



Fiji Labour Party

National Referendum Bill No. 46 of 2025

Submission

Fiji Labour Party submits strong objections to aspects of Bill No. 46 which as they stand, deny fundamental freedoms and the democratic rights of our people to freely and openly discuss and consult on issues to be raised in a referendum.

1. Introduction:

At the outset, FLP submits that the National Referendum Bill (Bill46) is **unconstitutional**. It denies fundamental freedoms of

- speech, expression and publication
- assembly and association
- political rights and
- the right of access to information

enshrined in the Bill of Rights (Chapter 2 - s17,18,19,23 &25 of the Constitution.

Furthermore, Ch1 Section 3 (1) of the Constitution makes it explicit that: *“Any person interpreting or applying this Constitution must promote the spirit, purpose and objects of the this Constitution as a whole, and the values that underlie a democratic society based on human dignity, equality and freedom.”*

The limitations to the rights and freedoms prescribed under these sections do not apply in the case of the Referendum Bill.

2. A Referendum must be more than a Ballot Process

A referendum on a national constitution is one of the highest exercises of popular sovereignty. Its legitimacy does not rest only on whether ballots are cast and counted, but on whether citizens are able to freely deliberate, associate, campaign, access information, and contest ideas before voting.

The “free” in “free and fair” refers not only to the technical administration of polling day but also to the freedom of political speech and organisation that makes the decision meaningful.

Bill No. 46, the National Referendum Bill 2025 (“the Bill”), purports to provide a framework for referendums in Fiji.

However, several provisions in the Bill restrict political communication and civic participation so severely that they risk producing a referendum that may be procedurally orderly, yet democratically hollow.

These restrictions are especially troubling given that the referendum is contemplated on the 2013 Constitution - a document that defines and protects the fundamental rights of our people. It provides the structure of the government, rules of governance, and sets out the rules of political competition.

International democratic standards and comparative experience suggest that referendums require more, **not less**, space for public debate—alongside reasonable safeguards against intimidation, bribery, and obstruction.

Bill 46, however, as currently drafted, leans heavily towards suppressing normal civic activity. It concentrates excessive control over information and participation in the hands of the State - ie the current government.

2.0 Suppression of Political Speech and Campaigning

A broad ban on advocacy and persuasion

Clause 23 – *Prohibition of Canvassing*

- 2.1 The Bill makes it an offence, or criminalises any attempt to discuss or consult with anyone “*by word, message, writing or in any other manner*”, or endeavours to persuade someone to vote one way or dissuade them from voting one way. It also makes it unlawful to visit a voter at home or work “*for any purpose*” connected with the referendum.

This is extraordinarily restrictive, if not draconian. In theory and practice – persuasion, whether through speeches, pamphlets, door-to-door canvassing, community meetings, social media advocacy, or union/civil society campaigning—is the normal mechanism through which voters learn, deliberate and organise. A referendum is not simply a vote; it is a public argument. A law that criminalises persuasion criminalises democratic politics itself.

- 2.2 In response to criticism, government denies that the intent of the Bill was to prohibit lawful discussion. It says Section 17 of the Constitution allows “reasonable limits on expression to protect the integrity of elections” (FT 11/12/25).
- 2.3 Our response to government is that Section 23 is clearly headed: *Prohibition of Canvassing*. How much more explicit can that be to government’s intention to ban all forms of campaigning. The intention is very clear.
- 2.4 There are no ‘reasonable limits’ contained in Clause 23. It bans outright canvassing or discussions, even among individuals. That is draconian.
- 2.5 If government’s intention is to allow campaigning on the Referendum issue, then this must be explicitly stated in the Bill. No where does the Bill refer to a campaign period to allow for discussions, public debate and consultations.

