Joint Submission on the Review of Fiji's Electoral Laws

Dialogue Fiji
The University of Fiji

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Preface

Electoral systems are the bedrock of democratic governance. Their design determines not just how representatives are chosen, but also whether citizens can participate meaningfully in shaping their government. In Fiji—a country with a complex colonial legacy, a history of political instability, and deep ethnic cleavages—the electoral system must do more than merely count votes; it must ensure fairness, inclusion, stability, and trust in governance.

In this context, collaboration between Civil Society Organisations (CSOs) and universities is not just beneficial, but essential. CSOs like Dialogue Fiji offer grounded, practitioner-informed perspectives derived from engagement with communities, political actors, international partners and electoral processes. Universities, on the other hand, bring the rigour of academic research, comparative insights, and legal scholarship. When these two knowledge streams are combined, they yield recommendations that are not only intellectually robust but also pragmatically attuned to on-the-ground realities.

Dialogue Fiji has led the technical work in this submission. As the most experienced CSO in Fiji working on electoral issues, Dialogue Fiji has a long history of engagement in this space through research, public education, advocacy, and policy dialogue. It has worked closely with a range of international partners and election stakeholders, and has published extensively on Fiji's electoral laws and systems. The technical assessments and legal reform proposals in this document are based on this depth of knowledge and experience.

The University of Fiji brings complementary academic expertise, ensuring the submission is grounded in legal analysis, constitutional principles, and global best practices. Together, this collaboration brings both theory and practice to the table—exactly what's needed when discussing complex and politically sensitive issues like electoral reform.The result is a comprehensive, evidence-based, and forward-looking set of proposals aimed at improving Fiji's electoral laws and ensuring that reform efforts strengthen—not undermine—democracy.

The submission engages with all major instruments under review, including the 2013 Constitution's electoral provisions, the Electoral Act 2014, the Political Parties Act 2013, and the Electoral (Registration of Voters) Act 2012. It recognises the strengths of the current system and processes while offering practical reforms to address weaknesses, particularly those that constrain fairness, transparency, and civic participation.

It is important to remember that reform, by definition, is about making something better. Reform must not become a pretext for regression or partisan advantage. It should be driven by the goal of deepening democracy, protecting rights, and improving the institutions through which the people express their political will.

We commend this submission to the Electoral Law Reform Commission, policymakers, and to the wider Fijian public in the spirit of principled, constructive engagement. In an era where democratic backsliding is a global concern, Fiji now has an opportunity to show that reform, done properly and transparently, can strengthen democracy - not erode it.

1. Introduction

1.1 Background

The Fijian Government has made clear its intent to reform Fiji's electoral laws. The Fiji Law Reform Commission was commissioned by the Cabinet in February 2025 to undertake public consultations and make recommendations for changes to the electoral legal framework. An Electoral Law Reform commission has been subsequently appointed. This Commission, appointed to advise on proposed reforms, is examining a suite of core instruments: the *Electoral Act 2014, the Electoral (Registration of Voters) Act 2012 and the Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013*. In addition, provisions of the Fijian 2013 Constitution governing elections fall within the scope of this exercise.

These laws collectively shape the conduct of parliamentary elections, from electoral system, size of legislature, election threshold, voter registration, formation of parties, candidate nomination, campaign finance, polling procedures, ballot handling, tabulation and release of results to the resolution of electoral disputes. Given Fiji's multiethnic society and recent transition to a proportional representation model, it is imperative that the legal framework is both coherent and responsive to democratic principles, and suited for the politics of an ethnically divided and conflict prone society.

This submission is made jointly by Dialogue Fiji and The University of Fiji in response to the call for views on reform. It provides a comprehensive assessment of the electoral framework, including constitutional, legislative, and administrative provisions. It draws on extensive research, global best practices, and the lived experience of electoral processes in Fiji over the past decade.

Our aim is to identify which elements of the current system and electoral laws should be retained and strengthened, and where legal or institutional reforms are needed to ensure electoral laws remain fair, transparent, and conducive to democratic stability. We also caution against reforms that may compromise democratic safeguards or create new vulnerabilities.

2. Electoral Provisions in the 2013 Constitution

2.1 Introduction

The 2013 Constitution of the Republic of Fiji introduced sweeping changes to the country's electoral framework, replacing its former communal-based, majoritarian electoral arrangements with a proportional representation system. These reforms were monumental in reshaping political representation in Fiji, particularly in the context of its ethnically diverse and historically polarised society. This section examines the key electoral provisions in the Constitution (Sections 52 to 66), with a focus on their normative desirability and practical performance.

2.2 The Open List Proportional Representation System

At the heart of the constitutional electoral framework lies the adoption of a Proportional Representation (PR) system, specifically an Open List Proportional Representation (OLPR) model, as outlined in Section 53. In contrast to closed-list systems, where party hierarchies determine who gets elected, the OLPR system empowers voters to directly choose individual candidates. This means that voters have a say not only in the party they support, but also in determining which candidates get elected—thereby enhancing accountability and intra-party democracy.

The key advantage of a proportional representation system in ethnically diverse societies like Fiji lies in its capacity to translate electoral support into parliamentary representation in a fair and accurate manner. Under OLPR, the number of seats a party receives is proportionate to the total number of votes it earns. This is a dramatic departure from previous systems such as the Alternative Vote (AV) or First-Past-The-Post (FPTP), which tended to exaggerate the parliamentary strength of larger parties and marginalise smaller ones, often resulting in disproportionate representation and electoral distortions.

For a country like Fiji, where ethnic identity has long intersected with political affiliation, PR ensures that no group is over- or under-represented relative to its share of the vote. This enhances legitimacy and helps mitigate grievances that often arise when segments of the population feel systematically excluded from power. Through enabling a diversity of political voices—whether based on ethnicity, ideology, or regional interests—OLPR creates incentives for coalition-building, moderation, and cross-ethnic appeals, thereby encouraging the development of a national, rather than ethnic, political discourse.

Importantly, the OLPR model encourages the rise of diverse political actors, including women, youth, and ethnic minorities, who may not thrive under closed-list or majoritarian systems (The highest ever proportion of women MPs in the Fijian legislature was achieved under the current electoral framework following the 2018 elections). The open-list nature allows candidates to bypass internal party hierarchies if they have sufficient grassroots support, thus diversifying representation in Parliament. This feature also contrasts favourably with the Ghai draft constitution, which proposed a closed-list system, concentrating power in party elites and weakening direct voter influence.

2.3 A Single National Constituency

Section 53 of the Constitution also provides for a single national constituency, an element that complements the OLPR system by treating the entire country as one electoral district. This ensures that each vote carries equal value, regardless of where it is cast—a fundamental tenet of democratic equality. In stark contrast to the pre-2013 arrangement, where voters were divided into communal and open

constituencies (often based on ethnicity or geography), the single national constituency eliminates the differential value of votes that previously existed.

A single national constituency also removes any opportunity for gerrymandering. In systems divided into multiple districts, those in power can redraw lines to cluster or disperse particular voter groups, distorting outcomes to their advantage. With no district boundaries to manipulate, every ballot enters the same nationwide pool, fully reflecting the aggregate will of the electorate. In an ethnically divided society like Fiji —with an executive dominance—this design effectively neutralises one of the most potent tools of electoral manipulation that an incumbent party can wield.

Moreover, a single nationwide district incentivises parties to cultivate broad, cross-ethnic appeal. Instead of concentrating resources and campaigning amongst their own ethnic groups or in certain geographical areas, political contenders must appeal to diverse communities across the entire country, encouraging inclusive policy agendas and reducing the salience of race-based appeals.

In a recent opinion piece, Jon Fraenkel, has argued that a single national single national electoral roll does not necessarily require a single national constituency. While this may be theoretically correct, Fraenkel's interpretation disregards the constitutional imperative in Section 53(1)(c), which mandates that each vote must be "of equal value." In a system with multiple constituencies, even if all voters are listed on a national roll, the relative weight of votes would inevitably differ across districts unless constituencies were of the same population size, which is an impossibility in practice.

The Yash Ghai draft constitution, noted for its many positive elements compared to the current Fijian constitution, proposed a closed list proportional representation (CLPR) system with the country divided up into four electoral districts. As noted above, multiple electoral districts would reopen the door to gerrymandering and the distortions of malapportionment. Moreover, closed lists concentrate power in party elites and deprive voters of agency by denying them the right to do candidate rankings or hold individual nominees directly accountable—options that OLPR uniquely provides. In this respect, the current electoral provisions in the 2013 constitution are better than those proposed in the Ghai draft.

Therefore, any move away from a single national constituency would compromise the principle of "one person, one vote, one value," reintroduce malapportionment and regional disparities, reintroduce the risk of gerrymandering, remove the incentive for political parties and electoral candidates to cultivate broader, cross-ethnic appeal, and undermine voter agency by centralising candidate selection in party hierarchies, thereby reducing individual accountability and ideological diversity.

