to media restrictions during election campaigns.

MOG context

MOG 2018 Recommendation 20 and MOG 2022 Recommendation 18 called for review and clarification of the media blackout. The MOG did not recommend its wholesale abolition.

Comparative context

Comparative practice varies. India retains a 48-hour silence period, Singapore provides a 24-hour Cooling-Off Day, and New Zealand prohibits active campaigning on election day. The relevant lesson is

that a short period of reduced campaign activity is a recognised means of protecting voter reflection and orderly polling.

CDD recommendation. Retain a 48-hour campaign silence period and amend sections 63, 109A and 118 coherently. Define the forms of active campaigning that are prohibited and provide clear exceptions for genuine news, official voter information and private communication. Amend section 118 (3) to designate that the Electoral Commission ensures compliance by media organisations.

3.7 Clauses 12, 42 and 43: Protected area around polling venues

PROPOSED CHANGE

The Bill reduces the protected radius around polling venues from 300 metres to 100 metres and permits the Electoral Commission to determine another boundary in accordance with its Rules.

CDD ASSESSMENT

CDD opposes the proposed reduction. The explanatory material does not establish that a 100-metre zone would provide an equivalent level of protection for voters, polling officials and the polling environment.

Analysis

The protected zone performs several functions. It separates voters from organised party activity immediately before they enter a polling venue; creates space for queue, traffic and crowd management; reduces opportunities for voter tracking and last-minute approaches; and lowers the likelihood that rival political groups will congregate close to the polling place.

A 100-metre boundary would make it easier for party workers, vehicles, temporary structures and supporters to operate close to the route used by voters. In congested urban settings, 100 metres may be a very short practical distance. In rural settings, a party operation immediately outside the boundary may remain highly visible to all voters entering and leaving the venue.

The Bill does not cite a security assessment, operational review or other evidence demonstrating that the existing 300-metre rule is

excessive. A reduction of this kind should be justified by evidence, particularly where the same Bill also proposes to permit party-provided transport and refreshments on polling day.

Ballot secrecy must also be considered in light of modern image-capture technology. High-end mobile phones now provide substantial telephoto and digital zoom capability. Whether a ballot can be observed from outside a polling place will depend on building design, lighting, window placement and line of sight. This reinforces the need for both a meaningful external buffer and explicit internal privacy safeguards.

CDD recommendation. Retain the 300-metre boundary in sections 63, 146 and 147. Permit the Electoral Commission to extend the boundary where site-specific conditions warrant it, but not to reduce it. Add an express prohibition on photographing, filming or using optical equipment to observe a ballot paper, voting screen or voter marking a ballot, and require venue-level assessment of sight-line risks.

3.8 Election-day political activity and polling-place security

The principle underlying CDD's position on the campaign silence period and the polling-place boundary is that campaigning and polling should be institutionally distinct. Political parties have the campaign period in which to persuade and mobilise voters. Polling day should be administered as a neutral civic process in which voters can approach, enter and leave a polling venue without unnecessary partisan contact.

Organised party camps, hospitality, voter transport operations, party-managed voter-list checking and supporter gatherings near polling venues can create security risks and visible partisan presence. They may also increase the possibility of confrontation between rival groups and place additional demands on police and polling officials, whose primary responsibility should be the safety and orderly conduct of the poll.

A common restriction can also protect political equality. If all parties are required to keep organised election-day activity away from

polling venues, no party is compelled to establish an equivalent operation simply because competitors are doing so.

CDD recommendation. Prohibit organised party camps, hospitality, party-administered voter transport, voter-list checking and active campaigning on polling day. Neutral FEO information points and authorised observer activity should operate under separate rules.

3.9 Clause 13: Postal voting

PROPOSED CHANGE

Clause 13 expands the grounds for postal voting to include family or other significant commitments and allows additional grounds approved by the Electoral Commission. It also removes the statutory declaration requirement.

CDD ASSESSMENT

CDD supports broader access to postal voting where a voter has a genuine impediment to attending the assigned polling station. However, the proposed grounds are open-ended and should not turn postal voting into a general convenience option for voters resident in Fiji. Postal voting is inherently more susceptible to compromise than voting conducted within the controlled polling-station environment because additional stages of identity verification, delivery, custody, completion and return occur outside direct electoral supervision. It should therefore neither be routinely offered nor encouraged as an alternative for local voters who are reasonably able to vote in person. Eligibility should be confined to genuine circumstances in which attendance at the assigned polling station is impracticable, supported by clear criteria, appropriate verification and robust safeguards throughout the postal voting process.

Analysis

Eligible voters should not lose the opportunity to vote because work, care responsibilities, health, travel or another substantial commitment prevents attendance at the assigned polling station. Removing unnecessary formalities can improve participation, but eligibility should remain linked to a genuine inability or significant difficulty in voting in person.

The power to approve additional grounds should nevertheless be exercised through a published and predictable process. Voters should know the applicable criteria before an election and should be treated consistently. Postal ballots also require secure issuance, tracking, custody and verification.

CDD recommendation. Retain the expansion of postal-voting access, but define the grounds with sufficient precision and require any additional ground to be established by a published Electoral Commission rule, preferably gazetted before the election period. Maintain clear identity-verification, application, review, tracking, custody and ballot-security procedures.

