



Submission to the Parliamentary Standing Committee on Justice, Law and Human Rights on the National Referendum Bill 2025 (Bill No. 46 of 2025)

CLAUSES

1. Short title and commencement
2. Interpretation
3. Act to bind State
4. Purpose

PART 1—PRELIMINARY

5. Circumstances in which a referendum may be held
6. Person qualified to vote
7. Single vote
8. Register of Voters to be conclusive evidence of right to vote

PART 3—CONDUCT OF REFERENDUM

9. Application of existing electoral and voting procedure
10. Polling venues, polling stations and symbols
11. Notification of polling stations and symbols
12. Polling day at referendum to be public holiday
13. Presiding officers
14. Facilities to be provided at polling station
- Admittance to polling station
- by ballot and ballot papers
- referendum

PART 4—OFFENCES

WRITTEN SUBMISSION

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

On the National Referendum Bill 2025 (Bill No. 46 of 2025)

Submitted by: Dialogue Fiji

1. Introduction

Dialogue Fiji thanks the Parliamentary Standing Committee on Justice, Law and Human Rights for the opportunity to make this written submission on the National Referendum Bill 2025 (Bill No. 46 of 2025).

Dialogue Fiji is an independent civil society organisation working on democracy, governance, human rights, and social cohesion in Fiji. We have closely followed the development of this Bill and previously made an oral submission before the Committee, as well as issuing public statements expressing concern about several of its provisions. This written submission builds on and elaborates upon the key points raised during our oral submission.

Dialogue Fiji acknowledges and welcomes the Government's intention to establish a statutory framework for the conduct of national referendums, particularly in light of section 160 of the Constitution, which requires referendums for constitutional amendments, and Parliament's power to submit matters of national importance to the people.

However, the legitimacy of a referendum depends not only on the act of voting, but on the quality of the process that precedes it. A referendum that suppresses debate, limits civic participation, or centralises control of information risks producing outcomes that are formally valid but democratically fragile.

2. The Central Problem: Excessive Restrictions on Civic Participation

The Bill, as currently drafted, contains provisions that go far beyond what is necessary to ensure orderly voting and instead criminalise core democratic activity, including public education, advocacy, and discussion.

Most concerning are sections 22, 23 and 27, which collectively:

- prohibit the production or display of referendum-related materials at any time;
- criminalise persuasion "by word, message, writing or in any other manner"; and
- prohibit participation in referendum-related activities by persons under 18 or not registered to vote.

Taken together, these provisions would make Fiji an extreme outlier among democratic systems.

A referendum, especially one dealing with constitutional change, requires a higher standard of openness and legitimacy, not a lower one. Fiji's 2013 Constitution has been widely criticised for its non-participatory origins. Any process to amend it must therefore be demonstrably inclusive, transparent, and deliberative.

3. Section 22: Prohibition on Badges, Symbols and Materials

Section 22 prohibits any person other than the Supervisor of Elections from producing, distributing, displaying, or even wearing any symbol, badge, banner, poster or advertisement "in connection with any referendum" at any time before, during or after a referendum.

This provision:

- grants the Supervisor of Elections a monopoly over referendum-related expression;
- criminalises civic education materials produced by civil society organisations, academics, and the media;
- prevents public forums, campaigns, or even symbolic expression; and
- allows warrantless arrest based on a police officer's subjective view.

This is not a proportionate regulatory measure. It amounts to a blanket suppression of expression.

Recommendation

Dialogue Fiji recommends that section 22 be amended so that any restrictions on materials apply only during a clearly defined blackout period immediately preceding polling day, consistent with international democratic practice. Outside that period, civic education and advocacy must be permitted. Detailed proposed amendments are set out in Annex A.

4. Section 23: Prohibition of Canvassing and Persuasion

Section 23 criminalises any attempt "by word, message, writing or in any other manner" to persuade a person how to vote.

This provision is extraordinary in its breadth. It criminalises:

- public debate;
- academic commentary;
- media analysis;
- civic education campaigns; and
- even private conversations between citizens.

A referendum without persuasion is not a democratic exercise; it is a controlled plebiscite.

Recommendation

Dialogue Fiji recommends that section 23 be revised so that restrictions on persuasion apply only during the blackout period, and not throughout the referendum process. Proposed drafting changes are detailed in Annex A.