2.4 Size of Parliament

The Constitution allows for the systematic adjustment of the number of parliamentary seats based on population data. This ensures representation evolves with demographic changes. The process is independent and data-driven, with no role for the executive to politically manipulate seat numbers.

This model contrasts sharply with systems where Parliament size changes according to political convenience. The design embedded in the Constitution provides predictability, integrity, and responsiveness. It avoids the politicisation of parliamentary design.

This provision has proven effective. Fiji's Parliament is neither bloated nor under-representative. Therefore, no constitutional amendment is required.

2.5 Voter Registration and Voting Age

Sections 55 of the Constitution provides clear and internationally aligned criteria for voter registration: Fijian citizenship and a minimum age of 18. These are standard democratic thresholds. Calls for youth pre-registration or automatic voter enrolment can be addressed through amendments to the Electoral (Registration of Voters) Act 2012. The Constitution already empowers citizens with the right to vote at 18; the operational improvements needed to simplify enrolment do not require changing this core principle. The lowering of the voting age in the 2013 constitution was a marked improvement from earlier constitutions, and was very significant in the inclusion of youths in democratic decision making.

2.6 Term of Parliament

The reduction of parliamentary terms from five to four years in the 2013 Constitution was a very positive reform. Shorter electoral cycles promote accountability, responsiveness, and limit the entrenchment of power. This change brings Fiji in line with democratic norms across numerous jurisdictions.

There is no compelling case for reversing this, and the current arrangement strengthens the democratic bargain between representatives and the electorate.

2.7. Addressing Common Myths and Proposals

Myth 1: The Coattail Effect Undermines Democracy

In OLPR systems, a party's total vote share determines how many candidates from that party are elected. While it is true that some candidates with relatively few votes may be elected if their party performs well, this is a design feature of proportional representation—not a flaw. The system rewards collective party support and ensures ideological coherence. Notably, this is far more democratic than closed-list PR systems where party elites decide who gets into Parliament. Interestingly, a closed-list system is being advanced by some critics of the coattail effect.

Myth 2: Candidates With Fewer Votes Are Elected While Others With More Are Not

This perceived anomaly is a natural result of a PR system. Seats are allocated based on party vote shares, and within parties, candidate ranking is determined by individual votes. The overall outcome is still proportional. This mechanism ensures parties that perform better overall secure representation for a party —not just isolated individuals.

Myth 3: Single Constituency Breaks the MP-Voter Link

Effective representation does not depend on artificial geographic boundaries. MPs can and do maintain constituency relationships through outreach, consultations, and party offices. Moreover, the national constituency compels MPs to consider the interests of all Fijians, not just regional/ethnic blocs. Moreover, in Fiji's experience, there is no evidence that single national constituencies reduce accountability. The results from the three elections held under the system shows that unresponsive or under-performing MPs were penalised by voters at later elections by not being re-elected.

Myth 4: The Electoral System Was Designed to Keep FijiFirst in Power

There is no aspect of the electoral system that favours any party. The so-called "rockstar effect," where popular figures garner mass support, can be leveraged by any political party. It is a product of voter

preference, not institutional bias. Every party has equal opportunity to field high-profile candidates.

Myth 5: The Electoral System Centralises Power in the Prime Minister and Attorney General

Power concentration in the previous government resulted from internal party constitutions and political culture—not the electoral system. Electoral systems allocate representation; they do not dictate how power is distributed within a party or government. The current system itself is neutral; how parties operate within it is a separate issue.

2.8. The Senate Proposal: A Regressive Step

Some have called for the re-establishment of a Senate or upper chamber. While bicameralism is common in some democracies, Fiji's previous Senate was not elected. It was composed of appointees chosen by political leaders or traditional bodies. Allowing unelected individuals to block or shape legislation is deeply undemocratic.

Unless a new Senate is fully elected and accountable, reintroducing it would regressively concentrate power in the hands of unelected elites. Lawmaking must remain the preserve of elected representatives.

Moreover, the financial implications of reinstating a Senate cannot be ignored. Members of Parliament already receive substantial salaries and benefits, which were significantly increased in last year to public disdain. Adding another chamber would mean additional salaries, allowances, administrative overheads, and operational costs. This would place an undue burden on Fijian taxpayers, who are already grappling with high living costs and the impacts of austerity measures. At a time when government expenditure needs to be prudent and citizen-centred, creating a costly new legislative body that replicates existing functions is both economically and politically unjustifiable.

In sum, re-establishing the Senate would erode democratic principles and strain public finances without delivering clear benefits. Lawmaking must remain the domain of elected representatives, and reform efforts should focus on strengthening existing institutions—not creating new, redundant, and potentially undemocratic ones.

2.9. Festive Elections: Seriousness Over Spectacle

There have been proposals to turn election day into more festive affair. While civic celebration is welcome, elections must remain solemn, secure, respectable and sober affairs. Fiji's 48-hour blackout period and restrictions on party tents near polling stations help ensure voter focus, safety, and protection from undue influence. There is nothing in the current laws preventing celebration before or after—but election day itself must be insulated from manipulation or disorder.

2.10 Conclusion

Fiji's 2013 Constitution establishes a robust, modern foundation for inclusive and proportional elections, when compared globally. However, as Fiji undertakes consultations on electoral reform, there have been renewed calls for constitutional change. Some critics argue that Fiji's current electoral design, elements of which are contained in the 2013 Constitution, alienates voters and distorts representation. However, such claims are largely grounded in misconceptions, partisan interests or sheer obfuscation. We argue that constitutional amendment is unnecessary in relation to Fiji's electoral system. In fact, if there is anything worth preserving in the 2013 constitution, it is the electoral system.The existing framework, built on the

Open List Proportional Representation (OLPR) model with a single national constituency, already embodies the democratic principles of fairness, proportionality, inclusivity, and vote equality and is a considerable improvement over previous systems. Where enhancements are desirable, they can be achieved through statutory amendment, not constitutional overhaul. Changing the core electoral provisions of the Constitution risks undermining representation and weakening Fiji's multiethnic democratic fabric.

A crucial factor often overlooked in the debate on electoral reform is the issue of timing. Under Fiji's current constitutional framework, the next national elections can be held at any time after 7 August 2026. Given the proximity of this timeline, pursuing constitutional amendments—especially in relation to the electoral system—poses significant risks to stability and well-being of the nation.

Constitutional reform is a complex, time-consuming process, especially given the statutory requirements under Fiji's 2013 constitution. It would involve extensive public consultation, parliamentary approval and, potentially, legal challenges. Attempting to introduce major constitutional changes within a year of a possible election is not only impractical but will also violate established international norms.

According to the *Code of Good Practice in Electoral Matters* adopted by the Venice Commission, which is widely regarded as a global standard and referenced by the United Nations and Commonwealth bodies, *"fundamental elements of electoral law, in particular the electoral system proper... should not be open to amendment less than one year before an election."* This principle ensures fairness, stability, and public confidence in the electoral process.

Any attempt to change the Constitution now risks undermining this principle and could generate uncertainty, disrupt preparation for the next general election, and erode trust in democratic institutions. The government should therefore adopt a more responsible and measured approach by focusing on statutory amendments that can improve electoral processes without destabilising the legal framework.

3. Electoral Act 2014

3.1 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 Fijian Elections Office; defines key electoral concepts (such as writ issuance, nomination, polling and vote counting); and sets out the procedures, timelines and safeguards for each phase of the electoral cycle. It lays out the rules for candidate nomination and registration, governs campaign conduct and media regulations, and prescribes every aspect of voting—from the design, printing and security of ballot papers to the procedures for in person, postal and assisted voting. The Act also specifies how votes are counted, tabulated and formally declared, and sets out an extensive offences regime.

Covering every phase of the electoral cycle, the Act regulates:

- **Election Administration** (Parts 1–2): the composition, powers and funding of the Electoral Commission and Supervisor; staffing and sub offices of the Fijian Elections Office; and cooperation by State agencies.
- **Nomination and Candidacy** (Part 3, Divisions 1–2): the writ process, eligibility criteria, deposits, support requirements and procedures for independent and party candidates.
- **Polling and Voting** (Part 3, Divisions 3–6): the preparation and distribution of ballot papers; polling station arrangements; voter identification; postal, pre-poll and in person voting; assisted voting; and the secrecy and security of the poll.
- **Counting, Tabulation & Declaration** (Part 3, Divisions 7–8): protocols for vote counting at each station, tabulation of provisional results, allocation of seats under Open List Proportional Representation, and formal declaration of elected Members of Parliament.
- **Campaign Regulation & Media** (Part 4): rules on campaign materials, paid advertising, opinion poll restrictions, and prohibitions on vote buying or misuse of State facilities.
- **DisputeResolution & Offences** (Parts 5–6): the Court of Disputed Returns process for election petitions, grounds for voiding elections, and an extensive schedule of electoral offences (bribery, undue influence, personation, false statements, etc.), with associated penalties.
- **Miscellaneous Provisions** (Part 7): transitional arrangements, power to make regulations and destroy records, and rules for conducting other elections under the Act.