3.10 Clause 14: Changes to pre-poll arrangements

PROPOSED CHANGE

Clause 14 inserts a new section 82A allowing the Supervisor to depart from the published pre-poll schedule following an interrupting event or in another circumstance approved by the Electoral Commission, with accompanying publication and notification duties.

CDD ASSESSMENT

CDD supports the objective of enabling necessary operational changes, but considers the grounds for unilateral action too broad.

Analysis

Cyclones, floods, infrastructure failures or other genuine emergencies may make a scheduled pre-poll operation impossible. The law should allow election administrators to respond quickly while preserving transparency and voter access.

The proposed definition of an interrupting event includes a request by a village or other venue and any other circumstance that, in the Supervisor's opinion, delays or interrupts deployment. These grounds are broad and should be tied to objective operational necessity, particularly where a change may affect a voter's practical ability to participate or an observer's ability to monitor the process.

The notice provision also requires refinement. Proposed section 82A refers to publication on "the website and social media platform" of

the FEO and to radio broadcast. The singular reference to a social-media platform is inaccurate as the FEO has more than one social media platforms, while specifying radio alone does not reflect the range of print, broadcast, online and direct communication channels that may be needed to reach affected voters. The legislation should require publication through the FEO website, its official social-media channels and other reasonably available mass-media and local communication channels appropriate to the affected communities.

CDD also recommends reviewing the terminology “pre-poll voting”. The process described in section 82 is voting conducted in advance of polling day. “Early voting” would be clearer public-facing terminology because voting is in fact taking place during the period. If this terminology is adopted, it should be changed consistently throughout the Act and associated voter information.

MOG context

The amendment partially responds to MOG 2014 Recommendations 30 and 31 concerning timely information on pre-poll locations and improved access for remote voters. It does not fully address the recommendation for earlier determination and consultation.

CDD recommendation. For any material relocation, postponement or cancellation of early voting, require objective grounds, written reasons and Electoral Commission approval or prompt ratification. Require multi-channel notice to voters, parties and observers, including the FEO website, official social-media channels, appropriate mass media and local notice mechanisms. Ensure that affected voters retain a practical opportunity to vote. Consider replacing “pre-poll voting” with the clearer and more accurate term “early voting” throughout the Act.

3.11 Clause 16: Recount powers

PROPOSED CHANGE

Clause 16 expands section 89(6) so that the Supervisor may instruct or conduct a recount for quality-assurance purposes and provides

that an official recount may overturn a previous decision of a presiding officer.

CDD ASSESSMENT

CDD supports clarifying the Supervisor's authority to direct a recount, but considers the proposed wording unnecessarily broad and ambiguous. The amendment should be aligned with the existing polling-station recount framework rather than creating a parallel and undefined power.

Analysis

Section 89 establishes that counting at a polling station is undertaken by the presiding officer and designated election officials, while section 98 already provides a detailed procedure for a recount requested by a polling agent. Under section 98, a recount is conducted at the polling station by the presiding officer or designated election officials, in the presence of agents and observers, and the presiding officer then determines the correct figures and prepares the final protocol of results.

Against that framework, adding an express power for the Supervisor to direct a recount is reasonable. The Supervisor cannot be present at every polling station and may receive information indicating that a recount is warranted. However, the phrase providing that “an official undertaking of a recount may overturn a previous decision of the presiding officer” is unclear and unnecessary. A valid recount will necessarily supersede any earlier count figures that are shown to be incorrect.

CDD recommendation. Retain the Supervisor's power to direct a recount, but delete or clarify the phrase allowing an unspecified “official” to overturn a presiding officer's decision. Any post-polling-station recount conducted personally by the Supervisor should be governed by express rules on grounds, notice, observation, ballot custody, revised protocols and review.

3.12 Clauses 17 and 18: Rejected and discarded ballot papers

PROPOSED CHANGE

Clause 17 adds discarded ballot papers to the preliminary

reconciliation process. Clause 18 then amends section 100(1)(c) by replacing “rejected” with “discarded”. Section 100 is about the “Packaging and transfer of ballot papers and other election materials after count”.

CDD ASSESSMENT

Clause 17 is sensible, but clause 18 should not proceed in its present form because rejected and discarded ballot papers are distinct categories.

Analysis

A rejected ballot is a ballot that has entered the count but cannot be accepted as a valid vote under the statutory rules. A discarded ballot, as newly defined, is a ballot paper found in the polling station whether or not it has been completed. (see Section 94 for definition of a “rejected ballot”)

Election reconciliation depends on accounting for every ballot paper and preserving a clear audit trail. The proper amendment is therefore to add discarded ballot papers to the existing record, not remove rejected ballot papers from it.

The new definition of discarded ballot paper should also be accompanied by a documented chain-of-custody procedure so that found ballot papers are immediately recorded, secured and reconciled.

CDD recommendation. Amend section 100 so that valid, rejected (invalid), discarded, spoiled and unused ballot papers remain separately identified and accounted for. Add a documented chain-of-custody procedure for discarded ballots.

3.13 Clause 19: Publication of provisional results

PROPOSED CHANGE

Clause 19 changes section 102A from requiring provisional results to be published “continuously” to requiring them to be published “periodically”.

CDD ASSESSMENT

CDD does not support the change unless the Bill defines a sufficiently frequent and transparent publication standard.