5. Section 27: Criminalising Participation by Youth and Non-Voters

Section 27 prohibits persons under 18 and those not registered to vote from taking part in “any activity connected with a referendum”, with criminal penalties.

This provision is deeply problematic.

Young people, while not eligible to vote, have a legitimate stake in constitutional and national decisions. International experts, academics, and civil society actors who may not be registered voters often play a vital role in public education and debate.

No established democracy criminalises participation in referendum discourse on the basis of voter eligibility alone.

Recommendation

Dialogue Fiji recommends that section 27 be removed or substantially revised so that it does not criminalise education, discussion, research, or advocacy by youth, non-citizens, or non-registered voters. Dialogue Fiji’s preferred option is set out in Annex A.

6. Misplaced Reliance on Singapore (1961) and Australia (1984)

During debate, reference has been made to Singapore’s *National Referendum Ordinance 1961* and Australia’s *Referendum (Machinery Provisions) Act 1984*.

These comparisons are misleading.

Singapore’s 1961 law was enacted under colonial conditions, during the Cold War, to manage a highly contested merger referendum. The referendum itself is widely criticised for its lack of a genuine “no” option and heavy-handed controls. It is not an appropriate democratic benchmark. In fact, Singapore’s 1961 referendum law is often cited as an example of what a referendum law should not be!

Australia’s law, by contrast, permits extensive campaigning and persuasion and imposes only narrow, short silence periods near polling day. It does not support the sweeping bans contained in this Bill.

7. Comparative Democratic Practice

Across democratic systems including Australia, New Zealand, the United Kingdom, Switzerland, Ireland, and Vanuatu:

- referendum campaigning is permitted;

- civic education is encouraged;
- persuasion is lawful;
- restrictions are narrow and time-limited; and
- fairness is achieved through spending limits, transparency, and neutral information, not speech bans.

Fiji's Bill, as drafted, is more restrictive than these systems, and even more restrictive than laws in jurisdictions with far weaker human rights protections.

8. Alignment with the Venice Commission Code of Good Practice on Referendums

Dialogue Fiji notes that the Venice Commission's Code of Good Practice on Referendums represents the most widely accepted international benchmark for the design and conduct of democratic referendums. The Code emphasises core principles including freedom of voters to form an opinion, equality of opportunity, neutrality of authorities, balanced access to information, and sufficient time for public debate. The Code is frequently relied upon by courts, parliaments and international bodies in assessing the democratic legitimacy of referendum processes.

As currently drafted, the National Referendum Bill 2025 is not aligned with several key principles of the Code. In particular, the Code stresses that voters must be able to engage in free debate and receive pluralistic information prior to voting, subject only to narrowly tailored and time-limited restrictions immediately before polling day. By contrast, sections 22 and 23 of the Bill impose broad prohibitions on expression and persuasion throughout the referendum period, rather than confining restrictions to a short "cooling-off" or blackout period. This undermines the Code's requirement that voters be able to form an informed opinion through open discussion. Similarly, section 27's criminalisation of participation by youth, non-voters and non-citizens runs counter to the Code's emphasis on inclusive public debate and civic engagement, even where voting rights are restricted.

The Code also underscores the importance of neutrality in the formulation of the referendum question and adequate timeframes for public scrutiny. The Bill's failure to establish an independent and balanced body to draft the referendum question, coupled with provisions allowing the question to be published only days before polling, falls short of these standards. Dialogue Fiji therefore submits that aligning the Bill with the Venice Commission Code of Good Practice on Referendums would significantly strengthen its democratic credibility. The amendments proposed by Dialogue Fiji, as set out in this submission and detailed in Annex A, are intended to bring the Bill into closer conformity with these internationally recognised principles while remaining sensitive to Fiji's constitutional and political context.

9. Protection of Indigenous and Minority Rights in Constitutional Referendums

Dialogue Fiji notes that referendums are inherently majoritarian instruments. While this may be appropriate for ordinary policy questions, additional safeguards are widely recognised as necessary where a referendum is used for the purpose of amending constitutional provisions that affect fundamental rights. In plural

societies, constitutional change achieved through a simple majority may not always reflect a sufficiently broad or durable consensus on matters that have long-term implications for different communities.