3.2 Shortcomings of the Act

3.2.1 Sections 6(1B) & 6(1C): Privacy Override Powers of the Supervisor of Elections

Sections 6(1B) and 6(1C) grant the Supervisor of Elections the unilateral power to demand “any information” from any person relevant to or required for the performance of functions under the Act — even when such information is protected by “any other written law on confidentiality, privilege or secrecy”. This sweeping authority contravenes Article 17 of the ICCPR, which prohibits “arbitrary or unlawful interference” with privacy. Fiji ratified ICCPR in 2018 thus is legal obligated to abide by its provisions. Moreover, giving an individual official such overriding power—without judicial oversight—risks abuse, data breaches, erosion of trust and human rights violations.

In an era of heightened data sensitivity, such intrusions grossly threaten not only privacy of individuals but also institutional/professional credibility. No leading democracy authorises an election official to override

established privacy regimes and norms at will. Australia's AEC, for example, is bound by the Privacy Act 1988, and cannot override it; court orders are required for sensitive data.

To safeguard both electoral integrity and individual privacy, ss 6(1B)–(1C) should ideally be repealed altogether, or, if deemed absolutely necessary, then replaced with a narrowly prescribed regime whereby the Supervisor may request specific data only upon a reasoned order from the Electoral Commission or, for highly sensitive material, a court-issued warrant.

The Act should also set out clear thresholds—for example, demonstrating that the information is strictly necessary for validating candidate qualifications or investigating credible allegations of electoral fraud—and require written findings of fact and legal basis before any data can be accessed. Embedding these procedural safeguards will ensure that Fiji balances the legitimate needs of election administration against fundamental privacy rights, ensuring that any intrusion is lawful, proportional, internationally compliant and subject to appeal.

(It is also, pertinent to point out that Fiji does not have a specific legislation that directly protects personal information. The only protection is afforded by section 24 of the constitution.)

3.2.2 Section 18: FICAC's Role in Investigating/Prosecuting Electoral Offences

Section 18 mandates that the Supervisor or the EC immediately report "probable commission of an election related criminal offence" to FICAC, regardless of severity. This blanket referral creates a system where even the most minor infringements—which neither reflect systemic corruption nor warrant full criminal investigation, are referred to FICAC.

The threat of a FICAC probe can intimidate political party officials, election officials, polling station staff, election candidates, election monitors and party agents, potentially deterring civic participation and slowing down dispute resolution. Moreover, due to the current practice of routing all suspected offences—however trivial—through the anticorruption machinery, Fiji risks diverting FICAC resources from genuine corruption cases and generating unnecessary fear among election stakeholders .

To remedy this, there is a need to amend s18 to narrow FICAC's jurisdiction to serious offences involving misuse of public office, bribery, or vote manipulation. Lesser offences—such as procedural noncompliance or regulatory technicalities—should be handled by the EC through administrative sanctions (warnings, fines up to a capped amount, or temporary suspensions) without criminal referral.

This tiered enforcement model preserves FICAC's capacity to investigate true corruption while providing a more proportionate, efficient response to minor breaches. Empowering the EC to administer administrative penalties also speeds resolution of low level infractions, reducing backlog and building stakeholder confidence in fair, pragmatic enforcement.

3.2.3 Sections 27–34: Candidate Deposits and Refund Threshold

An issue which is impacting on political participation of smaller political parties is the requirement under section 27(1) of the Electoral Act 2014 for a deposit of $1,000 to be made for every candidate on the party list. This is unreasonably high and poses a significant financial burden on political parties and election candidates. For a full complement of candidates (55 in 2022), a party needed to pay FJ$55,000 in the last elections. This becomes a significant barrier to smaller parties' fielding the maximum number of candidates- a factor that disadvantages them in a proportional representation system. Under section 34 of

the Act, the deposit is only returned to elected candidates, and to unelected candidates who receive at least 1% of the total vote. In the 2022 general election, only 57 candidates (16.7%) polled more than 1 percent of the total valid votes cast. This meant that 83 percent of candidates forfeited their deposits. The forfeiture not only imposes a financial barrier but also deters credible but less resourced individuals from standing, thereby narrowing the field of competition and potentially limiting voter choice.

Candidate deposits are not common internationally. Of the 40 countries that use OLPR for lower/single house elections, only 6 require candidate deposits. As evident from the Table below, the level of deposit and conditions for return in Fiji is comparatively high internationally, taking into account average salaries and per capita incomes. This means that, for a number of political parties in Fiji, the cost of candidate nomination becomes one of the biggest components of their election expenditure, leaving them fewer financial resources for campaigning.

Country	Level of Deposit	Conditions for return
Australia - Lower House	AU **$250**	**4%** first preference votes
Australia - Upper House	AU **$500**	Membership in group receiving **4%** of vote
Britain	**£500**	**5 %**
Canada	CA **$200**	**15 %**
India	R **500**	**1/6 of the vote**
Ireland	IE **£100**	**1/3** constituency quota
Japan	Yen **2 million**	House of Reps: **1/5** of the valid vote divided by the number of members to be elected
Malaysia	Ringgit **5000**	**12.5 %** of votes cast
New Zealand	NZ **$100**	**1/4** of votes of successful candidate

Table 7: Candidate Deposits (Source: ACE Project, n.d)

To remedy this imbalance, we recommend reducing the refund threshold from 1 percent to 0.1 percent of valid votes cast. This change preserves a disincentive against completely frivolous candidacies—since trivial contenders still face a nominal financial risk—while significantly lowering the barrier for serious but lesserknown aspirants. A 0.1 percent threshold would mean a candidate in a 500,000vote election needs only 500 votes to reclaim the deposit, a more realistic target for the vast majority candidates. Such reform would broaden the candidate pool, stimulate policy innovation, and enhance democratic representation—particularly in multiethnic or geographically remote constituencies where local figures can muster small but passionate support bases.

3.2.4 Section 110: Opinion Poll and Research Publication Rules

Sections 110 imposes a blanket blackout on publishing any election-related opinion polls in the seven days before polling and on polling day itself, backed by draconian penalties of up to FJD 10,000 or five years' imprisonment. By outlawing the release of new polling data at a time when voters and parties most need up-to-date information on public sentiment, these provisions have a profoundly chilling effect on academic freedom and civic research. Scholars, journalists and civil society organisations risk severe sanctions merely

for conducting or sharing survey findings, discouraging critical analysis of voter behaviour, campaign messaging and emerging trends—work that is essential to improving electoral processes and informing strategic adjustments by candidates and parties.

Moreover, vesting such expansive discretion in the Supervisor of Elections and the Electoral Commission to direct removals, demand methodologies on threat of criminal sanction, and render final decisions without judicial review grants the executive an extraordinary tool to suppress inconvenient data. Such provisions stifle the very transparency that underpins democratic legitimacy: voters are deprived of timely insights into shifting electoral dynamics, parties lose a key source of feedback for policy refinement, and academics cannot engage in comparative or empirical research without risking punitive action.

In contrast, leading democracies treat opinion-poll publication as a protected form of political expression. In *Thomson Newspapers Co. v. Canada (Attorney General),* the Supreme Court of Canada struck down a three-day pre-election blackout as an unjustifiable infringement of freedom of expression under section 2(b) of its Charter, recognising that informed voting depends on access to timely information. Freedom of Speech, Publication and Expression is protected by section 17 of the 2013 Constitution as it was in previous Fijian Constitutions unless it (*inter alia*) disrupts the orderly conduct of elections.

International standards likewise caution against broad, unguided bans. The ACE Electoral Knowledge Network's global survey finds that while some countries impose short blackout periods, most democracies either allow continuous publication or limit restrictions to a few hours on election day—and none pair these with heavy criminal penalties.

To remedy this, we recommend amending Section 110 and 110A to replace the current seven-day blackout with a 48-hour pre-election window during which all new opinion polling must cease. This change strikes a balance between the public's right to up-to-date information—allowing academics, media and civil society to publish legitimate surveys right up until two days before election day—and the need to prevent undue influence and protect electoral confidence on polling day itself, where premature exit poll figures can fuel conspiracy theories in a context of historical distrust. All polls may continue to be governed by the Commission's non-binding disclosure guidelines (sponsor, sample size, fieldwork dates, margin of error, questionnaire, etc), but removal or correction orders—and any accompanying penalties—would be confined to clear cases of fraud or proven falsification of research, handled as civil offences with capped fines rather than criminal sanctions.