Analysis

The word “periodically” is undefined and could encompass materially different reporting intervals. Long gaps in provisional reporting may reduce the ability of parties, observers and media organisations to compare published totals with polling-station records and may create greater space for rumours, disinformation, particularly on social media, and conspiracy theories.

Fiji’s digital results platform, *FEO App*, has provided a useful channel for rapid public access to provisional results; the appropriate response to verification risk is to strengthen the platform, its backup systems and its correction protocols rather than reduce the timeliness of publication.

MOG context

MOG 2022 Recommendation 20 called for improved communication of provisional and final results, stronger verification protocols and consideration of an analogue backup. Replacing “continuously” with “periodically” does not implement the core of that recommendation.

CDD recommendation. Retain the requirement for continuous publication of provisional results, retain real-time digital dissemination through the FEO results platform, and publish a clear correction log for any amended figures.

3.14 Clause 20: Section 105 and the Final National Results Tally

PROPOSED CHANGE

Clause 20 replaces the words “party list” with “Final National Results Tally” wherever those words appear in section 105.

CDD ASSESSMENT

CDD considers clause 20 unnecessary and conceptually incorrect. Section 105 uses the term “party list” accurately and consistently with both the structure of Fiji’s open-list proportional representation system and the terminology already defined elsewhere in the Electoral Act.

Analysis

A “party list” and the Final National Results Tally are distinct legal and electoral concepts. In list proportional-representation systems, a party list is the roster of candidates nominated by a political party for the election. In an open-list system such as Fiji’s, voters cast votes for individual candidates, those votes also contribute to the party’s aggregate vote for seat allocation, and the candidates within each qualifying party are ranked according to their individual vote totals. The Electoral Act itself defines “party list” as the list of individuals nominated by a party, while section 103 requires the Final National Results Tally to record candidate and party vote totals and to rearrange each party list in descending order of candidate votes. The Final National Results Tally is therefore the results instrument within which the ranked party list appears; it is not a substitute for the concept of the party list itself. Replacing “party list” with “Final National Results Tally” throughout section 105 conflates the candidate roster with the document recording and ranking the results and produces awkward, repetitive drafting.

CDD recommendation. Delete clause 20 and preserve the established meaning of “party list” in list proportional representation and distinguish it clearly from the Final National Results Tally, which records the results and the post-election ordering of candidates.

3.15 Clauses 21 to 25: Opinion polls, campaign materials and State resources

PROPOSED CHANGE

These clauses mainly reclassify existing offences under the proposed penalty framework, including offences relating to opinion polls, campaign materials, non-interference and misuse of State resources.

CDD ASSESSMENT

CDD supports more proportionate enforcement, but the underlying provisions should be reviewed rather than simply given new labels.

Analysis

The underlying provisions relating to opinion polls and research warrant substantive review, not merely a change in offence classification. CDD supports reasonable disclosure standards for published opinion polls, including identification of the sponsor, sample size, fieldwork dates, methodology, question wording and margin of error where relevant. However, methodological disagreement should not ordinarily be resolved through criminal law or final administrative determinations by election officials.

Ordinary errors should generally be addressed through disclosure and correction. Serious sanctions should be reserved for deliberate fabrication or materially deceptive publication.

Misuse of State resources is qualitatively different because it can confer an electoral advantage on the incumbent through public vehicles, staff, premises, data, procurement or publicly funded communication. Such conduct should remain a serious electoral matter and should be subject to active monitoring and public reporting.

CDD recommendation. Use disclosure and correction for ordinary opinion-poll compliance and reserve serious sanctions for deliberate or reckless deception. Maintain misuse of State resources as a serious electoral offence and strengthen monitoring and public reporting.

3.15.1 Section 110A: Regulation of opinion polls, surveys and research

Section 110A goes materially beyond ordinary disclosure regulation. It requires the Electoral Commission to adopt guidelines for election-related opinion polls, surveys and research; compels any publisher to comply with those guidelines; empowers the Supervisor to demand methodology and supporting information; authorises the Supervisor to direct immediate removal or correction of published material; and makes the Electoral Commission's decision on appeal final and expressly immune from further appeal or judicial review.

CDD considers this framework inconsistent with a proportionate approach to research regulation in a democratic election. Election management bodies have legitimate responsibilities for administering elections, but they are not academic or professional regulators of survey methodology. Questions of sampling design, weighting, questionnaire construction and statistical interpretation often involve reasonable professional disagreement. The law should require transparency about methodology and should address deliberate fabrication or materially deceptive presentation, but it should not make compliance with administratively determined research guidelines a criminal matter.

The exclusion of court review in section 110A(7) is particularly problematic. A person whose research is ordered to be removed should have access to independent judicial review, especially where non-compliance can attract criminal liability. MOG 2022 also identified the cumulative effect of sections 110A, 115 and 144A on free political debate as an area requiring review.

CDD recommendation. Repeal section 110A in its present form. Replace it with a narrow statutory disclosure regime for published election-related opinion polls, surveys and research. Any power to require correction should be confined to demonstrably false or materially deceptive factual information, serious sanctions should be reserved for deliberate fabrication or deception, and all coercive directions should remain subject to independent judicial review.