International standards, including the Venice Commission Code of Good Practice on Referendums, emphasise that constitutional referendums affecting rights should be accompanied by enhanced procedural safeguards, including neutrality, adequate public information, and mechanisms to ensure that outcomes command wide societal support. At present, the Bill contains no mechanism to assess the potential impact of proposed constitutional amendments on minority groups, nor does it provide for any higher approval threshold where fundamental rights are affected.

Dialogue Fiji therefore recommends the inclusion of specific safeguards where a referendum is used for constitutional amendment purposes affecting minority rights. These safeguards, including an independent human rights impact assessment and a supermajority approval threshold, are intended to ensure that constitutional change enjoys broad and inclusive support. In Fiji's context, such measures would provide appropriate protection for minorities while strengthening the legitimacy of referendum outcomes overall. These proposals are detailed in Annex A.

Dialogue Fiji further notes that indigenous rights, while not based on numerical minority status in Fiji, are constitutionally recognised collective rights, particularly in relation to land, culture, identity and customary institutions. Safeguards such as independent impact assessment and enhanced approval thresholds would also serve to reinforce indigenous self-determination by ensuring that any constitutional change affecting these rights is carefully considered, widely understood, and supported by a clear and substantial majority of the population. In this way, the proposed safeguards protect minority rights while also enhancing the long-term security and legitimacy of indigenous rights within Fiji's constitutional framework.

10. Structural Gaps in the Bill

In addition to excessive restrictions, the Bill lacks key safeguards that would enhance fairness and legitimacy:

(a) Absence of spending limits and disclosure rules

The Bill contains no controls on referendum campaign spending or funding sources.

(b) Absence of an independent body to draft referendum questions

The Government effectively controls the framing of the referendum question, undermining neutrality.

(c) Inadequate timeframes

The Bill allows referendum questions to be published as late as five days before polling day, denying voters adequate time to understand the issue and engage meaningfully.

11. Dialogue Fiji's Proposed Reforms

Dialogue Fiji recommends the following reforms, many of which were outlined in our oral submission and are elaborated in Annex A:

- Define a clear blackout period, limited to the immediate pre-poll period.
- Amend sections 22 and 23 so that restrictions on materials, canvassing and persuasion apply only during the blackout period.
- Remove or revise section 27 to avoid criminalising youth, experts, and non-voters.
- Introduce spending limits and disclosure requirements for referendum campaigns.
- Establish an independent Referendum Question Commission, appointed by the President and comprising:
 - two nominees of the Prime Minister;
 - two nominees of the Leader of the Opposition; and
 - one nominee of the Fiji Law Society, with safeguards to ensure expertise and political neutrality.
- Introduce additional procedural safeguards where a referendum is used to amend constitutional provisions affecting fundamental rights, including an independent human rights impact assessment and a two-thirds national approval threshold to ensure broad and inclusive public support.
- Require early publication of the referendum question, including:
 - publication of a draft question for public comment; and
 - finalisation of the question at least 90 days before polling day.

12. Conclusion

Chair and Members of the Committee, referendums are among the most powerful democratic tools available to a people. Used well, they strengthen legitimacy and trust. Used poorly, they entrench division and cynicism.

As drafted, the National Referendum Bill 2025 risks silencing the very voices it purports to consult. With targeted amendments, however, it can become a framework that genuinely empowers the people of Fiji.

Dialogue Fiji respectfully urges the Committee to recommend substantial revisions to ensure that this Bill enhances, rather than constrains, Fiji's democratic future.

Dialogue Fiji remains available to assist the Committee further.

Proposed Amendments to the National Referendum Bill 2025

Submitted By: Dialogue Fiji

A. Introduction

Dialogue Fiji supports the objective of providing a legal framework for the conduct of a national referendum. However, several provisions of the Bill, as currently drafted, risk unnecessarily restricting democratic participation, freedom of expression, and civic education, while also departing from international best practice in referendum regulation.

This submission proposes targeted amendments to ensure the Bill:

- protects electoral integrity without suppressing legitimate public debate,
- aligns restrictions with clearly defined time periods,
- avoids criminalising civic participation by youths and non-voters, and
- introduces safeguards relating to campaign spending and referendum question neutrality.

B. Proposed Amendments

1. Insert a Definition of “Blackout Period”

Issue

Sections 22 and 23 currently apply “at any time either before, during or after” a referendum. This is excessively broad and effectively creates a permanent ban on referendum-related expression.

International best practice confines strict restrictions to a defined pre-poll silence period, commonly referred to as a blackout or cooling-off period.