It is also important to in reality, election management bodies are rarely staffed with the kind of survey-methodology experts needed to adjudicate nuanced questions of sampling design, weighting, question wording or error margins. Expecting the Electoral Commission—or the Supervisor of Elections—to second-guess complex research methods risks arbitrary or uninformed interventions, especially when those officials lack formal training in statistics or social science. In a healthy democracy, opinion-poll publication is more appropriately governed by professional ethics codes and media self-regulation, rather than by criminal laws or electoral legislation.

3.2.5 Section 115: CSO Led Civic Education

Section 115's blanket ban on any CSO activity once the election writ is issued—extending to all foreign-funded organisations and their staff—effectively criminalises virtually every form of CSO activity after the writ of elections is issued. A single public comment (even on social media), panel discussion or voter-education session related to electoral issues would expose CSO leaders to fines up to FJD 50,000 or ten-

years' imprisonment. This draconian overreach not only silences independent voices precisely when they are most needed to foster informed debate and hold parties to account, but it also undermines fundamental freedoms of expression and association protected by international human-rights law, including Article 19 of the ICCPR which, as we have noted above, Fiji has ratified.

Through stripping CSOs of any formal role, Section 115 deprives voters, candidates and political parties of essential research, monitoring and education services. In many democracies—such as Kenya, Ghana and South Africa—domestic CSOs conduct voter-education drives, organise candidate debates and monitor campaign finance under clear rules of non-partisanship. Their work has been shown to boost turnout, expose corruption and improve the quality of public discourse. In Fiji, however, the law's expansive phrasing means that even a social-media post analysing party manifestos by a CSO would contravene the statute, deterring even benign civic initiatives.

The penalties attached to Section 115 underscore its draconian character. No mature democracy imposes decade-long prison terms for CSO engagement in voter outreach or election research. Instead, best practice across OECD countries favours transparency requirements—such as registering foreign funding—combined with light administrative sanctions for violations, rather than criminalising core civil-society activities.

To safeguard democratic resilience, Section 115 should be repealed or radically narrowed. Any regulation of CSO campaign activities ought to focus solely on preventing direct partisan campaigning—i.e., endorsing candidates—rather than broad restrictions on non-partisan voter education, debate facilitation or policy analysis. Minor breaches could be handled through proportional administrative fines not exceeding FJD 1,000, and with a clear exemption for academic and research institutions. Such reforms would reintegrate CSOs as constructive participants in Fiji's elections, enhancing transparency and strengthening public trust without compromising the integrity of the campaign process.

3.2.6 Sections 116(4C) & 116(4D): Mandatory Financial Audits of Campaign Promises

Sections 116(4C) and 116(4D) of the Electoral Act require any political party, election candidate or their agents who make a campaign-related financial commitment—whether orally or in writing—to furnish an immediate, detailed written explanation of how the revenue for that commitment will be raised, how the expenditure will be disbursed and allocated among sectors, and how any deficit will be financed. Although intended to promote transparency, in practice this obligation has deterred parties from publishing comprehensive manifestos. In the most recent Fijian general election, many parties refrained entirely from issuing full policy platforms, fearful that it would require written financial statements—and might expose them to criminal prosecution. Smaller parties, lacking the resources to engage professional budget analysts on short notice, found these requirements especially burdensome, further entrenching the advantage of better-funded incumbents and narrowing the field of substantive policy debate.

The Fijian experience shows that rather than curbing "pie-in-the-sky" promises, which voters would naturally penalise at the ballot box if they are unrealistic, the instant-disclosure regime encourages a minimalist approach: parties issue few concrete proposals or disguise their commitments in vague language to avoid triggering the written-explanation rule. In contrast, established democracies employ expert-driven cost assessments. In Canada, the Office of the Parliamentary Budget Officer responds to requests from political parties and independents to provide independent estimates of the financial cost of election campaign proposals. Voters thus receive authoritative, impartial analyses of campaign promises, while parties retain the freedom to refine their proposals as economic circumstances evolve.

A more balanced approach in Fiji would be to establish an independent fiscal body—either within the academic community, electoral commission, or parliament—to cost significant campaign commitments on a fixed schedule before elections. Parties would submit their manifestos by a statutory deadline; the fiscal body would then publish transparent, expert-verified cost estimates alongside those manifestos, allowing the electorate to judge the feasibility of each proposal, and even the political party's credibility without resorting to punitive legal measures. This model preserves rigorous fiscal transparency, alleviates the undue burden on smaller parties and under-resourced candidates, and entrusts voters—rather than courts—to sanction unrealistic pledges at the ballot box.

3.2.6 Section 119: Ministerial Discretion over Observer Accreditation

Section 119 of the Electoral Act grants the Minister unfettered authority "to appoint or invite any person, organisation or entity to be observers for any election on such terms of reference as determined by the Minister." In practice, this vesting of sole discretion in a political actor—who may also be an active candidate or member of the incumbent party—creates a clear risk of partisan bias in the accreditation process. Without any statutory criteria or independent oversight, domestic NGOs, citizen coalitions and academic monitors can be excluded arbitrarily, depriving Fiji of vital grassroots scrutiny and leaving significant gaps in transparency and early warning of procedural irregularities.

To address this, Section 119 should be amended to transfer accreditation authority to the Fiji Electoral Commission under clear, published rules. The law must require observer groups to apply—ideally at least 14 days before polling—submitting core documents such as their constitution or articles of association, a statement of their suitability to observe, and a list of proposed observers and their CVs. The Commission should then decide all applications within a fixed timeframe, publish written reasons for any rejection, and maintain a publicly accessible register of accredited organisations. Embedding these safeguards in primary legislation will ensure a predictable, merit based process, free from executive interference, and bolster public confidence in domestic observation.

South Africa's model illustrates this approach in action. Its Independent Electoral Commission operates an online accreditation portal where organisations upload their constitution, a statement of suitability and the names of appointed observers; all accreditation decisions rest solely with the Commission rather than any ministerial office. Adopting a similar framework in Fiji can ensure that domestic observers can play a full, nonpartisan role in strengthening electoral integrity.

3.2.7 Sections 135–150: Proportional Reduction of Criminal Penalties

Fiji's Electoral Act casts a wide net of criminal offences—ranging from filing a duplicate voter registration (s 136) and record-tampering (s 138), to personation (s 142), bribery (s 140) and undue influence (s 141)—each carrying a maximum penalty of up to FJD 50,000 or ten years' imprisonment. Even relatively minor offences or errors, such as omissions on campaign materials (s 137) or wearing party insignia in a polling station (s 145), expose party officials, candidates and polling agents to decade-long prison terms. This one-size-fits-all approach of harsh criminal penalties fails to distinguish between simple administrative errors and offenses that truly threaten the integrity of elections.

By contrast, Australia's Commonwealth Electoral Act 1918 calibrates punishments to the severity of the wrongdoing. Impersonating another voter—a direct attack on the secrecy and sanctity of the ballot—carries a maximum of six months' imprisonment. Casting more than one vote intentionally can attract up to twelve months' imprisonment, while both bribery (s 326) and interference with political liberty (s 327) carry

maximum terms of two years and six months respectively. Even knowingly publishing false or misleading material about the voting process is punishable by only six months' imprisonment under section 329. Australia reserves the harshest sentences for offenses that involve direct corruption or violence, treating procedural lapses and speech-related infractions as civil or lower-level criminal matters.

Fiji's almost uniform ten-year maximum makes every error seem as dangerous as organised vote-buying, discouraging honest participation by election officials, party officials, election candidates and election monitors. It also undermines proportionality in sentencing, risking public perceptions of unfairness and prompting challenges under principles of justice and human rights. Globally, the experience with regulatory regimes has demonstrated that if "penalties for relatively minor transgressions are too severe: this may raise doubts about the fairness of the political finance system, with the result that non-enforcement or the "under-charging" of offences is tolerated".

A more balanced framework would tier penalties into at least three categories:

a. **Regulatory Infractions** (e.g., late filings, signage errors, minor form defects) should incur administrative sanctions or modest fines (e.g., up to FJD 1,000) without imprisonment.
b. **Intermediate Offenses** (e.g., misleading publications, unauthorised removal of campaign materials) could attract civil penalties or short custodial terms (e.g., up to 12 months) alongside fines up to FJD 5,000.
c. **Serious Corrupt Practices** (bribery, personation, large-scale register manipulation) would remain criminal offenses, with imprisonment terms scaled to the gravity of the act (for example, up to a maximum of five years for bribery and coercion.).