3.16 Clause 26: Party-provided transport and refreshments

PROPOSED CHANGE

Clause 26 creates an express exception to the vote-buying provision by allowing a political party, candidate or representative to provide free transport to or from a voter's assigned polling venue and free refreshments during the journey or outside the proposed 100-metre boundary, provided there is no attempt to influence the vote.

CDD ASSESSMENT

CDD strongly recommends deleting clause 26. It creates an unnecessary and difficult-to-enforce exception at the point in the

electoral cycle when voters should be most insulated from inducement and partisan pressure.

Analysis

The central issue is not limited to an explicit exchange of a benefit for a vote. Influence may be social, relational or implied. A voter may feel a sense of obligation after accepting a material benefit from a party immediately before voting even if no express request is made.

The transport journey also creates a private setting in which political conversation, informal pressure or data collection can occur. A party may record a voter's name, address, telephone number, pickup time and whether the person has voted. Such practices can facilitate subsequent political targeting and may compromise voter privacy.

The provision would also affect equality of competition. A well-resourced party could operate a substantially larger transport and hospitality network than a smaller party or independent candidate. Financial capacity would therefore translate directly into an election-day mobilisation advantage. More fundamentally, clause 26 moves the law in the wrong direction on undue influence. Contemporary electoral-integrity frameworks generally seek to separate material benefits from the act of voting and to reduce opportunities for inducement, dependency or perceived obligation. Creating an express statutory permission for political parties to provide both transport and refreshments at the point of voting expands, rather than narrows, the circumstances in which such influence may arise.

There are practical security concerns. Pickup points, refreshment stations and party vehicles may create crowds and traffic close to polling venues. Rival party operations may occupy the same areas and increase the risk of confrontation. Police and polling officials should not be required to manage competing party operations in addition to the poll itself.

The accessibility rationale can be addressed through a neutral mechanism. Section 39(3) of the Electoral Act already requires, except in exceptional circumstances, voters to be assigned to polling stations within reasonable walking distance of their place of residence. Genuine access barriers will nevertheless arise for some voters because of disability, age, geography, weather or lack of

transport. Those cases justify neutral assistance, not a direct material relationship between a political party and a voter immediately before or after the vote. The case for refreshments is weaker still: food and drinks are not required to transport a voter to a nearby polling place and constitute a tangible benefit provided by an electoral contestant on polling day.

Comparative context

India provides a particularly relevant comparison. Its electoral law treats candidate-provided free conveyance of electors to or from a polling station as a corrupt practice. The broader integrity principle is that material benefits and voting should be kept institutionally separate.

CDD recommendation. Delete clause 26. Where a voter has a genuine transport-access need, authorise the FEO to provide or contract politically neutral assistance using objective criteria. Such a service should have no party branding, campaigning, party workers, voter-list checking, political data collection or hospitality. Political parties, candidates and their representatives should remain prohibited from providing food, drinks or other material benefits to voters on polling day.

3.17 Clause 27: Civil-society participation

PROPOSED CHANGE

Clause 27 permits activities otherwise restricted by section 115 where they comply with Electoral Commission Rules. It also authorises the Supervisor to direct that an activity be amended or cancelled, with an appeal to the Electoral Commission.

CDD ASSESSMENT

CDD considers the clause an improvement on the current blanket restriction, but not a complete response to longstanding concerns about section 115.

Analysis

Non-partisan voter education, research, public debates, legal analysis, rights advocacy and election observation contribute to informed participation and electoral accountability. Regulation

should distinguish these activities from direct partisan campaigning.

CDD's earlier Electoral Act submission highlighted the chilling effect created by section 115, particularly for foreign-funded civil-society organisations. The concern is not only the severity of the penalty, but the breadth of the underlying restriction, which can capture legitimate civic activity precisely when public information is most needed.

The proposed appeal mechanism is useful, but an instruction to cancel an activity during an election campaign can have an immediate effect even if the organisation later succeeds on appeal. Decisions should therefore identify the specific rule, evidence and reasons, provide an opportunity to respond where practicable and remain subject to effective judicial review.

The more principled approach is to repeal section 115(1) rather than retain its broad prohibition and build a new permission regime around it. Non-partisan voter education, public debates, research, policy analysis and election observation are legitimate democratic activities and should not depend on prior approval merely because an organisation receives foreign funding. Any necessary restriction should target direct partisan campaigning, foreign direction of a contestant's campaign or conduct that is otherwise prohibited under the Act.

The case for reform is also not new or partisan. In Parliament on 29 November 2018, then Opposition Leader Sitiveni Rabuka criticised section 115 for limiting voter education by civil-society organisations and argued that civil society should be given the opportunity and support to provide voter-awareness programmes. That position reflects the institutional concern identified repeatedly by the MOG and by civil society. The appropriate standard should not change according to whether a political actor is in government or opposition.

MOG context

MOG 2014 Recommendation 26, MOG 2018 Recommendation 16 and MOG 2022 Recommendations 1 and 9 all identified restrictions on civil-society participation as requiring reform. Clause 27 is responsive to the issue but does not fully implement the MOG's recommendation.

CDD recommendation. Repeal section 115(1). If Parliament considers a residual restriction necessary, confine it narrowly to direct partisan campaigning or foreign direction of partisan campaign activity. Expressly protect non-partisan voter education, research, public debate, policy analysis and election observation. Any enforcement action should require written reasons, procedural fairness and effective independent review.