Proposed Amendment

Amend Clause 2 (Interpretation) by inserting a new definition:

“blackout period” means the period commencing 48 hours immediately before polling day and ending at the close of polling on polling day.

2. Amend Section 11(2) Notification of polling stations and symbols

Issue

Section 11(2) currently provides that the Supervisor must publish a notice specifying the polling stations, the questions to be submitted to voters, and the symbols to be used not later than 5 days prior to polling day.

In effect, this means:

- the referendum question may only be made public five days before voting, and
- this occurs alongside broad restrictions on expression and canvassing.

This undermines informed participation and meaningful public engagement.

Proposed revision: separate and extend the timeline for the referendum question

Recommended approach

Do not tie the referendum question to the same timeline as polling station notices. Instead:

- require early publication of the referendum question, and
- retain the 5-day requirement only for logistical matters.

Proposed revised section 11

Amended Section 11 – Notification of polling stations, symbols and referendum question

11.—(1) The Supervisor must publish a notice in the Gazette specifying the polling stations and symbols to be used for the conduct of a referendum, not later than 5 days prior to polling day.

(2) The referendum question or questions to be submitted to voters must be published not later than 90 days prior to polling day, in the Gazette and through such other means as may be necessary to ensure public awareness.

(3) The publication of the referendum question under subsection (2) must be accompanied by neutral explanatory material approved by the Referendum Question Commission.

(4) Failure to comply with subsection (2) invalidates the conduct of the referendum unless the High Court determines that the failure did not materially affect the fairness of the referendum.

2. Amend Section 22 (Badges, Symbols, etc.)

To apply only during the blackout period

Issue

Section 22 currently prohibits symbols, materials and campaign expression before, during and after a referendum, which is disproportionate and inconsistent with democratic norms.

Proposed Revised Section 22

22.—(1) No person other than the Supervisor must, during the blackout period, make, print, publish, distribute, put up, wear, use, carry or display any badge, symbol, favour, set of colours, flag, banner, advertisement, handbill, placard or poster, or any replica of a ballot paper, in connection with a referendum.

(2) Subsection (1) does not apply to the publication of neutral, factual information for the purpose of public education, provided such information does not seek to influence how a voter votes.

(3) A police officer may arrest without warrant any person offending against subsection (1).

(4) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding one year.

3. Amend Section 23 (Prohibition of canvassing)

To apply only during the blackout period

Issue

Section 23 currently criminalises persuasion at all times, including during periods when public debate and education are essential for informed voting.

Proposed Revised Section 23

23.—(1) No person must, during the blackout period—

- (a) by word, message, writing or in any other manner, endeavour to persuade any person to give or dissuade any person from giving his or her vote at a referendum; or
- (b) visit a voter at his or her home or place of work for the purpose of influencing the voter's decision.

(2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding one year.

4. Review And Amend Section 27 (Restriction On Referendum Activity)

Issue

Section 27 criminalises participation in referendum-related activities by:

- persons under 18 years, and
- persons no longer registered as voters.

This goes significantly beyond international practice. While such persons may not vote, criminalising their participation in discussion, education or observation is excessive and counterproductive.

This provision would:

- criminalise youth civic engagement,
- deter academic and international expertise,
- suppress public education initiatives,
- expose minors to criminal liability.

Proposed Amendment

Option A (Preferred): Repeal Section 27 entirely

Section 27 is repealed.

Option B (Alternative): Narrow Section 27

27.—(1) Any person who ceases to be a registered voter in accordance with section 55 of the Constitution must not cast a vote or purport to cast a vote at a referendum.

(2) Subsection (1) does not prohibit participation in public education, research, observation, discussion or advocacy relating to a referendum.

Dialogue Fiji strongly recommends **Option A**.

5. Insert New Section: Campaign Spending Limits

Issue

The Bill is silent on referendum campaign spending. This creates a risk of unequal influence, particularly by well-resourced actors.

Proposed New Section (to be inserted in Part 4)

27A.—(1) A person or organisation must not incur expenditure in excess of \$100,000 in connection with a referendum.

(2) The amount specified in subsection (1) applies to the first referendum conducted after the commencement of this Act and may be adjusted for subsequent referendums by regulation, having regard to inflation and changes in campaign costs.

(3) Any expenditure limit prescribed under this section must promote fairness, transparency and equality of participation.