3.2.8 Section 144A: Publication of False Statements

Section 144A of the Electoral Act criminalises the publication of any information—whether inside or outside Fiji—that the Supervisor of Elections believes to be a "false statement" likely either to influence an election's outcome or to "diminish public confidence" in the Supervisor or Electoral Commission. On its face, the provision purports to protect electoral integrity by punishing deliberate misinformation. In practice, however, the law grants the Supervisor virtually unchecked power to suppress any criticism deemed inconvenient, regardless of its factual basis or intent. The statutory terms "false statement" and "public confidence" are undefined, offering no objective threshold for researchers, journalists or citizens to gauge permissible commentary. A single direction from the Supervisor to "remove or correct" an article, report or social media post carries the force of law, and noncompliance attracts up to FJD 50,000 in fines or five years' imprisonment—penalties comparable to serious violent crimes. Even an academic critique of electoral procedures or a scholarly analysis comparing Fiji's system with international best practice could be swept within 144A's broad remit, creating profound legal uncertainty and a pervasive chilling effect.

By criminalising any "false statement" affecting public confidence, s 144A disincentivises rigorous, open research into electoral administration. Academics and policy analysts rely on publishing provisional findings, data driven critiques and theoretical models to stimulate reform. Under 144A, however, even well meaning inquiries—such as a university study showing procedural delays, minor discrepancies in the voter roll, or lapses in transparency—could trigger directions to retract or revise work. Scholars would face an impossible dilemma: either refrain from researching and publishing or risk criminal sanction. Moreover, the 24hour review obligation by the Electoral Commission offers no substantive due process protections, and there is no right of appeal beyond that. This dynamic incentivises self censorship, whereby critical commentary and the sanctity of academic freedom, including of universities, is suppressed ex ante to avoid punitive reprisals.

One of the most troubling aspects of s 144A is that even if an individual or party immediately "removes or corrects" a statement at the Supervisor's direction under subsection (2), they remain fully exposed to criminal prosecution—and potentially a fine of up to $50,000 or five years' imprisonment—under subsection (4). In effect, compliance with a takedown order offers no safe harbour: the very act of removing the content does not extinguish liability for having published it in the first place. This "double jeopardy" dynamic creates acute legal uncertainty and a powerful incentive to self censor: why risk even a single tweet or article if, even after complying with a removal notice, you may still face criminal charges?

To remedy this, the following is recommended:

- **Recast the offence** as a narrowly defined crime of **"**deliberate electoral fraud", requiring proof of malicious intent (mens rea) and demonstrable harm—rather than a broad "false statement" standard. This aligns with offences in mature democracies, such as the UK's Representation of the People Act, which criminalises only knowingly false statements about a candidate's personal character or conduct, and then only before and during an election.
- **Introduce clear definitions**: specify that "false statement" applies solely to material factual claims (e.g. fabricated vote counts), not to opinions, academic hypotheses or bona fide critique. Require any removal directive to include a written statement of reasons, identification of the allegedly false passages, and a defined procedure for independent appeal to a court—ensuring due process.
- **Carve out an explicit academic freedom exception**, stating that peer reviewed research, expert analysis or policy oriented reports published by recognised institutions are exempt from removal orders unless first subject to judicial review and a finding of actual malice. This safeguard preserves open scholarly debate while targeting only those who wilfully distort facts to subvert elections.
- **Introduce an express "compliance immunity**": anyone who removes or corrects their statement within 24 hours of a valid Supervisor's direction should be exempt from all criminal liability under subsection (4). Moreover, any further prosecution should require a court to first find that the individual acted with "actual malice"—that is, knowing falsity or reckless disregard for the truth—before charges can proceed. This two step safeguard would (a) ensure correction of misinformation, and (b) reserve criminal penalties for truly bad faith actors, not for scholars, journalists or citizens who make honest mistakes or promptly comply with requests for correction or with lawful orders.

3.2.9 Section 156: Regulation Making Powers

Section 156 vests broad regulation making power in the Minister responsible for Elections, allowing the executive branch to prescribe regulations, including detailed electoral procedures, administrative forms, and timelines. This concentration of authority risks politicising subordinate legislation and may lead to sudden rule changes that favour incumbents. Actual or perceived ministerial control over technical details (polling hours, fines, etc) undermines the constitutional independence intended for the Electoral Commission and diminishes stakeholder trust .

To remedy this, we recommend that there should be an amendment to section 156 to delegate exclusive subordinate legislation authority to the Electoral Commission. The EC, as an independent EMB, would be better placed to enact timely, expert driven technical regulations—free from partisan influence. This realignment ensures that detailed electoral rules evolve under an impartial body with institutional memory and technical expertise.

Summary Table

Provision	Recommendation	Rationale
ss 6(1B), 6(1 C)	Delete provisions allowing the Supervisor to override privacy laws	Grants excessive, arbitrary power inconsistent with ICCPR Art 17; no other democracy vests such authority in its election body
s 18	Limit FICAC's involvement to the most serious electoral offences	Prevents over criminalisation and intimidation by reserving full criminal procedure for genuinely severe violations; minor breaches should incur administrative sanctions
ss 27–34	Lower candidate deposit refund threshold from 1% to 0.1%	High forfeiture rate (83% of candidates lost deposits in 2022) stifles new entrants; a lower threshold still discourages frivolous candidacies without imposing an unfair barrier
s 104	Revise or remove overly broad regulations on opinion poll publication	Vague provisions with harsh penalties chill legitimate polling activities; other democracies regulate polls without deterring research and publication
s 115	Remove restrictions on CSOs conducting civic/voter education	Undermines freedom of expression (ICCPR Art 19) and discourages essential civic engagement
s 116(4C), 116 (4D)	Eliminate mandatory financial audits of campaign policy promises	Imposes a unique, burdensome requirement on political parties; no comparable audit mandates exist in other democracies
s119	Election observers to be accredited by Election Commission	Current accreditation of observers by the Minister for Elections leads to politically, motivated exclusion.
ss 135–150	Review and reduce scale of criminal penalties for electoral offences	Current maxima (10 years' imprisonment, FJD 50,000 fines) are disproportionately harsh; most jurisdictions impose significantly lighter sanctions
s 144A	Recast as a narrowly defined crime of "deliberate electoral fraud" requiring proof of malicious intent; define "false statement" to cover only material factual claims; carve out an academic freedom exception; and introduce an express compliance immunity	Grants the Supervisor of Elections unchecked power to suppress critique, stifles academic freedom and allows prosecution even after takedown orders have been complied with.
s 156	Transfer regulation making power from the Minister to the Electoral Commission	Ensures rule making rests with an independent body, reducing real and perceived conflicts of interest during the election cycle.

4. Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013

4.1 Introduction

The Political Parties (Registration, Conduct, Funding and Disclosures) Act 2013 was enacted to establish a comprehensive legal framework governing the formation, internal governance, financial transparency and permissible activities of political parties and independent election candidates in Fiji. Coming into force on 18 January 2013, the Act seeks to promote fair and accountable democratic competition by prescribing clear criteria for party registration, setting out detailed disclosure and audit obligations, and prohibiting improper sources of funding .

The legislation is structured in four principal parts. Part 1 provides definitions of key terms and sets the Act's short title and commencement date; Part 2 regulates the lifecycle of political parties, including application and registration, mergers, deregistration, contents of party constitutions and the maintenance of party records . Part 3 details limits on permissible sources of party and candidate funding, donations caps, mandates comprehensive asset and liability declarations, and requires annual audits and public disclosure of accounts. Finally, Part 4 contains general provisions relating to offences, winding up procedures and avenues for appeals. The Act is supplemented by schedules detailing model party constitution provisions, a party code of conduct and a map of the four divisions of map from which parties need to obtain endorsements to be registered.

Notably, the Act requires parties to secure at least 5,000 registered voter endorsements across all four geographical divisions and to lodge annual financial statements and declarations of personal wealth, to guard against the undue influence of narrow interests and to require transparency at both party and individual levels. Its stringent penalties for noncompliance—even extending to deregistration and criminal liability—underline the legislature's intent to ensure that Fiji's political landscape operates under robust standards of integrity and public accountability .

4.2 Shortcomings of the Act

4.2.1 Section 19: Deregistration Powers

Section 19 grants the Registrar of Political Parties the power to deregister a political party for breaches such as non-compliance with financial disclosure requirements. This is the most severe administrative sanction available under the Act, as it results in the immediate loss of legal status, forfeiture of assets, and exclusion from electoral participation. However, this decision can be made unilaterally by the Registrar, without judicial oversight or a formal hearing process.

Deregistration as a penalty exists in just 23.3 percent of democracies, and even where it is prescribed, it is almost invariably imposed by courts rather than by election-management officials. To safeguard democratic rights and institutional integrity, deregistration should be contingent on judicial confirmation by the High Court, ensuring that affected parties are afforded a fair hearing and the right to present evidence.

Adopting a judicial requirement would align Fiji's deregistration mechanism with international due process standards. It would reinforce public confidence in the impartiality of enforcement decisions and reduce the likelihood of litigation or political backlash. The Registrar could still recommend deregistration, but the final determination should rest with an independent and impartial court of law.