3.18 Clause 28: Costing of campaign commitments

PROPOSED CHANGE

Clause 28 repeals sections 116(4C) and 116(4D), which require parties and candidates making financial commitments to provide immediate explanations of how those commitments will be funded.

CDD ASSESSMENT

CDD supports repeal of the current criminalised costing requirement, but recommends replacing it with an independent and voluntary fiscal-costing mechanism.

Analysis

The existing provision can discourage detailed manifestos, particularly among smaller parties that do not have immediate access to economists, fiscal analysts or government data. It can also encourage vague policy commitments as a means of avoiding legal risk.

The public interest in credible costing remains legitimate. A more constructive model is to make independent technical capacity available to all parties and independent candidates on equal terms.

The FEO should not be placed in the position of assessing whether a policy proposal is affordable. Its institutional role is election administration. Fiscal analysis is better performed by a body with economic expertise, access to relevant government data and transparent methods.

MOG context

MOG 2022 Recommendation 12 contemplated technical and/or financial support to improve manifesto costing. The Bill removes the existing statutory mechanism but does not implement the MOG proposal for supportive costing capacity.

Comparative context

Canada's Parliamentary Budget Officer and Australia's Parliamentary Budget Office provide examples of independent institutions that can cost election proposals without criminalising policy development.

CDD recommendation. Retain clause 28 and recommend establishment of an independent, voluntary election-costing service available on equal terms to all political parties and independent candidates.

3.19 Clauses 30 to 46: Offence classification and penalties

CDD supports the Bill's objective of reducing the disproportionate penalties found throughout the Electoral Act. Successive MOG reports have raised concerns about the severity of the offence regime, and the present Act often exposes very different forms of misconduct to similarly high maximum penalties.

Dialogue Fiji's earlier Electoral Act submission to the Fiji Election Law Reform Commission made the same point. It noted that relatively technical breaches can sit alongside bribery, personation, undue influence and ballot-related offences within a largely punitive criminal framework. The result is not only potential unfairness. Excessively severe sanctions can also discourage reporting, participation and consistent enforcement.

The proposed two-tier model is an improvement but does not go far enough. A regulatory system should distinguish minor administrative non-compliance from deliberate breaches of campaign rules and from conduct that directly corrupts the vote.

Proposed tier	Illustrative conduct	Appropriate response
1. Administrative infringement	Late filing, minor labelling error, correctable form defect or low-harm procedural non-compliance.	Warning, corrective direction and proportionate civil or administrative fine. No imprisonment.
2. Illegal electoral practice	Intentional or repeated breach of campaign or electoral rules causing material regulatory harm.	Court-imposed fine and, where justified, limited disqualification.
3. Corrupt electoral practice	Bribery, treating, undue influence, personation, ballot tampering or serious misuse of State resources.	Criminal prosecution, proportionate penalty and reasoned judicial determination of disqualification.

The drafting of proposed section 135A also requires correction. The section begins by applying to “any person”. Under the Act, that term can include a political party or another legal entity. The provision then allows imprisonment and automatic disqualification from the National Register of Voters. A political party cannot be imprisoned or registered as a voter. Natural persons and legal persons should therefore be dealt with separately.

There is a further interaction with section 151, which already permits electoral disqualification. The Bill should not create automatic disqualification under section 135A while leaving a separate discretionary regime under section 151 without explaining how the two provisions relate.

Drafting of the offence amendments

A recurring drafting problem arises from the Bill’s use of textual substitutions. In several clauses, the existing penalty phrase is replaced with wording such as “which is an illegal electoral practice” or “which is a corrupt electoral practice”. When the amended provision is read as a complete sentence, the result is grammatically awkward or redundant.

A clearer method would separate the statement of prohibited conduct from its legal classification. For example, the substantive provision could remain intact and a new sentence could state: “A

person who contravenes subsection (X) commits an illegal electoral practice.” The applicable penalty could then be identified in a consolidated schedule.

This approach would also reduce the risk of inconsistencies across the Act and make it easier for parties, election officials, courts and citizens to understand the offence framework.

CDD recommendation. Do not enact clauses 2 and 30 to 46 as a series of fragmented substitutions. Instead prepare a consolidated three-tier offence framework and schedule. Separate natural persons from political parties and other legal entities, specify the required mental element where appropriate, and preserve judicial control over voter disqualification.

3.20 Clause 40 and section 144A: Publication of false statements

Clause 40 changes the classification of the offence in section 144A but does not address the broader concerns created by the underlying provision. Section 144A permits regulatory action in relation to statements considered false and likely to affect an election or diminish public confidence in the FEO or Electoral Commission.

CDD recognises the legitimate need to address deliberate electoral disinformation. The present provision, however, is broader than is necessary because it does not clearly distinguish a materially false assertion of fact from opinion, analysis, satire, academic research or a good-faith mistake.

CDD’s earlier Electoral Act submission also identified a due-process concern: compliance with a direction to remove or correct a statement does not necessarily extinguish exposure to prosecution. This weakens the incentive to correct an error promptly and may encourage self-censorship among journalists, researchers and civil-society organisations.

