

31 August 2022

Support for Fiji legal profession and the rule of law

The Law Council of Australia backs calls by the Fiji Law Society for the Fiji Parliament to take more time to consider and consult on the proposed Electoral Act Amendment Bill No. 49 (the Bill) in order to ensure it does not unnecessarily erode citizens' right to privacy.

The proposed measures in the Bill would appear to vest the Supervisor of Elections with extraordinarily broad information gathering powers, without appropriate safeguards or oversight mechanisms. There is no right of appeal against a decision by the Supervisor other than to the Fiji Electoral Commission which is final and cannot be further appealed or reviewed by any court.

The Law Council takes the view that coercive information gathering powers, such as these, must be seen as exceptional, particularly when used in executive rather than judicial processes, given their intrusive impact on individual rights, including the right to privacy.

The Law Council has taken the view that the use of such powers is justified only when necessary to achieve a legitimate purpose and only when accompanied by sufficient protection against their overuse or misuse and by provisions to mitigate their adverse impact on individual rights.

It is essential that the public has a credible basis upon which to be satisfied that these powers are necessary in response to legitimate and evidence-based threats to the Fijian electoral process. In this case, no such justification appears to have been made out, and the necessity of the proposed powers does not appear to have been clearly or adequately established. Further, the Bill lacks safeguards, including the apparent absence of a right of appeal from the Supervisor's exercise of powers.

The Law Council's concerns include that the Bill may encroach upon legal professional privilege. Legal professional privilege remains an important aspect of the proper administration of justice and facilitates the rule of law in the public interest. Privilege belongs to the client, not the lawyer. The doctrine of legal professional privilege promotes the fostering of trust and candour in the relationship between a lawyer and client, ensuring a client can obtain full and frank legal advice from their representative. The Bill's impact upon legal professional privilege, along with broader rights and privileges, should be carefully reviewed before it progresses further.

The Law Council is also concerned by the reported use of urgency powers to introduce and debate the Bill. More time must be provided for consideration of legal and civil rights ramifications, and any safeguards which are necessary to protect rights and privileges, before the Bill is voted on by the Parliament.

The Law Council will continue to monitor this situation carefully.

Contact: Kristen Connell, P. 0400 054 227, E. kristen@talkforcemediacom.au