4.2.2 Section 20: Effect of Deregistration of Political Parties

Section 20(2) allows MPs from deregistered political parties to defect to another party in parliament or become independents. This is essentially is at odds with the principles enshrined in Fiji's constitution. This provision presents several challenges. A fundamental democratic principle dictates that the composition and positions (stances) within the legislature should always mirror the intentions of the voters. There exists a solid rationale for mandating MPs to align with their party, especially within proportional representation (PR) systems like Fiji's multi-member open list proportional representation (OLPR) system. In such systems, a party's share of seats directly correlates with its aggregate votes. MPs owe their parliamentary seats to their respective parties. Given the significant influence of the coattail effect in Fijian national elections—where less popular MPs benefit from the votes garnered by prominent party leaders—the imperative for requiring strict adherence to party lines is justified.Section 20(2) of the Political Parties Act has now led to a situation where the wishes and interests of the voters of the deregistered Fiji First party has been seriously jeopardised. In the extreme situation that currently exists, votes cast for Fiji First are now directly empowering the leader of the People's Alliance Party (the main political rival of Fiji First and its voters). This is a travesty for democracy and the people's preferences, though probably unforeseen when the legislation was drafted and enacted in 2013.

To remedy this, it is recommended that Section (20)(2) of the Political Parties Act be amended to state that should a parliamentary party with more than 10% of parliamentary seats is deregistered which significantly impacts on the proportionality of seat allocation (composition of parliament) as per the results of the latest elections, a fresh general election is automatically triggered. This reform would ensure that the reallocation of seats follows the will of the electorate as expressed at the ballot box, rather than the opportunism of individual MPs, and would protect the integrity of Fiji's proportional representation system.

4.2.3 Section 21: Requiring Donors to Be Registered Voters

Currently, Section 21 of the Act outlines lawful sources of party and candidate funding but does not require donors to be registered voters or be of a certain age. This gap allows for potential abuse through donations by minors or fictitious persons, who are used as conduits to divide large donations into smaller, less detectable tranches. In doing so, wealthy individuals or entities can effectively bypass disclosure and donation limits, distorting the spirit of the law. To close this loophole, a requirement should be introduced mandating that donors must be listed on the national electoral roll, which would mean that they would have to be at least 18 years of age. The table below shows age limits on political donations in multiple countries.

Country	Age Limit for Political Donors
Australia (State of NSW)	16 years
Azerbaijan	18 years
Belarus	18 years
Israel	18 years
Mongolia	18 years
Russian Federation	18 years
Singapore	21 years
Ukraine	18 years
United Kingdom	16 years
United States of America	17 years

Table: Age Limits on Political Donations (reproduced from Lal, 2021).

This reform would strengthen the traceability and integrity of political donations. Through tying donor eligibility to voter registration, authorities can cross-check contributions against the national voter register, reducing the incidence of fraud and enhancing the overall transparency of the political finance ecosystem.

4.2.4 Section 22: The FJD 10,000 Donation Cap

Section 22 of the Political Parties Act currently caps individual donations at FJD 10,000 per year. While this figure was originally conceived to limit the influence of wealthy donors, it has remained static since 2013, despite rising inflation. Over time, this has significantly eroded its real value. A cap that fails to evolve in response to economic changes becomes a blunt instrument, incapable of meaningfully regulating the flow of money in politics.

Indexing the donation cap to inflation, for example via the Consumer Price Index published by the Fiji Bureau of Statistics, would allow the cap to maintain its original value. Several countries have adopted such mechanisms. Uruguay, for instance, uses the Unidad Indexada (UI) to adjust contribution limits annually, while Chile similarly uses the Unidad de Fomento (UF). These systems ensure the donation caps retain their value relative to cost-of-living changes, removing the need for ad hoc legislative amendments.

Furthermore, aligning the cap with economic realities reduces pressure on electoral institutions and legislators to revisit financial thresholds frequently. It provides a predictable and transparent regulatory mechanism that enhances donor compliance and enforcement efficiency. A well-maintained donation cap, adjusted annually based on a clear formula, would would be more appropriate for protecting against large donations, whilst ensuring that this is less susceptible to arbitrary thresholds placed by incumbents.

4.2.5 Sections 22(8) – 22(11) : Corporate Donations

Sections 22(8) to 22(11) of the Act impose a categorical ban on donations from corporate entities. Although this measure was designed to prevent undue influence from businesses and vested interests, it has created unintended consequences. Notably, it has encouraged the use of "straw donors," where corporate-backed individuals donate in their personal capacity to mask the true source of funds. This undermines the very transparency the law seeks to uphold.

Rather than an outright prohibition, a more calibrated approach should be adopted—allowing corporate contributions under a regulated and transparent framework. For instance, Argentina amended its political finance laws in 2019 to permit corporate donations under strict conditions: full disclosure, a clear ceiling on contribution amounts, and exclusion of companies with government contracts. This reform brought substantial corporate funding into the open and enhanced regulatory oversight.

Adopting a similar model in Fiji would eliminate perverse incentives for donation laundering while enabling political parties to receive legitimate financial support from businesses operating within the bounds of the law. The reform could also include safeguards, such as blacklisting corporations awarded government tenders within the preceding year or limiting contributions to a fixed percentage of the company's net income.

4.2.6 Section 26: Mandate Online, Machine Readable Filings

Section 26(2A) states that "A political party must publish its audited accounts in a format provided by the Registrar on the official website of the Fijian Elections Office within 3 months after the end of each financial year".Although this provision requires the political party to undertake the publication, the reality is that political parties do not have the access to publish anything on the official website of the Fijian Elections Office. Unless political parties get direct upload access to the Elections Office website, this legislative requirement is unworkable and in urgent need of redrafting to clarify both hosting responsibilities and technical procedures.Moreover, audited accounts are typically published in non-searchable formats, such as static PDFs. Section 23 also requires public access to donor reports, but these are not readily available in a digital, user-friendly form. This undermines the utility of the disclosures, as stakeholders—including journalists, civil society, and electoral competitors—are unable to efficiently analyse political finance data.

A solution lies in requiring political parties to file reports in machine-readable, standardised digital formats such as XML or CSV, and to host these filings on a centralised, publicly accessible digital portal. Colombia's "Cuentas Claras" platform serves as a global benchmark, enabling real-time, searchable access to campaign finance records across multiple election cycles. Such systems facilitate scrutiny, pattern analysis, and timely detection of anomalies in political finance behaviour.

Implementing a similar portal in Fiji would significantly enhance the transparency and oversight of political finance. It would allow the Fijian Elections Office to proactively monitor compliance, while empowering civil society to perform watchdog functions more effectively. This reform aligns with open government principles and would mark a substantial leap in democratic accountability.

4.2.6 Section 27 (26A and others) -Disproportionate Penalties

The Political Parties Act 2013 is widely regarded as one of the most punitive political party legislations in the region, prescribing penalties of up to ten years' imprisonment or substantial fines for a range of breaches. Although the Act's sanctions are comprehensive and unambiguous, political parties themselves and independent political finance experts have warned that such draconian measures risk doing more harm than good. In practice, the threat of a decade behind bars may deter not only deliberate malfeasance, but also penalise honest mistakes by under-resourced party treasurers. Yet despite the severity of these statutory penalties, Fiji lacks any systematic record of how often—and in what circumstances—the EMBs or courts have actually imposed them. Beyond occasional media releases or reports, there is no central

register of convictions, fines or deregistrations, making it difficult to assess whether the law operates as intended.

Comparative data underscore the abnormality of Fiji's sanction regime. Today, more than half of all democracies—some 105 countries, or approximately 58 percent—retain the option of imprisonment for serious violations of their political-finance regimes. However, almost all cap custodial sentences at five years or less, even for the most serious offences. Sentences exceeding five years are extremely rare globally, reserved only for the most extreme cases of grand-theft or conspiracies that threaten the entire electoral process. By contrast, Fiji's ten-year maximum places it in a very small minority of jurisdictions, out of step with both regional neighbours and international best practice.

To restore balance and transparency, Fiji should pursue two complementary reforms. First, it should introduce a tiered sanction framework that reserves lengthy custodial sentences for flagrant, systematic corruption—while treating minor administrative omissions and reporting delays as regulatory infractions subject to modest fines or civil penalties. Second, it should mandate the publication of a centralised sanctions register, maintained by the Elections Office, cataloguing every instance of a conviction, fine, or deregistration under the Act. Such a registry would not only permit rigorous evaluation of which provisions achieve their objectives, but also deter arbitrary application by shining a light on enforcement practices. This would achieve better accountability and proportionality in dealing with financial disclosures and other offences by political parties, election candidates, their agents and donors.

4.2.7 New Provision- Spending Caps

Although the Act places tight restrictions on who may donate and how much, it imposes no limitations on how much a party or candidate may spend during an election. Whilst contribution limits are generally considered more effective, spending is easier to monitor. According to the IDEA Political Finance Database, 26% of countries impose limits on political party spending, either annually or per election campaign, whilst 44% of countries impose expenditure limits on election candidates. In the case of Fiji, financial disclosures made following the three recent election results demonstrate the huge disparity in election expenditure between the incumbent and challenger parties.