A more proportionate approach would require proof that the statement concerned a material factual matter, that the publisher knew it was false or was reckless as to its truth, and that the publication was likely to cause significant electoral harm. Removal

or correction orders should state reasons and identify the impugned material, and there should be rapid access to independent judicial review.

CDD recommendation. Rewrite section 144A so that serious sanctions apply only to deliberate or reckless material falsehood likely to cause significant electoral harm. Protect opinion, satire, journalism, research and good-faith analysis. Require written reasons and rapid judicial review for removal orders, and create a proportionate safe-harbour where a good-faith error is promptly corrected.

3.21 Clause 46: Campaigning at educational institutions

PROPOSED CHANGE

Clause 46 removes the existing prohibition on campaigning at educational institutions.

CDD ASSESSMENT

CDD does not oppose political engagement in educational settings, but the repeal should be accompanied by equal-access and safeguarding rules.

Analysis

Universities and, in appropriate settings, schools can provide valuable spaces for civic education and political debate. At the same time, educational institutions have obligations to protect students, avoid coercion and maintain continuity of teaching and examinations.

Where campaign events are permitted, institutional rules should be published in advance and applied equally to registered parties and independent candidates. Attendance should be voluntary, student data should not be shared for partisan purposes and public educational resources should not be used to favour a contestant.

CDD recommendation. Retain the liberalisation only with clear rules on equal access, voluntary participation, safeguarding, non-disruption and non-partisan use of institutional resources.

3.22 Clause 47: Electoral Commission rules and referendums

PROPOSED CHANGE

Clause 47 expands the Electoral Commission's rule-making powers, including in relation to the conduct of referendums.

CDD ASSESSMENT

CDD supports an appropriate administrative rule-making role for the Electoral Commission, but fundamental referendum rules should be enacted in primary legislation.

Analysis

The franchise, campaign-finance regime, official information, observation, counting, results and dispute-resolution framework are central to the legitimacy of a referendum. They should not be created shortly before a vote through broad delegated rule-making.

The Electoral Commission can appropriately make technical rules concerning forms, procedures and implementation within a statutory framework. Those rules should be subject to consultation, early publication and parliamentary scrutiny.

CDD recommendation. Place the core referendum framework in primary legislation. Limit Commission Rules to administrative implementation and provide for prior consultation, early publication, tabling in Parliament and an appropriate disallowance mechanism.

4. Priority reforms not addressed by the Bill

Bill No. 29 addresses a substantial number of provisions in the Electoral Act, but it should not be treated as a complete electoral reform package. CDD's earlier Electoral Act submission identified several structural issues that remain outside the Bill. Many also correspond with recommendations made by the MOG over successive election cycles.

4.1 Section 18: Referral of electoral offences to FICAC

PROPOSED CHANGE

Section 18 requires the Supervisor or Electoral Commission to report the probable commission of an election-related criminal offence to FICAC. Bill No. 29 does not materially reform this arrangement.

CDD ASSESSMENT

CDD recommends aligning referral obligations with the seriousness of the alleged conduct.

Analysis

Where electoral legislation criminalises a wide range of technical breaches, mandatory referral can draw low-level regulatory matters into the anti-corruption system. This can discourage participation by polling officials, party agents, candidates, observers and volunteers and can divert investigative resources from serious corruption.

The three-tier offence framework proposed in this submission provides a basis for a more proportionate model. Administrative infringements should ordinarily be dealt with by the Electoral Commission through warnings, correction directions and capped civil penalties. FICAC should focus on serious corruption, bribery, deliberate vote manipulation and related conduct falling within its institutional mandate.

CDD recommendation. Amend section 18 so that mandatory FICAC referral applies to serious corruption and deliberate attacks on the integrity of the vote or count. Provide an administrative enforcement pathway for minor electoral breaches.

4.2 Sections 27 to 34: Candidate deposits

Section 27 requires a deposit of FJ\$1,000 for each candidate. A party fielding 55 candidates was therefore required to commit FJ\$55,000 at the nomination stage in the 2022 election. Under section 34, the

deposit is returned only where the candidate is elected or receives at least 1 per cent of the total vote.

CDD's analysis of the 2022 results found that only 57 candidates, approximately 16.7 per cent, received more than 1 per cent of valid votes. This means that approximately 83 per cent of candidates forfeited their deposits. The burden falls particularly heavily on smaller parties, independent candidates and new entrants.

The design of Fiji's electoral system makes the refund threshold especially significant. Fiji operates as a single national constituency, so the 1 per cent threshold is calculated against the national vote. It is therefore not directly comparable with a 4 or 5 per cent refund threshold calculated within a much smaller local constituency.

CDD's earlier Electoral Act submission also observed, drawing on ACE Electoral Knowledge Network data, that candidate deposits are not universal among countries using open-list proportional representation. The policy objective of discouraging frivolous nominations can be achieved without imposing a barrier that materially affects competitive equality.

Jurisdiction	Illustrative rule	Relevant distinction
Fiji	FJ\$1,000 per candidate; refund if elected or candidate reaches at least 1% of total national vote.	The denominator is the national vote; a 55-candidate list requires FJ\$55,000.
Australia	Candidate deposit and statutory vote threshold for refund.	Threshold applies within the relevant electoral division or contest.
United Kingdom	£500 deposit with a constituency vote threshold for return.	Threshold applies within one local constituency.
Canada	Federal candidate deposit was removed following constitutional litigation.	Demonstrates that nomination seriousness can be addressed without a cash deposit.