(4) The Electoral Commission may require disclosure of referendum-related expenditure in the manner prescribed by regulation.

6. Insert New Section: Abuse of State Resources and Official Position

Issue

The Bill does not contain any provision prohibiting the use of state resources or official position to influence the outcome of a referendum. This creates a risk of unequal influence, particularly where the Government or public authorities may be partisan actors in the referendum. International democratic standards require strict neutrality of public authorities during referendum processes.

Proposed New Section (to be inserted in Part 4)

27B.—(1) A public office holder, public officer, or public authority must not, in his or her official capacity, use or permit the use of state resources for the purpose of influencing or seeking to influence the outcome of a referendum.

(2) For the purposes of subsection (1), *state resources* include—

- (a) public funds;
- (b) government vehicles, facilities or equipment;
- (c) public employees or contractors during official working hours; and
- (d) official government communications, publications or media.

(3) Subsection (1) does not apply to—

- (a) neutral and factual information relating to the referendum process;
- (b) administrative or logistical arrangements necessary for the conduct of the referendum; or
- (c) information issued by the Electoral Commission in the performance of its statutory functions.

(4) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$10,000.

7. Insert New Section: Referendum Question Drafting Body

Issue

The Bill does not specify who drafts the referendum question, nor how neutrality is ensured. This is a critical democratic safeguard.

Proposed New Section (to be inserted in Part 2)

5A.—(1) There is established a Referendum Question Commission responsible for drafting the question or questions to be submitted to voters at a referendum.

(2) The Commission shall consist of 5 members appointed by the President, comprising—

- (a) 2 nominees of the Prime Minister;
- (b) 2 nominees of the Leader of the Opposition; and
- (c) 1 nominee of the Fiji Law Society.

(3) Of the nominees under subsection (2)(a) and (b), each of the Prime Minister and the Leader of the Opposition must nominate at least one person drawn from

academia or civil society organisations, with demonstrated expertise and experience in constitutional law, electoral law, public law, political science, public policy or democratic governance.

(4) A nominee under subsection (2) may be a citizen or non-citizen, including an international expert, provided the nominee possesses relevant expertise and experience.

(5) In drafting a referendum question, the Commission must ensure that the question—

- (a) is clear and capable of being understood by voters;
- (b) is neutral and unbiased; and
- (c) does not unfairly favour any particular outcome.

(6) The Commission must publish the draft referendum question or questions for public comment for a period of not less than 30 days.

(7) The Commission must consider public submissions received under subsection (6) and finalise the referendum question or questions not later than 90 days before polling day.

8. Insert New Section: Safeguards for Fundamental, Minority and Indigenous Rights in Constitutional Referendums

Issue

The Bill does not provide additional safeguards where a referendum is used to amend constitutional provisions affecting fundamental rights. In the absence of such safeguards, constitutional change may be determined by a narrow majority without sufficient assessment of its broader and longer-term implications for different communities.

International best practice recognises that constitutional referendums affecting rights should be subject to enhanced procedural protections to ensure legitimacy, inclusiveness and durability. These safeguards are intended not to impede reform, but to ensure that constitutional change commands broad public support and is informed by objective assessment.

Proposed New Section (to be inserted in Part 2)

5B.—(1) Where a referendum is held for the purpose of amending the Constitution, and the proposed amendment affects or relates to—

- (a) fundamental rights or freedoms;
 - (b) the rights or protections of minority groups; or
 - (c) constitutionally recognised indigenous rights,
- the safeguards set out in this section apply.

(2) Prior to the holding of such a referendum, an independent human rights impact assessment of the proposed amendment must be conducted.

(3) Where the proposed amendment affects indigenous rights, the assessment conducted under subsection (2) must specifically consider the impact on indigenous land, culture, identity and customary institutions.


(4) The assessments referred to in subsections (2) and (3) must be conducted by the Fiji Human Rights and Anti-Discrimination Commission, or such other independent bodies as may be prescribed by law, and must be published and made publicly accessible within a reasonable period before polling day.


(5) A constitutional amendment to which this section applies is approved at a referendum only if it is supported by not less than two-thirds of the valid votes cast nationally.

(6) The Referendum Question Commission must have regard to the assessments conducted under this section when finalising the referendum question or questions.

(7) Nothing in this section limits the jurisdiction of the courts to review the constitutionality of a proposed amendment or the conduct of a referendum.



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