This is also particularly concerning in Fiji's electoral context, which operates under a single national constituency model. Well-funded incumbents can flood the media landscape with advertising and dominate outreach, marginalising under-resourced challengers. Spending caps act as equalisers in such settings.

Spending Limits- Breakdown by Continents				
Continent	**Countries with Spending Limits**	**Countries with No Spending Limits**	**No data**	**Countries researched**
Africa	12(23.5%)	33(64.7%)	6(11.8%)	51
Americas	16(47.1%)	18(52.9%)	0(0.0%)	34
Asia	15(40.5%)	20(54.1%)	2(5.4%)	37
Europe	19(43.2%)	25(56.8%)	0(0.0%)	44
Oceania	1(7.1%)	12(85.7%)	1(7.1%)	14
Total	**63**	**108**	**9**	**180**

Table 3: Spending Limits Globally- Breakdown by Continents. . (Source: International IDEA Political Finance Database)

Implementing overall and per-election spending limits, indexed to voter numbers or the donation cap, would enhance electoral fairness and curtail excessive influence by wealthy candidates or parties. These caps should be enforced by continuing to require pre- and post-election expenditure disclosures and by introducing penalties for non-compliance, including fines or disqualification from public funding.

4.2.8 New Provision: Establish Public Funding

Sections 21 and 22 make no provision for public financing, relying exclusively on private contributions. This model inherently favours incumbents and parties with access to wealthy donors, leaving emerging or smaller parties at a disadvantage. Without a baseline level of public funding, these parties struggle to compete on equal footing, thereby narrowing the political space and limiting voter choice.

Whilst the idea of public funding of political parties is controversial, over the past few decades there has been a clear global shift towards state subsidies: around 60 percent of countries now provide direct financial grants, and approximately 80 percent offer free public broadcasting or other indirect forms of support.

Fiji's relatively stringent party-registration requirements—designed to bar frivolous parties—already safeguard against abuse of public funding. Therefore, becoming eligible for public funding could be simply based on duly obtaining registration under the current provisions of the Political Parties Act. Allocating funds in proportion to each party's vote share is the most widely used criterion worldwide, and Fiji's single, multi-member PR district makes this method especially equitable. Under such a system, even parties that fall short of the 5 percent electoral threshold would receive financial resources commensurate with their actual support, enabling them to sustain operations and compete more effectively in elections. In this way, a modest programme of public funding would help sustain a multi-party landscape in Fiji, and having sufficient safeguards against frivolous entries, and parties formed just to acquire public funds.

4.2.9 New Provision: Add Gender Targeted Top Ups

Fiji's Parliament remains among the lowest worldwide in terms of female representation—women hold under 10 percent of seats, far below global norms. Because the open-list PR system used in Fiji does not itself ensure that women rise through party preferences, the most realistic way to increase women's presence is to tie public campaign funding to candidate gender balance.

Some 30 countries now condition direct public subsidies on parties nominating a minimum share of women; Fiji could similarly require that at least 40% women candidates need to be nominated by a party to access public funding for election year campaign expenditure. Such a measure would not only enhance gender equality but also catalyse broader efforts within political parties to support and mentor female candidates, expressing gender priorities and contributing to long-term cultural and institutional change including in incidences of violence against women and children which are of epidemic proportions in Fiji despite decades of efforts to curb it. How women or females are defined, given the insights of the local LGBTQIA+ community, for the purpose of direct public subsidies on parties, is a matter that Fiji needs to address itself from the freedom from discrimination perspective should this recommendation be accepted.

4.2.10 New Provision- Regulate Third Party Spending

The Act does not currently address campaign-related expenditure by third parties—such as civil society organisations, unions, corporations, or informal advocacy groups—or adequately regulate online advertising. As political campaigning increasingly shifts to digital platforms and as third-party actors become more influential, this omission represents a major regulatory blind spot.

Globally, democracies have responded by introducing specific registration, disclosure, and expenditure caps for third-party campaigners. In Canada, for instance, third parties—defined as corporations, unions, individuals or other entities—must channel all election-related spending through a dedicated campaign bank account, report both monetary and non-monetary contributions (including loans, volunteer labour and cryptocurrency) in detailed financial returns, and may not use any foreign-sourced funds for regulated activities. There are no limits on the amount of own funds, loans or domestic contributions a third party can receive, but contributions over CAD 200 must be itemised by contributor, and all regulated expenditures are capped by statutory expense ceilings.

It is recommended that Fiji introduce a new provision to define and regulate third-party entities. This reform would close a significant gap in the current legal framework, preventing indirect circumvention of spending and disclosure rules, and ensuring that all significant political influencers are subject to the same democratic standards of accountability.

Summary Table

Provision	Recommendation	Rationale
s19	Make deregistration contingent on confirmation by the High Court, with a formal hearing.	Guarantees due-process and impartiality, aligns Fiji with global norms where courts—not election officials—impose the ultimate sanction
s20	Amend so that if a party holding > 10 % of seats is deregistered, a fresh general election is automatically triggered.	Preserves voters' proportional choices, prevents opportunistic defection, and protects the integrity of the OLPR system.
s21	Permit donations only from individuals on the national electoral roll (18 +).	Stops the use of minors or fictitious donors as "straw men", improves traceability, and closes a major loophole in disclosure enforcement.
s22	Index the FJD 10 000 annual cap to inflation (e.g. CPI).	Maintains the cap's real value, avoids ad-hoc legislative updates.
s22 (8)–(11)	Replace the blanket ban with a regulated regime: disclosure, ceilings, and exclusion of firms with government contracts.	Brings corporate money into the open, removes incentives for hidden "straw" giving, and mirrors successful reforms (e.g. Argentina 2019).
s26	Require parties to file audited accounts and donor reports in machine-readable formats (XML/CSV) on a central public portal; clarify hosting responsibility.	Makes data searchable and timely for journalists, CSOs and regulators, fixes the current impossibility of parties uploading to FEO's website, and modernises transparency.
s27	Introduce a tiered sanction scheme with minor administrative breaches attracting civil fines.	Restores proportionality, deters arbitrary enforcement, and enables evidence-based evaluation of the law's impact.
New provision – Spending caps	Impose overall and per-campaign expenditure limits, indexed to voter numbers or the donation cap.	Levels the playing field in Fiji's single-district PR system, curbs dominance by wealthy incumbents,
New provision – Public funding	Establish direct state subsidies, allocated by vote share to all registered parties.	Reduces reliance on big donors, supports smaller parties, and brings Fiji in line with the 60 % of democracies offering public financing.
New provision – Gender-targeted top-ups	Condition public funding on parties nominating at least 40 % women candidates, appropriately defined.	Creates a strong incentive for gender parity and addresses Fiji's < 10 % female parliamentary representation, provided this attribute is appropriately defined with insights from the LGBTQIA+ community.
New provision – Third-party spending	Define and regulate third-party campaigners: mandatory registration, disclosure, foreign-funds ban, and spending ceilings (including online ads).	Closes a major blind spot, prevents circumvention of party limits, and subjects all influential actors to the same accountability standards.

5. Electoral (Registration of Voters) Act 2012

5.1 Introduction

The **Electoral (Registration of Voters) Act 2012** establishes a clear, uniform framework for enrolling and maintaining the database of those eligible to vote in Fiji's general elections. Its primary purpose is to guarantee that every Fijian citizen aged eighteen and over—unless disqualified by longterm imprisonment or adjudged mental incapacity—has the right to be registered and issued a secure voter card, while also setting out the duties of the Supervisor of Elections and registration officers in processing applications, revising entries, and handling objections .

Key objectives include the creation and upkeep of the National Register of Voters (including electronic maintenance and periodic publication), the facilitation of timely updates (change of address, corrections, removals), stringent safeguards against data manipulation and misuse of voter information, and the establishment of offences and penalties to protect the integrity of the register. Altogether, the Act's provisions ensure that Fiji's electoral roll remains accurate, accessible, and secure in support of free and fair elections.

Key Elements of the Act

The Act begins by defining its scope and key terms, including "Supervisor of Elections," "National Register of Voters" and "voter card,". It guarantees every Fijian citizen aged eighteen or over the right to be registered, except those serving imprisonment of twelve months or more or adjudged of a mental disorder, and requires the Supervisor to publicise an annual notice and call unregistered qualified persons to apply. Applications must be made in person on an approved form to a registration officer and include detailed personal particulars (name, address, occupation, date of birth, gender), biometric data (thumbprints, photograph), and proof of identity; duplicative or incomplete applications may be rejected and, if made more than once without cause, attract criminal penalties up to FJD 10,000 and/or five years' imprisonment

Central to the Act is the establishment of a comprehensive National Register of Voters, maintained electronically if desired, which records each voter's full name, closest polling venue, residential address, occupation, date of birth, gender, facial photograph and unique voter number. Upon successful registration, each voter receives a secure, Fijian Elections Office issued voter card; the Act also empowers the Supervisor to revise the register at any time before closure—correcting errors, updating particulars, removing deceased, ineligible or duplicate entries—and to process objections and judicial reviews in a tightly prescribed timeframe to ensure accuracy and confidence in the roll .