CDD recommendation. Reduce the refund threshold from 1 per cent to 0.1 per cent of valid votes, review the FJ\$1,000 amount and consider a reasonable cap on the aggregate deposit required for a party list. Parliament could also consider verified supporter signatures as an alternative or complementary mechanism.

CDD, Electoral Act Submission, section 3.2.3; comparative references listed in Appendix C.

4.3 Section 110: Opinion-poll publication restrictions

PROPOSED CHANGE

The existing Act prohibits publication of election-related opinion polls during the seven days before polling. Bill No. 29 changes the penalty classification but does not reconsider the duration of the prohibition. Section 110A is addressed separately in section 3.15.1 of this submission.

CDD ASSESSMENT

CDD recommends a shorter, more proportionate framework centred on transparency and deliberate deception rather than criminalisation of professional research.

Analysis

A seven-day prohibition removes potentially relevant information from public debate while voter preferences and campaign dynamics may still be changing. The restriction, particularly when combined with severe penalties, can discourage legitimate academic, media and civil-society research.

CDD supports clear disclosure obligations. A published poll should identify who commissioned and conducted the research, fieldwork dates, sample size, sampling method, question wording and margin of error where applicable.

CDD's earlier submission noted that election management bodies are not necessarily staffed with survey-methodology specialists. Professional disagreements about sampling, weighting and questionnaire design should therefore be addressed primarily

through transparency, correction, peer scrutiny and professional standards rather than criminal law.

Serious sanctions can be reserved for deliberate fabrication, falsification of results or materially deceptive presentation.

CDD recommendation. Replace the seven-day publication ban with a 48-hour restriction aligned to the campaign silence period. Retain professional disclosure requirements, use correction for ordinary errors, reserve sanctions for deliberate material deception and preserve access to independent review.

4.4 Section 119: Accreditation of election observers

PROPOSED CHANGE

Section 119 gives the Minister a central role in appointing or inviting observers and determining their terms. Bill No. 29 does not reform this arrangement.

CDD ASSESSMENT

Observer accreditation should be administered by an independent electoral institution rather than a political office-holder.

Analysis

A Minister may also be a candidate or senior member of the governing party. Even where the power is exercised fairly, ministerial control creates an avoidable perception of political influence over who may scrutinise the election.

Domestic observer organisations can provide local knowledge, strengthen transparency, identify operational problems early and contribute to public confidence. Accreditation should therefore be based on published criteria, clear deadlines and written reasons for refusal.

CDD's earlier submission identified South Africa as a useful comparative model, where observer organisations apply to the independent election commission under a published process.

MOG context

Domestic observation has been raised repeatedly by the MOG, including recommendations following the 2014, 2018 and 2022 elections. Bill No. 29 does not substantively address those recommendations.

CDD recommendation. Transfer observer accreditation to the Electoral Commission. Establish published eligibility criteria, application and decision deadlines, written reasons for refusal, a public register of accredited observers and an effective appeal mechanism.

4.5 Section 156: Regulation-making authority

PROPOSED CHANGE

Section 156 gives the Minister broad power to make regulations under the Electoral Act. Bill No. 29 does not substantially alter that allocation of authority.

CDD ASSESSMENT

Technical election rules should, as far as practicable, be made by the independent Electoral Commission within a framework established by Parliament.

Analysis

Election administration should minimise both actual and perceived opportunities for the government of the day to shape operational rules for an election in which it is a contestant.

This does not mean that all electoral rules should be delegated. Matters affecting the franchise, fundamental rights, offences, penalties and core safeguards should remain in primary legislation. Technical procedures can be made by the Electoral Commission after consultation and remain subject to parliamentary scrutiny.

CDD recommendation. Transfer appropriate technical rule-making powers from the Minister to the Electoral Commission. Require consultation, early publication and tabling in Parliament. Retain matters affecting rights, offences, penalties and the franchise in primary legislation.

5. Conclusion

Bill No. 29 provides a meaningful opportunity to improve Fiji's electoral framework. Several reforms deserve support, particularly the repeal of excessive information-gathering powers, improvements to postal voting and accessibility, and the effort to reduce the disproportionate criminal penalties contained in the current Act.

Other provisions should be reconsidered because they would weaken safeguards at the point where the law should be most protective of voter autonomy, political equality and public confidence. Political parties should not be authorised to provide transport, food or drinks to voters on polling day; organised partisan activity should not be moved closer to polling venues without compelling evidence that existing protections are unnecessary; and ballot secrecy should be protected against both physical observation and modern image-capture technologies.

The Committee should also require a higher standard of legislative drafting. Electoral law must be capable of being understood and consistently applied by election officials, political parties, candidates, observers, courts and citizens. Circular definitions, incomplete substitutions, confused ballot categories and provisions that appear to apply imprisonment or voter disqualification to political parties do not meet that standard.

CDD accordingly recommends that the Committee retain the Bill's genuine liberalising reforms, amend provisions that create new integrity or procedural risks, and use the present review to advance the significant MOG and CSO recommendations that remain unresolved. A credible electoral framework should be rights-respecting, politically neutral, transparent, proportionate and sufficiently clear to command the confidence of all electoral stakeholders.