3.0 Sweeping Ban on Symbols, Posters, Handbills, even Advertisements Clause 22

- 3.1 Prohibits any person other than the Supervisor from making, publishing, distributing, wearing, using, carrying or displaying “any badge, symbol... set of colours, flag, banner, advertisement, handbill placard or poster” (or any replica ballot paper) connected to a referendum “at any time either before, during or after” the referendum.
- 3.2 This goes far beyond reasonable regulation of misinformation or intimidation. It effectively bans citizens and civil society from communicating visually in ordinary ways.
- 3.3 Even if the State intends neutrality, the effect of this will be a chilling denial of the right to expression and association for political parties, churches, unions, youth groups, women’s groups, and community organisations. Such organisations will not be able to run normal awareness campaigns using basic materials in favour or against the referendum questions.
- 3.4 Clause 22 empowers police officers to arrest without a warrant any person found in breach of its provisions. As in Clause 23, the offence carries a fine of up to \$1000 and a maximum jail term of one year, if found guilty.

- 3.5 It would serve as an instrument of suppression and abuse of police authority to arrest without warrant anyone offending “in his or her view” against the section. In combination with an expressive offence, arrest-without-warrant authority creates a high risk of selective enforcement and intimidation. This is thoroughly problematic.

4.0 Gag Order

- 4.1 Clauses 23 and 24 of the Bill place a gag on the people – it’s a Gag Order. Labour submits that these Clauses should be removed altogether. And be replaced with provisions allowing for full public debate and specifying a campaign period on the Referendum issue.

We ask whether the government is also contemplating using the “Gag Order” in the case of the Constitutional Amendment it is seeking to propose.

The Coalition Cabinet and indeed its constituent political parties should hang their heads in shame for attempting to throttle the fundamental freedoms of our people.

5.0 Restrictions on “referendum activity” are vague and potentially overbroad – Clause 27

- 5.1 Clause 27 states that any person under 18, or a person who ceases to be a registered voter, “must not take part in any activity connected with a referendum.”
- 5.2 The phrase “any activity” is undefined and could be interpreted to include non-voting participation such as volunteering at civic education events, translation support, community discussions, or observation. While minors cannot vote, they are still rights-bearing citizens who may legitimately engage in political speech. A blanket ban is disproportionate and invites arbitrary enforcement.

6.0 The Bill denies the Right to Information through time Restrictions

- 6.1 A fair referendum requires adequate time and accessible information both through public campaigns and private engagements.
- 6.2 **Only five days’ notice for polling stations, questions and symbols**
Clause 11 requires the Supervisor to publish in the Gazette a notice specifying the polling stations “not later than 5 days prior to polling day,” and that notice must also specify the referendum questions and symbols.

6.3 Five days is inadequate for a constitutional referendum in a diverse society, especially when the Bill simultaneously suppresses civic campaigning and persuasion. Late notice combined with speech restrictions can create a ‘strategic surprise’ in favour of the government that may have specific advantage in pushing certain agenda through manipulation of the referendum questions. This possibility occurs when citizens learn the question/s late and cannot freely mobilise discussion around it.

7.0 Ballot Paper in English Only

7.1 Clause 16 requires the ballot paper to be printed in English. Although Clause 14 requires guidance notices at polling stations in English, iTaukei, and Hindi, the ballot itself remains English-only. For a constitutional referendum, legitimacy depends on voters understanding precisely what they are approving or rejecting. The ballot instrument should be multilingual and in plain-language to minimise misunderstanding and dispute.

8.0 Polling-day restrictions and privilege for parliamentary parties

8.1 Labour questions provisions in Clause 24 (f) which allows only political parties represented in Parliament to set up and maintain an office near a polling station, provided it observes the 200 meter limit. We have a number of political parties, Labour being a case in point, that are very active even though not represented in Parliament. The rule must apply to all political parties and not discriminate in favour of those parties in Parliament.

8.2 Clause 24 also prohibits loitering within 200 metres and restricts various polling-day activities, including waiting outside polling stations except to vote.

8.3 The Bill restricts offices connected to the referendum on polling day, but includes an explicit carve-out by which any political party represented in Parliament may maintain up to two offices (subject to the 200-metre rule).