To safeguard the integrity of Fiji's electoral roll, the Act creates serious offences for unauthorised manipulation of register data (up to FJD 100,000 fine and/or ten years' imprisonment) and for breach of duty by registration officers (up to FJD 50,000 fine and/or ten years' imprisonment). It mandates incorporation of robust security features into voter cards, regulates seizure of false documents, prohibits improper disclosure of registration information, and obliges state agencies to assist the Fijian Elections Office.

5.2 Shortcomings of the Act

5.2.1 Sections 2, 4 and 19: Registration Modality

Fiji's voter registration framework confines voter enrolment to fixed "registration periods" and closes the register at the writ issuance date (secs 2 & 19), and registration is done manually upon application by a voter (section 4). In contrast, automatic voter registration (AVR) systems makes registering "opt-out" instead of "opt-in", and this can have a positive impact on voter turnout. In high-registration nations, including Germany, Australia, and Canada, the government automatically registers eligible voters. For example, Canada's National Register of Electors is a *permanent, continuously updated* database maintained via data sharing with federal, provincial, and municipal agencies—eliminating the need for separate registration drives each cycle. Similarly, 22 U.S. states plus D.C. have implemented Automatic Voter Registration (AVR), whereby eligible citizens are automatically registered when they interact with agencies like the DMV.

To modernise and broaden voter access, it is recommended that Fiji should amend section 4 to authorise automatic enrolment through data-matching with school and civil registry systems. The Act should permit online pre-registration and self-updates, with manual applications reserved mostly for first-time registrants without digital records.

5.2.2 Section 3: No provisions for youth preregistration

Current law restricts voter registration to those already aged eighteen or over (section 3), missing an opportunity to preregister 16 and 17 year olds. This gap delays full political participation until adulthood, missing an opportunity to harness youthful enthusiasm and civic engagement at a formative stage. In Australia, though registration is mandatory for everyone eighteen years of age or older, sixteen and seventeen-year-olds can pre-enroll, and are then automatically enrolled upon their eighteenth birthday. Furthermore, as described in a study undertaken by the Brennan Center for Justice, "election officials send birthday cards, with registration forms enclosed, to students turning either 17 or 18 years old."

To build a more inclusive electorate and to stimulate interest in youths, we recommend that Fiji should insert a clause into section 3 enabling preregistration of citizens aged sixteen and seventeen. The Supervisor of Elections would maintain a separate youth registry, automatically converting entries to full registration on each individual's eighteenth birthday. Complementary amendments should require the FEO to coordinate with secondary schools and tertiary institutions, conducting annual registration drives and sending mailed or electronic reminders as sixteen-year-olds reach preregistration eligibility. Through legislating youth preregistration, Fiji can cultivate lifelong voting habits, enhance civic education, and reduce administrative bottlenecks on election years, without compromising the integrity of the adult register.

5.2.3 Section 3(2) Broad disenfranchisement for mental disorder and imprisonment without nuanced safeguards

Section 3(2) strips registration rights from anyone "adjudged or … declared to have a mental disorder" or serving a prison sentence of twelve months or longer . This blanket disenfranchisement contravenes global trends toward restoring voting rights to persons with mental health conditions and short-term sentences. The UK's Electoral Administration Act 2006 abolished legal incapacity barriers, affirming that mental health status alone cannot preclude franchise if other qualifications are met.

Fiji should reform section 3(2) to remove automatic disenfranchisement for mental disorders and limit imprisonment disqualifications to sentences exceeding two years, aligning with international human rights standards. These amendments strike a balance between protecting electoral integrity and upholding fundamental democratic rights, ensuring that mental illness or brief imprisonment does not permanently silence a segment of Fiji's citizens.

5.2.4 Section 4 High barriers for remote and vulnerable populations

Applicants must appear in person with thumbprints, a facial photograph, and an official birth certificate (sec 4(2)(g–i)). This disenfranchises rural, elderly, and disabled Fijians who may struggle to travel to registration centres. In contrast, Canada and many U.S. states offer multiple channels—mail in, online, same day at polling places—and third-party or assisted registrations to ensure broad accessibility.

To broaden accessibility, Fiji should amend section 4 to allow multiple registration channels: secure online portals with two-factor authentication; mail-in forms requiring notarised or digitally attested identity proof; and mobile registration teams visiting remote communities. Through diversifying registration modalities, Fiji will ensure that no qualified voter is disenfranchised by geography, disability or circumstance, equalising electoral access across its dispersed archipelago.

5.2.5 Section 4(4) Overly punitive criminal penalties

The Act makes multiple registration applications a criminal offence punishable by up to FJD 10,000 in fines and/or 5 years' imprisonment (sec 4(4)), and manipulation of the register a crime carrying up to FJD 100,000 in fines and/or 10 years' imprisonment (sec 10A). By contrast, U.S. states that impose penalties on voter registration drives typically limit sanctions to civil fines or license suspensions rather than long prison terms—recent restrictive laws drawing criticism for "unbelievable" fines for minor paperwork mistakes, but still stopping short of multiyear imprisonments.

Fiji should adopt a tiered penalty framework: minor infractions—duplicate or incomplete applications—should trigger civil notices; intentional fraudulent registrations warrant administrative fines capped at FJD 5,000; and only deliberate, large-scale manipulation should carry criminal sanctions, limited to a maximum of two years' imprisonment. Complementary amendments to section 10A's manipulation offence should distinguish between technical database errors and malicious tampering, applying proportional penalties accordingly. Such reform preserves deterrence against genuine fraud while eliminating punitive overreach, fostering a more enabling environment for voter registration efforts.

5.2.6 Section 11A Limited data protection safeguards and unrestricted sale of the register

Section 11A allows the Supervisor to publish and sell the National Register of Voters without robust privacy controls. Unrestricted disclosure of personal data—names, addresses, birth dates—risks misuse for commercial marketing, political profiling or identity theft. In Canada, by contrast, the National Register of Electors is subject to strict legal constraints: parties may only use register data for electoral purposes, and misuse is penalised under the Canada Elections Act; personal data beyond name and address (e.g., phone, email) is expressly protected.

Section 11A should be amended so that the public version of the National Voter Register includes only each voter's name, unique voter number and assigned polling station—omitting all other personal details—and to require any political party that requests this trimmed-down list to sign a legal undertaking that it will use

the data solely for genuine election planning and voter outreach, with any commercial or non-electoral use explicitly prohibited and punishable by fines under the Act.

Summary Table

Provision	Recommendation	Rationale
ss2, 4 & 19 –	Introduce automatic voter registration (AVR) using data-matching with civil and school registries; permit secure online self-updates and keep manual enrolment mainly for first-time voters without digital records.	Shifts the system from "opt-in" to "opt-out," raising registration rates and potential turnout, reduces costly periodic drives, and aligns Fiji with best-practice models in Canada, Australia, Germany and 22 U.S. states.
s3	Allow preregistration of 16- and 17-year-olds; maintain a youth roll converted automatically on their 18th birthday; mandate annual school- and campus-based drives.	Cultivates early civic habits, broadens the future electorate, eases election-year bottlenecks, and follows Australia's successful model of engaging teenagers before first voting age.
s3(2)	Delete automatic exclusion for people with mental disorders and limit prisoner disenfranchisement to sentences exceeding two years.	Restores rights in line with UK reforms and international human-rights standards, ensuring mental illness or short custodial terms no longer disenfranchise otherwise-eligible citizens.
s4	Authorise multiple channels: secure two-factor online portals, notarised or digitally-attested mail-in forms, and mobile teams for remote communities.	Prevents geography, disability or age from deterring enrolment, equalises access across Fiji's dispersed islands, and mirrors Canada's multi-modal approach.
s4(4) & 10A	Adopt a tiered system: civil notices for duplicate/incomplete forms; intentional fraud fined ≤ FJD 5 000; only deliberate large-scale manipulation draws criminal penalties capped at two years' imprisonment.	Maintains deterrence for genuine fraud while ending disproportionate 5- to 10-year sentences, and harmonises sanctions with comparators that rely on civil fines.
s11A	Publish a trimmed public register (name, voter number, polling station only); require parties to sign a legal undertaking restricting data to electoral purposes, with fines for misuse.	Shields personal data from commercial exploitation or identity theft, meets modern privacy standards (e.g. Canada Elections Act), yet still lets parties conduct legitimate voter outreach or verification.