Appendix A. Clause-by-clause recommendations

Clause	CDD position	Recommended action
1	Amend	Set a fixed commencement date or defined period after assent, sufficiently before the election timetable.
2	Rewrite	Replace circular definitions with direct definitions and a coherent three-tier offence and penalty framework.
3	Support	Retain repeal of sections 6(1B) and 6(1C); review section 6(1A) so the repealed powers cannot be recreated indirectly.
4	Amend	Require disclosure and recusal from the affected matter rather than temporary “stepping down” from office.
5	Amend	Specify the decision-maker, review trigger, notice requirements and appeal or review process for continuing eligibility.
6	Rewrite in package	Classify the offence within the consolidated three-tier framework.
7	Support with amendment	Remove the statutory declaration requirement but retain proportionate consequences for knowingly false or malicious objections.
8	Rewrite in package	Define the prohibited conduct and required mental element within the consolidated offence framework.
9	Amend	Confine the exception to genuine assistive use; retain the mobile-phone ban for voters and polling agents and prohibit photography, recording or transmission of voting information.
10	Rewrite in package	Distinguish deliberate electoral interference from minor or technical non-compliance.
11	Rewrite in package	Clarify prohibited communications, lawful exceptions and the required mental element.
12	Oppose	Retain the 48-hour campaign silence period and 300-metre protected area.
13	Amend	For Fiji-based voters, confine postal ballot to to genuine need only; define additional grounds in advance and maintain strong ballot-security safeguards.
14	Amend	Use objective grounds, Commission oversight, written reasons and multi-channel notice; consider replacing “pre-poll voting” with “early voting”.
15	Rewrite in package	Classify the offence within the consolidated three-tier framework.

Clause	CDD position	Recommended action
16	Amend	Retain power to direct a recount, but delete or clarify the incoherent “overturn” wording and align recounts with section 98 safeguards.
17	Support	Add discarded ballots to reconciliation, retain all existing ballot categories and provide clear chain-of-custody procedures.
18	Oppose	Add discarded ballots to section 100 without replacing or removing rejected ballots.
19	Oppose	Retain continuous provisional results, with verification, backup systems and a transparent correction log.
20	Delete	Delete clause 20 and leave section 105 unchanged. “Party list” and the Final National Results Tally are distinct concepts.
21	Rewrite in package	Do not merely reclassify the opinion-poll offence; align the publication restriction with the 48-hour silence period and use proportionate sanctions.
22	Rewrite in package	Repeal section 110A and replace it with a narrow disclosure-based regime, with coercive decisions subject to judicial review.
23	Rewrite in package	State the prohibited conduct, required intention and seriousness needed for liability.
24	Rewrite in package	Use correction or administrative responses for minor failures; reserve criminal penalties for deliberate or serious evasion.
25	Rewrite in package	Retain misuse of State resources as a serious offence and strengthen monitoring, transparency and public reporting.
26	Delete	Do not permit party-provided transport, food or drinks on polling day; use politically neutral FEO assistance for genuine access needs.
27	Rewrite	Repeal section 115(1); protect non-partisan civic activity, narrowly target direct partisan campaigning and preserve independent review.
28	Support	Retain repeal of the costing offence and develop an independent, voluntary costing service available equally to all contestants.
29	Oppose	Retain a 48-hour media silence period, modernise its scope and replace the abolished MIDA with the Electoral Commission.
30	Rewrite in package	Adopt three offence tiers, distinguish natural and legal persons and preserve judicial control over electoral disqualification.
31	Rewrite in package	Place the amended offence in the consolidated three-tier framework and penalty schedule.
32	Rewrite in package	Distinguish serious from lesser misconduct and state the required intention.

Clause	CDD position	Recommended action
33	Rewrite in package	State the required knowledge or intention and apply proportionate sanctions.
34	Rewrite in package	Retain serious ballot misconduct as a corrupt electoral practice, but define the conduct and mental element clearly.
35	Rewrite in package	Clarify the respective liability of individuals, political parties and other legal persons.
36	Rewrite in package	State the required intention and preserve appropriate lawful defences or authorised conduct.
37	Rewrite in package	Protect innocent assistance and authorised official action while targeting intentional misconduct.
38	Rewrite in package	Use administrative or civil responses for technical or low-harm non-compliance.
39	Rewrite in package	Protect legitimate political expression and require sufficient intention and material electoral harm.
40	Rewrite section 144A	Target deliberate or reckless material falsehood causing significant electoral harm; protect good-faith speech and provide rapid judicial review.
41	Rewrite in package	Match offence classification and penalty to seriousness, intention and electoral harm.
42	Oppose	Retain the 300-metre protected boundary and correct defective or unclear cross-referencing.
43	Oppose	Retain the 300-metre boundary and add explicit safeguards against photography, filming or optical observation of voting.
44	Rewrite in package	Reserve criminal liability for sufficiently serious intentional conduct; use proportionate measures for lesser breaches.
45	Rewrite in package	Classify each subsection according to seriousness and mental element.
46	Support with safeguards	Require equal access, voluntary participation, safeguarding and non-disruption at educational institutions.
47	Amend	Place core referendum rules in primary legislation; confine Commission Rules to technical administration, with consultation and parliamentary scrutiny.



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