8.4 This embeds unequal opportunity into referendum administration whereas a constitutional referendum should not be structured to favour incumbents or parliamentary parties over non-parliamentary actors, civil society organisations, or emerging political movements. Equality of participation is a core democratic value that needs express safeguards for fairness.

9.0 Subjective “Unlawful Assembly” Standard

- 9.1 Clause 25 deems an assembly of five or more persons unlawful if its “manner” is calculated to cause “intimidation, alarm or annoyance” to any voter.
- 9.2 “Annoyance” is subjective; it can be used to break up peaceful civic gatherings, including citizen observers or community groups providing non-coercive assistance. This is not a narrowly tailored public-order safeguard, it is a broad discretionary tool.

10.0 How Democracies Regulate Referendums without Criminalising Debate

- 10.1 Comparative experience shows that strong democracies do not run referendums by criminalising persuasion and banning civic materials. They regulate campaigns to ensure fairness through spending rules, transparency, equal access and neutral information, while preserving speech.
- 10.2 In the 2014 Scottish independence referendum, campaign rules recognised lead campaigners, regulated spending, and created a structured regulated period where campaigning was assumed and enabled, not outlawed.
- 10.3 Similarly, the UK’s 2016 EU referendum operated under an established regulatory framework (including designation of lead campaigns and defined referendum periods) premised on allowing campaigning while regulating it.
- 10.4 Ireland’s constitutional referendums, including the 2015 marriage equality referendum were characterised by intense nationwide debate across civil society and political groups without any legal ban on advocacy.
- 10.5 New Zealand’s early-1990s electoral-reform referendums likewise relied on extensive public discussion and voter information efforts rather than suppression of advocacy.
- 10.6 International guidance echoes this approach. The Venice Commission’s Code of Good Practice on Referendums stresses conditions including freedom of voters to form an opinion, pluralism, and balanced information rather than blanket bans on political communication.

11.0. Substantive amendments Fiji should adopt

To align the Bill with democratic standards and the requirements of a constitutional referendum, Fiji should adopt the following substantive amendments:

- **Repeal or radically narrow Clause 23** so that ordinary persuasion and canvassing are lawful, while prohibiting only intimidation, harassment, deception, obstruction, and campaigning within a clearly defined “silence zone” near polling stations.
- **Replace Clause 22** with a transparent campaigning regime: disclosure rules, spending caps (if desired), rules against impersonation/misrepresentation, and balanced access principles—rather than banning posters, symbols and “advertisements” altogether.
- **Clarify and narrow Clause 27** by defining prohibited conduct precisely (e.g., official roles reserved for registered voters), not banning “any activity” connected with the referendum.
- **Extend Clause 11 notice periods** substantially (e.g., weeks or months, not five days) and require proactive publication beyond Gazette notices, including multilingual public information.
- **Require multilingual ballot papers** (English, iTaukei, Hindi) and plain-language explanation of what a “Yes” and “No” vote means, especially for constitutional changes.
- **Add question-design safeguards** (neutral wording, single-issue rule, independent review, and a public consultation period for draft questions).
- **Strengthen transparency and contestability:** observer rights, publication of disaggregated results, clear complaint mechanisms and timelines.
- **Remove subjective public-order triggers** such as “annoyance” (Clause 25) and replace with clear, rights-compatible thresholds tied to threats, intimidation, and obstruction.

12.00 . Conclusion

- 12.1 Fiji should have a referendum law that protects integrity by preventing bribery, coercion, obstruction, and violence. But integrity is not achieved by criminalising persuasion, banning civic materials, restricting broad categories of participation, and compressing notice periods. Those measures undermine the conditions for informed consent and equal political participation, especially in a referendum that may reshape constitutional rights and democratic institutions.
- 12.2 A referendum on the Constitution must be conducted in an environment of open debate, pluralism, accessible information, and fair contestation. The Bill, in its current form, is too restrictive to meet the standard set out by international conventions.
- 12.3 Fiji should therefore amend it substantively so that any referendum, whether it be on the 2013 Constitution or any other subject, whatever its eventual question, can be credibly regarded as the genuine voice of the people.